The Responsibility to Protect after Libya & Syria

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Despite the commitment made by all heads of state attending the 2005 World Summit to uphold the principle of the responsibility to protect (R2P), atrocity crimes continue to be committed by states and nonstate actors. This essay argues that assessments of R2P's effectiveness too often overlook the political nature of the principle – with the strengths and weaknesses that this status entails – and apply rigid standards of success that both underestimate its contribution to building capacity to prevent and respond to atrocity crimes and overemphasize the role of military intervention. It also suggests that R2P is best understood as a "duty of conduct" to identify when atrocity crimes are being committed and to deliberate on the best form of collective response. The cases of Libya and Syria have nonetheless raised fundamental questions about the prospect of catalyzing international efforts to protect populations, particularly when there is disagreement over the costs and benefits of a coercive response.

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In spite of the cries of "never again" following the genocides in Rwanda and Srebrenica, the early decades of the twenty-first century have continued to be marked by atrocity crimes.[1] In far too many crises, vulnerable populations suffer from forms of violence that challenge our common humanity.[2] In 2014–2015, acts that could constitute genocide, war crimes, ethnic cleansing, and crimes against humanity took place in the Central African Republic, the Democratic Republic of the Congo, Iraq, Libya, Nigeria, South Sudan, Sudan, Syria, and Yemen, among other regions. A number of other situations featured grave and systematic violations of human rights or international humanitarian law – by both state and nonstate actors – that entailed significant risk of further escalation, or virulent forms of violent extremism that posed a particular threat to religious and ethnic minorities.

Just over a decade ago, heads of state and government pledged to address these protection cri-

ses when they adopted the principle of the responsibility to protect (R2P) at the 2005 World Summit held at the United Nations headquarters in New York. In articles 138 and 139 of the 2005 World Summit Outcome, they not only affirmed the primary responsibility of states to protect their own populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, but also accepted a collective responsibility to assist each other in fulfilling this responsibility and declared their preparedness to take timely and decisive action, through the Security Council and in accordance with the United Nations charter, when national authorities manifestly fail to protect and peaceful means have proven inadequate.[3]

So what does the apparent disjuncture between rhetorical commitment and the reality faced by threatened populations tell us about the standing and trajectory of the responsibility to protect? There is an active scholarly debate on whether R2P has progressed to the status of a norm and, if so, the nature of its effects on state behavior.[4] This essay does not seek to address these particular issues, notwithstanding their importance to theoretical advances concerning the nature and impact of norms in international relations. Instead, it takes the view that the fractious debates about R2P's impact have often been driven by a lack of clarity over what exactly the principle is, and what it can contribute. In what follows, I tackle both of these questions before focusing on how the particularly difficult cases of Libya and Syria have affected assessments of R2P and posed challenges for its future implementation.

Nonetheless, two preliminary points about R2P's normative trajectory are worth stressing. First, while there is continued contestation about some aspects of R2P, the points of contention among UN member states have diminished substantially over the past decade. Informed by the

annual reports of the UN secretary general,[5] extensive consideration of the responsibility to protect in the General Assembly has helped to advance an implementation framework based on three pillars: pillar one emphasizes the primary responsibility of individual states to protect their own populations (whether nationals or not) from genocide, war crimes, ethnic cleansing, and crimes against humanity; while pillars two and three call upon the international community to assist states in fulfilling these responsibilities and to respond collectively if national authorities manifestly fail to do so. This framework has helped forge consensus on some core aspects of the principle, including the importance of prevention, the need to ensure that "timely and decisive" response uses a full range of diplomatic, political, humanitarian, and – as a last resort – military measures, and that implementation must conform to the UN charter and other established principles of international law.

This consensus spans all regions. While there is a persistent view that R2P is a "Western" concept, the past decade of deliberation and action provides contrary empirical evidence.[6] As one recent multinational study of state practice concluded: "The core of the global political conflict over protection from atrocities has moved on. Most relevant actors around the globe accept the idea that the protection of populations from atrocity crimes is both a national and international responsibility."[7] Those states and institutions once considered hostile to the principle of R2P have themselves begun to reference and employ it, and the debate has shifted from the merits of the principle itself as to how it should be implemented.[8] This evolution has been on full display in the most recent interactive dialogues on the responsibility to protect in the General Assembly, where states across the geographical spectrum concur that the international community should

adopt measures to support R2P, including the use of force as a last resort.

