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## The Status of the Responsibility to Protect Norm in International Relations

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### What is the Current Status of the Responsibility to Protect Norm in International Relations?

In 2005, more than 150 world leaders unanimously endorsed the Responsibility to Protect (R2P),<sup>[1]</sup> a three-pillared framework for action to prevent or halt mass atrocities which stipulates that, (i) states have a responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, (ii) the international community has a responsibility to assist other states in fulfilling these obligations, and (iii) the international community has a responsibility to take collective action, including ultimately military action, in a timely and decisive manner when a state is manifestly failing to provide such protection.<sup>[2]</sup>

Almost a decade has now passed and R2P has been invoked by states, nongovernmental organisations and the media with respect to humanitarian crises in Darfur, Kenya, Georgia, Myanmar, Gaza, Sri Lanka, the Congo, North Korea, the Ivory Coast, Libya, Syria, Yemen, and other states swept up in the Arab Spring.<sup>[3]</sup> Despite this, however, and all the scholarly discussion of R2P as “an idea whose time has come”,<sup>[4]</sup> what is disturbingly clear in 2015 is that the current status of R2P is uncertain and true global consensus on the norm is yet to be achieved, as demonstrated by the UN Security Council (UNSC) deadlock on the Syrian crisis.<sup>[5]</sup> The question thus arises, what is the current status of the R2P norm?

This essay argues that R2P is worryingly tenuous, but there is the potential for it to develop into a robust international norm.<sup>[6]</sup> It begins by reviewing constructivist literature on the emergence of international norms and norm development.<sup>[7]</sup> The essay then briefly explains the emergence of R2P before presenting three theoretically informed arguments in support of the main thesis. First, while it may be tempting to believe the fiction that R2P has attained the status of an international norm, it has not yet reached a position of such universality.<sup>[8]</sup> The R2P concept remains highly contested and “buyer’s remorse”<sup>[9]</sup> has resulted in backsliding, leaving the norm struggling to transition from the norm emergence stage to the norm cascade stage in the norm development process.<sup>[10]</sup> Second, R2P faces serious dissent even within the UN.<sup>[11]</sup> Third, there is still the potential for R2P to develop into a robust international norm because there are feasible ways to expand global consensus on R2P.<sup>[12]</sup> The conclusion contends that the UN may not yet be able to meet its promise to “never again” stand idly by in the face of mass atrocities, but there is hope that it will be able to in the future.

Adopting Legro’s definition of norms as “collective understandings of the proper behaviour of actors”,<sup>[13]</sup> this paper proceeds on the basis of the constructivist assumption that state behaviour is shaped by non-material factors, such as norms, ideas and beliefs, because these factors inform states’ identities and interests.<sup>[14]</sup> In the constructivist paradigm, shifts in the ideas and norms that shape state behaviour can explain change in the international system, but before norms can be causally linked to systemic change they proceed through various stages of development.<sup>[15]</sup> The main thesis of this paper proposes that R2P is an evolving norm in the midst of this norm development process.

The norm development process is explained in Finnemore and Sikkink’s norm life cycle model.<sup>[16]</sup> According to their model there are three stages of norm development: norm emergence, norm cascade, and norm internalisation<sup>[17]</sup>

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During the first stage, norm entrepreneurs introduce the new norm and try to convince a critical mass of states to endorse it.[18] When the new norm has been adopted by a critical mass of states it reaches a “tipping point” and transitions to the second stage, norm cascade, whereby it spreads relatively rapidly among the remaining states.[19] The norm usually enters this second stage after it has become institutionalised in international relations, international organisations and international law.[20] During the third stage, internalisation, the norm achieves a “taken-for-granted quality”.[21] It is no longer contested and compliance becomes almost reflexive.[22] Significantly, not all emerging norms reach a tipping point and develop into international norms. Some never complete the norm life cycle.[23]

Before applying this framework to determine the norm development stage at which R2P is currently located, it is worth briefly explaining the emergence of R2P. A number of conscience-shocking events occurred following the break-up of the former Soviet Union, including genocide in Rwanda in 1994 and in Srebrenica in 1995. These events intensified debate in the 1990s between, on the one hand, proponents of “humanitarian intervention”, who argued that there was a “right to intervene” militarily for humanitarian purposes without the consent of the state in question, and on the other hand, proponents of absolute sovereignty, who argued that the internal affairs of states were none of the international community’s business.[24]

