

The Responsibility to Refine: The Need for a Security Council Committee on the Responsibility to Protect

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“Today, the responsibility to protect is a concept, not yet a policy; an aspiration, not yet a reality. Curbing mass atrocities will be neither easy nor quick. There is no certain blueprint for getting the job done. We are all novices in this field.”

~ United Nations Secretary-General Ban Ki-moon, Berlin,
July 15, 2008

*“Bill, don’t you know this game is crooked?”
Canada Bill turned to his friend and said, “Yeah, but it’s the only
game in town.”*

~ Conversation between famous gambler “Canada Bill” and
George Devol, Cairo, Illinois, late 1800s

I. INTRODUCTION

A. *The Current Reality of the Responsibility to Protect*

The international response¹ to situations of mass atrocities² is devastatingly predictable: the media expresses outrage for a short period of time,

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1. The term “response” will be used throughout this paper to encompass the range of potential responses to burgeoning situations of mass atrocity including, but not limited to, diplomacy, economic sanctions, peacekeeping measures, and the use of military force.

2. The term “mass atrocities” will be used throughout this paper to generally mean genocide, war crimes, and crimes against humanity, as codified in the Rome Statute of the International Criminal Court.

civil society groups file reports, academics host conferences, and someone declares “never again.” Such posture carries on until the rare occasion when the political stars perfectly align, a critical mass is reached, and a response occurs (traditionally referred to as “humanitarian interventions”) through *ad hoc* coalitions or regional groups acting to fill the void caused by United Nations (“U.N.”) Security Council’s tepid peacekeeping operations or outright Security Council inaction.³ Such responses, however, are always illegal and are often deemed spastic, belated, inconsistent, incomprehensive, and disingenuous (hereinafter “impure” interventions).⁴ The only alternative to these *ad hoc* measures, given Security Council inaction, is for no one to act at all—as happened in Rwanda in 1994, Srebrenica in 1995, and present day Darfur, Sudan.⁵

International inaction does not result from a communal moral void, or because of a lack of international resources or expertise. In fact, public opinion supporting responses to mass atrocities is high when the right questions are asked,⁶ and the international community does possess the necessary preventive, reactive, and rehabilitative capacities to holistically address mass atrocities, from before they ferment until after they are subdued. Nor is the inertia a result of a lack of agreed principles to apply to situations where military force is required to address mass atrocities: traditional “just war” principles are largely accepted as controlling,⁷ and there is no

3. See Alex J. Bellamy & Paul D. Williams, *The Responsibility to Protect and the Crisis in Darfur*, 36 SECURITY DIALOGUE 27, 42 (2005) (“[A]rmed intervention in response to 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.”).

4. See MARIA BANDA, U.N. ASS’N OF CAN., *THE RESPONSIBILITY TO PROTECT: MOVING THE AGENDA FORWARD* (2007) (“The U.N. has too often failed ‘to act quickly and effectively,’ while *ad hoc* coalition and regional initiatives (which have emerged as a possible alternative to U.N.-led—and, even, U.N.-authorized—operations) have caused serious concerns about their capacity, accountability, and legitimacy to intervene.”) (citation omitted), available at http://www.unac.org/en/library/unacresearch/2007R2P_Banda_e.pdf

5. See Donald Steinberg, Deputy President, Int’l Crisis Group, Address at the Cardozo Law School: Responsibility to Protect in the Real World: From Rwanda to Darfur to Kenya (Mar. 10, 2008), <http://www.crisisgroup.org/home/index.cfm?id=5332&l=1> (arguing that the international community has been far too “overly respectful of sovereignty” by not taking stronger actions in Zimbabwe, Myanmar, eastern DRC, and Sri Lanka, among other conflict situations.).

6. See S. Neil Macfarlane, Carolin J. Thielking & Thomas G. Weiss, *The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?*, 25 THIRD WORLD Q. 977, 986–87 (2004) (noting that a 2003 poll of United States citizens indicated that 55% of the population believed that the United States and other Western states had a duty to act in Africa to prevent genocide); see also THOMAS FRANCK, *RECOURSE TO FORCE* 183 (2002) (arguing that “[l]ess than half of Russians condemn[ed] the United States and NATO” for their unauthorized actions in Kosovo, despite the fact that the Russian government threatened to veto any Security Council authorization of action) (quoting *What the Papers Say: NATO’s Balkan War: Is it for Love or Money?* MOSCOW TIMES, Apr. 3, 1999); PAUL KENNEDY, *THE PARLIAMENT OF MAN: THE PAST, PRESENT, AND FUTURE OF THE UNITED NATIONS* 255 (2006).

7. Roughly, these principles are “just cause,” “proportionality,” “reasonable chance for success,” and “last resort.” See Gareth Evans, President, Int’l Crisis Group, Presentation at the Seminar on International Use of Force, World Legal Forum, The Hague: Responsibility to Protect and the Use of Military Force (Dec. 11, 2007), <http://www.crisisgroup.org/home/index.cfm?id=5209&l=1> (explaining that the use of force criteria in the ICISS report on the responsibility to protect “have an explicit

disagreement that genocide, war crimes, and crimes against humanity violate *jus cogens* norms.

The derailment of international mass atrocity responses can be distilled to a single force: states' self-interest. States' self-interested political, economic, resource and security considerations stall responses to mass atrocities in the best of circumstances and completely block them in the worst of circumstances. All states—weak and strong—view the possibility of responding through a myopic lens focused on how such actions will affect their self-interests as either the acting or recipient state.

That states' self-interests influence their decisions is not a novel theory, but its lessons are astonishingly absent from discussions about institutionalizing and/or operationalizing international responses to mass atrocity situations. As a result, the conversation never passes a theoretical level. The most recent doctrine trumpeting the need for international responses to mass atrocities—the widely accepted Responsibility to Protect (R2P) doctrine—suffers the same fate.

B. The Responsibility to Protect—Putting the Cart Before the Horse

In its report on *The Responsibility to Protect* (“R2P Report”), the International Commission on Intervention and State Sovereignty (“ICISS”)⁸ outlines that the R2P doctrine aims to “[bridge] the divide between intervention and sovereignty,”⁹ sovereignty being the principle historically cited as forbidding external interference into a state's internal affairs. R2P reconceptualizes “state sovereignty” as including a responsibility of a state to protect its own citizens from “avoidable catastrophe.”¹⁰ In the event that a state is unable or unwilling to provide such protection, the R2P

pedigree in Christian ‘just war’ theory”); see also INDEP. INT'L COMM'N ON KOSOVO, THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED 10 (2000) [hereinafter KOSOVO REPORT] (discussing three “threshold principles” which must be satisfied for legitimate humanitarian intervention, namely (a) the suffering of civilians or breakdown of government; (b) the overriding commitment to the direct protection of the civilian population; and (c) a reasonable chance for the intended intervention to end the humanitarian catastrophe.).

8. The Government of Canada established the ICISS with the mandate of “build[ing] a broader understanding of the problem of reconciling intervention for human protection purposes and sovereignty . . . [and] try[ing] to develop a global political consensus on how to move from polemics—and often paralysis—towards action within the international system, particularly through the United Nations.” INT'L COMM. ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (2001) [hereinafter R2P REPORT]. The ICISS was created in response to former Secretary General Kofi Annan's challenge to the international community to “find common ground in upholding the principles of the Charter, and acting in defense of our common humanity,” and the query, “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?” Chris Abbott, Oxford Research Group, Rights and Responsibilities: Resolving the Dilemma of Humanitarian Intervention (Sept. 2005), at 1, 7 (citation omitted), available at http://www.oxfordresearchgroup.org.uk/publications/briefing_papers/rightsandresponsibilities.php.

9. R2P REPORT, *supra* note 8, at 17.

10. *Id.* at viii.

doctrine places a “responsibility to react” on the international community to fill the void—including, as a last resort, by using force.¹¹ For such military responses, the *R2P Report* incorporates traditional “just war” principles: “right intention,” “last resort,” “proportional means,” and “reasonable prospects.”¹² The R2P concept also includes the international community’s “responsibility to prevent” mass atrocities before they occur,¹³ and the “responsibility to rebuild” durable peace, good governance, and sustainable development after intervention occurs.¹⁴

The R2P’s reconceptualization of “state sovereignty” is the doctrine’s key contribution to the cause of protecting populations from mass atrocities. It shifts the dialogue from the intractable debate of “the right of intervention vs. sovereignty” toward a more palatable focus on the “responsibility to protect” innocent people “seeking or needing support.”¹⁵ This reformulation strips non-interventionists of the argument that sovereignty provides states with unchallengeable autonomy with regard to their populations, and instead reasonably redefines (or rediscovers) the term as requiring states to protect their populations. This astute strategy avoids the inflammatory move of dismissing sovereignty—a bedrock of international law—as archaic and instead works with the principle. The R2P doctrine also somewhat defangs the traditional humanitarian intervention debate by substantially focusing on the “responsibility to prevent” and the “responsibility to rebuild,” rather than only emphasizing the military response portion of the “responsibility to react” spectrum. For the foregoing reasons, the concept has gained considerable traction within the U.N.¹⁶ and civil society.¹⁷ Most significantly, in the 2005 World Summit Outcome document,

11. R2P REPORT, *supra* note 8, at 29 (“When preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then interventionary measures by other members of the broader community of states may be required. These coercive measures may include political, economic or judicial measures, and in extreme cases—but only extreme cases—they may also include military action.”).

12. *Id.* at xii.

13. *Id.* at 19.

14. *Id.* at 39.

15. *Id.* at 16–17.

16. See, e.g., The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General*, ¶135, delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005) (“I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it.”); High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility: Report on the High-Level Panel on Threats, Challenges and Change*, ¶¶ 199–203, U.N. Doc. A/59/565 (Dec. 2, 2004) [hereinafter *A More Secure World*]; Press Release, U.N. News Centre, Secretary-General Appoints Special Advisor to Focus on Responsibility to Protect (Feb. 21, 2008) (reporting establishment of position of Special Advisor on the Responsibility to Protect tasked with “conceptual development and consensus building, to assist the General Assembly to continue consideration of this crucial issue”). The Security Council cited the doctrine in two recent resolutions regarding the protection of civilians in armed conflict and the conflict in Sudan. See S.C. Res. 1674, U.N. Doc. S/INF/61 (Apr. 28, 2006) (civilians in armed conflict); S.C. Res. 1706, U.N. Doc. S/INF/61 (Aug. 31, 2006) (Sudan).

17. Various civil society organizations support the advancement of the R2P concept. For example, the Responsibility to Protect—Engaging Civil Society (“R2PCS”) project “works to advance Responsi-

the General Assembly explicitly acknowledged and accepted the R2P doctrine.¹⁸

However, beyond its conceptual gymnastics, the *R2P Report* (and its progeny) lacks a concerted focus on how to activate the R2P doctrine given the realities of the international system.¹⁹ The international system is comprised of self-interested states and dominated by the self-interested permanent five members of the Security Council (“P5”)—the locus of power in the international system and the sole body that can legally authorize the use of force when circumstances on the ground warrant it. To be fair, the *R2P Report* does acknowledge that:

[i]f international consensus is ever to be reached about when, where, how and by whom military intervention should happen, it is very clear that the central role of the Security Council will have to be at the heart of that consensus. *The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has.*²⁰

However, the report does not provide any realistic activation proposals for either military responses or the host of other responses contemplated by the

bility to Protect . . . and to promote concrete policies to better enable governments, regional organizations and the U.N. to protect vulnerable populations.” Welcome to R2PCS, <http://www.responsibilitytoprotect.org/index.php> (last visited Oct. 3, 2008). Furthermore, the Global Centre for the Responsibility to Protect, which is associated with other centers around the world, was recently established at the Ralph Bunche Institute for International Studies at The Graduate Center of The City University of New York to “serve [as] a catalyst for moving the responsibility to protect from principle to practice,” and to “conduct, coordinate, and publish research on refining and applying the R2P concept.” Global Centre for the Responsibility to Protect, <http://globalr2p.org/about.html> (last visited Nov. 2, 2008). On April 18, 2008, Pope Benedict XVI offered his support for R2P in his address to the U.N. General Assembly. Pope Benedict XVI, Address at the United Nations General Assembly, in *N.Y. TIMES*, Apr. 19, 2008, available at <http://www.nytimes.com/2008/04/19/nyregion/18popeatun.html>.

18. Paragraphs 138 and 139 of the pertinent General Assembly resolution declare:

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity . . .

G.A. Res. 60/1, ¶¶ 138-39, U.N. Doc. A./RES/60/1 (Sept. 15, 2005) [hereinafter 2005 World Summit Outcome] (alteration in original), available at <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>.

