'R2P' as an Emerging Norm

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The inherent tension in the international system, between human rights and sovereignty, is at the forefront of International Relations. Developed to overcome the failures that humanitarian intervention faced in the 1990s, Responsibility to Protect (R2P) sought to reframe States' understanding of sovereignty from a *right* to a *responsibility* through establishing a new norm regarding appropriate international responses to the most egregious violations of human rights. R2P is a powerful new and emerging norm. It has the capacity, when internalised by the international community, to effectively protect civilians at risk of mass atrocity crimes. It has not yet reached the third stage of norm internalisation, and is not yet evolved into binding International Humanitarian Law (IHL), however the international community has unequivocally begun to accept that it holds the primary moral responsibility to protect. The international community (including states, intergovernmental organisations, non government organisations, civil society and private sector entities)[1] may have formally committed to the principles of R2P, however this essay will argue that not all within the international community have internalised R2P to the degree that it is perceived as a domestic duty. The challenge remains: how to persuade those resistant to the obligations enshrined in R2P (such as the US), and those who have not yet accepted their own domestic duty (such as Israel), to accept their responsibility. Indeed, internalisation of pillar one of R2P—states' own responsibility to protect–could prevent coercive military intervention becoming necessary at all. This essay will first look at the theoretical and historical origins of humanitarian intervention and the emergence of the R2P norm, then the legal and moral standing of R2P will be illustrated through a detailed case study of the recent Israeli-Palestinian conflict in Gaza in 2014. It will conclude with the challenges facing R2P, as an emerging norm on its journey to reaching the third level of norm internalisation.

The Theoretical and Historical Origins of Humanitarian Intervention and the Emergence of R2P as a Norm

Changes in norms create the only permissible conditions for changes in international political behaviour, and it is clearly evident in the evolution of norms associated with states invocation of humanitarian intervention.[2] States' changing attitudes to humanitarian intervention can be traced through the evolution of the concept since the 19th century. During this time, a distinctive expansion in defining what constitutes a 'human' and thus qualifies as deserving protection by foreign action occurred.[3] A reconceptualization of 'human' from solely white, Christian and European being, drove the push for the end of slavery and de-colonisation. By the 20th century, a further shift had occurred whereby not only were states willing to intervene for humanitarian reasons, it became necessary to acquire multilateral sanction by the UN in order to claim legitimacy. This development was identified by Martha Finnemore, who observed that 'International normative fabric has become increasingly institutionalised in formal international organisation'.[4] The United Nations (UN) has created a dramatic shift in the international system, a norm shift evident in the proliferation and near universal ratification of the majority of its treaties governing state behaviour.

The UN was established on the basis of a system of compliance rather than enforcement, in an effort to socialise and strengthen states' commitment to the human rights outlined in *The United Nations Declaration of Human Rights* (UNDHR). Modern Humanitarian Intervention was born out of the Western Liberal conception of Universal Human Rights that emerged following the end of World War Two. This conception drew on Enlightenment philosophy. The UN was created out of a desire to never repeat the atrocities committed by Adolf Hitler and, as such, focused mainly on external aggression rather than internal mass killings.[5]. Initially non-binding, the introduction of *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and*

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Political Rights in 1966, combined with the UNDHR and optional protocols, became legally binding. The UNDHR and the subsequent Convention *on the Prevention of Genocide* (both 1948) were both early efforts to begin to create a normative framework to restrict state behaviour and limit sovereignty.

