

NAVIGATING R2P BETWEEN NORM AND PRACTICE

The idea that states are responsible for the protection of their own people is a powerful normative and transformative one, but is far from complete or conclusive

By Omar Auf

The Responsibility to Protect (R2P) civilians has become one of the most contested concepts in international norms and relations, and not without good reason. There are questions of whether and how to apply R2P in conflict zones such as Ukraine, Syria, Palestine, and Myanmar, to name a few. But R2P is not merely a theoretical debate, augmented by an intervention in Libya over ten years ago. Rather it is a living concept with potential for more widespread (and needed) application. However, it lacks the political will—and the comprehensive framework—that is essential to its application in a fair, careful, and truly protective manner.

The Responsibility to Protect is a political norm—meaning it isn't a binding law based on a treaty or custom—interacting with international law by setting standards, common practices, and expectations, often into soft or hard law. Norms place a responsibility on all states to protect. But to protect whom? The answer, first, is to protect a state's own people; second, to aid states that are incapable of protecting their own people; and third, to intervene in states incapable or unwilling to protect their own people. The third aspect is the controversial element as well as the reason R2P came into being in the first place.

There is a strong argument in support of R2P, which focuses on preventing atrocities being committed against civilians. However, there are equally strong arguments against the concept, both in theory and in current practice. Both those for and against generally see the way which R2P has expressed itself in practice as problematic: R2P as a norm in international relations demands a reconsideration of our conceptualization of sovereignty at best and is a violation of the principle at worst.

Addressing such flawed implementation—especially when applied against the will of the state, which took place in Libya—is a priority, either by canceling the concept altogether, or by reforming its implementation.



Too Late to Act?

The Responsibility to Protect was birthed by a world which witnessed atrocities and where it was too late to act. This is the context in which international pundits, particularly the late United Nations Secretary-General Kofi Annan, began to question the concept of sovereignty vis-à-vis stopping atrocities.

△ A police helicopter is seen flying over police officials during their march to celebrate Police Day in Tripoli, Libya, Oct. 9, 2021. *Hazem Ahmed/Reuters*

The first shock to the world was the Rwandan Genocide in 1994, where hundreds of thousands of Rwandans died while the UN, and all its member states, effectively did nothing during the mass slaughter. Just a few months later, in 1995, thousands of Bosniak boys and men were systematically killed by the Serbs in what came to be known as the Srebrenica Massacre.

These two tragic events were a shock to the world, and to Annan. In his 1999 report entitled “We the Peoples”, he asked the all-important question: “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?”

Enter R2P. In 2000, the Canadian government commissioned the International Commission on Intervention and State Sovereignty (ICISS) to answer that question. A year later, the commission issued its report, which formulated a clear idea of R2P for the first time by challenging the absolute nature of state sovereignty, referencing “constitutional power sharing arrangements”. This essentially deconstructed the state and the notion of sovereignty along with it.

The commission looks at the state—and sovereignty—not as the absolute sum of its parts, but as conditional upon the fulfillment of obligations toward all of its parts. The ICISS thus shifted sovereignty from a state-centered, inviolable notion to a people-centered, conditional one.

The international community generally embraced the notion, but states were still skeptical. At the 2005 World Summit, the General Assembly unanimously voted in favor of the World Summit Outcome, which included an acceptance of R2P as a norm for protection and intervention in articles 138 and 139, but limited its mandate to genocide, war crimes, ethnic cleansing, and crimes against humanity. The following year, the UN Security Council (UNSC) passed a resolution reaffirming articles 138 and 139.

In 2009, the concept was further refined by then-Secretary-General Ban Ki-moon's Report on Implementing the Responsibility to Protect. He identified three pillars to R2P—the three aforementioned cases where R2P is applicable. There are compelling arguments on both sides, as well as clear problems with the implementation that need to be addressed.

