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R2P: The Next Ten Years 🔒

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Abstract and Keywords

R2P was designed for pragmatists, not purists: to change state behaviour, not make new law or rewrite international relations theory. Since 2005 it has gathered momentum as a normative force, institutional catalyst, and framework for both preventive and reactive action. There are many grounds for optimism about its consolidation and further development in all these respects over the next decade and beyond: it is no longer possible for policy-makers to think and act as if mass atrocity crimes committed behind sovereign state borders are nobody else's business. But, with dissension over the implementation of its Libyan intervention mandate in 2011 paralysing the Security Council's subsequent response to atrocities in Syria, much remains to be done to recreate Council consensus over the hardest cases, those potentially requiring coercive military force. Some variation on the concept of 'responsibility while protecting', first advanced by Brazil in 2011, offers the most productive way forward.

Keywords: R2P, pragmatic, normative, institutional, preventive, reactive, military force, responsibility while protecting, optimism

THE point of the responsibility to protect (R2P) doctrine, in the minds of those of us who conceived it, has always been to change the way that the world's policy-makers, and those who influence them, thought and acted in response to emerging, imminent, and actually occurring mass atrocity crimes. It was to generate a reflex international response that genocide, other crimes against humanity, and major war crimes happening behind sovereign state walls were everybody's business, not nobody's. It was to create a new norm of international behaviour which states would feel ashamed to violate, compelled to observe, or at least embarrassed to ignore.

R2P was designed for pragmatists rather than purists, with full knowledge of the messy reality of real-world state motivations and behaviour. Its intended contribution was not to International Relations theory but political practice. It was designed not to create new

legal rules but rather a compelling new sense of moral and political obligation to apply existing ones. It was intended from the outset to stimulate the creation of new institutional mechanisms, national and international, that would help translate that sense of obligation into effective action. And above all it was designed to change behaviour: to ensure that global policy-makers would never again have to look back, in the aftermath of yet another genocidal catastrophe, and ask themselves how they could possibly have let it all happen again.

This is the context, and these are the benchmarks, against which R2P's success or failure over the last decade should be measured, and its likely future over the next decade and beyond should be assessed. How does and will it stand up as an international norm? How much has it impacted, and will it in the future, on state perceptions as to what are appropriate responses to atrocity crime situations? How much institutional change has it stimulated, and will it in the future? How much actual behavioural change has there been, and how much more can be reasonably expected? Can and will R2P's contribution to eliminating the scourge of mass atrocity crimes from the face of the earth ever be more than marginal?

(p. 914) None of us can predict the future with any confidence, but we can try to mould it. What has gone before is no certain guide to what will come next: discontinuities are inevitable. But we can learn from experience, and concentrate resources and advocacy in areas where they are likely to be most productive. In what follows my focus will be on what needs to done over the next ten years or so—building on what has been achieved so far and recognizing what remains to be achieved—to consolidate R2P as a normative force, institutional catalyst, and framework for both preventive and reactive action.

It is probably too much to hope that within that, or any other, time frame we really can end mass atrocity crimes once and for all. But I remain optimistic, as I have been from the outset, that R2P is an idea whose time has come, and that it will over time make an ever more important contribution to making the world a safer and saner place for those legions of men, women, and children who remain at risk, as they have so often been in the past, of murder, torture, rape, starvation, expulsion, destruction of property and life opportunities for no other reason than their race, ethnicity, religion, nationality, caste, class, ideology, or opinion.

R2P as a Normative Force

It may be too big a call 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',[1] but it is certainly true to say that R2P has gained over the last decade much more worldwide normative traction than most observers had thought possible, and certainly did so in a way that remains unimaginable for the concept of 'humanitarian intervention' which it has now almost completely displaced.

The best evidence of this is in the annual debates on R2P in the General Assembly, even in the aftermath of the strong disagreements over the Libyan intervention in 2011 which have had many sceptics pronouncing its death rites. None of the three 'pillars' of R2P[2] are under siege. No state is now heard to disagree that every sovereign state has the responsibility, to the best of its ability, to protect its own peoples from genocide, ethnic cleansing, and other major crimes against humanity and war crimes. No state disagrees that others have the responsibility, to the best of their own ability, to assist it to do so. And no state seriously continues to challenge the principle that the wider international community should respond with timely and decisive collective action when a state is manifestly failing to meet its responsibility to protect its own people.

Certainly there is less general comfort with the third pillar than the first two, and there will always be argument about what precise form action should take in a particular case, but the basic principles are under no threat. In the most recent annual General Assembly debate in early September 2015, in which statements were made by or on behalf of 89 states from every regional group, there was overwhelming support for all the basic R2P (p. 915) principles; and that support was repeated three weeks later in many leaders' statements in the general debate opening the new session.[3]

Further evidence of the acceptance achieved by R2P lies in the record of the Security Council. For all the continuing neuralgia about the Libyan intervention and the paralysing impact of that on its deliberations on Syria, the Security Council, *after* its March 2011 decisions on Côte d'Ivoire and Libya, by the end of 2015 had endorsed 35 other resolutions directly referring to the responsibility to protect, including measures to confront the threat of mass atrocities in Yemen, Libya, Mali, Sudan, South Sudan, and the Central African Republic, and had authorized more than a dozen Presidential Statements employing that language.[4] There were just four Security Council resolutions prior to Libya using specific R2P language, but there have been 35 since. While none of these have authorized a Libyan-style military intervention, and a great many references are in pillar 1 terms, referring to states bearing the primary responsibility to protect their own populations, they make clear that the Council is comfortable with both the language and substance of the doctrine in all its dimensions. They certainly put beyond any conceivable prospect of redemption any crude notion of Westphalian sovereignty that a state should

be immune from international scrutiny, and possible intervention, whatever the scale of the horrors perpetrated within its borders.

