

2. ПОДХОДЫ К «ОТВЕТСТВЕННОСТИ ПО ЗАЩИТЕ» ГРАЖДАНСКОГО НАСЕЛЕНИЯ

Ramesh Thakur

R2P: LOOKING BACK TO LOOK AHEAD

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Abstract The article looks at the origins and evolution of R2P and examines ongoing debates about it and the principle's current status. Interventions were frequent before R2P was formulated in 2001 and are not guaranteed after R2P's unanimous adoption in 2005. Atrocities will still be committed and the international community will struggle to respond to them in time and effectively. In contrast to controversial "humanitarian interventions", R2P, especially when backed by legitimacy criteria that have been agreed in advance, at least helps to shift the balance towards interventions that are rule-based, multilateral and consensual. To that extent it helps the world to be better prepared – normatively, organizationally and operationally – to deal with crises of humanitarian atrocities, as they arise, without guaranteeing good outcomes.

Keywords Responsibility to Protect (R2P), United Nations, mass atrocities, collective action, sovereignty, humanitarian interventions, Rwanda, Kosovo, Libya, Syria

Название статьи "Ответственность по защите": взгляд в прошлое ради перспективы на будущее

Аннотация В статье исследуются истоки и эволюция «ответственности по защите», а также продолжающиеся дискуссии вокруг этой концепции и ее текущий статус. Интервенции во внутренние дела государств были нередки и до того, как принцип «ответственности по защите» был сформулирован в 2001 г., не прекратятся они после того, как он был единогласно одобрен на уровне ООН в 2005 г. Массовые зверства против гражданского населения будут совершаться и впредь, а международное сообщество будет продолжать пытаться реагировать на них своевременно и эффективно. Однако, в отличие от печально известных «гуманитарных интервенций», «ответственность по защите», особенно при условии, что критерии ее легитимности согласованы заранее, по крайней мере, способствует сдвигу в сторону многостороннего и согласованного вмешательства, основанного на международно признанных нормах. В этом смысле «ответственность по защите» делает мир более подготовленным – в нормативном, организационном и оперативном отношении – к противодействию кризисам, связанным с массовыми жертвами среди гражданского населения, по мере их возникновения, хотя и не гарантирует успешных результатов.

Ramesh Thakur is Professor at Crawford School of Public Policy, The Australian National University, and editor-in-chief, "Global Governance". Рамеш Такур – профессор Школы публичной политики Австралийского национального университета (Канберра), главный редактор журнала "Global Governance".

Ключевые слова ответственность по защите, ООН, массовые зверства, коллективные действия, суверенитет, гуманитарные интервенции, Руанда, Косово, Ливия, Сирия

I. Introduction

International organizations are an integral part of contemporary world affairs, articulating norms, clarifying, developing and enforcing laws, and in myriad other ways establishing normative benchmarks for state conduct. This includes the appropriate level of force that a state may use internally against its own citizens and internationally against other states. What happens then if some states want to use force internationally in order to protect victims of atrocities by a ruling regime within domestic jurisdictions? Like great powers, major international organizations too require organizing principles for responding to critical challenges to peace and security. The innovative principle of the Responsibility to Protect (R2P), first articulated by the International Commission on Intervention and State Sovereignty (ICISS) in 2001¹ and unanimously adopted by world leaders gathered at a UN summit in 2005,² is the organizing principle for responding to mass atrocity crimes of genocide, crimes against humanity, war crimes, and ethnic cleansing.

By adopting R2P, the international community acknowledged that those who live in zones of safety have a duty of care towards those trapped in zones of danger. It strikes a balance between unilateral interference and institutionalized indifference that has become the normative instrument of choice for converting a shocked international conscience into decisive collective action to prevent and stop atrocities. In the vacuum of responsibility for the safety of the marginalized, stigmatized and dehumanized out-group subject to mass atrocities, R2P provides an entry point for the international community to step in and take up the moral and military slack. At least, that was the idea. As with most good ideas for improving world order, the result has fallen short of the ideal. This article looks at the origins and evolution of R2P and then examines ongoing controversies and the principle's current status.