The response of the international community to situations of mass atrocity crime throughout the 1990s was widely varied but consistently inadequate. The *United Nations Security Council* (UNSC) had demonstrated a sporadic willingness to authorise robust military action in response to inter-state humanitarian crises prior to the creation of R2P.[6] The 1990s was a decade marked by Humanitarian Intervention. In some instances, the UN sanctioned military intervention to varying degrees of success (e.g. Somalia and Sierra Leone). In other instances, non-sanctioned or unilateral intervention occurred (e.g. Kosovo), while in other like situations no substantial intervention took place.[7] The clearest example of inaction being Rwanda, where in 1994 ethnic Hutu militia slaughtered over 800 000 Rwandans 'while the world watched'.[8] The selective application of humanitarian intervention led to accusations that powerful states, led by the West, were co-opting it as a tool for achieving their national geo-strategic objectives. Inconsistent practices, double standards and the sporadic nature of Western powers' interest in humanitarian intervention throughout the 1990s showed that 'noble principles were often convenient cloaks for hegemonic interests'.[9] What this revealed was that there was still hostility in the developing world to the 'right of intervention' and its ideological associations with neo-imperialism and neo-colonialism.[10] The core of the issue of humanitarian intervention in the 1990s was reconciling the tension between intervention and the principle of state sovereignty.

Against this backdrop of increasing humanitarian crises the international community sought better ways to prevent and respond, and 'norm entrepreneurs' sought to shift the debate about humanitarian intervention from sovereignty as a right to a responsibility. The essential function of sovereignty is 'at base the protection of the people's most fundamental rights from the most egregious acts of violence', [11] and as such sovereigns have an inviolable responsibility to fulfill this protection. The changing nature of warfare, from inter-state to intra-state meant that the United Nations normative framework needed to be adjusted to account for the changed reality of threats to victims.[12] The biggest threats to international security now come from the eruption of intra-state crises such as civil wars. The choice of weapons is now predominantly small arms and the profile of victims of armed conflict is predominantly non-combatant civilians. Indeed civilians now vastly outnumber troops killed directly by warfare. Thakur and Weiss report this as high as a ratio of 9:1.[13] There has also been a shift in the way wars are seen, with conflicts today portrayed graphically and in real-time through the media. Domestic populations now directly see the impact of their government's actions, and are more informed as to their impact. R2P aims to reconcile the traditional conception of sovereignty (the exclusive control and supremacy over a defined territory) with the modern notion that sovereignty also includes the primary responsibility to protect its own people.[14] The reality of new, global interdependence has inevitably resulted in an 'erosion of the once sacrosanct principle of national security',[15] in that instability now has truly global ramifications.

R2P was crafted as a reformation of humanitarian intervention, but in a way that was more sophisticated and more broadly politically acceptable than its predecessor.[16] R2P is a cleverly designed concept aimed at circumventing the controversy surrounding the doctrine of humanitarian intervention in the 1990s.[17] Although R2P is a newly defined concept it was always present implicitly in the origins of the UN.[18] *The International Commission on Intervention and State Sovereignty* (ICISS) released *The Responsibility to Protect* report, commissioned by the Canadian government, to develop global political consensus about how and when the international community should respond to emerging crises involving the potential for large-scale loss of life and other widespread crimes against humanity. Whereas 'Humanitarian Intervention' throughout the 1990s privileged the intervening state, R2P would 'put the needs of victims of atrocity ahead of those of the intervening power'.[19] The report drew on the ideas of Francis Deng, originally developed to deal with *Internally Displaced People* (IDPs).[20] Deng wrote in 1991 that 'sovereignty carries with it a responsibility on the part of governments to protect their citizens', words echoed in the ICISS report.[21] Rather than create a new norm, the ICISS adapted a norm shift already underway.

The ICISS report argued that R2P would put the needs of victims of atrocity ahead of those of the intervening power. [22] The ICISS conception of R2P varied in several significant ways to the final conception of R2P unanimously adapted at the 2005 World Summit. Significantly, R2P initially contained six criteria for appropriateness of military

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action. These included just cause, right intention, last resort, right authority, proportional means and reasonable prospect of success. These criteria echoed Just War Theory, a tradition concerned with military ethics. The UNSC was designated the authority to authorise intervention, however, crucially, regional organisations might provide an alternate mechanism if the UNSC was deadlocked. In order to be ratified, and to quell concerns from China, Russia and other non-aligned states (i.e. BRICS), several significant modifications to the original ICISS conception of R2P were required. The criteria to determine appropriateness of action were removed, military force was placed exclusively in UNSC control, the threshold for action was raised to 'manifestly failing to protect', and the type of violence covered by R2P limited to four mass atrocity crimes (Genocide, war crimes, crimes against humanity and ethnic cleansing).[23]