Second, the principle of R2P has made significant progress in the formal deliberations of key intergovernmental bodies in a relatively short period of time. As of autumn 2015, the Security Council had adopted more than thirty resolutions and six presidential statements that refer to the responsibility to protect, some of which have authorized peacekeeping missions that explicitly referenced the need to support national authorities in upholding their responsibility to protect (such as in Mali, South Sudan, and Cote d'Ivoire), and others that welcome the work of the Joint Office for the Prevention of Genocide and the Responsibility to Protect.[9] The General Assembly has held a formal debate, convened seven annual informal interactive dialogues, and referred to the responsibility to protect in two Third Committee resolutions. The Human Rights Council has adopted thirteen resolutions that feature the responsibility to protect, including three on the prevention of genocide and nine relating to country-specific situations. And at a regional level, the African Commission on Human and Peoples' Rights has adopted a resolution on strengthening the responsibility to protect in Africa[10] and the European Parliament has recommended full implementation of the principle by the European Union.[11]

Resolutions and declarations, however, are ultimately about words; on their own, they do not tell us enough about the degree to which R2P has been internalized. Nor do they provide much comfort to those who on a daily basis confront systematic and large-scale violence. We therefore require deeper consideration of what the principle of responsibility to protect can reasonably be expected to do, and what contributions it has concretely made to realize the goal of atrocity crime prevention and response.

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The starting point is to recall that the inclusion of R2P in the 2005 World Summit Outcome embodies a *political* commitment to take a more activist posture vis-à-vis atrocity crimes, born out of the international community's painful failures in the 1990s to halt genocide, war crimes, crimes against humanity, and ethnic cleansing. It is also crucial to note that the political context that gave rise to the principle was dominated by the lessons of *both* Rwanda *and* Kosovo. In the former case, the failure to respond to the unfolding genocide with a stronger international force led to a search for ways to build the capacity and will to protect populations from large-scale massacre or humanitarian catastrophe. In the case of Kosovo, NATO's intervention to avert ethnic cleansing encountered strong opposition given the lack of Security Council authorization for the bombing campaign, prompting attempts to construct a more widespread consensus for the conditions under which military force could be used in the service of humanitarian objectives. These efforts followed the approach of the 2001 International Commission on Intervention and State Sovereignty, which developed and promoted the notion of "responsible sovereignty": that state sovereignty should not be conceived solely in terms of undisputed control over territory, but rather should be linked to a state's capacity to protect and provide for its population.[12]

The principle of R2P thus arose primarily out of moral and political, rather than legal, considerations, and was built on the conviction that state sovereignty is enhanced through more effective protection. It did not create any new legal obligations, beyond what already exists in the Geneva Conventions, the Genocide Convention, the UN charter, and other relevant legal instruments related to human rights. Indeed, on the face of it, we had – and have – all of the law we need.[13] What was lacking then,

and is still in too short supply today, is the capacity and will to act on these legal provisions, including the powers of the Security Council to authorize the use of coercive measures when it identifies threats to international peace and security. What the unanimous support for R2P in the Summit Outcome provided was an authoritative interpretation of the charter,[14] and of other particular aspects of international humanitarian and human rights law, that asserted the legitimacy of viewing the commission of atrocity crimes as a matter of international concern – rather than a matter of domestic jurisdiction – and of acting collectively to address it. In addition, it sent a powerful reminder to national authorities of the responsibilities they already have to their own populations as part of existing law and emphasized that this responsibility includes prevention.

As a political principle, R2P was designed both to legitimize a shift in expectations about how the international community should view situations involving atrocity crimes, and to mobilize greater will and capacity to act. With respect to the first function, it has helped create a category of acts that are, by their very nature, issues of *international* concern by establishing a "floor of decency"[15] beyond which states *themselves agree* that populations should not fall. In terms of its second role, R2P has created a framework for developing policy and institutional capacity – at the national, regional, and international levels – to prevent and respond to atrocity crimes.

One key example is the appointment of focal points within governments to coordinate policy development on atrocity crime prevention and response.[16] These national-level officials are critical to the implementation of R2P's first pillar: they accelerate the adoption of domestic measures that will advance implementation of these obligations. Such steps include conducting a national risk assessment; signing and ratifying relevant treaties of international human rights law and international humanitarian law, as well as the Rome Statute of the International Criminal Court; and developing laws and institutions to address exclusion and discrimination. They also extend to efforts to foster collaboration among various government departments and agencies to improve upon the capacity to respond to atrocity crimes outside state borders, as illustrated by the Obama administration's creation of the Atrocities Prevention Board.

