

The Responsibility to Protect: Implications for Implementation

Tammy Lambert
MA - University of Calgary
Conference of Defence Associations Institute
Institute's 12th Annual Graduate Student Symposium
Kingston, ON, Canada
October 30, 2009

Introduction

In 2001, the International Commission on Intervention and State Sovereignty (ICISS), commissioned by the Canadian government, unveiled their report entitled *The Responsibility to Protect*.¹ *Responsibility to Protect* is based on the principle that sovereign states have a duty to protect their own citizens from mass human rights violations, crimes against humanity and genocide. Should they be unable or unwilling to do so, the international community has a ‘responsibility to protect’ those citizens, allowing and advocating for, the use of military intervention for protection purposes.

At the 2005 World Summit, the principles of *Responsibility to Protect* were unanimously affirmed by state leaders.² *Responsibility to Protect* is drawn from just war theory and provides threshold levels for intervention, outlines the legitimate authority for decisions to intervene and a framework for legitimate responses. The “just cause threshold” is reached when there is “serious and irreparable harm occurring to human beings, or [is] imminently likely to occur”. The two “just causes” are the “large scale loss of life” with genocidal intent or not and, “large scale ethnic cleansing.”³

Military humanitarian intervention has increasingly been a focus of debate in international politics since the debacle of the interventions in Rwanda and Somalia. However, with inadequate resources and inefficient bureaucracy, the actualization of humanitarian intervention has been perceived as *ad hoc* and inadequate. The creation of *Responsibility to Protect* attempted to provide a more concrete framework of when intervention should take place

This paper was first used as a term paper for Dr. Rob Huebert, POLI 439, University of Calgary, April 2009.

¹ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001).

² Edward C. Luck. “The United Nations and the *Responsibility to Protect*” *The Stanley Foundation* (2008): 1.

³ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): XII.

and the justifications for intervening. Since its inception and adoption, however, there have been a number of cases which meet the 'just cause' threshold levels in a number of countries that have done little to protect their citizens. The Democratic Republic of the Congo, and Darfur exhibited the necessary 'just cause' threshold levels for military interventions according to *Responsibility to Protect*. However, despite the creation of UN/AU missions for these areas, *Responsibility to Protect* was not utilized. In a stark case, one can look to the war in Northern Uganda which has been ongoing since 1986, characterized by massacres and forced displacement by the Lord's Resistance Army (LRA). This paper seeks to understand why *Responsibility to Protect* has not been implemented in Uganda despite the 'just cause threshold' being met.

It would appear that the dominant arguments in favour of not utilizing humanitarian intervention in general extend to the implementation of *Responsibility to Protect* in Uganda. This paper will examine three significant factors that appear to be influencing the use of *Responsibility to Protect*. First, the primacy of sovereignty and lack of political will remain obstacles to intervention. Second, the maintenance of the United Nations Security Council as the 'just authority' despite its failures to come to agreement on intervention in the past impacts the ability of states to intervene. Third, the inception of the International Criminal Court (ICC) appears to have created a challenge. With the presence of the ICC, intervening to stop genocide and crimes against humanity risks being sidelined for *ex post facto* responses that will risk fewer lives, and require less political will than humanitarian intervention.⁴ If the International Criminal Tribunal for Rwanda was indeed set up out of guilt,⁵ it is plausible that the permanence of the

⁴ Thomas W. Smith. "Moral Hazard and Humanitarian Law: The International Criminal Court and the Limits of Legalism," *International Politics* 39 (2002): 192.

⁵ Peter Uvin and Charles Mironko. "Western and Local Approaches to Justice in Rwanda". *Global Governance* 9 (2003): 221.

ICC may offer state actors a pardon from intervention in a manner which can clear guilty consciences.

The paper will begin with a consideration of humanitarian intervention and its benefits. From there, the concepts and principles of *Responsibility to Protect* will be examined, followed by a brief discussion on the conflict in Northern Uganda. The next section will consider the interplay between *Responsibility to Protect* and the conflict in Northern Uganda, situated in the international system. Finally, the paper will conclude with a brief commentary on what the non-implementation of *Responsibility to Protect* thus far means for Canada as result of its role in the creation of the doctrine.

Humanitarian Intervention

Jack Donnelly defines humanitarian intervention as action that is “undertaken to halt, prevent, or punish systematic and severe human rights violations or in response to humanitarian crises, such as famine or mass refugee flows.”⁶ In a more militaristic definition, Gareth Evans defines humanitarian interventions as “coercive action against a state to protect people within its borders from suffering grave harm.”⁷ Theoretically, there appears to be moral consensus that intervening to save lives from systematic death and grave abuses of humanity has become the global norm.⁸ In reality though, this is questionable. As Walzer claims, “even with a minimalist understanding of human rights, even with a commitment to nothing more than decency, there are more occasions for intervention than there are actual interventions.”⁹ This is illustrative of the lack of interest of international actors to intervene even for the most fundamental human right;

⁶ Jack Donnelly. *Universal Human Rights in Theory and Practice*. (Ithaca and London: Cornell University Press 2003), 243.