19. See THOMAS G. WEISS, HUMANITARIAN INTERVENTION 119 (2007) (“In looking back over the last two decades and toward the next, the essential challenges of humanitarian intervention are not normative but operational.”).

20. R2P REPORT, *supra* note 8, at 49 (emphasis added).

“responsibility to react.” Indeed, beyond a cursory plea for P5 veto restraint,²¹ the report fails to address the activation issue,²² and little work on that front has been done to date. Six years after the report’s release, ICISS co-chair Gareth Evans admitted that “a lot more attention” should have been devoted to the Security Council’s “decision making process,” and expressed, “[w]e must *simply hope* that, over time there emerges some greater convergence between the legal and political order, that the Security Council will work better than it has done.”²³

By treating the need for an activation system as an aspiration rather than a fundamental tenet of R2P, its authors have relegated the doctrine to a nimble but ultimately impotent conceptual tweak of the humanitarian intervention nomenclature.²⁴ The activation question is the compulsory threshold issue that must be solved before discussions about R2P details will have real meaning. For R2P to survive, and for lives to actually be saved, a “Responsibility to Refine” the current international security machinery must be added to the doctrine’s laudable responsibilities to prevent, react and rebuild. A responsibility to simply hope will not suffice.

C. *The Responsibility to Refine: The Need for an R2P Security Council Sub-Committee*

As the *R2P Report* rightly states, the Security Council must play the central role in the R2P activation scheme.²⁵ At the apex of the world’s collective security machinery, the Security Council is, in theory, equipped to captain collective responses to mass atrocities. It is the only body under the UN Charter that possesses the legal authority to use non-self-defense-related force; therefore, its use of force authorizations carry a level of politi-

21. Specifically, the 85-page R2P REPORT devotes one paragraph to an analysis of a P5 “code of conduct” agreement not to exercise their vetoes when addressing a “significant humanitarian crisis.” See *id.* at 51. This proposal is discussed later in the paper.

22. See Banda, *supra* note 4, at 9 (“ICISS also tried to identify the ‘right authority’ for intervention, but ultimately failed to resolve this issue.”) (citation omitted).

23. Evans, *supra* note 7, at 5, 7 (emphasis added).

24. See Rebecca J. Hamilton, *The Responsibility to Protect: From Document to Doctrine—But What of Implementation?* 19 HARV. HUM. RTS. J. 289, 297 (2006) (“Unless [the] ‘in principle’ support [for R2P] is matched by a political commitment to making the reforms needed for the R2P to be operational, the ICISS report will merely mark the turn of another century of inaction in the face of mass human suffering.”).

25. See Simon Chesterman, *The U.N. Security Council and the Rule of Law: The Role of the U.N. Security Council in Strengthening a Rules-Based International System* at ii (N.Y. Univ. School of Law, Public Research Paper No. 08-57, 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1279849. In particular, Recommendation 6 provides:

The Council should be prepared to act for the international community in exercising the Responsibility to Protect. As stated in the 2005 World Summit Outcome Document, this should be in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

Id.

cal legitimacy²⁶ and it holds “strategic leverage” over governments.²⁷ Indeed, in the much lauded 2005 World Summit Outcome document, the General Assembly accepted the concept of R2P collective action only insofar as such action is authorized “through the Security Council.”²⁸ Further, the Security Council can mobilize the diverse catalog of UN monitoring and operational capabilities, expertise, and resources that single states, or groups of states, simply cannot match over an extended period. In short, for all of its imperfections, the Security Council is the only game in town.

Given its centrality to R2P activation, all options must be explored to strengthen the Security Council’s capacity and motivation to lead collective action against mass atrocities. In particular, the Security Council’s checkered response history²⁹ demands a modification of the body’s decision-making process regarding its response to mass atrocities.³⁰ Namely, processes must be put into place that: (1) minimize the self-interest dynamics which have delayed or blocked needed responses in the past; and (2) improve the body’s early warning monitoring capabilities, information consolidating capacity, and institutional focus on burgeoning mass atrocities.

Any proposals to modify the Security Council’s decision-making process, however, must necessarily avoid suggesting reform of the P5 veto power, as such proposals will never be accepted.³¹ The same self-interest that impedes effective responses to mass atrocities will compel the P5 to discard any proposals stripping them of their power, especially where the potential use of their own treasuries and/or militaries is involved. Only those proposals that respect the Security Council’s strengths—its legal authority, political legitimacy, and operational capacity to end mass suffering—while also acknowledging its weaknesses—that it is by nature comprised of self-interested members—have realistic chances of being considered. In the same way that R2P works with the sovereignty principle instead of condemning it, reasonable activation proposals must work within the P5 dominated international system rather than trying to change it.

26. *See id.*

27. *See* Hans-Jorge Strohmeyer, Remarks at the Program in Holocaust and Human Rights Studies (Mar. 10, 2008) (transcript available at the Cardozo Law School Library).

28. *See* 2005 World Summit Outcome, *supra* note 18, ¶139 (declaring the international community’s commitment to exhaust “appropriate diplomatic, humanitarian and other peaceful means” before the exercise of Chapter VII powers, read in light of Chapters VI and VIII of the U.N. Charter).

29. *See* Bellamy & Williams, *supra* note 3, at 41 (noting that while the Council has exercised broad discretion in identifying threats to international peace, it has yet to authorize a use of force with the consent of the host state, as in the cases of Saddam Hussein, Pol Pot, Idi Amin, Mullah Omar, Charles Taylor, and Than Shwe).

30. *See* Thomas Franck, *Collective Security and U.N. Reform: Between the Necessary and the Possible*, 6 CH. J. INT’L L. 597, 609 (2006) (arguing for an alternative approach shifting attention away from efforts to change rules on the use of force and towards a process by which the Council would instead determine, “case-by-case, whether to authorize collective measures in borderline cases”).

31. *See* Thomas G. Weiss, *The Illusion of U.N. Security Council Reform*, WASH. Q., Autumn 2003, at 147, 151.

This paper therefore proposes the creation of a Security Council Committee on the Responsibility to Protect (hereinafter “R2P-SCC” or “R2P Security Council Committee”). As discussed in further detail below, the R2P-SCC would be tasked with monitoring and analyzing situations worldwide where the application of R2P might be appropriate. In line with the R2P doctrine, the R2P-SCC would not simply focus on situations ripe for use of force but would also consider the international community’s responsibility to prevent and responsibility to rebuild. The R2P-SCC would then issue recommendations to the Security Council regarding the most appropriate courses of actions for particular flagged situations. The committee would be comprised of relevant experts from U.N. member states, representative of all regions and all economic, political, and military strengths. All members would have equal power on the committee and no member would possess a veto.

As will be discussed below, the R2P-SCC would substantially dull the self-interested considerations that affected past potential responses. It would also galvanize support for action from previously resistant states and broach the response question earlier, more consistently, and more comprehensively than in the past. Further, an R2P-SCC recommendation would legitimize unilateral action in the event that the Security Council did not authorize collective action. Perhaps most importantly, the R2P-SCC would work within the limits of the current self-interested system, while at the same time providing the potential for tangible and far-reaching effects.

Arguing for the creation of the R2P-SCC, this paper is divided into four parts. Part II describes the current international legal and self-interested political landscape that necessitates refinement of the existing decision-making and activation processes. Part III addresses the shortcomings of alternate proposed activation schemes. Part IV sets forth the specifics of the proposed R2P-SCC and its envisioned effects on the international community’s response to situations of mass atrocity. Finally, Part V concludes by addressing counterarguments.

II. THE CURRENT SELF-INTERESTED STATE OF AFFAIRS

In the seven years since its 2001 inception, the R2P doctrine has failed to mobilize action in response to mass atrocity situations any more effectively than efforts made prior to its adoption. States’ self-interested considerations continue to derail early, comprehensive, and consistent responses in the post-R2P world just as they did in the years before it. Between 2006 and 2008, for example, a conservative yet faithful implementation of R2P would have applied the doctrine to the situations in Darfur, Ethiopia,

Somalia,³² the Democratic Republic of the Congo,³³ Uganda,³⁴ Zimbabwe,³⁵ and Burma.³⁶ Those situations could have received the benefit of any number of appropriate R2P responses within the broad umbrellas of “the responsibility to prevent” or “the responsibility to react,” which, as discussed above, envision far more than blunt military action. Instead, the international community’s response has been grossly underwhelming.

In the context of states’ responses to mass atrocities, this paper defines “self-interest” no more sophisticatedly than the phrase’s common meaning: “a concern for one’s own advantage and well-being.”³⁷ This definition is assuredly broad and ambiguous. Self-interest is a fluid, complex, and multi-layered concept that can manifest in any number of ways and lead to any number of decisions which, at different points in time, might compel a state to act differently in response to very similar fact patterns. However, the critical point in the current analysis is not necessarily to pinpoint and catalog states’ self-interests into precise definitions and neat boxes. Rather, it is only necessary to understand that states’ self-interested considerations—be they political, economic, diplomatic, strategic, security, or other—ensure, in the context of mass atrocity response, that the calculus rarely centers on the mass atrocity victims. States acting for their “own advantage and well being”—whatever that is at a given moment in time and however multiple considerations intersect—do not first act in the interests of the child soldiers conscripted, the women raped, or the ethnic groups systematically exterminated. This reality clashes with R2P’s victim-centric focus.³⁸

Certain generalities can be made, however, regarding the broad sorts of self-interested considerations which induce states’ inaction and the relative strengths of the states which make them. In the context of international responses to mass atrocity situations, it is helpful to distinguish generally between the self-interested considerations of individual P5 members and the self-interested considerations of, roughly, everyone else, referred to

32. See, e.g., Human Rights Watch, *Atrocities Fuel Worsening Crisis in Horn of Africa: U.N. Security Council Should Press Ethiopia and Somalia to Put an End to Abuses* (Dec. 3, 2007), http://www.responsibilitytoprotect.org/index.php/countries_in_crisis/1356 (describing the conflict in Somalia and eastern Ethiopia’s Ogaden region as “the worst humanitarian crisis in Africa”).

33. See, e.g., Intl Comm. of the Red Cross, *Democratic Republic of the Congo: Concern Over the Fate of Civilians in North Kivu*, May 12, 2007 (expressing concern over the fate of civilians in North Kivu).

34. See, e.g., Intl Crisis Group, *Crisis Group Reporting on R2P-related Issues* (Sept. 2008), <http://www.crisisgroup.org/home/index.cfm?id=4521&l=1#reporting>.

35. See, e.g., *id.*

36. See, e.g., *Responsibility to Protect—Engaging Civil Society, Crisis in Burma*, <http://www.responsibilitytoprotect.org/index.php/pages/1182> (last visited Nov. 22, 2008).

37. MERRIAM-WEBSTER’S ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/self-interest> (last visited Nov. 22, 2008).

38. See Gareth Evans, Lecture at the 10th Asia Pacific Programme for Senior Military Officers, S. Rajaratnam School of International Studies, Singapore: *The Responsibility to Protect: Meeting the Challenges* (Aug. 5, 2008), <http://www.crisisgroup.org/home/index.cfm?id=5615&l=1> (describing R2P’s focus as “looking at the whole issue from the perspective of the victims, the men being killed, the women being raped, the children dying of starvation”).

herein as the Non-Aligned states.³⁹ This dichotomy is useful because it reflects some of the fundamental dynamics of the current international system—where legal use of force can only occur by Security Council mandated action, which is clearly controlled by the P5. In the event that the Security Council fails to act, early and effective unilateral (or multilateral) uses of force are widely acknowledged as not being realistic without the support of a P5 member, or, in many instances, the United States.⁴⁰ Such illegal uses of force face staunch opposition from Non-Aligned states that, after witnessing past impure interventions, often cite state sovereignty as an absolute bar to any use of force not involving Security Council mandates.⁴¹ These different sets of self-interest are explored further below.

A. *Self-Interest Considerations of P5 States*

The self-interested considerations of the P5 are especially crippling to R2P responses because the P5 controls the Security Council, and in the event of Security Council inaction, members of the P5, and especially the United States, are the only states that can unilaterally implement and sustain (or galvanize regional or multilateral support for) the comprehensive R2P aims of prevention, reaction (not simply by use of force), and rebuilding. The desirability of an international R2P response system spearheaded by the Security Council is therefore obvious: its resolutions carry a weight,

39. Reference to the “Non-Aligned Movement,” the “Group of 77,” or the “Global South” is often used to capture these “other” states. While recognizing the technical inaccuracy, for simplicity’s sake, this paper will refer to these states as Non-Aligned states. The Non-Aligned Movement currently is comprised of 118 states focused, among other things, on: “the support of self-determination, national independence and the sovereignty and territorial integrity of States; opposition to apartheid; non-adherence to multilateral military pacts and the independence of non-aligned countries from great power or block influences and rivalries; the struggle against imperialism in all its forms and manifestations; the struggle against colonialism, neocolonialism, racism, foreign occupation and domination; disarmament; non-interference into the internal affairs of States and peaceful coexistence among all nations; rejection of the use or threat of use of force in international relations; the strengthening of the United Nations; the democratization of international relations; socioeconomic development and the restructuring of the international economic system; as well as international cooperation on an equal footing.” See <http://www.cubanoal.cu/ingles/index.html>.

