

The Responsibility to Protect & Measures Not Involving the Use of Force

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At a time of tremendous upheaval and human suffering, with 59.5 million people displaced by war, persecution and conflict - the greatest number since the Second World War - we need norms like the Responsibility to Protect (R2P) more than ever.¹ This was acknowledged at the Opening of the Seventieth Session of the United Nations (UN) General Assembly in September 2015 by Archbishop Paul Richard Gallagher, Secretary for Relations With States for the Vatican, who appealed for a recommitment to the principles of the Responsibility to Protect. However, during his remarks the Archbishop also raised a concern with R2P regarding: “the suspicion, historically founded, that under the guise of humanitarian intervention, the principle of the sovereign equality of the members of the United Nations Organization, established in Paragraph 2 of the same Article of the Charter, is overridden.”²

Despite the fact that R2P and “humanitarian intervention” are distinct and separate concepts, Archbishop Gallagher’s legitimate concern is with regard to the violation of national borders and the abuse of international principles. In this context we should recall that the UN Charter also reaffirms “faith in fundamental human rights,” and that its opening words are not “we the sovereign states,” but “We the Peoples.”³ It was precisely when contemplating and confronting the dilemma of trying to balance between the Charter’s simultaneous promotion of sovereign equality and universal human rights that in 1999 the then UN Secretary-General, Kofi Annan, posed the matter very sharply: “When we read the [UN] Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse

¹This paper was written with the research assistance of E. Cinq-Mars and H. Murphy-Cruise. On numbers of displaced, see UNHCR Global Trends: Forced Displacement in 2014, <http://unhcr.org/556725e69.html>. The 59.5 million includes 19.5 million refugees, 38.2 million internally displaced persons and 1.8 million asylum seekers.

²P.R. GALLAGHER, *Intervention of H.E. Paul Richard Gallagher Secretary For Relations With States*, The United Nations at 70: The Road Ahead for Peace, Security and Human Rights. General Assembly, New York. Speech.

³United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI

them.” Or in the slightly less diplomatic version: “State frontiers should no longer be seen as watertight protection for war criminals or mass murderers.”⁴

In these phrases one finds the political genesis of the Responsibility to Protect. Building on existing international law, R2P was grounded on the principle that sovereignty entails responsibility.⁵ The decade since the 2005 UN World Summit, where R2P was endorsed at the largest ever meeting of heads of state and government, has seen a gradual but significant redefinition of the rights of civilians and the responsibilities of sovereigns. Since 2005 the UN Security Council has referenced R2P in more than forty of its resolutions.⁶ The overwhelming majority relate to the primary role of the state in preventing genocide, war crimes, ethnic cleansing and crimes against humanity, rather than committing the international community to coercive military force. Together these resolutions advanced R2P normatively and had practical outcomes in many cases – the Security Council imposed sanctions, mandated peacekeepers to protect civilians and so on.

However, since 2011 much bitter ink has also been spilled over the UN Security Council-mandated and NATO-led intervention in Libya, as well as the bloody conflagration in Syria. Regarding Libya, the crux of the division was the alleged misuse of military force by the interveners to affect “regime change” rather than simply to protect civilians under attack in Benghazi, Misrata and elsewhere. Also, for a range of reasons (some exogenous, some endogenous) there was a lack of meaningful commitment to long-term post-conflict peacebuilding after the intervention ended in late 2011.⁷

⁴See, K. ANNAN, *Thirty-fifth Annual Ditchley Foundation Lecture*. UN Doc. SG/SM/6613. New York: United Nations 1998; K. Annan, *Two Concepts of Sovereignty*, Address to the 54th Session of the General Assembly (20 September 1999) in K. Annan, *The Question of Intervention: Statements by the Secretary General 44*, UN Publications, New York, 1999.

⁵ G. EVANS, *The Responsibility to Protect : Ending Mass Atrocity Crimes Once and For All*, Brookings Institution Press, Washington, D.C. 2015

⁶ Global Centre for the Responsibility to Protect, *UN Security Council Resolutions Referencing R2P*, 2015

⁷ S. ADAMS, *Libya and the Responsibility to Protect*, Global Centre for the Responsibility to Protect Occasional Paper Series 3 (2012).

