Oxford Research Group
Sustainable Security Programme

ORG EXPLAINS #9

THE RESPONSIBILITY TO PROTECT

Alasdair Mckay

April 2019

Subject

This primer explains the Responsibility to Protect concept, including its origins, applications and critiques.

Context

April 2019 marks the 25th anniversary of the Rwandan Genocide and closely follows the 20th anniversary of the NATO-led intervention in Kosovo, two cases which highlighted the dilemmas of how to act in the face of humanitarian crises. While Rwanda showed the heavy human costs of inaction, Kosovo asked difficult questions about where the responsibility and legitimacy to respond to mass atrocities resided.

The Responsibility to Protect (R2P) was created as an attempt to solve these problems. It was devised by the Canadian Government's International Commission on Intervention and State Sovereignty (ICISS) in its 2001 report and the essence of this document was affirmed by states at the 2005 World Summit in New York.

Decades on from Rwanda and Kosovo, R2P has become the principal framework for considering policies in response to atrocity crimes, although military interventions based upon R2P remain very rare. Though not without its critics, R2P is often characterised as a norm with a global consensus. However, this consensus may be becoming increasingly fragile as the re-emergence of populist nationalism and geopolitical strains has seen many states retreat from domestic and international human rights commitments.

Key points

- R2P is a norm which stemmed from the humanitarian intervention debate of the 1990s. It is an effort to resolve tensions between humanitarian need and the principles of state sovereignty and non-interference that still define the international system.
- R2P recalibrates the concept of sovereignty to entail states having a responsibility to protect their citizens' human rights. Should states fail in their duties, the responsibility is transferred to the international community which is then tasked with protecting the populations in question.
- R2P is 'narrow but deep' in its approach to atrocity prevention. It aims specifically to prevent four 'mass atrocity crimes': genocide, war crimes, crimes against humanity and ethnic cleansing.
- R2P thus has a basis in international law, but it is not a binding legal agreement. Instead it is a collective pledge to honour past commitments made by states to prevent atrocity crimes.
- Invocation of R2P to justify actions by the UN and other international actors has been frequent but has become more controversial since the 2011 UN-mandated operation in Libya.
- R2P has evolved since its inception in the 2001 ICISS report and is somewhat different to the original blueprint. It continues to attract controversy and alternative proposals, not least from states in the Global South.

What is the Responsibility to Protect?

The Responsibility to Protect (R2P) is an international security norm. It describes a global commitment and framework to prevent four 'mass atrocity crimes': genocide, crimes against humanity, war crimes and ethnic cleansing.

R2P does not address other serious human security problems such as natural or environmental disasters, climate change, nuclear proliferation or disease epidemics. The focus of R2P is deliberately 'narrow but deep', meaning it is narrowly restricted to mass atrocity crimes, but it is deep in terms of the broad array of tools available through the UN system that can be used to address these violations.

Since its emergence in 2001, R2P has gained significant momentum. At the 2005 World Summit, one of the largest meetings of world leaders in history, R2P was affirmed by 170 heads of state in paragraphs 138–139 of the Outcome Document. The Document was then adopted by the UN General Assembly through Resolution 60/1 (2005) and the Security Council via Resolutions 1674 (2006) and 1894 (2009). In the General Assembly's subsequent 'Informal Interactive Dialogues' on R2P a large majority of states have expressed their general support for the concept.

Why was the Responsibility to Protect established?

There is not a single source for R2P and the ideas behind it go back to at least the 1940s with the declaration of 'Never Again' to genocide. Its emergence in the early 21st century is largely seen as a product of the UN's failures to stop mass atrocities in the 1990s and the need for clearer frameworks for responding to atrocities crimes in the face of unilateral 'humanitarian interventions' of contested legality.

Following the Cold War, it was hoped that the UN would be liberated from the paralysis instilled by the US-Soviet superpower rivalry and play a more decisive role in world affairs. There were signs of optimism with the Security Council using its Chapter VII powers more frequently in the early 90s and more innovative peacekeeping initiatives were launched. But several episodes confounded these expectations with three stand-out cases.

Rwanda Over a 100-day period (April-July 1994) at least 800,000 Rwandans were murdered in history's fastest genocide. The UN's Independent Inquiry into the Actions of the UN During the 1994 Genocide in Rwanda (1999) found that the response of the UN both before and during the genocide 'failed in a number of fundamental respects.'