40. As Thomas Weiss explains:

There is little doubt . . . that U.S. airlift capacity, military muscle, and technology are required for larger and longer duration deployments. For better or worse, the United States in the Security Council is what former U.S. secretary of state Dean Rusk once called the fat boy in the canoe: ‘When we roll, everyone rolls with us.’ With Washington’s focus elsewhere, the danger is not too much but rather too little humanitarian intervention.

WEISS, *supra* note 19, at 133–34.

41. Of course, Non-Aligned states are also motivated by a bevy of self-interested considerations other than fear of an expansive and dangerous intervention doctrine. However, it is indisputable that the common self-interested consideration binding most of these states is a fear of an abused intervention system. See Evans, *supra* note 38 (arguing that while the right to intervene might be seen in the North as a “noble” and “effective rallying cry,” it continues to enrage new states emerging after World War II who, in turn, were all too conscious of having “been on the receiving end of *missions civilisatrices* from the colonial and imperial powers”).

gravitas, and legitimacy that cannot otherwise be replicated,⁴² and represent at the very least an imperfect expression of the international community's will.

Further, in the absence of a self-defense situation, the Security Council is the only international actor who can legally authorize the use of force, when such measures are required to stop mass atrocities.⁴³ Unauthorized uses of force are illegal and carry with them the inevitable stigma of doubt, opposition, fear, and resentment commensurate with illegal actions.⁴⁴ However, a litany of self-interested considerations prevents individual states in the P5 from championing collective responses.

1. "National" & Strategic Self-Interest

The "national interest" is a concept often cited as a state's justification for failing to act in the face of mass atrocities abroad. Examining the instances when it has been invoked reveals that the term can simply be described as a synonym for "self-interest." For example, United States "national interest" was cited as justification for inaction in Bosnia in the early 1990s. In explaining why the first Bush administration failed to intervene militarily in Bosnia in the face of known mass atrocities,⁴⁵ then National Security Advisor Brent Scowcroft explained:

We could never satisfy ourselves that the amount of involvement we thought it would take was justified in terms of U.S. interests involved . . . We were heavily *national interest* oriented, and Bos-

42. Interestingly, some states even renounce Security Council-authorized action, citing both the primacy of state sovereignty and that the Security Council body is not representative of the world community. In 1999, Algerian President Abdelaziz Bouteflika expressed these concerns in a speech given on the opening day of the General Assembly debates:

[W]e do not deny that the United Nations has the right and the duty to help suffering humanity, but we remain extremely sensitive to any undermining of our sovereignty, not only because sovereignty is our last defense against the rules of an unequal world, but because we are not taking part in the decision-making process of the Security Council.

Barbara Crossette, *U.N. Chief Wants Faster Action to Avoid Slaughter in Civil Wars*, N.Y. TIMES, Sept. 21, 1999, available at <http://query.nytimes.com/gst/fullpage.html?res=9902E6D91F3CF932A1575AC0A96F958260&sec=&spon=&pagewanted=2> (quoting President Abdelaziz Bouteflika).

43. See generally U.N. Charter art. 51 (providing for the right of individual or collective self-defense until the Security Council has taken measures to restore peace); *id.* art. 2, para. 4 (prohibition on threat or use of force); *id.* art. 2, para. 7 (reference to Chapter VII enforcement measures); *id.* art. 39 (Security Council as sole authority on use of force); *id.* art. 10 (exception to plenary power of General Assembly); *id.* art. 42 (Security Council action by air, sea, or land forces). Furthermore, while the Charter's Preamble "reaffirm[s] faith in fundamental human rights" and the Charter lists "promoting and encouraging respect for human rights" as one of the U.N.'s "purposes," these provisions simply do not incorporate any use of force language. *Id.*, Preamble. See *id.* art. 1(3); see also *id.* art. 55, para. 1(c) (respect for human rights).

44. See WEISS, *supra* note 19, at 123–24 (arguing that despite their flaws, international political processes are nonetheless essential and thus should not be set aside).

45. Whether or not the Bosnian conflict was "genocide" was subject to vigorous debate within the Bush administration and subsequent Clinton administration, a debate that detracted valuable resources and attention from addressing the fact that thousands of civilians were being systematically killed, raped, and displaced. See SAMANTHA POWER, *A PROBLEM FROM HELL* 288–300 (2002).

nia was of *national interest* concern only if the war broke out into Kosovo, risking the involvement of our allies in a wider war. If it stayed contained in Bosnia, it might have been horrible, but it did not affect us.⁴⁶

The subsequent Clinton administration did little to shift the country's focus from its own national interests to that of the mass atrocities occurring. Then-Secretary of State Warren Christopher explained in 1993:

That's a tragic, tragic situation in Bosnia, make no mistake about that. It's the world's most difficult diplomatic problem I believe. It defies any simple solution. The United States is doing all that is can consistent with its *national interest*.⁴⁷

The lack of United States (and European powers) "national interests" ultimately manifested in a Security Council Resolution regarding Bosnia that simply created "safe areas" for Bosnian Muslims, including in Srebrenica.⁴⁸ Due in large part to the United States' refusal to provide troops to the mission, the "safe areas" were only protected by a tiny fraction of the 30,000 troops that U.N. Secretary General Boutros Boutros-Ghali considered necessary.⁴⁹ Ultimately, the Serbs overran the weakly protected Srebrenica enclave, and 7,000 Muslims were massacred.⁵⁰

With regard to Rwanda, the Clinton administration was regulated by directive "PDD-25," a list of sixteen factors that policymakers were required to consider when addressing potential peacekeeping situations.⁵¹ Chief among these considerations was that "U.S. participation had to advance U.S. interests."⁵² In April 1994, the commander of U.N. peacekeeping troops in Rwanda, General Roméo Dallaire, made a request to the Security Council for 5,000 armed troops, which several nonpermanent members of the Security Council approved.⁵³ The United States strictly applied PDD-25 to the request, and its fastidiousness resulted in substantial delay of a Security Council resolution, which was issued after most of the roughly 800,000 victims of the Rwandan genocide were killed.⁵⁴

46. *Id.* at 288 (emphasis added).

47. *Id.* at 310 (emphasis added).

48. *Id.* at 303.

49. *Id.*

50. *Id.* at 392.

51. *Id.* at 342.

52. *Id.* (quoting Congressman David Obey of Wisconsin, who described the policy as "zero degree of involvement, and zero degree of risk, and zero degree of pain and confusion").

53. *See id.* at 377-78.

54. *See id.* at 379. U.S. President George W. Bush ratified his predecessor's inaction based on a national interest rationale. On the campaign trail, when asked whether he would have deployed troops to Rwanda, Bush explained that the United States "should not 'send troops to stop ethnic cleansing and genocide in nations outside our strategic interest.'" Robert Kagan, *The September 12 Paradigm*, FOREIGN AFF., Sept./Oct. 2008, at 25, available at <http://www.foreignaffairs.org/20080901faessay87502-p10/robert-kagan/the-september-12-paradigm.html>.

In certain instances, identifiable strategic interests distract states from vigorously pursuing responses to mass atrocities.⁵⁵ For example, still considered the world's lone "superpower" and a compulsory player in any long term or large response to a mass atrocity situation, the United States is currently focused on combating terrorism, which necessarily diverts resources and focus away from distant mass atrocities.⁵⁶ Moreover, because of the threat of terrorism, responding to mass atrocities poses additional strategic costs for the United States: for instance, it is argued that the United States has not championed a stronger response regarding Darfur out of fear that radical elements in Khartoum's government would capitalize politically on such action by characterizing it as a "crusader plot."⁵⁷

Because of their insular focus on purely strategic interests, P5 states make policy priorities and allocate resources in ways that ensure a certain degree of ignorance about particular "low priority" situations.⁵⁸ If a state lacks the requisite historical, political, cultural, and geographic knowledge about a particular conflict, root causes could be misdiagnosed, solutions prescribed incorrectly, and early warning indicators misread or missed.⁵⁹ Further, this resource and focus issue ensures that individual states will always be reacting to mass atrocities rather than working to prevent them before escalation.

2. *Economic Self-Interest*

Individual economic self-interest often dissuades P5 states from triggering robust responses to mass atrocity situations. China's obstruction of a

55. See Macfarlane, Thielking & Weiss, *supra* note 6, at 977 ("Humanitarian efforts that are not immediately connected with national interests could be regarded as a diversion from pressing new security challenges.").

56. See WEISS, *supra* note 19, at 130–34.

57. See Bellamy & Williams, *supra* note 3, at 38.

58. See Macfarlane, Thielking & Weiss, *supra* note 6, at 977 ("[T]he war against terrorism consumes military resources, most particularly Washington's. How many lives and how much money can be spared . . . 'merely' to save the lives of strangers?"). Samantha Power notes a striking manifestation of this reality in her book *A Problem From Hell: America and the Age of Genocide*. She explains how then-National Security Advisor Brent Scowcroft told her that during a seven-month period in which 70,000 Bosnians were killed, President Bush would ask him about once a week, "Now tell me again what this is all about?" POWER, *supra* note 45, at 287. Power also explains that, shortly before the genocide in Rwanda, Lieutenant General Wesley Clark, then director of strategic plans and policy for the Joint Chiefs of Staff at the Pentagon, recalls Pentagon staff members asking, "Is it Hutu and Tutsi or Tutu and Hutsi?" referring to the two main ethnic groups in the country. *Id.* at 330. While Clark tried to gather information about the ethnic dimension of events in Rwanda, Power writes, "[u]nfortunately, Rwanda had never been of more than marginal concern to Washington's most influential planners." *Id.*

59. See Bellamy & Williams, *supra* note 3, at 39 (criticizing arguments that intervention in Darfur would destabilize 2005 Machakos/Naivasha peace talks because the arguments were based on faulty and simplified assumptions); KENNEDY, *supra* note 6, at 103 (explaining that during the Rwandan genocide, it had been difficult to obtain donor contributions from U.N. member states, "most of whom did not know the difference between Hutus and Tutsis"); John Prendergast, Op-Ed., *Genocide's Uncertain Legacy*, WASH. POST, Feb. 26, 2008 (arguing that, while the United States' humanitarian aid in Sudan is a "credit," "[i]t is easy to provide humanitarian assistance from the American breadbasket [but] [i]t's hard to deal with the causes that make the assistance necessary").

proper Security Council response to the ongoing atrocities in Sudan can be directly linked to its substantial economic ties to the country.⁶⁰ It is the largest arms supplier to Sudan, selling \$83 million in arms to Sudan in 2005,⁶¹ and is Sudan's closest trade partner.⁶² It has purchased roughly two-thirds of Sudan's exports and supplies one fifth of Sudan's imports.⁶³ Accordingly, China has used its position in the P5 to deflect criticism of the Sudanese government regarding the ongoing atrocities in Darfur, and to dull or altogether block Security Council action against the Khartoum regime.⁶⁴ Additionally, Russia has opposed stronger action with regards to Darfur because of its own economic interests. As of 2005, it has sold roughly \$150 million worth of military equipment to Sudan, and there is speculation that Russia has opposed economic sanctions on the Sudanese government for fear that Khartoum will default on payments it owes Russia.⁶⁵

Concerns about the direct cost of responses also curb P5 members from activating Security Council responses. For example, the United States rejected a proposal to jam genocidal messages being broadcasted on Rwanda's Radio Mille Collines in part because of its concern about the costs of creating such radio interference.⁶⁶ After the killing had commenced in Rwanda, commander of the U.N. peacekeeping mission Major General Roméo Dallaire requested an increase in the number of U.N. peacekeepers. The United States government opposed any such increase because it believed that it would inevitably lead to a larger and more costly contribution of its

60. See Bellamy & Williams, *supra* note 3, at 32 n.8.

61. See Nicholas Kristof, Op-Ed., *China's Genocide Olympics*, N.Y. TIMES, Jan. 24, 2008, at A23.

62. See Save Darfur Coalition, CHINA IN SUDAN: HAVING IT BOTH WAYS (2007), http://darfur.3cdn.net/2573d6e338d592b4a0_csm6beuk7.pdf [hereinafter CHINA IN SUDAN].