In Syria, almost five years of civil war has killed over a quarter of a million people and those who remain in the country face almost unimaginable suffering at the hands of the government and its proxies, or the vast array of non-state armed groups fighting against them. Many of these groups have committed atrocities and violated international humanitarian and human rights law. Nevertheless, the Assad government still bears the greatest responsibility for mass atrocity crimes committed in Syria because it has superior military assets at its disposal and has inflicted by far the greatest amount of unlawful death and indiscriminate destruction against civilians it is supposed to protect. The emergence of the so-called Islamic State (variously abbreviated as IS, ISIL, ISIS or Daesh), with its genocidal determination to wipe out ethnic and religious minorities in both Syria and Iraq, poses an additional and terrifying threat to vulnerable civilians.⁸

The Responsibility to Protect is an international norm and as such, it does not possess independent agency. The failure to end mass atrocities and protect civilians in Syria is therefore not a failure of R2P, but of the actors and institutions charged with its implementation. Beyond the primary responsibility of the Syrian government to stop killing its own people, and the need to hold accountable the various armed groups perpetrating atrocities in areas under their command and control, a special responsibility rests with the UN Security Council. It is the only legitimate body entrusted and mandated by all 193 members of the United Nations with the maintenance of international peace and security. The inability to forge consensus, protect the vulnerable and help end the civil war in Syria is a historic and catastrophic failure on behalf of the Security Council.

However, since 2011 there has been a tendency to overstate the controversy surrounding R2P and reduce the norm solely to a debate about whether or not it was right to intervene in Libya and whether or not Western powers should bomb the Syrian military and topple the Assad government. This reinforces one of the most corrosive and dangerous misconceptions about R2P— namely that it is fundamentally about exerting military power.

There is no right to militarily intervene. On the contrary, R2P focuses on the right of vulnerable people to protection. The underlying premise of the Responsibility to Protect is, therefore, a

⁸ S. ADAMS, *Failure to Protect: Syria and the UN Security Council*, Global Centre for the Responsibility to Protect Occasional Paper Series 5 (2015); Idem, *Libya and the Responsibility to Protect*, Global Centre for the Responsibility to Protect Occasional Paper Series 3 (2012).

fundamental rejection of “unilateral interference and institutionalized indifference.”⁹ Moreover, central to R2P is an absolute commitment to prevention, including preventing an initial outbreak of a crisis, preventing its escalation, and preventing recurrence. Even R2P’s third pillar, often conflated with the use of force, privileges peaceful measures under Chapters VI and VIII of the UN Charter, before the use of coercive military action under Chapter VII.

Many of these peaceful measures and preventive tools can be implemented independently and expeditiously by the UN Secretariat or various regional or sub-regional organizations. Such measures might include human rights monitoring and the gathering of evidence with regard to gross human rights violations. The deployment of special political missions and international support for conflict resolution or capacity-building efforts can also have a palliative impact in divided societies that are approaching a crisis point. Humanitarian assistance can enhance protection for the vulnerable and discourage potential perpetrators from committing crimes. Finally, diplomacy and mediation can bring international expertise and political attention to a situation and facilitate its potential resolution. Indeed, the importance of the diplomatic track was especially evident in the way the international community responded to mass atrocities in Kenya in late 2007 and early 2008.

Kenya and “R2P in Practice”

After Kenya went to the polls in December 2007, a contested election outcome led to horrifying ethnic violence. The burning of a church near Eldoret, in which several hundred ethnic Kikuyus were sheltering, killed dozens of people and gained international media attention during the first week of January 2008. It did not, however, stop the internecine violence which eventually killed 1,133 Kenyans and left an additional 663,000 displaced. As the situation spiraled out of control, the need for an international response became imperative. Former UN Secretary-General Kofi Annan and a team of “Eminent African Personalities” were deployed to interpose themselves between the main political rivals and were eventually able to mediate an end to the crisis. Violence ebbed as a result of the new power-sharing arrangement between the government and

⁹ R. THAKUR, *Humanitarian, Democracy and Intervention: Libya and the Responsibility to Protect*, in A. SAIKAL & A. ACHARYA, *Democracy and Reform in the Middle East and Asia: Social Protest and Authoritarian Rule After the Arab Spring*, I.B. Tauris, London 2013, P. 73.

opposition. The efforts of Annan and his team were subsequently hailed as the first example of “R2P in practice” since its adoption at the 2005 UN World Summit.¹⁰

While it is true that R2P operated mainly as “background music” to the international political response to Kenya, Annan himself has argued that, “I saw the crisis in the R2P prism with a Kenyan government unable to contain the situation or protect its people... I knew that if the international community did not intervene, things would go hopelessly wrong.”¹¹ The intervention took the form of high-level negotiations mixed with international diplomatic pressure and the implicit threat of devastating sanctions and political isolation if the crisis was not resolved.