⁷ Gareth Evans and Mohamed Sahnoun. “The *Responsibility to Protect*” *Foreign Affairs* 81, no. 6 (2002): 99.

⁸ Alex J. Bellamy. “Motives, outcomes, intent and the legitimacy of humanitarian intervention” *Journal of Military Ethics* 3, no. 3. 2004): 217.

⁹ Michael Walzer. “The Argument About Humanitarian Intervention” in Georg Meggle (Ed) *Ethics of Humanitarian Interventions* (Frankfurt Ontos Verlag, 2004):23.

life. So why then does humanitarian intervention continue to be discussed and debated by many as a normative goal towards which the international community should strive?

As with most debates on the functioning of the international order, the debates on humanitarian intervention are largely polarized. On one side, there is a belief that moral obligations and decency of the conscience of actors validates the necessity for humanitarian intervention. A duty to protect fellow human beings morally, and ethically, is one of the main legitimizing factors in the use of humanitarian intervention. Terry Nardin identifies the concept of protection as a duty that results from a ‘common morality’ that exists within human beings.¹⁰ He states that it is “...not merely permissible but a duty to employ force against the violent if their victims cannot otherwise be protected.”¹¹

Alternatively, others argue that sovereignty should remain sacrosanct. According to Bellamy, those who disagree with the necessity of intervention “argue that sovereignty is often the only protection that weak states have against the strong and that interventionism is illegal and illegitimate because it offends against the foundational norms of international society.”¹² Daniel Warner claims that, “to intervene is to trespass, to go where one is not welcome and has no right to go.”¹³

Using Nardin’s understanding of the morality of humanitarian intervention, humanitarian intervention and principles such as the *Responsibility to Protect* should be the global norm. Yet, it is proving difficult to actualize humanitarian intervention based on the normative concepts of duty and ethics. States and state leaders will not assume the burden of these decisions, nor do

¹⁰ Terry Nardin. “The Moral Basis of Humanitarian Intervention.” *Ethics and International Affairs* 16, no. 2 (2002): 64.

¹¹ *Ibid.*, Nardin, 66.

¹² Alex J. Bellamy. “Motives, outcomes, intent and the legitimacy of humanitarian intervention” *Journal of Military Ethics* 3, no. 3. 2004): 219.

¹³ Ramesh Thakur. “In Defence of the *Responsibility to Protect*.” *The International Journal of Human Rights* 7, no 3 (2003): 164.

they have to, under current norms. It is quite easy to shift blame from one actor to the next without any ever assuming responsibility. Kuperman claims that “the constant challenge is to transform “never again” from empty rhetoric into implementable policy.”¹⁴ *Responsibility to Protect* was intended to change this by providing concrete agreement on when and how humanitarian intervention should take place.

The Responsibility to Protect and Humanitarian Intervention

During the last decade, immediately following the end of the Cold War there was an increase in attempts at humanitarian interventions, by the UN and other international organizations. Examples of these attempts include the former Yugoslavia, Somalia and Rwanda. Weiss states that, “the notion that human beings matter more than sovereignty radiated brightly, albeit briefly, across the international political horizon of the 1990s.”¹⁵ However, as Gareth Evans claims, “the international community in the last decade repeatedly made a mess of handling the many demands that were made for “humanitarian intervention”: coercive action against a state to protect people within its borders from suffering grave harm.”¹⁶ Failures and mistakes comprised many of the state actions taken during attempted humanitarian interventions. Evans states that “...in Somalia in 1993, Rwanda in 1994, and Bosnia in 1995, the UN action taken (if taken at all) was widely perceived as too little too late, misconceived, poorly resourced, poorly executed, or all of the above.”¹⁷ The concept of *Responsibility to Protect* attempts to clarify the ambiguity in humanitarian interventions; when intervention should take place, the reasons why it should be implemented and how to do operationalize successful interventions.

¹⁴ Alan J. Kuperman. *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington: Brookings Institute Press, 2001): IX.

¹⁵ Thomas G. Weiss. “The Sunset of Humanitarian Intervention? The *Responsibility to Protect* in a Unipolar Era,” *Security Dialogue* 35, no. 2 (June 2004), 135.