Bosnia A year later (July 1995), 8,000 Bosniaks were massacred by Bosnian Serb forces in the east Bosnian town Srebrenica and more than 20,000 civilians were expelled from the 'Safe Area' supposedly safeguarded by a United Nations Protection Force.

Kosovo The controversy surrounding NATO's intervention (March-June 1999) in Kosovo brought debates around humanitarian intervention to the fore. In response to the ethnic cleansing in the then-Yugoslav province of Kosovo, NATO countries attempted to gain authorisation from the Security Council for military action. But China and Russia threatened to veto such moves. Without UN authorisation, NATO launched a bombing campaign. Reporting in 2000, the Independent International Commission on Kosovo (established by the Government of Sweden) dubbed the actions 'illegal but legitimate'. Fears were raised that Kosovo could set a dangerous precedent where humanitarian arguments would be frequently abused by states to justify future military interventions. There were also concerns that emerging human rights norms were rapidly outpacing the seemingly outdated international principle of non-intervention.

Hoping to reconcile the tension between state sovereignty and the inviolability of human rights, then-Secretary-General Kofi Annan presented the following challenge in his 2000 Millennium Report:

> 'if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?'

This challenge was answered the following year by the ICISS, which developed an international plan aimed to prevent future 'Kosovos' and 'Rwandas'. African states had already embraced a collective responsibility to act in the face of mass atrocity through their signature of the African Union Constitutive Act (Article 4(h)) in July 2000.

Who carries the responsibility to protect?

R2P asserts that each individual state has the responsibility to protect its citizens, in both peace and wartime, from the four atrocity crimes. Through various means, the international community should help states uphold this. However, should a state fail in its obligations, either through a lack of ability or will, the responsibility falls on the international community, which is compelled to take timely and decisive action to remedy the situation in accordance with the UN Charter.

What constitutes the 'international community' is not defined in R2P-related documents and its very existence is a contested subject in international law and international relations. Nevertheless, it generally refers to Member States working within the UN apparatus and with regional organisations like the African Union (AU). R2P strategic documents have established roles for several UN organs and departments in fulfilling the responsibility to protect with various other actors. These include, but are not limited to, the Security Council, the UN General Assembly, the Secretariat, the Human Rights Council, the Peacebuilding Commission, the International Criminal Court (ICC, a non-UN body), the Office of the Special Adviser for the Prevention of Genocide, regional and sub-regional organisations, and civil society organisations.

How is R2P supposed to be implemented?

In 2009, the then-UN Secretary-General, Ban Ki-moon, presented his R2P implementation strategy based on the 2005 Outcome Document. A three-pillar strategy was devised which has been built on in subsequent reports.

1. **The protection responsibilities of the state**

Dubbed R2P's 'bedrock', this pillar ensures that every state has the responsibility to protect its populations from the atrocity crimes, including their incitement. To establish whether states are meeting this responsibility, steps have been proposed such as conducting forms of regular human rights peer review, as well as ensuring that states are parties to the relevant instruments of international and domestic human rights law. When a case is referred by the UN, states should also assist the ICC and other international tribunals in apprehending indictees.

2. **International assistance and capacity-building**

This pillar involves several forms of assistance from the international community.

a) **Encouragement of pillar one** which involves measures such as raising awareness of the punitive consequences of planning to engage in or incite atrocity crimes, and general educational initiatives on R2P.

b) **Building the capacity to protect** by helping states to exercise their responsibility. The international community should help with measures such as security sector reform and disarmament, demobilisation, and reintegration,

which help states build and sustain legitimate and effective security forces. Support for transitional justice initiatives is also part of the capacity building process.

c) **Provision of protection assistance** to states 'under stress before crises and conflicts break out'. The UN and regional arrangements should build rapidly deployable human rights experts to help countries under stress. These actors should investigate alleged abuses, bring international attention and support to the state, and provide the state with guidance on how to stop the escalation of a crisis. They can also work with local police and civilian components, deploy peacekeeping operations, and gather intelligence.

3. **Timely and decisive response**

If a state is 'manifestly failing' to protect its populations from mass atrocity crimes, Pillar III stipulates that the international community must be prepared to take appropriate collective remedial action in a timely and decisive manner in accordance with the UN Charter. The UN has a wide range of powers it can use such as negotiations, inquiries, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, and other peaceful methods. Should these fail, more forceful measures should be looked to, including economic sanctions, blockades and, as a last resort, military intervention. Coercive action must be undertaken with prior Security Council authorisation. The decision to act is made on a case-by-case basis and there is no list of fixed criteria for when intervention should occur in place.