Progress in capacity-building is also evident at the regional and international levels. Within the European Union, an R2P focal point has been appointed to coordinate the work of policy divisions active in different aspects of atrocity crime prevention and response, and the European Commission's early warning tool, designed for conflict prevention, now incorporates indicators relevant to genocide, crimes against humanity, and war crimes. Within the United Nations, implementation of R2P has been furthered by the work of the Joint Office for the Prevention of Genocide and the Responsibility to Protect and by the adoption of a new framework of analysis that both specifies the risk factors of atrocity crimes and sets out a process for identifying and elevating "situations of concern."[17] More recently, the action plan for the secretary general's Human Rights Up Front initiative has spawned further institutional reforms to strengthen the link between early warning and early action in the UN system.[18]

Elsewhere at the international level, institutionalization is less formal and more decentralized. It has usually taken the form of enhanced coordination and engagement among a variety of actors and organizations in cases where atrocity crimes have been committed, or were imminent, such as in Guinea in 2009 – 2010, Kenya in both 2007 – 2008 and 2013, and, most recently, Burundi. These conscious efforts to forestall the com-

mission or escalation of atrocity crimes offer the strongest proof that such acts of violence are deemed matters of international (and not solely domestic) concern.

More broadly, the development and diffusion of R2P has been partially responsible for the increased volume in academic and policy-related research on risk factors and triggers for atrocity crimes, sources of national resilience, and preventive mechanisms.[19] This enhanced knowledge is beginning to translate into tailored efforts to support "states under stress" (to use the term from the Summit document) through development cooperation programs that build or strengthen inhibitors to atrocity crimes, such as a professional and accountable security sector, independent bodies and procedures for overseeing political transitions, and local capacity for dispute resolution.[20] These initiatives are only in their infancy, and face the methodological challenge – common to all areas of public policy involving prevention – of definitively demonstrating effectiveness, since it is hard to prove a negative. But the political commitment to R2P and its increased presence in the language of international diplomacy have helped to create a transnational policy constituency dedicated to improving preventive capacity.[21]

What the principle of R2P has *not* done is dictate what particular response should follow in every case of protection failure, particularly when it comes to the option of military intervention. As a result, critics have been quick to claim that the lack of intervention in one case, and the presence of it in another, is evidence of R2P's weakness.[22] However, there are two reasons why it is inappropriate to judge R2P's impact in terms of whether we see a consistent pattern of military intervention.

First, such a test misunderstands the essence of responsibility. As the philosophical literature tells us, prospective responsibilities – such as R2P – are by nature conse-

quentialist rather than deontological. They define a particular state of affairs that an agent should bring about (in this case, protection), without specifying the precise means of doing so.[23] The standard of the critics of R2P is therefore too minimalist, given that it overlooks the many other tools and mechanisms that can be brought to bear to address situations featuring atrocity crimes. In the case of Guinea, for example, concerted preventive efforts by local, regional, and international actors – which included preventive diplomacy, arms embargos, travel bans, and threats of International Criminal Court prosecutions – helped avert a recurrence of atrocity crimes following the massacre of September 2009. Assessing how the international community has responded to atrocity crime situations to date, and how it could respond in future, requires analysis of these nonmilitary means and the conditions under which they are effective.

On the other hand, the standard of a consistent pattern of intervention is too demanding, given that – like all issue areas that touch on the use of coercive means – implementation of R2P is profoundly shaped by the political dynamics within, and unique structure of, the United Nations Security Council. That said, it would be too simplistic to explain away the mixed pattern of responses to atrocity crime situations by highlighting the political motives of Security Council members, no matter how prominent they may be in certain cases. The lack of consensus on action within the Council, or the slow pace of its response, can also be shaped by genuine doubts on the part of Council members about either the appropriateness or the feasibility of using military force for humanitarian objectives. In the case of Darfur in 2004–2005, for example, Western states concluded that a successful military effort to counter the violence perpetrated by the Janjaweed militia could not

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be mounted, given competing missions in Iraq and Afghanistan, the difficulties associated with the terrain in Sudan, and concerns about whether such an intervention would have destabilizing effects for neighboring countries. This example suggests that the normative imperative to respond to atrocity crimes will almost always exist alongside other considerations: both normative (such as the just war notion of "reasonable prospects of success") and nonnormative (such as military overstretch). How these factors work together in decision-making to produce policy decisions will differ from case to case.

Given this complex political and normative landscape, what *can* we expect R2P to do? I have argued elsewhere that what the principle demands, at a minimum, is a "duty of conduct" on the part of members of the international community: to identify when atrocity crimes are being committed or are imminent and to deliberate on how different actors (national, regional, and international) can and should respond. This duty of conduct is particularly demanding for bodies such as the UN Secretariat or Human Rights Council, which do not have the same level of politicization built into their DNA as a body like the Security Council.[24]