¹⁶ Gareth Evans and Mohamed Sahnoun. “The *Responsibility to Protect*” *Foreign Affairs* 81, no. 6 (2002): 99.

¹⁷ *Ibid.*, Evans and Sahnoun. 100.

Responsibility to Protect outlines a number of factors for legitimate intervention, focusing on factors most marked by dispute in the past, such as when to initiate interventions, and how much force should be used. The intention is to codify responses to grave violations of human rights. One of the noticeable changes being implemented is the change of language. There has been a clear attempt made, by the authors of *Responsibility to Protect*, to change the dialogue from a “right to intervene” to a “responsibility”.¹⁸ The goal of this dialectical switch is to frame issues and conflicts from the viewpoint of the victim, highlighting state responsibility as the primary protector and to make reaction to crimes against humanity and genocide more palatable.¹⁹

The state is claimed to be the entity most responsible for the protection of their own civilians. *Responsibility to Protect* commits itself to preventing armed conflict and crimes against humanity, as its fundamental principle.²⁰ It is when a state is unable or unwilling to do so, that the doctrine factors in. The ‘just cause’ threshold outlines when military intervention becomes necessary. There are two criteria. First, “large scale loss of life....with genocidal intent, or not, which is the product of either deliberate state action, or state neglect or inability to act, or a failed state situation.” And second, “large scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”²¹ *Responsibility to Protect* outlines the meaning of necessary intervention as twofold. The first consists of the threat of the use of force, and the second is actually applied military force.²² This diverges from

¹⁸ Bellamy, Alex J. “*Responsibility to Protect* or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq.” *Ethics & International Affairs* 19, no. 2 (2006): 35. See also: Gareth Evans and Mohamed Sahnoun. *The Responsibility to Protect*” *Foreign Affairs* 81, no. 6 (2002): 101.

¹⁹ Gareth Evans and Mohamed Sahnoun. *The Responsibility to Protect*” *Foreign Affairs* 81, no. 6 (2002): 101

²⁰ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): 19.

²¹ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): XII.

²² *Ibid.*, 8.

previous discussion surrounding humanitarian intervention by differentiating between humanitarian intervention, and military interventions to save human lives.²³ Based on the just war tradition *Responsibility to Protect* outlines operational principles as guidelines for intervention. The right intention is based on intent to alleviate human suffering. Military intervention must be the last resort after all non-military means have been attempted and the minimum necessary force is advocated. Finally, there must be reasonable prospects for success of the mission to protect lives.²⁴

The outline and justifications for intervention are clearly laid out in an attempt to reduce discussion on whether or not a situation warrants military intervention for humanitarian purposes. Yet, even with this codification, military intervention has not changed. *Responsibility to Protect* has yet to be implemented in response to ethnic cleansing or genocide.²⁵

In order to narrow the focus of the debate of the use of *Responsibility to Protect*, the conflict in Northern Uganda will now be considered as a case study.

The Conflict in Northern Uganda

The conflict in Northern Uganda can be traced back to 1986 when Yoweri Museveni, current President of the Republic of Uganda seized power and control of Uganda with the National Resistance Movement.²⁶ Museveni's regime has been involved in a number of armed insurgencies. The conflict, specifically with the Lord's Resistance Army (LRA) in Northern

²³ Gareth Evans and Mohamed Sahnoun. *The Responsibility to Protect* Foreign Affairs 81, no. 6 (2002): 101

²⁴ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): XII.

²⁵ It is important to note, that any military humanitarian interventions since the inception of the *Responsibility to Protect* doctrine have also been very limited. The terrorist attacks on September 11th, 2001, drastically altered international politics, largely impacting military humanitarian intervention debates. The major drafting of *Responsibility to Protect* was completed prior to these attacks. The proximity to 9/11 and the one track focus of the dominant world actors at this time are important in the utilization and acceptance (or apparent rejection) of the *Responsibility to Protect*.

²⁶ Joanna Quinn. "Getting to Peace? Negotiating with the LRA in Northern Uganda," *Human Rights Review* 1 (2009): 56.

Uganda has been ongoing since becoming the dominant force in the 1990s.²⁷ The conflict has been attributed to Museveni's practices to consolidate the North, and the vicious reaction from the rebel movement.²⁸

Known for its brutality and use of children in conflict, the LRA evolved out of a previous rebel group in 1987. Currently the force is under the leadership of Joseph Kony who operates it in a warlord fashion.²⁹ Although the goals of the LRA have been identified as political, they continually change, and have not been explicit.³⁰ Children have been some of the largest casualties of the ongoing conflict in the North. Children and youth are forcibly recruited to serve in the force. In 2003, 75% of the LRA were children.³¹ Young people between the ages of eight and eighteen are targeted for reasons of malleability and vulnerability.³² They are easier to control because they are too young to defend themselves or run away, ensuring commitment through indoctrination.³³

The brutality of the LRA further extends to its destruction of the Northern population. As one of the government's anti-insurgency tactics, members of the population were relocated to major town centres or internally displaced persons camps.³⁴ As a result of this forced relocation by the government and fear of incursions, massacres and abductions by the LRA, 80% of the population in the Northern region, comprising of three major districts, Gulu, Kitgum and Pader,

²⁷ Tim Allen. *Trial Justice*. (London: Zed Books, 2006): 39.