Aware that the permanent members of the Security Council's (P5) veto powers could obstruct a collective response, the Secretary-General suggested in the strategy that the P5 should refrain from using their veto in situations of 'manifest failure' and should act in good faith to reach a consensus. This falls significantly short of the measures originally proposed by the ICISS to bypass deadlock in the Security Council.

What is the basis for R2P in international law?

Proponents of R2P argue that it is 'firmly anchored in well-established principles of international law'. But it is not a binding international law, nor does it propose international legal reform. It is best understood as a collective international political pledge to honour existing legal responsibilities. The four types of human rights abuse R2P addresses are captured by the shorthand, 'mass atrocity' or 'mass atrocity crime'. They are all prohibited in international law.

- **Genocide** is defined as 'acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group'. The 1948 Genocide Convention made not only genocide, but also conspiracy to commit, attempt to commit, direct and public incitement to, and complicity in genocide crimes punishable in international law. 149 States have ratified the Convention. 45 United Nations Member States have not.
- **War crimes** are defined and set out principally in the four Geneva Conventions (1949) (Art. 50/51/130/147 of the respective Conventions) and subsequent Protocol I (1977) to them (Art. 11 (4), 85, 86). The term covers a wide range of prohibitions during war including torture, hostage-taking, mistreating prisoners of war, targeting civilians, pillaging, rape and sexual slavery, and the intentional use of starvation.
- **Crimes against humanity** are defined at length in the Rome Statute of the International Criminal Court (1998) as a widespread or systematic attack directed against any civilian population.

It covers various acts and some specific crimes such as torture and slavery have their own conventions.

- **Ethnic cleansing**, though not defined in international law, is described by the UN Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992) as 'the planned deliberate removal from a specific territory, persons of a particular ethnic group, by force or intimidation, in order to render that area ethnically homogenous.' It can be categorised as either a war crime or a crime against humanity, depending on the circumstances in which it is committed, under the ICC and the International Criminal Tribunal for the Former Yugoslavia statutes.

R2P's capacity to use coercive measures, including military intervention, makes the concept controversial in international law. The use of force by states, regardless of whether it is motivated by humanitarianism, is prohibited in international law by Article 2(4) of the UN Charter. Further, Article 2(7) of the Charter reads, 'Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.' The 1970 General Assembly Resolution Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States (2625-XXV) also affirms the principle of non-intervention.

But there are two specific exceptions within Chapter VII of the UN Charter:

- **Article 51** permits force used in self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.
- **Article 41** specifies that the Security Council may authorise actions to 'maintain or restore international peace and security,' including 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.' Should these fail, the Security Council is empowered under **Article 42** to 'take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.' These articles are where R2P derives its legality to harness coercive measures, as clarified in the 2005 Outcome Document.

What other controversies surround R2P?

While there is at least a rhetorical global consensus on R2P amongst states, there are several criticisms of R2P, particularly voiced by states within the Non-Aligned Movement and the Group of 77 (G77) coalition of developing states.

State Sovereignty R2P's critics have accused it of eroding the dominant norm of state sovereignty. This principle affirms that states are in exclusive control of all the people and property within their territorial borders, free from outside intervention. The concept is seen, in theory at least, to provide international order since sovereign states are regarded as equal, regardless of their size or wealth. R2P seeks to resolve the capacity for state sovereigns to protect human rights abusers rather than their own people. R2P redefines sovereignty as a form of collective moral responsibility for both states and the international community with non-intervention conditional on upholding basic rights. R2P frames itself as an ally of sovereignty rather than an adversary because helping states fulfil their responsibilities arguably strengthens sovereignty rather than erode it.

Humanitarian Intervention R2P has also been accused of being 'humanitarian intervention' by another name, but there are important differences. R2P involves a wide range of preventative measures; unlike humanitarian intervention which implies only coercive measures. R2P is specific about the crimes it addresses, while humanitarian intervention does not have a defined list of crimes specifying when it is acceptable. R2P is sanctioned in international law; in contrast to humanitarian intervention, which is illegal under broad legal consensus.

How has R2P fared in practice?

As of April 2019, the Security Council has passed 81 Resolutions referencing R2P (figure 1). Since 2014, they have averaged a steady dozen per year.

