Book Section:

Security and International Law: the 'Responsibility to Protect'

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I Introduction

One of the most significant areas of security and international law is that of threats to the security of individuals. As this book deals elsewhere with the concept of 'human security', this chapter is dedicated to one particular conception of how to address the threats to individual security posed by mass atrocity crimes – the doctrine of 'Responsibility to Protect' (RtP). RtP was born in 2001[1] with the publication of a report by the International Commission on Intervention and State Sovereignty (ICISS)[2] aimed at being a comprehensive doctrine capable of overcoming the deadlock between state sovereignty/non-intervention and human rights, which had characterised the humanitarian intervention debate in previous decades, due to its broader understanding of security crises.[3] RtP's core idea is the primary responsibility of a state towards the security of its population and the secondary responsibility of the international community in this regard. The idea has undergone several 'evolutions' from its promulgation in 2001, through the General Assembly's adoption of parts of the ICISS report in its World Summit Outcome Document in 2005,[4] to the Secretary General's Report on the implementation of the doctrine in 2009.[5] These evolutions have demonstrated areas of clear

[1] The idea of sovereignty as responsibility towards a state's own citizens was first introduced in 1996 in the context of refugees – see especially: F Deng et al, Sovereignty as Responsibility: Conflict Management in Africa (Washington DC, Brookings Institution Press, 1996).
[2] ICISS, The Responsibility to Protect (Ottowa, International Development Research Centre, 2001).
[3] For references to this 'deadlock' see, eg: K Annan, Millennium Development Report to the 55th Session of the UNGA (5 September 2000) UN Fact Sheet DP1/2083/Rev.1; ICISS (n 2) foreword vii.
[4] UNGA, 'World Summit Outcome Document' UN GA Res 60/1 (24 October 2005) (Outcome Document).
[5] B Ki-moon, 'Implementing the responsibility to protect: Report of the Secretary General' UNGA 63rd session (12 January 2009) UN doc A/63/677.

consensus between states and also areas where issues are clearly unresolved and lacking international consensus on human protection.

This chapter addresses some of these issues by exploring the role of the RtP doctrine in providing security to vulnerable individuals. It does so in the light of the book's two main questions – whether international law can address the types of security risks that threaten our existence in the 21st Century and where and how international law might fall short in meeting the problems that arise in situations of insecurity. To answer these questions, the chapter critically engages with RtP, examining how it constructs the nature of insecurity and what assumptions are made about the role of international law in providing security. Section II introduces the idea of 'responsibility to protect' and its development. Section III examines some key assumptions underpinning RtP. The first assumption is the very foundation of RtP – that the internal crises in which mass atrocity crimes occur are the key threat to individual security today. The second assumption is that because these crises are associated with weak, failing or non-democratic regimes, domestic governance reform is the most important crisis-prevention strategy. The third assumption is that, given that the fault lies with the government that has failed to protect its people, the international community's role is to respond by rescuing those at risk, should prevention fail. Section IV argues that these assumptions provide an incomplete picture of the situations of insecurity in which mass atrocity crimes occur and, thus, give a faulty analysis of suitable prevention measures. It criticises RtP's assumptions for neglecting more chronic socio-economic problems, related to violence and insecurity, and consequent mass abuses of civil and political rights. Related to this implicit decoupling of socio-economic from civil and political rights, this section also argues that RtP insufficiently addresses the role of the international community in actually contributing to the sorts of crises that RtP attempts to address. Section V considers the place of RtP in international law and relates arguments about RtP to those concerning international law's

'fitness for purpose' in addressing security threats in the 21st Century more generally. Some concluding thoughts are then offered.

II The Development of the 'Responsibility to Protect' Doctrine

RtP has been discussed widely following the ICISS report, including in the UN High Level Panel Report of 2004[6] and various more recent reports by the Secretary General. This section discusses the three most detailed iterations of the RtP concept in order to understand how it has developed and which of its concepts remain problematic: the ICISS Report of 2001, the UN World Summit in 2005 and the Secretary General's implementation report of 2009.

A The International Commission on Intervention and State Sovereignty 2001

The 2001 ICISS report was commissioned by the Canadian Government to find a way forward from the state sovereignty-human rights deadlock, which had characterised the earlier humanitarian intervention debate.[7] Having met with a wide range of actors, including NGOs, governments and civil society groups, the Commission produced a detailed report covering the changing international context of security threats; changes in the terms of the humanitarian intervention debate and the meaning of sovereignty; the three 'pillars' of responsibility (to prevent, to react and to rebuild); together with operational issues relating to military intervention, including the question of Security Council authority. Finally, the report ended with thoughts for the 'way forward' from the analysis therein to action in the future.[8] The changing international context includes new security issues, such as the increase in intra-state conflicts frequently associated with weak states and frequently involving high civilian

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[6] UN, 'A more secure world: our shared responsibility' Report of the High Level Panel on Threats, Challenges and Change (29 November 2004) UN Doc A/59/565.
[7] ICISS (n 2) 2.
[8] ICISS (n 2) 69.

casualties.[9] At the same time, the report comments that, since the end of World War II, international law has increasingly become concerned with protecting the individual through increasing numbers of human rights treaties (including the Genocide Convention and various more general human rights conventions).[10] In this context, the report notes that a principle is emerging of intervention for human protection purposes – including military intervention in extreme cases of major harm to civilians.[11] In light of this, the Commission recommended changing the terms of the debate from a 'right to intervene' to a 'responsibility to protect', focusing on the victims rather than the interveners and encompassing a broader responsibility than just that of military intervention.[12] The core principle of the report is that '[w]here a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unable or unwilling to halt or avert it, the principle of non-intervention yields to the international responsibility to protect'.[13] The ICISS report did not receive an immediate response from the international community, but was debated four years later by the General Assembly as part of its World Summit.

B The United Nations General Assembly World Summit 2005

In two paragraphs of its 'Outcome Document', the General Assembly endorsed the key principle of RtP in its 2005 World Summit.[14] Paragraph 138 of the Outcome Document refers to states' responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and encourages the international community to assist states in exercising this responsibility.[15] Paragraph 139 acknowledges the responsibility of the international community to help protect populations against these crimes. It notes that this

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[9] See ICISS (n 2) 4.
[10] ICISS (n 2) 6 para 1.25, 14.
[11] ICISS (n 2) 16 para 2.25.
[12] ICISS (n 2) 17, para 2.29; G Evans, 'Responsibility to Protect: an idea whose time has come...and gone?' (2008) 22 Intl Relations 283.
[13] ICISS (n 2) xi.
[14] UNGA, Outcome Document (n 4).
[15] UNGA, Outcome Document (n 4) para 138.

responsibility is to be carried out peacefully in accordance with Chapters VI and VIII of the UN Charter or, if necessary, by acting collectively through the Security Council and Chapter VII, on a case-by-case basis, where a state is 'manifestly failing' in its protective duty. It also recommends that the General Assembly continue to consider the responsibility to protect populations, 'bearing in mind the principles of the Charter and international law'.[16] Although this has been hailed as a revolutionary norm,[17] the Outcome Document is a somewhat cautious approach to the detailed content of the full ICISS report, such as in its reference to the option of General Assembly-mandated action,[18] or to the suggestion made by 'a senior representative of one of the Permanent Five countries' that the Security Council's 'P5' might refrain from using their veto power.[19] Nevertheless, it seems that the idea of both states and the international community having a responsibility towards individuals at risk from mass atrocities has been accepted by the General Assembly, which instructed Secretary General Ban Ki-moon to continue to report on the matter.

