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**A Victory for Common Humanity? The responsibility to protect
after the 2005 World Summit.**

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Amidst the general disappointment that accompanied last month's world summit, there were several important rays of hope. One of these, and perhaps in the longer-term the most important, was the General Assembly's (GA) endorsement of the 'responsibility to protect'. One hundred and ninety one states committed themselves to the principle that the rule of non-intervention was not sacrosanct in cases where a government was committing genocide, mass killing and large-scale ethnic cleansing within its borders. Moreover, some state leaders boldly claimed that had such a declaration existed in 1994, this would have prevented the Rwandan genocide and the massacres a year later at Srebrenica. For example, the United Kingdom's Secretary of State for Foreign Affairs, Jack Straw, stated in his speech to the Labour Party conference on 28 September that, 'If this new responsibility had been in place a decade ago, thousands in Srebrenica and Rwanda would have been saved'. This paper seeks to critically reflect on this claim by considering how far the GA's adoption of the responsibility to protect significantly changes the parameters shaping humanitarian intervention in contemporary international society. Here, I argue that the UN's endorsement of this new norm fails to address the fundamental question of what should happen if the Security Council is unable or unwilling to authorise the use of force to prevent or end a humanitarian tragedy, and secondly, it fails to address the question of how this norm could be better implemented to save strangers in the future.

The argument proceeds in three parts: first, I consider the genesis of the 'responsibility to protect' in the report produced by the Canadian sponsored International Commission on Intervention and State Sovereignty (ICISS). Here, I argue that what was imaginative about the ICISS report, entitled *The Responsibility to Protect*, was that it tentatively suggested ways for the UN to act when the Council could not agree on collective action. Unfortunately, none of the key recommendations in the report were taken up, and I consider how far this reflected the US and UK invocation of humanitarian justifications over Afghanistan and especially Iraq which was widely seen as discrediting the notion of the responsibility to protect. The second part of the paper examines how the idea of the responsibility to protect moved from the margins to gain endorsement by the GA. I argue that three factors were crucial in explaining this change: first, the ideas in the ICISS report were taken up positively by the Secretary General's

High-Level Panel on 'Threats, Challenges and Change' which reported to Kofi Annan in December 2004. The High-Level Panel broke with ICISS by omitting any discussion of what should happen if the Security Council was unable or unwilling to act. This enabled it to secure a consensus among those members of the panel who were most sensitive about eroding state sovereignty. The High-Level Panel shared the Canadian sponsored Commission's enthusiasm for reaching an agreement on the criteria that should govern the use of force, and this idea was taken up by Annan in his major report 'in larger freedom' which set out a detailed blueprint for UN reform. However, this part of the reform package was a casualty of the negotiations in New York which took place in the run-up to the world summit. But once the responsibility to protect was decoupled from an agreement on criteria, many developing states which were nervous about agreeing to an idea that they worried might legitimise great power interventionism in the internal affairs of weaker states, dropped their reservations and were prepared to sign up to the responsibility to protect. Finally, there is some evidence that those who were most opposed to the idea were increasingly persuaded that they could use the language in the summit declaration to undermine efforts to promote intervention at the UN. In other words, far from enabling intervention, it seems that some governments saw the GA's endorsement as an important mechanism for constraining the use of force.

The final part of the paper considers the limits of the responsibility to protect in terms of questions of authority and political will by focusing on the difficulties of reaching agreement in the Council in cases where the preventive use of force is being considered, and in situations where there is no political will to act.

ICISS and the 'Responsibility to Protect'

The idea of the 'responsibility to protect' was first explicitly articulated in the report produced by the ICISS. Set up at Lloyd Axworthy's initiative, the Commission sought to develop a new normative framework that would ensure that there were no more Rwandas and no more Kosovos. Here, it was responding to Kofi Annan's plea that the UN avoid future situations where the Security Council was united but ineffective as over Rwanda, and where it was divided, and particular states acted without express Council authorisation as over Kosovo.

The report argued that the debate over sovereignty versus intervention should be re-framed in terms of the responsibility to protect. States are entrusted with the primary responsibility to protect the security of their citizens. However, should they fail to exercise this responsibility, then ‘the principle of non-intervention yields to the international responsibility to protect’.¹ The report declared that, ‘[t]he most compelling task now is to work to ensure that when the call goes out to the community of states for action, that call will be answered. There must never again be mass killing or ethnic cleansing. There must be no more Rwandas’.² The Commission viewed their report as:

- Contributing to the generation of the political will necessary to avoid future Rwandas.
- Bridging the divide between West and South in relation to contending claims of human rights versus sovereign rights by moving debate away from the legal right of states to intervene and towards the international responsibility to protect the victims of humanitarian crises.
- Establishing threshold principles – large scale killing and ethnic cleansing – and precautionary ones (right intention, last resort, proportional means and reasonable prospect of success) to govern when intervention was permissible.