63. See *id.*

64. See Eric Reeves, *A Comprehensive Guide to China's Role in Darfur*, SUDAN TRIB., Dec. 20, 2007, available at <http://www.sudantribune.com/spip.php?article25251> ("China has played lead blocker for the National Islamic Front regime at the U.N. This semi-official blessing from a permanent member of the Security Council has allowed Khartoum to defy a host of U.N. demands and continue with its genocide."). In 2006, China was instrumental in assuring that the peacekeeping troops authorized by Security Council Resolution 1706 could only deploy in Darfur with Khartoum's consent. Dream for Darfur, *China's Role*, http://www.dreamfordarfur.org/index.php?option=com_content&task=view&id=21&Itemid=38 (last visited Nov. 22, 2008). In 2007, while China supported a U.N.-African Union deployment, it blocked language that threatened sanctions against Khartoum for noncompliance. CHINA IN SUDAN, *supra* note 62. It also stripped from the final version of the resolution any language that would have authorized the force to seize illegal arms in Darfur that violated a prior Security Council arms embargo. See *id.* To date, deployment of the force has been hugely unsuccessful because of Khartoum's lack of cooperation. See Warren Hoge, *U.N. Officials Warn of Darfur Failure*, N.Y. TIMES, Jan. 10, 2008, at A6 (noting that only 9,000 of the planned 26,000 troop force has been deployed because of "foot dragging" and "blocking moves" by Khartoum, including "stalling on agreements for providing the land necessary for bases, on the approval to conduct flights and other operations at night, on the legal status of the force and on the inclusion of non-African specialized units that are considered essential to the force's success").

65. See Bellamy & Williams, *supra* note 3, at 32-33.

66. See POWER, *supra* note 45, at 371 (citing a U.S. government explanation that the cost of \$8,500 per hour of flight time for the plane needed to jam the radio signals was too expensive.).

troops.⁶⁷ Similarly, a major factor in U.S. inaction in response to the Bosnia conflict was the “estimated steep cost of intervening.”⁶⁸

3. *Domestic Political Self-Interest*

Self-interested concerns over domestic political reaction to proposed mass atrocity responses also discourage action. Donald Steinberg, President Clinton’s special assistant for African affairs, publicly stated in 1994 that the main deterrent against strong U.S. action in Rwanda for the Clinton Administration was the recent political fallout from the failed U.S. military operation in Somalia.⁶⁹ Regarding Bosnia, both the Bush and Clinton administrations considered the impact of military responses on their political futures. In 1992, the Bush administration viewed Bosnia as a “tar baby” and President Bush was “unwilling to risk American lives in Bosnia in any capacity.”⁷⁰ Samantha Power describes the Clinton administration’s calculations in the following way:

Some very cherished goods at home would also be jeopardized [by an intervention.] After more than a decade of Republican rule in the White House, leading Democrats spoke about the importance of carrying out domestic reforms . . . Dick Morris, Clinton’s erstwhile pollster . . . made noninvolvement in Bosnia a “central element” of his advice. “You don’t want to be Lyndon Johnson,” he said to Clinton early on, “sacrificing your potential for doing good on the domestic front by a destructive, never-ending foreign involvement.”⁷¹

B. *Self-Interest Considerations of Non-Aligned States*

A distinct set of self-interested concerns of Non-Aligned states substantially stall the international community’s current response system regarding mass atrocities. These self-interested concerns have substantially less impact on whether or not Security Council action is taken, but instead impact the possibility of unilateral action in the event that the Security Council is frozen or merely authorizes a peacekeeping operation with a weak mandate.

67. *See id.* at 366–67.

68. *Id.* at 283.

69. *See* Steinberg, *supra* note 5 (“I’ll always regret that I bought into the common wisdom that in the wake of the Blackhawk Down killings in Mogadishu, the American people would not abide sending U.S. troops to another remote African location.”); *see also* CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 229 (2004) (“It is clear that states’ reluctance to play a major role in Rwanda was strongly influenced by the experience of Yugoslavia and Somalia.”); *West ‘Guilty’ over Rwandan Genocide*, CNN.COM, Apr. 6, 2004, <http://www.cnn.com/2004/WORLD/africa/04/06/rwanda.dallaire/index.html> (quoting General Roméo Dallaire, commander of U.N. peacekeeping forces in Rwanda in 1994, that the failed U.S. military action in Somalia “created a fear of casualties” in the West).

70. POWER, *supra* note 45, at 285.

71. *Id.* at 306.

This set of self-interests centers on a fear of an unconstrained, unilateral intervention doctrine which could be manipulated and misapplied by stronger states against them. Essentially, Non-Aligned states are self-interested in their self-preservation, which they fear would be jeopardized by responses taken outside the boundaries of the international legal system.⁷²

1. *Anti-Colonialism Self-Interest*

Non-Aligned states are suspicious of mass atrocity responses that may be used as pretexts for Western imperialistic motives. Venezuelan President Hugo Chavez has called R2P a “very dangerous concept” that “shape[s] imperialism, interventionism as [the United States] try to legalize the violation of the national sovereignty.”⁷³ The group “Responsibility to Protect—Engaging Civil Society” (“R2PCS”), one of the first civil society groups solely focused on the R2P doctrine, explains:

In promoting the Responsibility to Protect, there is a strong sense of caution from the region about the norm. Some fear that R2P will be misused as reasoning for neo-colonialist ‘Western’ interventions. Many in the global south has thus solidified this position, often through the Group of 77 or the Non-Aligned Movement, against what they feel is intended to strengthen the influence and power of Northern governments to the detriment of the South.⁷⁴

The *ex post facto* humanitarian justifications given for the United States’s preemptive war in Iraq have strengthened this line of argument.⁷⁵ Thomas Weiss explains that “the legitimate idea of humanitarian intervention has been contaminated by association with George W. Bush’s and Tony Blair’s spurious and largely *ex post facto* ‘humanitarian’ justifications for invading

72. As discussed in note 41, these states undoubtedly also possess their own economic or political self-interests. Notwithstanding their meaningful impact on the international community’s responses to mass atrocities, I will not document them here.

73. Hugo Chavez, President of Venez., Address at the General Debate of the 60th Session of the U.N. General Assembly (Néstor Sánchez trans., Sept. 15, 2005), available at <http://www.embavenez-us.org/news.php?nid=1745>; see also KOSOVO REPORT, *supra* note 7, at 11 (“The Commission is aware that in many countries of the world there is a much stronger commitment to the protection of their sovereignty than currently exists in the West. Given the dual history of colonialism and the Cold War, there is widespread concern about Western interventionism. The growing global power of NATO creates a feeling of vulnerability in other parts of the world, especially in a case such as Kosovo where NATO claims a right to bypass the United Nations Security Council.”).

74. Responsibility to Protect—Engaging Civil Society, Introduction, <http://www.responsibilitytoprotect.org/index.php/pages/1285> (last visited Nov. 22, 2008).

75. After the invasion of Iraq was initially justified on preemptive grounds, former Prime Minister of the United Kingdom Tony Blair explicitly used R2P language to justify the action, stating, “we surely have a responsibility to act when a nation’s people are subjected to a regime such as Saddam’s.” Tony Blair, Prime Minister of the U.K., Speech at Sedgefield (Mar. 5, 2004), available at <http://www.guardian.co.uk/politics/2004/mar/05/iraq.iraq>.

Iraq.”⁷⁶ Walden Bello, Executive Director of the Bangkok-based research and analysis institute Focus on the Global South and professor at the University of the Philippines at Diliman states:

Iraq shows the dangers of the humanitarian rationale. It can so easily be used to justify any violation of national sovereignty to promote the interests of an external force. Yes, under Saddam Hussein, the Iraqi people were subjected to systematic repression, with many people executed and jailed. Yet, most of us, at least most of us in the global South, recoil at Washington’s use of the humanitarian logic to invade Iraq. Most of us would say that even as we condemn any regime’s violations of human rights, systematic violation of those rights does not constitute grounds for the violation of national sovereignty through invasion or destabilization. Getting rid of a repressive regime or a dictator is the responsibility of the citizens of a country. In this regard, let me point out that not even during the darkest days of the [Ferdinand] Marcos dictatorship did the anti-fascist movement in the Philippines think of asking the United States to do the job for us Are we exaggerating our case? No. The Iraq tragedy is a result only of the American Right’s drive to place U.S. power far beyond the reach of any potential rival or coalition of rivals. The way to Iraq was paved by the actions of liberal democrats, of the very same Clintonites that currently criticize the Bush administration for its having plunged the U.S. into a war without end. In other words, the road to Iraq would have been more difficult without the humanitarian intervention in Yugoslavia in the 1990’s.⁷⁷

Sudan has capitalized on this anti-colonialist/anti-imperialist argument, arguing that proposed Security Council sanctions “[were] now being used as a ‘Trojan horse’ by ‘some activists within the U.S. administration’ to bring military pressure on the Islamic government in Khartoum.”⁷⁸ The

76. WEISS, *supra* note 19, at 124; *see also* Macfarlane, Thielking & Weiss, *supra* note 6, at 977 (arguing that the *ex post facto* humanitarian justification for regime change in Iraq highlighted the potential for abuse, thus eroding consensus for the legitimacy of use of force based on human protection); Responsibility to Protect—Engaging Civil Society, *supra* note 74 (“Although justifications for intervention in Iraq based on humanitarian grounds in 2003 were quickly discredited by most governments, there is still a sense that R2P could be used in the future for these types of politically-motivated interventions.”).

77. Walden Bello, Humanitarian Intervention: Evolution of a Dangerous Doctrine, *Global Policy Forum* (Jan. 19, 2006), <http://www.globalpolicy.org/empire/humanint/2006/0119humintbello.htm>; *see also* Kanbawza Win, *Will It Be A Paper Tiger?*, *ASIAN TRIBUNE*, Aug. 26, 2008, <http://www.asiantribune.com/?q=node/12909>.

78. Comments by Elfatih Mohamed Ahmed Erwa, Sudanese Ambassador to the U.N., as quoted in Warren Hoge, *U.N. Council Threatens to Punish Sudan Over Militia Killings*, *N.Y. TIMES*, Jul. 31, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9B0CEFD1E3DF932A05754C0A9629C8B63>.

Sudanese Ambassador to the U.N. accused the United States of acting in a “colonial” fashion and asked, “Aren’t these the very same states that we see daily on TV monitors and their massive military machine while they are practicing the occupation of nations, pouring their fire on innocent civilians in Iraq and Afghanistan?”⁷⁹

Russia’s recent invocation of the R2P doctrine in support of its armed invasion of Georgian territory in the republic of South Ossetia also adds credence to this Trojan horse argument. Despite no credible evidence that Georgia was committing mass atrocities against Russian citizens as envisioned by the R2P doctrine, Russian Foreign Minister Sergei Lavrov “argued that Russia’s use of force in response was an exercise of the responsibility to protect, which applied not only ‘in the U.N. system when people see some trouble in Africa’ but also under the Russian Constitution when its own citizens were at risk.”⁸⁰ Gareth Evans, chief architect of the ICISS Report, while discounting Russia’s reasoning that R2P justified Russia’s actions, reemphasized the concerns of weaker states regarding international mass atrocity responses:

For those of us who have worked long and hard to create a consensus that the world should never again turn its back on another Cambodia or Rwanda, this and every misapplication of R2P—genuine or cynical—is an occasion for alarm. We are conscious of the fragility of that consensus should the impression gain hold that R2P is just another excuse for the major powers to throw their weight around.⁸¹

2. *Fear of Inconsistent Application*

Similarly, Non-Aligned states fear the West’s inconsistent application of an intervention doctrine.⁸² Critics often raise the comparison between action in Kosovo and inaction in Rwanda.⁸³ Thomas Weiss argues that the reticence of developing countries to support robust responses to mass atrocities “is unlikely to disappear as long as inconsistency and disingenuousness continue to characterize Western responses to humanitarian catastrophes.”⁸⁴

79. *Id.*

80. Gareth Evans, Op-Ed., *Russia and the Responsibility to Protect*, L.A. TIMES, Aug. 31, 2008, available at <http://www.latimes.com/news/printedition/opinion/la-oe-evans31-2008aug31,0,6720471.story>.

81. *Id.*

82. Hamilton, *supra* note 24, at 289 (“[T]he interventions of the 1990s were inconsistent, lacking any coherent theory with which to justify the infringement of sovereignty in each case.”); see also KOSOVO REPORT, *supra* note 7, at 11–12 (arguing that the international community did not give the same priority to humanitarian catastrophes happening outside Europe as it did to Kosovo).

83. Cf. Macfarlane, Thielking & Weiss, *supra* note 6, at 986 (referring to a poll in which 74% of United States citizens said they would support interventions in Europe to stop a genocide, while only 55% supported the same in Africa).

