



CANADA AND THE FUTURE OF R2P

2019

CJR2P

Canadian Journal on the Responsibility to Protect

Presented by the Canadian Centre on the Responsibility to Protect

Munk School of Global Affairs and Public Policy

University of Toronto

Volume 1 (2019)

CCR2P 

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Dear readers,

We are very proud to present the Canadian Journal on R2P (CJR2P), the inaugural issue of the new journal series from the Canadian Centre for R2P (CCR2P). Based at the Munk School of Global Affairs at the University of Toronto, the CCR2P is an independent, non-partisan, and non-profit research organization mandated with promoting scholarly engagement with and political implementation of the Responsibility to Protect (R2P) principle. These two goals are deeply intertwined, and both missions are at the heart of the CJR2P.

This inaugural edition is centered around the question of R2P's future – and how Canada may play a constructive role in that future. Our quest is a timely one: over the course of this decade, the global conversation surrounding R2P has shifted towards the question of implementation – yet the challenges to effective implementation are as numerous and pressing as ever. Mass atrocity crimes continue to be committed in places such as Syria, Myanmar, Yemen, and the DPRK – with many more communities throughout the world showing the early signs of atrocity crimes. We believe that Canada has a special role in championing R2P; from the 2001 ICISS report to the 2005 World Summit Outcome, the R2P has been a proud Canadian intellectual legacy and we all share a collective responsibility to protect people in peril.

The submissions compiled in this volume were generously contributed by members of the CCR2P's Scholars' Network and advisory board, and delve deeply into these pressing questions, exposing both the shortcomings and potential of the R2P principle, and contemplating Canada's role in the past, present, and future of the Responsibility to Protect.

We are very grateful for the opportunity to share the insight and expertise of this diverse and extraordinary group of academics and policy experts, and we hope that you find the articles and op-eds in this volume as thought-provoking and illuminating as we have.

We thank you for your continued support for the study and advocacy of R2P.

Sincerely,

Michael Switzer (Deputy Executive Director, CCR2P)

& Benjamin MacLean-Max (Director of Publications, CCR2P & Editor-in-Chief, CJR2P)

Contributor Biographies

Dr. Kwesi Aning is the Director of the Faculty of Academic Affairs and Research (FAAR) at the Kofi Annan International Peacekeeping Training Centre (KAIPTC) Accra, Ghana.

Ghuna Bdiwi is a Syrian human rights lawyer and PhD Candidate at Osgoode Hall Law School – York University. In both her practice and research, she concentrates on the ongoing atrocity crimes in the Syrian conflict. She chairs a documentation center working on investigating crimes in Syria. Her research focuses on international criminal law, R2P, criminal theory, transitional justice, democracy and the rule of law. She consistently calls upon the international community to take seriously its responsibility to protect civilians in Syria.

Dr. Michael Butler is Associate Professor of Political Science and Director of the Leir Luxembourg Program at Clark University. He is a member of the Governing Council of the International Studies Association-Northeast and a Senior Fellow at the Canadian Centre for the Responsibility to Protect (CCR2P). He is currently the Series co-Editor of the International Studies Intensives book series with Routledge.

Fifi Edu-Afful is a Post-Doctoral Fellow with the Global Fellowship Initiative at the Geneva Centre for Security Policy (GCSP) in Geneva, Switzerland.

Professor the Hon. Gareth Evans, former Foreign Minister of Australia and President of the International Crisis Group, is Chancellor of the Australian National University. He co-chaired the International Commission on Intervention and State Sovereignty (ICISS) in 2001 and chairs the International Advisory Board of the New York-based Global Centre for the Responsibility to Protect.

Dr. Carolyn Filteau has a PhD and an LLM from Osgoode Hall Law School, and a BA/MA in Anthropology from the University of British Columbia. She has taught Conflict Resolution at Seneca College in Toronto and Negotiation at the Life Institute at Ryerson University. She has presented papers at International conferences and published in conference proceedings and journals. She is currently a Member of the Board of the Canadian Centre for Victims of Torture and is also working as a Senior Researcher for the Canadian Centre for Equality.

Amb. Marius Grinius is a Fellow at the Canadian Global Affairs Institute and a member of the Advisory Board of the Canadian Centre for R2P. He is the former Canadian Ambassador to Vietnam, to South Korea and concurrently to North Korea, to the United Nations, and to the Conference for Disarmament in Geneva. He was Canada's representative to the HRC from 2007 to 2009.

Jennifer A. Orange is a doctoral candidate at the University of Toronto, and former litigator at Torys LLP. She taught International Human Rights Law and International Humanitarian Law at the University of Toronto from 2009-2013 and has spoken and published widely on international law and human rights. She is a Junior Fellow at Massey College and a Senior Fellow at the Canadian Centre for the Responsibility to Protect. She was a Global Justice Fellow of the Munk School for Global Affairs, and a Jackman Humanities Institute-Mellon Fellow. She is a part-time member of the Human Rights Tribunal of Ontario.

Dr. Jeremy Sarkin is Distinguished Visiting Professor of Law at NOVA University Lisbon and member of CEDIS, in Lisbon, Portugal. He has undergraduate and postgraduate law degrees from South Africa, a Master of Laws degree from Harvard Law School and a Doctor of Laws degree on comparative and international law. He is admitted to practice as attorney in the USA and South Africa. He was a member (2008–2014), and Chairperson-Rapporteur (2009–2012), of the United Nations Working Group on Enforced or Involuntary Disappearances. He has published 17 books and more than 300 articles and book chapters.

The Very Rev. the Hon. Dr. Lois Wilson was President of both the Canadian and World Council of Churches, a board member on the Canadian Institute for International Peace and Security, the Chair of the Board of Rights and Democracy, and served as Officer with the Ontario Human Rights Commission. She has authored seven books, served as Chancellor of Lakehead University, and is a Companion of the Order of Canada.

Natalie Zähringer is a lecturer in the Department of International Relations at Wits University, Johannesburg, South Africa. Her research interests include international norm contestation and evolution, international law, and international organizations. She is currently a PhD candidate, pursuing the topic: “Moving beyond international norm emergence - Diffusion, contestation and adaptation of an international norm: the case of the Responsibility to Protect (R2P).”

The Responsibility to Protect: Canada's Legacy*

Professor the Hon. Gareth Evans

Received September 24th, 2018

If it was not for Canada, we would not have the Responsibility to Protect: the internationally agreed principle, now universally referred to in shorthand, for better or worse, as “R2P,” that was embraced unanimously by the world’s heads of state and government at the United Nations’ (UN) 60th Anniversary World Summit in 2005. R2P provides, in essence, that those at risk of genocide, war crimes, ethnic cleansing and crimes against humanity are not nobody’s business, but rather the whole world’s, even when such crimes are committed wholly within the boundaries of a single sovereign state.

It was Canada, no-one else, that after a decade of total paralysis on the part of the international community in response to a series of terrible mass atrocity crimes through the 1990s, responded not just with rhetoric but action to UN Secretary-General Kofi Annan’s despairing and heartfelt plea to the General Assembly in 2000, viz. “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?”

It was then Canadian foreign minister Lloyd Axworthy, a fiercely principled liberal in the Pearsonian tradition – which is happily now back in favour in Ottawa after going missing for a decade – who decided to meet Annan’s challenge by establishing a blue-ribbon International Commission on Intervention and State Sovereignty (ICISS). Its task was to wrestle with the whole range of legal, moral, operational and political questions rolled up in the intervention debate, to consult the widest

* This is an updated version of an address, ‘ICISS Fifteen Years On’ delivered at Simon Fraser University on 16 September 2016, reproduced in Simons Papers in Security and Development No. 54/2016, October 2016.

possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.

When Axworthy – who had known me as a like-minded foreign minister – invited me to co-chair his proposed commission, I did not need much persuasion. And he gave me a cast made in heaven to work with. My co-chair, the late Mohamed Sahnoun, was a distinguished Algerian diplomat and veteran UN Africa adviser. He had a delightful capacity to defuse likely tensions – usually with African parables involving lions, monkeys, crocodiles, scorpions, or all of the above – and was an appropriate leavening influence on his sometimes overly exuberant Antipodean colleague. Also from the Global South was former President Fidel V. Ramos, the avuncular, cigar-chewing hero of the Filipino People Power revolution; former African National Congress (ANC) leader Cyril Ramaphosa (now South Africa’s President); former Guatemalan Foreign Minister and later Vice-President Eduardo Stein; and the multi-talented and much-travelled Indian scholar and UN official, Ramesh Thakur, who has spent a good part of his life teaching in Canada.

From the North there were former US Congressman Lee Hamilton; German General and former NATO military head Klaus Naumann; Russian diplomat and parliamentarian Vladimir Lukin; and the Swiss diplomat and former long-serving president of the International Committee of the Red Cross, Cornelio Sommaruga, who rather liked my description of him as “a Northerner with Southern characteristics.” And two Canadians: legal specialist Gisele Cote-Harper, and then Harvard-based human rights scholar Michael Ignatieff (who was to personally experience in his later career what I told him at the time: that politics, even in a country as gentle and polite as Canada, was a bloody and dangerous trade, and best avoided by normally sane and sensitive souls). We also had an outstanding Canadian-led support staff under Jill Sinclair as Secretary, a hugely capable and imaginative diplomat (and nowadays senior Defence official) who was wonderfully refreshing to work with, not least, perhaps, because she sidlined as a nightclub jazz singer, with a personal style owing less allegiance to the Champs-Élysées than to Haight-Ashbury.

So ICISS was launched in September 2000, and just over a year later, in December 2001 – after five commission meetings, eleven regional roundtables and national consultations across five continents – *The Responsibility to Protect* was born, with the publication, under that title, of our 90-page report and 400-page supplementary volume of research essays, bibliography and background material.

Somewhat miraculously, the final ICISS report had in it not a single line of recorded dissent. But along the way just about everything was contestable – and contested.

The name of the report and its sustaining theme was no exception to the contestability rule. At the first of the commission's five meetings, in Ottawa in November 2000, I suggested in my opening remarks that what we needed was a strong new phrase, one that would capture the flavour of what we all wanted to say about the moral imperative of responding to mass atrocity crimes, be succinct and memorable, and, while having some continuity with the debate of which we had all been part over the past decade, would also mark an escape from its sterility and divisiveness. So far, so good. But then, having spent a few mornings under the shower in the lead-up to our meetings toying with a score or more of different word combinations, I was adventurous enough to suggest that maybe, just maybe, there was such a phrase we could agree met these specifications, and which could even work as the title of our report: "the responsibility to protect."

This was met by what I can only describe as a collective, incredulous intake of breath. "Well, we'll have to think long and hard about *that*" was the hardly unreasonable general response. To suggest the report's title before we had even begun to discuss its content, let alone taken any soundings in the dozen consultations that were scheduled to take place around the world, was considered a little presumptuous, even for an Australian.

The achievement of the ICISS report was to fundamentally change the course of the global debate, a rather unusual impact for any such commission report to have. Its key contributions were fourfold. First, changing the language of the debate from the "the right to intervene" to "the responsibility to protect" made it possible for entrenched opponents to find new ground on which to more constructively engage. Second, broadening the range of actors in the frame allowed for the inclusion of not just international actors able and willing to apply military force, but the whole international community. Third, the report dramatically broadened the range of responses: whereas humanitarian intervention focused one-dimensionally on military reaction, R2P involves multiple elements in the response continuum: preventive action, both long and short term; reaction when prevention fails, with reaction itself a nuanced continuum from persuasion all the way up to coercive military force; and, finally, post-crisis rebuilding aimed again at prevention, this time of recurrence of the harm in question. Fourth, the report recognized that however much one might strive to avoid resorting to

military coercion, that might still be in some cases the only credible option, thus identifying very clear (and hard to satisfy in all but the most extreme cases) criteria for the use of force.

The process by which the 2001 Commission report became a unanimous 2005 UN General Assembly resolution is a story too long to relate here, but one in which, it is important to note, Canada again played a centrally important role (along with, in particular, South Africa and a number of other sub-Saharan states whose active support was absolutely crucial). In the final stages of the World Summit debate a handful of resistant countries, above all India, looked like killing the necessary consensus – until some very effective personal diplomacy from then Prime Minister Paul Martin at the last minute brought them aboard.

But that was then, and now is now. Looking back after well over a decade has passed since 2005, what is the Canadian legacy? Just some fine words, or something more than that? Looking no further than the ongoing catastrophe in Syria, where R2P gained no traction at all; at the horrible aftermath of the initially-successful R2P-based military intervention in Libya in 2011; at the terrible plight of Myanmar's Rohingya in since mid-2017, described by the UN High Commissioner for Human Rights as a 'textbook example of ethnic cleansing', it would be easy to be cynical – as many critics are – and say that the whole enterprise has been a complete waste of time, or worse. But let me give you a more positive stocktake, using as my benchmarks the four big things that R2P was designed to be: a normative force; a catalyst for institutional change; a framework for preventive action; and a framework for effective reactive action when prevention has failed.

R2P as a Normative Force

It may be a stretch to say, as the British historian Martin Gilbert did two years after the 2005 World Summit, that acceptance of the responsibility to protect is "the most significant adjustment to sovereignty in 360 years." But it is certainly true to say that there has been continuing growth in acceptance of R2P as a *principle*, or normative standard, in a way that would have been unimaginable for the earlier concept of "humanitarian intervention" which R2P has now almost completely, and rightly, displaced. Although many states are still clearly more comfortable with the first two pillars of R2P (states' responsibility to their own populations, and others' to assist them) than they are with the third (timely and decisive action when atrocity prevention has failed) and there will always be

argument about what precise form action should take in a particular case, there is no longer any serious dissent evident in relation to any of the elements of the 2005 Resolution.

On the basic issue of principle, a genuine – and unprecedented – global consensus has emerged over the last ten years that state sovereignty is not a license to kill, that mass atrocity crimes – even those committed entirely within a state’s borders – *are* the world’s business. The best evidence lies in the General Assembly’s annual interactive debates, which have occurred since 2009 and were formalised in 2018. These debates have shown ever stronger and more clearly articulated support for the new norm, and in the more than 50 resolutions referencing R2P that have now been passed by the Security Council (more than 40 of them *after* the divisions over Libya in 2011).

R2P as an Institutional Catalyst

An ever-growing number, now 60, states and intergovernmental organizations have now established R2P “focal points:” designated high-level officials whose job is to analyse atrocity risk and mobilize appropriate responses. Civilian response capability is receiving much more organized attention, as is the need for militaries to rethink their force configuration, doctrine, rules of engagement, and training to deal better with mass atrocity response operations.

The most crucial institutional need for the future is to consolidate support for the International Criminal Court (ICC) and the evolving machinery of international criminal justice, designed to enable not only trial and punishment for some of the worst mass atrocity crimes of the past, but in doing so to provide an important new deterrent for the future. Implementation of the ICC’s mandate may not always have been perfect, but it does not deserve the criticism it has been receiving from some African and Asian states fearing its scrutiny, or the renewed attack on its very existence from the US Trump administration. It is trying hard to fill what has far too long been a major institutional vacuum and its processes should be respected.

R2P as a Preventive Framework

R2P-driven strategies have had a number of notable successes, notably in stopping the recurrence of strife in Kenya after 2008; in the West African cases of Sierra Leone, Liberia, Guinea, and Cote

d'Ivoire over the last decade; and Kyrgyzstan after 2010. Volatile situations such as Burundi get the kind of continuing Security Council attention unknown to Rwanda in the 1990s. Strong civilian protection mandates are now the norm in peacekeeping operations. And the whole preventive toolbox, long and short term, structural and operational, is much better understood.

But, although prevention is always strongly supported in UN debate, action still lags behind the rhetoric. Part of the problem of getting sufficient resources to engage in successful prevention is the age-old one: that success here means that nothing visible actually happens; no-one gets the kind of credit that is always on offer for effective fire-fighting after the event.

R2P as a Reactive Framework

The not-so-good news here is that on the critical challenge of stopping mass atrocity crimes that are under way, whether that is done through diplomatic persuasion, stronger measures like sanctions or criminal prosecutions, or through military intervention, R2P's record has been mixed at best.

There have been some success stories: Kenya in 2008, Côte d'Ivoire, and – at least initially – Libya in 2011. And some partial success can be claimed for the new or revitalized UN peacekeeping operations in Congo, South Sudan, and the Central African Republic, where mobilization of the international community, although late, was better late than never. But there have also been some serious failures. They certainly include Sri Lanka in 2009. And in Sudan, where the original crisis in Darfur predates R2P but the situation remains unresolved and President Omar al-Bashir effectively untouched either by his International Criminal Court indictment or multiple Security Council resolutions. We are not doing as well as we should be in stopping non-state actors like Boko Haram committing atrocity crimes in territory over which they have control. International censure has not inhibited Israel from using manifestly disproportionate force to maintain its occupancy of the West Bank and isolation of Gaza. There has been a distressing lack of response to the Rohingya crisis. And, above all, there has been catastrophic international paralysis over Syria.

The crucial lapse in Syria occurred in mid-2011, when the Assad regime's violence was one-sided and containable. Driven by the perception, not itself unreasonable, that the Western powers had overreached in Libya by stretching a limited mandate to protect civilians into a regime-change

crusade, a number of Security Council members then over-reached in the other direction: seeing another slippery slope in Syria, there was no majority support for a resolution even just to condemn the regime's violence against unarmed civilians. And with the Syrian leadership sensing its impunity, the situation deteriorated quickly into the full-scale civil war still dragging on disastrously today.

There are few more important or urgent tasks for R2P advocates than to rebuild consensus within the Security Council as to the right way to handle the hardest of cases, when it may well be that the threat or use of coercive military force is the *only* way of stopping catastrophic atrocity crimes in their tracks. Re-establishing consensus is not impossible, but it will take time. The "responsibility while protecting" (RWP) proposal put on the table by Brazil in 2011 remains the most constructive of all the suggested ways forward, requiring as it would all Council members to accept close monitoring and review of any coercive military mandate throughout such a mandate's lifetime, and I think it reasonable to hope that some agreement along these lines will eventually be reached, even if the present environment is unpromising.

Complete, fully effective implementation of R2P remains some way off. But I see no evidence anywhere that anyone wants a return to the bad old days, when the whole UN was a consensus-free zone on mass atrocity crime issues. We should never forget how bad those days could be. In November 1975, seven months after the Khmer Rouge had commenced its genocidal slaughter, US Secretary of State Henry Kissinger famously said to Thai Foreign Minister Chatichai Choonhavan: "You should also tell the Cambodians [the Khmer Rouge] that we will be friends with them. They are murderous thugs, but we won't let that stand in our way."

As cynical as our political leaders sometimes remain – and as a former long-serving politician myself, I know something about that culture – it's hard to imagine any of them today feeling able to talk like that. That's a measure of how far we have come with R2P. And if that's true, it's a great tribute to a great Canadian initiative.

Responsibility to Protect in 2018

Amb. Marius Grinius

Received August 30th, 2018

Introduction

About a year ago I was one of seven contributors asked by OpenCanada to comment on the status of Responsibility to Protect (R2P), its prospects for protecting human rights in the twenty-first century, and how it might develop in the years to come.¹ 2017 was a difficult year, one which was described by the United Nations (UN) undersecretary-general for humanitarian affairs, Stephen O'Brien, as the largest humanitarian crisis seen since the creation of the UN, with more than 20 million people across four countries facing starvation and famine.² In my commentary, I noted that R2P will remain an early warning indicator rather than an effective tool to protect innocent civilians for several reasons. These reasons included: the fact that Russia and China, by their actions, were simply anti-R2P; that there was a lack of Western commitment to uphold the R2P principle; that the readiness of nations to contribute resources to any future military intervention under R2P was unknown and unlikely; and that R2P was far from an established global norm, unlike the norms of universal human rights or crimes against humanity.

R2P, State Sovereignty and Intervention

The Canadian-inspired December 2001 Report of the International Commission on Intervention and State Sovereignty (ICISS) formed the intellectual basis for the R2P principle and its subsequent recognition at the 2005 UN World Summit. For its purposes, the ICISS defined intervention as “action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective.” The ICISS noted that, while intervention under the R2P

¹ <https://www.opencanada.org/features/seven-reasons-why-r2p-relevant-today>

² Associated Press, 11 March 2017, “World faces worst humanitarian crisis since 1945, says UN official”

rubric could include preventative measures short of military action, the most controversial was, and remains, military intervention.

The ICISS tried to address the conundrum whereby intervention stands to contravene the foundational principle of state sovereignty, enshrined in the UN Charter. Article 2.1 of the Charter states: “the Organization is based on the principle of the sovereign equality of all its Members.” Article 2.7 states that “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...”

Therein lies the rub. Permanent Security Council (SC) members Russia and China regularly invoke the idea of “non-interference in the internal affairs of the State” as an excuse to protect themselves and their friends from actions that otherwise could be taken by other states under the R2P principle. Thus, anything actions beyond expressions of concern for situations in, for example, Chechnya, Tibet, or Xinjiang are easily stymied. Even as relations with South Korea warm, North Korea has explicitly reminded Seoul that any reference to North Korea’s egregious human rights situation will be considered interference in its internal affairs. In 2014 the Commission of Inquiry on human rights in North Korea concluded that the North Korean government had manifestly failed to protect its people from crimes against humanity; indeed, the Commission named various State organs under the effective control of North Korea’s Supreme Leader Kim Jong-un as perpetrators. It also recommended that the Security Council refer the situation in North Korea to the International Criminal Court (ICC) for action.³

The idea of “regime change” has also been intertwined with R2P. When R2P was explicitly invoked against Libya in 2011, Russia, China and non-permanent Security Council members India, Brazil, and Germany abstained from voting on the resolution. This vote allowed a coalition of mostly NATO members, including Canada, plus Sweden, Jordan, Qatar, and the United Arab Emirates, to use military force to protect civilians in Libya. This included an air interdiction campaign, a no-fly zone, and enforcement of an arms embargo on the high seas.⁴ The military intervention ultimately led to the fall of Muammar Qadhafi, a lesson in unintended consequences not forgotten by Russia

³ Human Rights Council, Report of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, A/HRC/25/63, 7 February 2014 (Summary) and A/HRC/25/CRP.1, 7 February 2014 (Detailed findings).