Principles or doctrines can acquire normative force either legally, or morally and politically. Present international law prohibits states perpetrating any of the defined atrocity crimes themselves, and in the specific case of genocide they have some legal obligation under the Genocide Convention to take measures to prevent that particular crime if they have the power to do so,[5] but that is as far as their legal obligations go. The other responsibilities identified by R2P are essentially moral and political, namely, the responsibilities of states not just not to perpetrate these crimes themselves but, more generally, to 'protect' their own populations from them (pillar 1), to assist other states in addressing atrocity-risk situations (pillar 2), and to take action in a timely and decisive manner if another state manifestly fails to protect its people from any of the defined crimes (pillar 3).

It would have been premature in 2005, and still is now, to describe R2P as creating in these contexts any new rules of customary international law. The obligations in question may become so, but that will depend on how comprehensively the new doctrine is implemented and applied in practice, as well as recognized in principle, over the course of many years. But for R2P to be properly described as a new international 'norm', it is not necessary that all the responsibilities it identifies be *legal* in kind. With the weight behind it of a unanimous General Assembly resolution at head of state and government level, and with all the further UN Member State acceptance it has acquired since, as described previously, R2P can certainly be described in moral and political terms as a new international norm—and, moreover, not just an 'emerging' one. It does amount to a new standard of behaviour, and a new guide to behaviour, generally accepted as such, for every state.

All that said, there is more work to do. There are still significant differences evident across the world in the nature and degree of individual states' commitment to R2P, and (p. 916) it is important that these be minimized in the years ahead if the new norm is to further consolidate and flourish, and be the framework within which atrocity crime issues are effectively addressed in practice. It is particularly important that the states, and groups of states, that will matter most in the world of the twenty-first century—not just the United States, China, European Union, and Russia, but emerging major powers like the other 'BRICS' states, India, Brazil, and South Africa—stay so far as possible on the same page, not least when it comes to the most sensitive and difficult of all R2P issues, the use of coercive military force.[6]

There is no doubt that since initial consensus over how the Security Council should respond in Libya evaporated during the course of 2011 the major powers have struggled

to do that. The P3[7] was seen by Russia, China, and the other BRICS countries (all of whom, coincidentally, were sitting on the Council at the time) as profoundly over-reaching in translating a narrow civilian-protection mandate into a broad-ranging regime-change one, without giving the Council any serious opportunity for debate or argument, and without being willing to even explore possible diplomatic solutions which may, conceivably, have ended the conflict with fewer casualties and less of the mayhem than continues to this day. While it may not have been the only reason, the distrust that Libya engendered was certainly a very major reason for the Council's inability to reach agreement on any action at all in Syria—even initially a condemnatory statement, let alone any more robust reactive measures—with terrible subsequent consequences.

Cooperation has not evaporated entirely in cases requiring tough international responses. The kind of commitment shown in supporting very robust peacekeeping operations in the Congo, Mali, and Central African Republic has certainly been very different to the indifference or discord which characterized the reaction to Rwanda, Bosnia, Kosovo, and so many other pre-R2P cases. But no full-scale coercive military mandate, applied against the wishes of the government of the state in question, has been endorsed by the Council since Libya, and it is important that a sense not develop that authorizing such action is forever now beyond the pale. Although atrocity cases which satisfy all the necessary prudential criteria for the use of military force (as discussed in the section in what follows on 'R2P as a Reactive Framework') will necessarily be few and far between, it is all too unhappily likely that they will arise from time to time. It is crucial for the health of the international order that they be dealt with cooperatively, within the UN system, in the way that the R2P norm prescribes, and that relevant international actors do not revert to the bad old days of either doing nothing at all, or taking appropriate action outside the authority of the UN Charter.

One of the keys to re-establishing the necessary consensus on the Council, and among the other major powers who will influence action in the future, is recognition by the P3 of what went wrong in their handling of the Libya intervention, and a willingness to address that by adopting some variation of the 'Responsibility while Protecting' (or 'RwP') proposal originally made by Brazil, discussed later in this chapter. But for present purposes what needs to be emphasized is how important it is to bring a common *mindset* to the handling of mass atrocity crime issues, because without that no (p. 917) procedural solutions can possibly make much difference, and how important it will be for R2P advocates to encourage that mindset convergence. And the news in this respect is by no means all bad. While there are significant differences of approach among the major players, they are relatively easily bridgeable with reasonable goodwill, given that what is involved in mass atrocity cases is rarely any kind of challenge to states' vital national

interests, however these may perceived or described, but rather to our common humanity.