84. WEISS, *supra* note 19, at 132; see also Paul Reynolds, *Zimbabwe: No Easy Answers*, BBC NEWS, Mar. 28, 2008, <http://news.bbc.co.uk/2/hi/africa/7316309.stm> (“It is sometimes argued that the West

The past “Just-Do-It-But-Don’t-Call-It-A-Doctrine” approach to humanitarian intervention raises issues of selectivity and arbitrary application, both of which influence the perception of legitimacy.⁸⁵

3. *Fear of Too Broad a Mandate*

Finally, Non-Aligned states fear R2P doctrine manipulation and expansion, creating uncertainty as to when they might be vulnerable to an intervention.⁸⁶ For instance, some seek to interpret R2P as justifying a “duty to prevent” nuclear security disasters⁸⁷ and the right to launch preemptive strikes against suspected terrorist targets.⁸⁸ Recently, former Secretary General Kofi Annan has invoked R2P to justify action to combat global hunger and climate change,⁸⁹ and the concept has also been cited in support of more vigorous government action against the Liberation Tigers of Tamil Eelam (“LTTE”) secessionist movement in Sri Lanka.⁹⁰

III. NON-RESPONSIVE SOLUTIONS

The above self-interest considerations discourage states from otherwise championing or supporting collective responses to mass atrocity situations. The R2P doctrine provides little direction regarding how to activate its worthy continuum of responses—from early prevention through sustained rebuilding—within this self-interested system. Those responses that do occur (if at all) only happen after thousands of lives have been lost, and are under-funded, undermanned, poorly conceived, and made inconsistently.⁹¹

is hypocritical in that NATO went to war with Serbia over Kosovo (without a U.N. resolution) but is unwilling to help starving Africans by intervening in Zimbabwe.”).

85. See Macfarlane, Thielking & Weiss, *supra* note 6, at 979.

86. See Hamilton, *supra* note 24, at 293.

87. See Lee Feinstein & Anne-Marie Slaughter, *A Duty to Prevent*, FOREIGN AFF., Jan.–Feb. 2004, at 136, 137.

88. See Ivo Daalder & James Steinberg, Op-Ed., *Preventive War: A Useful Tool*, L.A. TIMES, Dec. 4, 2005, at M3, available at <http://articles.latimes.com/2005/dec/04/opinion/op-preemptivewar4>.

89. See Lisa Schlein, *Kofi Annan Says Polluters Must Pay For Climate Change*, VOA NEWS, Apr. 22, 2008, <http://www.voanews.com/english/2008-04-22-voa62.cfm?CFID=229756733&CFTOKEN=12792755> (quoting Annan as stating, “[s]hould not the same logic [of the responsibility to protect] apply for the protection of people who may not have enough to eat, who may be at the mercy of nature and are helpless to protect themselves.”); see also Gregory Meeks & Michael Shank, Op-Ed., *U.N. Security Council Must Act Preemptively—On Climate Change*, CHRISTIAN SCI. MONITOR, Mar. 24, 2008, available at <http://www.csmonitor.com/2008/0324/p09s02-coop.htm> (“Transcending the Security Council’s usual scope of nation-state conflicts, climate change-related conflict will affect all of us—with particular devastation to developing countries not represented by the P5. Thus it is incumbent upon the Security Council, which has a responsibility to protect weaker member states, to step up and save the world.”).

90. See Prasad Gunewardene, Op-Ed., *Only a Mission to Crush Terrorism*, DAILY NEWS (Sri Lanka), Mar. 24, 2008, available at <http://www.dailynews.lk/2008/03/24/fea02.asp> (“A Government is vested with the responsibility to protect its people and the territory. Therefore, it is compelled to take defensive action against any enemy who threatens the people and the territory of the nation.”).

91. See Benjamin Valentino, *The Perils of Limited Humanitarian Intervention: Lessons From the 1990s*, 24 WIS. INT’L L.J. 723, 723 (2006) (arguing that “most major humanitarian interventions of the [1990s] barely ‘intervened’ at all” and were ill-equipped to prevent the worst atrocities).

A maturation of the current system is thus clearly needed in order to address mass atrocities.⁹² U.N. Secretary General Kofi Annan called for such an evolution in an agenda-setting moment nine years ago in the wake of the inaction in Rwanda and the controversy over the use of force in Kosovo.⁹³ He challenged the international community to muster more vigorous and consistent collective responses to mass atrocities by reconciling the sovereignty principle with the imperative of combating massive human rights violations.⁹⁴ Annan identified the need to “restore the United Nations to its rightful role in the pursuit of peace and security,”⁹⁵ and the need to determine within the international community “ways of deciding what action is necessary, and when, and by whom.”⁹⁶

The importance of a more effective Security Council was central to Annan’s address.⁹⁷ He singled out the Security Council as the necessary spearhead when the use of force was necessary. Annan warned that if the Security Council failed to adapt and to defend the “common interest,” there would arise “a danger that others could seek to take its place.”⁹⁸ Implicit in this warning was a fear of single states abusing the precedent of a successful unilateral intervention for nefarious purposes,⁹⁹ and the fear that the precedent would not be applied consistently or comprehensively in all worthy situations.¹⁰⁰

Nine years after his address, the world has failed to adequately respond to Annan. This section critiques two direct attempts to respond, one by the R2P report itself and the other by Professor Thomas Franck, a leading commentator on use of force issues. First, the R2P report attempts to address Annan’s concerns in its cursory support of a P5 “code of conduct” veto agreement. This approach is ultimately unrealistic, however, not only because the P5 is unlikely to abdicate their veto power, but also because it does not encourage early, collective R2P preventative measures. Second, Thomas Franck’s “global jury” response, discussed below, fails to answer Annan’s plea for a more effective Security Council and only addresses how

92. See Franck, *supra* note 30, at 600; Kofi Annan, *Two Concepts of Sovereignty*, *Economist*, Sept. 18, 1999 [hereinafter *Two Concepts of Sovereignty*] (“We need to adapt our international system better to a world with new actors, new responsibilities, and new possibilities for peace and progress.”).

93. *Two Concepts of Sovereignty*, *supra* note 92; see also Kofi Annan, Secretary-General of the U.N., Address to U.N. General Assembly: Presentation of Report of the Secretary-General on the Work of the Organization, (Sept. 20, 1999) [hereinafter *Annan Address*], available at http://www.undemocracy.com/generalassembly_54/meeting_4.

94. *Annan Address*, *supra* note 93.

95. *Id.*

96. *Two Concepts of Sovereignty*, *supra* note 92 (emphasis added).

97. See *Annan Address*, *supra* note 93; see also *KOSOVO REPORT*, *supra* note 7, at 5 (advocating to consider reforming the Security Council, among other main bodies of the U.N.).

98. *Annan Address*, *supra* note 93.

99. See *id.* (expressing concern that military action outside “established mechanisms” might set dangerous precedents).

100. See *id.* (declaring that any new commitment to humanitarian intervention must be seen as fairly and consistently applied).

justified, yet unauthorized, uses of force fit within the international legal framework. However, Franck's examination provides the analytical foundation upon which a complete response to Annan's query can be constructed and a more responsive Security Council created.

A. *The R2P Report's P5 "Code of Conduct"*

ICISS and its R2P report were in part created to respond to the challenges set forth in Annan's 1999 General Assembly Address.¹⁰¹ However, the R2P concept, in and of itself, is not an adaptive, activation proposal but rather a mere reconceptualization of sovereign and international responsibilities—a move Annan advocated two years before the R2P report was written.¹⁰² The report's only activation scheme proposal is that the P5 adopt a veto "code of conduct" regarding "significant humanitarian crises."¹⁰³ Specifically, the R2P report requests that the P5 members agree not to veto a majority resolution addressing a "significant humanitarian crisis . . . where [their] vital national interests were not claimed to be involved."¹⁰⁴

This recommendation would likely prove ineffective even if accepted by the P5. Conceivably, if a P5 member's vital national interest were not at stake, it would be less inclined to exercise its veto in the first place, rendering the "code of conduct" an agreement on conduct that already occurs. Those who argue that the code of conduct would disallow states to use the veto on behalf of their clients' and friends' interests¹⁰⁵ will likely face a definitional argument concerning the legitimate scope of a state's "vital national interests." Specifically, a P5 member could argue that its economic and/or security relationships with a potential target state were so strong that not exercising its veto power would affect its own "vital national interests." Definitional disagreements over whether a particular situation rose to the level of a "significant humanitarian crisis" are also foreseeable.¹⁰⁶

101. See R2P REPORT, *supra* note 8, at 81.

102. See Annan Address, *supra* note 93 (discussing the evolving norm of humanitarian intervention).

103. See R2P REPORT, *supra* note 8, at 51.

104. *Id.*

105. See Franck, *supra* note 30, at 609.

106. Professor Franck has contemplated a similar scheme of "sidebar agreements" regarding the use of force necessary to alleviate a humanitarian crisis caused by the failure of a government to carry out the measures previously ordered by a Chapter VII Security Council resolution, upon formal certification by the Secretary-General that there had been substantial noncompliance with the essential requisites of the prior resolution. *Id.* Professor Franck argues that this scheme might have some traction with the P5 because: (1) of a perception among them that "they have more to gain than to lose from enhancing the capacity of an endangered collective security system"; (2) of "global public opinion" condemning self-interested uses of the veto; and (3) the P5's veto restraint is essential if it is to appease the likely six new members of the Security Council who will likely be denied the veto power altogether. *Id.* at 610. History does not support the first two arguments, the most recent example being that of inaction on the crisis in Darfur. China and Russia's economic self-interest (and their self-interest in not allowing action

The “code of conduct” proposal also does nothing to trigger more effective early preventative responses to burgeoning mass atrocity situations or to ensure more consistent and comprehensive responses, all fundamental precepts of R2P and Annan’s address. Instead, the proposal simply asks for the Security Council to act more appropriately in its reactionary function.

B. Thomas Franck’s “Global Jury”—an Incomplete but Important Answer

Thomas Franck has also addressed Annan’s 1999 call for a more effective and adaptive U.N. response to mass atrocities.¹⁰⁷ Franck suggests that the institution’s actual practice reveals that adaptation to the R2P principle has in some ways already occurred. He states:

One possible answer [to the “dilemma” presented in Annan’s 1999 General Assembly address] based on the actual practice of U.N. organs is that the U.N. system already tolerates, ultimately cooperates with, and may even commend military action by states when such action is taken to avert a demonstrable [“major humanitarian”] catastrophe It is possible to conclude that the use of force by a state or regional or mutual-defense system is likely to be tolerated [by the U.N. organs] if there is credible evidence that such first-use was justified . . . by an egregious and potentially calamitous violation of humanitarian law by a government against its own population or a part of it.¹⁰⁸

Franck refers to the U.N. organs as the “global jury”¹⁰⁹ who, when confronted with unauthorized use of force actions to prevent bona fide human rights crises, have responded “benevolently” through “either specific consent or silent acquiescence.”¹¹⁰ Franck indicates that the U.N. organs employ a “concept of mitigation” when judging an unauthorized use of force such that morally justifiable acts “pass with tacit approval, others without comment, and some with only minimal rebuke.”¹¹¹ Franck does not claim

regarding their own human rights abuses) have obviously trumped any inclinations they might have to save the collective security system or the effects they have felt from global public opinion. See, e.g., Gavin Stamp, *China Defends its African Relations*, BBC NEWS, June 26, 2006, <http://news.bbc.co.uk/2/hi/business/5114980.stm>; J. Peter Pham, *Strategic Interests: The Russian Bear Returns to Africa*, WORLD DEF. REV., Aug. 21, 2008, <http://worlddefensereview.com/pham082108.shtml>. Regarding the third argument, the six new members have not yet been added to the Security Council, and until they are and power arrangements are discussed, victims of today’s mass atrocities will continue to be neglected.

107. See Thomas Franck, *When, if Ever, May States Deploy Military Force Without Prior Security Council Authorization?*, 5 WASH. U. J.L. & POL’Y 51, 63–64 (2001) [hereinafter Franck, *When, if Ever*]; FRANCK, *supra* note 6, at 182.

108. Franck, *When, if Ever*, *supra* note 107, at 64, 68 (quoting directly from Annan’s General Assembly address and responding in turn); see also FRANCK, *supra* note 6, at 184.