⁴ Security Council resolution S/RES/1973 (2011) was adopted on 17 March 2011.

and China. Further support from China or Russia in situations where R2P could potentially be invoked against any of their friends should not be expected. Indeed, Russia continues to ensure that the Syrian dictator Bashar al Assad is free to stamp out any resistance with violence and impunity.

R2P: 2018 Challenges So Far

The UN Secretary-General's annual report is instructive concerning the implementation of R2P: "Despite progress in implementing the principle of responsibility to protect, the international community continues to fall short where it matters most: the prevention of genocide, war crimes ethnic cleansing and crimes against humanity and the protection of vulnerable populations. On the ground, trends continue to move in the wrong direction and civilians are paying the price with their lives."⁵

In 2017, the Stockholm International Peace Research Institute (SIPRI) reported: "global security...deteriorated markedly in the past decade. The number, complexity and lethality of armed conflicts have increased...The world total of forcibly displaced people is over 65 million and has been climbing sharply in recent years."⁶ CrisisWatch tracks some 70 conflicts and crisis situations; its July 2018 Global Overview categorizes Zimbabwe, Israel/Palestine, and Yemen as conflict risk alerts. Although it also notes that Yemen and Zimbabwe present "resolution opportunities," it then again identifies Yemen, along with Cameroon, Somalia, Côte d'Ivoire, Mali, Pakistan, Haiti, Israel/Palestine, and Iraq as "deteriorated situations."⁷ The R2P July Monitor, produced by the Global Centre for the Responsibility to Protect, identifies Afghanistan, Central African Republic, Myanmar (Burma), Syria, and Yemen as current crises where "mass atrocity crimes are occurring and current action is needed."⁸ The Global Centre also tracks all references to R2P made in UN resolutions and Presidential Statements since the UN General Assembly endorsed the principles of R2P at its 2005 World Summit.⁹ The Global Centre has reported that, as of 30 July 2018, 75 such resolutions have been made, eight since the beginning of 2018. Of those eight, two were general

⁵ A/72/884-S/2018/525, "Responsibility to protect: from early warning to early action", Report of the Secretary-General, 1 June 2018.

⁶ SIPRI Yearbook 2018, "Armaments, Disarmament and National Security", www.sipriyearbook.org

⁷ Crisis Group, CrisisWatch Global Overview July 2018, <https://www.crisisgroup.org/crisiswatch>

⁸ R2P Monitor, 15 July 2018, Issue 40, globalr2p.org

⁹ A/RES/60/1, "2005 World Summit Outcome", adopted by the UN General Assembly on 16 September 2005

resolutions (concerning the maintenance of international peace and security and the protection of civilians in armed conflict) while six were reminders to African countries of their responsibilities to protect their populations. In 2017 there were 12 such references, all to African states. Syria rated one Security Council resolution in December 2016 which had a reference to R2P. Interestingly, on 28 February 2017, China and Russia vetoed a UNSC resolution that would have imposed sanctions against Syria for its use of chemical weapons against its own people. Indeed prior to that Russia and/or China had vetoed seven other resolutions related to Syria.¹⁰

NATO has been more circumspect these days when referring to R2P. The 2018 Brussels Summit Statement says: “NATO and partners are committed to ensuring that all efforts are made to avoid, minimize, and mitigate the negative effects on civilians arising from NATO and NATO-led military operations and missions, as underscored in our new military concept for the Protection of Civilians.” It also refers to the Women, Peace and Security agenda, as well as the protection of children in armed conflict. Its list of countries and situations of security concern, however, stays away from any R2P-specific language.¹¹ The G7 Foreign Ministers’ Communiqué of 23 April 2018 also went through a lengthy checklist of countries and situations of concern, but only specifically mentioned the protection of civilians with respect to Myanmar, Syria and Yemen.¹²

While all of the examples cited above are not new, there are several country-specific trends that are worrisome. Canada’s Foreign Minister Chrystia Freeland described the ongoing expulsion and killings of Muslim Rohingya out of Myanmar as “ethnic cleansing.” “These are crimes against humanity”, she stated. Freeland noted that “the Government of Myanmar has failed in its essential duty to protect human rights and to ensure the security and dignity of vulnerable and marginalized people, particularly women and girls.”¹³ Amnesty International recently released a report that implicated Myanmar’s top military leaders in crimes against humanity.¹⁴ In her recent speech in

¹⁰ https://en.wikipedia.org/wiki/Vetoed_United_Nations_Security_Council_resolutions_on_Syria

¹¹ NATO Brussels Summit Declaration, 11-12 July 2018.

¹² G7 Foreign Ministers’ Communiqué, 23 April 2018, Toronto.

¹³ Government of Canada, “Address by Minister Freeland to announce Canada’s response to the Rohingya crisis”, 23 May 2018. Note: As DFAIT Director for Asia Pacific South I visited Rohingya refugee camps near Cox’s Bazar in Bangladesh in 1992. At the time there were about 250,000 Rohingya refugees in Bangladesh. All but about 20,000 were repatriated to Myanmar by the early 2000s. Some 700,000 Rohingya have now fled Myanmar over the past year and some 25,000 have been killed according to various reports.

¹⁴ Amnesty International, “We Will Destroy Everything”: Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar. 27 June 2018.

Singapore, however, Myanmar's leader and Nobel Peace laureate Aung San Suu Kyi stated that "We who are living through the transition in Myanmar view it differently than those who observe it from the outside and who will remain untouched by its outcome."¹⁵ Expect others to use similar disingenuous language in defence of other human rights violations. The US Treasury Board has now sanctioned several mid-level Burmese military commanders, but not the most senior ones. Most recently the UN Independent International Fact-Finding Mission on Myanmar concluded that Myanmar's top military generals, named in the report, must be investigated and prosecuted for genocide, as well as crimes against humanity and war crimes.¹⁶ In the meantime, two Reuters reporters are on trial in Myanmar under the Official Secrets Act for investigating a possible high-level cover-up related to the killing of 10 Rohingya villagers.

While human rights abuses against Muslim Uyghurs in Xinjiang, China are nothing new, in its report on China the UN Committee on the Elimination of Racial Discrimination cited one expert as saying that "China had turned the Xinjiang Uyghur Autonomous Region into something that resembled a massive internment camp shrouded in secrecy, a 'no rights zone', while members of the Xinjiang Uyghur minority, along with others who were identified as Muslim, were being treated as enemies of the State based on nothing more than their ethno-religious identity."¹⁷ These comments followed various public allegations that one million Uyghurs may currently be held in internment or re-education camps. China has denied these allegations and has suggested that some are vocational education facilities to rehabilitate and reintegrate petty criminals.¹⁸ While not the subject of any specific R2P conversation as of yet, the situation begs the question of whether there is a threshold number of civilian victims that would trigger a closer investigation and possible international invocation of the R2P principle. The ICISS does refer to the "just cause threshold," which would include potential for "large scale loss of life" or "large scale ethnic cleansing." It would appear that the Xinjiang situation would not qualify under such a definition. Besides, China would be ready to wield its veto if necessary.

¹⁵ Derek Cai, Associated Press, "Suu Kyi cites 'terrorism' for brutality to Rohingya", 22 August 2018

¹⁶ Office of the High Commissioner for Human Rights, "Myanmar: Tatmadaw leaders must be investigated for genocide crimes against humanity, war crimes – UN report", Geneva, 27 August 2018

¹⁷ Office of the High Commissioner for Human Rights, "Committee on the Elimination of Racial Discrimination reviews the report of China", Geneva, 12 August 2018.

¹⁸ An overview may be found in Foreign Policy, written by Rian Thum, "China's Mass Internment Camps Have No Clear End in Sight" dated 22 August, 2018.

Most recently the Kingdom of Saudi Arabia (KSA) reacted dramatically to Minister Freeland's concerns via twitter regarding additional arrests of civil society and women's rights activists. "The [KSA Foreign] Ministry also affirmed that the Canadian statement is a blatant interference in the Kingdom's domestic affairs, against basic international norms and all international protocols. It is a major, unacceptable affront to the Kingdom's laws and judicial process, as well as a violation of the Kingdom's sovereignty."¹⁹ While this particular drama continues to be played out, the Saudi statement is an excellent example of anti-R2P rhetoric that combines national sovereignty, non-interference in a State's internal affairs, and vague references to international norms and protocols, whatever they may be.

R2P and International Machinery to Implement

Arguably, R2P is another important milestone in the evolution of the idea of human rights, which stretches from 539 BC, when Cyrus the Great of Persia conquered Babylon, freed its slaves, declared that all people had the right to choose their own religion, and established racial equality,²⁰ to the Magna Carta of 1215, to the 1919 League of Nations Covenant, to the Universal Declaration of Human Rights in 1948, to all of the subsequent human rights-related agreements and recognized principles including R2P. It is not by coincidence that the same 2005 World Summit resolution that recognized the principle of R2P also established the Human Rights Council (HRC), which was intended to be an improvement over its much-vilified predecessor, the UN Commission on Human Rights. Indeed, the language in the Summit resolution flows from a reference to protecting children in situations of armed conflict²¹, to human rights, to refugee protection, to the responsibility to protect populations from genocide, to war crimes, ethnic cleansing, and crimes against humanity (ie the spectrum of potential R2P application) to strengthening the machinery of the United Nations including through the creation of the Human Rights Council in 2006.

¹⁹ Saudi Press Agency, "Statement from the KSA Ministry of Foreign Affairs, Jeddah, Dhu-AlQa'dah 24, 1439, 06 August 2018.

²⁰ A Brief History of Human Rights, the Cyrus Cylinder (539 BC), <https://www.humanrights.com/what-are-human-rights/brief-history/>

²¹ Note: The Report of the Secretary-General on "Children and armed conflict", A/72/865-S/2018/465, dated 16 May 2018, reported a large increase in the number of violations over the previous year with at least 6,000 verified violations by government forces and more than 15,000 by a range of non-State armed groups.

According to the Global Centre for R2P, the HRC has passed 36 resolutions which invoke the R2P principle. The challenge, however, is how to go from identifying likely acts that contravene the R2P principle to their actual prosecution. Logically, the Security Council ought to be the primary body to do exactly that. The 2011 Libya example of direct military intervention, however, is unlikely to be repeated thanks to potential Chinese and Russia SC vetoes. The Security Council could refer a case to the International Criminal Court (ICC), which tries individuals accused of genocide, war crimes, crimes against humanity and aggression. The SC chose not to do so in the case of North Korea. The ICC's record since its establishment in 2002 can be described as methodical (26 cases of which six are closed, four are ongoing, three found guilty, one under appeal and twelve where arrest warrants have been issued but the accused remain at large or not in the Court's custody). More seriously, China, Russia, the United States and India are not States Party, along with Myanmar, North Korea, Cuba and Venezuela, among others. Other models could be based on the international criminal tribunals for Yugoslavia and Rwanda or the special courts for Sierra Leone or Cambodia. All possible venues for R2P's implementation face daunting international political and bureaucratic challenges. To get Myanmar's generals, for example, to be prosecuted for genocide would be a monumental task. North Korea's leader, Kim Jong-un, will not be tried for crimes against humanity anytime soon.

R2P: The Bottom Line

My review of R2P-related developments over the past 12 months lead me to conclude, again, that R2P will remain an early warning indicator of egregious human rights violations rather than an effective tool to protect innocent civilians. At present, the reasons remain the same, only more so. Under its current President, the United States continues to diminish its global leadership and question the basic machinery of internationalism. The latest example is Trump's decision in June to quit the Human Rights Council where, under the Obama Administration, the United States had made a significant difference. Current HCR members China, Cuba, Venezuela and Saudi Arabia are, no doubt, delighted with this turn of events. For others, including Canada, the need to muster the necessary political will to reinvigorate the R2P principle and its implementation will require a concentration of effort that is not readily evident.

North Korea and the Responsibility to Protect

The Very Rev. The Hon. Dr. Lois Wilson

Received September 10th, 2018

The DPRK came into being following the division of the peninsula following World War II. It is still technically at war with South Korea, as the conflict was concluded with only a truce. It is a reclusive state, unlike any other country in the world.

As a Canadian Senator, I headed a Parliamentary/academic/church delegation to Pyongyang in 2000, which led to Canada establishing diplomatic relations with the DPRK, believing that trust, talking and negotiation are better than bombs. Several other countries, including New Zealand, did so at the same time. Despite Canadian officials warning me to expect a frosty and hostile reception, we found ourselves received with utmost cordiality, based on the historical memory of DPRK officials for the solid relationships established many years ago through the work of Canadian missionaries to North Korea. Canadian Church involvement with Korea began over 200 years ago with the Roman Catholic missions, and 100 years ago with the Presbyterian, Methodist, and Anglican (and later United Church of Canada) missions, which blossomed mostly in the northern part of the peninsula. The Canadian Food Grains Bank (Mennonite) coordinated consistent humanitarian relief from the Canadian public and churches for many years. Agriculture-related delegations from the DPRK visited Canada on several occasions, touring Manitoba, Saskatchewan, New Brunswick and Ontario. The World Council of Churches has been active in mobilizing humanitarian relief and technical assistance, as well as sponsoring international conferences on Peace and Reunification of the Korean Peninsula. These events brought delegations of North Koreans to the “outside” world, enabling citizens from both Koreas to discuss their mutual approaches in a secure atmosphere. The consistent approach of the churches has been the encouragement of confidence-building measures and engagement with the DPRK, as well as a plea to exercise extreme restraint in actions and rhetoric in order to avoid heightened tensions. This includes urging the

Government of the DPRK, South Korea and the United States to stop the joint military exercises of the United States and South Korea.

The report of that 2000 Parliamentary delegation urged engagement at every level: academic, civilian, government, believing that engagement was the most effective strategy for the future. Accordingly, diplomatic relations were established between Canada and the DPRK in 2001. Not too long afterwards, however, I met two officials from North Korea in the Westin Hotel lobby in Ottawa, seeking a place to establish their presence in Canada. They informed me that Canada has just advised them to return to North Korea immediately. The diplomatic agreement had been put on ice by the Canadian government in view of the nuclear policy of the DPRK. Despite this, some Canadians founded the DPRK-Canada Association, and for ten years sponsored annual visits to the DPRK by assorted Canadians and stayed in good touch with the DPRK UN Ambassador in New York. Once he even came to Toronto and spoke!

I found North Korea unlike any other country I have ever visited. It tends to isolate its people from the outside world. Obedience within the country is strictly induced. Surveillance is widespread. Very few of its top official, let alone its citizens, have ever visited the world outside its boundaries. It has a deep aversion to outside powers, situated as it is adjacent to China, Japan and South Korea (with their US military bases), yet for a long time was reliant on the USSR for its energy needs. None of these countries really want to see a change in the status of North Korea or a destabilization of the regime—as such a move would bring chaos to the region that pits Western interests against those of China and Russia.

In March 2013 the UN Commission of Inquiry (COI) invited hearings on human rights in the DPRK, which, of course, denied the Commission access to the country. Nevertheless, 80 public hearings were held and 80 written submissions presented, as well as 204 confidential hearings. In March 2014 the COI concluded that there were widespread, systemic gross human rights violations and crimes against humanity based on State policies. It has been widely known for some time by those closely associated with DPRK that it has denied rights to freedom of thought, conscience, religion, expression and association. (Although it must be noted that there is one Protestant church in Pyongyang, and it is here that it is not mandatory to wear the lapel pin of the great leader, and it is from this group the World Council of Churches has drawn limited representation at its global

conferences.) Also, the NKCC (North Korean Christian Council) exists and is still active, though under the restraints of the State. The COI report documents the fate of those who oppose state policies: torture, persecution, detention, sexual abuse, abortions, executions. It also documents state control of the right to food; camps for political prisoners where many are executed without due process; and state abduction of foreign nationals.

Since Donald Trump took office in the U.S.A., tensions between North Korea and America have escalated. Pressure has been brought to bear on North Korea to abandon its nuclear program entirely. The President of South Korea is conciliatory with the North and recently collaborated in arranging visits between Koreans of the North and South whose families had been divided during the Korean War so many years ago.

Has R2P any relevance to this situation? As you know, R2P is based on 3 pillars:

1. The state is responsible to protect the population from war crimes, genocide, crimes against humanity and ethnic cleansing.
2. The international community must encourage and assist states to fulfil their responsibilities to protect their populations. The goal is to help states establish or strengthen structures, mechanisms and operational capacity to reduce the risk of atrocity crimes and thus reduce the need for timely and decisive action under R2P's third pillar.
3. The third pillar sets out a range of tools, including the employment of coercive measures through the Security Council, should peaceful means be inadequate when states are manifestly unable or unwilling to protect their populations.

The COI report identified ten out of eleven crimes against humanity (as defined in the Rome Statute of the ICC). It reports that the government has failed to protect its own population against persecution on religious, racial, gender grounds; it has forced transfers of populations within North Korea, causing starvation, disappearance, extermination, murder, enslavement, torture, imprisonment, rape and forced abortions are all highlighted. The report is unequivocal.

The International Community has focused on two issues regarding the DPRK: violations of human rights and resources diverted from social and humanitarian needs to develop DPRK nuclear capabilities. Is the application of R2P possible to address either or both of these situations? The

European Parliament on April 14, 2014 announced that the DPRK must be held accountable for violations of human rights, brought before the ICC and sanctions applied, but China announced it would exercise its veto through the Security Council and oppose this.

The UNHCR established a Commission of Inquiry in March 2013 and appointed a Commissioner whose report of March 17, 2014 was rejected by the DPRK who saw it as an attempt to change the regime, as had allegedly happened in Libya. China had previously denied access to the Commissioner to their country's experience. It also indicated that the refugees pouring across the border to China were economic migrants, not refugees, that the report contained "unreasonable criticism," and that taking the issues to the ICC would not help the situation. China wants stability in the region and advises that more pressure on DPRK will only exacerbate the situation, and China itself will pull back its support for the Non-Proliferation Treaty. It is clear that China and probably Russia will veto any measures that appear punitive or hostile through the Security Council. Canada did not help by returning all DPRK refugees to that country by the Harper government as it is considered it a "safe" country.

Currently. President Trump continues to issue wild threats against DPRK unless it divests itself completely of all nuclear weapons and capabilities. That action calls forth equally wild threats from the leader of the DPRK. While it appears to be sheer rhetoric and bluff on the nuclear file, while each seeks political "success," the nuclear power in the hands of either of these heads of state gives one pause.

The question is, what to do? Which strategy will work? Hostile pronouncements and threats, or engagement and long-term negotiations? Threats or diplomacy and engagement with constructive dialogue?

In the context of wild rhetoric from both sides about the nuclear threat (which I think are symbolic attempts to claim victory, pre-eminence, and success for one's side) and while acknowledging that R2P remains far from a globally accepted norm, there is the need for strong and vocal civil society voices to call for governments' accountability to civilian populations and support for peace.

Christian churches, drawn from civil society and through their ecumenical global agencies, continue to call for renewing engagement in confidence-building measures and contact with DPRK, building on the historical memory and social capital of former days. Following the April 27, 2018 meeting of Moon Jae-In, President of South Korea and Chairman Kim Jong UN and their jointly signed declaration for Peace, Prosperity and Reunification of the Korean Peninsula, promising joint efforts to alleviate military tensions, the global ecumenical community acted. Drawing on the trust created by its over 100 year historical engagement and history with the DPRK and South Korea, on May 7, 2018, a six-person delegation from the World Council of Churches (333 denominations) and the World Communion of Reformed Churches (233 member denominations) met with the Korean Christian Federation as well as government officials in the DPRK, emphasizing their support for the denuclearization of the peninsula in the context of efforts to achieve a nuclear-free world through advocacy for universal ratification and implementation of the Treaty for the Prohibition of Nuclear Weapons. While this may appear to be beyond reach at the current time in history, the Christian churches are holding that up as a goal. Perhaps the best that can be done currently is to agree on no first use, and couple that with renewed efforts for a peace treaty on the Korean peninsula, since none have been declared since the Korean War.

June 25, 2018 saw the UN General Assembly sponsor a debate on R2P and “the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity,” as part of the formal agenda at its 72nd session. This has been the first formal discussion at the UN since 2009. However, despite a report by the Secretary General with options to improve early warning signals and a strategy for preventive work, the General-Secretary noted in his report, “Despite progress in implementing the Responsibility to Protect Principle, the International Community continues to fall short where it matters most: preventing genocide, war crimes, ethnic cleansing and crimes against humanity, and protecting vulnerable populations.”¹

R2P, while a useful doctrine which is gaining legal authority and lip service of governments worldwide, appears to be impossible and inadvisable to implement in the DPRK under current circumstances. R2P is an innovative and international effort to advance the rule of law and the protection of civilians—goals that are widely supported by most Canadians, and very important in

¹ Fergus Watt, “The UN Debates R2P – To What End?,” *Mondial, World Federalist Movement – Canada*, June 2018.

promoting a humane and peaceful world. But much more work needs to be done to achieve consensus around R2P as a tool toward achieving peace. China and Russia continue to oppose it. Western governments lack strong commitments and there is still a great deal of disagreement about the wisdom of applying it. A more productive approach at this point in time lies in practicing confidence building measures, in creating trust, and in calling for a nuclear free world by implementation of the Treaty for the Prohibition of Nuclear Weapons.