C Implementing the Responsibility to Protect, 2009

One of the results of the General Assembly's request to the Secretary General was the report 'Implementing the Responsibility to Protect', produced in 2009.[20] The report suggests a three-pillar strategy for implementing the responsibility to protect (different from the pillars in the 2001 report of prevention, reaction and rebuilding). These are: the state's responsibility to protect (pillar 1); the international community's responsibility to assist, especially with capacity-building (pillar 2); and the need for a timely and decisive response to a crisis (pillar

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[16] UNGA, Outcome Document (n 4) para 139.
[17] See, eg, R Cooper and J Kohler, Responsibility to Protect: Global Moral Compact (Basingstoke, Palgrave MacMillan, 2005); N Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' (2005) 2 J Intl L Intl Relations 95, 97.
[18] ICISS (n 2) 48 para 6.7; 53 paras 6.29-6.30.
[19] ICISS (n 2) 51 para 6.21.
[20] Ki-moon (n 5).

3).[21] In relation to these pillars, the report suggests that RtP is about strengthening sovereignty through international assistance, rather than weakening it through intervention (coercive action is mentioned only briefly when Ki-moon encourages the P5 not to use their veto in RtP situations[22]). Prevention, through pillars 1 and 2, is viewed by the report to be critical.[23] Nevertheless, the 2009 report does deal with the issue of intervention and, in doing so, seems to be at odds with the 2001 ICISS report's understanding of sequencing, which uses 'just war' criteria to guide the decision on when military intervention might be appropriate.[24] In contrast to ICISS' endorsement of the need for military intervention to be a last resort, Ki-moon's report argues that there is no need for a chronological sequencing of the different possible RtP responses and that the UN should not prize procedure over results.[25] Thus, at times, the Secretary General's 2009 report appears more expansive than the 2001 ICISS report on the use of force, at other times its focus is less on military intervention.

D RtP Now

From these documents, key unresolved areas of RtP can be seen to centre on the need for a chronological sequence of actions before military intervention is used as a last resort and on the use of the veto by the P5 members of the Security Council. These points will be returned to later, when considering the issue of military intervention and the relationship of RtP with international law. The point to be made now is that, notwithstanding these unresolved issues, it is claimed that RtP's supporters 'have won the battle of ideas'.[26] Certainly the General Assembly has continued to debate the matter after the World Summit and encouraged the

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[21] Ki-moon (n 5) 2. Pillar 2 has also been understood more in terms of rebuilding – see A Nollkaemper and J Hoffmann, Responsibility to Protect: From Principle to Practice (Amsterdam, Pallas, 2012) 15.
[22] Ki-moon (n 5) 27 para 61.
[23] Ki-moon (n 5) 9 para 11b.
[24] ICISS (n 2) 32 para 4.16; 36 paras 4.37, 4.38.
[25] ICISS (n 2) 22; Ki-moon (n 5) 9 para 12, 22 para 50. The ICISS does recognise the difficulty of the 'last resort' concept, but nevertheless emphasises the need for caution before military intervention.
[26] So claims Simon Adams (the Executive Director of the Global Centre for the Responsibility to Protect, a major RtP NGO), see S Adams, 'Responsibility to Protect' speech to opening plenary session of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana.

Secretary General to continue to report back on relevant issues, including reports on 'early warning and assessment'[27] and 'a timely and decisive response'.[28] Scholars have also noted that RtP has been hailed as coming of age in recent years.[29] Others have praised it as being a 'crucial concept',[30] 'the most dramatic normative development of our time'[31] and a valuable tool in raising awareness of our collective responsibility to protect individuals from certain types of insecurity and violence.[32] With recent references to RtP in Security Council resolutions in relation to the situation in Libya,[33] it appears that the international community has now largely accepted the overall concept of RtP, if not all of its details and operational issues. The next section examines the provisions of RtP more closely, identifying what assumptions RtP makes about how situations of insecurity arise and how they are best dealt with, in particular the roles played by the 'unable or unwilling' irresponsible state and by the 'international community' of responsible states.

III The Concept of '(in)security' in the Responsibility to Protect

Quite clearly, RtP is designed to address situations in which civilians suffer grave harm at the hands, or through the neglect, of their government that has failed in its primary responsibility towards its population. The 2001 report refers to this failure as the state having the primary responsibility and being unable or unwilling to fulfil it.[34] The 2005 Outcome Document refers

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[27] B Ki-moon, 'Early warning, assessment and the responsibility to protect' (14 July 2010) UN Doc A/64/864.
[28] B Ki-moon, 'Responsibility to protect: timely and decisive response' (25 July 2012) UN Doc A/66/874-S/2012/578.
[29] See, eg A Orford, 'Moral Internationalism and the Responsibility to Protect' (2013) 24 EJIL 83.
[30] N Wheeler and F Egerton, 'The Responsibility to Protect: 'Precious Commitment' or a Promise Unfulfilled?' (2009) 1 Global Responsibility to Protect 114.
[31] R Thakur and T Weiss, 'R2P: From Idea to Norm – and Action?' (2009) 1 Global Responsibility to Protect 22.
[32] See, eg R Cohen, 'The Responsibility to Protect: Human Rights and Humanitarian Dimensions' Harvard Human Rights Journal Annual Symposium (20 February 2009); S Adams, 'Responsibility to Protect' speech to opening plenary session of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana.
[33] See, eg UNSC Res 1973 (2011) UN Doc S/RES/1973. Other situations have also merited a reference to RtP, such as Syria – see, eg UNSC Res 2042 (14 April 2012) UN Doc S/RES/2042; UN GA Res A/HRC/RES/S-16/1; UN GA Res A/RES/66/176; UN GA Res A/RES/66/253, all urging the Syrian Government to protect its population.
[34] ICISS (n 2) foreword viii.