109. See FRANCK, *supra* note 6, at 186.

110. See Franck, *When, if Ever*, *supra* note 107, at 64–65.

111. FRANCK, *supra* note 6, at 184.

that such uses of force are now legal, only that they are deemed excusable by the “global jury.”¹¹²

In support of this response, Franck examines the U.N. organs’ reactions to several past responses to mass atrocities and relays how they have reacted benevolently to unauthorized but necessary responses. In response to Tanzania’s 1978 use of force into Uganda, for example, “states simply but consciously decided to pass over in silent acquiescence.”¹¹³ The Security Council only “indirectly condemned” Vietnam’s use of force in Kampuchea in 1978, where the Khmer Rouge was responsible for the deaths of roughly one million people,¹¹⁴ and the international system “quietly, but eloquently, looked the other way” in regard to France’s 1979 intervention into the former Central African Empire (“CAE”).¹¹⁵ Similarly, the U.N. system “directed virtually no criticism—and, eventually, widespread praise and endorsement” toward the ECOWAS/ECOMOG 1989/1999 uses of force in Liberia and Sierra Leone, even though they were taken without the requisite Article 53 Security Council approval,¹¹⁶ and the international community responded with “benevolent silence” to the 1991 military action in northern Iraq by France, the United Kingdom, and the United States.¹¹⁷

Franck’s “global jury” response, however, does not answer Annan’s call for a more successful U.N. response activation scheme led by the Security Council.¹¹⁸ Instead, perhaps pragmatically, Franck altogether skips the question of Security Council efficacy and moves directly to a normative reconciliation of how unauthorized, yet necessary, uses of force can occur within the current international legal framework without having to question the legitimacy of or fundamentally amend that system.¹¹⁹ In doing so, Franck admits that the “global jury” answer does not solve the problem of ensuring responses to mass atrocities. He writes, “Indeed, the problem for the system is not so much how to accommodate such interventions in its

112. *See id.* at 191.

113. *Id.* at 145. Franck explains that this silence was influenced by Tanzania’s lack of territorial ambition and the fact that it was a leading member of the Non-Aligned movement. Prior to Tanzania’s action, Idi Amin controlled Uganda; under his authority 300,000 were killed.

114. *See id.* at 145, 149. Franck explains that the international community’s slightly sterner rebuke of Vietnam (than of Tanzania) stemmed from doubt over Vietnam’s true motives. *See id.* at 145, 149. Vietnam had no intention of helping to establish democratic rule, and Vietnam “seemed in no haste to withdraw its forces.” *Id.* at 150.

115. *Id.* at 152.

116. *Id.* at 158. Regarding Sierra Leone, the Security Council continually praised ECOMOG. These regional organization actions occurred in Liberia after 5,000 lives had been lost and 500,000 people had been made refugees, and after almost a decade of conflict in Sierra Leone that generated hundreds of thousands of casualties and displaced half the country’s population. *See id.* at 155–59.

117. *See id.* at 152–55.

118. *See Annan Address, supra* note 93 (“If the collective conscience of humanity . . . cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice . . . [I]t may soon lose faith in our ability to make a difference.”).

119. *See FRANCK, supra* note 6, at 191.

framework of legality but how to find states willing to undertake the necessary rescue.”¹²⁰

In other words, the barrier to helping mass atrocity victims is not constructed of laws but rather of self-interest. Franck’s “global jury” response proves the former but says nothing about an operation or process that could mitigate the latter. The “global jury” response also does not alleviate Annan’s implicit concerns about unilateral interventions carried out for nefarious purposes.¹²¹

Franck’s “global jury” response, however, does contain an embedded thread that provides the basis for a more complete activation answer to Annan’s request. That thread runs through Franck’s case studies and underlines the centrality of self-interest to the international community’s analysis regarding responses to mass atrocities. The “global jury” tacitly supported such responses in Uganda, CAE, northern Iraq, Liberia, and Sierra Leone, because their fears of self-interested motivation were assuaged: there were no serious imperialist concerns and it was clear that the humanitarian intervention doctrine was applied legitimately. Similarly, while China and Russia voiced their opposition regarding Kosovo, the overwhelming rejection of the proposed Security Council resolution demonstrated confidence in NATO’s motives and an agreement that the use of force was justified. This thread must be exposed, pulled out, and used to weave together a practical and effective R2P Security Council activation system.

IV. THE RESPONSIBILITY TO PROTECT SECURITY COUNCIL SUB-COMMITTEE (R2P-SCC): THE GLOBAL *Grand Jury*

Franck’s case studies expose a collective compassion for international responses to mass atrocities that must be cultivated. It is obvious that the “global jury” approves of responses to mass atrocity situations when self-interest is stripped from the equation; R2P supporters must seek to activate this collective conscience much sooner in a venue that can effectively mobilize it. The R2P-SCC has exactly that goal in mind. The proposal for an R2P-SCC is based on the logic that a properly constructed Security Council committee—a “global *grand jury*”—would recommend proactive authorization for those responses that a “global jury” would otherwise retroactively sanction. The R2P-SCC proposal is an attempt to capitalize upon, crystallize, streamline, and activate the collective conscience that Franck has proven not only exists, but often answers the response question correctly. The following sections present a sketch of the makeup and perceived func-

120. *Id.*

121. See Annan Address, *supra* note 93.

tions of the R2P-SCC and the likely benefits that would result from its establishment.

A. *The R2P-SCC: Framework and Functions*

The R2P-SCC would be a full-time, subsidiary organ of the Security Council, created by Security Council resolution. The U.N. Charter allows for the creation of such a body because it would aid the Security Council to fulfill an Article 34 function: investigation of situations that might endanger the maintenance of international peace and security.¹²² The R2P-SCC would be created under the Council's Chapter VI powers to facilitate its Article 34 investigation function, but its recommendations could certainly trigger Chapter VII action by the Security Council.

Broadly, the R2P-SCC would be tasked with monitoring situations to which the R2P doctrine might apply and making specific recommendations to the Security Council regarding appropriate action.¹²³ The R2P-SCC would be a repository for relevant information from governments and civil society regarding potential R2P situations, and would work closely with the Secretary General's Special Advisor on the Prevention of Genocide.¹²⁴ The recommendations springing from the committee's deliberations would be forwarded to the Security Council to consider and vote upon in the normal fashion. In line with the R2P continuum, the R2P-SCC would assess

122. Article 34 of the U.N. Charter instructs:

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

U.N. Charter art. 34. Further, Article 29 provided that “[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.” Additionally, Rule 28 of the Provisional Rules of Procedure of the Security Council allows for the appointment of “a commission or committee or a rapporteur for a specified question.” Provisional Rules of Procedure of the Security Council, R. 28, U.N. Doc. S/96/Rev.7 (Dec. 21, 1982), available at <http://www.un.org/Docs/sc/scrules.htm>. As the Security Council has consistently found mass atrocity situations to constitute threats to international peace and security, the creation of a sub-committee to aid in the investigation of such situations is appropriate. See, e.g., S.C. Res. 1784, U.N. Doc. S/RES/1784 (Oct. 31, 2007) (regarding Sudan); S.C. Res. 1777, U.N. Doc. S/RES/1777 (Sept. 20, 2007) (regarding Liberia); S.C. Res. 1772, U.N. Doc. S/RES/1772 (Aug. 20, 2007) (regarding Somalia). There currently exist Security Council Committees on such issues as counterterrorism and nuclear nonproliferation.

123. Per the R2P doctrine, the R2P-SCC would only consider potential mass atrocity situations.

124. The Secretary-General, *Updated Report of the Secretary-General on the Implementation of the Five-Point Action Plan and the Activities of the Special Adviser on the Prevention of Genocide*, ¶ 21, delivered to the Human Rights Council, U.N. Doc. A/HRC/7/37 (Mar. 18, 2008) [hereinafter *Report of the Secretary-General on Activities of the SAPG*] (emphasizing the need to collate “early-warning information”). Note that the Office of the Special Adviser on the Prevention of Genocide is tasked with collecting information on potential genocidal situations, acting as an early warning mechanism to the Secretary-General, making recommendations to the Security Council through the Secretary-General on actions to prevent or stop genocide, liaising with the U.N. system regarding genocide prevention, and working to enhance the U.N.'s capacity to analyze and manage information relating to genocide and related crimes. See Letter from the Secretary-General to the President of the Security Council, U.N. Doc. S/2004/567 (July 12, 2004). The different capacities and functions of the R2P-SCC and the Special Adviser position, as well as their potential relationship, are discussed below.

situations at all stages—from before mass atrocities occur through after they have been quelled—to determine appropriate preventative, reactive, or rehabilitative measures. Thus, the R2P-SCC could consider not only the use of force question but also Chapter VI preventative measures, such as the dispatching of special envoys, mediators, and aid,¹²⁵ and Chapter VII measures not including the use of force, such as sanctions. Regarding a use of force recommendation, the R2P-SCC would determine whether U.N. peacekeepers, regional organizations, or other options would be the most efficacious.

The R2P-SCC would be comprised of relevant experts from states of all world regions and would be representative of all political, economic, and military strengths.¹²⁶ All states would have an equal vote in issuing recommendations for particular flagged situations. Importantly, no country would possess a veto power. An affirmative majority vote would send a recommendation to the Security Council.

As Franck argues with regard to the “global jury,” it is not naïve to assume that R2P-SCC would succeed in reaching credible, objective conclusions. The same attributes that Franck assigns to his credible “global jury” would apply to the R2P-SCC “global grand jury.”¹²⁷ For example, most mass atrocity situations would directly impact only a few members of the “global grand jury,” leaving the remainder free from any allegiances and able to objectively evaluate a situation.¹²⁸ Further, states would be as mindful of “practice as precedent” in the “global grand jury” as they are in the “global jury,” meaning “their first concern [would be] to do the right thing by the norms under which all must live.”¹²⁹ Also, peer-group approval would act as the same counterweight to states’ baser instincts on the “global grand jury” as it does on the “global jury.” Finally, “[m]ost governments do respond to clear and unimpeachable evidence of the facts and of their sociopolitical context.”¹³⁰ Because the R2P-SCC would be the central repository for all relevant information, the quality of evidence upon which to base its recommendations would be extremely high.¹³¹

125. See U.N. Charter art. 33, para. 2 (“The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by [negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice].”).

126. At this pre-embryonic stage, technicalities regarding the makeup of the R2P-SCC and its day-to-day operations are less important than laying down the vision and envisioned role of such an organ. Any lack of specificity, however, should not undercut the need for R2P supporters to vigorously push for this sort of Security Council refinement.

127. See FRANCK, *supra* note 6, at 187.

128. See *id.*

129. *Id.*

130. Franck, *When, if Ever*, *supra* note 107, at 68.

131. Cf. *id.* at 67 (“Another thing that may be said about the record of the [Security] Council and [General] Assembly in applying the Charter to unauthorized uses of force is that decisions are affected profoundly, if not always decisively, by the quality of information available to those bodies.”).

B. *The Benefits of the R2P-SCC*

1. *A Global Grand Jury*

There are several potential benefits of the R2P-SCC, all stemming from the organ's impact on states' self-interest. Most importantly, it would harness at much earlier stages the reservoir of collective compassion regarding mass atrocities. It would convert the world's current post-response "benevolent silence" into pre-response "benevolent action" before situations ripened into mass atrocities. Instead of the "global jury" having to wait to pardon necessary but untimely unilateral responses to mass atrocity situations, the "global grand jury," through the R2P-SCC, could affirmatively pursue similar action through collective means. The R2P-SCC would transform the "global jury" from a static observer into a dynamic actor. If the "global jury" condoned Tanzania's use of force in Uganda because it believed that "it was time for Amin to go,"¹³² a similarly situated "global grand jury" would have likely recommended action at an earlier point. Over time, the R2P-SCC would ideally amass an institutional expertise that would allow it to diagnose problems and prescribe recommended solutions more efficiently and effectively.

Further, the R2P-SCC would strip from states the tactic of citing humanitarian reasons for otherwise illegal use of force. While the legality of the United States' war in Iraq has been thoroughly debated and still remains a somewhat open question, what cannot be disputed is that the use of force would likely not have been ratified by the global community on solely humanitarian grounds. Indeed, this justification was only seriously proffered by the United States after the operation commenced and weapons of mass destruction were not found. If the R2P-SCC had existed and could have rejected a humanitarian justification for invasion of Iraq, this justification would never have been legitimately offered as a pretext for war. The same point can be made with regard to Russia's invocation of R2P to justify its use of force in Georgia.

2. *Pressure on the P5*

Recommendations for action made by the committee would place an extraordinary amount of pressure on the Security Council, another chief benefit of the R2P-SCC. Because an R2P-SCC recommendation would embody the world's will, and not that of a single state, it would severely weaken arguments made by some P5 members that responses to mass atrocities are a pretext for Western hegemonic purposes or that they create precedent for nefarious action in the future.¹³³ Indeed, the only precedent set would be

132. See FRANCK, *supra* note 6, at 144.

133. See, e.g., KOSOVO REPORT, *supra* note 7, at 145 (discussing China's concern that the Security Council might have been subject to manipulation by the U.S. and its allies).

that future responses would again have to pass the R2P-SCC's scrutiny. When the P5 members are thereby denied from making these default arguments (which they might cite disingenuously to cover up their true self-interested hesitations), their true motivations for inaction (be they political, economic, or other) would be exposed and their position increasingly isolated. As a result, the use of the veto would come at an extremely high cost.