**Fostering Strategic Partnerships in Implementing R2P Doctrine:
Canada's Africa Foray**

Dr. Kwesi Aning and Fiifi Edu-Afful

Received October 30th, 2018

Introduction

Today's security environment is faced with a much broader range of threats than what existed in the past. These challenges are happening despite the lofty ambitions and ideals of the normative principles of the Responsibility to Protect (R2P). From the merciless civil war in Syria and Yemen to the catastrophic violence against Rohingya people and the widespread human rights violations in Burundi and the Central African Republic, among others, the crimes R2P was intended to prevent have persisted at an alarming pace within the past few years.¹ It appears we have a bad case of *déjà vu* when one looks back at what happened in Rwanda and Srebrenica. Even more worrisome is the emerging acceptance of these kinds of massacres and atrocities against civilians as spin-offs of conflict. Although the African Union (AU) and the Economic Community of West African States (ECOWAS), for instance, have shown agency in embracing and genuinely operationalizing the global norms of R2P through the use of collective action, concerns have been raised on various fora about their commitment. Issues of sovereignty, limited institutional capacity, a limited appetite for enforcement action, and a lack of explicit instruments to activate their intervention clauses in R2P-like situations have often been

¹ Aning, Kwesi and Frank Okyere. "The challenge and usefulness of R2P in the Syrian context," *Open Democracy*, 12 September, 2013. <http://www.opendemocracy.net>.

highlighted.² Additionally, in spite of the overwhelming political acceptance, AU member states continue to view R2P as a contentious issue.³

This could be seen in the continental body's cautious avoidance of mentioning R2P explicitly in its documents. The situation is further compounded by the lack of trust that exists between the AU and other multilateral organizations such as the European Union (EU) and the North Atlantic Treaty Organisation (NATO), especially considering the way and manner their implementation of an R2P mandate from the Security Council on Libya was erroneously misrepresented as regime change. These challenges notwithstanding, R2P remains a constant reminder that states and the international community cannot be passive spectators during mass-atrocity crimes. Canada's role in the furtherance of this objective has never been in doubt. Since September 2000, the Canadian government has been instrumental in the prevention, mediation and resolution of many of Africa's security impasses. This paper examines the security dimensions of Canada-Africa relations in the past two decades and establishes how Canada could partner with the AU and its Regional Economic Communities (RECs) or Regional Mechanisms (RMs) to consolidate the gains of the African Peace and Security Architecture (APSA) and crisis response capabilities for intervening in R2P-like situations.

Africa and Responsibility to Protect

Africa's historic battles with the principles of national sovereignty and non-interference in the affairs of Member States have undergone drastic changes since the 1994 genocide in Rwanda. These changes have been exemplified by the transformation both in the rhetoric and the actions that support their engagements and initiatives. Since the OAU was transformed into the AU in 2000, the AU and its RECs/RMs have sought to combine preventive and reactive measures towards dealing with genocide and mass atrocities. This certainly preceded the 2005 world summit outcome document. The usual silence that greeted such atrocities, the issuance of

² Aning, Kwesi and Fifi Edu-Afful. "African Agency in R2P: Interventions by African Union and ECOWAS in Mali, Côte d'Ivoire, and Libya". *International Studies Review*, 18, No.1 (2016): 120-133.

³ Murithi, Tim. "The Responsibility to Protect, As Enshrined in Article 4 of the Constitutive Act of the African Union". *African Security Review*, 16, No. 3 (2007): 14-24; Williams, D. Paul. "From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture". *African Affairs*, 106, No.423 (2007): 253-279.

‘empty’ communiqués and the docile approach of observing the trend of events has given way to a more robust agency in responding to these threats.⁴ The distinctiveness between the OAU and the AU could be seen in the codification of R2P principles into the 2002 Constitutive Act and in subsequent AU documents.⁵ On the normative side, there has been universal acceptance of the strategic shift from a non-interference attitude to the ‘non-indifference’ posture in handling conflict situations that threaten the rights of individuals and have the propensity to cause grave atrocities.⁶ R2P normative principles have gained universal acceptance by most African states, replacing the previous approach where sovereignty was seen by many African leaders as licence to kill and commit atrocity crimes, and was simply not anybody else’s business. Collectively, Article 4 (h) of the Constitutive Act which authorizes intervention in grave circumstances such as genocide, war crimes and crimes against humanity; the Ezulwini Consensus and the protocol relating to peace and security council have all strengthened the interventionist posture and demonstrated the willingness to add a cooperative interventionist push to the rhetoric. This has been complemented with the creation of a new AU peace and security architecture which has within it structures such as the already established Peace and Security Council (PSC), the Continental Early Warning System (CEWS), the African Standby Force (ASF), the Panel of the Wise and the Peace Fund. Also, the African Court on Human and Peoples’ Rights has emerged as a parallel development in support of the R2P principles, especially in situations where State parties are complicit. The ASF, for instance, has energized the capabilities of regional economic communities, particularly the ECOWAS and the Southern African Development Community (SADC). It is now evident that a majority of African states support all three pillars of R2P, namely:

- Protecting populations from mass atrocity crimes (including genocide, war crimes, crimes against humanity and ethnic cleansing);
- Acceptance that the wider international community has the responsibility to encourage and assist individual states in meeting that responsibility; and

⁴ Aning and Edu-Afful, “African Agency in R2P,” 123.

⁵ Aning, Kwesi and Frank Okyere. “The African Union”. In *The Oxford Handbook of the Responsibility to Protect*, edited by A. J. Bellamy and T. Dunne, 355-372. Oxford: Oxford University Press, 2016.

⁶ Aning, Kwesi and Samuel Atuobi. “Responsibility to Protect in Africa: An analysis of the African Union's Peace and Security architecture”. *Global Responsibility to Protect*, 1, No.1 (2009): 90-113.

- Agreeing that when states manifestly fail to protect the population, the international community, in accordance with the provisions of the UN charter, can use collective action in a timely and decisive manner.⁷

Much as these principles have received universal acceptance on the continent, individually, only the first two pillars are in the 'comfort zone' of many of these African states. Institutionally, there are about thirteen African countries who have joined the global network of R2P focal points and appointed senior level officials to monitor and promote mass atrocity prevention at the national level.⁸ Admittedly, some have paid lip service to their roles, but generally, a greater number of these states have practicalized the contents of this rather 'abstract' norm. At the continental level, the AU effectively has civilian and military preparedness (mass atrocity response) to engage, support and intervene in R2P-like situations. Although, some of these established institutions come under intense assault from some tenacious African countries, generally, R2P has been an important energizer for a lot of the preventive strategies in most Africa countries. A classic demonstration of the AU's effort could be seen in the role it played together with Kofi Annan to prevent the 2008 post-election violence in Kenya from degenerating into genocide. Similarly, the AU, with the help of ECOWAS, was able to prevent atrocity crimes in a number of West African states, notably the situation in Cote d'Ivoire and Mali. Again, the AU's continued role in Burundi has prevented the symptoms of genocide and mass atrocities from being fully manifest. Cumulatively, when you look at the four benchmarks of normative influence, institutional stimulus, preventive measure and reactive mechanism, the AU appears to be flourishing in the first three. However, it has performed averagely with the last benchmark mainly due to issues of capacity and capabilities in mounting a timely and robust intervention to protect populations in crises situations.

Canada's Contributions Towards R2P

Canada's global commitments to the principles of R2P has never been in doubt. It was instrumental in the creation of the current international framework for the prevention of mass

⁷ See Paragraph 138 and 139 of the World Summit Outcome Document, 2005.

⁸ See Global Network of R2P Focal Points. http://www.globalr2p.org/our_work/global_network_of_r2p_focal_points.

atrocities. Through the work of the Canadian-led International Commission on Intervention and State Sovereignty (ICISS), the first hint of the expression of R2P was born in 2001.⁹ At the World Summit of 2005, Canada committed itself to respect R2P by influencing other states to accept the responsibility of protecting citizens from genocide, mass killings and ethnic cleansing. Canada's pivotal role in the struggle to secure universal support and acceptance for the simple yet contentious doctrine that all states have a "Responsibility to Protect" populations from genocide and other mass atrocities has seen the creation of institutions and norms that control government responses to such horrors. As one of the main promoters of the paradigm, Canadian foreign policy has been emphatic that the physical protection of human lives, especially in times of conflict, is sacrosanct and must take priority over all other broader motives.¹⁰ In effect, individual human rights were essentially paramount to the rights of state sovereignty. Their continued international efforts changed the way atrocities were perceived globally and assisted in devising ways of preventing states from abusing sovereignty and being passive bystanders to genocidal crimes. Aside the governmental push, there were a number of think-tanks and non-governmental organizations such as the Canadian Centre for the Responsibility to Protect and the International Coalition for the Responsibility to Protect that have ensured that the political drive to integrate and sustain the global discourse on R2P was kept alive.

Canada's approach to human security is predicated on the assumption that states have the primary responsibility towards the protection of its citizens but in the event that the state fails, the responsibility to prevent, react, and rebuild is automatically transferred to the international community. Canada's early support for human security was a clear expression of its unwavering responsibility to encourage a shift from state to human security. This challenged the existing normative framework of sovereign decision-making, territorial sovereignty and self-determination. Over the years, Canadian foreign policy has been defined by its robust international engagements on issues of development, peace and security.¹¹ Indeed, Canada's

⁹ Paris, Roland. "Human Security: Paradigm shift or Hot Air?". *International Security*, 26, No. 2: (2001): 87-102.

¹⁰ Axworthy, Lloyd. "Introduction". In *Human Security and the New Diplomacy: Protecting People, Promoting Peace*, edited by Rob McRae and Don Hubert. Kingston, ON: McGill-Queens University Press, 2001.

¹¹ Akuffo, Edward Ansah. "Canadian Foreign Policy in Africa: Regional Approaches to Peace, Security, and Development". In *Global Security in a Changing World*. Ashgate: Farnham, 2013.

main focus on a wider human security has seen its multilateral efforts and active campaigns focusing on the promulgation of the treaty prohibiting the use of anti-personnel landmines, small arms and light weapons agreements and conventions on war-affected children. Additionally, Canada has been instrumental in the creation of institutions such as the International Criminal Courts (ICC). As a founding member of the United Nations, Canada has continuously deployed troops to serve as peacekeepers to protect vulnerable populations around the world. Its most recent contribution included sending peacekeepers backed by helicopters to support the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

However, it is important to emphasise that Canada's initial momentum and the political activism for R2P has not been matched in recent times. Most public statements that heralded government response to atrocity crimes like the situation in Libya (2011) and Syria (2012) avoided the use of R2P. As Jillian Siskind observes, "irresponsible partisanship is muddying what should be a point of pride for Canada on the world stage."¹² Conceivably, for political reasons, the doctrine does not enjoy the same importance and support that it did when it was initially championed by the liberal government in 2001. Today, bizarrely, the country could hardly be referred to as the lead advocate as its successive governments within the last decade have strangely hesitated in mentioning R2P in their deliberations. Institutionally, Canada has been evasive in the appointment of a national R2P focal point to report and signpost incidents of atrocities for remedial attention and action. Canada has taken a back seat and its deafening silence has arguably impacted on international effort to operationalize the implementation of the R2P doctrine. However, a fleeting adjustment seems to be occurring now as the Trudeau government's pronouncements, especially on Syria and Iraq, demonstrate its willingness to re-engage with the doctrine.¹³ While the current government is prepared to support humanitarian efforts but not combative roles, it remains to be seen if Canada will continue to advocate for R2P on the international stage and expand its humanitarian aid program to countries where mass atrocity crimes are being committed.

¹² See <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/3709-canadian-lawyers-for-international-human-rights-president-jillian-siskind-canada-and-the-responsibility-to-protect>.

¹³ See <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/3709-canadian-lawyers-for-international-human-rights-president-jillian-siskind-canada-and-the-responsibility-to-protect>.

Conclusion: Partnering AU to Deliver on R2P

In the face of evolving global threats, it has become imperative for institutions and nations to devise partnerships that can improve responses and efficiency in protecting large populations at risk of possible atrocity and genocidal crimes. For many, the question has always been “what can Canada do to strengthen R2P on the African continent?” Working on issues of R2P in the long-term demands endurance, commitment and interest. Although the AU has, over the years, demonstrated a desire to play a critical role along the entire prevention, reaction and rebuilding continuum, many of its institutions face multiple challenges that hamper the implementation of these commitments. The Burundian experience for instance, illuminates one of the dilemmas facing the AU. Its capabilities for the timely and effective use of force in crisis situations appear to be still evolving. In instances where they have been swift, their actions have been delayed by some host/member states working under the cloak of sovereignty to thwart timely interventions to prevent serious war crimes and crimes against humanity. Apprehensions still remain between the emerging norm of R2P and the tradition of solidarity and mutual protection among Africa’s ruling class. Closely related to that obstacle is the AU’s overreliance on some of its RECs/RMs, who are currently developing into coherent entities which are institutionally solid enough to respond to certain threats. The situation is compounded by the fundamental challenge of competition and rivalry between the AU and those RECs/RMs that have operational capability. One other flaw relates to the apprehensions between the AU and the ICC, which hinders the effective implementation of R2P on the continent. Another flaw is the lack of adequate funding, which limits the ability of the Peace and Security Council to launch initiatives. Lastly, the lack of political will, especially in the post-Libya context in which many Heads of States view the R2P as a concealed instrument to overthrow governments that are not favorable to the West, also causes implementation challenges.

Considering that the AU and Canada are both inclined towards the promotion of human security and civilian protection in peace support operations, this could be the entry point for Canada to engage the AU in the full implementation of R2P principles. In order to deliver on this broad R2P doctrine, Canada should assist the AU and its RECs/RMs in promoting the integrated notion of the responsibility to prevent, react and rebuild among Member States and

all other actors on the continent. Additionally, Canada can use its influence on the African continent to generate commitment across the protection continuum through its bilateral development assistance. Also, the Canadian government can help avert conflict and mass atrocities by drawing on expertise within Canada, particularly those with capabilities on conflict prevention, mediation, reconciliation, and peacebuilding, to assist the AU and its Member States while continuing and broadening its support for humanitarian relief efforts. To support this security and development agenda, Canada's priority in international assistance to Africa must be expanded beyond the current ten nations.

**The R2P Yesterday, Today, and Tomorrow: Analyzing Canada’s Response to
the Syrian Conflict – Accountability for Responsibility**

Ghuna Bdiwi

Received October 31st, 2019

Can the R2P Work in World Now?

The pledge of “Never Again” was one of the lessons that, unfortunately, did not last long after World War II. Vicious and violent conflicts have continued around the world, causing untold human suffering. Two incidents in the nineteenth century were significant in re-energizing the debate among world leaders about how to protect humanity from the scourge of war, especially when neither legal nor diplomatic tools provide a solution: (1) the conflict in Kosovo, when the international community (IC) did not pursue humanitarian intervention (HI) to halt heinous crimes against civilians, and (2) the conflict in Rwanda, when the IC watched in silence the slaughter of 800,000 civilians in 90 days.¹

In the absence of political interests, the worry has been that HI is illegal and is a threat to state sovereignty. Article 2(1) of the Charter of the United Nations stresses the “principle of the sovereign equality of all its Members.”² In addition, Article 2(4) prohibits the use of force with two exceptions: (1) the United Nations Security Council (UNSC) has the authority to “decide what measures shall be taken ... to maintain or restore international peace and security,”³ and (2) the individual or collective right to self-defence.⁴ The UNSC’s decisions are often in the geopolitical interest of its five members. The division of power between them might prevent finding solutions that lessen human suffering, and the question remains of how best to protect humanity from crimes of atrocity.

¹ Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Mississauga: Vintage Canada, 2009).

² Article 2(1), Charter of the United Nations.

³ Article 39, Charter of the United Nations.

⁴ Article 51, Charter of the United Nations.

In his 2000 report on the work of the UN, Kofi Annan, then-United Nations Secretary-General, challenged world leaders by saying: “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?”⁵ As a response, the Canadian government, along with others, took the lead by establishing the ICISS. In 2001, the Commission presented its report on the R2P.⁶ The report successfully pointed out the problematic nature of the illegality of HI, and asserted that “state sovereignty implies responsibility.”⁷ The R2P must happen “where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.”⁸ The R2P endorsed by governments and states at the 2005 World Summit Outcome confirmed that states have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.⁹ It further affirmed that states, as a last resort, “are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII.”¹⁰

The R2P implies three kinds of responsibilities: the responsibility to prevent, react, and rebuild.¹¹ It addresses a set of mechanisms applicable at different stages of conflicts.¹² This includes diplomatic, economic, legal, and military measures.¹³ The R2P has protected civilians in many conflicts, for

⁵ UNGA, *Report of the Secretary-General on the Work of the Organization*, UNGAOR, 55th Sess, Supp No 1, UN Doc A/55/1 (2000), para 3, <http://www.un.org/documents/sg/report00/a551e.pdf>.

⁶ Thomas G. Weiss, Gareth J. Evans, Don Hubert, and Mohamed Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, (Ottawa, ON: International Development Research Centre, 2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

⁷ *Ibid.*, XI.

⁸ *Ibid.*

⁹ UN General Assembly, *World Summit Outcome: resolution/adopted by the General Assembly*, 24 October 2005, A/RES/60/1, para 138.

¹⁰ *Ibid.*, para 139.

¹¹ Weiss, Evans, Hubert, and Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, XI.

¹² *Ibid.*, 22.

¹³ *Ibid.*, 23.

example, Darfur,¹⁴ Côte d'Ivoire,¹⁵ Libya,¹⁶ the Central African Republic,¹⁷ the Congo,¹⁸ but yet not Syria.

Has the R2P Helped Syria?

The conflict in Syria is a real challenge to the R2P. Since 2011, mass crimes of atrocity have been committed, yet the IC is still hesitant to end the suffering of Syrian civilians. Many have questioned the capability of the R2P in cases like Syria, but I think that the real question is whether the international diplomatic system is ready for the R2P. Are political interests preventing the application of the R2P? If so, what can we do about it? Next, I will give a short recap of the Syrian conflict situation.

Reports on Syria provide evidence of grave human rights violations by all parties to the conflict that constitute war crimes and crimes against humanity. Examples of atrocities in Syria include massacres and unlawful killing, torture, death in detention centres,¹⁹ forced disappearances, enforced displacement, heavy and indiscriminate shelling of civilian areas, the use of chemical weapons against civilians on a large scale,²⁰ attacks on medical personnel, siege civilian and denial of humanitarian access,²¹ sexual and gender-based violence, and violation of children's rights, and many others.²²

¹⁴ UN Security Council, *Security Council Resolution 1975 (2011) [on targeted sanctions against individuals meeting the criteria set out in resolution 1572 (2004) on giant arms embargo against Côte d'Ivoire]*, 30 March 2011, S/Res/1975(2011).

¹⁵ UN Security Council, *Security Council Resolution 1706 (2006) [Sudan]*, August 30 2006, S/Res/1706 (2006).

¹⁶ UN Security Council, *Security Council Resolution 1973 (2011)*, 17 March 2011, S/Res/1973 (2011).

¹⁷ UN Security Council, *Security Council Resolution 2121 (2013) [on the situation in the Central African Republic]*, 10 October 2013, S/Res/2121(2013).

¹⁸ UN Security Council, *Security Council Resolution 2348 (2017) [on the extension of the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) until 31 March 2018]*, 31 March 2017, S/Res/2348 (2017).

¹⁹ "A report into the credibility of certain evidence with regard to torture and execution of persons incarcerated by the current Syrian regime," *prepared for Carter-Ruck and Co. Solicitors of London*, (20 January 2011), 4, https://www.carter-ruck.com/images/uploads/documents/Syria_Report-January_2014.pdf. See also: Ben Hubbard and Karam Shoumali, "Hundreds Died in Syrian Custody, Government Acknowledges," *The New York Times*, July 26, 2018, accessed October 31, 2018, <https://www.nytimes.com/2018/07/26/world/middleeast/syria-detainees-dead.html>.

²⁰ UN Secretary General, *Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013: note/by the Secretary General*, 13 September 2013, A/67/997-S/2013/553, http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/553.

²¹ Siege Watch, "First Quarterly Report on Besieged Areas in Syria," (February 2016) *The Syria Institute*, <https://siegewatch.org/wp-content/uploads/2015/10/PAX-RAPPORT-SIEGE-WATCH-FINAL-SINGLE-PAGES-DEF.pdf>.

²² UN General Assembly, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 1 February 2018, A/HRC/28/69, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A.HRC.28.69_E.doc.

An estimated 400,000 civilians have been killed since the beginning of the Syrian conflict.²³ The UN, since 2014, has been unable to reckon the death toll due to lack of access to Syria – thus, the vagueness of the figure of 400,000.²⁴ According to the United Nations High Commissioner for Refugees, as of October 2018, an estimated 5.6 million citizens have been forced to flee their homeland, fearing violence and seeking safer places around the world,²⁵ and there is an estimated 6 million internally displaced people.²⁶ The country has become a haven for radical extremist groups that are strongly committed to global military operations, fighting for their ideologies that are far from the principles of the Syrian revolution of freedom, equality, and democracy.

The Syrian conflict has always been an obvious case for the R2P. Since the start, there have been two notable features of the conflict: (1) a *prima facie* case of crimes of atrocity, with the level of violence increasing, and (2) despite the fact that war crimes are the result of a number of armed groups, “the government’s willingness and capacity to use highly destructive and indiscriminate weaponry is unrivalled. And, whoever is using force, it is still the government that has the primary responsibility to ensure protection of the population.”²⁷ Several reports of the Independent International Commission of Inquiry on the Syrian Arab Republic have noted that “The Government has manifestly failed in its responsibility to protect its people. ... its forces have committed more widespread, systematic and gross human rights violations.”²⁸ Clearly, the Syrian government is either unable or unwilling to protect its citizens, and it has failed to protect them, resulting in ongoing crimes against humanity.

²³ UN General Secretary, “Note to Correspondents: Transcript of press stakeout by United Nations Special Envoy for Syria, Mr. Staffan de Mistura”, 22 April 2016, <https://www.un.org/sg/en/content/sg/note-correspondents/2016-04-22/note-correspondents-transcript-press-stakeout-united>.

²⁴ John Heilprin, “UN says it can no longer keep track of Syria death toll,” *CTV News*, 7 January 2014, <http://www.ctvnews.ca/world/un-says-it-can-no-longer-keep-track-of-syria-death-toll-1.1626828>.