²⁸ *Ibid.* 56.

²⁹ Anthony Vinci. "The Strategic Use of Fear by the Lord's Resistance Army," *Small Wars & Insurgencies* 16 (2005): 365, 363.

³⁰ Dunn 2004:208, Vinci 2005: 363)

³¹ Michael Wessells. "Child Soldiers, Peace Education, and Postconflict Reconstruction for Peace" *Theory into Practice* 44 no. 4 (2005): 364.

³² Anthony Vinci. "The Strategic Use of Fear by the Lord's Resistance Army," *Small Wars & Insurgencies* 16 (2005): 367.

³³ *Ibid.*, Vinci.367.

The fact that children comprise a majority of the fighting force may be another factor in a hesitation to deploy forces into Northern Uganda. The investigation of this moral dilemma however, is beyond the scope of this paper.

³⁴ Tim Allen. *Trial Justice*. (London: Zed Books, 2006): 53.

now live in IDP camps.³⁵ Fears of LRA attacks have forced millions of civilians to these IDP camps to seek safety and refuge. Leaving villages and homes, and spending years in the IDP camps means no land, no farming and no livelihood. The crimes committed against the human population are clearly outlined in the arrest warrants for Kony and the LRA leadership of the International Criminal Court. Kony alone has been charged with 33 counts of war crimes and crimes against humanity including: murder, enslavement, attacks against civilian populations, rape, pillaging and inhumane acts (which include mutilation of victims).³⁶

In Conflict in Northern Uganda?

The ‘just cause’ threshold is being met in Northern Uganda. The conflict in Northern Uganda clearly is encompassed by *Section B*, of the ‘just causes’. Under the, “large scale ‘ethnic cleansing’” clause, the just cause threshold is met if there exists, “actual or apprehended, whether carried out by killing, *forced expulsion, acts of terror, or rape*” (emphasis added).³⁷ There have been over 1.6 million people displaced, predominantly members of the Acholi people.³⁸ An estimated 30, 000 children have been abducted.³⁹ However, this is solely an estimate because figures on abductees are difficult to ascertain. Peace attempts have failed. The government is unable to control or end the conflict. At some points, the government has worsened the situation by demanding the relocation of populations.⁴⁰ Spreading across borders into the Democratic Republic of the Congo and Sudan, the LRA attacks warrant attention by the international

³⁵ *Ibid.*, Allen. 53.

³⁶ The Office of the Prosecutor, *The International Criminal Court: Pre-Trial Chamber II*, “Warrant Of Arrest For Joseph Kony Issued On 8 July 2005 As Amended On 27 September 2005” (27 September 2005): 19.

³⁷ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): XII.

³⁸ James Ojera Latigo. “Northern Uganda: Tradition-based Practices in the Acholi Region.” *Traditional Justice and Reconciliation after Violent Conflict – Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance, 2008): 94.

³⁹ *Ibid.*, 94.

⁴⁰ Joanna Quinn. “Getting to Peace? Negotiating with the LRA in Northern Uganda,” *Human Rights Review* 1 (2009): 57.

community as they cause increased destabilization in the central eastern region.⁴¹ The factors that justify intervention have been clearly illustrated in Northern Uganda; there has been large scale loss of life, displacement along ethnic lines, mass rape and abduction. Why then, has *Responsibility to Protect* not been implemented since its inception in 2001 despite the UN Head of Humanitarian Affairs has claiming that “Northern Uganda is one of the worst humanitarian crises in the world?”⁴²

Will and Sovereignty

There are a number of factors that contribute to the policy of non-intervention in Uganda. There is an absence of a will to act because state interests are not at stake. Tanguy cites Kofi Annan stating that, “lack of political will, national interest narrowly defined, and simple indifference too often combine to ensure that nothing is done, or too little and too late.”⁴³ There are few negative political implications for foreign governments that can result from non-intervention. Intervening to simply save lives, although the moral choice, does not appear to be the pragmatic choice that leaders take. And this indifference is exactly what the *Responsibility to Protect* is attempting to reverse. Wheeler claims that this is because, “...noble humanitarian intentions are no guarantee against failure and humiliating exit, and that there is a dangerous arrogance in the idea that the secure liberal societies of the West have the answers, let alone the will, to solve the problems of states such as Somalia and Rwanda.”⁴⁴ With continuing debates over responsibility and threshold being met, Uganda will soon be added to this list. States are

