



No Joy in Juba: South Sudan and the R2P

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South Sudan, the world's newest country, currently risks slipping into a violent malaise. The crisis in South Sudan highlights very clearly some of the key problems surrounding the practical implementation of the Responsibility to Protect.

Five years after seceding from Sudan, South Sudan is about to collapse into its second civil war since 2013. Marauding bands of informally constituted ethnic groups contribute to a climate of vigilantism. UN diplomats debate the utility of an arms embargo in a state awash in arms. The threat is meant to leverage Juba's permission to allow a four thousand peacekeeper regional protection force into the country. But Juba's complaint about its exclusion from negotiations, contributes to a climate of distrust about the international community and its intentions. The crisis represents a serious challenge for the Responsibility to Protect (R2P) doctrine and the international community to forestall a humanitarian disaster that is well underway.

The Responsibility to Protect

A 2001 report by the International Commission on Intervention and State Sovereignty introduced the idea of R2P, creating a new international norm that made the formerly autonomous allowances of absolute sovereignty contingent on each state's responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing. Its controversial pillar two seized the international community with subject matter jurisdiction to intervene as the residual stop-gap agency to prevent internal abuse when states were incapable or unwilling to do the same. Two other pillars addressed

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a responsibility to prevent (addressing root causes of catastrophe) and a responsibility to rebuild (to assist with reconstruction and reconciliation).

The development of the norm has been controversial and it has been reworked, principally along lines of nurturing states to live up to their internal responsibilities and tethering it to actions of the UN Security Council. But its proactive charge of intervention has also been embraced by scholars and norm entrepreneurs as a progressive development. In its 2007 judgment in the *Prevention and Punishment of Genocide Case*, the International Court of Justice (ICJ) supported the duty of states to prevent atrocity beyond their borders if they have the capacity to influence persons likely to commit such acts; the ICJ acknowledged that this obligation extended beyond the competent organs of the UN. [The International Law Commission's 2001 Draft Articles on State Responsibility](#) provided that states cooperate to end through lawful means serious and systematic breaches of peremptory norms. R2P's normative development indicates that the idea of a collective responsibility to protect now informs the legal order of international courts and tribunals, suggesting a growing receptivity to and maturation of the doctrine.

R2P, Africa and South Sudan

Africa was the first region where the R2P was meant to be applied. It grew out of the idea of responsible sovereignty, [first articulated](#) by Francis Deng and others in 1996. Responsible sovereignty suggested benefits to cooperation among states. These benefits went beyond the avoidance of international conflict or the mere 'tending to' of sovereign fences. Responsible sovereignty suggested sovereignty could imply joint action and joint benefits. It grew into the idea of R2P.

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Nowhere has R2Ps reception been stronger than in Africa, having been well received by the African Union, the Economic Community of West African States, (ECOWAS), the Southern African Development Community (SADC), and a litany of African elites, including South Africa's Thabo Mbeki, Nigeria's Olusegun Obasanjo, Tanzania's Salim Ahmed Salim, South Sudan's Francis Deng, Ghana's former UN Secretary-General Kofi Anan, and Algeria's Mohamed Sahnoun. Cases within the African context indicated its time had come: The UN Security Council validated ECOWAS' interventions in Liberia (1990/92) and Sierra Leone (1997), offering praise in the face of its own inaction to these humanitarian crises. R2P received the unanimous support of one hundred and seventy Heads of State in two provisions of the [2005 UN World Summit final document](#), presaging the incorporation of the doctrine by the African Union in its [2005 Ezulwini Consensus report](#).

But nowhere has its implementation been more problematic than in the world's newest country, South Sudan. Sudan, and now South Sudan, have been beset by internecine violence over the last sixty years. South Sudan teetered on implosion almost immediately after achieving statehood in July 2011. South Sudan devolved into civil war in December 2013, when its President Salva Kiir Mayardit accused former Vice President Riek Machar of plotting against the regime. An improbable rapprochement, fortified by [an internationally mediated agreement](#), was signed in August 2015, resulting in Machar's much delayed return to the capital, Juba in April 2016, and the formation of a most tenuous unity government, which collapsed in July in a wave of bloodshed and atrocity in Juba. Kiir has now [rejected a US proposal](#) to insert the four thousand peacekeepers, claiming it is an attempt to turn South Sudan into a UN protectorate.