²⁵ “Operational Portal,” *Situation Syria Regional Refugee Response*, <https://data2.unhcr.org/en/situations/syria..>

²⁶ “Syrian Arab Republic,” *OCHA, July 06, 2018*, <http://www.unocha.org/syria>.

²⁷ Tim Dunne and Alex Bellamy, “Syria,” *Asia Pacific Centre for the Responsibility to Protect*, policy brief, 2013, 3.

²⁸ UN General Assembly, *Report of the independent international commission of inquiry on the Syrian Arab Republic*, February 22 2012, A/HRC/19/69, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/106/13/PDF/G1210613.pdf?OpenElement> See also, report of the UNSC finds that the government was responsible for sarin attack, UN Security Council, “Letter dated 26 October 2017 from the Secretary-General addressed to the President of the Security Council” 26 October 2017, https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s_2017_904.pdf.

The IC has made many attempts to force the Syrian government to meet its obligations; it has employed economic measures (boycotts), sanctions, and suspension of the government's international political representation.²⁹ It has applied a number of diplomatic measures, such as the creation of the Action Group for Syria, tasked with preparing guidelines and principles for political transition.³⁰ The Action Group for Syria has established the Geneva Communiqué to encourage ceasefire, also in order to prepare for political transition.³¹ The IC has created the Independent International Commission of Inquiry to investigate alleged violations of international human rights law.³² The IC has also appointed the United Nations Supervision Mission in Syria to observe the implementation of a peace plan.³³ In 2017, efforts to arrive to a ceasefire agreement took place at the Astana peace talks.³⁴ These efforts are ongoing at the time of writing, all with no significant results.

The typical legal measure is the referral to the International Criminal Court (ICC) to end impunity for the perpetrators of the most serious crimes that concern the IC.³⁵ Syria is not a party to the ICC; hence, such a referral requires a decision from the UNSC, but that decision was not possible, given the veto power of Russia and China.³⁶ With all of these measures tried and failed, the IC, in

²⁹ "Q&A: Syria sanctions," *BBC News*, March 23, 2012, <http://www.bbc.com/news/world-middle-east-15753975>. It suspended Syria's permanent chair at the Arab League, see: Neil Macfarquhar, "Arab League Votes to Suspend Syria Over Crackdown," *The New York Times*, November 13, 2011, <http://www.nytimes.com/2011/11/13/world/middleeast/arab-league-votes-to-suspend-syria-over-its-crackdown-on-protesters.html?pagewanted=all>.

³⁰ Action Group for Syria, "Action Group for Syria: Final Communiqué", 30 June 2012, para 4, <http://www.un.org/News/dh/infocus/Syria/FinalCommuniquActionGroupforSyria.pdf> [Accessed 15 September 2016].

³¹ UN Department of Political Affairs, "14 November 2015, Statement of the International Syria Support Group Vienna," accessed October 30, 2018, <https://www.un.org/undpa/en/Speeches-statements/14112015/syria>.

³² UN Human Rights Council, "Independent International Commission of Inquiry on the Syrian Arab Republic," <https://www.ohchr.org/en/hrbodies/hrc/iicisyrria/pages/independentinternationalcommission.aspx>.

³³ "Action Group for Syria: Final Communiqué," 30 June 2012, *United Nations Office at Geneva*, at para 4. <http://www.un.org/News/dh/infocus/Syria/FinalCommuniquActionGroupforSyria.pdf>.

³⁴ Dylan Collins, "Russia, Turkey, Iran Agree Plan to Support Syria Truce," *Al Jazeera*, January 24, 2017, <https://www.aljazeera.com/news/2017/01/syria-talks-resume-astana-rocky-start-170124082357096.html>.

³⁵ *Ibid.*

³⁶ See, UNSC, France [et al]: draft resolution, UN Doc S/2011/612, (4 October 2011). <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20S2011%20612.pdf>. UNSC, Bahrain [et al]: draft resolution, UN Doc S/2012/77, (4 February 2012). <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20S2012%2077.pdf>. UNSC, France [et al]: draft resolution, UN Doc S/2012/538, (19 July 2012). <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20S2012%20538.pdf>. UNSC, Albania [et al]: draft resolution, UN Doc S/2014/348, (22 May 2014). https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/348. UNSC, Andorra [et al]: draft resolution, UN Doc S/2016/846, (8 October 2016) https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/846. UNSC, Egypt [et al]: draft resolution, UN Doc S/2016/1026, (5 December 2016). https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/1026 (vetoed by China, Russia). UNSC, Albania [et al]: draft resolution, UN Doc S/2017/172, (28 February 2017),

accordance with the R2P, should now take collective action in a timely and decisive manner. Not surprisingly, such action has not happened in the way that the R2P envisions, i.e., protecting civilians. Instead, various countries' armies – those of the US, Russia, France, England, Turkey, Kurdish, Hezbollah, and Iran – have intervened, each for their own geopolitical interests and agendas.³⁷ US President Donald Trump's military operation in Syria was unable to achieve any results; on the contrary, the US strike confirmed the US's lack of genuine interest in halting the war in Syria.³⁸

How Should the IC Respond to Atrocities in Syria?

The R2P is a moral commitment. Therefore, if the international diplomacy system is currently not ready to uphold its R2P, the question then is how, in such circumstances, the IC should respond to atrocities. António Guterres, United Nations Secretary-General, in his report on the R2P, said:

There is a gap between our stated commitment to the responsibility to protect and the daily reality confronted by populations exposed to the risk of genocide, war crimes, ethnic cleansing and crimes against humanity. To close that gap, we must ensure that the responsibility to protect is implemented in practice. One of the principal ways in which we can do so is by strengthening accountability for the implementation of the responsibility to protect and by ensuring rigorous and open scrutiny of practice, based on agreed principles.

Guterres' emphasis on accountability as a responsibility was noted in the ICISS report, asserting that “the threat to seek or apply international legal sanctions has in recent years become a major new weapon in the international preventive armory. ... [It] will concentrate the minds of potential perpetrators of crimes against humanity on the risks they run of international retribution.”³⁹ Guterres' calls for accountability urged combatants, the UN members, and civil societies to

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2017/17. UNSC, France [et al]: draft resolution, UN Doc S/2017/315, (12 April 2017). http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_315.pdf. UNSC, France [et al]: draft resolution, UN Doc S/2017/962, (16 November 2017), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2017/962.

³⁷ Uri Friedman, “Syria's War Has Never Been More International,” *The Atlantic*, February 15, 2018, <https://www.theatlantic.com/international/archive/2018/02/syria-civil-war-next/553232/>.

³⁸ Barbara Starr and Jeremy Diamond, “Trump Launches Military Strike against Syria,” *CNN*, April 07, 2017, <https://www.cnn.com/2017/04/06/politics/donald-trump-syria-military/index.html>.

³⁹ ICISS, 24.

collaborate to collect evidence and hold accountable those responsible for war crimes in Syria.⁴⁰ Despite the deadlock at the UNSC to refer the Syrian file to the ICC, efforts to achieve criminal accountability are now underway in many countries in Europe (Germany, Sweden, Switzerland, France, and Finland) based on the principle of universal jurisdiction.⁴¹ Victims of war crimes in Syria have filed cases in the domestic courts of these countries against their prospect perpetrators.⁴²

The Legacy of the R2P vs. the Canadian Response to Crimes in Syria

Since the establishment of the ICISS, Canada has regarded itself as being the vanguard of the R2P. Canada implemented the R2P to justify its intervention in Haiti, for instance.⁴³ Canadian officials have proudly referenced the R2P in Libya; Lloyd Axworthy, former Foreign Minister, and Allan Rock, former Canadian Ambassador to the UN, wrote: “In a fortuitous coincidence, last week’s liberation of Libya occurred exactly a decade after the Responsibility to Protect (R2P) principle was proposed by the Canadian-initiated International Commission on Intervention and State Sovereignty.”⁴⁴ But then what? Did Canada change its mind when it came to Syria? Not completely. Since 2011, Canada has taken some economic measures against Syria. Under the *Special Economic Measures Act*, Canada announced sanctions against members of the al-Assad regime and froze their assets. Canada stopped all investment, and trade with Syria, including importation of petroleum products.⁴⁵

In fact, Canada was hesitant to take military action in Syria, particularly in 2015, when many criticized Prime Minister Justin Trudeau’s decision to withdraw from the military operation against

⁴⁰ Edith M Lederer, “UN Chief Asks Security Council to Refer Syria to International Criminal Court,” *CTV News*, January 27, 2018, <https://www.ctvnews.ca/world/un-chief-asks-security-council-to-refer-syria-to-international-criminal-court-1.3778007>.

⁴¹ Ian Brownlie, *Brownlie’s Principles of Public International Law*, 6th ed (Toronto: Oxford University Press, 2003), 303.

⁴² The European Centre for Constitutional and Human Rights, “The Path to Justice Leads through Europe – E.g. Austria,” accessed October 30, 2018, <https://www.ecchr.eu/en/case/the-path-to-justice-leads-through-europe-eg-austria/>.

⁴³ Anthony Fenton, “Haiti and the Danger of the Responsibility to Protect (R2P),” *Upside Down World*, published December 22, 2008, <http://upside-downworld.org/archives/haiti/haiti-and-the-danger-of-the-responsibility-to-protect-r2p/>.

⁴⁴ Yves Engler, “Will Trudeau Embrace The Responsibility To Protect Doctrine?,” *HuffPost Canada*, November 02, 2016, accessed October 30, 2018, https://www.huffingtonpost.ca/yves-engler/trudeau-r2p_b_8423674.html.

⁴⁵ Government of Canada, “Canadian Sanctions Related to Syria,” last updated July 09, 2018, http://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/syria-syrie.aspx?lang=eng.

ISIS.⁴⁶ However, very soon after that, Canada delivered on its R2P by resettling 25,000 Syrian refugees who escaped the violence of their homeland.⁴⁷ In 2016, Trudeau put pressure on the UNSC to functionalize the R2P in Syria, saying: “I encourage other countries to help generate forward momentum on Syria, given UN members have a collective responsibility to protect the world’s vulnerable and weak when others cannot or will not.”⁴⁸ Canada has recently tried to help Syrian civil defence group, the White Helmets, who were tortured by the al-Assad regime.⁴⁹ While it is a moving and encouraging reaction, but do these actions really ally with Canada’s understanding of the R2P? Was that assistance the promise that Canada had in mind when leading the establishment of ICISS? The answer is: definitely no. So, is Canada able to do more? The answer is: yes!

How Canada Can Help

Despite all the international diplomacy circumstances explained above, Canada can still help by encouraging efforts toward criminal accountability for crimes against humanity in Syria. Canada can continue to “rally the international community to hold perpetrators of war crimes in Syria to account,”⁵⁰ but it has not hosted any in-house measures, as Europe has.

Canada can help to provide justice to Syrian victims of war crimes. Amongst the resettled refugees in Canada, there are likely to be victims who want justice, as well as both witnesses and perpetrators. There might be some institutions that were involved in illegal conduct,⁵¹ and there might be Canadians who were involved in crimes as foreign fighters within terrorist groups in Syria.

⁴⁶ Yves Engler, “Will Trudeau Embrace The Responsibility To Protect Doctrine?,” *HuffPost Canada*. November 02, 2016, accessed October 30, 2018, https://www.huffingtonpost.ca/yves-engler/trudeau-r2p_b_8423674.html.

⁴⁷ Citizenship Canada, “#WelcomeRefugees: Key Figures,” last updated February 27, 2017, <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/welcome-syrian-refugees/key-figures.html>.

⁴⁸ “Statement by the Prime Minister of Canada on UN General Assembly Plenary Meeting on Syria.” *Prime Minister of Canada*, October 24, 2016, <https://pm.gc.ca/eng/news/2016/10/20/statement-prime-minister-canada-general-assembly-plenary-meeting-syria>.

⁴⁹ Murray Brewster, “Canada to Accept up to 250 Syrian White Helmet Volunteers, Family after Dramatic Escape | CBC News,” *CBC News*, July 22, 2018, <https://www.cbc.ca/news/politics/syria-russia-white-helmet-1.4749380>.

⁵⁰ “Canada Urges Accountability for War Crimes in Syria,” *Revolutionary Forces of Syria Media Office*, October 31, 2017, <https://rfsmediaoffice.com/en/2017/10/31/canada-urges-accountability-war-crimes-syria/>.

⁵¹ See per example the case of Lafarge in Europe: “Lafarge Charged with Complicity in Syria Crimes against Humanity,” *The Guardian*, June 28, 2018, <https://www.theguardian.com/world/2018/jun/28/lafarge-charged-with-complicity-in-syria-crimes-against-humanity>.

Under the Crimes Against Humanity and War Crimes Act, Canada punishes individuals who are guilty of core international crimes, namely genocide, crimes against humanity, and war crimes. Canada's High Court of Justice explains that "this principle [of universal jurisdiction] recognizes that with respect to certain types of international crimes a country has the right to prosecute an offender irrespective of the fact that the offence was not committed on its territory"⁵² The problem with the Canadian approach to the universal jurisdiction principle is that the Act requires "that an accused appear at and be present during proceedings and any exceptions to those requirements apply."⁵³ This exception might be a political decision.

Canada could refer the Syrian case to the International Court of Justice (ICJ), the court that deals with states' wrongdoings, based on the Convention against Torture, to which Syria is a signatory.⁵⁴ The benefit of pursuing that option is that "[t]he ICJ would provide a unique forum for exposing evidence of atrocities in an authoritative judicial process."⁵⁵ Such an option would also put pressure on the Syrian government to allow access to its detention centres.⁵⁶

Canada might also help by establishing a special court for crimes in Syria. It could rally members of the UNGA to establish a tribunal, maneuvered by a number of willing states. The UNGA's authority to establish such a tribunal comes from Article 22 of the UN Charter, which provides that: "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions."⁵⁷ Those promoting criminal accountability in North Korea, for example, have advocated for such an option.⁵⁸

⁵² R. vs Finta [1989] 1 S.C.R 1138.

⁵³ Article (9)2, Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24. Entered in force on June 1, 2009.

⁵⁴ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, 85 (article 30), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

⁵⁵ Andrew Stobo Sniderman and Payam Akhavan, "Akhavan and Sniderman: Here's how we can hold Syria responsible for its crimes," *Ottawa Citizen*, September 3, 2017, <http://ottawacitizen.com/opinion/columnists/akhavan-and-sniderman-heres-how-we-can-hold-syria-responsible-for-its-crimes>.

⁵⁶ Ibid.

⁵⁷ Article 22, Charter of the United Charter.

⁵⁸ "North Korea: UN Should Act on Atrocities Report," *Human Rights Watch*, March 28, 2014, <https://www.hrw.org/news/2014/02/17/north-korea-un-should-act-atrocities-report>.

Criminal accountability is not only directly linked to states' responsibilities to protect; I suggest that, going forward, states' responsibility to hold criminals accountable is the ideal approach to the R2P. Pursuing criminal justice for war crimes in Syria is crucial. The IC has failed to end impunity for Syrian war perpetrators, but individual states can assist by removing immunity and ensuring that justice prevails. That would give hope to victims and their families and would restore faith in the international justice system. Canada has always embraced its R2P, it has always stood for justice, liberty, and democracy, and it should take seriously its responsibility to prosecute criminals of war crimes in Syria.

Separating from an Elephant: The Strategic Value of R2P to Canadian Foreign Policy

Dr. Michael J. Butler

Received October 18th, 2018

Introduction

Amidst the fallout of the horrific Syrian civil war and the humanitarian crisis it engendered – both approaching a tragic eighth anniversary – one might take note of a resounding refrain from many leading voices in Canadian foreign policy circles. The narrative goes something like this: we’ve failed not only the Syrians, but also ourselves and our principles. The source of this self-flagellation? The inability (read: generalized unwillingness) of the “international community” to respond quickly and decisively to protect civilians under the guise of the Responsibility to Protect (R2P) and, by extension, the presumption that Canada wouldn’t, couldn’t, or didn’t do enough to change that outcome.¹

Some have attributed the underlying cause of Canada’s supposed negligence on R2P to the “about-face” of the Conservative Harper government, which first muzzled the Department of Foreign Affairs, Trade and Development (DFATD) on R2P, and then rendered discussions of responsibility to protect as little more than a footnote.² Indeed, the Harper government’s refusal to acknowledge R2P in explaining Canada’s participation in NATO’s Operation Unified Protector in Libya on the floor of Parliament in 2011 stands as a piece of bizarre political theater, one magnified by the

¹ Andisheh Fard, “Re-engaging with the Responsibility to Protect,” *National Observer*, 2017; Naomi Kikoler, “Time for Canada to Recommit to R2P,” *Open Canada*, 2014; Hugh Segal, “Protecting the Responsibility to Protect,” *Open Canada*, 2014; Jennifer Welsh, “The Council Fiddles While Damascus Burns,” *Open Canada*, 2012

² Charlotte Beck, “From Founding Father to Backslider: Canada and the R2P,” *Henrich Böll Foundation*, 2015

unequivocal embrace of the logic and language of R2P in UNSCR 1973.³ This ambivalence toward R2P persisted in conjunction with Canada's commitment to operations against ISIS in Iraq and Syria, which operationally prioritized a militarized counterterrorism justified domestically through instrumental allusions to R2P.⁴

Whatever its underpinnings, much of the critique among Canadians of the international community's abdication of responsibility to Syrians and Canada's role in it understandably, and perhaps rightly, concerns the legal, ethical, and perhaps even (dare I say) moral obligation to support and promote R2P. However, there is another and equally valid argument as to why Canada should take up the cause of "selling" R2P to those who aren't buying. That argument is pragmatic, even self-regarding – namely, that it is in Canada's strategic interests to do so. This paper advances a deceptively simple and straightforward proposition. Informed by the lessons of Syria, but with an eye to the future, the appropriate response for Canada going forward is one that "doubles down" on support for R2P not only on its merits, but for its instrumental value to Canadian foreign policy.

In light of the apparent resurgence of illiberalism and nationalism in the international system, this paper argues that the architects of Canadian foreign policy currently have a window of opportunity to advance Canada's long-standing strategic objective of Canadian internationalism. That opportunity is especially acute given the abdication of even the pretense of support for liberal norms and values and their translation through international institutions by the United States. With Père Trudeau's elephant to the south fully awake and bellowing along with a herd of like-minded pachyderms, the fate of R2P – and the principles underlying it – may very well lie in Canada's hands.

Syria: learning from failure

The degree of critical introspection concerning Canada's performance in its well-established role as an interlocutor for R2P is in many ways welcome (and, to an American observer, admirable). At the same time, it bears noting there's something of a paradox embedded in the effort, in that burrowing further into the rabbit-hole of Canada's (purportedly) abdicated responsibility *viz.* the R2P runs the

³ Sid Rashid, "Preventative Diplomacy, Mediation and the Responsibility to Protect in Libya: A Missed Opportunity for Canada?" *Canadian Foreign Policy* 19, no. 1, 2013; EmbassyNews.ca, "Responsibility to Protect Facing Biggest Test, *Embassy*, 2011

⁴ Beck, "From Founding Father to Backslider"

risk of generating and sustaining a stultifying debate. The intent here is certainly not to minimize the horrific suffering that has characterized Syria for the better part of a decade, nor to minimize the inability of Canada and the international community at-large to do more about it. At the same time, remaining stuck within a feedback loop concerning any real or perceived inability or unwillingness to lead an international response to mass atrocities in Syria and the forced displacement of millions of Syrians is a dangerous outcome. This is especially true from the standpoint of those who wish to see a renewed effort toward the implementation of R2P, as opposed to continued machinations over past failures to do so. Doing so for all intents and purposes compounds the disaster by reifying it.

To the contrary, among the many and striking lessons of Syria for those who remain committed to R2P not just as an idea but rather as a norm shaping behavior is the evident fact that, paraphrasing Mark Twain, rumors of R2P's diffusion are greatly exaggerated. For all the light that Finnemore and Sikkink's "norm life cycle" model (1998) sheds on the trajectory that successful ideas trace on their way to normative acculturation and behavioral modification, there is no presumption anywhere in that seminal contribution that, like other things, norms just "happen." Rather, they require skillful cultivation, not only or even especially prior to emergence, but indeed after reaching the tipping point. If there is anything that Syria reveals with respect to R2P on a conceptual plane, it is what happens when scholars and practitioners alike conclude that norm diffusion and internalization are self-sustaining dynamics that inevitably follow once an idea has seemingly attained normative status. This is in many ways falling back into the trap of Fukuyama-esque liberal triumphalism – a fallacy that runs the risk of blinding us to the reality that norms can stagnate, backslide, or even die.⁵

⁵ Acharya, Amitav, "The R2P and Norm Diffusion: Towards a Framework of Norm Circulation," *Global Responsibility to Protect* 5, no. 4, (2013); Mona L. Krook and Jacqui True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality," *European Journal of International Relations* 18, no. 1, (2012); Ryder McKeown, "Norm Regress: US Revisionism and the Slow Death of the Torture Norm," *International Relations* 23, no. 1, (2009); Ewan Harrison, "State Socialization, International Norm Dynamics, and the Liberal Peace," *International Politics* 41, (2004); Diana Panke and Ulrich Petersohn, "Why International Norms Disappear Sometimes," *European Journal of International Relations* 18, no. 4, (2012)

Canada's moment?

To be clear, the prevailing presumption here with respect to R2P as a norm is decidedly **not** that it is dead. Clearly, though, the patient is ailing.⁶ In picking up the pieces after Syria, we must recognize that for R2P to be resuscitated and reanimated, it needs a committed and steadfast “norm entrepreneur.”⁷ With respect to R2P, few if any actors in the international system are better positioned to serve this function (quite literally; see Miller, 1980) than Canada. The veracity of this statement stems not only from Canada's role as midwife at the birth of R2P in Ottawa in 2001, or from its contributions to advancing the notion of human security, but more broadly from the logical centrality of R2P to Canada's foreign policy lodestar through the Cold War and beyond: namely, “Canadian internationalism.”⁸

As Munton and Keating (2001) have chronicled, none other than John Wendell Holmes described internationalism as “almost a religion” for Canada.⁹ Canadian internationalism – entailing as it does the requirement to be involved in responding to any significant threat to peace and security so as to promote a stable and just global order—has, in Melakopides' words, long distinguished “the style as well as the substance of Canada's foreign policy” (1998: 5), in Gosselin's (1989) view from Pearson to Trudeau (redux?). The degree of ethical obligation associated with the practice of Canadian internationalism lends the approach a distinctly normative flavor, impacting Canada's views of what situations might justify redress.¹⁰ Indeed, the most prominent form of worship associated with Holmes' “religion” would certainly be peacekeeping, which has long provided Canada a most fitting vehicle for implementing the ideas inherent to internationalism.¹¹ For obvious reasons, so too does R2P.