II. Origins

The history of the twentieth century is in part the story of a twin-track approach to tame – through a series of normative, legislative and institutional fetters – impulses to armed criminality by states in the use of force domestically (to commit atrocities) and internationally (to commit aggression). Cumulatively, these attempted to translate an increasingly internationalized human conscience into a new normative architecture of world order which still left a gap when victims of state-sanctioned atrocities needed international military force to protect them.

Sovereignty is the bedrock organizing principle of modern international society and faith in it was strongly reaffirmed by the large number of countries that regained their independence from colonial bondage in the second half of the twentieth century. In the growing anti-colonial narrative, “humanitarian intervention” as a doctrine was progressively discredited in large parts of the world in a new climate of international legitimacy unfavourable to intervention in general, and to Western intervention in particular.³ At one level, the developing countries’ attachment to sovereignty is deeply emotional, reflecting the lingering trauma of their colonial experience. At another level, the commitment to sovereignty is functional. The state is the cornerstone of the international system and state sovereignty provides order, stability and predictability in international relations.

However, far from being absolute, sovereignty has generally been considered to be contingent. The more significant change of recent times is that it has been reconceived as

being instrumental. Its validation rests not in a mystical reification of the state, but in its utility as a tool for the state serving the interests of the citizens. Internal forms and precepts of governance must conform to international norms and standards of state conduct. That is, sovereignty must be exercised with due responsibility. This crucial normative shift was articulated by Francis M. Deng, the Special Representative of the Secretary-General for Internally Displaced Persons (IDPs).⁴ States are responsible for providing life-protecting and life-sustaining services to the people. When unable to do so, as responsible members of the international community they must seek and accept international help. If they fail to seek—or obstruct—international assistance and put large numbers of people at risk of grave harm, the world has an international responsibility to respond.

In addition and juridical sovereignty notwithstanding, “humanitarian intervention” too has a long history. But the many examples of intervention in actual state practice over the centuries did not lead to an abandonment of the norm of non-intervention. A perennial difficulty in trying to justify intervention is that the use of force can cause more harm than good, with the cure being worse than the disease. Often the breaches provoked such fierce controversy and aroused so much nationalistic passion that their net effect was to reinforce the norm more than to negate it. This was true even when the case for humanitarian intervention seemed the strongest, as with India against Pakistan’s atrocities in East Bengal in 1971 or with Vietnam to get rid of Cambodia’s murderous Khmer Rouge regime in 1979.

In the meantime, as the world steadily became a global village under the impact of rapid developments in communications and transportation technology, the human rights norm also deepened and spread outwards from the Euro-Atlantic core to the farthest reaches of the increasingly interconnected international system. This produced normative dissonance between the norms of non-intervention in the internal affairs of sovereign states and the abusive practices and humanitarian atrocities perpetrated by some brutish thug-rulers on their own peoples shielding behind that norm.

When some states defied the norm of non-intervention in efforts to protect the victims of mass atrocity crimes, their claimed emerging norm of “humanitarian intervention” collided with the existing norm of non-intervention. The majority of states rejected the effort to re-legitimize the unilateral use of force internationally by some in order to circumscribe the arbitrary use of force internally by others. The paradigmatic case of shameful inaction amidst mass atrocities was the Rwanda genocide in 1994; that of unilateral intervention to try and halt mass atrocities was military action by the North Atlantic Treaty Organization (NATO) in Kosovo in 1999.⁵ Doing nothing was no longer acceptable to a globally sensitized human conscience (Rwanda), but doing something militarily when confronted with an impossible-to-obtain UN authorization was not legally permissible either (Kosovo). Rwanda caused lasting damage to the UN ideals and credibility when the organization failed to stop a three-month long genocide; Kosovo showed the damage to the UN credibility and the sharp polarization of international opinion when NATO intervened militarily outside the UN framework.

In other words, the existing normative consensus was no longer fit for purpose against the brutal facts of the real world. Under the impact of contrasting experiences in Rwanda and Kosovo, UN Secretary-General Kofi Annan urged member states to come up with a new consensus on the competing visions of national and popular sovereignty and the resulting “challenge of humanitarian intervention.”⁶ The policy community split between the major powers and the majority of states from the global South on the question of the continuing validity and relevance of the norm of non-intervention. The response from the developing countries was that sovereignty was their final defence against the rules of an unjust world.⁷ The Non-Aligned Movement (NAM) – with 113 members, the most representative group of countries outside the UN itself – three times rejected “the right of humanitarian intervention,” demonstrating just how deeply divisive the issue was.⁸ Responding to Annan’s clarion call, an independent blue ribbon international commission was convened to try and recreate a new consensus and its report came up with the innovative formula of the responsibility to

protect that married the civilian protection agenda of the mid- and late 1990s to the earlier reformulation of sovereignty as responsibility in the context of internally displaced persons (IDPs).