41 Xan Rice. “Ugandan rebel deputy leader defects: Fugitive wanted by international criminal court in talks with UN to return home from Congo” *Guardian News and Media Limited* Thursday 29 January 2009 [accessed via <http://www.guardian.co.uk/world/2009/jan/29/uganda-rebels-odhiambo-defects> on April 1st, 2009].

42 United Nations Press Release. November 10, 2003. “Head Of UN Humanitarian Affairs Office Visits Northern Uganda, Says ‘Deeply Shocked’ By ‘War Against Children’” [accessed via: <http://www.un.org/News/Press/docs/2003/af750.doc.htm>]

43 Joelle Tanguy. “Redefining Sovereignty and Intervention.” *Ethics & International Affairs* 17, no. 1 (2003): 146.

44 Nicholas J. Wheeler. *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000): 32.

unwilling to use, and lose, their resources for the sake of conflicts that have no direct impact on their own functioning.

As Williams and Bellamy state:

Armed intervention in response to a supreme humanitarian emergency is currently only likely when a state, group of states or regional organization becomes sufficiently animated that it is prepared to incur significant political and material risks to ease the plight of suffering strangers and secure international legitimacy for its actions.⁴⁵

Under present conditions this is unlikely for fear of repercussions from intervening in a sovereign state.

The international system is comprised and understood in such a way that grants sovereignty to each state; authority over their given territory. Sovereignty has been, and continues to be, a foundational concept to maintain a peaceful international system. It can be understood as a mechanistic principle enabling states to abide by international law, while maintaining control over each state's own interests and power. Self determination and autonomy characterize ideals of international state activity. *Responsibility to Protect* claimed sovereignty was to be changed from sovereignty as control to *sovereignty as responsibility*.⁴⁶ This clause or agreement has yet to be implemented. The actualization of the rhetoric from paper to action is virtually non-existent, indicating the pinnacle to which sovereignty is upheld.

Sovereignty is an important component to the survival of weaker states. For example, President Bouteflika of Algeria states that sovereignty is "our last defence in an unequal world."⁴⁷ The drafters of *Responsibility to Protect* acknowledge this, claiming that sovereignty is

⁴⁵ Paul D. Williams and Alex J. Bellamy, "The *Responsibility to Protect* and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005): 42.

⁴⁶ Gareth Evans and Mohamed Sahnoun. "The *Responsibility to Protect*," *Foreign Affairs* 81, no. 6 (2002): 101

⁴⁷ Cited by Joelle Tanguy. "Redefining Sovereignty and Intervention." *Ethics & International Affairs* 17, no. 1 (2003): 143.

still important in international relations for functioning, equality and dignity.⁴⁸ Few states are willing to infringe in another state's sovereign territory for fear of repercussion or ill perceptions. Williams and Bellamy argue that, "since 9/11...many states have become increasingly suspicious that the West's humanitarian justifications mask neo-imperial ambitions."⁴⁹ Perceptions like these, although not completely unfounded, reinforce the norm of sovereignty.

The Security Council

Deeply rooted in moral considerations and normative claims, the *Responsibility to Protect*, is somewhat ambiguous as an international doctrine. *Responsibility to Protect* has been defined as "an emerging norm."⁵⁰ However, its lack of use is difficult to reconcile with this "emergence". With a significant number of conflicts that could have fallen under the guise of *Responsibility to Protect*, such as Darfur, none have. Given the relative newness of the Report, this is perhaps to be expected. What is contested, however, is the possibility for *Responsibility to Protect* to become an international obligation, with state consensus *as well* as the will, resources and ability to enforce it. Discussing its use in Northern Uganda, and elsewhere, is limited by the reliance of the permanent five members of the Security Council. According to *Responsibility to Protect*, "there is no more appropriate body...to authorize military intervention" than the United Nations Security Council.⁵¹ The leadership of the international institutions has been, and will continue to be detrimental to its actualization despite the good intentions.

According to *Responsibility to Protect*, the Security Council is supposed to "deal promptly with any request for authority to intervene where there are allegations of large scale

⁴⁸ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): 7.

⁴⁹ Paul D. Williams and Alex J. Bellamy, "The *Responsibility to Protect* and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005): 36.

⁵⁰ Carlo Focarelli. "The *Responsibility to Protect* Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine," *Journal of Conflict & Security Law* 13, no (2008):200.