⁶ Roland Paris, “Responsibility to Protect: The Debate Continues,” *International Peacekeeping* 22, no. 2, (2015); Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality, and the Future of Humanitarian Intervention*, (Basingstoke/New York: Palgrave Macmillan, 2012)

⁷ Cass R. Sunstein, “Social Norms and Social Roles,” *96 Columbia Law Review*, 1996, pg. 903

⁸ Andrew F. Cooper, *Canadian Foreign Policy: Old Habits and New Directions*, (Scarborough: Prentice-Hall, 1997)

⁹ John W. Holmes, *The Shaping of Peace*, vol. 2, (Toronto: University of Toronto Press, 1982)

¹⁰ Michael J. Butler, “Elephants of a Feather? The Role of ‘Justice’ in U.S. and Canadian Cold War Military Intervention Decisions,” *Canadian Journal of Political Science* 38, no. 1, (2005)

¹¹ Geoffrey Hayes, “Canada as a Middle Power: The Case of Peacekeeping,” in *Niche Diplomacy: Middle Powers after the Cold War*, ed. Andrew F. Cooper. (New York: St. Martin's, 1997)

However, it is instructive to note that Canadian internationalism hardly equates to the pursuit of a cosmopolitan utopia. The doctrine's architects explicitly stressed that Canadian interests should be construed as two-dimensional (material as well as ideational) and that Canada should be intent on pursuing "milieu goals."¹² Canadian internationalism has long compelled Canada's decision makers to approach foreign policy dilemmas with a commitment to securing liberal outcomes through multilateral vehicles. At the same time, it has imparted upon those same decision-makers the need to ensure said outcomes also contributed to a stable and peaceable global order underwriting the continued security, prosperity and material welfare of Canada.¹³ To attempt anything less would be self-defeating, in that it would threaten to reduce Canada's capability to bear the mantle of middle power and in turn promote its internationalist agenda.¹⁴

This pragmatism pervading Canadian internationalism is especially important to acknowledge in light of contemporary developments in (read: challenges to) the prevailing global order. The rising tide of illiberalism and its manifestations in the increasingly jingoistic and nationalist policies and rhetoric of even – and perhaps especially – Western states stand in stark contrast not only to the principles of R2P, but to the ideas and ambitions at the heart of Canadian internationalism itself. Thus, rising to the defense of R2P, as so many leading Canadian voices have called for, is also rising to the defense of a cosmopolitan order for which Canada has been a consistent advocate, and, by extension, a defense of Canadian values as translated through the foreign policy apparatus under the guise of internationalism.¹⁵

¹² Thomas S. Axworthy, "'To Stand Not So High Perhaps but Always Alone': The Foreign policy of Pierre Elliott Trudeau," in *Towards a Just Society: The Trudeau Years*, eds. Thomas S. Axworthy and Pierre Elliot Trudeau, (Markham, Ont.: Viking Press, 1990)

¹³ Costas Melakopides, *Pragmatic Idealism: Canadian Foreign Policy 1945-1995*, (Montreal: McGill Queen's University Press, 1998).

¹⁴ Adam Chapnick, "The Canadian Middle Power Myth," *International Journal* 55, no. 2, (2000)

¹⁵ Lloyd Axworthy, "Resetting the Narrative on Peace and Security: R2P in the Next Ten Years," *The Oxford Handbook of the Responsibility to Protect*, (Oxford University Press: Oxford Handbooks online, 2016); Serena K. Sharma and Jennifer M. Welsh (eds.), *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention*, (New York: Oxford University Press, 2015)

Separating from an elephant

Rallying Canada to the defense of R2P after the debacle that was (and is) Syria requires Canadian decision-makers as well as the public at-large to acknowledge the implications and importance of maintaining an internationalist agenda in an era of illiberalism and resurgent nationalism. The ability to do so, in turn, seems to turn on the need to convince those same constituencies of the pragmatic aspects and strategic benefits of doing so. Perhaps the most significant is the implication that, by standing in the breach with respect to R2P, Canada is assuming at least part of the mantle of leadership abdicated by the United States in the wake of its headlong pursuit of a self-serving and self-defeating unilateralism.

The call for Canada to help fill the leadership void willfully created by the Trump Administration is not solely or even primarily about the alleged preoccupation of Canadians with the U.S. or any presumed predilection to differentiate themselves from their twitching and grunting neighbor to the south.¹⁶ For one thing, America's hegemonic aspirations have long been nothing more than aspirational, discredited in the face of the relative decline of the U.S. from its early post-Cold War apex.¹⁷ This fact was not lost on the Obama Administration, which spent the better part of its term in office attempting (and failing) to adjust expectations accordingly.¹⁸ The Trump foreign policy (such as it is) has responded to the same challenge in its own inimitable fashion – tearing down the tent of American leadership (leaky as that tent often was) of the liberal international order and the norms, values, and institutions it ostensibly covered.

Though Canadian leadership would undoubtedly have the (positive?) externality of differentiation from the U.S., the strategic gain to be had is far more intrinsic in nature. To the extent that ideas and interests are mutually constitutive and reinforcing, in turn informing action, a successful foreign policy is one that aligns with and serves a state's ideology.¹⁹ This latter point is one that even realists

¹⁶ Seymour Martin Lipset, *Continental Divide: The Values of the United States and Canada*, (New York/Longon: Routledge, 1990)

¹⁷ Acharya, Amitav. *The End of American World Order*. (John Wiley & Sons: 2018); Christopher Layne, "The Unipolar Illusion Revisited: The Coming End of the United States' Unipolar Moment," *International Security* 31, no. 2, (2006)

¹⁸ Andreas Kreig, "Externalizing the Burden of War: The Obama Doctrine and US Foreign Policy in the Middle East," *International Affairs* 92, no. 1, (2016); M. S. Indyk, K. G. Lieberthal, and M. E. O'Hanlon, "Scoring Obama's Foreign Policy: A Progressive Pragmatist Tries to Bend History," *Foreign Affairs*, (2012)

¹⁹ Alexander Wendt, *Social Theory of International Politics*, (Cambridge: Cambridge University Press, 1999)

have long (if begrudgingly) acknowledged.²⁰ In coming back to R2P, if we take into account not only Canada's role in its origin story but, more fundamentally, the milieu that produced it and the ideas that constituted (and still constitute) it, R2P is practically indistinguishable from Canada's foreign policy idea(s). In that sense, fully embracing the role of norm entrepreneur in defense of R2P is not an exercise in posturing relative to the arrogant unilateralism of the U.S., or "punching above one's weight." Nor is it about making things right after Syria or offering a corrective to the degeneration of the UN. Ultimately it is about bringing Canadian foreign policy (back) into alignment with Canada's long-standing, and still-standing, commitment to internationalism – as much a strategic move as an ethical one.

²⁰ Samuel P. Huntington, "The U.S.: Decline or Renewal?," *Foreign Affairs* 67, no. 2, (1988)

Child Soldiers: Whose Responsibility to Protect?

Dr. Carolyn Filteau

Received October 13th, 2018

Introduction

The paper involves a study of the international norm of ‘The Responsibility to Protect’ (R2P) and the relationship it bears to children in war zones and more particularly to the use of child soldiers in the contemporary world’s many conflicts.¹ One of the many illegal acts to which children fall victim is recruitment by armed forces and armed groups. With some of the Western world undergoing a dramatic shift in thinking, this group of children becomes even more at risk. As a consequence, it would seem not only appropriate but essential to remind ourselves of the national and international humanitarian law and legal principles that exist for children in conflict that have been fought for not so long ago.

The Responsibility to Protect states that citizens must be protected in cases of human atrocities, war crimes, ethnic cleansing and genocide where states have failed or are unable to do so. This paper argues at the outset that the Responsibility to Protect should be called upon to protect children before, during and after armed conflict. While much of prevention exists in the form of international law, treaties and covenants, R2P transcends individual human rights laws to remind the international community of its obligation to take action when states are unable or unwilling to do so.

Recruiting and using children under the age of 15 as soldiers and willfully causing great suffering or serious injury to a child's body and health is prohibited under international humanitarian law – treaty

¹ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), 11, <https://www.idrc.ca/en/book/responsibility-protect-report-international-commission-intervention-and-state-sovereignty>.

and custom – and is defined as a war crime by the International Criminal Court (ICC). While teenagers are frequently targets of recruitment because they have advantages over young children in regard to size, strength, and cognitive ability, there are many exceptions and many armed conflicts exploit even younger children.² Thus, when it comes to children, their conscription or enlistment into armed forces or groups or their use as active participants in hostilities constitutes not only a violation of human rights, but also a violation of international humanitarian law.

On the one hand, various conventions have been introduced at the international level that provide different kinds of protection for child soldiers depending on age (i.e., age 15 or 18). On the other hand, in spite of these laws and conventions, Dallaire tells us in 2010 that the child soldier “has become the weapon of choice in over thirty conflicts around the world, for governments and non-state actors alike.”³ This remains true in contemporary conflicts around the world. In 2010 the greatest geopolitical area where child soldiers were found was Africa (around 100,000 children at that time) in countries such as Guinea, the Ivory Coast, the Democratic Republic (DR) of Congo, Chad, Sudan, Somalia, Uganda, Rwanda and Burundi. Child soldiers are also found in Asia, in Myanmar and Sri Lanka (Tamil Tigers); in the Middle East, in Israel, the Palestinian Territories, and Iraq; and in Latin America in Colombia. These children are regularly encouraged to commit suicide attacks or used as human shields.

The Coalition to Stop the Use of Child Soldiers (now Child Soldiers International) continues to deliver research findings and policy in its efforts to promote the adoption and implementation of international legal standards. In 2016 Child Soldiers International published *A Law unto Themselves? Confronting the Recruitment of Children by Armed Groups* which provides a legal analysis of progress made so far in engaging with armed groups about child recruitment and use. The Report informs us that, although progress is being made, greater attention needs to be given to the safe release and reintegration of child soldiers whose numbers remain in the tens of thousands.

A number of different theoretical approaches can be used to frame the issue of children in armed conflict. Certainly, projects like this one underscore one of the important problems of international relations (IR) theory; i.e. the relationship between ethics and security or nationalism. Given the

² Michael Wessels, *Child Soldiers: From Violence to Protection* (Cambridge: Harvard University Press, 2006)

³ Romeo Dallaire, *They Fight Like Soldiers, They Die Like Children* (Toronto: Vintage Canada, 2010), 2.

changes since the end of the Cold War in the conception of what constitutes security, internationalists argued that the realist approach no longer provides an adequate framework for foreign relations. Structural realists are generally dismissive of ethical considerations in IR. Ethical codes, however, lie behind much of the discourse about children and armed conflict. Thus, a more humanitarian constructivist and multidisciplinary approach is needed to consider the child soldier phenomenon. In the first instance, this approach privileges the individual's security needs over that of the state. Secondly, it focuses on humanitarian norm creating and norm building as a useful way of devising a means of protecting children affected by war.

Preventing the recruitment of children and their participation in hostilities is by far the best way of protecting them. The International Committee of the Red Cross (ICRC), therefore, places a great deal of emphasis on prevention. Ensuring respect for the rights of children is a top priority. Providing a secure environment where children can find ways of being safe, well fed and properly clothed that do not involve carrying a gun is something to which all of us can and must contribute. But it is states that bear the primary responsibility for creating this environment and, as has been shown, many states fail to do so.⁴

The Paris Principles on the Involvement of Children in Armed Conflict (2007) states that a child soldier can be defined as follows:

A child associated with an armed force or armed group refers to any person below 18 years of age who is, or has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes.⁵

Human rights law also declares 18 as the minimum legal age for recruitment and use of children in hostilities.

⁴ Kristin Barstad, "Preventing the Recruitment of Child Soldiers: The ICRC Approach," *Refugee Survey Quarterly*, 27, no. 4 (December 2009)

⁵ United Nations' Children's Fund (UNICEF), *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, February 2007, 7, <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>.

The purpose of this paper is to increase attention toward the fact that the immorality of these perpetrators will not be stopped unless awareness is increased, and robust mandates at the international and national levels continue to be approved and, even more importantly, supported and the political will to accept state responsibility needs to be there on the part of all nations and must not be pushed aside or forgotten.

The paper is divided into three parts: Part I. *Recruitment and Retention*; a number of factors contribute to the recruitment and retention of child soldiers and these are discussed; Part II. *The Responsibility to Prevent: The International Law Protecting Child Soldiers*; and Part III. *Transitional Justice and Reintegration* which ends the analysis by considering the matter of punishment or reintegration of child soldiers into society after the conflict has ended.

Part I. Recruitment and Retention

A number of factors contribute to the recruitment and retention of child soldiers.

Civil Wars

The current climate of civil war contributes to the phenomenon of child soldiers in this century. Civil wars are often “the product of failed or failing governments that have poor capacity and are cobbled by crime and corruption. The eruption of war worsens this situation, plunging society into a downward spiral of increased poverty and increased inability to meet basic needs”.⁶

Civil wars are far more common than international wars and are fought between governments and one or more non-state actors. There are large numbers of civilian casualties. In the failed states and war-plagued regions of the globe, young recruits are available to be forced, coerced or seduced into serving at the will of armed groups.⁷ Children are vulnerable and easy prey to be drawn into the midst of war.

⁶ Wessels, *Child Soldiers: From Violence to Protection*

⁷ Dallaire, *They Fight Like Soldiers, They Die Like Children*, 2.

Children and Small Weapons

Most wars today are fought in poor, developing countries with small, lightweight weapons, another contributing factor in the use of child soldiers. In earlier times young children lacked the necessary size and strength to handle larger weapons. Today, however, AK-47 (Kalashnikov) assault rifles can be purchased in Africa for the price of a chicken or goat and can be handled easily by young children. The profusion of light weapons such as rifles, rocket-propelled grenades, light mortars, light machine guns, and land mines has increased the easy availability of small, low-cost weapons and has increased their accessibility to young children in conflict situations.

In April 2008, the UN Secretary General's report on small arms and light weapons was presented to the Security Council. The report noted that

small arms facilitate a vast spectrum of human rights violations, including killing and maiming, rape and other forms of sexual violence, enforced disappearance, torture, and forced recruitment or use of children by armed groups or armed forces. More human rights abuses are committed with small arms than with any other weapon.⁸

Voluntary versus Nonvoluntary Recruitment

Children both join armed groups 'voluntarily' or are forced into them, becoming child soldiers through their abduction or force. The boundaries between choice and coercion, however, are frequently blurred. The causes of soldiering are contextual, vary across individuals, and are embedded in wider systems of exploitation and violence.⁹ Many children who "choose" to join are desperate and lack options. Such motivating factors, of course, raise the question of the use of the term "voluntary". "Young children are not only pliable, they are seen as expendable. Once in, leaving the armed group becomes impossible,"¹⁰ and they are frequently controlled through terror and brutality.

The Experience of Child Soldiers

Children have been thrown into firefights with little training, have been used as mine detectors, and sent unprotected into minefields to reduce the damage to adult troops. Child soldiers are often

⁸ UN General Assembly, *Impact of Armed Conflict on Children*, 26 August 1996, A/51/306, <https://childrenandarmedconflict.un.org/about-us/mandate/the-machel-reports/>.

⁹ Wessels, *Child Soldiers: From Violence to Protection*

¹⁰ *Ibid.*, 33.

deprived of the most basic needs, including food and rest. Children are beaten for making mistakes, creating trouble, or trying to run away. Often the children are forced to kill or rape, and are exposed to drugs, violence and sexual offences.¹¹ In Myanmar (Burma) children were ordered to make frontal assaults against highly fortified positions, creating a field of slaughter.¹² Commanders also use rewards to sculpt new attitudes and values. For example, children who show exceptional motivation and obedience are often given command posts with privileges and greater access to food or health care. In spite of this, there tends to be an omnipresent fear and threat of death for the children. As well, the torture and violence they see around them increases their fear of what will happen to them. “In many armed groups, crying itself is a punishable offense. Cut off from their family and feeling overwhelmed by their painful situation, some child soldiers commit suicide.”¹³

Sexual Exploitation

Child soldiers often experience different forms of sexual abuse and exploitation and, for them, there is no escape. Large numbers of children, mostly girls but also boys, are exploited sexually in war zones. Rape is perhaps the most publicized form of sexual exploitation, but more hidden forms of sexual violence are also wide-spread.¹⁴

Part II. The Responsibility to Prevent

Although this paper is intended to make clear that the problem of child soldiers has not been eradicated, it is worthwhile recognizing that progress has been made in the international legal arena and that these laws and conventions should be implemented when we speak of states’ responsibility to protect child soldiers. Certain authorities are responsible for ensuring that international humanitarian law (IHL) is adopted and obeyed, including international bodies in the case of multinational forces, traditional institutions, clan leaders, armed groups and States. In order for them to be effective, states need to sign the relevant treaties, and adopt and implement the relevant laws governing child recruitment.

¹¹ Whitman, L. and J. Fleishman, *The Child Soldiers Africa Report* 39(4); (2012): 65-66

¹² Wessels, *Child Soldiers: From Violence to Protection*

¹³ *Ibid.*, 63.

¹⁴ *Ibid.*, 27.

PART III. Transitional Justice and Reintegration

Restoring Normalcy

The paper argues, overall, that “Children who participate in conflict must be viewed as victims of institutionalized child abuse who have suffered human rights violations and psychosocial harm.”

Jareg (2005) recommends a number of methods of restoring normalcy, including:

restoring family relationships, community participation, health services including mental health, organized learning opportunities, vocational or income-generating training and recreational activities, modified according to the different cultural, social and political contexts one is working in.¹⁵

Not all child soldiers are wanted by families or society, however, which increases the possibility that they will become prime targets for re-enrollment.

At the stage of transitional justice, there is often a thin line between child soldiers being judged as either victims or perpetrators. Siegel defines transitional justice as the study of the choices made and the quality of justice rendered when states are replacing authoritarian regimes by democratic state institutions.¹⁶ While the protectionist view of children as passive victims who are vulnerable tends to be the most common, and one that I feel is closest to the reality, there are some proponents who see children as autonomous actors, bearing criminal responsibility for heinous crimes by having killed, maimed or tortured their victims. The minimum age of criminal responsibility (MACR) remains highly uncertain under international children’s rights law. Article 40 of the CRC obliges states to establish a MACR but does not specify at what age and the MACR varies greatly across countries. Before the ICC, prosecution below the age of eighteen was excluded through Art. 26 of the Rome Statute.¹⁷

¹⁵ Elizabeth Jareg, *Crossing Bridges and Negotiation Rivers: The Rehabilitation and Reintegration of Children Associated with Armed Forces* (Norway: Coalition to Stop the Use of Child Soldiers, 2005), 4, http://www.pscentre.org/wp-content/uploads/2013/03/crossing_bridges_childsoldiers.pdf.

¹⁶ Richard Lewis Siegel, “Transitional Justice: A Decade of Debate and Experience,” *Human Rights Quarterly* 20, no. 2 (May 1998): 431.

¹⁷ Ilse Derluyn, Wouter Vandenhole, Stephan Pamentier and Cindy Mels, “Victims and/or Perpetrators? Towards an interdisciplinary dialogue on child soldiers,” *BMC International Health and Human Rights* 15, no. 1 (October 2015): 28.

Protecting the Rights of Child Soldier Refugees and those Internally Displaced

Children may seek access to refugee states pursuant to Article 1(F) (a) of the Refugee Convention if they have been used as child soldiers and commit international crimes.¹⁸ At the same time, many countries are opposing the number of refugees seeking asylum. As a result, regulations are being tightened in many countries and it becomes even more difficult for refugees to benefit from *the 1951 Convention Relating to the Status of Refugees* (Refugee Convention). The focus of this is Articles 1(A)(2) and 1 (F)(a) of the Refugee Convention (also referred to the inclusion clause) which outlines the criteria that an individual must meet to be recognized as a refugee.¹⁹

Conclusion

In conclusion, I have presented the case for the protection of some of the most vulnerable persons in conflict; i.e., child soldiers. What the study shows is that children may or may not become child soldiers of their own free will. In fact, the evidence suggests that children are most often forced or abducted into violent groups seeking their help. And, even if they are considered to have joined on a voluntary basis, the question of what is considered “voluntary” is consistently under debate. Children in combat situations often find themselves without family, without food or shelter, without safety or security or education and see the fighters as a form of security and hope. Once in, they are often subject to numerous forms of abuse and exploitation including beatings, drugs, and sexual assault and are forced to commit heinous crimes for fear of their own lives.

The study has addressed the matter of the international community’s responsibility to prevent this from happening, to protect vulnerable children and to consider what happens to them when the fighting stops. The international community has worked hard to develop norms that cover all these areas and those norms have been referred to in the paper. The study also looks further into the predicament of the child soldier as refugee and any existing regulations or laws that have been developed to help the child soldier integrate into a new country when returning to their own family and society is not an option. I remind the reader of the relevant national and international

¹⁸ “Convention Relating to the Status of Refugees,” 28 July 1951, United Nations Treaty Series vol. 189 no. 2545, 156.

¹⁹ Magali Maystre, “The Interaction between International Refugee Law and International Criminal Law with Respect to Child Soldiers,” *Journal of International Criminal Justice* 12, no. 5 (December 2014): 976.

humanitarian laws in a world where the immigration and refugee crisis appears to be hardening prospects of entry. And, I write to impress upon the reader the situation for children at risk and the efforts the international community has made to alleviate or prevent their suffering and to reintegrate them into society as contributing members with a legitimate, and safe, status. I argue that the Responsibility to Protect must not be forgotten in the rush to put national security ahead of humanitarian principles or concerns.