R2P should be seen, as Ban Ki Moon and Bellamy describe, as a broad spectrum of measures including early detection, diplomatic action and military action used only as a last resort. R2P encompasses three mutually re-enforcing pillars. Pillar one encompasses the responsibility of states themselves to prevent and protect their populations from atrocities. The second pillar encompasses capacity building – that the international community should assist states to fulfil their pillar one obligations. States have primary responsibility for protecting its citizens, if the state should be unwilling or unable to fulfil that mandate, then the responsibility shifts to the international community, the third pillar. The third pillar encompasses a broad range of policy options including non-coercive such as diplomacy, and coercive measures such as economic sanctions. The pointy edge of pillar three is military intervention, which is designated to be used only as a last resort. Pillar one is of most utility in terms of preventing mass atrocity crimes from occurring or escalating. States themselves can mobilise quickly to respond to internal conflict, as they are not required to get UNSC approval for action, thus avoiding international politicisation of the issue.

The ambiguity surrounding states own responsibility to protect its domestic populations from internal conflict escalating the point of requiring international intervention is an ongoing barrier to effective human protection. International Relations scholars have long debated the efficacy of the normative content of R2P following the amendment process. Chesterman pessimistically asserts that the final product was emasculated to a point where 'the security council could authorise, on a case by case basis, things it had been authorising for more than a decade';[24] Mohammed states 'When it comes to the international community, there is little responsibility remaining in the responsibility to protect'.[25] Additionally, Jacob points out that when states endorsed R2P it was not understood as it is today and that a broadening of the R2P agenda has occurred since 2009, pushed by UN Secretary Ban Ki-moon.[26] It is fair to say that the original conception of R2P, when signed by 150 states, did not enlist a clear understanding of the implications of state responsibility toward their own populations.[27] Despite these criticisms and observations, and although there is clearly work to be done on fleshing out R2P as a fully-fledged (and internalised) norm, R2P's real power lies in its capacity to create change when internalised in full by the international community.

The motives driving the international community to intervene militarily may include genuine humanitarian concern, however form only part of a larger constellation of motivations driving such action. The normative context of Humanitarian Intervention is important because it shapes conceptions of interests that motivate action.[28] A norm can be defined either statistically (as being the mean pattern of common behaviour), or ethically (as being a pattern of behaviour that should be followed in accordance with a given value system).[29] From a realist perspective, motivations for intervening militarily to save civilians at risk in foreign countries would involve gaining a geo-strategic or political advantage, whereas from a liberal perspective intervention may be motivated by economic or trade advantages.[30] From a Kantian perspective, states would be motivated by an interest in promoting democracy and liberal values in the intervened country.[31] However, there is a key problem in the theoretical focus of these perspectives: they do not investigate interests, they merely assume them.[32] Traditional approaches fail to account for the fact that there are always mixed and complex motivations driving state action; Humanitarian motives may be genuine, but form only part of a larger constellation of motivations driving state actions.[33] Justifications are an attempt by states to 'connect ones actions to standards of justice of appropriate and acceptable behaviour'. [34] Justification is too often conflated with motivation, however justification and motivation are very different notions when examined critically.