Significant structural reforms were then undertaken – including investing in local peacebuilding and strengthening national institutions (often with international support) to avoid a recurrence of atrocities in Kenya. These involved long overdue reforms to the security sector, rewriting the constitution, as well as other measures designed to outlaw hate speech and incitement to ethnic violence (the use of local radio and text messaging for fomenting violence was particularly prominent in 2007/8). The dividends for this investment in prevention were enormous: the 2013 Kenyan election was largely free, fair and transparent. Devastating ethnic violence was almost completely avoided.¹²

Kenya demonstrated that it is possible to have a successful non-military response to an international crisis where mass atrocities are occurring. Coming just two years after the UN World Summit, Kenya provided a positive example of how to operationalize R2P. On the downside, those suspected of being most responsible for orchestrating mass atrocity crimes in 2007-2008 were not held accountable for their actions. This reality, when combined with the

¹⁰A. BORU HALAKHE, “R2P in Practice”: *Ethnic Violence, Elections and Atrocity Prevention in Kenya*, Global Centre for the Responsibility to Protect Occasional Paper Series 4 (2013) p.3; J. JUNK, *Bringing the Non-Coercive Dimension of R2P to the Fore: The Case of Kenya*, Global Society, November 2015, pp.4-5.

¹¹J. JUNK, *Bringing the Non-Coercive Dimensions of R2P to the Fore: The Case of Kenya*, Global Society, Vol. 30, No. 1, January 2016, p.58.

¹²A. BORU HALAKHE, “R2P in Practice”: *Ethnic Violence, Elections and Atrocity Prevention in Kenya*, Global Centre for the Responsibility to Protect Occasional Paper Series 4 (2013).

current Kenyan government's attempt to subvert the International Criminal Court's investigations, means that a culture of impunity is still largely intact. This is problematic for a range of reasons, not least of which is that accountability for past atrocities is amongst the most effective ways to prevent their recurrence.

Unlike Kenya, in the Central African Republic today efforts are underway to establish a hybrid Special Criminal Court to prosecute those responsible for grave human rights abuses committed since December 2003. The International Criminal Court at The Hague has also opened a complementary investigation. While the Special Criminal Court cannot solve all of Central African Republic's current problems, it is clear that the lack of accountability for past human rights abuses created a situation where various armed protagonists (both government and rebels) would periodically resort to predatory armed violence without fear of legal sanction.¹³ When combined with the endemic fragility of the Central African state, this fostered a permissive environment for the perpetration of atrocities. Breaking the culture of impunity in Central African Republic today has an obvious punitive element, but confronting the past may also assist in strengthening the rule of law and respect for human dignity. In Central African Republic, Kenya and elsewhere, national courts, hybrid tribunals, regional courts and other international mechanisms remain crucial tools in the atrocity prevention toolkit.

Smart Sanctions

Beyond institutions of international justice, other existing multilateral infrastructure can be utilized in imaginative ways to prevent atrocities. For example, in Guinea international actors provided extensive support for the implementation of much-needed reforms following a notorious September 2009 stadium massacre in the capital, Conakry, during which security forces killed more than 150 people attending a political rally and also perpetrated mass rape. In November 2010 Guinea transitioned to its first civilian government in fifty years. Shortly thereafter Guinea became the first state on the agenda of the UN Peacebuilding Commission (PBC) to voluntarily request assistance prior to a UN Security Council referral. The PBC has systematically assisted Guinea since then, including through the preventive deployment of

¹³E. CINQ-MARS, *Too little, too late: Failing to prevent mass atrocities in the Central African Republic*, Global Centre for the Responsibility to Protect Occasional Paper Series 7 (2015).

monitors and mediators.¹⁴ However, not so well known is the way that the PBC also mobilized international funds to help pay for the retirement of almost 3,000 officers from the Guinean military as the country underwent serious security sector reform. This was a form of insurance against the possibility of a coup, a way of weeding out officers accused of human rights abuses, and gave the military a vested interest in the transition to democracy.¹⁵

Targeted sanctions and diplomatic pressure are other existing tools that if strategically deployed and carefully monitored, can also play an important role. For example, UN Security Council sanctions imposed at the start of the conflict in Libya (ie: before the military intervention) cut off nearly \$36 billion in funds that Libya's aging dictator, Muammar Qaddafi, could not access to import more weaponry, or hire more mercenaries.¹⁶ Despite legitimate criticisms of aspects of the Libyan intervention, there is little doubt that the civil war would have been bloodier and longer if Qaddafi had access to these funds.¹⁷