to the state's 'manifest failure' to protect its population.[35] The ICISS report notes that millions are at risk of atrocities and RtP is designed to deliver 'practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them'.[36] This role of the state towards its own citizens is reflected in pillar 1 of the 2009 report, which notes that 'it is the enduring responsibility of the State to protect its populations ... from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement'.[37] RtP is thus designed to be a narrow doctrine, addressing only these mass atrocity crimes and the local government's role in carrying them out or in failing to prevent them.[38] The doctrine is also designed to be 'deep' because, although the focus of RtP claims to be on prevention, flexible responses to crises also involve a 'wide array of protection and prevention instruments' from Chapters VI, VII and VIII of the Charter.[39]

RtP's definition of insecurity relates specifically to threats from (or failures of) the citizens' own government in relation to the civil and political rights of the state's own citizens (limited to the mass atrocity crimes of genocide, war crimes, crimes against humanity and ethnic cleansing). Again, clearly, the very existence of the doctrine assumes that something can be done about mass atrocity crimes specifically, with RtP specifying that it is Chapter VI, VII and VIII measures that are appropriate. This is discussed further in the next subsection on the causes of crises.

A The cause of threats to individual security

Perhaps unsurprisingly for a report that deals with grave civil and political rights abuses, the 2001 ICISS report relates the primary causes of conflicts or state collapse to failures in

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[35] UNGA, Outcome Document (n 4) para 139.
[36] ICISS (n 2) 11 para 2.1.
[37] Ki-moon (n 5) 8 para 11.a.
[38] Ki-moon (n 5) 8 para 10.b.
[39] Ki-moon (n 5) 8 para 10.c; A Dieng, Secretary General's Special Representative for Genocide, Opening Speech to Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana.

domestic governance – in particular, commenting that a 'firm national commitment to ensuring fair treatment and fair opportunities for all citizens provides a solid basis for conflict prevention'.[40] The 2009 report comments that populations will be at risk if 'national political leadership is weak, divided or uncertain about how to proceed' (for example, against rebels).[41] It also deplores the lack of education and training on human rights in states at risk from RtP crimes.[42] Mass atrocity crimes are therefore taken to be caused by the government responsible for the civil and political rights of its citizens.[43] Mass atrocities being the fault of the government, RtP then considers the role of the international community in response to national governance failures. It is to this that the next section turns.

B The international community's role in enabling security

i Prevention and Assistance

The international community's secondary responsibility to protect populations at risk from mass atrocity crimes involves helping states prevent crimes on their territory and responding to the commission of such crimes should preventive efforts fail. RtP recommends that the international community help local efforts to identify triggers of conflict[44] and support local human rights and good governance initiatives[45] to strengthen national governance. The international community's assistance to states should be through diplomatic encouragement, human rights training and other governance capacity building assistance,[46] by UN Special Advisors and the Bretton Woods institutions,[47] or through rule of law and other human rights issues being addressed in existing aid programmes.[48]

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[40] ICISS (n 2) 19 para 3.2.
[41] Ki-moon (n 5) 15 para 29.
[42] Ki-moon (n 5) 16 para 33.
[43] Ki-moon (n 5) 12; ICISS (n 2) 11, 19.
[44] ICISS (n 2) 19 para 3.4.
[45] ICISS (n 2) 19 para 3.3.
[46] Ki-moon (n 5) 15 para 29-30; 20 para 44.
[47] Ki-moon (n 5) 15 para 30.
[48] ICISS (n 2) 27 para 3.41; Ki-moon (n 5) 21 para 47.

ii Reaction and Response

If the international community's preventive efforts fail and a crisis develops, the international community must then exercise its responsibility to react. This responsibility can be fulfilled using economic, political and legal, as well as military, means.[49] ICISS acknowledges that sanctions can be a blunt instrument and, as such, it may be necessary to consider military action.[50] ICISS devotes significant space to endorsing 'just war' criteria to assess the legitimacy of a military response.[51] The 2009 report refers to the broad range of tools available under the Security Council's Chapter VI, VII and VIII powers, as well as the role of the General Assembly,[52] diplomatic sanctions and arms control.[53] The report notes, however, that given the widely different circumstances in which mass atrocity crimes occur, 'there is no room for a rigidly sequenced strategy or for tightly defined 'triggers' for action'.[54] A significant role of the international community is therefore envisaged by RtP, both in helping states improve weak domestic governance for conflict prevention and in responding to domestic failures with a variety of measures.

RtP's key assumptions about threats to security outlined above focus on the state-citizen relationship and the national government's duty not to abuse its citizens' civil and political rights. Adhering to liberal scholar Fernando Teson's view that 'a major purpose of states and governments is to protect and secure human rights', RtP envisages a cosmopolitan role for the international community whose human rights obligations to individuals everywhere can require it to rescue individuals from gross human rights abuses[55] and to

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[49] ICISS (n 2) 19.
[50] ICISS (n 2) 29.
[51] ICISS (n 2) 32-37 para 4.18-4.43.
[52] Ki-moon (n 2) 8-9 para 11c; 22 para 49.
[53] Ki-moon (n 2) 25 paras 57, 58.
[54] Ki-moon (n 5) 22 para 50.
[55] F Teson, 'The Liberal Case for Humanitarian Intervention' in J Holzgrefe and R Keohane (eds), Humanitarian Intervention: Ethical, Legal and Political Dilemmas (Cambridge, Cambridge University Press, 2003) 93; see also F Teson, 'Collective Humanitarian Intervention' (1995-1996) 17 Michigan J Intl L 323, 342.

encourage weak national governments not to abuse their populations in the first place. The next section goes on to demonstrate that RtP contains an impoverished conception of the role of the international community in the security of individuals in other states and, therefore, it cannot successfully address insecurity and violence.

IV Security and Responsibility: an alternative conception

This section will address RtP's construction of the nature of security threats by suggesting an alternative understanding of these threats. It critiques the very need for a doctrine focused on mass atrocity crimes because such a doctrine inevitably assumes that the 'international community' is well-placed to rescue people from this particular type of insecurity, rather than having a role in creating systemic causes of insecurity. The alternative conception of insecurity offered below links socio-economic development to security more explicitly than RtP does, arguing that, without adequately addressing this issue (and the international community's role in contributing to the causes of insecurity), the international community can only ever respond to the symptoms, and not the causes, of insecurity.