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The difficulties facing R2P in terms of getting States from the point of ratification to actually internalising the norm on a domestic level is a key challenge facing the international community. Norms are socially constructed, and change over time. The predominate account of how new international norms emerge and become embedded in state practice is explored in Finnemore and Sikkinks seminal three stage model.[35] The first stage involves agenda setting activities of norm entrepreneurs. For R2P, this is generally attributed to former UN Secretary Kofi Annan, who championed and raised the public profile of R2P and rallied a critical number of states (norm leaders). The state level norm entrepreneur was Canada, who produced the original ICISS report. The second stage is a norm cascade, whereby norm leader seek to socialise other states into becoming norm followers.[36]

"The social nature of international politics creates normative understandings among actors, and in turn coordinates values, expectations and behaviour".[37]

The process is intersubjective and constantly evolving. Motivations for states to proscribe vary, and can include coercive (e.g. sanctions or peer pressure) and non-coercive (e.g. desire to be a well-respected member of the international community) means. The third and final stage in the process is norm internalisation; the norm is fully internalised within all states and acquires a 'taken for granted quality'.[38] Arguably, R2P is currently in the second stage of the norm lifecycle, as the norm has not yet been internalised by all within the international community.[39] Importantly, norms are intersubjective, norms shape interests and interests shape actions.[40] Conventionally, literature on humanitarian intervention sees states hiding behind justifications to cover self-interested reasons for action. More frequently, however, humanitarian motives do play a role in a large and complex set of motivations driving state actions. Establishing R2P as a universal standard represents a normative challenge not only because it challenges states' traditional conception of sovereignty, but also because its legal status is not clear-cut.

External military intervention in intrastate humanitarian crises does not fit neatly into the international legal framework governing the use of force. Although R2P does not have official legal status, it was crafted to align with existing IHL and customary law. The UN charter recognises only self-defence and the maintenance and restoration of international peace and security as legitimate grounds for the use of force in International Relations.[41] The non-intervention principle enshrined in Article 2(7) of the UN Charter strengthens the principle of state sovereignty at the core of the establishment of the UN. Rooted in binding international treaties and conventions, IHL sets out legal obligations to parties involved in armed conflict. Regardless of whether the conflict is inter or intra-state, violations of IHL constitute war crimes.

By limiting the triggering events to the four mass atrocity crimes, R2P, as an emerging norm, was able to overcome the problem of its dubious legal status. The UN mandate has been described as having a 'selectively expansive' view of the 'threat to peace'.[42] That is, if the UNSC decides that an inter-state conflict is indeed a threat to peace, they can use the chapter seven powers to sanction intervention for civilian protection purposes. The crafters of R2P recognised this tendency, and carefully aligned it with existing categories of international legal crime that serve as legitimate grounds for the use of force. Hehir and Robert describe R2P's legal status as 'best viewed as a multifaceted political concept based on exiting principles of international law'.[43] Evans asserts that R2P has the potential to develop into a legal norm, stating that 'International law is capable of evolving through practice and commentary as well as through formal instruments and judicial decisions'.[44] This is referring the International Court of Justice that recognises that new norms of International law can develop through general practice.

Despite alignment with existing international law giving R2P the capacity to become a legally binding norm, the international community's acceptance of R2P as a right has been limited by some states' desire to avoid creating a legal *obligation* to intervene. What is important is that R2P does not create any legal duties for states or the UNSC and there has been a reluctance to include any new language that could be interpreted to create a duty. The careful wording of R2P, including 'prepared' and 'case by case basis', clearly illustrates the desire of states to avoid creating a legal *obligation* to intervene. 'Responsibility', as described in paragraph 139 of the UN outcome document is often seen as a 'discretionary choice rather than an unequivocal duty'.[45]

The Bush administration's actions during the amendment process of the 2005 World Summit were instrumental in the dilution of the final normative content of R2P and indicative of select states resistance to its obligations under R2P.