Nevertheless, even here the principle of R2P has had some effect. This brings me to its third and final political function: raising the political costs of a failure to respond. The growing acceptance of the responsibility to protect now makes it more difficult for the Security Council to justify inaction in the face of genocide, war crimes, ethnic cleansing, and crimes against humanity. That does not mean that it always mounts a collective response, but the reputational costs of not doing so have increased. When members of the Council are united – as they were in mandating and supervising the removal of chemical weapons in Syria – they can ameliorate conditions

of insecurity for thousands of civilians. But when they fail to find common purpose, the impact is devastating, to civilians on the ground and to the reputation and standing of the Council itself. In a highly unusual step, the General Assembly publicly rebuked the Council in the summer of 2012 for its inadequate response to the Syrian crisis, passing a strongly worded resolution expressing "grave concern" at the escalation of the violence and "deploring the failure of the Security Council" to agree on measures to ensure the compliance of Syrian authorities with its decisions.[25]

One response to this reputational challenge, mounted by the French government, is to create a voluntary agreement among the Permanent Five Members of the Security Council to refrain from using the veto in situations featuring atrocity crimes.[26] Despite the obvious political difficulties in reaching such agreement (both Russia and China are firmly opposed), the degree to which the proposal continues to gather support among UN member states is surprising. This speaks to the growing frustration with the working methods of the Security Council, and mounting pressures for the body to be more representative in its makeup and transparent in its decision-making. Thus, even if the French proposal fails to gain traction in its current form, the political cost of the veto to the Permanent Five is likely to increase, and concrete alternatives to the Council's monopoly over matters of international peace and security – such as the so-called Uniting for Peace Resolution or the authorization of regional bodies – may over time gain in prominence and legitimacy.

I have thus far suggested that R2P presents a multifaceted political agenda, involving tiered responsibilities and a mix of preventive and responsive tools. Yet at the heart of the principle remains a call to implement the international community's responsi-

bilities to protect populations from atrocity crimes, no matter where those populations reside. In short, while prevention may be the preferred approach, it does not always succeed.

Although states have taken concrete measures to enhance their pillar one and pillar two responsibilities, the record of implementation of the measures under pillar three – timely and decisive response – has been mixed. Two cases in particular have raised fundamental and persistent questions about R2P's capacity to catalyze efforts to protect populations in ways viewed as legitimate by the international community. The international intervention in Libya in 2011, authorized by Security Council Resolution 1973, has generated debates about when and how force should be used for the purposes of protection and sparked concerns among some member states about the potential for the responsibility to protect to be misused. It has also reminded actors of the vital need to consider what responsible action demands *after* the use of force.[27] In addition, the international community's inability to resolve the continuing catastrophe in Syria – where over one-quarter of a million people have now been killed and more than ten million displaced – has led some to question whether R2P has, by raising the expectations of populations about the international community's concern and resolve but delivering very little protection on the ground, in fact, made matters worse.

My focus here is on R2P's continued political utility, and how its "duty of conduct" has been affected by the examples of Libya and Syria. Three main effects can be identified. First, these cases have highlighted the epistemic problems associated with arriving at a collective view on an atrocity crime situation. Second, they have illustrated the difficulty of determining *when* military force should be considered. And third, they have underscored the

challenges that arise in efforts to estimate and weigh costs when deliberating over the appropriateness of a military response.

A key benefit of paragraphs 138 and 139 of the World Summit Outcome is that they circumscribe the scope of R2P from the more general threshold of "large scale loss of life," which was the formulation in the 2001 International Commission on Intervention and State Sovereignty report *The Responsibility to Protect*, to four specific crimes and violations that had already been identified in the Rome Statute of the International Criminal Court and the Constitutive Act of the African Union. But although, in theory, this narrower scope should facilitate consensus on situations that constitute matters of concern for the international community as a whole, in practice, contestation has lingered over which situations feature the current or imminent risk of atrocity crimes and thus activate the international responsibility to protect. This debate has been particularly pronounced in retrospective discussions of the Libyan case, since critics of the intervention now claim that the capacity of Colonel Gaddafi to engage in large-scale massacres was greatly overstated.[28] It was also evident in the context of Sri Lanka in 2009, when, even among supporters of R2P, there was disagreement as to whether the civilians caught in the fighting in the jungle area near Mutulivu were being subjected to atrocity crimes, or whether the Sri Lankan government was legitimately protecting its population against the existential threat of terrorism.[29]

Some analysts, such as Robert Pape, believe this potential for contestation can only be mitigated by waiting for a specific threshold to be crossed – in his case, the death of "several thousand" civilians – before contemplating the use of coercive responses involving military force.[30] This standard, Pape suggests, enables a balance between the imperative of timely ac-

tion and the need for clear evidence. But although this represents an admirable attempt to set a specific "line" to be crossed, it would both rule out the potential of preventive action – at least preventive action through military means – and represent a further narrowing of R2P's scope to a particular number of deaths.