A The Importance of Mass Atrocity Crimes

This section contends that, while horrific, mass atrocity crimes are not necessarily the primary insecurity faced by vulnerable populations today. Creating a doctrine to enable urgent responses to these particular crimes elevates the importance of certain types of death over other types, without justification, and risks *adding* to the injustices suffered by the most vulnerable people by drawing attention away from equally important, and related, situations of insecurity. Some statistics highlight this point. There are 18 million poverty-related deaths annually, with 2,000 million people lacking access to basic drugs, 2,500 million lacking access to basic sanitation, 1,020 million chronically undernourished and 34 million people

suffering from HIV and AIDS.[56] This contrasts with the 1998 statistics of 588,000 deaths from war and 736,000 from social violence[57] and, of course, the famous death toll numbers of 800,000 in Rwanda and suggestions of 100,000 in Syria. Alex Bellamy describes this issue as 'structural violence', rather than organised military violence, being the main contemporary problem facing humanity.[58] In this regard, he contrasts 'death by politics' (state sponsored killing) with 'death by economics' (such as starvation). The latter is somehow seen as being outside the interest or responsibility of international law and the 'international community.[59]

The perception of mass atrocity crimes as the most urgent security issue reflects a tendency of international lawyers to focus on crises, rather than on systemic chronic issues, and thus not consider the relationship between the two. As Hilary Charlesworth notes, 'using crises as our focus means that what we generally take for 'fundamental' questions and enquiries are very restricted'.[60] Sundya Pahuja describes this phenomenon as 'the power of a question to define an outcome'[61] – if mass atrocity crimes are posed as the most urgent security threat to individuals, the outcome of a doctrine to deal with them seems natural. RtP succumbs to this crisis-focus, both in its very existence and in its limited acknowledgement that 'global justice' can be related to mass atrocity crimes. A focus on the more chronic problems outlined above would suggest that if we have a responsibility towards individuals in other states (as Teson suggests), it should include not just responding to crises in which mass atrocity crimes may occur, but also responding to the significant numbers suffering from these chronic problems. RtP does not explain why the 'millions' suffering from state repression and collapse are in need of a doctrine to help them, compared to the greater number of people

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[56] H Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 Modern Law Review 377, 391; T Pogge, 'Politics as Usual: What Lies Behind the Pro-poor Rhetoric?' Yale University Lecture (2010) 12-13.
[57] A Hurrell, Order and Justice in International Relations (Oxford, Oxford University Press, 2003) 42. See also A Bellamy, 'Humanitarian Responsibilities and Interventionist Claims in International Society' (2003) 29 Review of International Studies 320, 329.
[58] Bellamy (n 57) 329.
[59] Bellamy (n 57) 332.
[60] Charlesworth (n 56) 377.
[61] S Pahuja, 'Don't just do something, stand there! Humanitarian intervention and the drowning stranger' (2005) 5 Human Rights & Human Welfare 51.

dying from poverty-related causes. The existence of a doctrine addressing mass atrocities also suggests that they are a separate act or acts, unrelated to other global problems. This does not enable a comprehensive understanding of the situations in which mass violence occurs.

Proponents such as Adama Dieng (the Secretary General's Special Representative for the Prevention of Genocide) argue that RtP is *supposed* to be a narrow doctrine and so benefits from this limited focus.[62] Gareth Evans (one of ICISS' co-chairs) describes this as limiting the doctrine to 'extreme, conscience-shocking cases'.[63] This may calm the fears of those who see RtP as expanding the number of situations when it is acceptable to use military force, but, in more general terms, it does not explain why the deaths of 18 million human beings from poverty is not as conscience-shocking. Whilst efforts addressing underdevelopment and efforts addressing mass atrocity crimes are not necessarily mutually exclusive, there is a real risk that the focus on mass atrocity crimes will draw attention, effort and, crucially, funds away from causes, such as global health and poverty, and towards the defence industry and military intervention. Even if mass atrocity crimes *are* the major problem of our time, more conscience-shocking than the 18 million poverty-related deaths every year, RtP still neglects the relationship between atrocities and more chronic problems. The focus on crimes occurring during crises reflects a prioritising of certain civil and political rights over other human rights. Scholars frequently refer to 'fundamental' human rights,[64] without explaining whether all human rights are fundamental (as the term 'human' would imply) or whether some rights are more fundamental than others – though Holzgrefe and Keohane's reference to the word 'fundamental' rights in their definition of humanitarian

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[62] Dieng (n 39). The limited focus of RtP is a source of criticism for some who believe there is no justification for the choice of its 4 crimes, which are not necessarily obviously related in terms of causes and, possibly, appropriate responses – see, eg, A Gallagher, Genocide and its Threat to Contemporary International Order (Basingstoke, Palgrave 2013) 7.

[63] Evans (n 12).

[64] See, eg T Meron, 'On a Hierarchy of International Human Rights' (1986) 80 AJIL 1; WM Reisman, 'Sovereignty and Human Rights in Contemporary International Law' (1990) 84 AJIL 866, 872; P Malanczuk, Humanitarian Intervention and the Legitimacy of the Use of Force (Amsterdam, Het Spinhuis, 1993); M Kahler, 'Legitimacy, Humanitarian Intervention, and International Institutions' (2011) 10 Politics, Philosophy & Economics 20.

intervention suggests that only those rights triggering an intervention are the fundamental ones.[65] This issue warrants further discussion, which takes place below.

B The cause of crises: civil and political vs socio-economic rights

The primary importance of certain civil and political rights stems from the 'triumph of liberalism'[66] at the end of the Cold War and the declining influence of socialism and socio-economic rights. At this time, liberal international lawyers and others began to champion democracy and civil and political rights. For example, Thomas Franck comments that, in relation to coup attempts in Haiti and Russia, 'the international community vigorously asserted that only democracy validates governance'.[67] Teson asserts that anarchy and tyranny (non-democracy) are the worst forms of injustice because it is in these conditions that evils, such as genocide, are perpetrated.[68] In addition, John Rawls' theory of justice focuses more on the civil and political arena than socio-economic issues – equality of civil and political opportunities can never be compromised and increased socio-economic equality is not a justification for civil and political inequalities.[69]

In a similar vein, RtP relates insecurity strictly to the government's failure to protect its people's civil and political rights.[70] It constructs the biggest threat to individual security as mass abuses of civil and political rights and constructs the blame for abuse to lie with the government when those rights are violated on a grand scale. Although one paragraph of the 2001 report by ICISS does refer to the role of Cold War debts and the trade policies of richer countries in preventing poorer states from addressing some of the root causes of conflicts,

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[65] Holzgrefe and Keohane (n 55) 1.

[66] F Fukuyama, 'The End of History' (Summer 1989) National Interest.

[67] T Franck, 'The Emerging Right to Democratic Governance' (1992) 86 AJIL 46, 47. See also A D'Amato, 'The Invasion of Panama was a Lawful Response to Tyranny' (1990) 84 AJIL 516, 516; AM Slaughter, 'International Law in a World of Liberal States' (1995) 6 EJIL 503, 509; Teson (n 55) 93-94.