As to the United States, there is little risk of it engaging in the general adventurism and militarization of R2P of the kind feared by so many of its critics, particularly in the Global South. The 'indispensable nation', as Madeleine Albright famously described the United States in the context of its unique capacity to project power just about anywhere in the world,[8] can be expected to be deeply cautious in the future—from an R2P advocate's perspective maybe too cautious—about plunging into new military commitments except when national interests, narrowly defined, are very obviously threatened. The isolationist current always evident in US public and congressional sentiment may, if anything, be strengthening. Some hard lessons have been learned in Iraq, Afghanistan, and Libya over the last decade about the limits of military power, and overall, there is much less cause for anxiety now than there may have been at the time of the Iraq War in 2003 about the major Western powers' willingness to engage in cynical neo-imperialist adventurism. While the military response to the Islamic State, or Da'esh, in Syria and Iraq might be thought to be an exception to this cautious trend, there has been a clear R2P justification for it in the terrible atrocities perpetrated by the militants (separate and distinct from the more problematic homeland-terrorism rationale), the scale of the operations has been modest, and they have been undertaken with the express or implicit support of the governments of the states involved.

Generally the United States has been a strong supporter of the R2P norm in a UN context, and (as will be noted in the discussion later of 'R2P as an Institutional Catalyst') has played a leading role in developing early warning and response preparedness, and nuanced military response strategies, that have been useful models for other states. The only really frustrating aspect of the US commitment, from an R2P norm entrepreneurship perspective, is the deliberate decision of the Obama administration to refrain, other than in an in-house UN context, from actually using 'responsibility to protect' terminology: the main privately stated reason being a domestic political one, namely, not to stir up those many forces in the country deeply sceptical of any terms associated with national or international legal obligations.[9] Those of a more sceptical cast of mind might be minded to think it another example of something not made in the United States not existing. Either way, it does not do much to enhance the visibility and stature of a norm which senior US policy-makers well understand is in their interest, as well as the global interest, to promote.

Of the Europeans, the United Kingdom and France, although regularly and strongly supporting the evolution of R2P in a UN context, have not been completely true believers in the whole R2P package, which provides restraints as well as opportunities for the militarily adventurous. This is essentially because they view it through the lenses of their

(p. 918) previous attachment, respectively, to 'the doctrine of humanitarian intervention' (which was very much the central Blairite rationale for the invasion of Iraq in 2003) and Bernard Kouchner's 'droit d'ingérence'.[10] Both countries have been strong enthusiasts for military intervention in appropriate, but sometimes also inappropriate, cases. The United Kingdom, in Iraq in 2003 and other cases subsequently, has tended to push legal arguments for military intervention without express Security Council endorsement up to and beyond their credible limits. France was widely thought to have prematurely advocated a military response to the Myanmar humanitarian emergency in 2008. And both were central to the enterprise in Libya of pushing the resolution 1973 mandate beyond what were very widely regarded as its credible limits.

But all that said, both countries have been intensely, and admirably, committed to preventing and halting mass atrocity crimes, and France has broken new and welcome (if so far rather infertile) ground with its proposal that the Security Council's permanent members agree voluntarily not to exercise their veto powers in mass atrocity crime cases, at least those where a P5 member's vital national interests are not at stake.[11] While the enterprise of achieving greater international consensus around the application of R2P would benefit from a rather more cautious approach to the use of coercive military force than the United Kingdom and France have tended to exercise so far, their leadership in Europe continues to be necessary. The other major EU power, Germany, continues for obvious historical reasons to be almost painfully unwilling to use military power in any context: if that position were to prevail, R2P would lose the cutting edge it will always need to be a completely effective atrocity-curbing tool.

The other two permanent members of the Security Council, China and Russia, have been much more traditionally inclined to champion—cynically or otherwise (and some scepticism is permissible, particularly in the case of Moscow)—the principles of non-interference in countries' internal affairs and of respect for the sovereignty, unity, and territorial integrity of states. But notwithstanding this, China—contrary to many expectations—did not play any kind of spoiling role in the debate leading up to the World Summit debate which embraced R2P in 2005, and has not been the strongest obstructive voice since. It did not oppose the initial resolution 1973 on Libya, and has framed its subsequent objections not absolutely but in terms of the need to use 'extreme caution' in authorizing the use of force to protect civilians, and to 'fully and strictly' implement Security Council resolutions and not 'wilfully misinterpret' them: it has expressed strong support in that context for the concept of 'Responsibility while Protecting'. Its veto early in 2012, against the wishes of the Arab League, of the condemnatory (but not otherwise interventionary) proposed Security Council resolution on Syria, was unexpected, and may have reflected other factors—in particular anxiety about the United States squeezing its

Middle East energy sources—more than a determination to reassert a hard line on R2P as such.[12]

Beijing is increasingly visibly self-conscious about China's need to be seen to be playing a constructive, responsible role in international affairs, and should not be assumed to be instinctively unresponsive to the need for sometimes quite robust cooperative responses to mass atrocity crimes. A lively internal debate continues among Chinese (p. 919) academics and practitioners, with some clearly negative views being expressed, but the most common position being a cautious willingness to embrace the R2P concept and apply it in prudent and appropriate ways.[13] It is important that external actors do everything possible to reinforce that constructive mindset in the years ahead, with the P3 having a particular responsibility to acknowledge the legitimacy of Chinese concerns about over-exuberant application of R2P's military dimension.

Russia was in the lead-up to 2005, and has been since, a more obdurate opponent of robust action, but in the event opposed neither the World Summit Outcome Document, nor the 2011 Libya resolutions, nor many other Security Council resolutions and Presidential Statements referring to R2P. It in fact explicitly *relied* on R2P to justify its own military invasion of Georgia in 2008,[14] but this generated a strongly negative international response, and R2P was not in fact invoked—although many had expected it to be—in its equally unhappy annexation of Crimea in 2013 and continuing intervention in Ukraine. Russia's stated objections to R2P in recent years have been much more directed to the way in which R2P was applied in Libya ('double standards dictated by short term circumstances or the preferences of particular states'[15]) than to its inherent normative content.