⁵¹ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): XII.

loss of human life or ethnic cleansing.”⁵² However, there are ambiguities. States are to intervene only in cases that “shock the humanity of mankind.”⁵³ Despite provisions on threshold levels, and ‘just causes’ wavering and vetoing continue (even though states are to “agree not to apply their veto powers”⁵⁴) by members of the Security Council. This cannot be deemed legitimate in all cases. Nor can such decision making be viewed as a consensus by the international community.

During the Rwandan genocide, many in the UN claimed that a failure at another intervention would decrease the credibility of the organization.⁵⁵ Yet, with the continual denial of intervention, under *Responsibility to Protect*, as the dominant ‘just authority’, the UN is decreasing its legitimacy as an organization that stands to protect human dignity and human lives. Despite attempts of *Responsibility to Protect* to work around Security Council deadlocks, such as giving some authority to the General Assembly, “...they fall short of a long-overdue proposal to restructure democratically the makeup of the Security Council.”⁵⁶ This is a requirement for *Responsibility to Protect* to enter into force.

The International Criminal Court

The notion of a common humanity is a necessary building block to create an international norm that not only legally requires action, but that morally warrants a response in policy makers. To Wheeler, “this gap between normative commitments and instruments allows governments to

⁵² *Ibid.*, XII.

⁵³ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): 31.

⁵⁴ *Ibid.*, *The Responsibility to Protect*. XII.

⁵⁵ Nicholas J. Wheeler. *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2002): 216.

⁵⁶ Joelle Tanguy. “Redefining Sovereignty and Intervention,” *Ethics & International Affairs* 17, no. 1 (2003): 145.

abuse human rights with virtual impunity.”⁵⁷ It is the ability to choose inaction over human lives that is the issue of contention.

From the above discussion on the norm on non-intervention, it is evident that taking a route alternative to intervention may be very appealing to state leaders. Thomas Smith claims that the benefits of the ICC as a permanent Court to fight impunity for human rights abuses and crimes against humanity creates a moral hazard. He states:

...if international actors feel confident that human rights criminals will eventually be brought to justice, either in their own countries or before the ICC, they may be less inclined to intervene to stop human rights crimes while they are happening, something international actors have been reluctant to do in any case.⁵⁸

However palatable *ex post facto* actions are to state leaders, to justify continued non intervention with the possibility of post-conflict justice is perilous. Smith notes that the two, intervention and prosecution, are not necessarily mutually exclusive. Arguably, in Northern Uganda, both are required. Military intervention is needed to stop the mass human rights abuses, but justice is still required to combat impunity at the international level and provide closure for victims. If accountability becomes a goal unto itself of the international community, it can have the positive effects of deterring future crimes, acknowledging the crimes of the past and creating an accurate record of the truth on which new regimes can move forward. While it is true that, “the threat of prosecution rattled the LRA military leadership, pushing them to the negotiating table,”⁵⁹ the lasting effects of this initial compulsion appear to have dissipated, without consequence. The ICC does not have the capabilities to militarily enforce these arrest warrants. However, the UN,

⁵⁷ Nicholas J. Wheeler. *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000): 1.

⁵⁸ Thomas W. Smith. “Moral Hazard and Humanitarian Law: The International Criminal Court and the Limits of Legalism,” *International Politics* 39 (2002): 177.

⁵⁹ Nick Grono and Adam O’Brien “Justice in Conflict? The ICC and Peace Processes” in *Courting Conflict? Justice, Peace and the ICC in Africa*, ed. Nicholas Waddell and Phil Clark (London: The Royal African Society, 2008): 15.

under *Responsibility to Protect*, has both the infrastructure and legitimacy to end the continuing loss of life in Uganda.

The ICC and *Responsibility to Protect* came into being at roughly the same time. As a newly functioning international institution, the ICC presents other difficulties. It has already received criticism for its involvement in solely African conflicts.⁶⁰ This presents another dilemma for intervention, especially with the use of *Responsibility to Protect*. Because it would have been the first time *Responsibility to Protect* had been used, it is possible that the international community did not think another ‘trial period’ of new doctrine or institution should be implemented in Uganda. If the ‘West’ was already perceived as being imperialist with the invasion of Afghanistan and Iraq, getting involved in Northern Uganda under these relatively new auspices could be problematic as well. However, as noted, the ICC has been given the opportunity to begin investigations and hand out indictments. These actions are vital steps in the development of the institution. However, in the five years since the investigations began, the conflict has not ended. The warrants should not be rescinded, but the peace efforts in Northern Uganda ought to be augmented; this time, with the enforcement of the *Responsibility to Protect*.

