

The Responsibility to Protect in 2020: Thinking Beyond the UN Security Council

Written by Samuel Jarvis

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SAMUEL JARVIS, JUN 19 2020

2020 marks 15 years since heads of state of 191 countries agreed to sign the 2005 World Summit Outcome Document. Outlined in paragraphs 138 and 139 of this document is the core idea of the Responsibility to Protect, that every individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and that the international community has a responsibility to respond if a state manifestly fails to protect their populations from such crimes. Highlighted in these paragraphs is also the unique role of the UN Security Council, recognised as the body with the primary responsibility for the maintenance of international peace and security. As a result, much of the controversy surrounding state responses (or lack of) to mass atrocity crimes have been framed around the critical role of the Security Council, both in terms of academic focus and media coverage of the R2P.

The persistent failures of the Security Council to build consensus, or at times even recognise the outbreak of atrocity crimes occurring, has thus continued to absorb the attention of those both critical and supportive of the norm. From debates over the restriction of veto rights to calls for a more balanced Security Council, many of the answers put forward to the challenge of selectivity often return to the question of how to reform the Security Council, or for some critics, highlighting why the Security Council will always be an ineffective actor.

Reflecting on the current Security Council dynamics in 2020, one is struck first and foremost by the continued paralysis, which the outbreak of the Covid-19 virus has further exacerbated, deepening divisions between major powers. Consequently, despite the UN Secretary General's call in March for an immediate global ceasefire, the Council has over many weeks failed in its ability to support this resolution. The Covid-19 virus therefore raises significant questions for the future of human protection and mass atrocity prevention, not only in terms of its potential to generate triggers for future political violence and atrocities, but also the knock-on impact it appears to be having on multilateral cooperation at the highest levels. Whilst it is certainly evident that the breakdown in Security Council consensus long pre-dates the virus, the outbreak can be seen to have accelerated confrontation, most notably between the USA and China, subsequently limiting the opportunity to build greater cooperation for addressing the longer-term economic and structural impacts of the virus, particularly on developing countries.

Looking forward, there is a pressing need to focus on how the goals of human protection and the R2P can be further supported beyond the Security Council and also examine the potential strengths and limitations of other forums and actors in helping to pursue these goals.

Outside of the formal parameters of the Security Council, the use of Arria formula meetings have become an important way to aid discussion and debate of peace and security issues that have not found their way onto the Council's formal agenda. These meetings have become a critical space for Council members to engage and interact with Human Rights Council-mandated Commissions of Inquiry, as well as including NGO representation and civil society actors amongst the briefers. The R2P's emphasis on the centrality of prevention therefore means such discussions are crucial to raising the alarm of human rights atrocities even when the Council has blocked discussion. Whilst these meetings ultimately do not provide definitive or legal outcomes, the increased use of Arria formula meetings in recent years demonstrate their importance in giving members new information from independent sources

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on key country situations. Along similar lines, the Human Rights Council in Geneva also provides a vital forum for raising early warning signs of possible atrocities in order to then assist states in preventing mass atrocities, such as under Pillar II of the R2P.

However, it is important to also reflect here on the clear limitations of these forums in terms of enforcement and at the same time recognise that their role in supporting early investigative mechanisms is usually just the starting point for accountability and justice for such atrocities in the future.

The UN General Assembly (UNGA), mentioned in the 2005 agreement, has also been the focus of recent scholarship concerning its potential to help further address humanitarian and human rights issues. The UNGA has a number of roles to play, by providing recommendations to the Security Council as well as taking steps to investigate atrocity crimes and pushing for appropriate legal methods and judicial proceedings. This has often included reinforcing the work of independent international fact-finding missions and passing resolutions urging governments to comply with findings and recommendations. Coupled with its more representative makeup, the UNGA will most likely be required to play an even more critical role in supporting human protection and R2P initiatives moving forward, particularly in terms of trying to hold a divided Council to account.

Whilst the UNGA has attempted to explicitly condemn the Council's inability to address atrocity crimes in the past, these calls have most often failed to spark a direct response. A central challenge moving forward is thus how to redefine the UNGA's role beyond just being a forum for discourse on the R2P, to one that is recognised as an important collective security actor. So far, the UNGA has struggled to effectively step up to this challenge, despite several high-profile incidents of Security Council deadlock.

For effective prevention and human protection to take place outside the UN system, it will most likely fall to regional organisations to carry the burden. Whilst different individual actors have interpreted elements of the R2P in contrasting ways, there has been evidence of regional organisations and states working to support early warning by incorporating mass atrocity prevention into legislation and formal institutions. Beyond these initiatives, there have also been attempts by regional actors to engage in so-called 'quiet diplomacy' tactics, for example where regional organisations have been slow to respond. This has seen specific regional actors making use of their proximity and trust with neighbouring states to help provide support, such as the delivery of humanitarian aid, as was the case when Indonesia engaged with Myanmar in response to atrocities against Rohingya Muslims. However, whilst there is certainly evidence that these more ad-hoc diplomatic arrangements can be a useful way to deliver less controversial forms of response, such as humanitarian aid, it does still leave significant gaps in protection, which a more collective response would help to address. Furthermore, the divide in regional organisations over the principle of non-intervention has continued to be a significant stumbling block, even for seemingly less intrusive forms of prevention.

With a more divided Security Council, regional organisations will likely be forced to pick up the slack and whilst there is evidence of some effective integration of human protection initiatives, implementation remains notably ad-hoc and often lacking in sustained cooperation arrangements.

During this period of significant economic and political upheaval caused by the Covid-19 virus, the challenges of human protection become even more imperative, particularly in regard to divided and fragile societies, many of which host large numbers of refugees and internally displaced people who face the most dangerous situations. The continuation of a bitterly divided Security Council will thus likely place even greater pressure on other regional forums and actors to work in trying to uphold the responsibility to protect moving forward. Subsequently, the longer-term threat to the R2P is the risk of it sliding further down the list of state priorities as economic pressures take hold. These economic pressures also have the potential to further strain fraught relations between governments and citizens, creating the conditions for social disorder and political unrest.

The break down in multilateralism between major powers in the Security Council therefore forces us to think more expansively about how protection and prevention initiatives can still be delivered and supported through a range of different mechanisms and actors. Subsequently, the future of the R2P in the next fifteen years is most likely to be defined by its application beyond the Security Council, whereby stronger backing for both top-down and bottom-up

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initiatives, supported by the wider UN system and implemented by the actions of regional organisations, states and civil society, will be essential.

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