Furthermore, one notable aspect of recent cases has been the degree to which evidence for alleged atrocity crimes, particularly in video or photographic form, has been publicly contested as exaggerated or fabricated. The French government's argument for referral of the situation in Syria to the International Criminal Court drew upon photographs of alleged torture that were dismissed by other members of the Security Council as lacking credibility.[31] Such controversy gives added weight to the calls by some states for an authoritative and impartial actor to make a definitive determination on the existence of an atrocity crime situation. In fact, this suggestion has been a core element of the French proposal for restraint in the use of the veto by the Security Council Permanent Five.

Even if such an impartial body could be formed or identified, or an ad hoc commission of inquiry established to ascertain the "facts," such processes cannot always deliver definitive or timely assessments that enable the international community (or more particularly, the Security Council) to respond decisively to escalating crises. In the case of Syria, for example, the initial report of the Independent International Commission of Inquiry on the Syrian Arab Republic could not definitively establish responsibility for the May 2012 massacre at Houla, in which more than one hundred people (half of them children) were killed.[32] Two months later, in its final report, the Commission concluded that the Houla massacre had been committed by Syrian government forces and militia, backed by state officials at the high-

est levels, and that the killings met the requirements of the war crime of murder.[33] By that time, however, one of the pivotal moments for decisive political action had passed and core members of the Security Council had become deadlocked over how to respond to the deepening crisis.

In article 139 of the World Summit document, UN member states emphasized a full range of tools at the disposal of the international community – noncoercive as well as coercive – to respond to the commission of genocide, war crimes, ethnic cleansing, and crimes against humanity. Since 2005, states' use of noncoercive tools has included measures under chapters six and eight of the charter, such as mediation between warring parties to reduce or end violence; negotiation over specific protection issues, such as humanitarian access; monitoring and observer missions to report on serious violations of international humanitarian and human rights law, assess specific sources of threat, and deter the commission of atrocity crimes; fact-finding missions to establish impartially whether atrocity crimes have occurred; and public advocacy on protection by key United Nations officials and representatives of regional and other international organizations. Acting under articles 41 and 42 of the charter, the international community has also employed more robust tools to address the threat or commission of atrocity crimes, including targeted sanctions, the authorization of peacekeeping missions with a robust protection of civilians mandate, and the authorization of military action with the express purpose of protecting civilians.

As this record shows, the choice for the international community is rarely between total inaction and sending in ground troops. Instead, there are a variety of mechanisms that can be employed, even if actors have underinvested in their capacity to use them. Nor is every use of military force necessarily a coercive act, in the strictest sense, since

most UN-authorized missions with civilian protection purposes operate with the consent of the state in question.

Regardless of the presence or absence of consent, a crucial ethical and political question is whether the use of military means must *literally* be the last resort, or whether R2P's "duty of conduct" entails only an obligation to assess if nonmilitary means are likely to succeed. With respect to Libya in 2011, some believe the rush to authorize the use of force curtailed the opportunity for other tools to succeed, particularly a mediated solution to the conflict between the government and rebel groups. This view has been contested by those who suggest that if atrocity crimes are to be prevented, not all tools will be appropriate or feasible. The challenge facing the latter position, however, is that it defers to a more subjective act of political judgment – such as whether a mechanism is likely to work – rather than the more objective standard of using force as a last resort.

Another core feature of ethical debates on the use of force is the imperative for decision-makers to assess reasonable prospects for success, given the unintended and destructive consequences that military means invariably bring about. The political discourse that has accompanied the development of R2P suggests that its "duty of conduct" implies a similar kind of injunction, but it is even more pronounced given that the overall objective of coercive measures is humanitarian. Nevertheless, one of the core challenges raised by the Libya intervention is how to sustain an argument about the success of a military effort to forestall atrocity crimes (or their escalation). This is so for three reasons.

First, as international affairs scholar Roland Paris has observed, the evidence of a successful preventive action is a *nonevent*: the absence of atrocity crimes. But since this is extremely difficult to demonstrate, supporters of such a policy usually resort to counterfactual arguments about what would have happened in the absence of military action, which in almost all cases will involve assumptions that can be contested.[34] The task becomes even more challenging when such interventions cause significant harms, even if unintended, since these actual costs will appear more vivid than the predicted benefits. "Perceptions of the costs and benefits of preventive operations," Paris has suggested, "are thus likely to be skewed towards the costs, even when the mission arguably accomplishes what it set out to do: averting a mass atrocity."[35]

A second and related problem is that military action to prevent or respond to atrocity crimes is often judged not in terms of whether it meets its immediate goal, but rather in terms of whether the state in which intervention occurs becomes *generally* more stable. As commentators have observed, particularly in relation to the NATO action in Libya, outside forces seeking to protect a population may be tempted (or pressured) to expand their operation to address what is alleged to be the "deeper" cause of the threat to that population. Unless they do, the argument goes, their disengagement may simply lead to a resumption of the original conditions that placed populations in peril.[36] But if they do, their actions will amount to an (unauthorized) expansion of their initial mandate. If this mandate is issued from a multilateral body, the damage to future intergovernmental negotiations can be considerable.