The ICISS argued that the task was to make the Council work better, and proposed that the P-5 agree not to exercise the veto in cases where there is majority support for a resolution authorising the use of force to prevent or end a humanitarian catastrophe.

Most governments were positive at the declaratory level, but no substantive progress was made on implementing its key recommendation that the General Assembly and Security Council endorse the idea of the ‘responsibility to protect’ and adopt the threshold and precautionary principles in the report. There was no support from the permanent five (P-5) for agreed limits on the veto (France was the most enthusiastic here), and whilst some developing states welcomed a greater role for the General Assembly, there was no question of the P-5 agreeing to this.

Supporters of the report blamed the attempts to justify the Iraq war in humanitarian terms as responsible for the limited progress that was made in implementing its key recommendations. For example, Gareth Evans, co-chair of the Commission – and an influential member of the High-Level Panel - argued in May 2004 that the ‘poorly and inconsistently’ argued humanitarian justification for the war has ‘almost choked at birth what many were hoping was an emerging new norm justifying intervention on the basis of the principle of the “responsibility to protect”’.³ The worry was that the misuse of humanitarian arguments by America, and especially the UK, would reinforce long-standing suspicions on the part of many Southern states that a doctrine of humanitarian intervention would be a weapon used by the strong against the weak.⁴ With the benefit of hindsight, it is evident that Evans was being overly pessimistic, but his assessment appeared accurate at the time, and this begs the question as to what explains the change in attitudes that led governments at the summit to sign up to the responsibility to protect.

From the High-Level Panel to the 2005 Declaration

The first factor that significantly changed the normative context was Annan’s decision to convene the High-Level panel. One important consequence of the divisions in the Council over Iraq was Annan’s commissioning of fifteen highly experienced representatives from North and South to examine how the UN could be reformed to meet the new security challenges of the 21st century. Its report ‘*A more secure world: our shared responsibility*’ takes as its point of departure the core assumption in the ICISS report that state and human security are indivisible, and that it is to collective action by states that we have to look to address the myriad of threats facing humanity. The High-level Panel proposed that the UN should adopt the emerging norm of the responsibility to protect in cases of ‘genocide and other large-scale killing, ethnic cleansing or serious violations of international law’. It also recommended that the Council reach agreement on the criteria determining the use of force, and proposed the following principles: *Seriousness of Threat; proper purpose; last resort; proportional means; and Reasonable Chance of Success*. The fact that Russian and Chinese representatives on the High-Level Panel were prepared to accept such language, when their governments had opposed British attempts in 1999-2000 to reach

agreement on criteria in the Council, reflected the strength of arguments being mobilised by key members of the panel, crucially Evans and the British representative Lord David Hannay. It was also crucially dependent upon the High-Level Panel's explicit statement that the use of force would have to be authorised by the Council under its Chapter VII provisions. It was this criterion that the UK had refused to accept in negotiations over criteria in the Council, believing that such a constraint would bind the UK and its Western allies in future cases where consideration was being given to using force without express Council authorisation, as had happened over Kosovo.

What is highly innovative about the High-level Panel report is the proposition that the Council has the authority – and indeed the *responsibility* – to use force preventively to uphold international peace and security. This was a ground-breaking development because it enables the Council to adopt resolutions that authorise coercive action, including ultimately the use of force, to prevent humanitarian crises from worsening. The Secretary General warmly welcomed the report of the High-Level Panel, and he included all its proposals related to the responsibility to protect and the use of force into 'in larger freedom' which was distributed in March 2005 for discussion within the GA in the run-up to the September summit. Moreover, in taking up the ideas of the panel, Annan clearly included prevention of genocide and ethnic cleansing in his definition of what counts as a threat to 'international peace and security'.⁵

On the question of criteria, the Secretary General is an enthusiast. He wrote in 'in larger freedom' that if the Council could reach agreement on the principles set out in the report of the High-Level, this would 'add transparency to [Council] deliberations and makes its decisions more likely to be respected, by both governments and world public opinion'.⁶ Implicit in this contention is the assumption that if the Council agreed on criteria, this would enable it to reach agreement in future cases where the issue of intervention was contested. The question as to whether agreement on principles determining the use of force would generate Council unity in future cases is a moot one since this part of the reform package was rejected during the negotiations in New York.