Russia has been particularly supportive of the role of regional organizations in the prevention and settlement of conflicts, and was clearly influenced, as were others, by the strong support of the Arab League for intervention in Libya. Nevertheless, strong support by the Arab League—and 13 members of the Security Council—for the proposed resolution on Syria put to the Council in February 2012, condemning the violence and backing an action plan for political transition but not threatening any coercive measures, was not enough to prevent Russia vetoing the resolution: the realpolitik of its close and long-standing economic and strategic relationship with Damascus and the Assad regime prevailed, and has continued to prevail since in subsequent Council debates. But senior officials have shown serious interest in the 'Responsibility while Protecting' concept as a way of re-establishing broader Security Council consensus, and it is not to be assumed that its intransigence will be as complete in other contexts in the future, especially if the tensions over Ukraine which are currently poisoning relationships with the United States and EU countries can be resolved.

Of the remaining BRICS threesome (India, South Africa, and Brazil), India was the last significant state to be persuaded to join the 2005 consensus, and has remained a generally unenthusiastic supporter of R2P since (save in the context of the Sri Lankan issue in 2009, when Foreign Minister Pranab Mukherjee called on the Colombo government to exercise its responsibility to protect its own citizens). Certainly it has been among the strongest critics, both in the Security Council and Human Rights Council, of the way the Libyan intervention mandate was implemented. But it did support the initial interventionist measures against Libya in resolution 1970, did not oppose resolution 1973 authorizing the use of force in Libya, did issue a condemnatory statement on Syria as President of the Security Council[16] (and supported the proposed Syria resolution in February 2012), supported the use of UN forces to protect civilians in Côte d'Ivoire, and has itself been a willing provider of peacekeeping forces with strong Protection of Civilian (POC) (p. 920) mandates. It has generally focused not on opposing military force so much as setting conditions for its exercise, including that it 'be the measure of last resort and be used only when all diplomatic and political efforts fail' and that Security Council mandates be closely monitored: it has been a strong supporter in this respect of 'Responsibility while Protecting'.[17]

India has wanted to be seen internationally as a champion of human rights and democracy, but at the same time to maintain its non-interventionist credentials with the Non-Aligned Movement (NAM), a difficult balance to maintain (as, comparably, is its position as simultaneously a global champion and national resister of nuclear disarmament). It seems reasonable to assume that as Delhi looks more and more to assuming a global leadership role, it will contribute to bridge-building on these issues in a more active and systematically constructive way: again it is crucial that the P3 and others be responsive to its concerns about the potential misapplication of military force in R2P contexts.[18]

Brazil is another state visibly torn between its overall desire to maintain support from the Global South, and its increasing self-consciousness as a rapidly growing global player of real stature and willingness in that context to embrace more human rights rhetoric in its foreign policy. Again, more like South Africa than India, it was one of the key Latin American countries embracing, in an historically significant way, limited-sovereignty principles in the lead-up to 2005, and has generally given quite strong support to the R2P norm. But as with all the BRICS countries, the bridge too far for it was the perceived over-reach by the NATO-led operation in Libya in implementing Security Council resolution 1973. What distinguished Brazil's reaction was going beyond mere criticism to offer a very constructive way through the impasse by proposing its set of 'Responsibility while Protecting' principles, to operate not in substitution for but in parallel to R2P.[19]

Reduced to its essentials, RwP has just two key elements. It would require, first, before any military mandate is granted, systematic attention to the relevant prudential criteria for the use of coercive military force, not yet formally adopted in any UN process but spelt out in the initial Commission report which introduced the R2P concept more than a decade ago and very much part of the currency of international debate ever since, namely, seriousness of harm involved, right intention, last resort, proportionality, and balance of consequences.[20] It would not be necessary, and probably counter-productive to try, to formally adopt these five criteria in a formal Security Council or General Assembly resolution. Only the United Kingdom has ever shown even tentative interest in accepting these criteria, even on an informal basis, but it is an issue that the P5 cannot for much longer avoid seriously addressing.

The other element of a new process would require some kind of serious ongoing review of coercive mandates once granted. This has been met with resistance by the P3 on the grounds that there must be some flexibility in the implementation of any military mandate, and that military operations can never be micro-managed. These are not unreasonable concerns, but equally there is no reason in principle or practice why broad concepts of operations, as distinct from strategy or tactics, should not be regularly (p. 921) debated, and questioned as necessary. Whether civilian protection can be accomplished without full-scale war-fighting and regime change is exactly such a question that the P3 should be prepared to debate. It is not necessarily a matter of establishing any new institutional mechanism—though sunset clauses, requiring formal renewal if a mission is to continue, are hardly unfamiliar in the Security Council. It is more a matter, again, of there being some real understanding that ongoing debate on mandate implementation is wholly legitimate.