A Step Towards Integrating the Women, Peace and Security Agenda into the Responsibility to Protect

Jennifer A. Orange

Received August 29th, 2018

Introduction

In order to maintain legitimacy and find its place as a legal norm, the Responsibility to Protect Doctrine (R2P) must ensure the protection of the most vulnerable populations on the globe against four major categories of crimes: genocide, war crimes, crimes against humanity and ethnic cleansing. Women and girls are disproportionately affected by armed conflict and are regularly targeted by belligerents.¹ Despite its criminalization, sexual violence against women and girls continues to be a tactic of war. What is more, according to UN Women, violence against women and girls in conflict zones leads to a cascade of human rights violations. Women and girls lose land rights, are less likely to attend primary school, experience higher infant mortality, and face higher rates of child marriage.² While states strive to understand the causes and consequences of violence against women, women are massively underrepresented in governmental positions that support the prevention and resolution of conflict.³

¹ Standing Senate Committee on Human Rights, 'Women, Peace and Security: Canada Moves Forward to Increase Women's Engagement', November 2010, <https://sencanada.ca/content/sen/committee/403/huma/rep/rep05nov10-e.pdf>;

² 'Infographic: Women and Armed Conflict', UN Women, accessed 23 August 2018, <http://www.unwomen.org/digital-library/multimedia/2015/10/infographic-women-armed-conflict>.

³ UN Secretary-General, 'Report of the Secretary-General on Conflict-Related Sexual Violence', 15 April 2017, <https://www.un.org/en/events/elimination-of-sexual-violence-in-conflict/pdf/1494280398.pdf>; 'Facts and Figures: Peace and Security', UN Women, accessed 24 August 2018, <http://www.unwomen.org/what-we-do/peace-and-security/facts-and-figures>. 'Despite Growing Awareness of Urgent Need to End Sexual Violence, Empower Women in Conflict Zones, Real Progress Seriously Lagging, Security Council Told | Meetings Coverage and Press Releases', accessed 23 August 2018, <https://www.un.org/press/en/2017/sc13045.doc.htm>.

Since its inception in 2001, R2P has been criticized for not recognizing the role of women and girls both as victims of violence and leaders in achieving peace and stability. The International Commission on Intervention in State Sovereignty (ICISS)'s 2001 report failed to include a gendered perspective in its initial description of R2P as it outlined the obligations of states to prevent genocide, war crimes, ethnic cleansing and crimes against humanity.⁴ While some progress has been made to integrate the women, peace, and security agenda with R2P, more state action is needed.⁵

This paper first reviews the developing international legal framework that recognizes the prevalence of violence against women and girls in armed conflict, establishes its illegality, and calls for more involvement of women in the prevention and resolution of armed conflict. I then discuss the announcements made by the Canadian government at the Vancouver UN Peacekeeping Defence Ministerial Conference in November 2017, and analyze how Canada's evolving peacekeeping agenda integrates feminist concepts into the principles underlying R2P. The development of R2P from an aspirational framework to an international legal norm relies in part on establishing state practice and *opinio juris*, that is, a recognition among states that a certain practice is obligatory.⁶ Thus, the actions of Canada can influence the integration of the rights of women and girls into R2P as a legal norm, and enrich the very concept of state sovereignty.⁷

⁴ <http://responsibilitytoprotect.org/index.php/women-and-conflict> [also see 2001 report]

⁵ Sara Davies, Sarah Teitt, and Zim Nwokora, 'Bridging the Gap: Early Warning, Gender and the Responsibility to Protect', *Cooperation and Conflict* 50, no. 2 (2015): 228–49, <https://doi.org/10.1177/0010836714545689>. Progress in official UN documents, such as the Secretary-General's 2009 report on "Implementing the Responsibility to Protect", has grown to recognize the importance of protecting women's rights in order to prevent societies from plunging into mass violence, the ability of women's groups to train troops on gender issues and human rights and the unappreciated work of women's organizations in investigating and monitoring violent situations and providing support to victims of sexual violence. Critically, the report reiterated that sexual violence against women can constitute war crimes, genocide, and crimes against humanity: UN General Assembly, A/63/677 (2009), available at: <http://responsibilitytoprotect.org/implementing%20the%20rtop.pdf> [accessed 25 August 2018].

⁶ The two main sources of international law are treaties and international customary law. The general rule is that a practice reaches the status of customary law when (1) there is sufficient and settled state practice and (2) states subjectively feel that they are conforming to what amounts to a legal obligation (also known as *opinio juris*). See *Statute of the International Court of Justice*, 59 Stat. 1055, T.S. 993, Bevans 1179 (1945) at Arts. 38(1)(a) and (b); *North Sea Continental Shelf, Re*, [1969] I.C.J. Rep. 3 at para 77. Jurists look for a general recognition among states that a certain practice is obligatory, although universality is not required. Ian Brownlie has listed numerous sources of evidence of state practice, such as: diplomatic correspondence, policy statements, press releases, the opinions of official legal advisers, official manuals on legal questions, e.g. manuals of military law, executive decisions and practices, orders to naval forces etc., comments by governments on drafts produced by the International Law Commission, state legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs, and resolutions relating to legal questions in the United Nations General Assembly. Ian Brownlie, *Principles of Public International Law*, 7th ed. (Oxford: Oxford University Press, 2008) at 6.

⁷ Secretary General Ban Ki-moon framed state sovereignty as a responsibility to protect one's own subjects, as well as the subjects of other states that are at risk of genocide, war crimes, crimes against humanity, and ethnic cleansing: UN General Assembly, 'Implementing the Responsibility to Protect: Report of the Secretary-General', 12 January 2009,

The Importance of Increasing the Number of Women Peacekeepers

The rights of women and girls are protected through a number of well-established international treaties and declarations addressing international human rights and humanitarian law that have developed over the past 70 years.⁸ In the past 20 years, much progress has been made to officially recognize the alarming rates of violence against women and girls that occur before, during, and after armed conflict both within and between states. The inclusion of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity in the definitions of crimes against humanity and war crimes in the *Rome Statute of the International Criminal Court* was a major achievement in recognizing the impact of gender based violence.⁹ The UN Security Council acknowledged as early as 2000 in S.C. Resolution 1325 that women and girls account for the vast majority of civilians adversely impacted by armed conflict and recognized the important role that women should play as leaders in the prevention and resolution of armed conflict. The resolution further indicated a willingness to incorporate a gender perspective into peacekeeping and urged the Secretary General to increase the role and contribution of women in “United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel.”¹⁰ The Security Council then reiterated these goals in six resolutions in as many years.¹¹

https://www.un.org/ruleoflaw/files/SG_reportA_63_677_en.pdf. Including violence against women and girls among those crimes will in time impact notions of state sovereignty to include protecting female subjects.

⁸ See, for examples, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III); UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993; UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13; United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995; International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287; International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3; UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137; and UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

⁹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, Articles 7 & 8.

¹⁰ Security Council resolution 1325 (2000) [on women and peace and security], available at: <http://www.un-documents.net/sr1325.htm>.

¹¹ See UN Security Council, S/Res/1820 (2008), S/Res/1888/ (2009), S/Res/1889 (2009), S/Res/1960 (2010), S/Res 2106 (2013), and S/Res 2122 (2013).

A key part of ensuring that gender-based violence is prevented and addressed is putting women into peacekeeping and peace-making roles.¹² Nonetheless, almost two decades later, violence against women in conflict has become more visible,¹³ while the number of women actually hired as peacekeepers and mediators is dismal. Recognizing the link between women's meaningful involvement in peace operations and the achievement of long-term peace, in 2015 the UN Security Council passed Resolution 2242, which sets a goal of doubling women in roles as military and police peacekeepers by 2020.¹⁴ Yet in 2017, women comprised less than 4% of UN peacekeepers and less than 10% of police deployed to UN missions.¹⁵

Canada's November 2017 Announcements

In November 2017, Canada announced its second Women, Peace and Security Action Plan for the period of 2017-2022 ("Action Plan") with \$17 million for new projects. The Action Plan will be advanced through "international assistance programming, diplomacy and our participation in peace operations and other peace and stabilization efforts, including through the UN, NATO, G7, the Commonwealth, La Francophonie, and with the International Committee of the Red Cross." The announcement situates the plan within Canada's "feminist foreign policy" and more broadly within the women, peace, and security agenda as set out in the numerous Security Council resolutions.¹⁶

¹² I should note that merely ensuring that women are involved is not enough. Women, as well as people of all gender-identities, must be trained to be sensitive to gender in all of their roles in the military, peacekeeping and policing. These organizations must also examine their practices to ensure that gender difference is valued and that they are not perpetuating gender inequity. For more, see Lindy Heineken, 'Challenges Facing Women in Peacekeeping', Oxford Research Group, accessed 24 August 2018, <https://www.oxfordresearchgroup.org.uk/Blog/challenges-facing-women-in-peacekeeping>.

¹³ 'Infographic'.

¹⁴ UN Security Council, S/Res/2242 (2015) at 8.

¹⁵ 'UN Peacekeeping: Where Are All the Women?', Council on Foreign Relations, accessed 23 August 2018, <https://www.cfr.org/blog/un-peacekeeping-where-are-all-women>.

¹⁶ 'Women, Peace and Security', Prime Minister of Canada, 15 November 2017, <https://pm.gc.ca/eng/news/2017/11/15/women-peace-and-security>.

One interesting component of the Action Plan is the new “Elsie Initiative”. Titled after the first name of Canadian women’s rights pioneer and aviation expert Elsie McGill, the Elsie Initiative focuses on reducing barriers to women’s meaningful participation in peacekeeping operations. In Canada’s announcement, it stated that the Elsie Initiative will:

1. Support the development of a systematic approach to deploy more women in peace operations.
2. Design tailored technical assistance support for countries that contribute peacekeepers to ensure the right conditions are in place for the deployment of women.
3. Provide assistance to designated UN missions to improve their ability to support and benefit from women’s increased participation in peace operations. Canada will provide \$6 million toward this goal.
4. Launch a global fund to support the deployment of women peacekeepers. Canada will provide \$15 million to establish this fund.
5. Monitor and evaluate so that the Elsie Initiative can be adjusted as needed and help build a solid base of evidence for the development of a more comprehensive approach that could be fully integrated within the UN peacekeeping system.¹⁷

The Elsie Initiative has both domestic and international ramifications. Canada is investing in support for its own female peacekeepers, as well as working to support the deployment of women from other states as UN peacekeepers. The Elsie Initiative’s objectives align with, and provide a gendered strength to, the R2P goals of preventing and protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing.

The 2017 Action Plan and R2P

The launch of the Action Plan does not reference the R2P doctrine. However, the Action Plan works to knit together the principles of R2P and the women, peace, and security agenda in ways that could strengthen what is means for a state to fulfill its obligations under R2P. Furthermore, the

¹⁷ Global Affairs Canada and Global Affairs Canada, “The Elsie Initiative on Women in Peace Operations”, backgrounders, gcnews, 12 March 2018, <https://www.canada.ca/en/global-affairs/news/2018/03/the-elsie-initiative-on-women-in-peace-operations.html>.

Action Plan is evidence of state practice that that integrates the role of women in what it means to prevent the four named crimes in R2P.

The Action Plan is being put to the test in Canada's 2018 participation in the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) peacekeeping mission.¹⁸ As of May 2018, Canada's peacekeepers are 14% women. While this number exceeds the goals set in the Elsie Initiative (of 8%), it falls short of the total goal set by the Security Council in Resolution 2242. I also note that while 14% may be a higher number than past missions, it is still only 14%.

In response to questions about this number, the Minister of National Defence, Harjit Sajjan, stated that the number of women will improve once further peacekeeping operations get to the field. However, somewhat disappointingly, the CBC reported that the Minister made two statements that prioritize "having the right people" present over the number of women engaged in the mission: "The Canadian Armed Forces have done their work of making sure that we have the right people,"...

"We want to make sure that Canadian leadership is there and highlighted," Sajjan said. "It's not just about male or female. it's [sic] about having the right people."

Of course, having personnel with the appropriate skills in a complex peacekeeping situation is critical. What is disappointing is both that the Canadian Armed Forces do not have enough women that are considered "right" for the mission, and that having the right people is deemed an acceptable excuse for having fewer women than planned. Having women must be understood as a necessary component of having the "right people". A key part of R2P and the women, peace, and security agenda is that states must provide training and opportunities for women so that they can engage in activities such as peacekeeping and policing that help prevent atrocities. The current Canadian

¹⁸ Adrienne Arsenault · CBC News · Posted: Jun 24 and 2018 6:00 AM ET | Last Updated: June 24, 'Canadian Troops in Mali Prepare for Daunting, Dangerous UN Peacekeeping Mandate | CBC News', CBC, 24 June 2018, <https://www.cbc.ca/news/world/arsenault-minusma-1.4719915>.

government has committed to a feminist agenda domestically and internationally,¹⁹ but there is clearly more work to be done as only women comprise only 15% of our Armed Forces.²⁰

Conclusion

The elevation of R2P to an international legal norm relies on a concerted effort of states to protect their most vulnerable citizens. As Secretary-General Ban Ki-moon stated in 2009, states that respect diversity in their populations are less likely to suffer mass violations of human rights.²¹ In Canada, we are proud of our diversity and the strength of our equality laws. Canada's commitment to increasing the number of Canadian women in peacekeeping missions abroad in Mali and elsewhere, and supporting other states to do the same, is an example of a state practice that integrates a feminist perspective into R2P. Each step towards gender equality in the prevention and resolution of armed conflict is important, but we must continue to press the Canadian government to do more to meet and exceed international standards.

¹⁹ 'The New Era of Canadian Feminist Foreign Policy | Canadian International Council', accessed 29 August 2018, <https://thecic.org/the-new-era-of-canadian-feminist-foreign-policy/>.

²⁰ Murray Brewster · CBC News · Posted: Jun 25 and 2018 9:04 PM ET | Last Updated: June 26, 'Women Make up 14% of Canada's Peacekeeping Deployment to Mali | CBC News', CBC, 26 June 2018, <https://www.cbc.ca/news/politics/mali-women-peacekeeper-short-1.4721774>.

²¹ UN General Assembly, 'A/63/677' at para. 15.

Why Security Council Reform is Essential for the Responsibility to Protect to Actually Impact the Global Level of Atrocity Crimes

Dr. Jeremy Sarkin

Received October 28th, 2018

Introduction

With great fanfare at the conclusion of the International Commission on Intervention and State Sovereignty (ICISS) in 2001,¹ the Responsibility to Protect (R2P) was born.² It was not conceptually new, but rather a redesign or a repackaging of the old concept of humanitarian intervention (HI).³ While it could be argued that R2P differs from HI in that it has a different approach, and is based on a reformulation of sovereignty, the de facto result of each is similar – they both enable intervention (at least part of what R2P is) with the intention of protecting people.⁴ Thus, the concept of intervention exists within both concepts. HI has occurred often in recent times, including after the Rwandan genocide of 1994. HI was also used in Kosovo in 1999,⁵ in other words before R2P came into being. Crucially, the intent behind both HI and R2P, and what actually occurs, is analogous. This is because the notion of intervening in countries without their consent, in spite of sovereignty claims, has existed for a long time. Humanitarian intervention was a practice that occurred already,

¹ International Commission on Intervention and State Sovereignty. 2001. *The Responsibility to Protect*. Ottawa: International Development Research Centre.

² Jeremy Sarkin. "Is the African Union's position on non-indifference making a difference?: the implementation of the responsibility to protect (R2P) in Africa in theory and practice," *Journal of African Union Studies* 5, no. 1 (2016): 5-37.

³ Jeremy Sarkin. "The rise and fall (and supposed rise again) of the responsibility to protect (R2P) as a norm of international law: R2P in the human rights landscape," In *Reassessing the Responsibility to Protect*, ed. Brett R. O'Bannon (New York: Routledge, 2015), 51-73.

⁴ Jeremy Sarkin. "The role of the United Nations, the African Union and Africa's sub-regional organizations in dealing with Africa's human rights problems: Connecting humanitarian intervention and the responsibility to protect," *Journal of African Law* 53, no. 1 (2009): 1-33.

⁵ Fernando R. Teson. "Kosovo: A powerful precedent for the doctrine of humanitarian intervention," *Amsterdam Law Forum*, no. 1 (2008): 42.

at least, in the nineteenth century.⁶ Actual state practice saw interventions on the High Seas to prevent the slave trade and to deal with piracy. Minority protection (in other words the protection by a state of the human rights of people living in another country) was a regular reason for states to intervene in the affairs of another, despite stronger affirmations of sovereignty than those that exist today. Thus, for decades, if not centuries, the world has recognised the need, at times, to intervene in places. HI has occurred without the state's consent, where the state itself is responsible for, or cannot halt, atrocities occurring within its borders.

Following a similar track, the protections available from international humanitarian law, as well as international human rights law, are not new. While most argue that human rights protection only became available after World War 11, in reality such legal protections go back centuries. Even laws about genocide and crimes against humanity protections are not modern, but go back at least until the Martens Clause contained in the Hague Conventions of 1899 and 1907. The critical issue is that R2P, and what underpins R2P, are not new. The world has for a long time sought to find ways to protect people.

The question is why, despite the fact that intervention has been state practice, and is recognised by international law in various places, is it used so infrequently; and when it is used it is often used by states who do so for non-human rights reasons, even though they sometimes state the reason as R2P. In this sense, there is a need, as has been recently noted by Alex Bellamy and Edward Luck, to examine how R2P is being used in practice (or not). This has not always occurred with much focus on the theory of R2P.⁷

This article reviews R2P from the point of its rebirth, or renaissance, at the beginning of the twenty-first century, and its alleged move to becoming a global norm. It focuses on the question of why it is only used in relatively few places around the world to stop or prevent mass human rights abuses. This is not to argue that R2P is not used - it is - the issue is that it is not being used in the most important and most difficult cases. The article reviews why R2P language is often resorted to, and while it has three pillars, its pillars of prevention and rebuilding are used continually, but the

⁶ Jeremy Sarkin. "The responsibility to protect and humanitarian intervention in Africa," *Global Responsibility to Protect* 2, no. 4 (2010): 371-387.

⁷ Alex J. Bellamy, Edward C. Luck *The Responsibility to Protect From Promise to Practice* (Cambridge, UK: Polity Books, 2018).

practical application of it (as far as the third pillar relating to reaction) remains limited, when it comes to actually dealing with ongoing massive human rights violations. The article reviews what is happening around the world to argue that R2P is not being used in the sense that it was designed for. The argument is that there are many places with massive violations that R2P has been unable to respond to.

The article argues that much of the blame today for the high level of atrocity crimes in so many places, in many cases for years if not decades, can be placed at the door of the Security Council (SC). It is argued that it is the role that the SC plays, or rather, does not play in putting a stop to massive violations, that is crucial to understanding why R2P is not playing the key role that was envisaged when it was reborn some twenty years ago. For this reason alone (although there are many other reasons why reform is needed), it is argued SC reform is urgently needed.

The global human rights context

For the last decade or so the human rights situation in the world has become progressively worse.⁸ Freedom House (2018) in its "Freedom in the World Report" noted that for the twelfth year in a row the conditions of political freedoms and human rights have seen an overall deterioration globally.⁹ While international wars are seemingly on the decrease, the number of major civil wars rose from 4 in 2007 to 11 in 2014.¹⁰

Around the world an enormous number of atrocity crimes have been committed. While the intervention in Libya was seen by some as indicating that R2P's time had arrived¹¹ - this author disagrees¹² - what has occurred since then indicates that this is not the case, and that, actually, little is

⁸ Jeremy Sarkin. "The Need to Reform the Political Role of the African Union in Promoting Democracy and Human Rights in Domestic States: Making States More Accountable and Less Able to Avoid Scrutiny at the United Nations and at the African Union, Using Swaziland to Spotlight the Issues," *African Journal of International and Comparative Law* 26, no. 1 (2018): 84-107.

⁹ Freedom House. (2018). Freedom in the world 2018: Democracy in crisis. Retrieved from <https://freedomhouse.org/report/freedom-world/freedom-world-2018>.

¹⁰ Sebastian Von Einsiedel. "Major Recent Trends in Violent Conflict," *United Nations University Centre for Policy Research*, Occasional Paper 1, (2014).

¹¹ Thomas G. Weiss. "R2P Alive and Well After Libya," *Ethics and International Affairs* 25, no. 3 (2011): 5.

¹² Jeremy Sarkin. "Is the Responsibility to Protect an Accepted Norm of International Law in the post-Libya Era? How its Third Pillar ought to be applied," *Groningen Journal of International Law* 1, no. 0 (2012): 11- 48.

being done to halt the massive abuses that are being perpetrated everywhere.¹³ Thus, the words of Graham Cronogue, that the Libyan intervention would “make Russia and China extremely hesitant to approve the Responsibility to Protect in the future,”¹⁴ have been proved correct. If one looks at the situation in places such as Syria where the conflict began in 2011,¹⁵ or in Yemen, Myanmar, North Korea, South Sudan, Central African Republic, Eritrea,¹⁶ Burundi, Nigeria, Somalia, the DRC, Libya, China, Pakistan, Venezuela, Mexico, Afghanistan, and Somalia, among others, the number of abuses is enormous. It has been argued that there are other, seldom-mentioned places that would benefit greatly from the support of R2P such as, for example, Bahrain.¹⁷

In Syria over 500,000 people have been killed since 2011.¹⁸ While some argue that the lack of action in Syria is enough to claim that R2P has failed,¹⁹ it is the extent and magnitude of atrocities elsewhere which indicate that R2P has not lived up to its intended goal. Recently, in South Sudan, the ethnically fuelled civil war killings have resulted in the death of more than 380,000 people.²⁰ In Myanmar/ Burma about 750,000 people have fled to Bangladesh because of the genocide, crimes against humanity, ethnic cleansing, and other atrocities.²¹

¹³ Andrew Garwood-Gowers. "China and the "Responsibility to Protect": The implications of the Libyan intervention," *Asian Journal of International Law* 2, no. 2 (2012): 375-393.