R2P was the ICISS answer to reconciling the neuralgic rejection of “humanitarian intervention” by the global South with the determination by the North to end atrocities. Based on state practice, Security Council precedents, established and emerging norms, and evolving customary international law, ICISS held that the proscription against intervention is not absolute. The foundations of the international responsibility to protect lie in obligations inherent in the concept of sovereignty; the responsibility of the Council, under Article 24 of the Charter, for the maintenance of international peace and security; specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law, and national law; and the developing practice of states, regional organizations, and the Council itself.

In effect the International Commission on Intervention and State Sovereignty performed a “Feuerbachian inversion” of state–citizen relations on rights and responsibilities.⁹ Its report sought to change the conceptual language from “humanitarian intervention” to “the responsibility to protect,” pin that responsibility on state authorities at the national and the UN Security Council at the international level, and ensure that interventions, when they do take place, are done properly. ICISS argued that the essential nature of sovereignty had changed from state privileges and immunities to the responsibility to protect people from atrocity crimes. Where the state defaulted on its solemn responsibility owing to lack of will or capacity, or because it was itself complicit in the commission of the atrocities, the responsibility to protect tripped upwards to the international community acting through the UN.

The key innovation in 2001 was the reconceptualization of “humanitarian intervention” as R2P; everything else in this discourse flows from that distinction. Yet far too many analysts continue to conflate the two.¹⁰ Contrary to the criticism that R2P was merely old wine in a new bottle, the differences between them are real and consequential.¹¹ Intervention has a long lineage in the history of political thinking, including, most notably, just war theory. Several European powers engaged in humanitarian intervention throughout the 19th century.¹² Taking a major British political philosopher as the point of departure, Michael Doyle unpacks the thorny issue of when a state’s sovereignty should be respected and when overridden by other states in the name of humanitarian protection, national self-determination or national security.¹³ Drawing on the ideas of Rousseau, Kant and Hegel, Bjorn Gomes shows that intervention on humanitarian grounds is not just permissible, but may indeed be obligatory.¹⁴ Luke Glanville traces the notion of sovereignty as protective responsibility to the 16th–17th centuries,¹⁵ noting that the right to wage a just war to punish tyranny and rescue the oppressed predates non-intervention as an *attribute* of sovereignty.¹⁶

ICISS recognized “the long history, and continuing wide and popular usage, of the phrase ‘humanitarian intervention,’” but “made a deliberate decision not to adopt this terminology.”¹⁷ *Politically*, the visceral hostility of a large number of former colonized countries to “humanitarian intervention” is explained by the historical baggage of rapacious exploitation and cynical hypocrisy by the Western colonial powers. Some Indian analysts, for example, question why Winston Churchill is not treated as a mass murderer.¹⁸ Insistence on the discredited and discarded discourse by self-referencing Western scholars amounts to an in-your-face disrespect to them, to ICISS and to all the various groups of actors who have embraced R2P as an acceptable replacement. *Conceptually*, while R2P upends state–citizen relations internally and defines the distribution of authority and jurisdiction between states on the one side and the international community on the other, “humanitarian intervention” does so with respect to different states. *Normatively*, “humanitarian intervention” rejects non-intervention and privileges the perspectives and rights of the intervening states. R2P reformulates sovereignty as responsibility, links it to the human protection norm, sidesteps

without rejecting non-intervention and addresses the issue from the perspective of the victims. *Procedurally*, R2P can only be authorized by the United Nations whereas “humanitarian intervention” is agnostic between UN and unilateral interventions. *Operationally*, protection of victims from mass atrocities requires distinctive guidelines and rules of engagement and different relationships to civil authorities and humanitarian actors, always prioritizing the protection of civilians over the safety and security of the intervening troops.