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The Bush administration sought to derail the negotiations at the summit by introducing hundreds of last minute amendments to the draft outcome document.[46] Repeatedly, the 'moral' rather than legal aspects of R2P were emphasised as well as the qualitative differences between host states duties and the international community's residual responsibility to act. The Bush administration's response was based on a desire to maintain its freedom of action; if R2P was narrowly defined, then US unilateral action would be delegitimised.[47] Given the fact that the original ICISS report was published in December 2001, against the backdrop of the 9/11 terror attacks and the global war on terror (GWOT) that followed, it is not surprising that the US wanted to reject any legal obligation to adhere to R2P nor any obligation to seek prior authorisation from the UNSC. Indeed, the co-option of R2P by the US to justify the GWOT damaged the emerging R2P norm. The norm was damaged through the retroactive use of the language of Humanitarian Intervention and R2P as false justification and a pretext for regime change. Although this occurred before the ratification at the 2005 World Summit, Evans agreed that the US invasion of Iraq would not have met R2P test for intervention (applied retroactively).[48]

The desire to avoid R2P evolving into a *legal* obligation to intervene is not unique to the US, and is evident in the wording of all UNSC use of R2P since ratification.[49] The domestic political and domestic institutional structure of the US also constrained its actions, in that the United States constitution allows for no higher authority in determining policy. As Thakur and Weiss assert, 'Washington drags its feet because it categorically refuses to have its military committed by others'.[50] This attitude was affirmed by neoconservative commentator Steven Gowes, who commented that 'US national interests should be the sole yardstick for claiming legitimacy for intervention'.[51] The US may have endorsed R2P in a general sense, however it was clear in its rejection of its specific obligations. This ambiguity prevents R2P's development.[52] Accusations of US selectivity are a common theme in R2P literature. Indeed Stewart Patrick from the US State Department announced that 'US foreign policy will inevitably remain selective… Because the US must balance its interests in preventing suffering with its pursuit of other important goals and commitments'.[53] Many claim that there is a 'lack of objective criteria to guide UNSC decision making on the appropriateness of authorising military force' and, without such criteria, decision making is largely contingent on the will of the UNSC, which is turn heavily contingent on political exigencies.[54] Whether it is a lack of specificity is dubious, and it would seem more likely that states are not willing yet to create or commit to a legal obligation to intervene in all cases, having not yet entered the third stage of norm internalisation.

R2P has grown rapidly to become a mainstay of international public policy debates.[55] This has occurred despite attempts by the US to derail negotiations at the World Summit, and BRICS nations attempts to delegitimise it after its use in Libya. The international community is comprised not only of states, but of intergovernmental organisations, NGO's, civil society organisations and private sector entities. It is clear that most states among this community have accepted the duty; mass atrocity crimes are very uncommon in the realm of international relations. The world has not witnessed the scale or frequency of mass atrocity crimes seen in the 1990s. R2P language frames the discourse of discussions of sovereignty and is often referred to in academia, diplomacy and the media. Civil society has actively promoted 'norm socialisation and crystallisation'.[56] Indeed, a major research centre, as well as a centre for excellence, dedicated to the study of R2P, have both been established in Australia, a testament to R2P's significance to Australian foreign policy objectives. International civil society, including NGO's, have thrown their support behind R2P and created the influential Coalition for the Responsibility to Protect.[57] R2P influence is growing fast, especially considered relative to how recently the concept was created and endorsed.

The small number of states that have not internalised pillar one of R2P remain resistant to the full implications of R2P. Evans notes that there is an 'evident willingness by a number of states to deflate or undermine the new norm before it is fully consolidated or operational'.[58] Whether this is from shame, or an unwillingness to shift from deeply entrenched historical patterns, is unclear; however, without a genuine commitment to pillar one responsibilities, the ability to respond to situations of mass atrocity will fall on the international community, and the time it takes to mobilise this action (if action occurs at all) may mean that mass atrocity crimes have already been committed. If danger of escalation could be mitigated at the domestic level through a holistic application and internalisation of all three pillars of the R2P norm (particularly pillar 1), mass atrocity crimes could be reduced.