I do not have the space here to argue whether or not regime change is a necessary part of military action to protect populations. However, what the dilemma above suggests is that, post-Libya, new mechanisms are needed for ensuring accountability for those who act on behalf of a multilateral body such as the United Nations. It is no longer legitimate (if it ever was) to delegate protection without effective forms of oversight. Protection missions with mul-

tilateral authorization may therefore need to be accompanied by reporting mechanisms (akin to those that currently exist for peacekeeping) and "sunset clauses" that would trigger regular reviews by the Security Council and other relevant stakeholders, such as troop-contributing countries.

A final challenge in estimating reasonable prospects of success is the growing demand that agents who use military force also fulfill their responsibility to rebuild. The normative accounts that detail these *post bellum* responsibilities have proliferated in the wake of both the 2003 War in Iraq and the 2011 intervention in Libya, given the judgment that both missions failed to plan for the aftermath.[37] The public inquiry to identify lessons from the Iraq conflict, initiated by the British government in 2009, and which finally published its findings in July 2016, presented a damning critique of woefully inadequate postwar planning. Sir John Chilcot, chair of the investigation, firmly rejected the argument that the potential for chaos in Iraq could only have been seen in hindsight; instead, he contended, many of the difficulties encountered after the initial invasion – including the rise of violent extremism – "had been, or could have been foreseen."[38] The imperative to rebuild has also been criticized, however, for imposing excessive costs on potential interveners and thus dissuading them from engaging in efforts to protect populations from atrocity crimes.[39]

The contemporary backdrop for the third pillar of R2P is thus one to which the sentiment of "damned if you do" is paramount. While members of the international community fulfill their duty of conduct by identifying an atrocity crime situation and deciding how to react, they all too frequently conclude that the costs of a robust response are too high. But if the lessons drawn from Iraq and Libya are all about the costs of action, what does Syria tell us about the costs of *inaction*? The

total number of displaced people in the world in 2015 reached a record 65.3 million – the highest figure in recorded history. The Syrian conflict was a major contributor to this surge in mass flight, with the country standing as the world's biggest producer of refugees in 2015.[40] It is clear from this tragic case that the international community is also "damned if you don't"; costs are incurred both with and without intervention. Decision-makers therefore have a moral obligation to do as much and as best as they can to anticipate those costs and to subject their judgments to constant reassessment.

This essay has argued that the responsibility to protect should be seen as a political principle, with all of the strengths and weaknesses that this status entails. There is little doubt that, after only a decade, R2P has been established as a key feature of the normative and diplomatic landscape. We have also seen evidence of its ability to inspire research, galvanize resources for capacity-building, catalyze institutional change, mobilize collective attention, and even raise the political costs of inaction. What it has not achieved, but which is too much to expect, is the consistent and robust international response to all protection crises.

The progress made under R2P's first pillar conforms roughly to what scholars of international norms would expect: national/domestic-level actors interpreting and "localizing" an international principle within their particular context.[41] What makes the full realization of R2P so challenging, however, is that progress at the national level is insufficient. The principle also demands a collective "duty of conduct" by the international community. Successful implementation at this level is harder to achieve and more difficult to measure. Moreover, the debates generated by the cases of Libya and Syria suggest that the potential for delegitimization that

arises in the context of R2P's third pillar could have "collateral damage" with respect to maintaining the political capital necessary to further its other important pillars. As a result, the dilemmas associated with deliberation on the use of military means require, at a minimum, greater acknowledgement and, at a maximum, concerted effort at resolution – if the consensus that has been painstakingly built around R2P is to survive and strengthen.

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ENDNOTES

[1] This essay uses the term *atrocity crimes* to refer to the four acts specified in paragraph 138 of the 2005 World Summit Outcome. Genocide, war crimes, and crimes against humanity are established as crimes under international criminal law ; ethnic cleansing, while not defined as a distinct crime, includes acts that will regularly amount to one of the crimes, in particular genocide and crimes against humanity. See United Nations General Assembly, 2005 *World Summit Outcome* (A/RES/60/1), October 24, 2005, para. 138, http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf.

[2] See, for example, Early Warning Project, "Historical Trends in State-Led Mass Killing," http://www.earlywarningproject.com/risk_assessments. An increase in the number of atrocity crimes committed by nonstate armed groups has also accompanied the rise in state-led mass killing.

[3] United Nations General Assembly, 2005 *World Summit Outcome*, para. 138 and 139.