Implications

Canada’s contribution to the founding of ICISS and of *Responsibility to Protect* leaves the state situated in a unique position. Canada’s actions could have far reaching impacts on the use of the doctrine. Canada’s role in the creation of the doctrine of *Responsibility to Protect* is important, but cannot be considered completely defining of the success of *Responsibility to Protect*. Although Canada has played an integral role in the creation of this document, the possibility of implementing *Responsibility to Protect* requires international consensus to

⁶⁰ Albie Sachs. “Forward” in *Courting Conflict? Justice, Peace and the ICC in Africa*. (London: The Royal African Society, 2008): 6.

actualize its principles. Continued Canadian efforts to see *Responsibility to Protect* utilized in international relations ought to be welcomed. It must be understood, however, that unilateral action cannot be tolerated by any state in order to maintain legitimacy in the international community. Canada's involvement in Afghanistan, as indicated above, may have marred or distanced the acceptance of the doctrine. As well, it may have tarnished perceptions of Canadian altruism in military humanitarian interventions. Although these actions may have contributed to some discontinuity in the active adoption of *Responsibility to Protect* by the international community, this delay need not mean that these actions should be disbanded and the doctrine forgotten. A moral consensus however, among a group of states, needs to become the norm, and Canada is in a position to be the leader in this regard. Canada is at an important cross-road with *Responsibility to Protect* and its actions from here can influence the survival of the doctrine.

The inception of *Responsibility to Protect* seemed to indicate a codification of the concept of military intervention to promote and protect human security. It was meant to provide guidelines to defend human beings in danger, or near danger of genocide and ethnic cleansing. These guidelines were not necessarily meant to inspire the *will* to act; but a *duty* to prevent, and in other cases, a *responsibility* to respond. *Responsibility to Protect* was conceived following a decade that had seen the massacre of millions of civilians; it is supposed to prevent this from ever happening again.

However, there are a number of variables that contribute to the static status of *Responsibility to Protect*. It was unveiled during a turning point in international politics, eclipsed by the attacks on September 11, 2001. From there, despite a number of cases in which the 'just cause' threshold was met, there has been no intervention. This paper has examined the case of

Northern Uganda. Yet, a number of these factors that have led to non-intervention are applicable in other countries and conflicts.

First, the international norm of sovereignty has impacted the use of *Responsibility to Protect*. Fundamentally, states are unwilling to invade other states, even under the guise of an internationally codified document because of fears of repercussions, or failure. Going against the norm of sovereignty is even more unlikely without significant gain for the intervening states. Areas of little strategic gains or resource interests, like Uganda, do not garner the necessary response to intervene. Humans do not garner the necessary response to intervene. The will to act, to protect people alone, and strangers at that, has not developed among states.

Second, the decision to continue utilizing the unreformed Security Council as the body that decides what enables a legitimate intervention is problematic. The Security Council has not allowed for significant changes to the institution to make it fairer or more representative of actual state consensus. Thus, actors that have contributed to the creation of the norm of non-intervention in the past, remain at the forefront of decision making. Attempting to find a more legitimate means of decision makings in the international community will prove to be a challenge. The Security Council has the ability to make these decisions. The decision to implement *Responsibility to Protect* should remain under their jurisdiction but will require more than a request to not use veto powers. Arguably a change to the structure of the institution itself is necessary so that the decisions made are more representative of the international community.

Third, involvement of the International Criminal Court in Northern Uganda has made intervention under *Responsibility to Protect* difficult. Perceptions of Western interventions in the affairs of the politics of the state are already contested by those who claim that ICC intervention has negated any chance for peace. Intervention and justice do not need to be mutually exclusive

in the future. But, to have the first case of the ICC and the first case of the utilization of the *Responsibility to Protect* in Uganda may prove difficult in an international system where sovereignty is viewed as one of the only tools weaker states have against stronger states. Too much intervention after a period of non intervention by the international community may prove destructive for the legitimacy of both institutions. Since the judicial processes against the leadership of the LRA have begun, it is wise to let them continue. But, perhaps it is time to complement the ICC with the implementation of *Responsibility to Protect*.

Despite meeting necessary ‘just cause’ thresholds, the above reasons indicate why *Responsibility to Protect* is not working in the case of Northern Uganda. However, the institution is still valid. Kofi Annan stated that “if humanitarian intervention is...an unacceptable assault on sovereignty, how should we respond to Rwanda, to a Srebrenica – to gross violations of human rights that offend every precept of our common humanity.”⁶¹ The inception of *Responsibility to Protect* has provided the beginnings of a response to this question. It will take time to make the necessary adjustments to deconstruct the norm of non-intervention and sovereignty and replace it with a norm of protection and duty to respond to ethnic cleansing and genocide. To disregard *Responsibility to Protect* now would be premature. For, as is stated in 4.43 of *Responsibility to Protect*, “the reality that interventions may not be able to be mounted in every case where there is a justification for doing so, is no reason for them not to be mounted in any case.”⁶² Perhaps, with time, the morality of the doctrine will permeate international politics enabling intervention for human lives in all necessary cases.