Even before the political fall-out from Iraq, there was little enthusiasm in the Council for new guidelines on intervention. The British attempt, led by the then Foreign Secretary Robin Cook, to press this issue in the aftermath of Kosovo

failed to gain significant support. The United States strongly opposed such efforts, concerned that guidelines might either restrict its freedom of manoeuvre or push it into actions that it was reluctant to undertake. China and Russia were also opposed, worrying that guidelines might open the door to greater UN interventionism in the internal affairs of Member States.⁷ These basic positions have not changed, and if anything, they have hardened: for states like China, India and Russia, all too conscious of the massive disequilibrium in global power, it is vital that nothing be done that further restrict the UN Charter's restraints on the use of force. Equally, the United States remains opposed to any guidelines that might constrain its freedom of action when it comes to the use of force.⁸ The combined opposition of these states killed any attempt to develop agreed guidelines at the summit.

The principal argument against the Council adopting criteria is that it will enable powerful states to circumvent Council authority.⁹ However, this proposition is open to the powerful rebuttal that agreement on thresholds would actually constrain the use of force. The best argument for establishing specific principles is that it makes it harder for states to employ bogus humanitarian claims, since each government is required to defend its actions in terms of the specific criteria.¹⁰ As Gareth Evans put it, '[a]t the end of the day strong arguments will look stronger and weak arguments weaker, and these appearances do matter'.¹¹ Those governments which fail to present a persuasive case to other governments, the media and wider world public opinion risk being condemned and even sanctioned.¹² I am not arguing that criteria would eliminate the risk of abuse, but agreement on the principles set out in both the High-Level Panel report and 'in larger freedom' would establish a clear benchmark against which to judge the humanitarian claims of states.

The refusal of Russia, China, and the United States to discuss criteria was not accompanied by a rejection of the idea of the responsibility to protect. There was a significant body of international opinion led by the EU, Canada and other concerned states that worked hard in the months before the summit to reassure those developing states who were nervous and hesitant about endorsing the responsibility to protect. The success of these efforts was that member states accepted for the first time in the final outcome document that 'collective action' could be taken using 'Chapter VII, on a case-by-case basis and in cooperation

with relevant regional organisations...should peaceful means be inadequate and national authorities are manifestly failing to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.¹³ A small group of developing states (Pakistan and Egypt were important players here) led by China and India fought against inclusion of this idea. But in the end, having failed to gain significant support, they reluctantly agreed to sign up to the principle. It was crucial for these states that during the negotiations it was agreed to move the statement on the responsibility to protect out of the section dealing with the use of force and into the one concerning human rights and the rule of law. There was also a sense that none of these states wanted to be seen as responsible for preventing an agreed outcome at the summit, and in the case of China, it seems that it was prepared to trade-off its opposition to the responsibility to protect in return for greater concessions on the idea of a human rights council which it strongly opposes.

The third factor which seems to have smoothed the passage of the summit declaration is that those governments which are reluctant about humanitarian intervention are increasingly persuaded that the language of the responsibility to protect could be used to constrain rather than enable interventions. In this regard, it is important that the paragraph in the summit communiqué before the one dealing specifically with responsibility to protect states that, '[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.¹⁴ Alex Bellamy shows in his forthcoming article on Darfur how those states which opposed applying sanctions against the Government of Sudan argued in Council deliberations during 2004 that the responsibility rested firstly with states, and that in the case of Darfur, the crisis had not yet reached the point where it was reasonable to argue that Sudan is failing in its responsibilities.¹⁵ It remains to be seen how far states are enabled to avoid their obligations by employing this type of argument in future cases. Certainly, the hope of those who have pushed for the adoption of the responsibility to protect at the UN is that the agreement in the final outcome document will make it much harder for states to hide behind the shield of sovereignty when they are failing to protect their populations.