[4] See, for example, Aidan Hehir, *The Responsibility to Protect : Rhetoric, Reality and the Future of Humanitarian Intervention* (Houndsmills, United Kingdom : Palgrave Macmillan, 2012); Theresa Reinhold, "The Responsibility to Protect – Much Ado About Nothing?" *Review of International Studies* 36 (S1) (2010): 55 – 78 ; Alex J. Bellamy, "The Responsibility to Protect Turns Ten," *Ethics and International Affairs* 29 (2) (Summer 2012): 161 – 185 ; and Jennifer M. Welsh, "Norm Contestation and the Responsibility to Protect," *Global Responsibility to Protect* 5 (4) (2013): 365 – 396.

[5] United Nations General Assembly, Report of the Secretary-General, *Implementing the Responsibility to Protect* (A/63/677), January 12, 2009 ; United Nations General Assembly, Report of the Secretary-General, *Early Warning, Assessment, and the Responsibility to Protect* (A/64/864), July 14, 2010 ; United Nations General Assembly, Report of the Secretary-General, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect* (A/65/877), June 27, 2011 ; United Nations General Assembly, Report of the Secretary-General, *Responsibility to Protect : Timely and Decisive Response* (A/66/874), September 5, 2012 ; United Nations General Assembly, Report of the Secretary-General, *Responsibility to Protect : State Responsibility and Prevention* (A/67/929), July 9, 2013 ; United Nations General Assembly, Report of the Secretary-General, *Fulfilling Our Collective Responsibility : International Assistance and the Responsibility to Protect* (A/68/947), July 11, 2014 ; and United Nations General Assembly, Report of the Secretary-General, *A Vital and Enduring Commitment : Implementing the Responsibility to Protect* (A/69/981), July 13, 2015.

[6] Philipp Rotmann, Gerrit Kurtz, and Sarah Brockmeier, "Major Powers and the Contested Evolution of a Responsibility to Protect," *Conflict, Security & Development* 14 (4) (2014): 355 – 377. See also Bellamy, "The Responsibility to Protect Turns Ten."

[7] Global Public Policy Institute, *Effective and Responsible Protection from Atrocity Crimes : Toward Global Action* (Berlin : Global Public Policy Institute, April 2015), http://www.globalnorms.net/r2p.

8 For one example of the changing view on R2P within Asia, see High Level Advisory Panel on the Responsibility to Protect in Southeast Asia, *Mainstreaming the Responsibility to Protect in Southeast Asia : Pathway Towards a Caring ASEAN Community* (New York : United Nations, 2014).

9 See United Nations Security Council, *Resolution 2085 (2012)* (S/RES/2085), on the situation in Mali ; United Nations Security Council, *Resolution 1996 (2011)* (S/RES/1996), on the situation in South Sudan ; United Nations Security Council, *Resolution 1975 (2011)* (S/RES/1975), on the situation in Côte d'Ivoire ; and United Nations Security Council, *Resolution 2150 (2014)* (S/RES/2150) and *Resolution 2171 (2014)* (S/RES/2171), both thematic resolutions.

10 African Commission on Human and Peoples' Rights, *Res. 117 (XXXXII) 07 : Resolution on Strengthening the Responsibility to Protect in Africa*, 42nd Ordinary Session, November 28, 2007, http://www.achpr.org/sessions/42nd/resolutions/117/.

11 European Parliament, *Recommendation to the Council on the UN Principle of the "Responsibility to Protect"* (A7-0130/2013), http://www.europarl.europa.eu/sides/getDoc.do ?pubRef=-//EP//TEXT+TA+P7-TA-2013-0180+0+DOC+XML+V0//EN&language=EN.

12 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa : International Development Research Corporation, 2001). The move toward this reading of sovereignty had been developed almost a decade earlier in the work of Kofi Annan's former special representative on internally displaced persons, Francis M. Deng (who subsequently served as Ban Ki-moon's special representative on the prevention of genocide). See, for example, Roberta Cohen and Francis M. Deng, *Masses in Flight : The Global Crisis of Internal Displacement* (Washington, D.C. : The Brookings Institution, 1998).

13 I am not suggesting that R2P would not benefit from the further development of law. But the broader question of whether such legal advancement would be feasible in the current context is beyond the scope of this essay.

14 For an elaboration of this view, see Maria Banda and Jennifer M. Welsh, "International Law and the Responsibility to Protect : Clarifying or Expanding States' Responsibilities ?" *Global Responsibility to Protect* 2 (3) (2010) : 213 – 231.

15 For the original idea of the "floor," see R. J. Vincent, *Human Rights and International Relations* (Cambridge : Cambridge University Press for the Royal Institute of International Affairs, 1986), 152.