As discussed further in this chapter (in the section on 'R2P as a Reactive Framework') some variation on this proposal does seem to have the potential to put back on track a multilateral, cooperative approach to civilian protection, including in the most difficult cases. It has been disappointing that a combination of risk aversion in Brazil's foreign policy establishment, and President Dilma Rousseff's evident lack of interest in foreign policy, has led to Brazil subsequently taking a back seat on the issue. But its instincts on R2P remain sound, and it is likely to be a helpful player in the norm consolidation process in the next decade.[21]

The remaining BRICS member, South Africa, was an enthusiastic proponent of R2P in the 2005 World Summit, a crucial player in mobilizing and articulating sub-Saharan African support for it, and has generally been supportive since, keen to maintain its post-apartheid human rights and democracy credentials. But it has been tugged in a different direction by its other international personalities as an outspoken advocate for pan-African and South–South solidarity, a strong supporter of mediation and conflict resolution

through dialogue, and above all in the context of Libya as a long-standing friend of the Gadhafi regime and leader of the African Union mediation effort there—and has been an outspoken critic of the military intervention there as going 'far beyond the letter and spirit of Resolution 1973'.[22] If its explicit concerns about less than even-handed mandate implementation can be addressed—and again that it is a role that falls primarily to the P3 —it seems reasonable to hope that South Africa will become again a strong supporter of R2P in all its dimensions, and a very important player in ensuring the consolidation and further development of the norm.[23]

R2P as an Institutional Catalyst

All the normative consolidation in the world will not be of much use if R2P is not capable of delivering protection in practice. The continued evolution of institutional preparedness, at the national, regional, and global level, is absolutely vital if R2P is to move beyond rhetoric to effective practical implementation, particularly at the crucial stages of early prevention, and early reaction to warning signs of impending catastrophe.

Although much more needs to be done, the story in this respect has so far been reasonably encouraging. Particular effort is going into the creation of 'focal points' within key national governments and intergovernmental organizations, namely high-level officials whose designated day-job it is to analyse mass-atrocity risk situations and to (p. 922) energize an appropriately swift and early response within their own systems and in cooperation with others. A joint NGO–government initiative to establish a global network of such focal points had seen by the end of 2015 over 50 states, from every region of the world, signed up.[24] Although in some cases cosmetics need to be matched by more substance, the reality is that from Uruguay to the United States, from the DRC to Côte d'Ivoire, from Lithuania to New Zealand, there is a large and growing group of states building a real community of commitment.

One of the strongest institutional commitments in this respect has been made by the United States, with an interagency Atrocities Prevention Board (APB), headquartered in the National Security Council, being created with the object of taking whole-of-government responses to these situations to a new level of effectiveness. While early indications are that the APB has struggled within the system to add policy value in major problem areas already receiving high-level attention, like Syria and South Sudan, it has been quite effective in shaping responses in more marginal cases like Myanmar and Kenya, and developing risk mitigation strategies in a number of other African countries.

It is important that it be properly resourced on an ongoing basis, and be able to weather the vagaries of changes of political leadership.[25]

The UN system has its own focal point with the Office of the Special Adviser on the Prevention of Genocide, attached to which is also a Special Adviser on R2P (although the latter position is regrettably now very much a part-time one and not based in New York). That has needed to be supplemented by a more wholehearted institutional commitment to making R2P work, especially in relation to effective early warning, and some potentially important steps were taken in that direction with the Secretary-General's announced 'Rights Up Front' initiative announced in November 2013.[26] Itself largely a response to the UN system's failure to act strongly and effectively in the face of the rapidly unfolding human rights crisis in Sri Lanka in 2009, this is focusing on a much stronger and more timely information flow within the UN system, and from the UN to Member States, and better coordinated responses across the system. After its first year of operation the initiative was still showing more promise than performance.[27] But at least reaction to the initiative from Member States to date has been strongly positive, contesting the notion still being advanced by some R2P critics that many states will never be sympathetic to the characterization of emerging human rights problems in R2P terms because of the slippery slide to ultimate military intervention that characterization is thought to entail.

More institutional response capacity is needed in the civilian sphere in the form of the organization and resourcing of civilian capability able to be utilized, as occasion arises, for diplomatic mediation, civilian policing, and other critical administrative support for countries at risk of atrocity crimes occurring or recurring: commitments to develop that capability have to date been more often rhetorical than real. But probably the most crucial institutional need for the future is to create a culture of effective 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 potentially providing an important new deterrent for the (p. 923) future. National level support for the ICC is crucial in the absence of any international marshals service to apprehend indictees and enforce punishments, but that has far too often not been forthcoming, and the ICC has been struggling to maintain its credibility.[28] One of the biggest problems remains the failure of the United States, China, and Russia to sign the treaty creating the Court, and to apply obvious double standards in such support as it has offered: while the United States has in recent years been willing to use the Court as a tool against atrocity-perpetrators like Libya's Gadhafi and Syria's al-Assad, it has won few admirers for its selectivity, being totally unwilling to submit its own personnel or close allies like Israel to potential court process. Threat of ICC prosecution is an indispensable R2P tool for both prevention and reaction, and ensuring the

maintenance of the Court's credibility must be one of the highest priorities for R2P advocates in the years ahead.