Kiir and Machar's mutual distrust until the most recent violence in July was outweighed only by a common need for more money to support their factions and a mutual interest in avoiding a personal accounting of atrocities allegedly committed by their respective factions. Interpreted alternatively as an explanation or a threat to the international community, the two *allegedly wrote* on the Op Ed page of the *New York Times* in June 2016 that any disciplinary justice meted out "even under international law" would destabilize unity efforts. Translation: If you try to bring us to justice, we will bring back war. They invoked the name of the international community, calling on it to back their non-punitive plan for a mediated reconciliation. Four days after publication, the *New York Times* appended an Editor's Note to the South Sudan leaders' world-wide call for reconciliation; Machar had disavowed the Op Ed piece, claiming his views had been fabricated. But not completely. One month later, he and Kiir brought back bloodshed.

The episode highlights the complexities facing South Sudan. If the international community is to facilitate a solution to the ongoing crisis, only cosmetically concealed by an unravelling claim of unity, the fundamental normative problem of R2P must be addressed: where in the international community does R2P reside?

Transmuting the international community's abstract but coercive cause of action to prevent domestic abuse into something other than high-minded rhetoric requires either a fully functioning UN Security Council or another agency with the legitimacy and authority to pierce sovereignty's veil. The UN Charter system created a *jus ad bellum* regime that placed monopoly power over all uses and threats of force (except in cases of self-defense) in the hands of the Security Council. But that authority is often addled by inaction due to the

veto-wielding interests of the big powers, exposing the fundamental weakness of the UN system and provoking the elusive international legal and political pursuit for a better or supplementary normative solution.

Internationalists have wrestled with the poor choice between supporting the legality of the Charter system, which often stood silent in the face of atrocity, or supporting the legitimacy of humanitarian intervention, which only problematized consideration of hidden agendas pertaining to regime change, remedial secession, and self-determination. Establishing the international community as the *ex ante* entity vested with such a remedial power came as something of a surprise, and, after fifteen years of ontological development, remains in dispute. In theoretical terms, R2P marked a return to and modern expression of Christian Wolff's eighteenth century Republican idea of the *civitas maxima* (a 'grand republic' of nations), the meta-expression of community virtue that upholds the common good, secures the pluralistic interests of the state, and protects the solidarist interests of humanity by presenting a means to prevent internal atrocity. But even Wolff, who had no understanding of the modern state system as we know it, thought it could not function without a rector.

Kiir and Machar embrace this much of Wolff's eighteenth century mindset; they view the international community as a rhetorical trope that lacks a headmaster; they invoke its name to lend a fictive air of moral authority to their pieties on reconciliation, when they do not employ it as blackmail. Much of the doctrinal disarray surrounding R2P's non-appearance in South Sudan conforms to an uncertainty about the international community itself: Is it an unwitting continuation of the *mission civilisatrice* – the persistently failed and resented attempt to make sub-Saharan Africa more European; does it embrace or

dismiss African notions of community, which present a humanistic understanding different than contractarian models of liberal institutionalism (*Ubuntu*); is it an updated form of colonialism? Perhaps it is an expression of Carl Schmitt's *Political Theology* (1922), allowing its claimants the power to decide on the exceptions to legal rules. Schmitt was wary of the keepers of humanity's interests. Paraphrasing Proudhon, he wrote: whoever invokes humanity's name wants to cheat. Kiir and Machar would doubtless agree.

Equally problematic has been locating the international community's headmaster amid South Sudan's turmoil. Does the international community fundamentally reduce to a sanctions policy orchestrated by the US and its allies? Should it claim a regional identity in the form of mediations sponsored by the Intergovernmental Authority for Development (IGAD) or IGAD-Plus (an amalgam of states associated with the African Union Peace and Security Council), or non-African agencies of the EU, the so-called Troika (US, UK, and Norway), or perhaps China?

An Emergent Dark Side

South Sudan's misery teaches us something about the emergent dark side of R2P. It reveals a heteronomous will of a fragmented international community, which, in South Sudan's case finds expression in a variety of cross-cutting alliances. Tensions exist within IGAD, certainly between Uganda and Sudan and possibly due to reports of Eritrean and Sudanese military support of South Sudanese opposition forces. These tensions diminish IGAD's mediation efforts and reputation as an honest broker. Key sectors of South Sudan's limited civil society (specifically Church leaders) are overlooked; an array of venues and sponsors compete for influence, contributing to complaints of forum-shopping, which allow Kiir and Machar to play components of the international community

against each other. The center of this unity government in South Sudan has not held; war is around the corner and famine is spreading.

Conclusion

Locating R2P within the international community would be daunting enough were questions of its authorization or operationalization in South Sudan settled matters of fact; but its non-appearance in the continuing misery of the country suggests the doctrine, fifteen years in the making, is neither thickly representative of historical process nor thinly embodied as an aspiration. R2P, in the context of South Sudan, turns the international community into an ethical referent, a conceptual archetype that satisfies saints and sinners alike.

Image of peacekeepers in Juba by UN Photo via [Flickr](#).

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