[68] Teson (n 55) 102.

[69] J Rawls, A Theory of Justice (Harvard, Harvard University Press, 1999) 61.

[70] See section III B above.

such as poverty,[71] it then ties these causes back to the civil and political rights arena of *national* democratic participation and *national* responsibility, suggesting that national poverty and inequality is to be solved by national good governance.[72] Very little of the 2001 report considers the potential 'direct' responsibility of the international community for socio-economic underdevelopment in poorer countries (rather than viewing national political constitution as responsible for socio-economic development).[73] The 2009 report is slightly more promising in this regard, referring to aid and development as part of conflict prevention in stronger terms than ICISS does. But this report still largely sees the relationship the other way round, noting (no doubt correctly) that mass atrocity crimes halt development, such as tourism and capital investment.[74]

There is, therefore, a significant disparity between civil and political rights and socio-economic rights in RtP. This disparity is worrying in itself, given the number of people suffering from poverty and RtP's claimed cosmopolitan concern for 'a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it'. [75] It is also worrying because development and security are related – underdevelopment and poverty contribute significantly to violence and instability. Kofi Annan highlights the general importance of socio-economic development when commenting that 'a young man with AIDS who cannot read or write and lives on the brink of starvation is not truly free.'[76] Thomas Pogge points to the inability of severely poor citizens to combat corrupt and anti-democratic governments. [77] James Richardson suggests that 'Arbitrary acts of violence against the underprivileged, or acts of omission such as the dispossession without

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[71] ICISS (n 2) 20 para 3.4, 22 para 3.22.

[72] ICISS (n 2) 19 para 3.2.

[73] ICISS (n 2) 23 para 3.22; D Chandler, 'The Responsibility to Protect: Imposing the "Liberal Peace"?' (2004) 11 Intl Peacekeeping 59, 62.

[74] Ki-moon (n 5) 16 para 32.

[75] K Annan, 'Two Concepts of Sovereignty' Address to the General Assembly (20 September 1999) 1.

[76] K Annan, 'In Larger Freedom: Towards Security, Development, and Human Rights for All' Report of the Secretary General (UN 2005).

[77] Pogge (n 56) 20.

restitution of those who inadvertently stand in the way of 'development'' are just as important as 'negative' rights (which are the focus of RtP).[78] Fearon and Laitin found that poverty was a key factor contributing to civil war and Suzuki and Krause found that economic development reduced the risk of civil war.[79] RtP's national civil-political focus is in contrast to the General Comments issued by the Committee on Cultural, Economic and Social Rights, which suggest that all states must respect the economic, social and cultural rights of individuals in other countries – this appears to go unnoticed by RtP and its proponents.[80]

In RtP terms, a national commitment to good governance and political participation and representative governance is of limited value if, for example, an individual cannot read the ballot papers or is dying of starvation and so unlikely to have an investment in their future. This means that RtP's commitment to protecting vulnerable individuals from abuses is rather empty without a prior commitment to the socio-economic rights that strengthen the ability of citizens to meaningfully participate in democracy and good governance measures – the high-level human rights training in prevention is of little use if individuals cannot exercise these rights 'on the ground'. There is strong evidence that development contributes significantly to security and conflict prevention, suggesting that the structural violence of inequality and poverty is prior to outbreaks of military violence.[81] In order to be meaningful, the international community's responsibility to protect, whether in ICISS' terms of prevention or Ki-moon's terms of assistance, should include a genuine commitment to development and poverty alleviation. The idea of the international community's duty to assist states in preventing abuse suggests that the international community's relationship with problem states

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[78] J Richardson, 'Contending Liberalisms: Past and Present' (1997) 3 Eur J Intl Relations 5, 25.
[79] JD Fearon and DD Laitin, 'Ethnicity, Insurgency, and Civil War' (2003) 97 American Political Science Rev 75; S Suzuki and V Krause, 'Trade openness, economic development and civil war onset in the post-colonial world, 1950–1992' (2005) 5 Conflict, Security and Development 23.
[80] Committee on Economic, Social and Cultural Rights, General Comments No 12 para 36; No 14 para 39 and No 15 paras 31, 33 and 34 refer to the responsibility of all states parties to respect, protect and facilitate the enjoyment of economic, social and cultural rights in other countries.
[81] Fearon and Laitin (n 79); Suzuki and Krause (n 79). See also Bellamy (n 57); J Galtung, Peace by Peaceful Means (London, Sage, 1996); S Zizek, Violence (London, Profile, 2008).

is currently neutral, being neither a help nor a hindrance. If the blame for these crises lies with the local government, then, in response to a failure at the national level, it is logical that the international community could perceive a need for action in response.[82] A further issue meriting consideration is the degree of responsibility already borne by the international community in contributing to underdevelopment, violence and insecurity. The chapter now links socio-economic issues to the role of the international community in crises, challenging its role as rescuer.

C The role of the international community in insecurity – to the rescue?

In response to Bellamy's description of an international community which shows more concern for death by politics than by economics, this section demonstrates that the international community contributes significantly to 'death by economics'. Because this socio-economic insecurity is related to acts of violence, the international community therefore contributes to much of the violence within the states, which are then perceived to be unwilling or unable to fulfil their responsibility to protect. The idea that rich states contribute to the underdevelopment of poor states is not new. Whilst it is beyond the scope of this chapter to engage fully with development literature, it is at least plausible that rich country development policies are not helping the global poor, with loan conditions that increase inequality and decrease education, welfare and employment, for example, during the 1990s, developed countries reduced their development assistance by 27%.[83] Thomas Pogge also points to the asymmetrical global trading regime that allows rich countries to favour their companies through tariffs, quotas and subsidies, at an estimated cost to poor countries of $700 billion,

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[82] WM Reisman, 'Some Lessons From Iraq: International Law and Domestic Politics' (1991) 16 Yale J Intl L 203, 203; L Gordenker and T Weiss, 'The Collective Security Idea and Changing World Politics' in T Weiss (ed), Collective Security in a Changing World (Boulder, Lynne Reiner, 1993) 14; Teson, 'Collective Humanitarian Intervention' (n 55) 342;

[83] T Pogge, 'Priorities of global justice' (2001) 32 Metaphilosophy 6, 7, citing UNDP, Development Report (Oxford, Oxford University Press, 2000) 218.

whilst poor countries struggle to obtain affordable generic drugs and crop seeds as a result of the market access conditions imposed upon them by rich countries.[84] Because socio-economic underdevelopment has been shown in section IV B as being linked to violence and conflict, the international community's responsibility for socio-economic injustice means that they have a responsibility for contributing to the violence from which they wish to rescue people.