The Arguments for R2P

Atrocity prevention

The first argument for R2P is as potent as it is simple: how can atrocities be prevented without intervening? Rwanda and Srebrenica were wake-up calls for a reason, as the toll on human life was huge, and the manner in which life was violated was cruel and unbecoming of the world in which we strive to live.

There are valid concerns regarding R2P, and they must be addressed without forsaking R2P altogether. Genocide cannot be mitigated or addressed creatively; it is either halted in its tracks, with those responsible tried and put behind bars, or it is allowed to endure at a very high cost.

The idea that states are responsible for the protection of their own people is a powerful normative *and* transformative one, but is far from complete or conclusive. The challenge is how to establish a framework which stops atrocities from taking place but does not threaten the age-old paradigm of sovereignty.

People-centered sovereignty

The ICISS report was the opening salvo challenging the concept of an unconditional sovereignty. The notion of sovereignty conditional upon the security of populations has become at the core of understanding R2P since its formulation. There are many objections to this idea of sovereignty, which will

be addressed, but there is also a distinct rhythm to such a conceptualization.

Sovereignty is largely sacrosanct, as expressed through the UN Charter, because it acknowledges a state's independence and ability to make its own decisions and decide its own fate. These were integral to the decolonization process and the self-determination of oppressed peoples. In other words, sovereignty is respected so that the will of the people is preserved through the sovereign authority's governance. But what happens when the sovereign authority takes on a life of its own and gradually becomes disconnected from the people it's supposed to represent?

State-centered sovereignty assumes the state continues and will continue to represent the will of its people, and that the will of all its people is respected, either through some sort of special representation or benevolent rule, or for an agreed-upon democratic arrangement in which the minority voice consents to its decisions. If such was the case, there would be no oppressed minorities. The post-colonial state system was maintained in a way to allow a people small in number to rule themselves, grouped by their conception of nationhood.

Ironically, sovereignty is respected to allow minority peoples in the global context to rule themselves, but when the voice, or, worse, the basic safety of minority groups is undermined, the international community is hesitant to intervene because of sovereignty.

A people-centered sovereignty, on the other hand, respects sovereignty as long as sovereign authority respects its people. And the standard for respect is not very high; sovereignty would be undermined only when atrocities are imminent or committed.

The Arguments against R2P

Violations of sovereignty

While an argument has been presented with regards to the merits of a people-centered sovereignty over a state-centered one, there is another side to the argument. According to Adom Getachew, a political scientist at the University of Chicago, R2P diminishes the normative value of sovereignty as a post-colonial value used to ensure equality between states. By going to the Security Council to decide when to intervene, R2P reemphasizes a hierarchy in the international order, and leaves intervention in small, post-colonial states at the discretion of large, powerful states. In the Security Council, R2P becomes a selective concept, and sovereignty is unconditional for some and conditional for others, based on a state's power to resist intervention and their clout in the international system.

Clearly, R2P is problematic or at least a concept which has yet to mature. The question is whether this argument is strong enough to forsake R2P altogether, and fail to prevent atrocities, in the name of deconstructing hierarchies. This no longer becomes a question of theoretical integrity but of moral urgency. Many atrocities would not be stemmed without a clear, formalized framework of intervention which places not just the right to intervene, but the responsibility to do so, upon the international community. Here one must ask, is it so that just because there's a much higher bar to intervene in the United States than in a small country, for example, that we shouldn't intervene in a small country at the brink of atrocities because of this lack of consistency?

Difficulty in measuring success

Was Libya then another Rwanda? It generally wasn't, but it is impossible to say for sure. Alan J. Kuperman, a political scientist at the University of Texas in Austin, argues that the regime didn't perpetuate violence against rebels who laid

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down their arms, yet there is no way to know whether there would have been a massacre in Benghazi or not. Certainly, the rhetoric of exterminating rats did little to ease the nerves of world leaders, quite the contrary.