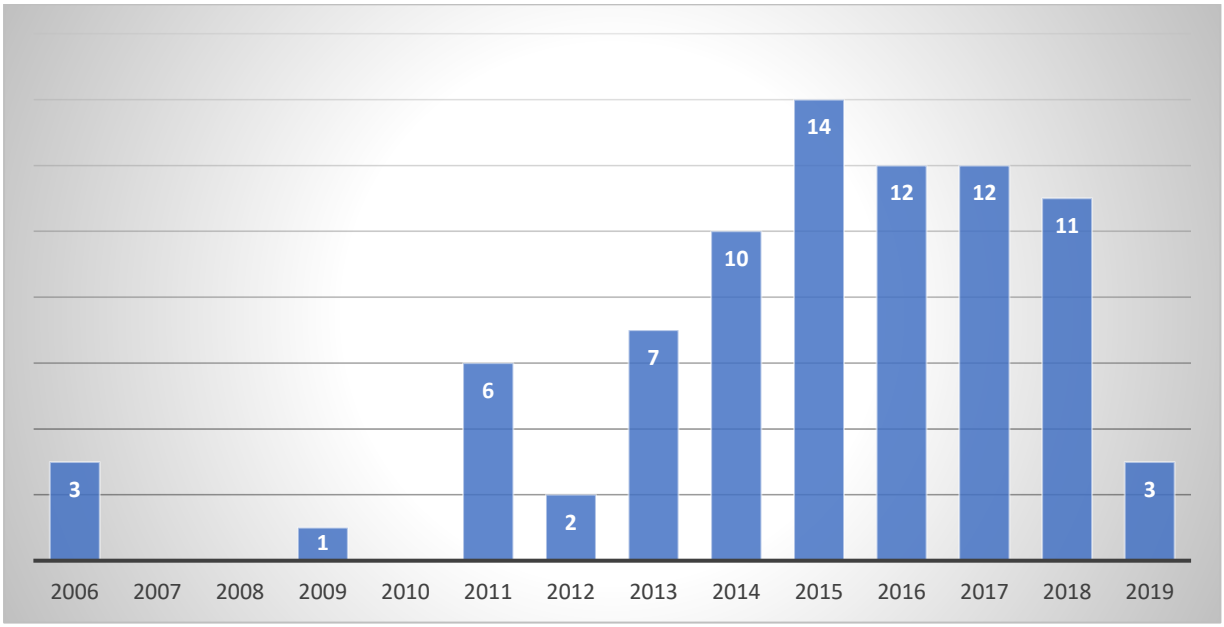

Figure 1 Security Council Resolutions passed referencing R2P by year. Source: Global Centre for the Responsibility to Protect.

There have been several high-profile examples of R2P being invoked by various actors in support of more definite actions:

- **Kenya** – where UN and AU action mediated a political agreement to end post-election violence in early 2008 and key political actors were later indicted by the ICC.
- **Kyrgyzstan** – where an Independent International Commission of Inquiry was launched to investigate potential atrocity crimes and make recommendations to prevent their repetition after the violence of 2010.
- **Cote d'Ivoire** – where the UN and France justified their 2011 military intervention to depose Laurent Gbagbo, also later prosecuted (unsuccessfully) by the ICC.
- **Libya** – where invocation of R2P was part of the justification for UN-mandated military intervention by NATO in 2011.
- **Central African Republic** – where R2P has been instrumental in mandating various regional, African, French and UN peacekeeping operations since 2013.
- **Iraq** – where R2P was important in the genesis of military action to protect the Yazidis in particular against the advance of the Islamic State group in 2014.

R2P has also been cited or invoked in numerous other cases in which international action was insufficient or frustrated, including Sudan, Burundi, South Sudan, Yemen and Myanmar. Even in these cases, it may be argued that pressure to avoid greater international military or judicial action has tended to restrain the extent of atrocity crimes committed.

As Figure 2 shows, as with the prosecutions brought by the ICC since its inception in 2005, the focus of R2P thus far has been disproportionately on African conflicts. Outside Africa, only Syria (6 resolutions) and Yemen have occasioned R2P resolutions.