¹⁴ Graham Cronogue. "Responsibility to protect: Syria the law, politics and future of humanitarian intervention post-Libya," *International Humanitarian Legal Studies* 3, no. 1 (2012): 124-159, 151.

¹⁵ Roy Allison. "Russia and Syria: explaining alignment with a regime in crisis," *International Affairs* 89, no. 4 (2013): 795–823.

¹⁶ The Human Rights Council adopted A/HRC/RES/38/15 in June 2018 on the Situation of human rights in Eritrea in which it was stated that it “Condemns in the strongest terms the reported systematic, widespread and gross human rights violations that have been and are being committed by the Government of Eritrea in a climate of generalized impunity.”

¹⁷ Aidan Hehir. "Bahrain: An R2P Blindspot?" *International Journal of Human Rights* 19, no. 8 (2015): 1129–1147.

¹⁸ Kailey Love. "Will UN's Accountability Mechanism Provide Justice in Syria?" *The Washington Report on Middle East Affairs* 36, no. 4 (2017): 62. For the specifics see Debarati Guha-Sapir, Debarati, Benjamin Schlüter, Jose Manuel Rodriguez-Llanes, Louis Lillywhite, and Madelyn Hsiao-Rei Hicks. "Patterns of civilian and child deaths due to war-related violence in Syria: a comparative analysis from the Violation Documentation Center dataset, 2011–16," *The Lancet Global Health* 6, no. 1 (2018): e103-e110.

¹⁹ Graham Melling and Anne Dennett. "The Security Council veto and Syria: responding to mass atrocities through the "Uniting for Peace" resolution," *Indian Journal of International Law* 57, no. 3-4 (2017): 285-307.

²⁰ Megan Specia, "383,000: Estimated Death Toll in South Sudan's War," *New York Times* (New York, US), 26 September 2018, https://www.nytimes.com/2018/09/26/world/africa/south-sudan-civil-war-deaths.html?rref=collection%2Fsectioncollection%2Fafrika&action=click&contentCollection=afrika®ion=stream&module=stream_unit&version=latest&contentPlacement=5&pgtype=sectionfront.

²¹ Basel Karo, Christopher Haskew, Ali S. Khan, Jonathan A. Polonsky, Md Khadimul Anam Mazhar, and Nilesh Buddha. "World Health Organization Early Warning, Alert, and Response System in the Rohingya Crisis, Bangladesh, 2017-2018," *Emerging infectious diseases* 24, no. 11 (2018).

Some states have experienced long-term mass human rights problems, two examples of which are North Korea (DPRK) and Swaziland.²² Most discussions today cover the DPRK in the context of denuclearization, but that regime has been committing massive crimes on its own people, including crimes against humanity, for more than 60 years. It is estimated that between 80,000 and 120,000 political prisoners are currently detained and that there have been hundreds of thousands of disappearances, in addition to many other types of violation.²³ Another country that has been committing mass human rights violations against its inhabitants for decades is Swaziland. It is one of the most autocratic draconian states in the world where no political parties or trade unions are permitted. The country is never on the international agenda and little is done to comment on its record or to sanction it for its ongoing practices.²⁴

Is R2P a new global norm mostly in theory or actually in practice?

The global context is that our planet is experiencing a human rights crisis and R2P has not proved to be effective in practice in dealing with the profusion of mass human rights problems that exist. This is true despite the fact that it was unanimously accepted by states at the conclusion of the World Summit in 2005.²⁵ In actual fact, it was not recognised by all states then, and is still far from being universally accepted.

In spite of the “paradigm shift”²⁶ as a result of the renaissance of R2P or the growth of the new norm,²⁷ advancements that R2P has brought into the twenty-first century²⁸ to deal with situations

²² Jeremy Sarkin. "The Need to Reform the Political Role of the African Union in Promoting Democracy and Human Rights in Domestic States: Making States More Accountable and Less Able to Avoid Scrutiny at the United Nations and at the African Union, Using Swaziland to Spotlight the Issues," *African Journal of International and Comparative Law* 26, no. 1 (2018): 84-107.

²³ See further on action to be taken Jawoon Kim and Alan Bloomfield. "Argumentation, Impact, and Normative Change: Responsibility to Protect after the Commission of Inquiry Report into Human Rights in North Korea," *Global Responsibility to Protect* 9, no. 2 (2017): 173-201.

²⁴ Sarkin. "The Need to Reform the Political Role of the African Union," *African Journal of International and Comparative Law*.

²⁵ Aidan Hehir. "Ten Years After The World Summit What Has R2P Achieved?," in *Responsibility to Protect: Where Do We Stand 10 Years After?*, ed. Vasilka Sancin, (Ljubljana: University of Ljubljana Press, 2015), 27-42.

²⁶ Nigel Rodley. "R2P and International Law," in *The Oxford Handbook of the Responsibility to Protect*, eds. Alex Bellamy and Tim Dunne (Oxford: Oxford University Press, 2015).

²⁷ Jennifer Welsh. "Norm Contestation and the Responsibility to Protect," *Global Responsibility to Protect* 5, no. 4 (2016): 365-396.

²⁸ Marie-Eve Loiselle. "The Normative Status of the Responsibility to Protect," *Global Responsibility to Protect* 5, no. 3 (2013): 317-341.

such as the Rwandan genocide and the atrocities committed at Srebrenica,²⁹ the point of the R2P today remains largely unrealised. Interestingly, it was the SC that was officially blamed for not taking action against these events.³⁰ While R2P has been termed the “most dramatic normative development of our time,”³¹ the numerous human rights catastrophes that exist in many parts of the world³² indicate that R2P has not achieved what it could have. This is the case even though the ICISS declared: “we want no more Rwanda’s and we believe that the adoption of the proposals in our report is the best way of ensuring that.”³³

While the UN and others have tried to limit R2P conceptually by downgrading its importance (for example by limiting its application to genocide, crimes against humanity and war crimes, despite a much wider vision initially, so much so that it is called R2P-Lite today by some),³⁴ little has been done to promote the wider application of R2P to certain state actors that have to date been unsympathetic to its cause. To achieve greater support for R2P, the UN and other actors have also limited R2P’s scope, to make it more palatable to some, by setting criteria as to when and why it can be used: again, to little avail. The same states that have been opposed to it are still today. Some are more vehemently opposed to it than they were in the past. Others that were sympathetic in the past are not as well inclined towards it today.

The reality is that narrowing the focus of R2P has not attracted more supporters, especially in the form of states that have been for the most part unsympathetic to it. In fact, attitudes towards R2P have become hardened over time. This is so especially after the 2011 Libyan intervention.³⁵ This is true for certain countries like India when it comes to the topic of intervention.³⁶ For critics, R2P is

²⁹ Alex J. Bellamy. “Global Politics and the Responsibility to Protect,” in *From Words to Deeds*, (London: Routledge, 2011), 14.

³⁰ Anne Peters. “The Security Council’s Responsibility to Protect,” *International Organizations Law Review* 8, no. 1 (2011): 15-54.

³¹ Ramesh Thakur and Thomas G. Weiss. “R2P: From idea to norm—and action?,” *Global Responsibility to Protect* 1, no. 1 (2009): 22-53, 23.

³² Max Du Plessis, Andreas Coutsoudis, and Jabu Thobela-Mkhulisi “Falls the Shadow – Defending Democracy in South Africa and Across the World”, *European Human Rights Law Review* 3, (2018).

³³ International Commission on Intervention and State Sovereignty. “The Responsibility to Protect,” *International Development Research Centre*, (2001): xiii.

³⁴ Thomas G. Weiss. “R2P after 9/11 and the World Summit,” *Wisconsin International Law Journal* 24, no.3 (2006): 750.

³⁵ Sarah Brockmeier, Oliver Stuenkel, and Marcos Tourinho. “The impact of the Libya intervention debates on norms of protection,” *Global Society* 30, no. 1 (2016): 113–133.

³⁶ Madhan Mohan Jaganathan and Gerrit Kurtz. “Singing the tune of sovereignty? India and the responsibility to protect,” *Conflict, Security & Development* 14, no. 4 (2014): 461–487.

seen to be a tool to get rid of undemocratic governments, in other words a tool for regime change.³⁷ As noted above, this is true despite attempts by those supportive of R2P to narrow its scope to gain more supporters. There have also been attempts to highlight the pillars of prevention and rebuilding, and downplay the pillar of reaction and its component of intervention. Despite this, the fear surrounding regime change continues, and for many, while R2P is supposed to have three pillars, the only one of importance is the responsibility to react.

R2P is however a much broader concept. It encompasses a responsibility not just to react but also to prevent atrocities and to rebuild societies. At this juncture, in the context of what is occurring around the world, the most undervalued and underused aspect of R2P is the second pillar, the responsibility to react. As Thomas Weiss has noted: “it is preposterous to argue that to prevent is the most important priority; the most urgent priority is to react better.”³⁸ This is not to argue that the first and the third pillars are unimportant, but rather to contend that those pillars imply voluntary compliance, and the major problems today are where states refuse to halt the abuses and other strategies have been attempted by the international community to little or no avail.

While the term R2P itself is used more often rhetorically, it seems, in the SC³⁹ and elsewhere, the reality is that it is used and applied in a very narrow sense.⁴⁰ The term is often used for linguistic purposes, and to indicate commitment to it, rather than to refer to the actual achievement of the goals for which it was designed. Its usage is also applied in ways that does little real justice to the main intention of R2P. In other words, it is claimed that at times R2P is being utilised when it is not and that what is actually utilised is not really R2P.

While some rightfully argue that R2P has played a positive role generally speaking,⁴¹ this is not quite true when it comes to halting mass atrocities. It is however not fair to view R2P as “sound and fury signifying nothing” or a mere “slogan employed for differing purposes shorn of any real meaning or

³⁷ Courtney J. Fung. "Separating Intervention from Regime Change: China's Diplomatic Innovations at the UN Security Council Regarding the Syria Crisis," *The China Quarterly* 235, (2018): 1-20.

³⁸ Thomas G. Weiss, *Humanitarian Intervention* (Polity Press, Cambridge 2012).

³⁹ Thomas G. Weiss. "Military humanitarianism: Syria hasn't killed it," *The Washington Quarterly* 37, no. 1 (2014): 7-20.

⁴⁰ Jess Gifkins. "R2P in the UN Security Council: Darfur, Libya and beyond," *Cooperation and Conflict* 51, no. 2 (2016): 148-165.

⁴¹ Luke Glanville. "Does R2P matter? Interpreting the impact of a norm," *Cooperation and Conflict* 51, no. 2 (2016): 184-199.

utility.”⁴² This is not reflective of the holistic role that R2P has played. Nonetheless it cannot be forgotten that R2P was designed mainly as a response to the world standing idly by when mass atrocities were occurring in the 1990s. Admittedly this does not encompass the entire purpose of R2P. However, to remove its interventionist role, guts the real purpose behind its establishment. Even those who are usually against its application, such as the Russians, use R2P in their language, and seemingly in ways that suits their political agenda.⁴³ Thus, Russia has used the term to justify its role in Georgia, Ukraine and to rationalize its occupation of Crimea.⁴⁴

What is true is that R2P has played a very limited role in halting massive abuses. It has occurred in a few cases, including Cote d’Ivoire, Libya, and possibly Kenya, in the aftermath of the post-election violence of 2008.⁴⁵ While some argue⁴⁶ it was successfully employed in the Arab Spring,⁴⁷ this is not the case.⁴⁸ In spite of this, Glanville argues “that the R2P norm in fact has a very real and readily observable impact on the behaviour of states [and] that this impact can be detected not only in instances of compliance with the norm, but perhaps even more clearly in examples of violation.”⁴⁹ While the impact on states may be discernible in some areas, there is no positive proof of R2P having had a real impact on halting mass atrocities. In this regard, Glanville does accept that the international community has failed with regard to: “do[ing] what it can short of military intervention,” but that R2P has not failed because the norm “does not require imprudent action that would likely do more harm than good.”⁵⁰ The problem is that in almost every case where mass atrocities are occurring, such an argument can be made.

⁴² Aidan Hehir. “The Responsibility to Protect: ‘sound and fury signifying nothing?’” *International Relations* 24, no. 2 (2010): 218–239.

⁴³ Roy Allison. “Russia and the post-2014 international legal order: revisionism and realpolitik,” *International affairs* 93, no. 3 (2017): 519–543.

⁴⁴ Xymena Kurowska. “Multipolarity as resistance to liberal norms: Russia’s position on responsibility to protect,” *Conflict, Security & Development* 14, no. 4 (2014): 489–508.

⁴⁵ Alex J. Bellamy and Paul D. Williams. “The new politics of protection? Cote d’Ivoire, Libya and the Responsibility to Protect,” *International Affairs* 87, no. 4 (2011): 825–850.

⁴⁶ On some of the debates see Alex J. Bellamy. “The Responsibility to Protect: added value or hot air?” *Cooperation and Conflict* 48, no. 3 (2013): 333–357 and Maggie Powers. “The Responsibility to Protect: Dead, Dying or Thriving?” *International Journal of Human Rights* 19, no. 8 (2015): 1257–1278.

⁴⁷ Aidan Hehir. “Assessing the Influence of the Responsibility to Protect on the UN Security Council During the Arab Spring,” *Cooperation and Conflict* 51, no. 2 (2016): 166–183 and Andrew Garwood-Gowers. “The Responsibility to Protect and the Arab Spring: Libya as the exception, Syria as the norm,” *UNSW Law Journal* 36, no. 2 (2013): 594–618.

⁴⁸ Hehir. “Assessing the Influence,” *Cooperation and Conflict*, 185.

⁴⁹ Glanville. “Does R2P matter?,” *Cooperation and Conflict*, 185.

⁵⁰ *Ibid.*

Security Council inaction to halt massive atrocities

It is important to note that the world has no intervention force; it has no international police force to do anything about the massive human rights crimes that are committed everywhere. While the UN has its blue helmets and UNIPOL, they have very specific and limited roles. They also usually have extremely limited mandates in the places in which they are employed, and then they can only play a role when the consent of the state concerned is given.

While the UN has an important role to play in the application of R2P, it does this largely on the basis of the pillars of prevention and rebuilding. When it comes to intervention, where the state has refused to stop what it is doing, or has no capacity to stop what is occurring, the UN has played a limited role. In some places it has used sanctions, diplomatic, economic pressures and a range of other processes to ensure state compliance with that country's human rights obligations. However, in certain circumstances it has taken a number of directly interventionist steps to halt what is occurring in the country, if the state is not agreeable to putting a halt to the abuses.

A variety of commissions of inquiry or fact-finding missions and investigations have been set up by the UN, often by the Human Rights Council or by the UN Secretary-General, including in Burundi, Eritrea, Syria, and South Sudan. While all these have reported on the mass violations, no actual steps are taking place to halt what is occurring there. Recent investigations into the DPRK, Gaza, Libya, and Sri Lanka have submitted their reports, but little action has been taken against the perpetrators or to put a stop to the violations.

While a variety of steps have been taken by a variety of actors to mediate, and take further steps to limit the effects of the problems that have occurred, no direct intervening action has been taken to stop the bloodshed or to force accountability afterwards.⁵¹ The SC has not been willing to intervene in a wide range of issues and this has allowed the violations to continue. This is not only with regard to well-known countries but is true for many others. Actual intervention was a major part of what R2P was envisaged to do as a result of the lack of action in Rwanda and the other atrocities in the

⁵¹ Jeremy Sarkin. "Understanding the Changing Relationship of South Africa and the International Criminal Court: Towards a Culture of Greater Impunity in Africa?," *Themis: Revista de direito* 18, no. 32 (2017): 7-34.

1990s. It is not the only part of R2P but it was supposed to be a central aspect of it. Not intervening undermines the totality of R2P.

The inaction by the SC is critically important in the context of R2P.⁵² The SC is the only UN organ that has the power to order or force a country to comply with its obligations, or to call for a halt to what is occurring in a state. The UN Charter gives the Council the primary responsibility for maintaining international peace and security (Article. 24). The Council assesses whether there is a threat and decides on the type of measures to employ, including the use of force.⁵³ However, the institution usually fails to act to intervene when massive human rights violations are occurring.

The veto, or the threat to veto has often stood in the way of R2P. As was noted by the Representative of New Zealand in 2015 “the use of the veto or the threat of the veto is the single largest cause of the Security Council being rendered impotent in the face of too many serious international conflicts.”⁵⁴ As a consequence mass atrocity crimes and grave human rights violations have continued to be perpetrated by states all over the world. The veto has been used by some of the P5 to benefit their own political and economic interests, or their allies. This occurs at the expense of international peace and security.

For example, with regard to Syria, there have been at least ten attempts made to get the SC to act. These processes have not been successful because of the use of the veto by Russia, sometimes together with China. The veto has been used regularly of late generally, including on six occasions in 2017. This does not take into account the way in which the threat of the veto⁵⁵ has been used, which has meant that sometimes a vote has not occurred. All the vetoes for the last three years have concerned Middle Eastern countries (Syria, Israel/Palestine/ Yemen), and all vetoes since 2009 have concerned the same region except two, which referred to Ukraine and Bosnia. Prior to this, the list of countries that it was used for included Georgia, Zimbabwe, Burma/Myanmar, and Cyprus.

⁵² Jason Ralph and Jess Gifkins. “The Purpose of United Nations Security Council Practice: Contesting Competence Claims in the Normative Context Created by the Responsibility to Protect,” *European Journal of International Relations* 23, no. 3 (2015): 630–653.

⁵³ As contained in Chapter VII of the UN Charter.

⁵⁴ United Nations, Security Council. Meeting 7389. 23 February 2015. S/PV.7389: 9.

⁵⁵ Oliver Stuenkel. “The BRICS and the Future of R2P,” *Global Responsibility to Protect* 6, no. 1 (2014): 3-28, 10.

Notwithstanding the fact that the SC has not taken steps to halt the atrocities, in many cases it prevents others from so doing. Thus, for example, attempts to get the Council to refer matters to the ICC have, to a large extent, failed. There have been instances, for example, in Sudan, where the SC has permitted the ICC to play a role by referring the situations to the Court. However, for many other places, such as Syria, North Korea, and South Sudan,⁵⁶ the Council has been unwilling to refer matters. The ICC would be able to play a major deterrent role if the Council were to intervene more often. Thus, a cooperative relationship with other institutions and other actors could have a dramatic positive effect in reducing the violations being committed around the world.⁵⁷

A variety of role players, including UN actors, have come out against the Security Council's apparent inaction. This has included the General Assembly (GA), which has done so on a number of occasions, including in 2012.⁵⁸ When the SC has not acted, the GA, despite its constraints, has even taken steps to collect potential evidence for future accountability processes – such as setting up a process in 2016 to investigate atrocities in Syria.⁵⁹

The UN High Commissioner for Human Rights has at various times also argued that the SC is not doing what is expected with regard to these matters. Thus, in 2014, then High Commissioner Navi Pillay argued that: “greater responsiveness by this council would have saved hundreds of thousands of lives.”⁶⁰ She further stated that: “Short-term geopolitical considerations and national interest, narrowly defined, have repeatedly taken precedence over intolerable human suffering and grave breaches of and long-term threats to international peace and security.” In 2018, the then High Commissioner, Zeid Ra'ad Al Hussein, argued that: “*Second to those who are criminally responsible – those who kill and those who maim – the responsibility for the continuation of so much pain lies with the five permanent members of the UN Security Council. So long as the veto is used by them to block any unity of action, when it is*

⁵⁶ Lars Waldorf. "Inhumanity's law: Crimes against humanity, RtoP and South Sudan," *International Politics* 53, no. 1 (2016): 49-66.

⁵⁷ Steven C. Roach. "Humanitarian Emergencies and the International Criminal Court (ICC): Toward a Cooperative Arrangement between the ICC and UN Security Council," *International Studies Perspectives* 6 (2005): 440-443.

⁵⁸ ny.un.org/doc/UNDOC/GEN/N12/449/39/PDF/N1244939.pdf?OpenElement

⁵⁹ Alex Whiting. "An investigation mechanism for Syria: The general assembly steps into the breach," *Journal of International Criminal Justice* 15, no. 2 (2017): 231-237 and Ingrid Elliott. "A Meaningful Step towards Accountability? A View from the Field on the United Nations International, Impartial and Independent Mechanism for Syria," *Journal of International Criminal Justice* 15, no. 2 (2017): 239-256.

⁶⁰ Associated Press, "UN human rights chief criticises security council over global conflicts," *The Guardian* (London, UK), 22 August 2014, www.theguardian.com/world/2014/aug/22/un-human-rights-chief-criticises-security-council-over-global-conflicts.

needed the most, when it could reduce the extreme suffering of innocent people, then it is they – the permanent members – who must answer before the victims.”⁶¹ This is an unequivocal statement about the Security Council’s inaction on protecting human rights and specifically the role of the P5. Zeid noted that: “It is time, for the love of mercy, that China, Russia and the United States, join them and end the pernicious use of the veto.”⁶²

Security Council reform

At the moment and for the foreseeable future, the SC and its makeup is an obstacle to R2P. It is an impediment for processes to ensure that mass atrocity is halted. UN reform, and especially that of the SC, is more urgent than ever.⁶³ The composition and powers of the SC have not changed since the UN was created in 1945, despite numerous attempts to implement changes. Tom Weiss notes that: “the cacophony, jealousies, and vested interests that have plagued this issue since 1965 remain.”⁶⁴ There have been many proposals including extending the SC and installing a fairer regional distribution of its seats.

Certainly, the lack of representativeness and the ineffectiveness of the SC on many issues including R2P are reasons for urgent reform.⁶⁵ The SC has experienced a loss of legitimacy and authority.⁶⁶ While various suggestions have been made to ensure that the veto is not used to interfere with processes dealing with human rights this has often been to no avail.