III. Evolution

The unanimous endorsement of R2P by world leaders in 2005 added clarity, rigor and specificity, limiting the triggering events to war crimes, genocide, ethnic cleansing and crimes against humanity, and so realigned the emerging global political norm to existing categories of international legal crimes. Affirming individual state responsibility to protect populations, member states declared they were “prepared to take collective action, in timely and decisive manner, through the Security Council ... and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations.”¹⁹

Secretary-General Ban Ki-moon’s special reports on R2P, issued annually since 2009 and continued by his successor Antonio Guterres, sustained and consolidated the international consensus. In his first report on R2P in 2009,²⁰ which remains the most important and influential so far, Ban reframed R2P in the metaphor of three pillars: first, the responsibility of each sovereign state itself to protect (including prevention) its own populations from the atrocity crimes in question; second, the responsibility of other states to assist it to do so; and third, the responsibility of the wider international community to respond in a “timely and decisive” fashion and by all appropriate means (not excluding coercive military action). While the coercive end of R2P is to be found only in Pillar Three, the latter is not restricted solely to coercive tools (military and non-military). Rather, even in Pillar Three the default first response is peaceful means while forceful means is the option of last resort.²¹ It has become obvious in successive annual General Assembly debates in and since 2009 that the three-pillar frame of reference is now overwhelmingly accepted by the UN community. The annual debates have helped to forge a shared understanding of R2P and show that the R2P consensus is broadening, its legitimacy strengthening, and most states are concerned to move on to questions of implementation.

IV. Controversies

In the pre-R2P era, the two paradigmatic cases that highlighted the flaws of the then-existing normative architecture were Rwanda in 1994 and Kosovo in 1999. In the post-R2P era, the two paradigmatic cases to date that highlight its mobilizing power but also underline its problems might well comprise Libya in 2011 when NATO led a UN-authorized R2P intervention, and Syria since 2011 where despite large numbers of civilian deaths and the confirmed use of chemical weapons, the United Nations failed to take any robust and effective action.

That said, in any evaluation of R2P, it has to be remembered that the primary responsibility for civilian protection is that of national authorities and conflict parties and the international community has only a fallback responsibility; the chief blame for atrocities should not be shifted to the UN or other regional or international actors. The protection of civilians is an outcome, not an activity. While the numbers and activities of civilian protection actors have grown, there does not seem to have been a commensurate increase in actual protection. Civilian protection norms impose moral obligations to act but do not by themselves indicate what courses of action to follow in order to achieve the best outcomes. Nor have satisfactory measures been devised to gauge impact and outcomes. But what does

seem clear is that civilian protection is a “wicked problem” with no solutions, only better or worse outcomes.

The main point of a new norm is not merely to promote the adoption of a new organizing principle of world order to address a particular issue, but to reshape international behaviour by altering state practice. This remains the greatest gap between promise and performance for R2P. When post-election violence broke out in Kenya in 2007–2008, Kofi Annan who was called in to mediate saw and handled the crisis in R2P terms.²² But it was Libya in 2011 that showcased both the potential mobilizing power and the limitations of R2P as a call to international arms. Security Council Resolution 1973 (17 March 2011) authorized the use of “all necessary measures ... to protect civilians and civilian-populated areas.” Subsequently, the consensus underpinning Resolution 1973 was damaged by gaps in expectation, communication and accountability between those who mandated the operation and those who executed it. The post-Gaddafi turmoil and volatility in Libya, that also cross-infected neighbouring countries like Mali, complicated international responses to the ongoing crisis in Syria by raising doubts about the long-term results of military action.

While the prevention and reaction components of the original ICISS formulation were endorsed and reaffirmed by the UN in 2005, the third component, namely the responsibility to rebuild, fell through the cracks. Taking the 2005 document as the agreed intergovernmental text, Ban Ki-moon’s subsequent reports similarly disregarded peacebuilding as an integral component of R2P – even though there are remarkable similarities in the core tasks of both normative agendas in the separate reports by the Secretary-General on them (promoting intercommunal dialogue and reconciliation, effective, legitimate and inclusive political institutions, effective and impartial justice mechanisms, etc.).²³ The 2001 ICISS version had sliced the principle into three cognate responsibilities to prevent, respond and rebuild. Ban’s 2009 report reformulated it in the metaphor of three pillars. In most respects the three-pillar reformulation is superior to the original ICISS formulation. But it loses sight of the crucial importance of the third responsibility to reconstruct and rebuild. Arguably, this was a critical failure on Libya which US President Barack Obama later blamed on the Europeans who, “given Libya’s proximity,” should have been more “invested in the follow-up.”²⁴ Other critics insist that the intervention did not satisfy the just cause and last resort criteria,²⁵ which is far more difficult to sustain on the evidence available in real time.