As international expert George Lopez has argued, sanctions work best when they are one of a number of tools – including multilateral diplomatic pressure and sustained political engagement – used to achieve a larger set of strategic policy goals.¹⁸ Since the late 1990s the international community has become more adept at focusing sanctions on atrocity enablers, or as Lopez explains: “Rather than punishing the society generally through trade sanctions, smart sanctions aim to constrain identifiable, culpable perpetrators.”¹⁹ While much of this effort has been focused on arms embargos, “smart sanctions” have also frozen overseas financial assets held by senior members of a government or armed group complicit in atrocities; suspended international aid or loans available to a government; banned technologies that can be used in human rights violations; imposed international travel bans; and so on. Lopez argues that:

¹⁴J. D. STREITFELD-HALL, *Preventing Mass Atrocities in West Africa*, Global Centre for the Responsibility to Protect Occasional Paper Series 6 (2015).

¹⁵*Ibid.*

¹⁶G. A. LOPEZ, *Tools, tasks and tough thinking: Sanctions and R2P* (2013).

¹⁷ADAMS, *Libya and the Responsibility to Protect*, (2012).

¹⁸*Ibid.* See also, G. A. LOPEZ, *Mobilizing Economic Sanctions for Preventing Mass Atrocities: From Targeting Dictators to Enablers*, in S. ROSENBERG, T. GALIS, A. ZUCKER, op. cit, pp.379-392.

¹⁹G. A. LOPEZ, *Mobilizing Economic Sanctions for Preventing Mass Atrocities: From Targeting Dictators to Enablers*, in S. ROSENBERG, T. GALIS, A. ZUCKER, op. cit, p.381.

Because mass atrocities are organized crimes, crippling the means to organize and sustain them – money, communications networks, and other resources – can disrupt their execution... The cases of recent history have taught that perpetrators are seldom able to carry out these crimes on their own. Rather, they are dependent on direct or indirect support from external actors – governments, commercial entities, and individuals – whose goods and services enable them to wage attacks against civilians.²⁰

In Darfur, Sudan, for example, rebel groups used Toyota pick-up trucks to transport forces that were carrying out devastating attacks on civilians. A 2005 UN report found that the majority of those vehicles were purchased and shipped from identifiable car dealerships in the United Arab Emirates. Cutting off the supply of vehicles could have easily undermined the deadly mobility of the Darfuri armed groups.²¹

While scholars like Lopez have shown that targeted sanctions work in about one third of cases, the above example shows that they are not a panacea and can be problematic if not consistently enforced. Moreover, Syria is an obvious case where bilateral and regional sanctions have not been enough. Not least of all because the vetoes of Russia and China on the UN Security Council stopped these sanctions from becoming truly global in scope, and because key allies, especially Russia and Iran, have continued to financially and militarily enable the Assad government's crimes. Furthermore, IS and other non-state armed groups are considerably less susceptible to sanctions as a coercive tool.

Sanctions are an example of international action to confront atrocities in Syria that does not involve the use of force. So too are ongoing UN Security Council efforts to secure increased humanitarian access to displaced and besieged Syrian civilians, initiatives to foster political dialogue between the government and opposition, and efforts to collect evidence and expose mass atrocity crimes perpetrated by various parties to the conflict. The work of the Human Rights Council-mandated Commission of Inquiry and the fact-finding missions of the Organisation for the Prohibition of Chemical Weapons are particularly notable in this regard.

²⁰G. A. LOPEZ, *Mobilizing Economic Sanctions for Preventing Mass Atrocities: From Targeting Dictators to Enablers*, in S. ROSENBERG, T. GALIS, A. ZUCKER, op. cit, p.385.

²¹G. A. LOPEZ, *Mobilizing Economic Sanctions for Preventing Mass Atrocities: From Targeting Dictators to Enablers*, in S. ROSENBERG, T. GALIS, A. ZUCKER, op. cit, p.387.

Another measure that has definitely not been tested in the Syrian case, because vested interest has prohibited it, is an arms embargo.