Nevertheless, even if Libya is in fact a resounding success in humanitarian intervention and in exercising the Responsibility to Protect, the world will never know, and we will continue to criticize the intervention in Libya for all of its faults without knowing the alternative scenario to weigh it against. Any intervention

under R2P will always be faced with all of its flaws and almost none of its merits, and will be under constant scrutiny and criticism.

R2P as a Norm

R2P has, in fact, made for itself a place in the international system as a norm. It is important to emphasize its role as a norm, as it aids understanding the full scope of R2P as well as helps distinguish itself from other concepts.

What R2P is, at its very core, is a way of understanding sovereignty in terms that are concerned with the welfare of people. Based on this, R2P is a doctrine that places the primary responsibility of protection of a people on the state itself, and then places the responsibility on the international community to aid or intervene in states that fail to fulfill such a responsibility. Accordingly, R2P is not only intervention, even though it was designed with such an end in mind, but it is important to understand the wider effect of R2P in the global system.

R2P as an idea is an important one: for the debate which it invites, for the future change in the actions of states in accordance with the norm, and for the normative undertones it places on the international system in general. International relations scholars and experts on the UN Thomas G. Weiss and Giovanna Kuele state that “R2P seems firmly embedded in the values of international society and occasionally in policies and tactics for a particular crisis” despite the fact that it is very new as a concept vis-à-vis other norms in the international system.

R2P in UNSC resolutions

In 2011, R2P was mentioned in several important UNSC resolutions. In Resolution 1975, pertaining to Cote d’Ivoire, R2P was mentioned in the preamble. It is worth noting that there was already a UN mission and French forces present in Cote d’Ivoire authorized to use force since 2004, under Chapter VII of the Charter. While it can be said that R2P was invoked to strengthen the normative integrity of the resolution and their mandate, the intervention by UN and French forces would have been present anyway.

With regards to Libya, a pertinent question arises: On what grounds did the UN authorize the use of force?

The actual military intervention was authorized based on threats to international peace and security, given the way S/RES/1973 was phrased. However, this doesn’t mean that R2P didn’t have a role to play. As a norm, it was central to the decision to intervene, and was relevant in the discourse as well as the formal resolutions. The abstentions of Russia, China, India, and Brazil on Resolution 1973 only came out of a fear of having another Rwanda on their hands. In that sense, R2P as a norm was the main driver of the intervention, despite the resolution implying that the actual intervention was due to threats to international peace and security.

Another interesting example of R2P acting as a norm in the context of a resolution is the 2012 UNSC Resolution 2085 on Mali, and international peace and security was again cited to refer to Chapter VII. Curiously, this time R2P is expressed in the operative clauses, as the resolution states that an armed support mission “to support the Malian authorities in their primary responsibility to protect the population” will be established. The Malian resolution is distinctively different from the resolutions concerning Libya for two reasons: first of all, the Malian government requested this military assistance to fight Al-Qaeda, so there’s no breach of sovereignty in whichever way it’s defined. Embedding R2P several times in the operative clauses of the resolution, however, implies an increased operationalization of R2P, and its governing notion on sovereignty. The second important distinction is that R2P was not used as justification for intervention

in the case of Mali, but as a guideline for the intervening force to act by, and a mandate to respect in spirit and in action.

While these are some of the more distinct examples of UNSC resolutions where R2P is mentioned, there are more, including Resolution 2014 on Yemen, 2127 on the Central African Republic, 1894 on Sudan, and 1996 on South Sudan, among many others.

R2P in Practice

Hidden motivations

While in theory R2P should be undertaken in a non-biased manner without vested interests other than the safety of the population, in practice this may not be the case. The issue begins with the fact that it is often individual states or military alliances that are intervening, and not a UN force.

As such, missions may be at risk of escalation or derailment based on these interests. However, the ICISS, realizing this, articulated an “ulterior motive exemption” which forgives states for inevitably having other interests when intervening. This is an attempt to address the hidden motivations problem by simply accepting it. But is this ulterior motive exemption acceptable?