The price of the backlash against the abuse of UN authorization by NATO in Libya in 2011 was refusal by Russia and China to cooperate in robust resolutions against President Bashar al-Assad’s brutal crackdown in Syria. This led to a widespread perception that inaction on Syria proved the hollowness of R2P as an inherent flaw.²⁶ But this conflates the structural dilemmas inherent in any contemporary use of international force into a central dilemma of R2P. The real question is: does R2P make the structural dilemmas more or less acute? In no case does R2P worsen the dilemma; in almost every case it makes the dilemma less acute.²⁷ In a brutal civil war like the one that has raged in Syria since 2011, the state cannot be prohibited from employing force to fend off armed challenges to its authority. Outsiders confront the moral hazard of encouraging opposition and secessionist groups to take up arms against governments elsewhere in the world. Yet the moral hazard argument can be exaggerated. It is intuitive to believe that some groups may be encouraged by examples elsewhere to provoke government forces to commit atrocities that would otherwise not occur. It is equally intuitive to believe that governments would be more reluctant to initiate atrocities knowing there was greater chance of international intervention to stop them. The net impact on the incidence of atrocities therefore could just as easily be negative or neutral as positive.²⁸

The 21st century has witnessed major international interventions in Afghanistan, Iraq, Libya, and Syria.²⁹ Some common lessons can be drawn from these cases. The most important is the limited utility of the use of force in contemporary conditions. Non-R2P operations in Iraq and Afghanistan have been no more successful than the R2P-authorized

mission in Libya. Syria (and other cases such as Sudan) proves that R2P does not guarantee collective UN action on all occasions when it is needed and justified. Nor, as Libya proved, does it guarantee successful outcomes when the UN does approve military action to protect populations at risk of slaughter. But nothing in recent history suggests going around the UN ensures success either. The use of force today is inherently controversial and problematic. No humanitarian crisis is so grave that the plight of the trapped civilians cannot be made even worse with outside military intervention: the swath of ungoverned territories from Afghanistan through the Middle East to North Africa is graphic evidence of that.

If the primary pathology in the region is the lack of local good governance institutions, a foreign military force is not just ineffectual; it is counter-productive, for it destroys and degrades the fragile physical and institutional infrastructure that does exist. The second critical lesson therefore is that for the major powers, going through the UN reduces the diplomatic transaction costs and contributes to the consolidation of the principle of a world governed by the rule of law in the use of force. The main focus should be on improving R2P implementation to safeguard against abuses and failures while channelling individual outrage to rid the world of atrocities through UN-centred collective action.

The third important lesson, conversely, is that unilaterally reinterpreting a Security Council mandate, as happened with Resolution 1973, to expand the mission and the means builds resistance; other countries resent being exploited as useful idiots and will withhold cooperation on future issues until such time as credible checks are put in place to prevent self-interested expansive reinterpretations of collectively authorized operations.

V. False North–South dichotomy

While R2P preserves to states the responsibility to protect their own populations, it strengthens the UN's responsibility for the international community as a whole. For most Western powers, the era of Westphalian sovereignty coincided with a history of interventions in contiguous, proximate and distant states. The most egregious example was colonization, justified, in an analogue to slavery, by denying independent legal status to the conquered territories. But throughout this period even the Western powers did not challenge the norm of non-intervention *per se*. While affirming its continuing validity as the key organizing principle of interstate relations, all intervening powers justified their departures from the norm as an exceptional act due to special compelling circumstances (or, in the case of India in 1971, resting the legal justification in the language of self-defence against “demographic aggression” in the form of ten million refugees).