16 To date, over fifty states – one-quarter of the UN membership – have appointed national focal points. See the updated list at Global Centre for the Responsibility to Protect, http://www.globalr2p.org (accessed January 14, 2016).

17 The UN framework is available at the Office of the Special Adviser on the Prevention of Genocide, http://www.un.org/en/preventgenocide/adviser/.

18 For a summary of the initiative and action plan, see Ban Ki-moon, "'Human Rights Up Front' Initiative," http://www.un.org/sg/humanrightsupfront/.

19 For examples of recent scholarship, see Scott Straus, *Making and Unmaking Nations* (Ithaca, N.Y. : Cornell University Press, 2015) ; Sheri P. Rosenberg, Tibi Galis, and Alex Zucker, eds., *Reconstructing Atrocity Prevention* (Cambridge : Cambridge University Press, 2015) ; and Serena Sharma and Jennifer M. Welsh, *The Responsibility to Prevent : Overcoming the Challenges of Atrocity Prevention* (Oxford : Oxford University Press, 2015).

20 For the full list of these inhibitors, see United Nations General Assembly, Report of the Secretary-General, *Fulfilling Our Collective Responsibility : International Assistance and the Responsibility to Protect*, para. 43 – 58.

21 Two examples are the Global Centre for the Responsibility to Protect's Global Network of National R2P Focal Points and the Global Alliance Against Mass Atrocity Crimes.

22 Aidan Hehir, "The Permanence of Inconsistency : Libya, the Security Council, and the Responsibility to Protect," *International Security* 38 (1) (2013) : 137 – 159.

[23] Robert E. Goodin, "Responsibilities," *The Philosophical Quarterly* 36 (142) (1986): 50–56. Duties, by contrast, specify an action that ought to be undertaken by a duty-bearer, and success or failure is a binary judgment that depends on whether the action is carried out.

[24] Welsh, "Norm Contestation and the Responsibility to Protect."

[25] United Nations General Assembly, *The Situation in the Syrian Arab Republic* (A/66/L.57), July 31, 2012. During the General Assembly debate that preceded the passing of the resolution, Assembly President Nassir Abdulaziz Al-Nasser lamented that the deadlock in the Council "sends the wrong signals to all parties in the Syrian conflict."

[26] Laurent Fabius "A Call for Self-Restraint at the UN," *The New York Times,* October 4, 2013, http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html?_r=2&.

[27] See the United Nations General Assembly and Security Council, *Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General* (A/66/551 – S/2011/701), "Annex: Responsibility while Protecting: Elements for the Development and Promotion of a Concept," November 11, 2011.

[28] Alan Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," *International Security* 38 (1) (Summer 2013): 105–136.

[29] Ramesh Thakur, "West Shouldn't Fault Sir Lankan Government Tactics," *Daily Yomiuri,* June 12, 2009.

[30] Robert A. Pape, "When Duty Calls: A Pragmatic Standard of Humanitarian Intervention," *International Security* 37 (1) (2012): 41–80.

[31] "Syria Crisis: 'Torture' Photos Shown to the UN Security Council," BBC News, April 15, 2014, http://www.bbc.com/news/world-middle-east-27044203.

[32] United Nations Human Rights Council, *Oral Update of the Independent International Commission of Inquiry on the Syrian Arab Republic* (A/HRC/20/CRP.1), June 26, 2012.

[33] United Nations General Assembly, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* (A/HRC/21/50), August 15, 2012.

[34] Roland Paris, "The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention," *International Peacekeeping* 21 (5) (2014): 569–603.

[35] Ibid., 575.

[36] Pape, "When Duty Calls."

[37] Examples include Gary Bass, "Jus Post Bellum," *Philosophy and Public Affairs* 32 (4) (2004): 384–412; Alex J. Bellamy, "The Responsibilities of Victory," *The Review of International Studies* 34 (4) (2008): 601–625; Alexandra Gheciu and Jennifer Welsh, "The Imperative to Rebuild: Assessing the Normative Case for Postconflict Reconstruction," *Ethics and International Affairs* 23 (2) (2009): 121–146; and Brian Orend, "Jus Post Bellum: The Perspective of a Just War Theorist," *Leiden Journal of International Law* 20 (3) (2007): 571–591.

[38] John Chilcot, "9.8 Conclusions: Post-Conflict Period," *The Report of the Iraq Inquiry* (London: The Iraq Inquiry, July 2016), http://www.iraqinquiry.org.uk.

[39] Pape, "When Duty Calls"; and Paris, "The Structural Problems."

[40] See United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement in 2015* (Geneva: United Nations High Commissioner for Refugees, 2016), http://www.unhcr.org/en-us/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html.

[41] See, for example, Alexander Betts and Philip Orchard, eds., *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014).

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