Case Study: Gaza

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The recent conflict in Gaza between Palestinians and Israelis is a clear example of the complex domestic, historical and political challenges facing R2P as an emerging norm. The crisis must be seen in the context of deeply entrenched historical patterns of violence, however our assessment of the current situation cannot be seen only through this lens. The UNHRC reports (although disputed) report over 2205 Palestinian and 71 Israeli civilians dying during the conflict.[59] The UN office for the coordination of Humanitarian Affairs reported that 77% of these deaths were civilian.[60] Despite any controversy over the exact figures, they clearly show that the Palestinian civilians were being targeted and a convincing case could certainly be made for ethnic cleansing or genocide under the four mass atrocity crimes that R2P encompasses. Why then, if formally universally ratified nearly a decade ago, was R2P not utilised by the UNSC in the early stages to either prevent the crisis during the escalation phase (pillar 1), or an international effort of humanitarian intervention mobilised to end the violence? The complex nature of the Israel-Palestine conflict, the status of Palestine as a legitimate state, as well as the extreme politicisation of the conflict, have all unduly clouded R2P's application. There are three key issues here that represent the broader difficulties of R2P's relationship with the international community.

The first issue is the Status of Gaza and whether or not it is an occupied territory or a formal independent state? R2P is conventionally understood as applying only to intra-state crises, therefore it follows logically that if Palestine is a state, R2P does not apply, and IHL governing the conduct of war would be more appropriate. But Palestine's status is not clear-cut; Gaza is wholly cut off from the outside world by Israel, all movement of people or goods is controlled by Israel, and even such basic provisions essential to life as water is in Israel's control. Indeed Israel itself does not even recognise Palestine as a state.[61] Despite Israel undertaking a 'disengagement plan' in 2005, it is reasonable to conclude that Israel remains the de facto occupying power of Gaza, and thus the conflict can be deemed intra-state and R2P applied. In spite of this technical understanding of the formal applicability of the norm of R2P, at the moral and theoretical heart of R2P is the global commitment to protect all people, regardless of ethnicity, religion or *statehood.* As Ban Ki-moon said; 'R2P applies everywhere and at all times'[62] and certainly applies to the 2014 conflict in Gaza.

The actions of both Israel and Palestine during the recent conflict illustrate that both parties were not adhering to the ethical principles of Just War theory or the legal principles of IHL due to the indiscriminate nature of attacks targeted towards civilians. The distinction between military and civilian targets is central to IHL, and it would appear that both sides have violated fundamental laws of war. The fourth Geneva Convention, which Israel is a signatory to, concerns the protection of civilians during war. Article 33 specifically outlaws collective punishment. Palestine's ongoing attacks on Israel were indiscriminately aimed at key civilian and infrastructure targets and, had it not been for a sophisticated missile defence system, they would have hit these targets. The unrelenting retaliatory airstrikes by Israel were similarly aimed at densely populated areas. These attacks were indiscriminate, and appeared to be fired with a deliberate intention of killing civilians and destroying key (and limited) civilian infrastructure in Palestine. In a statement regarding the massive civilian death tolls suffered by Palestinians, The Global Centre for the Responsibility to Protect stated that 'The Israeli Defence Force appear to have imposed *collective punishment* upon the people of Gaza', a clear violation of article 33 of the Geneva convention.[63] Although Israel retains the right to defend itself, IHL requires that Israel conduct war in a way that intentionally minimises the loss of civilian life.

The second issue regarding R2P's applicability to the recent conflict in Gaza relates to determining the threshold for coercive military intervention; the pointy end of the Third Pillar of R2P. The concept endorsed at the 2005 World Summit fails to address crucial questions relating to when and how the UNSC should decide on the appropriateness of military action. What constitutes a 'widespread or systematic' attack, and how many people have to die for conflict to be classified as one of the four mass atrocity crimes? 'Widespread' may be defined as 'massive large scale action', and 'systematic' as 'part of a preconceived strategy', but this still does little to define at what point action should be taken.[64] One of R2P's central challenges is to define this point, but for many reasons a fluidity of the point is necessary and desirable. To prevent mass atrocity crimes effectively, there must be some scope for states and/or the international community to intervene pre-emptively to prevent mass atrocity crimes from occurring. Especially in situations such as Libya, where there is a clear and present threat that genocide will occur (seen in Gadhafi's comments of 'cockroaches', echoing the language used in the Rwandan genocide in the 1990s). A standard where 100, 1000 or 10000 people must die before action can be mustered could not be effective, nor ethically sustainable.