Two examples demonstrate these points well. In the Balkan crisis, Anne Orford argues that the key threats to peace were viewed to be local historical ethnic tensions; set against the local cause of threats, the question for international actors was that of rescue.[85] In contrast to this view of threats to individuals, Orford points out the contribution made by the economic liberalisation project of the World Bank and International Monetary Fund to the increasing instability in, and eventual violent breakup of, the former Yugoslavia. She notes that before the two international financial institutions' (IFI) interventions into the country, the different Yugoslavian provinces had been able to coexist peacefully with a degree of autonomy from the central government, without perceiving a need for full separation. The IFIs required the central government to enact constitutional changes, which increased centralised control at the expense of autonomous regions, as well as decreasing education opportunities and reducing constitutional protections for workers.[86] This led to a decrease in income per capita, increased unemployment and attendant social unrest, together with a perception within the various regions that independence would be necessary to be able to reverse the damaging social changes introduced by the central government and the IFIs. [87] Pre-existing nationalist sentiments had previously been managed through regional autonomy, but were fuelled by the increasing sense of insecurity, instability and social exclusion resulting from the constitutional

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[84] Pogge (n 83) 12; Pogge (n 56) 20.
[85] A Orford, 'Locating the International: Military and Monetary Interventions after the Cold War' (1997) 38 Harvard Intl LJ 443, 444; A Orford, Reading Humanitarian Intervention (Cambridge, Cambridge University Press, 2003) 18.
[86] Orford, 'Locating the International' (n 85) 453.
[87] Orford, 'Locating the International' (n 85) 454; Bellamy (n 57) 330.

reforms and increased centralisation decreed by the IFIs. This is a very different, and more complex, picture than that of purely local factions fighting for local reasons, with the only question for the international community being whether or not it should intervene to protect individuals at risk from local violence.

The problematic role of the international community in intra-state violence can also be demonstrated in Rwanda, where Belgium's colonial policy of elevating Tutsis to senior economic positions at the expense of the Hutu population is said to have led to many of the ethnic tensions that led to the genocide in 1994.[88] Rwanda's exposure to the international market in coffee and the economic problems caused by the collapse in coffee prices is also said to have contributed significantly to the tensions through rapid increases in poverty and resulting social unrest.[89] Far from helping prevent instability and violence, international aid agencies and development programs are also alleged to have contributed to the 'structural violence' of poverty, inequality and humiliation of the local population, which was largely excluded from meaningful participation in decisions (and jobs) in the development process.[90] Mahmood Mamdani goes even further than suggesting that colonialism contributed to ethnic tension, arguing that in Rwanda and Darfur colonialism actually created racial differences that would not otherwise have existed in these countries.[91] Whether Mamdani is correct or not, it is difficult to deny the link between these non-military interventions (whether overtly colonial or through the practices of IFIs) that leave countries impoverished and acts of violence that spring from such impoverishment. This link does not mean that those carrying out acts of violence should not bear any responsibility for their actions; but if RtP really aims

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[88] B Jones, 'Intervention without Borders: Humanitarian Intervention in Rwanda, 1990-94' (1995) 24 Millennium J Intl Studies 225.
[89] RH Robbins, Global Problems and the Culture of Capitalism (Boston, Allyn and Bacon, 2002) 269; P Verwimp, 'The political economy of coffee, dictatorship, and genocide' (2003) 19 Eur J Political Economy 161.
[90] P Uvin, Aiding Violence: The Development Enterprise in Rwanda (Bloomfield, Kumarian Press, 1998) 107, 136, 143.
[91] M Mamdani, When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda (Princeton, Princeton University Press, 2001) 13, 42, 80; M Mamdani, Saviours and Survivors: Darfur, Politics and the War on Terror (Brooklyn, Verso, 2009) 6, 15, 59, 271.

to prevent violence, or react usefully to it, then it cannot ignore the broader context in which violence occurs or the wider range of actors responsible for violence. Bellamy concurs that focusing on the need for acts of 'intervention' ensures that military interventions are perceived as discrete acts, rather than a different part of the spectrum of the international community's historical, ongoing, long term involvement in 'problem' states.[92]

This section has suggested that the international community is a significant contributor to violence taking place in the countries that RtP deems incapable of protecting their citizens. This calls into question RtP's genuine commitment to root cause prevention as it is merely addressing the symptoms. The result of focusing on symptoms over causes is the perceived importance of military intervention in response to these symptoms – it is to this issue that the chapter now turns.

D RtP's Unanswered Questions: a return to 'humanitarian intervention'

Section II noted the unresolved issues in RtP surrounding military intervention – 'just war' questions of last resort and the right authority to sanction/permit action. Despite its claimed focus on prevention and protection for victims, rather than the 'rights' of interveners, and wider approach than purely military intervention,[93] the ICISS report devotes 13 pages on military issues – far more than on root cause prevention or responses other than military action, such as diplomacy and sanctions. Ironically, it suggests that military action might be appropriate because sanctions can be a blunt instrument.[94] The 2009 report takes the question of military intervention further (though less of the report is focused on the topic), stressing that chronological sequencing of responses is not necessary in response to a crisis, so that military intervention does not have to be a last resort.

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[92] Bellamy (n 57) 329. See also A de Waal, 'Darfur and the Failure of the Responsibility to Protect' (2007) 83 Intl Affairs 1039.
[93] Evans (n 12) 285.
[94] ICISS (n 2) 29 para 4.5.

This focus on military action is troubling for two reasons. First, it risks neglecting a true commitment to prevention (particularly the long term socio-economic issues outlined above). Second, if it is agreed that military intervention does not have to be a last resort in particular 'worst case' scenarios, it becomes all too easy to view each crisis as one of the 'worst case' scenarios requiring immediate military action. The idea that one needs to decide what to do in these difficult, worst case situations, presumes that we are already willing, able committed and actually doing everything else in the non-worst case scenarios, with the only remaining problem being the few worst cases. A similar situation arises in relation to the need for Security Council authorisation − it becomes easy to view any veto as illegitimate because it prevents a perceived-necessary military response, without considering that perhaps a veto might suggest that it is the proposed military response that is, in fact, illegitimate. For example, the Russian and Chinese vetoes of action in response to the Syrian crisis might not necessarily be illegitimate simply because they have the effect of preventing military action. Given the controversy surrounding the Libyan intervention and subsequent regime change, as well as the war crimes committed by the National Transitional Council, a resulting reluctance to authorise further military interventions is unsurprising.[95] This repeated return to the issue of military action at the expense of serious long term prevention efforts suggests that RtP and humanitarian intervention are not 'very different concepts' as Gareth Evans has argued.[96] In fact, Thomas Weiss comments that 'the acknowledgment by the 2005 World Summit ... has reinforced the legitimacy of humanitarian intervention as a policy option'[97] and even the ICISS report itself says that its report is about humanitarian intervention.[98] To criticise the constant focus on military intervention is not to say that use of force can never be an