This is where the NATO intervention in Kosovo 1999 was a radical departure. For the first time, the major Western powers challenged the validity and relevance of the norm of non-intervention itself and proclaimed an emerging new norm of “humanitarian intervention” instead. But the others still had the numbers to reject the self-interested claim and did so in no uncertain terms in congenial forums like NAM and the UN General Assembly. For most developing countries, the dominant policy now is to support pillars one and two of R2P but for some Western powers, the default policy setting has already shifted to include pillar three military action as a discretionary (because of mixed motives) rather than mandatory option.

Yet R2P is not really a North–South issue. Many non-Western societies have a historical tradition of reciprocal rights and obligations that bind sovereigns and subjects. The emerging powers like the BRICS (Brazil, Russia, India, China, South Africa) are the countries where R2P implementation remains most controversial and political resistance can be most expected. Because of their mediating role between developing countries and the global North,³⁰ they will be called upon to ensure that, through global governance mechanisms and international accountability instruments.³¹

(1) Vulnerable groups are protected from predations by brutish thug-rulers domestically;

(2) Weak countries are protected from the predations of regional or global major powers; and

(3) Violators of both sets of norms on the use of force are made to answer for their transgressions.

Efforts are indeed being made within the global South to try and find ways to move forward on how best to prevent and halt atrocities, including Brazil's concept paper on "Responsibility while Protecting."³² This has the potential to bring in some agreed parameters, building on the precautionary principles articulated in the 2001 ICISS report, on the conditions that will govern the use of UN-authorized R2P operations. Its two key elements are (a) to formulate an agreed set of criteria or guidelines to help the Security Council in the debate before an R2P military intervention is authorized, in order to achieve consensus and (b) a monitoring or review mechanism to ensure that the Council has an oversight role over the operation during implementation, in order to sustain that consensus.

VI. Current status

Every year there are multiple references to R2P in Security Council resolutions, presidential statements and reports and statements by the Secretary-General covering conflict situations in multiple theatres. From 2006 to the end of January 2018, between them the Security Council, its presidents, the General Assembly and the Human Rights Council have referenced R2P a total of 128 times (*Table 1*). Dozens of civil society organizations, projects and programs are dedicated to its promotion and advocacy in every region of the world. There are hundreds of research projects, books and articles on it. Each year R2P is also tested and found wanting in real crises around the world. There is a parallel debate in both policy and academic circles on the precise status of R2P: does it have any legal force; should we describe it as a principle; has it attained the status of a global norm? Regardless of whether it is a norm or not, there is general agreement that a normative shift has taken place from non-intervention, the dominant global norm in 1990 that shielded sovereign states from external intervention, to the responsibility to protect that seeks to qualify the norm of non-intervention in significant respects, albeit under narrow circumstances and tight procedural safeguards.

Table 1: R2P as a normative force: UN Security Council (UNSC), General Assembly (UNGA), Human Rights Council (UNHRC) resolutions and presidential statements

	Security Council resolutions	Security Council presidential statements	General Assembly resolutions	Human Rights Council resolutions	Total
2006	3	0	0	0	3
2007	0	0	0	0	0
2008	0	0	0	1	1
2009	1	0	1	0	2
2010	0	0	0	1	1
2011	6	2	0	3	11
2012	2	2	0	4	8
2013	7	4	1	4	16
2014	10	4	2	4	20
2015	14	4	2	2	22
2016	12	2	3	4	21
2017	12	2	0	7	21
Total	67	20	9	30	126

Source: Global Centre for the Responsibility to Protect. URL: <http://www.globalr2p.org>.

R2P is not a principle/norm in search of a self-validating crisis, but an attempt to find new consensus on a rare but recurring problem, namely humanitarian atrocities which, in the age of an internationalized human conscience, are an increasing affront to modern sensibility for a growing number of people and countries. It remains conceptually contested and politically controversial. But it is contentious as a principle in academic circles. In the policy community, the principle per se is no longer contested. It is how best to implement it, and with what oversight and safeguards in order to prevent abuse, that continues to attract controversy. Part of the explanation for the discrepant status of the R2P principle between the scholarly and policy communities is that conceptual purity and analytical consistency is a requirement of academic rigour divorced from the untidy and messy real world of politics inhabited by policymakers. Every country has to trade off value goals and material interests (values against values, interests against interests, and values against interests), which is why “a balance of interests” is a more satisfactory analytical construct than the stale and no longer fit for purpose “the national interest.”³³ That is, far from a fatal flaw, policy inconsistency is the norm and it is most acutely manifested in the policies of the five permanent members of the UN Security Council.