The Limits of the Responsibility to Protect

Without detracting from the success of what was achieved in New York in terms of gaining a new acceptance of the responsibility to protect, there are two critical limits to what has been achieved. The first is that the agreement in paragraph one hundred and thirty nine of the outcome document does nothing to address the fundamental problem of political will. Those media commentators who have trumpeted the agreement on the responsibility to protect imply that the barrier to humanitarian intervention has been the principle of non-intervention.¹⁶ This belief is shared by those state leaders who have pushed this idea at the UN. For example, I noted earlier Foreign Secretary Straw's comment that had the responsibility to protect been in place in 1994, the Rwandan genocide would have been averted. The problem with this reading of history is that the fundamental barrier to intervention in Rwanda - as Annan acknowledged in a 1999 report to the GA - was lack of political will.¹⁷ No state opposed intervention in Rwanda on grounds of sovereignty, and had any state, or group of states, sought a mandate from the Security Council to use force in April and May 1994, it is virtually inconceivable that this would have been opposed. Thus, the real test of the summit declaration on the responsibility to protect is whether it increases the likelihood of the Council mustering the political will to act to prevent and halt future humanitarian crises. The continuing failure to respond both effectively and quickly to the humanitarian emergency in Darfur suggests that declaratory commitments to the principle of the responsibility to protect are not backed up by the political will to save strangers in peril.

The second problem with what was agreed in New York is that it does nothing to address the fundamental problem of what should happen if the Council is unable to agree in cases where particular states are seeking a mandate or prevent or stop a humanitarian emergency. In the case of Darfur, for example, the implication of the current position is that if a majority of the Council supported a request for authorisation from a coalition of Western and African states seeking to end the atrocities, and this was opposed by one or more of the permanent members, then this would be the end of the matter. Few will be satisfied with this outcome, since each of us can imagine circumstances in which we would support moral imperatives trumping the legal prerogatives of the UN Charter. Some Western governments are prepared to support military action to

stop slaughter and suffering if the Council fails to exercise its responsibilities. This is most likely to occur because one of the five permanent members of the Council (P-5) uses its veto, but it is possible to imagine circumstances in which there is insufficient support for a resolution authorising the use of force to end a humanitarian crisis. For others, notably Russia, China and India, bypassing the Council undermines international law and sets dangerous precedents which others might emulate.

The difficulty is that states can sign up to the principle of the responsibility to protect but disagree over its application in particular cases. The problem of Council unity is unlikely to arise in cases where there is clear-cut evidence of genocide and mass killing (unless one of the P-5 has a vital interest at stake), but if military intervention occurs at this point, it will come far too late for many. It is highly significant that the summit declaration recognises that the Council has the right to authorise the preventive use of force in relation to humanitarian protection, but what it ignores is that securing a consensus that force should be used to prevent a humanitarian catastrophe is fraught with difficulty. The fundamental dilemma in using force in response to warning indicators of an impending disaster is that it can never be known whether intervention is justified; we can never have access to the counter-factual of what would happen if the intervention did not take place. Robert Legvold captures the dilemma of legitimating anticipatory humanitarian intervention: 'To wait until massive numbers of lives have been lost before acting will...compound the tragedy...Yet, to reach agreement on forceful action in response to warning signs before tragedy strikes promises to be difficult in the extreme, if the evidence is ambiguous, as it is likely to be, and if a sizable number of states, including major powers like Russia, China and India, start from a strong bias against intervention'.¹⁸ The only case to date of this kind was Kosovo. The reason why the latter was such a difficult one for the Council was because there were genuine differences of opinion among the P-5 over whether force was the right means to end the crisis. NATO claimed that it had credible evidence that the Milosevic government was planning to forcibly expel the Kosovars, and this was supported by a majority of states on the Council which accepted that the humanitarian necessities of the situation justified the use of force. However, Russia and China argued that diplomacy should have been given more time. Had the human rights crisis in

Kosovo worsened along the lines predicted by NATO, Russia's position might have changed in the Council. It accepted that the Yugoslav Government was committing gross abuses of international humanitarian law, and had voted in support of Resolution 1199 and abstained on Resolution 1203. The difficulty with this line of argument is how many Kosovars had to be killed - or be expelled - before Russia and China would have sanctioned military action. The burden of justification that falls on states launching anticipatory interventions is far greater than would be the case if the humanitarian catastrophe had already happened, since the risks of abuse are greatest in relation to such preventive actions.