In pursuit of a possible hidden interest in regime change, NATO overstepped its mandate, as set out by Resolution 1973, and committed acts of aggression. Moreover, it knowingly allowed crimes that it was intervening to stop to be committed by the rebels. Clearly, NATO’s “ulterior motive,” whether it was there from the beginning or developed with the conflict, was highly damaging.

Post-conflict stability and war termination

Another issue which becomes clear is that intervention often plants instability in the medium term, and may make matters worse than before. Unless intervention is very well planned with a clear post-conflict plan which doesn’t leave a power vacuum or leftover tensions, there is a high chance that conflict will resurface. In other words, R2P, as it is used today, is a short-term solution to a long-term issue.

Lawyer James P. Rudolph points out a link between R2P and the even younger emerging norm, *jus post bellum*, or the responsibility to rebuild. There are some who would argue that *jus post bellum* must be linked to R2P. It mustn’t necessarily be carried out by the same people who intervene, they say, but it must be integrated in the plan before intervention; otherwise R2P would act like no more than a ceasefire.

Inconsistency

Another important aspect in which R2P fails in practice is consistency. There is a general inconsistency in the willingness to intervene in countries which do not protect their populations, for several reasons. One reason is convenience, as states are generally disinclined to intervene in conflicts where it would prove to be a financial, logistical, or indeed political difficulty. One of the reasons NATO did not want to intervene again in Syria was because the terrain is completely different to Libya.

There is a further inconsistency which is related to power politics. A common question is why Libya and not Syria? The probable answer is because of Russia. The aforementioned issues with R2P being linked to the Security Council are brought back to the fore, and demonstrated even more potently with the Russian invasion of Ukraine, as it is likely, according to Amnesty International, that Russia has committed crimes against humanity.

Such inconsistency violates the very spirit of the Responsibility to Protect. R2P is not meant to be inconsistent or selective, but to be a responsibility toward all populations. The fact that R2P's application is prone to inconsistency is both a fundamental flaw in the conceptualization of R2P through ignoring the potency of *realpolitik* in determining when to intervene, and also a failure to adequately translate the norm in practice.

Nevertheless, R2P is still young, has room for improvement, and has arguably yet to mature.

R2P in Ukraine?

Given current events, can R2P be applied in Ukraine against Russia? More importantly, *should* R2P be applied in Ukraine? In both cases, the answer is no. It cannot be applied simply because Russia has a veto in the Security Council, and therefore armed intervention cannot be authorized. Though there may be an argument for intervening on the grounds of collective self-defense, as authorized by the UN charter, with R2P as a guiding notion. However, even if such an intervention is legal, R2P-based intervention still should not be applied because it might contribute to dragging out the war and increasing its devastation to possibly continental scale, not to mention running the risk of nuclear war.

Such is R2P's greatest flaw—that it is nigh impossible for it to be applied to the violations of major powers, even when it is completely justified. This is, however, a major flaw of the international community in general. The rules are not the same for the United States, China, and Russia, nor for the Global North compared to the Global South, because the former set the rules. Who will hold the United States accountable for its war crimes in Iraq, for example? Therefore, to criticize R2P because it suffers the same flaws as the community

which created it is to criticize a part simply because it is part of the whole and inevitably shares its flaws.

Before discussing armed intervention, some interesting essays look to apply the concept through non-armed intervention. The options proposed include an information war, legal proceedings, economic sanctions, diplomatic sanctions, and military assistance. This is a positive approach for the concept as a whole, disassociating R2P from the necessity for armed intervention and reflecting the norm's wider purpose. Practically, all these suggestions are already being implemented, though it would add a further layer of legitimacy to such efforts.