In the military sphere, the main need is to have in place properly trained and capable military resources available both for rapid 'fire-brigade' deployment in Rwanda-type cases, and for long-haul stabilization operations like those in the Congo and Sudan, not only in no-consent situations, but where vulnerable governments request this kind of assistance. And although the establishment of effective military rapid reaction forces on even a standby basis remains more an aspiration than a reality, key militaries—again with the United States playing a prominent role—are devoting serious time and attention now to debating, and putting in place, new force configuration arrangements, doctrine, rules of engagement, and training to run what are now being increasingly described as 'Mass Atrocity Response Operations' (MARO).[29]

Here as elsewhere, regional organizations can be expected to play an ever more important role, exercising the full range of the responsibilities envisaged for them in Chapter VIII of the UN Charter. So far, although both the European and African Unions have shown occasional willingness to act collectively, and the Arab League found in 2011 a hitherto-lacking capacity for concerted political action in the context of both Libya and Syria, only ECOWAS in West Africa has so far shown a consistent willingness to respond with a full range of diplomatic, political, economic, and ultimately military strategies in response to civilian protection crises. But there will, and should be, ever more pressure on regional and sub-regional organizations elsewhere in Africa, and in Asia and Latin America to be front-line responders in these situations. It may be going too far to say that the engagement of regional organizations will over the next few years be either a necessary or a sufficient condition for any military interventions in mass atrocity cases: every situation will have its own dynamic. But their role will be ever more important.

R2P as a Preventive Framework

The credibility of the whole R2P enterprise has depended from the outset on giving central importance to prevention, in three different contexts. First, long before any atrocity (p. 924) crime has occurred or been threatened, but when ethnic or religious or other tensions, unresolved economic or other grievances, or manifest governance inadequacies, or all of the above, suggest there may be a serious problem in the making unless these underlying issues are systematically addressed. Second, when warning signs —like overt hate propaganda—begin to accumulate, and more rapid and focused preventive responses have to be mounted if catastrophe is to be averted. And third, in a post-violence situation, where the crucial need is to rebuild the society in a way which

seriously addresses all the underlying causal issues, and ensures that the whole ugly cycle does not recur. One of the biggest reasons for R2P winning the kind of broad international acceptance that never came with 'humanitarian intervention' or 'droit d'ingérence', is that while the latter were focused one-dimensionally on military intervention in reaction to actually occurring atrocities, R2P always emphasized the need not only to preference non-military solutions in reactive contexts, but also to put huge preventive effort into assuring that these catastrophic eruptions did not occur at all, or recur in the future.

At both the long-term pre-violence prevention stage, and the post-violence rebuilding stage, when essentially underlying structural issues are the focus, the R2P mass atrocity crime prevention mission is indistinguishable for most conceptual and practical purposes from the general conflict prevention mission, or the general human rights protection mission. But while structural prevention may not be an exclusive R2P concern, it is certainly core R2P business. It is crucial that R2P advocates in the years ahead pay at least as much attention to these long-term prevention issues as they do to how to respond preventively to early warning signs of imminent violence, and how to respond to actual violence when it does break out. And advocacy has to be accompanied by effective action: there is a long tradition of regular lip-service being paid to the need for effective prevention, in both national and international debates, but the record of delivery is not stellar. Part of the problem of getting sufficient resources to engage in successful atrocity, or conflict, prevention is the age-old one that success means that nothing visible actually happens: no one—including the politicians who pay for it—gets the kind of credit that is always on offer for effective fire-fighting.

The better news is that the toolbox of relevant measures at all preventive stages—across the whole spectrum of political and diplomatic, economic and social, constitutional and legal, and security strategies—is well known,[30] and as experience accumulates, and lessons-learned literature proliferates, there is an ever more detailed and sophisticated understanding by professionals of the detailed strategies that are likely to be most effective, and cost-effective. One theme strongly emphasized in commentary from the Global South, and emerging from hard experience on the ground, is the critical need for more sensitive attention to be paid by external interveners and assisters to local social dynamics and cultural realities, and the perceptions of their own requirements by local populations at all levels.[31]

It is also encouraging that, stimulated by the reports of the Secretary-General to Member States in 2013 on 'State responsibility and prevention' and 2014 on 'International assistance and the responsibility to protect', recent General Assembly Interactive Dialogues on R2P have placed renewed attention on both the preventive (p. 925) toolbox generally, and capacity-building and other preventive strategies in the context of the

pillar 2 'assistance' responsibility. Regular detailed attention to prevention and assistance issues gives the opportunity to states in the Global North, in particular, to show that they are taking seriously and sensitively these responsibilities, are committed to genuine partnerships with states under stress, and are not just preoccupied with punitive measures: this can only help the consolidation of R2P's normative force. These occasions should be regularly repeated in the years ahead, and every opportunity taken by the relevant states to demonstrate that their commitment to prevention, and to pillar 2 assistance in that context, is not just rhetorical but real.

R2P as a Reactive Framework

Just as it is important for the continuing future acceptance of R2P to emphasize that it has always been about the prevention of mass atrocities, not just reaction to them once occurring, so too is it important to make clear that, in situations where prevention has failed and some kind of reaction is required, R2P from the outset has involved a whole continuum of both non-coercive and coercive responses, and is absolutely *not* about coercive military interventions alone, notwithstanding that these have taken over so much of the ongoing debate. Those reactive responses include diplomatic peace-making, political incentives as well as political sanctions, economic incentives as well as economic sanctions, offers of amnesty as well as threats of criminal prosecution, the jamming of radio frequencies by non-forceful means, arms embargoes as well as the use of arms, and various kinds of peacekeeping falling short of full-scale peace enforcement. And the application of coercive military force can take the form of pillar 2 assistance rather than invariably more controversial pillar 3 intervention—when done at the invitation of the government unable to deal alone with a mass atrocity situation not of its own making.[32]