It was the need to avoid divisions in the Council, such as arose over Kosovo that was a key motivation behind the setting up of ICISS. NATO's unilateralism over Kosovo demonstrates that Western governments are not prepared to always wait for Council authorisation when they believe that the preventive use of force is necessary to protect endangered peoples. In such situations, the real question is: who is acting irresponsibly, those who seek to end the killings in the absence of a clear UN mandate or those who argue that such actions break international law and hence undermine the rules restricting the use of force. To its credit, the ICISS report recognised that this question could not be ducked, and it suggested the following procedural mechanisms be employed: states must always request Council authorisation before acting (NATO failed this test over Kosovo); the P-5 should agree not to exercise the veto (unless vital interests were threatened) in cases where a resolution supporting military intervention to end a humanitarian crisis has majority support (this was not specified but it was understood that this meant securing at least 9 votes); and if the veto is exercised in such cases, recourse might be made to the General Assembly under the 'Uniting for Peace' resolution and/or to regional bodies. It is a fascinating counterfactual question as to whether NATO would have secured majority support in the Council had it followed these procedures over Kosovo, and whether in the event of a Russian or Chinese veto, a resolution supporting military action prior to the commencement of hostilities would have elicited a two-thirds majority in the General Assembly.

The proposal in the ICISS report for limiting the veto was too controversial for the High-level Panel, and it was also omitted from 'in larger freedom'. There was no discussion of alternatives to the Council in any of the formal negotiations in New York, and had this been raised, it would have derailed any agreement on

the responsibility to protect. Consequently, six years later, it is not evident that the UN is any better placed to cope with a future Kosovo where the Council is divided on the merits of preventive action. There are grounds for some guarded optimism in relation to the prevention of future Rwandas, since the hope must be that by signing up to the responsibility to protect, governments – especially Council members - will find it harder to evade their new declaratory commitment to protect endangered populations. However, if this does not translate into greater political will to use force in extreme cases of humanitarian emergency, rhetorical commitments to the responsibility to protect are likely to be seen as hollow, and the concept could become discredited for years to come. It is the responsibility of all of us to avoid this outcome by holding our representatives at the UN to the fine words they have signed up to so that future generations can look back at the 2005 summit as marking a decisive victory for the responsibility to protect over statist values and interests.

¹ *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, Ottawa, December 2001, p.xi.

² *Responsibility to Protect*, p.70.

³ Gareth Evans, 'When is it Right to Fight? Legality, Legitimacy and the Use of Military Force, 2004 Cyril Foster Lecture, Oxford University, 10 May 2004, p.9.

⁴ For a fuller discussion of this argument see Nicholas J. Wheeler and Justin Morris, 'Justifying Iraq as a humanitarian intervention: the cure is worse than the disease', in W.P.S. Sidhu and Ramesh Thakur (eds.), *The Iraq Crisis and World Order: Structural and Normative Challenges* (Tokyo: United Nations University Press, forthcoming 2006).

⁵ 'In larger freedom: towards development, security and human rights for all', Report of the Secretary General, A/59/2005, 21 March 2005, p.33.

⁶ 'In larger freedom', p.33.

⁷ These competing positions are discussed in Nicholas J. Wheeler, 'Legitimizing Humanitarian Intervention: Principles and Procedures', *Melbourne Journal of International Law*, 2/2, (2001), pp.550-568.

⁸ See Gareth Evans, 'The United Nations: Vision, Reality and Reform', Address to Australian Fabian Society, Melbourne, 28 September 2005 (copy on file with the author), pp.4-5.

⁹ Evans, 'The United Nations', p.5.

¹⁰ See Jutta Brunnée and Stephen J. Toope, 'Slouching Towards New 'Just' Wars: The Hegemon After September 11th', *International Relations*, 18/4 (December 2004), p.414; Thomas G. Weiss, 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, 35/2 (2004), p.144.

¹¹ Evans, 'When is it Right to Fight', p.14.

¹² I develop this argument at length in *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

¹³ 2005 World Summit Outcome, 20 September 2005, <http://daccessdds.un.org/doc/UNDOC/LTD/N05/511/30/PDF/N0551130.pdf?OpenElement>, accessed 26 September 2005, p.31.

¹⁴ 2005 World Summit Outcome, 20 September 2005, <http://daccessdds.un.org/doc/UNDOC/LTD/N05/511/30/PDF/N0551130.pdf?OpenElement>, accessed 26 September 2005, p.31.

¹⁵ See Alex Bellamy, 'The Responsibility to Protect and Darfur', forthcoming *Ethics and International Affairs* (copy on file with the author).

¹⁶ See Tod Lindberg, 'Protect the people; United Nations takes bold stance', *The Washington Times*, 27 September 2005.

¹⁷ Kofi A. Annan, *Preventing War and Disaster: A Growing Global Challenge* (New York: United Nations Department of Public Information), p.21.

¹⁸ Robert Legvold, 'Foreword' to the Como Workshop, *Pugwash Occasional Papers*, September 2000, p.10.