3. *Legitimizing Unauthorized Unilateral or Regional Action*

In the event of a veto, the R2P-SCC collective response recommendation would legitimize subsequent unauthorized unilateral or regional action. Having already heard the "global grand jury's" verdict, a state considering a unilateral response can do so knowing the "global grand jury" will support its action, and that there would be minimal risk of subsequent international censure.¹³⁴ The R2P-SCC ensures that the international community will have previously vetted virtually every potential unilateral response. This will eliminate the need for single states or groups of states to waste time lobbying for international support in instances when the R2P-SCC has already recommended action.

It must be noted that this paper's support for unilateral action in the event of an R2P-SCC recommendation and P5 veto is not based on the idea that such action, if it included a use of force, would be legal. As discussed above, unauthorized, non-self defense uses of force are plainly illegal under the U.N. Charter.¹³⁵ Further, no rule has developed in customary international law that renders legal an unauthorized unilateral or regional use of force.¹³⁶ However, the designation of such action as "illegal" should not carry the same normative force as it does in the domestic sphere.

As demonstrated above, in the mass atrocity context, some obviously illegal responsive actions are nonetheless embraced, endorsed, appreciated, and retroactively sanctioned by the international community.¹³⁷ Whether this dichotomy between illegality and acceptance is the result of outdated rules, or some other reason, is not the central concern of this paper. What is important here is that such a dichotomy exists and that it should be capitalized upon in order to better protect mass atrocity victims who have been

134. Similar arguments have been made with regard to the effects of a General Assembly "Uniting for Peace" recommendation, in which the General Assembly recommends the use of force in the event of Security Council inaction. See Weiss, *supra* note 31, at 155. Interestingly, Weiss argues:

Although the decision on the matter would only be a 'recommendation' (whereas the Security Council's decisions are obligations), the necessary backing in the General Assembly might have a moral and political weight sufficient to categorize the use of force as 'legal' even without the Security Council's endorsement. . . . In such a case, the action would certainly be regarded as legitimate.

Id. (citation omitted).

135. See *supra* Part II. A.

136. See SIMON CHESTERMAN, JUST WAR OR JUST PEACE? 84 (2001).

137. See *supra* Part III. B.

historically unprotected. In time, after a sufficient number of R2P-SCC sanctioned unilateral/regional use of force actions take place in spite of P5 veto, such practices might become part of customary international law.¹³⁸

4. *Consistent Application of R2P*

Another benefit of the R2P-SCC is that it would apply the R2P doctrine consistently to situations occurring throughout the world. Because it would not be burdened by the power dynamics that characterize the Security Council, it could assess all situations based on their merits, and not based on what situations were of political or economic interest. Presently, the “global jury” is only activated when certain states decide to focus on certain situations where their interests lie. The R2P-SCC’s global representative membership and no-veto voting structure would ensure a consistent application of the R2P doctrine.

Additionally, the R2P-SCC’s recommendation would benefit from being fashioned with the entire repertoire of U.N. capacity, expertise, and resources in mind. The U.N. currently possesses the tools to proficiently stabilize deteriorating situations and play a key role in rebuilding efforts, but the tools are fragmented and sometimes overlap.¹³⁹ As described by Paul Kennedy:

Practically speaking, all the components are already identified: U.N. blue helmets (or other designated military forces) to provide physical security; specialized bodies to help (re)train local police, judges, administrators; World Bank and UNDP capacities, alongside those of the U.N. Regional Banks, to identify priorities for economic and social recovery; experienced election monitors; a track record of working with international NGOs; and much else besides. What is so often lacking is political will and a lead body to coordinate the multiple efforts.¹⁴⁰

138. Cf. Int’l Law Ass’n, London Conference, 2000, Comm. on the Formation of Customary (General) Int’l Law, *Final Report of the Committee: Statement of Principles Applicable to the Formation of General Customary International Law* 20, available at <http://www.ila-hq.org/en/committees/index.cfm/cid/30>. The International Law Association’s report stated:

[T]here is no specific time requirement [regarding the formation of customary international law]: it is all a question of accumulating a practice of sufficient *density*, in terms of uniformity, extent and representativeness. Some customary rules have sprung up quite quickly: for instance, sovereignty over air space, and the régime of the continental shelf, because a substantial and representative quantity of State practice grew up rather rapidly in response to a new situation.

Id.

139. See KENNEDY, *supra* note 6, at 255 (“[I]t is clear that the [U.N.] and its agencies have been building up formidable knowledge of best practices, which now needs to be harnessed to assist future rescue endeavors. . . . [I]t is hard to see how this can be done without some central coordination”); see also MacFarlane, Thielking & Weiss, *supra* note 6, at 987.

140. KENNEDY, *supra* note 6, at 255.

The R2P-SCC could play a critical and necessary part in coordinating the fragmented U.N. components into a cohesive response system.¹⁴¹ In doing so, the R2P-SCC would be in a much better place than individual states to engender the sustained commitment to respond required by R2P's responsibility to prevent, react, and rebuild.

The R2P-SCC would generate these benefits because it strikes at the root cause of the world's paralysis: self-interest. The R2P-SCC centered process eliminates the self-interested fears of Non-Aligned states and, in turn, shines a spotlight on the self-interested hesitations of the P5 states. The world community, released from their fears of imperial Trojan horses, doctrine manipulation, inconsistent application, and expansion of the doctrine, is free to submit to the collective moral conscience in its decision making processes. A veto-threatening P5 member, on the other hand, denied recourse to the conventional opposition arguments, would be consequently forced to explicitly explain its motives to a watching world, to confess its economic and political self-interest.

C. *The Difference Between the R2P-SCC and the Secretariat's Special Advisers*

The R2P-SCC as conceived will perform different functions from those of the Special Adviser on the Responsibility to Protect or the Special Adviser for the Prevention of Genocide. As a threshold difference, the R2P-SCC would be a Security Council organ as opposed to a special adviser position under the auspices of the Secretariat. The detrimental buffer zone that currently exists between the adviser positions and the decision-making Security Council would no longer exist if the R2P-SCC were established.

1. *Special Advisor on the Responsibility to Protect*

The primary mandate for the position of special adviser on the Responsibility to Protect, a part-time position recently created by Secretary General Ban Ki-Moon and currently occupied by Edward Luck,¹⁴² is "conceptual development and consensus building"¹⁴³ to "assist the General Assembly to continue consideration of this crucial issue."¹⁴⁴ The position's mandate, structure, and resources clearly indicate, however, that it is not tasked with the role envisioned here for the R2P-SCC—one of monitoring burgeoning mass atrocity situations across the globe and recommending the best ways in which the Security Council should respond to those situations. Indeed,

141. See MacFarlane, Thielking & Weiss, *supra* note 6, at 987 ("[L]aments about inefficiency are commonplace, but eyes glaze over at the mention of 'co-ordination' . . . Radical surgery should not be postponed any longer. Pulling together the U.N.'s emergency menagerie (UNHCR, UNICEF, WFP, UNDP, and OCHA) under the leadership of a single agency is urgent and doable.")

142. See *Secretary-General Appoints Special Adviser to Focus on Responsibility to Protect*, U.N. NEWS CENTRE, Feb. 21 2008, <http://www.un.org/apps/news/story.asp?NewsID=25702&Cr=ki-moon&Cr1>.

143. *Id.*

144. *Id.*

proposals like the R2P-SCC could be offered to and processed by a special advisor position in an effort to put forth the most effective combination of R2P U.N. machinery.

2. *Special Adviser for the Prevention of Genocide*

The Special Adviser for the Prevention of Genocide (“SAPG”) is currently tasked with some of the responsibilities envisioned for the R2P-SCC. Specifically, the SAPG is authorized to collect information regarding certain mass atrocity situations and to act as an early warning mechanism and recommender of actions for the Security Council through the Secretary General.¹⁴⁵

Despite potential overlapping agendas and substantial zones of collaboration, there would be real differences between the SAPG and the R2P-SCC. The first difference, as stated above, would be the placement of the two entities within the U.N. As part of the Secretariat, the SAPG does not have the same organizational proximity to the Security Council as the R2P-SCC, which would be a Security Council committee. This distance has had real impacts on the ability of SAPG to gain access to the Security Council. For example, in October 2005, while accepting his written report, the Security Council “declined to hear a separate briefing” from former SAPG Juan Mendez on the disintegrating situation in Darfur.¹⁴⁶ The Security Council instead “heard a presentation on Darfur from Assistant Secretary General for Peacekeeping Hedi Annabi.”¹⁴⁷

The U.S. had joined the Sudan’s closest allies in the Security Council—China, Russia, and Algeria—in blocking Mr. Mendez’s request to be heard,¹⁴⁸ and former U.S. ambassador John Bolton went so far as to state,

145. See *Report of the Secretary-General on Activities of the SAPG*, *supra* note 124, ¶ 2. In particular, the Secretary-General outlined the SAPG as follows:

(1) Collecting existing information, in particular from within the U.N. system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide; (2) Acting as an early-warning mechanism to the Secretary-General, and, through him to the Security Council, by bringing to the latter’s attention potential situations that could result in genocide; (3) Making recommendations to the Security Council through the Secretary-General, on actions to prevent or halt genocide; and (4) Liaising with the U.N. system on activities for the prevention of genocide and working to enhance the U.N. capacity to analyze and manage information relating to genocide and related crimes.

Id. ¶ 3. As of March 2007, the current SAPG, Francis Deng, “was still in the process of establishing the office.” Press Release, United Nations, Human Rights Council Hears Statement by Special Advisor on Prevention of Genocide and Special Rapporteur on Human Rights in Sudan (Mar. 17, 2008), [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/2431E3CBFE2443D5C125740F0042F275?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/2431E3CBFE2443D5C125740F0042F275?OpenDocument).

146. Peter Heinlein, *U.N. Security Council Refuses Briefing on Darfur Atrocities*, GLOBALSECURITY.ORG, Oct. 11, 2005, <http://www.globalsecurity.org/military/library/news/2005/10/mil-051011-voa03.htm>.

147. *Id.*

148. See *id.*

One question is, how many officials from the secretariat does it take to give a briefing, and the assistant secretary general was there, he could give the briefing and that's one way to get it, another way is to get it in writing. . . . Why isn't the Council talking more about steps it could take to do something about the deteriorating security situation? That's what the council should be talking about.¹⁴⁹

Bolton's words, besides highlighting the inherent buffer zone between the Security Council and the SAPG, reveal that the SAPG is, or at least *was*, not viewed by the Security Council as part of the decision-making process but rather as a mere fact-finding entity, despite its status as the U.N.'s top expert on the prevention of genocide and mass atrocities.

Second, the SAPG is restricted by its mandate to only focus on mass atrocities with racial or ethnic roots. The R2P doctrine does not have such constraints and instead is to be applied to war crimes and crimes against humanity that do not necessarily carry any racial or ethnic dimensions. Thus, for example, the SAPG's mandate might not necessarily cover mass rapes currently taking place in the Democratic Republic of Congo, if those rapes are not ethnically or racially motivated, while such acts would fall squarely under the R2P doctrine.

The final and most important distinction between the SAPG and the R2P-SCC is that the former does nothing to strip states' self-interest from response to mass atrocity decision-making. While the SAPG might make a sound recommendation for a particular response based on accurate and comprehensive facts, its very structure prevents it from fusing that recommendation with the global collective conscience (the critical function of the R2P-SCC). As a result, the decision-making process is stymied by the Non-Aligned and P5 self-interests discussed throughout this paper.

V. ADDRESSING COUNTER-ARGUMENTS

A. *No New Results*

One potential objection to the R2P-SCC is that it will bring about no new positive reactions to mass atrocity situations because it too will suffer from the same paralysis caused by states' self-interest that cripples the current international response apparatus. According to this argument, an American, Chinese or Venezuelan representative sitting on either the Security Council or the R2P-SCC would be motivated by the same interests that would lead to the same vote on either body. In the end all the R2P-SCC would do is add another level of bureaucracy to an already over-bureaucratized system.

149. *Id.*

This claim, however, misses the central purpose of the R2P-SCC and ignores the distinctions between the interests of P5 and Non-Aligned States. While both groups act in self-interest, the self-interests of the P5 and the self-interests of the Non-Aligned states are characterized by different levels of rigidity. The self-interests of the P5 are firmly set, founded on the more base considerations of economic priorities and domestic politics. The self-interests of Non-Aligned states, on the other hand, are less rigid—not so much comprised of an inherent opposition to responding to mass atrocities but rather based on the doubt and distrust of any doctrine that could be used to justify impure interventions. The R2P-SCC would effectively alter the self-interested calculus of Non-Aligned states by placating their fears. By having a seat in the R2P-SCC, by having input, and by functioning as a filter through which impure interventions could not pass, the Non-Aligned states' self-interested considerations would be largely diluted.