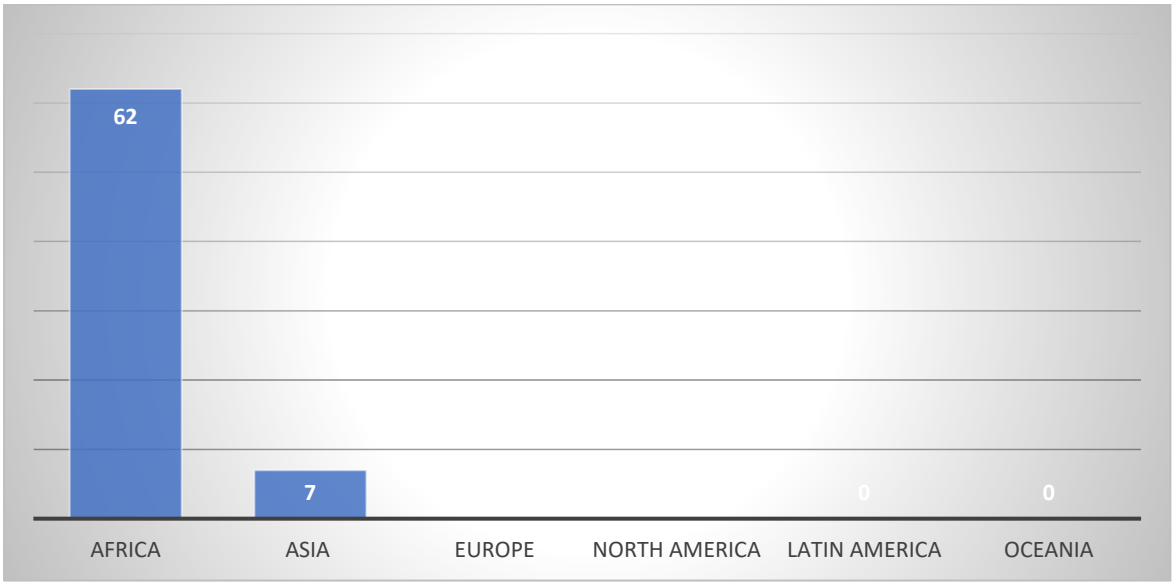

Figure 2 Security Council Resolutions referencing R2P by region. Source: Global Centre for the Responsibility to Protect.

The 2011 intervention in Libya is commonly cited as an important case for R2P. The UN Security Council adopted Resolutions 1970 and 1973 to protect civilians in response to the escalating civil war and reports of an impending humanitarian catastrophe in Benghazi. Though at the time the intervention was lauded as 'R2P working exactly as it was supposed to', the use of regime change and subsequent post-intervention chaos has led to criticism over how effectively R2P can be operationalised and it is often raised as an example of how easily the concept can be abused.

The Security Council's inability to overcome internal divisions and authorise an effective collective response to the Syrian war has also led to debates about R2P's effectiveness. Since 2013, the Security Council has passed 24 resolutions on Syria, six referring to the Syrian government's responsibility to protect populations. None have been fully implemented. Russia and China have jointly vetoed six draft resolutions and Russia has independently vetoed a further six.

Overall, these cases show the difficulties of effectively implementing Pillar III. Only two cases, Libya and Cote d'Ivoire, could realistically be seen as Pillar III in action. There are also problems with gaining firmer commitments to honour Pillar III by states. Many of the UN Assembly's 'Informal Dialogues' demonstrate that while states show receptiveness to Pillar's I and II, they have concerns about Pillar III. The reservations expressed have questioned the effect of the concept on state sovereignty, the inconsistent authorisation of intervention, the potential for abuse, and the comparisons between R2P and colonialism's 'civilising mission'.

There have even been alternative regional proposals for R2P, including Brazil's '**Responsibility While Protecting**' and China's '**Responsible Protection'**, which are geared towards enhancing Pillars I and II while diminishing Pillar III responsibilities.

Recent global developments will also make the international community's task of closing the gap between rhetoric and reality on R2P more difficult. The rise of global populism has seen states retreat from human rights commitments both at home and abroad. This means states will be less likely to intervene multilaterally in humanitarian emergencies if their national interests are not at stake.

The shift from a unipolar international system to a multipolar one -- with the US competing on the global stage with Russia and China – is also likely to make it far more difficult for the UN to respond decisively to humanitarian crises. The UN's failure to resolve the Syrian crisis due to the conflicting strategic interests of the US and Russia has already provided a telling example of this.

The failures to consistently invoke Pillar III are problematic because, by the architects of R2P's own claims, the framework's efficacy relies on all three Pillars working in unison. Without an effective means through which it can be enforced in practice, R2P's edifice is unstable and the project may be unsustainable.