⁶¹ United Nations, Human Rights Council. 37th session of the Human Rights Council, Opening statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, 26 February 2018, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22702&LangID=E>.

⁶² United Nations, Human Rights Council. 37th session of the Human Rights Council, Opening statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, 26 February 2018, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22702&LangID=E>.

⁶³ Richard Gowan and Nora Gordon, *Pathways to Security Council Reform* (New York: Center on International Cooperation, New York University, 2014).

⁶⁴ Thomas G. Weiss. “Despite the recent crises in Syria and Ukraine, reforming UN Security Council decision-making remains a pipe dream,” <http://blogs.lse.ac.uk/euoppblog/2014/08/21/despote-the-recent-crises-in-syria-and-ukraine-reforming-un-security-council-decision-making-remains-a-pipe-dream/>.

⁶⁵ Nadia Banteka. “Dangerous Liaisons: The Responsibility to Protect and a Reform of the U.N. Security Council,” *Columbia Journal of Transitional Law* 54, (2015): 13.

⁶⁶ Terrance L. Chapman, “Audience Beliefs and International Organization Legitimacy,” *International Organization* 63, no. 4 (2009): 733-64.

There have been a variety of proposals to reform the UN in general, and how the SC deals with massive human rights violations, specifically. Thus, France, in 2013 proposed a “code of conduct” that would control the use of veto where mass atrocity crimes - genocide, ethnic cleansing, war crimes and crimes against humanity – occurred.⁶⁷ This would mean that the P5 would not use the veto when mass atrocity crimes were taking place. This would have to be done when at least 50 member states, with ten countries from each of the five different regions of the world requested the UN Secretary-General to determine that mass atrocity crimes were being committed.⁶⁸ Another proposal has been the Responsibility Not to Veto (RN2V),⁶⁹ which ensures that the veto is not used when there are ongoing mass atrocity crimes.

However, both Russia and China have regularly stated that they are against reform of the Council. The Russian ambassador has asserted that the veto is a “tool which allows the Security Council to produce balanced decisions” and that “sometimes the absence of the veto can produce disaster.”⁷⁰ The issues of sovereignty and non-interference⁷¹ are still sacrosanct for some,⁷² even though these issues do not mean what they used to in an ever-changing world where joining international and other institutions means sacrificing these items to some extent. However, as then UN Secretary-General Kofi Annan noted in 2000, “if military 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?”⁷³

⁶⁷ UNA-UK. (2015). “UN Security Council and the Responsibility to Protect: Voluntary restraint of the veto in situations of mass atrocity,” <https://www.una.org.uk/sites/default/files/Briefing%20-%20Veto%20code%20of%20conduct.pdf>.

⁶⁸ UNA-UK. (2015). “UN Security Council and the Responsibility to Protect: Voluntary restraint of the veto in situations of mass atrocity,” <https://www.una.org.uk/sites/default/files/Briefing%20-%20Veto%20code%20of%20conduct.pdf>.

⁶⁹ Ariela Blätter and Paul D. Williams. “The responsibility not to veto,” *Global Responsibility to Protect* 3, no. 3 (2011): 301-322.

⁷⁰ UNSC. (2015). “In Hindsight: Security Council Decision-Making and the Veto,” <https://www.securitycouncilreport.org/monthly-forecast/2015-10/in-hindsight-security-council-decision-making-and-the-veto.php>

⁷¹ Jonathan E. Davis. “From ideology to pragmatism: China’s position on humanitarian intervention in the post-Cold War era,” *Vanderbilt Journal of Transnational Law* 44, no. 2 (2011): 217–283.

⁷² Zheng Chen. “China debates the non-interference principle,” *The Chinese Journal of International Politics* 9, no. 3 (2016): 349–374.

⁷³ Kofi Annan, “We the Peoples: The Role of the United Nations in the 21st Century,” (UN: New York, 2000)

Conclusion

Is it necessary to ask whether R2P is what it was envisaged to be?⁷⁴ It was meant to ensure that a Rwanda or a Srebrenica would be halted if they were to happen again.⁷⁵ That is, however, not the case with many such activities occurring all around the world every year. In fact, some of the places where these things are happening are not new; they have in some cases been going on for years and in some cases for decades. Even if we take a look at the pared-down version of R2P, it is plain to see that genocides, crimes against humanity, and war crimes have been occurring, and are still occurring, in countless places.

At the moment, the SC is an obstacle to R2P and the role it is meant to play in halting the atrocities. The SC is often dysfunctional when it comes to dealing with mass abuses around the world. Its legitimacy⁷⁶ is in crisis.⁷⁷

This article only looks at SC reform in the context of the human rights situation in the world. There are numerous other reasons why that reform is needed more urgently than ever before. As has already been the case for several years, it is not going to be straightforward to achieve reform. It is extremely unlikely that the main problematic actors, China, Russia and the USA will be willing to give up the veto. For reform to occur they all need to be in agreement and problematically they can use the veto to block any progress. The only way it seems that true change to international governance will occur is if a number of states determine that the UN with its present architecture does not suit their needs, and they decide to establish a new institution. This may break the camel's back.

As far as R2P is concerned, if it is to be the norm it was envisaged to be, then it has to play its part in reversing the deterioration of the global human rights situation that has occurred over the last

⁷⁴ Kurt Mills. "Will the World Ever Be Interested in Stopping Atrocities?" in *Last Lectures on the Prevention and Intervention of Genocide*, ed. Samuel Totten (London: Routledge, 2018).

⁷⁵ Justin Morris. "R2P: A Long View," in *Protecting Human Rights in the 21st Century*, eds. Aidan Hehir and Robert Murray (Hampshire: Palgrave Macmillan, 2017).

⁷⁶ Jason Ralph and Adrian Gallagher. "Legitimacy faultlines in international society: The responsibility to protect and prosecute after Libya," *Review of international studies* 41, no. 3 (2015): 553-573.

⁷⁷ Julian Borger and Bastien Inzaurrealde, "Russian Vetoes Are Putting UN Security Council's Legitimacy at Risk, Says US," *The Guardian* (London, UK), 23 September 2015, <https://www.theguardian.com/world/2015/sep/23/russian-vetoes-putting-un-security-council-legitimacy-at-risk-says-us>.

decade. In fact, R2P must do more. It should be proactively used to affect the dire situations in so many countries around the world. No longer can the debate be whether R2P permits intervention, but rather, how to do so. In this regard, the SC has not been at the forefront of taking action, but instead has proved to be an abject failure. It needs to be reformed urgently, or a new UN type of institution is needed where global governance is pursued in ways that protect the citizens of the world, rather than a few states and their friends.

State Sovereignty and the Responsibility to Protect: Incompatible Norms?

Natalie Zähringer

Received October 31st, 2018

Introduction

This paper investigates how state sovereignty as an established norm impacts the evolution of an emerging norm such as the responsibility to protect (R2P). International action to ensure human rights protection, especially the use of force, is seen as conflicting with traditional notions of state sovereignty. At first glance the recasting of international humanitarian intervention in the guise of R2P seems to reaffirm this tension as interference into the domestic affairs of a state continues to be advocated by the latter. Supporting this argument is the traditional assumption that the *sovereign* of a state is embodied in the highest authority, i.e. the government, hence regime change is considered the most fundamental breach of sovereignty. However, an alternative argument could be made that R2P reconceptualizes state sovereignty as popular sovereignty, with its focus on the people, and as such R2P does not pose a challenge to state sovereignty at all, but rather reinforces it.

Theoretical considerations

This paper is interested in the interplay between two international norms, and as such hopes to contribute to the emerging literature around norm evolution. The most widely acknowledged academic paper in this regard is Finnemore and Sikkink's *A Life Cycle of Norms*.¹ This model explains much, yet the model's major shortfall is the assumption that norms remain static once they are established, hence there is an inability to explain normative change once a norm has become widely accepted. Constructivist writers such as Wiener and Puetter (2009), Krook and True (2010), Zwingel

¹ Martha Finnemore, and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organizations* 53, no.9 (1998).

(2012), and Deitelhoff and Zimmerman (2013) and Wiener (2014) introduce and investigate the idea of norm contestation, a mechanism which facilitates the evolutionary process. They argue that divergent expressions of the norm necessitate a re-conceptualization of the norm towards convergence as otherwise collective international understanding and action becomes untenable.² With the inclusion of norm contestation as an important conceptual addition to the norm evolutionary cycle, an investigation into the interplay between conflicting norms such as R2P and state sovereignty becomes more insightful.

State Sovereignty

Today defined in terms of Article 2 of the United Nations (UN) Charter, state sovereignty outlines the prohibition of the use of force between states, non-interference into domestic affairs, and stipulates equality with other states.³ Albeit widely accepted, this legal interpretation often becomes untenable given the many challenges states face today, whether it is the existence of weak or failed states, or the emergence of supranational integration as seen in the European Union.⁴ Nevertheless, the perception of a static interpretation of state sovereignty persists, despite the fact that the more recent idea of sovereignty as *responsibility* is not as new as some believe. Such thinking has been around since state sovereignty was first conceptualized. Today Westphalian sovereignty is often misinterpreted as it was never intended by its proponents as an absolute *right*. Early theorists such as Bodin, Grotius and Hobbes outlined how leaders, in return for their position of authority, had to adhere to natural law and endeavour to protect their people. This formed part of what Hobbes and Rousseau termed the social contract, originally between the monarch and his subjects. This sees the people willingly hand over authority over their lives to a sovereign in return for liberty and security.⁵ If that sovereign failed to do so, other states *theoretically* had the right to intervene. Yet history shows

² Antje Wiener, and Uwe Puetter, "The Quality of Norms is What Actors Make of It – Critical Constructivist Research on Norms," *Journal of International Law and International Relations* 5, no. 1 (2009); Mona Lena Krook, and Jacqui True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality," *European Journal of International Relations* 18, no. 1 (2012); Susanne Zwingel, "How Do Norms Travel? Theorizing International Women's Rights in Transnational Perspective," *International Studies Quarterly* 56, (2012); Nicole Deitelhoff, and Lisbeth Zimmerman, "Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms," *Working Papers No 18*, Peace Research Institute Frankfurt, 2013; Antje Wiener, *A Theory of Contestation* (Heidelberg: Springer, 2014).

³ Article 2(4), 2(7) and 2(1) respectively.

⁴ Tanja E. Aalberts, *Constructing Sovereignty Between Politics and Law* (New York: Routledge, 2012), 21.

⁵ Luke Glanville, "The Antecedents of Sovereignty as Responsibility," *European Journal of International Relations* (May 2010): 3-9.

that such interventions were not common and, if they did occur, they generally provided the pretence for expansive or aggressive behaviour by states.⁶ Yet in practice, sovereign leaders favoured non-intervention for reciprocal reasons and tended not to challenge each other on the abuse of their subjects. This may well have contributed to the notion of the inalienability of non-interference as often interpreted today.

Popular Sovereignty

There necessarily exists, in every government, a power from which there is no appeal, and which ... may be termed supreme, absolute, and uncontrollable ... Perhaps some politicians ... would answer that ...the supreme power was vested in the constitution ...The truth is, that in our governments, [this] power remains in the people. (James Wilson)⁷

A closer examination of the history of sovereignty as responsibility links back to the emergence of the principle of *popular* sovereignty. This emerged through the American and French Revolutions. The French were influenced by Rousseau's idea of a collective will, while Locke influenced the Americans with his ideas around individualism.⁸ Hence, these two revolutions highlighted two distinct aspects: the right of a *people* to self-government and the right of an *individual* to be protected from tyranny. However, it was the former aspect, now termed self-determination, that was originally embraced. Nationalist ambitions became the guiding principle for most of the 19th and 20th Centuries, culminating in an endorsement by the Versailles treaty as well as Article 1 of the UN Charter which proclaims the "equal rights and self-determination of peoples." This ultimately facilitated the decolonization process in the second half of the 20th Century.

Yet until World War II, the second aspect of popular sovereignty, which stipulated the existence of individual rights, was sidelined. Only with the atrocities perpetrated against civilian populations in World War II did these rights shift back into the spotlight, and the world saw the emergence of an international human rights regime with its wide-ranging protection of individual rights. Yet the Cold

⁶ For example, Great Britain, France and Russia intervening in present-day Greece in 1827 to support them in their uprising against the Ottoman Empire.

⁷ As quoted by Andreas Kalyvas, "Popular Sovereignty, Democracy, and the Constituent Power," *Constellations* 12, no. 2 (June 2005): 223.

⁸ Glanville, "Antecedents," 9

War and decolonisation era still saw individual rights neglected, and consequently pitted against the non-intervention dimension. Only with the mass atrocities committed in Yugoslavia and Rwanda during the 1990s did a renewed impetus emerge to protect people from their own state.

While most democratic states today place both self-determination and human rights at the heart of political legitimacy, different interpretations persist. Some place greater importance on the will of the collective (e.g. the majority), while others emphasise human rights (e.g. the protection of minorities). Often seen in conflict with each other, Habermas argues that these two interpretations are not mutually exclusive, but can indeed be compatible.⁹ In today's context of democracy, the question which remains is: Who is the sovereign in the modern state? With Article 21 (3) of the UN Charter stipulating that "[t]he will of the people shall be the basis of the authority of government", it seems reasonable to interpret this as the collective government being the embodiment of the sovereign, but only if it is representative of the will of the people.¹⁰ Similarly, Kofi Annan stated: "States are now widely understood to be instruments at the service of their people, and not vice versa."¹¹

After centuries of failed starts, it seems that the time has finally arrived to re-evaluate the relationship between human rights and non-intervention by reconceptualizing the state sovereignty norm and reconsidering some of the original limitations placed thereon. This line of thinking was embraced by the Canada-based International Commission on Intervention and State Sovereignty (ICISS) in 2000, which introduced the Responsibility to Protect (R2P).

The rise and evolution of R2P

The term R2P was coined through the title of the ICISS final report. This 100 page document is a detailed analysis of the challenges surrounding the state sovereignty norm when it comes to the protection of human rights, and has laid the foundation for the emerging R2P norm. It clearly lays out three dimensions to R2P: the responsibility to prevent, react and rebuild. The primary responsibility lies with the state itself, and only if the state fails to meet this responsibility does this

⁹ Jürgen Habermas, "Human Rights and Popular Sovereignty: The Liberal and Republican Versions," *Ratio Juris* 7, no. 1 (March 1994): 1-2.

¹⁰ W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law," *The American Journal of International Law* 84, no. 4 (1990): 870.

¹¹ Kofi A. Annan, "Two concepts of sovereignty," *The Economist*, September 18, 1999.

shift to the international level. The report also addresses the question of international authority, stipulating that in the first instance approval should be sought from the United Nations Security Council (UNSC), where the five permanent (P5) members are encouraged to refrain from using their veto in cases of atrocity crimes. Should no consensus be reached, the report does suggest the use of the General Assembly's "Uniting for Peace" procedure, or even making use of regional or sub-regional organisations. Finally, the report also anticipated debates around the when and how, clearly stipulating that those intervening should do so with right intentions (i.e. not for the purposes of regime change), as a last resort, using proportional means and with reasonable prospects.¹²

Since the ICISS consisted of expert opinion rather than treaty negotiations by official state representatives, the next challenge was to incorporate R2P into the existing international legal framework. This was achieved in a surprisingly short period of time. As part of the UN General Assembly's World Summit Outcome Document in 2005, R2P was included in paragraphs 138 and 139. These two paragraphs provide the foundation of the R2P norm today, albeit reduced to the lowest common denominator, and have guided subsequent international action. Paragraph 138 emphasizes the state's responsibility to protect its population from atrocity crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity. It is paragraph 139 which outlines the international community's collective responsibility in the event that the state fails. Here the emphasis is first on diplomacy and peaceful means, and only thereafter may the UNSC under Chapter 7 of the UN Charter and possibly with the aid of regional organisations invoke the use of force "on a case-by-case basis."

The link created between R2P and the UNSC is quite interesting from a norm evolutionary perspective. By invoking Chapter 7 of the UN Charter, R2P uses existing mechanisms and as such embeds this emerging norm within an already accepted institutional and legal framework. This is noteworthy as the Outcome Document is a General Assembly resolution and as such cannot create a legally binding obligation on member states. Nevertheless, the two paragraphs in themselves signal an important, yet gradual shift in the interpretation of state sovereignty over time. To illustrate, Chapter 7 of the UN Charter refers to the right of the UNSC to take action in instances which pose an "existing threat" to international peace and security. International action can include the

¹² International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Developmental Research Centre, 2001), xi-xiii.

imposition of sanctions (Art 41) and the use of force (Art 42) and is considered binding on all member states of the UN. Originally such threats were interpreted as a direct attack on a sovereign state. Responses under Chapter 7 in the past included the Korean War in 1950 where the UN authorised the use of force to protect South Korea from an attack by North Korea. It was also invoked in the Gulf War in 1991 to protect the sovereignty of Kuwait against an attack by Iraq. However, over the years the interpretation as to what constitutes a threat to international peace and security has been greatly expanded to include regional threats emanating from refugee flows caused by civil war and, more recently, internal threats through human rights abuses. It should be noted, however, that responses to the latter have generally been limited to the imposition of sanctions, as was seen with the arms embargo against the South African Apartheid state. Only in the post-Cold War era has the use of force slowly become an acceptable alternative in instances of internal oppression. This evolution is interesting, as Chapter 7 was originally put in place to protect state sovereignty, but today it is entirely acceptable to use it to underpin the protection of people as well.

Despite the momentous occasion that the World Summit Outcome Document of 2005 presented, the two paragraphs lack the depth and clarity which the ICISS report contains. Authority is firmly enshrined within the UNSC with no other alternative made available in the event of paralysis in the UNSC. The interpretation of R2P is also much narrower. Originally, the ICISS report invoked R2P in a more general context of human rights abuses, with only intervention by the international community limited to the so-called atrocity crimes. Meanwhile the Outcome Document limits all aspect of R2P, both horizontally and vertically, to atrocity crimes. Furthermore, the Outcome Document remains silent on all important criteria that should underpin such interventions.

Libya brought to the fore the varying interpretations UN member states had around the R2P norm, as well as strong calls to respect state sovereignty. It also revealed the positive side of norm contestation: rather than R2P dying a slow death, Libya invigorated the debate around it. This is most effectively illustrated through the Brazilian call to *Responsibility While Protecting (RWP)*, which was tabled by President Rousseff in the UNGA in September 2011 and indicated a willingness to engage further on questions of authority and mandate.¹³ Other examples of continuous debate are

¹³ Paula W. Almeida, "Brazilian View of the Responsibility to Protect," *Global Responsibility to Protect 6* (2014).

the fact that the UN invoked R2P in resolutions more frequently in the year after Libya than the five years before,¹⁴ but also the UN Secretary Generals' annual reports on implementing R2P.

Eliminating incompatibility

It is becoming more and more apparent that most opposition to R2P is coming from the benches of so-called traditionalists, who view state sovereignty as an absolute. Here it is essential to prove that this interpretation of state sovereignty is inaccurate. But what is this interpretation of state sovereignty to be replaced by? Conceptually, interpreting state sovereignty through the lens of popular sovereignty seems to be a way forward. Clearly, in states which are based on democratic principles, an adherence to human rights which balances both collective and individual rights would provide the best foundation for a full realization of state sovereignty. It would also allow R2P to come into full effect, balancing the state's primary responsibility with the international community's secondary responsibility. However, the main challenge remains as to how the will of the people is to be determined, especially in the absence of democracy. It also raises the problem of pluralistic societies where generalizations cannot be allowed to speak for all equally.¹⁵

As the above has shown, it is conceptually possible to align the R2P norm with that of state sovereignty. However, one major stumbling block remains. International law is created through treaties and custom. The former are negotiated principles applicable to all states party to the agreement. The latter derives from ongoing state practice.¹⁶ Without the consent of representatives of sovereign states, norm evolution at the international level cannot proceed. Reflecting back on the history of state sovereignty, the original corollaries attached to the norm were outlined by scholars and generally lacked implementation by states, resulting in the ongoing interpretation of sovereignty as inalienable. Hence, it is the current pattern of state action that needs to be broken.

¹⁴ Alex J. Bellamy, "R2P – Dead or Alive?" in *The Responsibility to Protect – From Evasive to Reluctant Action?*, ed. Malte Brosig (Johannesburg: HSF, ISS, KAS & SAIIA, 2012), 13.

¹⁵ Simone Chambers, "Democracy, Popular Sovereignty, and Constitutional Legitimacy," *Constellations* 11, no. 2 (June 2004): 155.

¹⁶ John Dugard, *International Law: A South African Perspective* (Johannesburg: Juta, 2005), 28-29.

Conclusion

As is apparent, international norms such as state sovereignty and R2P undergo a continuous process of evolution, often driven by norm contestation. The historical outline provided shows that any conceptualization of either norm as fixed is inaccurate. The above highlights that, despite the ongoing norm contestation between state sovereignty and R2P, it is possible to identify an attempt at norm conformity. Surprisingly, this does not necessarily result in the newer norm conforming to the older one, but may include a reconceptualization of the older norm to align with the emerging one. This can be facilitated by what Peters' refers to as a push for greater socialization of "humanized state sovereignty."¹⁷

However, as scholars we can present the case of a reimagining of state sovereignty along the lines of popular sovereignty as much as we like, but unless state authorities buy into this interpretation, it is unlikely to guide state action and hence result in the amendment of international treaty or customary law. Bellamy and Luck's upcoming book also is an attempt to tackle precisely this question of "practice."¹⁸

¹⁷ Anne Peters, "Humanity as the A and Ω of Sovereignty," *The European Journal of International Law* 20, no.3 (2009), 513.

¹⁸ Alex J. Bellamy, and Edward C. Luck, *The Responsibility to Protect: From Promise to Practice* (Polity, 2018).

CANADIAN JOURNAL FOR THE RESPONSIBILITY TO PROTECT
ISSUE 1 2019

CCR2P 
Canadian Centre for the Responsibility to Protect