By extinguishing the concerns of the Non-Aligned states, the R2P-SCC process removes from the equation this component of inaction; the sole pillar left propping up the inaction becomes the economic and domestic political self-interest of the P5. The R2P-SCC proposal posits that the weight of inaction—the political and legitimacy costs involved in refusing to act despite the world's agreement—would overwhelm these manifestations of self-interest. In the event that a member of the P5 did not yield, it would nevertheless be clear to other states that the larger international community had deemed action both acceptable and justified.¹⁵⁰

This is not to say that Non-Aligned states do not also harbor economic and political self-interests; but an overwhelming amount of criticism by such states regarding international responses to mass atrocities strongly suggests that fears of doctrine manipulation and colonialist/imperialist aspirations of “stronger” states are what primarily influences Non-Aligned states in their decision-making.¹⁵¹ If economic, political, or other self-interests have motivated Non-Aligned states to oppose past responses or hesitate to apply R2P doctrine as currently posited, those interests have not been prominently articulated.

150. Furthermore, the majority-rules voting structure, with no representative holding a veto power, would substantially dull the impact of the P5's self-interest. Thus, recommendations for activating the Responsibility to Protect doctrine would be advanced despite the objections of some states. Moreover, the R2P-SCC proposal calls for an international cross-section of independent experts and not purely political appointments, so, in theory, the committee members would not be blindly influenced by national politics.

151. See *supra* note 41; see also U.N. Warns Against Using Mercenaries in Darfur, MIDDLE EAST ONLINE, July 30, 2008, <http://www.middle-east-online.com/english/?id=27153>. See also Bello, *supra* note 77 (discussing the sovereign state as a “primordial condition” for the access to human rights, political rights, and economic rights in a post-Westphalian world); Kanthavanam, Op-Ed., *What ‘Responsibility to Protect’ Means for Tamils*, TAMIL GUARDIAN, Sept. 13, 2007, available at <http://www.tamilguardian.com/article.asp?articleid=1390> (warning of the “manipulation” of international law and the resort to “self-serving reasons” in the invocation and implementation of R2P).

The tendency of Non-Aligned states to make decisions based on the doctrinal factors mentioned above may be explained by the fact that many of these states have experienced the types of mass atrocity violations that serve as appropriate targets for international responses. They know, rather than simply presume to know, the true impact of those situations. Non-Aligned states may therefore allow the merits of properly administered collective external help to trump the insular economic or political considerations that cause countries that have never before experienced such atrocities to hesitate.¹⁵² At the same time, however, many of the Non-Aligned states have also borne the brunt of pretextual, impure interventions, or have witnessed their neighbors enduring the same. As a result, many Non-Aligned states are hesitant to cede any more power to the stronger states by supporting a unilateral intervention doctrine. The R2P-SCC represents a potential solution both because it does not yield that additional power and because it gives Non-Aligned states a voice in the decision-making processes that are likely to affect them.

B. Too Similar to the General Assembly

A related counter-argument to the R2P-SCC is that a universally represented R2P-SCC will not in practice differ significantly from the General Assembly, which has consistently failed to act as a “global grand jury” with respect to past mass atrocity situations. Two responses to this argument are warranted, one having to do with membership, and the other with mandate.

While in principle the R2P-SCC would be similar to the General Assembly in terms of global representation, it is not intended to be a 192-member committee. Rather, the Committee is envisioned as being representative of all world regions, economic strata, and military strengths (much more representative than the current makeup of the Security Council and, specifically, the P5). Further, the individual R2P-SCC committee members are envisioned as representatives of mass atrocity victims, not representatives of their particular countries. While total separation from one’s citizenship and allegiances is not expected, objectivity, sense of purpose, and appropriate focus on mandate can be somewhat ensured through a vetting process. A simple survey of newspaper and scholarly articles or conversations on the street demonstrate that fierce opponents of mass atrocities come from all regimes and all corners of the globe; no country or region possesses a moral monopoly.

Furthermore, the R2P-SCC’s mandate would be different from that of the General Assembly in that it would be solely focused on R2P-related

152. Moreover, many of these states experience grossly lower standards of living and are unable to deliver basic necessities to their citizens (i.e., economic human rights) which, while not qualifying as “mass atrocities,” might still make citizens therein expect or desire help from the international community.

situations, and not on the host of other considerations considered in the General Assembly. This narrowly-focused mandate would allow for more specific and detailed discussions to occur, and more complex and nuanced recommendations to be proffered. Also, as the R2P-SCC would be a sub-organ of the Security Council, specifically created to provide R2P recommendations to the same, its recommendations would exert an influence over the Security Council greater than that associated with General Assembly edicts.

C. *An Unrealistic Proposal*

The fact that the R2P-SCC would have to be created *by* the Security Council in order to exert pressure *on* the Security Council highlights perhaps the strongest argument against the R2P-SCC: that the Security Council would never create such a committee. For the same reasons that the P5 would not give up their veto power, they would not voluntarily create a body that would functionally strip them of their power. As Paul Kennedy suggests, there is still a reasonable chance that such change could be realized, albeit slowly and in gradual increments:

When the U.N. changes, if it changes at all, the transformations will . . . have to be partial and gradual. That is not to say they will not be important. They will matter a great deal. So a 'softly, softly' approach to reforming the United Nations is critical, to get around the usual roadblocks by the Great Powers, national legislatures, and others who prefer things to stay the same. Change is not impossible, but the burden is on the reform-minded critics of the present system . . . to propose changes that might work. Any such proposals have to pass two tests: First, do they actually offer a prospect of measurable and practical improvement in our human condition; and second, do they have a good chance of being agreed to by the governments that control the world body?¹⁵³

The R2P-SCC proposal has the potential to meet both of Kennedy's requirements. First, the R2P-SCC has a realistic chance of improving the international community's responses to mass atrocity situations either through Security Council action or pre-approved unilateral action. As argued above, the R2P-SCC would ensure earlier and more consistent and comprehensive responses. Further, it would weaken states' abilities to manipulate the R2P doctrine for nefarious purposes. The R2P-SCC's increased institutional knowledge over time would result in more efficient and timely responses and offer increasingly incisive and nuanced solutions.

153. KENNEDY, *supra* note 6, at 244.

Second, there is a reasonable chance that the proposal would be agreeable to governments. The R2P-SCC proposal asks states simply to formalize and make more efficient something Franck has demonstrated that they do already: sanction responses to mass atrocities where the responder is not primarily motivated by nefarious purposes. Non-Aligned states would likely have a strong incentive to support it, as it empowers their standing in the collective decision-making process. Rather than being disenfranchised recipients of inconsistent responses, such states are elevated to active participants by the R2P-SCC, which is intended to remove their self-interested fears from the equation. The harder sell, clearly, is to be made to the P5.

Such a feat, however, is conceivable. For example, the P5 would face heavy scrutiny for objecting to the R2P-SCC if it were already agreed upon by the Non-Aligned states, because their own self-interest would be extremely transparent. Not able to cite the fears of Western hegemony and R2P manipulation that the Non-Aligned movement disregarded, the P5 would have to justify their opposition to the R2P-SCC based solely on their own economic and political self-interests. Moreover, the R2P-SCC proposal would be less abrasive to the P5 than other proposed alternatives. Unlike the traditional reform proposals, the R2P-SCC proposal does not ask the P5 to voluntarily cede power.

A “softly, softly” approach that does not seek massive reform,¹⁵⁴ the R2P-SCC proposal does not call for a change in the veto system, for adding additional permanent Security Council members, for the creation of an emergency peacekeeping force,¹⁵⁵ or for the creation of an independent “Court of Human Security.”¹⁵⁶ Clearly, any such proposals, which would strip P5 states of decision-making power and vast sums of resources, would directly collide with P5 self-interest. Rather, the R2P-SCC merely refines the machinery already in place, and focuses on simply activating, in a non-binding fashion, the existing global conscience. Indeed, the P5 would still be free to disregard any R2P-SCC recommendation and veto any Security Council action, albeit with probable political costs.

CONCLUSION

Seven years after its introduction, the R2P doctrine has not produced the results its authors envisioned.¹⁵⁷ The doctrine’s conceptual adjustments to

154. *See id.*

155. *See* Robert C. Johansen, *A United Nations Emergency Peace Service to Prevent Genocide and Crimes Against Humanity* 1–21 (Working Group for a United Nations Emergency Peace Service, discussion paper, Feb. 5–6, 2005), available at <http://www.globalactionpw.org/UNEPS/UNEmergencyPeaceService.pdf>.

156. *See* Fernando R. Tesón, *The Vexing Problem of Authority in Humanitarian Intervention: A Proposal*, 24 WISC. INT’L L.J. 761 (2006).

157. *See* Gareth Evans, President, Int’l Crisis Group, Address at the SEF Symposium 2007: Delivering on the Responsibility to Protect: Four Misunderstandings, Three Challenges and How To Over-

the sovereignty principle have not been enough to rouse a historically sluggish international community to effectively respond to mass atrocities. Indeed, the sovereignty principle was already understood to have evolved to incorporate “responsibility” before the report.¹⁵⁸ It has been questioned exactly what new ideas the R2P actually offered beyond a name for an existing idea.¹⁵⁹

The reason the R2P doctrine has failed to produce real responses to mass atrocities is the same reason that older doctrines of humanitarian intervention were rejected by the world community. Namely, self-interested considerations of both the potential responders and the potential recipients permanently derail discussion and trump the dormant collective conscience. Non-Aligned states are worried about a universal doctrine that would breed imperialism, manipulation, and inconsistent application, and the P5 are concerned with their economic and political considerations. No amount of conceptual wriggling can get around these realities.

To date, there has been an insufficient amount of scholarship and advocacy focused on activating the global collective conscience in spite of states’ self-interests. The R2P report suffers from this same fate. By disregarding the activation issue, the R2P report resigned itself to futility. The R2P-SCC proposal seeks to break this trend. It offers a concrete approach to institutionalize and operationalize the R2P doctrine despite a system of self-interested states, and it seeks to forge a path between self-interests and the laudable collective conscience that states have demonstrated in the past.

As Kennedy asserts, it is inevitable that any proposal recommending Security Council change—however slight—will face resistance. However, R2P supporters must not add to this argument’s force by wholly avoiding the issue as though it were off limits or taboo. Indeed, skipping the task of advocating for Security Council improvement represents either a pessimism or a pragmatism that the world simply cannot afford. Attention must return to Annan’s and the ICISS report’s call for a more responsive Security Council and to the 2005 World Summit Document where the General Assembly expressly limited its support of R2P collective action to Security Council authorized action.

There will be plenty of time in the future to discuss alternatives to Security Council led responses. However, right now, resources must be devoted

come Them, (Nov. 30, 2007), *available at* <http://www.crisisgroup.org/home/index.cfm?id=5190&l=1>; *see also* Gareth Evans, President, Int’l Crisis Group, Keynote Address at the International Crisis Group/Save Darfur Coalition/European Policy Centre Conference: Darfur: What Next? (Jan. 22, 2007), *available at* <http://www.crisisgroup.org/home/index.cfm?id=4625> (“The situation cries out, as it has from the beginning, for intense international engagement—not least from the E.U. and its key member states—to help reach a solution. This is a case, unquestionably, for the application of the responsibility to protect principle.”); *cf.* Steinberg, *supra* note 5 (“We have come a long way—but too many cases demonstrate how far we still have to go to bring R2P into the real world. In Darfur, the international community has blinked in the face of mass atrocities.”).

158. *See* R2P REPORT, *supra* note 8, at 13; Annan Address, *supra* note 93.

159. *See* Hamilton, *supra* note 24.

to and intellectual energy spent on practical solutions that will increase the likelihood of Security Council involvement. The current R2P debates and literature fail to focus on the practical solutions. They instead engage the issue at the periphery, either rehashing the moral justification for R2P or discussing theoretical and secondary details of how R2P preventative and rebuilding missions would unfold. The specific and hard work of Security Council change is never tackled and, consequently, the world has yet to see what results would come from such a concerted effort. It is time to steer the conversation in that direction, if not with the R2P-SCC proposal, then with another.

Some opponents will always summarily dismiss proposed Security Council structural changes as unrealistic or overly idealistic. However, if the fact of inevitable resistance is enough to make R2P supporters avoid the threshold issues of implementation and activation, then the whole endeavor should be scrapped altogether. To say that some sort of refinement of the current machinery is impossible is to concede that the realization of R2P is impossible. The latter will never be achieved without the former. Ultimately, the responsibility to refine the Security Council is necessary for the survival of the R2P concept and, more importantly, the victims of mass atrocities it seeks to protect.