These debates reached an impasse, as shown by the verdict of the Independent International Commission on Kosovo which found that NATO’s military humanitarian intervention in 1999 was illegal, since it lacked United Nations Security Council authorisation, but legitimate.[25] Seeking to overcome this impasse, the International Commission on Intervention and State Sovereignty (ICISS) introduced R2P in 2001, flipping the doctrine of humanitarian intervention on its head by focusing on the responsibility of all states to protect people rather than the right of a powerful few to intervene.[26]

World leaders unanimously endorsed R2P in the World Summit Outcome Document in 2005.[27] The concept that they endorsed, however, differs from that which was developed by the ICISS. First, R2P was linked to the four mass atrocity crimes of genocide, war crimes, crimes against humanity and ethnic cleansing, which narrowed its potential application since the ICISS specified that “a population...suffering serious harm, as a result of internal war, insurgency, repression or state failure” would fall within R2P’s remit.[28] Second, the concept endorsed in 2005 omitted a number of recommendations made by the ICISS. For example, it omitted the ICISS’ criteria to guide decision-making about the use of force, its proposed code of conduct for use of the veto on action aimed at preventing or halting a humanitarian crisis, and its recommendation that the General Assembly and/or regional organisations be empowered to authorise R2P military interventions if the UNSC is unable or unwilling to act.[29] Evidently, R2P’s dilution was necessary to secure consensus.[30]

Based on this consensus nonetheless, it could be argued that R2P has developed beyond the norm emergence stage and cascaded throughout the international system.[31] After all, the World Summit was a high-level plenary meeting of the General Assembly where leaders from almost every state in the world endorsed the norm. This argument, however, is unconvincing in light of the international community’s ongoing failure to prevent and halt mass atrocities in places such as Syria and North Korea.

The stronger argument is that while it may be tempting to believe the fiction that R2P has attained the status of an international norm, it has not yet reached a position of such universality.[32] The R2P concept remains highly contested and “buyer’s remorse”[33] has resulted in backsliding, leaving the norm struggling to transition from the norm emergence stage to the norm cascade stage.[34] This is the first argument of this essay and the reason it is stronger is because ample evidence supports it. For example, the debate over invoking R2P that occurred in response to Cyclone Nargis in Myanmar in 2008 shows that the R2P concept remains highly contested, particularly in terms of its scope and applicability.[35]

Similarly, the backlash against the 2011 Libyan intervention provides evidence of backsliding, at least with respect to R2P pillar three interventions.[36] In the Libyan case, UNSC Resolution 1973 authorised a NATO-led military intervention to prevent an impending massacre,[37] but NATO’s strategy gradually morphed from the impartiality of civilian protection to partiality in supporting rebel forces and regime change, which promoted Western interests in

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securing oil supplies.[38] This led to allegations of abuse of the UNSC mandate and generated a sense of “buyer’s remorse” with respect to R2P among key states, including Brazil, Russia, India, China and South Africa.[39]

“Buyer’s remorse” partly explains why Russia and China have vetoed four UNSC resolutions since October 2011 aimed at halting mass atrocities in Syria.[40] They are unwilling to support an R2P resolution that they believe may once again be illegitimately transformed to overthrow of the Assad regime.[41] Admittedly, geopolitical considerations are critical here too. Consider Russia’s ties to the Assad regime. Russia has invested heavily economically in Syria, for example, in the business of natural gas extraction, and Syria is a major purchaser of Russian arms exports and defence equipment.[42] Thus, although the UNSC debate over an R2P intervention in Syria is framed based on principle, it is not hard to see geopolitical concerns operating beneath the surface.[43]

Nonetheless, if institutionalisation indicates that an emerging norm has reached a tipping point and transitioned to the second norm cascade stage, the disagreements on Myanmar, Libya and Syria indicate that R2P has not yet reached a tipping point.[44] In sum, while it may be tempting to believe the fiction that R2P has attained the status of an international norm, it has not yet reached a position of such universality.[45] The R2P concept remains highly contested and “buyer’s remorse”[46] has resulted in backsliding, leaving the norm struggling to transition from the norm emergence stage to the norm cascade stage.[47]

It is not surprising then that the UN still faces challenges with respect to invoking R2P, which raises the second argument of this essay. R2P faces serious dissent even within the UN.[48] Official UN transcripts, informal dialogues, voting records on R2P-related resolutions, as well as official publications from UN panel discussions and conferences, disclose at least four interrelated key themes of dissent.