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[95] See, eg O Corten and V Koutroulis, 'The Illegality of Military Support to Rebels in the Libyan War: aspects of jus contra bellum and jus in bello' (2013) 18 J Conflict Security L 95; A Bellamy and P Williams, 'The New Politics of Protection' (2011) 87 Intl Affairs 825, 846; S Zifcak, 'The Responsibility to Protect after Libya and Syria' (2012) 13 Melbourne J Intl L 1, 11.
[96] Evans (n 12) 290.
[97] T Weiss, Humanitarian Intervention (Cambridge, Polity, 2007) 89.
[98] ICISS (n 2) foreword vii.

acceptable policy option. The point being made here is that the absence of a genuine commitment to doing everything that can be done, before contemplating military intervention, will mean that any use of force is unlikely to be perceived as legitimate. Doing 'everything' should not be taken to be diplomacy and sanctions in response to a crisis, but should also include a serious long-term commitment to poverty and inequality reduction as part of the international community's responsibility towards vulnerable individuals.

The 'do something or do nothing'[99] approach to military intervention in response to a crisis reflects the assumption highlighted in section IV C, that the international community is currently 'doing nothing' and has the option of 'doing something' (i.e. military intervention) to save people. Section IV's argument – that the international community is not in fact 'doing nothing' in relation to unstable states, but is in fact contributing to this instability – should suggest caution in endorsing the international community's subsequent desire to 'do something' in response to outbreaks of violence. These problems with RtP are important in their own right, but are particularly important in the wider context of international peace and security law more generally when considering arguments about the legal status of RtP.

V The Responsibility to Protect and International Law: the problem with an 'evolving norm'

The relationship of the RtP doctrine to international law is far from settled, with a variety of descriptions attaching to the documents that go to make up RtP – a 'concept'; an 'idea'; a 'political push'; 'political commitment' or an 'evolving norm'.[100] Sceptics argue that RtP is a political and not a legal doctrine as it has not achieved customary status under international

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[99] S Chesterman, Just War or Just Peace (Oxford, Oxford University Press, 2001) 108.
[100] Eg, M Notaras and V Popovski, 'The Responsibility to Protect' United Nations University (5 April 2011) (concept); Evans (n 12) (idea, new norm, concept); A Bellamy, 'The Responsibility to Protect – Five Years On' (2010) 24 Ethics Intl Affairs 143 (political commitment); UN High Level Panel (n 6) 65-66 paras 201-202 (emerging norm); M Wood, 'The Responsibility to Protect' speech to the opening plenary of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana (political push). For a summary, see A Bellamy, Responsibility to Protect: the global effort to end mass atrocities (Cambridge, Polity, 2009) introduction.

law, any more than its predecessor concept of humanitarian intervention, and the General Assembly's World Summit endorsement of RtP was very limited and only to the extent that the idea was in line with existing international law.[101] Proponents argue that RtP is already part of international law, bringing together different strands of extant law on states' human rights obligations to their own populations and to others (eg under the Genocide Convention),[102] the Rome Statue of the International Criminal Court and reports such as the 2004 High Level Panel report on 'Threats, Challenges and Change' and the 2005 'In Larger Freedom' report by Kofi Annan.[103] This means that there is nothing new in RtP and it has not changed international peace and security law on the use of force. Using UN reform reports, in addition to more formal sources of international law, to argue that RtP is a coherent unified legal norm is controversial, but the fact that parts of RtP reflect existing international law may lend legitimacy to the concept.

The idea that RtP is uncontroversial because it simply reflects existing international law sits uneasily with those aspects of RtP that seek to move beyond the existing legal framework – especially the need for UN Security Council authorisation for military intervention. An example of this is the thinking of Anne Peters, who admits that the legal status of RtP is not settled, but suggests that if RtP were a legal norm, then Security Council veto action could potentially be illegal and the P5 would be obliged to give reasons for any veto – something which she suggests may, in any event, be an existing procedural

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[101] On humanitarian intervention, see Chesterman (n 99). On RtP see, eg N Zupan, The RtoP: The Soft Law Riddle and the Role of the United Nations (Ljubljana, GV Zalozba, 2012) 541-561; C Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?' (2007) 101 AJIL 99 (noting that the question of authorisation has been consistently referred back to the Security Council, demonstrating that the law on exceptions to Art 2(4) of the UN Charter remains unchanged); D Amneus, 'Has Humanitarian Intervention Become Part of the International Law under the Responsibility to Protect Doctrine?' in Noellkaemper and Hoffmann (n 20) 157 (arguing that there has been no change in customary international law); A Hehir, 'The Responsibility to Protect and International Law' in P Cunliffe (ed), Critical perspectives on the responsibility to correct: interrogating theory and practice (Routledge, 2011).

[102] O Bring, 'Responsibility to Protect' speech to opening plenary of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana. See also E Luck, 'Interview Remarks' UN News Centre 1 August 2011, cited by Zupan (n 101) 532.

[103] N Schriver, 'The Responsibility to Protect' speech to the opening plenary session of the Responsibility to Protect in Theory and in Practice Conference (11-12 April 2013) Ljubljana.

obligation.[104] The push for implementation of RtP, now that the 'battle for ideas' is apparently won,[105] will be problematic if these key areas are not resolved. What exactly is to be implemented? The 2001 report's just war criteria requiring military intervention to be a last resort, or Ki-moon's suggestion that there is no need for a chronologically sequenced response? Nina Zupan laments that 'the contestability of the [RtP] can indeed slow down and reduce the efficacy of its implementation'.[106] However, the contested nature of key parts of RtP suggests that these are not ready to be implemented. If an idea has only achieved consensus on a limited number of points, then implementation should not push beyond this consensus – particularly not if relying on the level of consensus for legitimacy. ICISS mentions the suggestion that the Security Council P5 refrain from using their veto not as a consensus, but as an idea from one of the P5 representatives, one out of 193 member states of the UN, and the 2005 Outcome Document restates that RtP should be in line with existing international law.[107] Military intervention without Security Council authorisation does not form part of the consensus on RtP and yet the 2009 report, and much debate on the topic, seems to presume that implementation of RtP requires a way to deal with the (presumed) illegitimate veto – any veto preventing military action must necessarily be illegitimate because it is preventing military action.