⁶¹ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty (2001): 37

⁶² *Ibid.*, 2.

Bibliography

- Allen, Tim. *Trial Justice*. London: Zed Books, 2006.
- Bellamy, Alex J. "Motives, Outcomes, Intent and the Legitimacy of Humanitarian Intervention." *Journal of Military Ethics* 3, no. 3 (2004): 216-232.
- Bellamy, Alex J. "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq." *Ethics & International Affairs* 19, no. 2 (2006): 31 – 54.
- Donnelly, Jack. *Universal Human Rights in Theory and Practice*. Ithaca and London: Cornell University Press, 2003.
- Evans, Gareth. "The Responsibility to Protect: An Idea Whose Time Has Come...And Gone?" *International Relations* 2008 22, no. 3 (2008): 283-298.
- Evans, Gareth and Mohamed Sahnoun. "The Responsibility to Protect" *Foreign Affairs* 81, no. 6 (2002): 99-110.
- Focarelli, Carlo. "The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine," *Journal of Conflict & Security Law* 13, no. (2008): 191-213.
- Grono, Nick and Adam O'Brien "Justice in Conflict? The ICC and Peace Processes" in *Courting Conflict? Justice, Peace and the ICC in Africa*, ed. Nicholas Waddell and Phil Clark. London: The Royal African Society, 2008: 13-21.
- Kuperman, Alan J. *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington: Brookings Institute Press, 2001).
- Latigo, James Ojera. "Northern Uganda: Tradition-based Practices in the Acholi Region." *Traditional Justice and Reconciliation after Violent Conflict – Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance, 2008): 85- 121.
- The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty, 2001.
- Quinn, Joanna. "Getting to Peace? Negotiating with the LRA in Northern Uganda," *Human Rights Review* 1 (2009): 55-71.
- Rice, Xan. "Ugandan rebel deputy leader defects: Fugitive wanted by international criminal court in talks with UN to return home from Congo" *Guardian News and Media Limited* Thursday 29 January 2009 [accessed via

<http://www.guardian.co.uk/world/2009/jan/29/uganda-rebels-odhiambo-defects> on April 1st, 2009].

Sachs, Albie. "Forward" in *Courting Conflict? Justice, Peace and the ICC in Africa*. (London: The Royal African Society, 2008): 6.

Smith, Thomas W. "Moral Hazard and Humanitarian Law: The International Criminal Court and the Limits of Legalism," *International Politics* 39 (2002): 175-192.

Thakur, Ramesh. "In Defence of the *Responsibility to Protect*." *The International Journal of Human Rights* 7, no 3 (2003): 160-178.

The Office of the Prosecutor, *The International Criminal Court: Pre-Trial Chamber II, "Warrant Of Arrest For Joseph Kony Issued On 8 July 2005 As Amended On 27 September 2005,"* 27 September 2005.

Thomas, Nicholas and William T. Tow. "The Utility of Human Security: Sovereignty and Humanitarian Intervention" *Security Dialogue* 33 (2002): 177-192.

United Nations Press Release. November 10, 2003. "Head of UN Humanitarian Affairs Office Visits Northern Uganda, Says 'Deeply Shocked' By 'War Against Children'" [accessed via: <http://www.un.org/News/Press/docs/2003/afr750.doc.htm>]

Uvin, Peter and Charles Mironko "Western and Local Approaches to Justice in Rwanda" *Global Justice* 9 (2003): 219-231.

Vinci, Anthony. "The Strategic Use of Fear by the Lord's Resistance Army," *Small Wars & Insurgencies* 16 (2005): 360-381.

Walzer, Michael. "The Argument About Humanitarian Intervention" in Georg Meggle (Ed) *Ethics of Humanitarian Interventions*. Frankfurt Ontos Verlag, 2004.

Weiss, Thomas. "The Sunset of Humanitarian Intervention," *Security Dialogue* 35, no 2 (2004): 135-153.

Wessells, Michael. "Child Soldiers, Peace Education, and Postconflict Reconstruction for Peace," *Theory into Practice* 44 no. 4. (2005): 363 – 369.

Williams, Paul, and Alex J. Bellamy. "The *Responsibility to Protect* and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005): 27-47.