The most common theme of dissent concerns R2P’s susceptibility to politicisation, misuse and abuse by powerful states.[49] For example, Brazil, China, Cuba, India, Iran, Nicaragua, North Korea, Russia, South Africa, Syria, Venezuela, Pakistan and Zimbabwe all emphasise the “Trojan horse” critique, whereby R2P is seen as providing a humanitarian pretext for powerful states to intervene in weaker ones in pursuit of ulterior, self-serving objectives.[50] These states point to the US-led invasion of Iraq and the West’s “disgraceful scramble”[51] for oil contracts following the overthrow of Qaddafi as evidence that R2P can too easily serve as a guise for political opportunism.[52]

A second theme of dissent is based on the principles of sovereignty and non-intervention. Algeria, Belarus, Cuba, Nicaragua, North Korea, Sudan, Venezuela, and Zimbabwe cling to traditional understandings of absolute sovereignty, in which sovereignty is considered to be an inviolable and legitimate “shield” from foreign interference.[53] Hence, these states claim that R2P’s third pillar is inconsistent with international law because it violates the sovereignty of states, their political independence and their territorial integrity, all of which are principles enshrined in the UN Charter.[54]

China, Russia, Malaysia, India, Ecuador, Myanmar, Pakistan, Sri Lanka, Syria, Tunisia and Vietnam, on the other hand, accept that modern sovereignty is conditionally conferred, entailing a responsibility to protect the population from mass atrocities.[55] These states, however, still express concerns about the role of the international community in implementing R2P based on the principle of non-intervention.[56] China, for instance, argues that “even when outside support is necessary, the will of the country concerned must be fully respected and forcible intervention avoided”.[57] Similarly, Russia justified vetoing an R2P-related resolution on Syria in 2011 by stating that the proposed resolution failed to respect Syria’s sovereignty and territorial integrity and the principle of non-intervention in the domestic affairs of states.[58]

A third theme of dissent concerns an aversion to the use of force.[59] Brazil, China, Russia, Sudan, Zimbabwe, Qatar, North Korea and Syria all challenge R2P’s third pillar, specifically its stipulations for collective action under Chapter VII of the UN Charter, based on fears that using force to prevent mass atrocities will increase, rather than decrease, the amount of civilian deaths.[60] They point to the interventions in Iraq and Afghanistan, where the use of force contributed to the rise of terrorism and political instability, and the thousands of civilians killed during the Libyan intervention, as evidence that military interventions merely compound human rights abuses and aggravate the situation on the ground.[61]

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A fourth theme of dissent concerns UNSC illegitimacy. Some states claim that R2P is only legitimate to the extent that its institutional authority is legitimate and that the UNSC, as the institutional authority for implementing R2P pillar three, lacks legitimacy due to shortcomings in its structure and working methods.[62] The basic argument is that the UNSC is not representative of the international community or reflective of the contemporary distribution of global power because of the veto powers, and the fact that no permanent seats have been extended to the emerging powers of the Global South despite their increased wealth, military power and political clout.[63]

Accordingly, Pakistan claims, for example, that because of the UNSC's dated membership structure, invoking R2P pillar three merely reinforces "the pervasive inequality- in terms of security, power and wealth- that characterises our times".[64] Other states, such as India, Malaysia, Venezuela and Bolivia, emphasise that R2P is implemented selectively because the veto powers allow UN action to be held hostage to unrelated geopolitical interests of the permanent UNSC members.[65] UNSC inaction against Syria and Israel is illustrative in this regard.

In sum, R2P faces serious dissent even within the UN. Although proponents of R2P refer to these themes of dissent as "disingenuous" or mere "masks for national interest", they still impede R2P's normative development and challenge the UN's efforts to use R2P as a framework for mass atrocity prevention in pursuit of the broader goal of achieving peace with justice.[66] If the international community does not build consensus at the expense of this dissent, R2P will fail to transition to the norm cascade stage and develop into a robust international norm.[67]

It is reassuring then that the third argument of this essay is that there is still the potential for R2P to develop into a robust international norm because there are feasible ways to expand global consensus on R2P.[68] Notably, R2P dissent does not challenge why the international community should prevent mass atrocities, but rather, how, and R2P's third pillar is where most of the disagreement lies.[69] Since the UNSC must authorise R2P pillar three interventions, only a minority of R2P dissenters, including Brazil, Russia, India and China, have sufficient political influence to block R2P's normative development.[70] Fortunately, these states, unlike rejectionists such as Cuba and Venezuela, are willing to entertain constructive debate on R2P, as is evident from their statements at the General Assembly's sixth informal dialogue on R2P held in September 2014.[71]