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The conflict in Gaza should have qualified for the application of R2P's coercive third pillar and a stronger international response. The state was unwilling or unable to protect its citizens, civilians were indiscriminately targeted, and violence was escalating. The international community was not unaware of the situation, but chose to ignore the responsibilities enshrined by pillar three and place it in the historical context of continuing conflict in the Middle East. The Turkish Prime Minister Recep Tayyip Erdoğan publically declared 'Israel is committing genocide'.[65] There was unprecedented, widespread, real-time media coverage and condemnation of Israel. Israel itself had endorsed R2P at the UN General Assembly several times. Although limited, the States within the international community did assist with pillar two commitments including diplomatic assistance brokered through Egyptian sponsored cease fire, and humanitarian assistance to the people of Palestine. Despite these actions, no real attempt was made by the international community to end the violence when these efforts were not successful. Despite an official commitment to the principles enshrined in R2P, commitment remains rhetorical in this situation at both an individual state level (Israel ignoring its Pillar One responsibilities) and at an international level (The international community ignoring its Pillar Three responsibilities).

The third issue relates to the politicisation of the issue of ongoing Israel-Palestinian conflict, and its relationship to the UNSC permanent five (P5) as arbitrators of R2P. There is arguably no conflict in the world as politically polarising as the Israel-Palestine conflict. Events in Gaza demonstrate the continuing perception of the selective use of R2P against enemies of western powers. Due to the special and public relationship between Israel and the US as a member of the P5, this analysis will focus on the US. The US has vetoed over 45 resolutions aimed against Israel from 1972-2013 alone.[66] This 'special protection' has lead to accusations that US actions with its UNSC veto power has encouraged Israel's aggressive and expansionist policies. Robert Hill, the former Australian ambassador to the UN, offered insights into this special relationship in his remark that, "The Israel-Palestine conflict is a category of Israeli resolutions that the US, because of domestic political reasons… Will always veto".[67] These actions have meant that the UNSC's ability to apply R2P effectively has been hamstrung by the veto power held by the US.

US foreign policy has long been accused of legal exceptionalism and 'a la carte multilateralism',[68] evident in its relationship to Israel. This exceptionalism is based on the idea that the US is qualitatively different from other states in terms of its historical origin and political institutions.[69] The domestic political environment within the US also influences the decisions made regarding US attitudes to the Israeli-Palestinian conflict. Israel has a tremendous amount of influence in the domestic political realm of the US and has effectively lobbied for the continuation of the 'special' relationship between the two countries. Indeed, Powers contends that 'It is in the realm of domestic politics that the battle to stop genocide is lost'.[70] Domestically, Israel has tremendous support. This support exerts potent impact on foreign policy through collective action, lobbying and financial support to political campaigns in order to secure favourable policy outcomes for Israel. Thus, it is not only geopolitical considerations that come into play, but also domestic societal influences. It is important that the debate is not lost in purely geo-strategic terms, but is broken down to the individual level and the influences exerted on individual lawmakers in the US to maintain positions within government. As stated earlier, there are always mixed and complex motivations driving state action.

R2P is an emerging norm, and still faces important challenges in becoming internalised by all sectors of the international community in full. First, a central question remains unanswered by R2P, as illustrated by the Israeli-Palestinian conflict earlier this year: what is the threshold for intervention? Generally, 'The threshold for non-consensual intervention is high', having been officially used only once (that being recently in Libya).*[71]* Tension remains, because if R2P is too expansive it stands accused of impeding sovereignty, but, conversely, if it is too restrictive it is arguably not going to be robust enough to be protecting those most vulnerable on a consistent basis, and risks accusations of selectivity. An over expansive interpretation also runs the risk of echoing the problems that faced humanitarian intervention throughout the 1990s – that is the 'moral hazard' argument. It is a delicate balance that R2P is yet to establish.