Despite its 'contestability', the idea that the RtP doctrine is a necessary and welcome development permeates international legal discourse and relates to the idea that extant international (peace and security) law is not 'fit for purpose' in its ability to meet the security threats of the post-Cold War era.[108] Gillian Triggs argues that generally 'international law is

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[104] A Peters, 'The Responsibility to Protect and the Permanent Five: The Obligation to Give Reasons for a Veto' in Noellkaemper and Hoffmann (n 20) 199.
[105] Adams (n 27).
[106] Zupan (n 101) 547-548.
[107] UNGA, Outcome Document (n 4) 139.
[108] This idea formed part of Sir Daniel Bethlehem QC's opening remarks at the conference upon which this volume is based – see n*. See also D Bethlehem, 'International Law and the Use Of Force: the law as it is and as it should be' written evidence submitted to the House of Commons Foreign Affairs Committee (Seventh Report, 2004): 'there are significant shortcomings in the traditional body of legal rules relevant to the use of armed force

responding dynamically to the contemporary concern for the humanitarian needs of the individual'[109] but is still not able to respond adequately, is still not fit for purpose, because it does not allow military intervention without Security Council authorisation.[110] This idea that international law is not fit for purpose can be seen not just in relation to intervention for 'human protection' purposes, but in other areas of law, including 'cyber war' and terrorism, where a threat is identified as too novel for existing law to be able to respond adequately.[111] In counterpoint to calls to move international law 'forward' to enable a military response in RtP situations, others note that the rules prohibiting use of force exist for good reason and the migration of human rights issues away from multilateral resolution and into the area of peace and security, use of force, is problematic. Philip Alston argues that the focus on ad hoc interventions, in response to civil and political crises, allows the interveners to avoid supporting existing multilateral human rights promotion and protection regimes.[112] Mary Ellen O'Connell notes that the risk of increasing the range of permissible uses of force is an overall increase in violence and instability.[113] Brazil's concept of 'responsibility while protecting' draws attention to the very high costs of an intervention, in terms of casualties and increased violence, aptly demonstrated in Kosovo when the NATO bombing campaign was said to increase ethnic cleansing during the ensuing chaos.[114] 'Fitness for purpose' therefore

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... Recent events ... pose a challenge to the adequacy and coherence of the law in this area'; at 6 he summarises the main question for the Committee as 'Is international law adequate to the task required of it in contemporary international society?' para 2.2

[109] G Triggs, 'Public International Law: is it fit for purpose?' (2007) 7 Legal Information Management 113, 118.
[110] Triggs (n 109) 119.
[111] On cyber war, see Chapter 15 of this volume and the special edition of the Journal of Conflict and Security Law, in particular M O'Connell, 'Cyber Security without Cyber War' (2012) 17 J Conflict Security L 187. On terrorism, see eg O Okafor, 'Newness, Imperialism, and International Legal Reform in our Time: a Twail Perspective' (2005) 43 Osgoode Hall LJ 171.
[112] P Alston, 'The Security Council and human rights: lessons to be learned from the Iraq-Kuwait crisis and its aftermath' (1991) 13 Australian YB Intl L 107, 107.
[113] M O'Connell, 'Responsibility to Peace: A Critique of R2P Mary Ellen O'Connell' in P Cunliffe (ed), Responsibility to Protect: Critical Perspectives (London, Routledge, 2011).
[114] Speech given by President Dilma Rousseff during the general debate, 66th UN General Assembly Session (21 September 2011) www.un.int/brazil/speech/11d-Pr-Dilma-Roussef-opening-of-the-66th-gerneral-assembly.html; E Herring, 'From Rambouillet to the Kosovo Accords: NATO's War Against Serbia and its Aftermath' in K Booth (ed), The Kosovo Tragedy: The Human Rights Dimension (London, Frank Cass, 2001) 225, 229. See also D Levine, 'Some Concerns about the responsibility not to veto' (2011) 3 Global Responsibility to Protect 323.

seems to be synonymous with the expectation that international law should permit military intervention in more situations than it currently does. As noted, this risks increasing the overall level of violence and instability in the world.

In relation to the questions posed by the editors of this volume (to what extent international law can address the types of security threats in the 21st Century and where international law might fall short in this regard), RtP suggests that international law is capable of addressing the security threat of atrocities, but that it currently falls short in doing so, particularly in relation to the authorisation of military force. In contrast with this theme, this chapter has suggested that asking if international law is 'fit for purpose' because it does not permit military intervention to provide security, is asking the wrong question. International law does not necessarily fall short just because it does not mirror the ideas in RtP about when military intervention should occur and how it should be authorised.

VI Conclusion

This chapter outlined the development of the RtP doctrine and examined some problems with RtP's view of the key threats to individuals and their security in the post-Cold War era. The problems identified were the prioritising of mass atrocity crimes over other suffering and death; the focus on civil and political rights abused by a local government; the assumption that the international community is well-placed to undertake a secondary responsibility to protect by assisting with conflict prevention; and the assumption that a new doctrine is required because existing international law is not capable of responding adequately to the question of intervention without Security Council authorisation. The chapter demonstrated these problems by highlighting an alternative understanding of the source and type of threats to the security of vulnerable individuals. Here the chapter explored the role of the international community in contributing to the insecurity of individuals across the globe, both

through chronic socio-economic underdevelopment in general and its role in suppressing national political participation and through more specific examples of international community policies, which contribute to the very crises to which the international community wants to respond. The chapter then suggested that the way RtP views crises (and the role of the national government and international 'community' of states) leads to an assumption that the rules on the use of force need to be revisited, such that military intervention can be undertaken not as a last resort and not requiring Security Council authorisation. Linking this to international law more generally, the chapter examined RtP's relationship with the international legal regime governing peace and security and related this to general debates about the extent to which international law is 'fit for purpose' in addressing contemporary problems.

The central questions of this book relate to the adequacy of international law to respond to contemporary security threats. This chapter has argued that RtP constructs the nature of threats, and so the best response to them, in such a way as to suggest that certain aspects of international law are not capable of responding to the security threat of mass atrocity crimes (chiefly, the strict procedures of the UN in relation to international peace and security). In its attempt to respond to this security threat, RtP addresses some of the symptoms of global insecurity, rather than the fundamental causes. Those who wish to do good in responding to situations of insecurity, and who believe that the international community has a responsibility towards vulnerable individuals across the globe, should therefore refocus their efforts on chronic conditions of poverty and inequality, both because these are important in their own right and because these efforts are likely to reduce the sorts of crises that RtP was designed to address. In relation to the human rights-state sovereignty paradigm involved in RtP, assuming that international law is not fit for purpose because it does not permit military interventions into another state is a flawed assumption. There are good reasons to limit the

scope of permissible military intervention. A doctrine which tries to expand the ability of states to use force to halt violence, without considering and addressing more fully the causes of such violence (in particular the role of these 'rescuer' states in helping create the instability in the first place), should be treated with caution.