All this is not as well understood by policy-makers and commentators as it should be, and needs to be constantly reinforced. Non-military diplomatic efforts led by Kofi Annan, with the support of the African Union and the UN, successfully defused the explosive situation in Kenya in early 2008, which seemed to have all the makings of another Rwanda. The joined-up application of diplomatic initiatives, together with the threat or application of coercive, but non-military, targeted sanctions, and threats of reference to the ICC, may be an attractive starting point in responding to an unfolding crisis situation, and if not successful at least lay the foundations for a later military response should that prove necessary. In Côte d'Ivoire in early 2011 such a package was employed, with UN sanctions primarily implemented by the EU helping contain the crisis while African diplomats tried to negotiate a peace deal. When that proved impossible, what had initially been unachievable because of opposition from both Russia and South Africa—namely, a

unanimous Council resolution approving the use of force by (p. 926) French and UN troops—became, with other options now manifestly exhausted, readily deliverable by the end of March.[33]

However much one may seek to preference non-military solutions, the reality is that in some R2P situations—classically Rwanda—only coercive military force would have halted the atrocities. And some of these situations will allow little or no time for systematically exhausting options short of military force: where large-scale killing is occurring or manifestly imminent, a quick judgement may have to be made that no lesser action is capable of halting or averting the harm.

The position that coercive military intervention, even if only as an absolute last resort, must be retained in the R2P reaction toolbox, is not one that even some supporters of R2P find comfortable. Some academic industry continues to be devoted to arguing that there are so many inherent 'structural' problems involved in any coercive military intervention designed to halt an actual or avert an imminent mass atrocity crime that any such action is bound to produce a backlash not only against the interveners but the R2P doctrine itself. Those structural problems, it is said, include mixed motives (interveners will often have self-interested as well as altruistic aims), the counterfactual problem (the impossibility of *proving* that any given number of people would have died without the intervention), the conspicuous harm problem (there is bound to be at least some collateral civilian damage), the end-state problem (how to leave after an intervention without the harm recurring), and the inconsistency problem (how can you intervene anywhere if you can't do so everywhere you ideally should).[34]

The practitioner's response to these anxieties, however, is straightforward: welcome to the real world. Any decision-making in any real crisis almost invariably involves hard judgement calls, weighing and balancing considerations that almost never all point conveniently the same way.[35] R2P is a framework for action for pragmatists, not purists, and this is very well understood by those who have to apply it, not just write about it.

Because of the degree of sensitivity and difficulty involved in any decision to use coercive military force—against the will of the government of the state concerned—it has been assumed from the outset by most R2P advocates, certainly the present author, that it would only be in the most extreme and exceptional circumstances that it will be authorized by the Security Council. And so it has proved to be, with only the Côte d'Ivoire and Libya cases in 2011 giving rise to such a mandate. Leaving aside what happened subsequently in Libya, both these cases were at the time of the original decisions largely non-controversial and perceived as almost textbook examples of the way R2P was intended to operate in the face of actually occurring atrocity crimes that were feared likely to explode in scale and intensity: lesser measures like sanctions and threats of ICC

prosecution were first explored; warnings were given; military action, not initially excessive in scale, was only taken when they were ignored; and the initial action clearly met its civilian protection objectives. It is impossible to know how many thousands of lives were saved in Benghazi by that initial intervention, but certainly possible to argue that had the UN Security Council acted anything like as swiftly and robustly in the 1990s, 8,000 men and boys in Srebrenica, and close to 800,000 men, women, and children in Rwanda, would still be alive today.

(p. 927) But of course the Libya case, as already noted, whatever the initial lack of controversy has subsequently proved desperately divisive, because of the widespread perception—certainly among the influential BRICS group members—that the P3 members unacceptably transformed a limited civilian protection mandate into an open-ended regime change one. I have explored the merits of this dispute elsewhere and will not revisit it here.[36] The point for present purposes is that the perception in the Libyan case of P3 over-reach, and disregard of legitimate concerns of other Security Council members, has already had seriously adverse consequences in Syria—paralysing Council decision-making, and in the failure to even condemn Assad's early behaviour, let alone apply any coercive measure like sanctions, giving his regime a sense of impunity which helped plunge the country into catastrophic civil war. And it manifestly has poisoned the well for the application of at least the sharp-end of R2P in any similar case that might arise for the foreseeable future.

If R2P is to have a future in all the ways that it needs to—if we are not, in the face of extreme mass atrocity situations, to go back to the bad old days of indefensible inaction as with Cambodia, or Rwanda, or Bosnia, or of otherwise defensible action taken in defiance of the UN Charter, as in Kosovo—then a solution simply has to be found to the current post-Libya stand-off. The good news, as foreshadowed earlier in this chapter, is that a solution is in sight should agreement be able to be reached on some variant of the 'Responsibility while Protecting' proposal originally put on the table by Brazil.

While the initial reaction by the P3 powers to this proposal when it was first articulated was very sceptical, and has overtly remained so since, their Syrian experience has begun to compel some rethinking. The reality is that if an un-vetoed majority vote is ever going to be secured again for tough action in a hard mass atrocity case—even action falling considerably short of military action—the issues at the heart of the backlash that has accompanied the implementation of the Libyan mandate, and the concerns of the BRICS states in particular, simply have to be taken seriously, voicing as they do the concerns of a much wider swathe of the developing world.