Although R2P (along with its sibling norms of protection of civilians³⁴ and international criminal justice)³⁵ is an important normative innovation, it does not fill all gaps in the normative architecture of world order. Both R2P and the protection of civilians resulted from growing shame at the accumulating list of atrocities in which the international community stood by as passive onlookers, frustrations at the “constitutional” constraints and normative inadequacies rather than indifference and apathy to the plight of civilian victims that produced the passivity, and a determination to reposition the UN system to be empowered and capacitated to respond better on both the timeliness and effectiveness dimensions when confronted by repeat occurrences of similar tragedies. Despite these two valuable additions to the repertoire of the international community in dealing with atrocities perpetrated on civilians, there remain many gaps in the protection agenda’s normative architecture.³⁶

Taking everything into consideration, the most balanced assessment seems to have been made by Gareth Evans. He argues that despite the setbacks, disappointments and failures, R2P’s overall impact has been largely positive.³⁷ Evans measured this against four benchmarks: R2P as (1) a normative force, with the UN system as the most authoritative voice of global norms continuing to cite R2P (see *Table 1*), (2) as an institutional catalyst (e. g., with the appointment of 60 focal points by national governments and the European Union), and (3) a framework for conflict prevention (for example in Kenya, Guinea, Kyrgyzstan, Cote d’Ivoire and Gambia). But its record is least satisfactory as (4) a framework for effective reaction, with Syria being the most glaring but not the only example. It is worth emphasizing that, until the end of January 2018, 61 of the 68 Security Council resolutions referencing R2P have been after the NATO intervention in Libya in March 2011.

VII. Conclusion

Interventions were frequent before R2P was formulated in 2001 and are not guaranteed after R2P’s unanimous adoption in 2005. Indeed, the 2003 Iraq war confirmed that the real choice is not intervention per se, but whether the intervention will be ad hoc or rules based, unilateral or multilateral, and divisive or consensual. As long as the international order rests on sovereign states as its basic unit, some thug-rulers will commit atrocities and the international community will struggle to respond in time and effectively. R2P, especially when backed by legitimacy criteria that have been agreed in advance, will help to shift the balance towards interventions that are rules based, multilateral and consensual. To that extent it will help the world to be better prepared – normatively, organizationally and operationally – to deal with crises of humanitarian atrocities as, when and wherever they arise, *without guaranteeing good outcomes*.

R2P has been accepted as the central organizing principle for the international community to respond to humanitarian atrocities being committed inside sovereign jurisdictions. Controversies notwithstanding, R2P has a secure future because in origins it was essentially demand, not supply driven and, unhappily, the demand for it is unlikely to disappear.³⁸ World order will remain organized around the sovereign state as the basic entity. Some states will continue to exhibit the worst of human nature and engage in atrocities. Others will want to respond based on their better angels to help innocent victims. Success can never be guaranteed by any principle or formula for international interventions. But the chances of success can be enhanced and the controversy surrounding interventions can be muted if they are based on an agreed normative framework with regard to triggering threshold, authorizing agent, and implementation guidelines. One way or other, R2P speaks to these concerns and requirements and while inevitably it will be tweaked, it is unlikely to be discarded in the foreseeable future.

That said, R2P does not resolve all the dilemmas of how outsiders can provide timely, decisive, and effective assistance to all groups in need of protection. It may be deep but remains so narrow that many areas beyond the four atrocity crimes fall outside its scope. It is subject to Security Council veto and paralysis. The failure to guarantee reliable UN protection to at-risk victims of atrocities ensures a continuing interest in unilateral humanitarian intervention which will remain attractive to many people and countries as an alternative moral framework for trying to respond effectively and in time. But this can only be at the cost of immediate global controversy and long-term damage to the principle of an international order governed by the rule of law. Acceptance of the responsibility to protect norm no more guarantees “humanitarian intervention” than its non-existence had foreclosed it as a tool of individual and collective statecraft. But, by shaping the calculation of the “balance of interests,” the norm makes it modestly more rather than less likely that victims will not be callously abandoned.

ENDNOTES

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