The need exists for continued advocacy and activism by civil society and concerned governments to "remain steadfast and hold all governments' feet to the fire of individual and collective responsibility to protect at risk populations".[72] This can be achieved through genuine north-south dialogue. In the lead up to the ICISS report, there were extensive consultations (over 10) in both the Northern and Southern hemisphere, seeking the views of governments, scholars, intergovernmental and nongovernmental humanitarian actors, as well as journalists.[73] It is

highly unlikely that a member of the P5 will ever be subject to a humanitarian intervention, so seeking the opinion of those most likely to be on the receiving end of interventions has utility. Finally, there is a risk of 'rollback': a shameful edging back from the agreed norm of 2005, a form of 'buyer's remorse'.[74] This may partly be associated with the fact that with continual advocacy and pushing from Ban Ki-Moon[75], R2P's mandate regarding Pillar One and Two has expanded since ratification. Evolution and expansion of the R2P norm is certainly not a bad thing, so long as it does not move so fast as to damage the international community's commitment. Sustainable development is needed.

Accusations of selectivity are not likely to be resolved in the near future. Much has been said about the politicisation of the UNSC (regarding issues of selectivity or a lack of political will by powerful nations) as the greatest impediment to effective human protection.[76] Of course, Humanitarian Intervention under R2P should not be used as a façade for powerful states to solve parallel or unrelated issues. However, by recognising that there are complex interests driving motivations for states to intervene (including genuine humanitarian concern, geopolitical or strategic interests, domestic political interests and international pressure from both other states, regional bodies and the United Nations), more effective 'operationalising' of R2P can occur. A more effective strategy is to look at ways that R2P can be better operationalised and internalised *within* the international community and particularly Pillar One, to better protect civilians who are at risk now.

Conclusion

In conclusion, R2P is a new and emerging norm whose power lies in its potential to effectively protect civilians at risk of mass atrocity crimes. In terms of the norm life-cycle described by Finnemore and Sikkink, R2P is still in the second stage. In light of how recently it was developed, its evolution is impressive. It has not yet evolved into binding IHL, despite aligning with existing principles of IHL, but it has the capacity to develop over time into customary law. Each component of the international community is rapidly accepting that it holds the primary moral responsibility to protect. Whether this willingness is emerging from a complex set of motivations involving self-interest due to the magnification effects of internal conflicts in an increasingly globalised and interconnected world, geopolitical security concerns, or genuine humanitarian duty, States attitudes are clearly shifting in favour of accepting both primary responsibility for their own populations, and also secondary responsibility for at risk populations around the world. Traditional IR theory fails to account for the shift in behaviour of the international community in regards to intervention and human protection, further increasing the credibility of the norms approach.[77] As Evans noted, 'R2P is the best starting point the international community has, and is maybe likely to ever have, in preventing and responding to genocide and other mass atrocity crime'.[78] R2P's power lies in its potential, as an emerging norm, to shift state attitudes to mass atrocity crimes from one of opportunistic ambivalence of the 1990s, to a genuine moral and legal commitment to protect at risk populations around the world.

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[34] *Ibid,. 4.*

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[71] Not all agree that Libya was the first invocation of R2P. For literature regarding this controversy see, for example;

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[72] Thakur & Weiss "R2P: From Idea to Norm—and Action" 34.

[73] *Ibid.,* 20.

[74] *Ibid.,* 34.

[75] UN Secretary Ban Ki-Moon has released 5 special reports on R2P that have 'sustained and consolidated' international consensus on R2P. See that latest 'Responsibility to protect: State responsibility and prevention' online at http://responsibilitytoprotect.org/SG%20report%202013%281%29.pdf

[76] See, for example; Welsh, Jennifer. "Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP" *Ethics & International Affairs* 25 (2011): 255-262.

[77] Finnemore "Constructing Norms of Humanitarian Intervention" 2.

[78] Evans *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, 54.

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