One straw in the wind suggesting that there is at least some willingness within the P5 to move forward and find new consensus on R2P related issues is the French proposal,

noted earlier, that the P5 members voluntarily agree to suspend their right to exercise a veto when exercising a vote on a mass atrocity crime situation reported to the Council and described as such by the Secretary-General. Initial reactions from other P5 members so far have, again, not been very encouraging. Perhaps the problem is that they have taken to heart the nostrum of Australia's Prime Minister in the 1940s that 'The trouble with gentleman's agreements is that there are not enough bloody gentlemen'. But if ever the Security Council is to win back some of the respect and credibility that both its structure and behaviour have increasingly denied it, it is going to have to be through informal adjustments of this kind, and it is very much to be hoped that the move for veto self-denial in atrocity crime cases will gather real traction.

Overall, there are many grounds for optimism about the future of R2P over the next decade and beyond. It is important to emphasize again that the disagreement now evident in the UN Security Council *is* really only about how the R2P norm is to be applied (p. 928) in the hardest, sharp-end cases, those where prevention has manifestly failed, and the harm to civilians being experienced or feared is so great that the issue of military force has to be given at least some *prima facie* consideration. There is much more to the R2P project than just these extreme late-stage situations, and much to indicate that its other preventive, reactive, and rebuilding dimensions all have both wide and deep international support.

Policy-makers now around the world do understand the stakes, and the imperative for cooperative action, much better than they used to. No one really wants to see a return to the bad old days when appalling crimes against humanity committed behind sovereign state walls were seen by almost everyone as nobody else's business. Maybe we can even be optimistic enough to believe that R2P principles are already so internalized and embedded that no leader knowing of such crimes will ever say again to a counterpart—as US Secretary of State Henry Kissinger did to Thai Foreign Minister Chatichai in November 1975, seven months after the Khmer Rouge had taken over Cambodia—'[Tell them] we will be friends with them. They are murderous thugs, but we won't let that stand in our way.'[37]

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Notes:

(1.) Gilbert 2007.

(2.) As identified in the 2009 Report of the UN Secretary-General (A/63/677), bringing some welcome conceptual order to the rather sprawling language of paragraphs 138 and 139 of the World Summit Outcome Document.

(3.) See GCRtoP 2015b.

(4.) See GCRtoP 2015a.

(5.) As defined by the International Court of Justice in *Bosnia v. Serbia* 2007, ICJ 2.

(6.) The following discussion of major power positions draws substantially on Evans 2012, pp. 15–39, esp. pp. 29–33. An excellent recent contribution to an understanding of these positions is the collection of papers in *Conflict, Security & Development*, introduced by Rotmann et al. 2014.

(7.) France, the UK, and US (since then widely referred to around UN corridors by the alternative acronym FUKUS).

(8.) Albright 1998.

(9.) Junk 2014, p. 553.

(10.) See Brockmeier et al. 2014.

(11.) Announced by President Hollande in the General Assembly on 24 September 2013 (<http://gadebate.un.org/68/france>), with the detail being fleshed out by Foreign Minister Fabius in an article in the *New York Times* on 4 October 2013.

(12.) See Sayigh 2012; also Evans 2013.

(13.) See Liu and Zhang 2014.

(14.) See GCRtoP 2008, quoting a BBC interview with Foreign Minister Sergei Lavrov.

(15.) Permanent Representative Vitaly Churkin in UN Security Council 2011b, S/PV.6650, p. 23: he refrained from mentioning Russia's invasion of Georgia in this context.

(16.) UN Security Council 2011a, S/PRST/2011/16.

(17.) Permanent Representative Hardeep Singh Puri in UN Security Council 2011b, S/PV. 6650, p. 18.

(18.) See further Jaganathan and Kurtz 2014.

(19.) See statement of Foreign Minister Antonio de Auguiar Patriota, presented by Permanent Representative Maria Luiza Ribeiro Viotti in UN Security Council 2011b, S/ PV.6650, pp. 15–17.

(20.) For a full discussion of these criteria see Evans 2008, ch. 6, 'Reacting to Crises: When is it Right to Fight?'

(21.) See Stuenkel and Tourinh 2014.

(22.) Permanent Representative Baso Sangqu in UN Security Council 2011b, S/PV.6650, p. 22.

(23.) See further Verhoeven et al. 2014.

(24.) The initiative was launched in 2010 by the New York based Global Centre for the Responsibility to Protect, working with the governments of Australia, Costa Rica, Denmark, and Ghana. See GCRtoP (n.d.).

(25.) See Finkel 2014.

(26.) See Ban 2013.

(27.) See International Coalition for the Responsibility to Protect 2014.

(28.) See, for example, Sengupta 2015.

(29.) Sewall et al. 2010; see also, in an interestingly favourable assessment from an R2P sceptic's perspective, Kuperman 2011.

(30.) See, for example, Evans 2008, chs. 4, 7, and Appendix B; United Nations Office on Genocide Prevention and the Responsibility to Protect 2014.

(31.) See, for example, Mani and Weiss 2011; Stewart and Knaus 2011; 'Special Issue: Risk and Resilience to Mass Atrocities', *Global Responsibility to Protect* 2014.

(32.) See, for example, Evans 2008, ch. 5 and Appendix B

(33.) See Gowan 2011, p. 4.

(34.) See Paris 2014.

(35.) Thakur 2015.

(36.) See, for example, Evans 2012.

(37.) Kiernan 2009, p. 1.

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