Given this, there are at least three feasible ways to expand consensus on R2P. First, by focusing on prevention and national capacity building.[72] In his most recent report on R2P, the UN Secretary-General emphasises the importance of creating "inhibitors" to the commission of atrocity crimes.[73] "Inhibitors" are specific capacities that enable states to prevent situations escalating from risk of mass atrocities to the commission of mass atrocities.[74] In the Ivory Coast, for instance, where hate speech has incited violence, the UN has helped to build media capacity to defeat hate speech by assisting the development of investigative capacity of journalists, legislation concerning incitement to violence, and codes of conduct for journalists that require impartial reporting.[75]

Focusing on prevention and national capacity building would remind states that R2P aims to reinforce, not undermine, state sovereignty, at least in cases where the government is not exploiting state structures to perpetrate mass atrocities.[76] Moreover, it would ameliorate concerns about the use of force because the provision of timely international assistance to national governments under R2P pillar two would theoretically reduce the likelihood of more controversial R2P pillar three interventions.[77] In this sense then, the implementation of early warning systems is crucial. The UN Special Advisers on Genocide Prevention and R2P have developed a Framework of Analysis for the Prevention of Atrocity Crimes, which is a guide for evaluating the risk of genocide and other mass atrocities.[78] Its widest possible use, for example, at national, regional and international levels, could institutionalise objective and impartial early warning systems that "better sound the alarm" and promote early action.[79]

A second way to build consensus involves establishing principles for right conduct within military interventions.[80] Further developing Brazil's Responsibility while Protecting as a complementary norm would be useful. Responsibility while Protecting establishes criteria for a legitimate military intervention based on principles of just war theory, including the notions of last resort, proportionality and reasonable prospects of success, and also calls for a monitoring-and-review mechanism to ensure that UNSC mandates are properly implemented.[81] This would prevent the abuse of R2P resolutions for purposes beyond the prevention of mass atrocities, as arguably occurred in Libya, and reassure dissenter states that the main objective of R2P interventions is protecting civilians.[82] It may be

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impossible to ensure that R2P is never politicised, misused or abused, but establishing principles for right conduct within military interventions would mitigate the risk.[83]

Finally, a third way to expand consensus involves institutionalising a “responsibility not to veto”.[84] R2P proponents could help to revive efforts of the group of “Small Five” states, including Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland, which request that the permanent UNSC members refrain from exercising their veto on action aimed at preventing or ending mass atrocities.[85] While this would not resolve the issue of the UNSC’s dated membership composition, it would still enhance UNSC legitimacy and, in turn, R2P’s legitimacy, by facilitating objectivity in R2P decision-making.[86] It would also address, at least to some extent, concerns about the norm’s susceptibility to abuse since this theme of dissent is also related to the ability of the West to politicise R2P through the decision-making structures of the UNSC.[87]

In sum, there is still the potential for R2P to develop into a robust international norm because there are feasible ways to expand global consensus on R2P.[88] Again, it is important to emphasise that state interests in the intervention debate are not constructed in isolation from geopolitical concerns. It is conceded then that even if rhetorical, principle-based dissent is addressed and consensus on R2P is expanded, states may have a geopolitical interest in challenging R2P’s implementation in any given case.[89]

Despite this reality, the potential for R2P to develop into a robust international norm due to positive consensus building prospects remains palpable. Addressing challenges to R2P in a logically sound and politically feasible way may skillfully frame the debate so as to talk dissenters into a corner, whereby they are left with no socially sustainable option other than endorsing R2P, even when their geostrategic interests are at stake, if they wish to maintain legitimacy on human rights issues in the eyes of the international community.[90] Moreover, as emphasised from the outset, state interests in the R2P debate are not exogenously defined based on material interests. They are endogenously constructed based on ideas, norms and shared beliefs transferred through social interactions.[91] Thus, they are open to influence through rhetorical coercion, so to speak.[92]

Taken together, the three arguments presented above show that R2P is worryingly tenuous, but there is the potential for it to develop into a robust international norm.[93] One concluding point warrants emphasis. R2P’s normative development could not be more urgent.[94] Populations continue to be subject to mass atrocities in places such as Syria, Iraq, North Korea, Gaza, South Sudan, and Darfur, and unfortunately the slow pace of norm development contrasts to the speed with which mass atrocities can and often do unfold.[95] Yet readers are encouraged to maintain an unquenchable optimism since R2P’s future prospects are positive. The UN may not yet be able to meet its promise to “never again” stand idly by in the face of mass atrocities, but there is hope that it will be able to in the future.

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[94] UN Secretary-General, "Fulfilling Our Collective Responsibility", para. 78, <<http://www.globalr2p.org/media/files/sg-report-pillar-ii.pdf>>.

[95] Edward Luck, "The Responsibility to Protect: Growing Pains or Early Promise", *Ethics and International Affairs*, 24, no. 4 (2010), p. 357.

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