Yet R2P is blasted for being “a hollow promise for civilians under fire”. University of Portsmouth Director of Security and Risk Research Peter Lee's entire essay, and most essays before it written by experts, have criticized R2P for leaving too wide a berth for myopic and/or self-interested maneuvering, and too little space for accountability to be sincere. Moreover, the recommendations are always to refine it to add more conditions to its proper application—essentially restricting its application compared to the Libyan intervention. Yet here authors are calling for an intervention which will inevitably prolong the war and increase its devastation, which are exactly the actions which NATO has been repeatedly blasted for in Libya.

In the “hollow promise” article, the author says that U.S. Secretary of State Anthony Blinken has come forward with “very credible” reports of war crimes committed by Russian forces. This claim has little relevance for two reasons: first of all, war crimes are not covered by R2P. This is a common misconception among authors claiming R2P-based intervention, who are either not familiar with or choose to ignore the 2005 World Summit Document, which is the current expression of the state-based consensus regarding R2P. For example, another article by Charles H. Camp, Kiran Nasir Gore, and Lilia Chu claims that “the Responsibility to Protect doctrine requires States to prevent, react to, and rebuild following human rights crises”. This is simply wrong. While truer to the ICISS definition, which includes prevention and rebuilding, the current iteration of R2P certainly does not require prevention, reaction, and rebuilding following human rights crises. It only covers the four specified atrocities. More egregious, perhaps, is the same authors'—lawyers, no less—claim that “international scholars, nations, and the UN itself agree that it is part of customary international law, which is binding on all States, regardless of whether it has been codified as such, or whether the State consents”.

This is, again, inaccurate. R2P is not customary international law; it is a very young norm and lacks the all-important element of state practice. States have repeatedly failed in their responsibility to protect populations, whether it be in Syria, Myanmar, Palestine, or elsewhere. Its application has been the exception,

not the norm. The UN is not claiming that R2P is custom, and the member states certainly are not. The World Summit Outcome Document is not law, nor is the ICISS report or other documents related to R2P.

The second reason the “hollow promise” essay is problematic is because, even if war crimes were within R2P’s mandate, a claim by a state that its rival is committing atrocities is not sufficient evidence for an intervention. While this issue of who makes the claims which legitimize an R2P-based intervention is a practical and conceptual gap, it is currently filled by the Security Council through its decisions on whether or not to intervene, which is a highly flawed approach. And the ICC is simply too slow to be assigned the task. A novel body properly equipped for the urgency of the task must be created and empowered by the Security Council.

Having said that, R2P has indeed proven to be a hollow promise for many vulnerable populations, and is contingent upon the political will of member states, which is tragic. It should not be so, but in such a flawed, state-centered international system, how could it not be? The fact that it exists in the first place in the current political climate is very positive. What critics neglect is that it is leading the charge toward a more human-centered system, but, of course, the opposition is tremendous. Failure and resistance are expected and, unfortunately, it will fail more than it succeeds until a political reorientation of the entire system—which it contributes to—occurs. One must hope that this is not instigated by further atrocities, replicating the same conditions through which the norm was born, and that it proves effective where it can.

Overall, R2P has proven to be a unique concept both for its daring aspirations and evident failures. Some scholars see the need for such a concept, and such a people-centered interpretation of sovereignty, in the global system, as, ultimately, the system is made to serve the people. The protection of populations is precisely R2P’s goal, and there seems to be no sufficiently compelling argument to counter the conceptual need for a framework which places the emphasis on people rather than states and works to prevent atrocities.

While there are some conceptual flaws which can only be mitigated at best, there are others in implementation, which must be addressed and changed significantly. First steps can be taken toward this goal, such as implementing a UNGA-UNSC dual approval mechanism to achieve a wider consensus before intervention, or refining the framework through integrating concepts such as the Responsibility *while* Protecting. Clear and effective plans for the post-conflict phase as well as enhanced peacekeeping processes are necessary. The desire to uphold R2P as an international norm is tied to the need to update and reform the concept and its application in ways suiting the needs and concerns of the global system.

To quote political scientist Thomas G. Weiss: whither R2P? 