Arms Embargos

In 2013 the annual global trade in small arms was worth approximately \$4 billion.²² Small arms and light weapons are “weapons of mass destruction” in many conflicts where mass atrocities are committed in the developing world. This is especially true of the AK47, which can be easily used by a child soldier. For example, in 2010 the panel of experts monitoring the UN Security Council arms embargo in Somalia reported that “the AK-type assault rifle is the primary weapon used by armed forces and groups” in the ongoing multi-sided armed conflict in that country.²³ Numerous countries manufacture local variants of the ubiquitous assault rifle and it is estimated that there are approximately 100 million AK47s in the world today.

The proliferation of small arms and/or an arms “build up” in a country is also a recognized risk factor with regard to the potential commission of mass atrocities. In Rwanda the 1994 genocide was preceded by a two-year “buying spree” during which the government spent more \$100 million on weapons, or “twenty times what it spent in the entire decade of the ‘80s.”²⁴ When the genocide began in April 1994, the armed forces, police and *interahamwe* militias were well equipped with grenades, rifles and other small arms, as well as the machetes and improvised clubs utilized by some *genocidaire*. The UN only imposed an arms embargo in May, one month after the genocide had already begun, and illicit arms trading continued throughout the three months of mass killing. That Rwanda was one of the most deadly and efficient genocides in history was therefore due in part to pre-planning, not just in terms of the systematic persecution

²²A. FEINSTEIN, *Through the Barrel of a Gun: Can Information from the Global Arms Trade Contribute to Genocide Prevention?*, in S. ROSENBERG, T. GALIS, A. ZUCKER, *Reconstructing Atrocity Prevention*, Cambridge University Press, New York, 2015, p.196

²³UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1853* (2008), Document S/2010/91, p.74.
http://somalitalkradio.com/2010/mar/un_report_somalia.pdf

²⁴A. FEINSTEIN, *Through the Barrel of a Gun: Can Information from the Global Arms Trade Contribute to Genocide Prevention?*, in S. ROSENBERG, T. GALIS, A. ZUCKER, *Reconstructing Atrocity Prevention*, Cambridge University Press, New York, 2015, pp.200-205.

of the Tutsi, but also with regard to the mass importation of weapons that were later used to kill one million people in just 100 days.²⁵

Other conflicts involving mass atrocities have also demonstrated the devastating consequences of the proliferation of small arms and ammunition. In June 2003 during Liberia's devastating civil war, anti-government armed groups attacking Monrovia, the capital, were forced to end military operations and then temporarily retreat after they ran out of ammunition. Both sides of the conflict then used a pause in major hostilities to try to illegally import additional weaponry. It was only when the rebels received new supplies of munitions from Guinea during July that they were able to launch another major offensive, including indiscriminately shelling the capital. Mass atrocities were committed and the destruction of Monrovia was intense and sustained during this final phase of Liberia's bitter second civil war.²⁶

In this context it is also worth noting that as the international community mobilizes to militarily confront the threat posed by armed extremists from the so-called Islamic State, the faux caliphate is well-armed, in part, because of decades of corruption and conflict that has led to arms proliferation across the Levant. For example, a recent report by Amnesty International detailed how IS's impressive arsenal includes "more than 100 different types of arms and ammunition originally sourced from at least 25 countries," including weaponry stolen, traded or stockpiled from the Iran-Iraq war, the 2003 United States-led invasion and various regional conflicts. In the words of one of the report's authors, this "vast and varied" inventory is "a textbook case of how reckless arms trading fuels atrocities on a massive scale."²⁷

²⁵A. FEINSTEIN, *Through the Barrel of a Gun: Can Information from the Global Arms Trade Contribute to Genocide Prevention?*, in S. ROSENBERG, T. GALIS, A. ZUCKER, *Reconstructing Atrocity Prevention*, Cambridge University Press, New York, 2015, pp.200-205.

²⁶Human Rights Watch, *Weapons Sanctions, Military Supplies, and Human Suffering: Illegal Arms Flows to Liberia and the June–July 2003 Shelling of Monrovia*, Human Rights Watch Briefing Paper, 2003, p.2.

http://www.hrw.org/sites/default/files/related_material/liberia_arms.pdf

²⁷Amnesty International, *Iraq: 'Islamic State' atrocities fueled by decades of reckless arms trading*, Amnesty International, 8 December 2015.

<https://www.amnesty.org/en/latest/news/2015/12/islamic-state-atrocities-fuelled-by-decades-of-reckless-arms-trading/>

Amnesty International, Human Rights Watch, Oxfam International and other organizations, including the Global Centre for the Responsibility to Protect, have used these examples to call for ratification of the Arms Trade Treaty (ATT). If rigorously implemented, the ATT and targeted arms embargoes can effectively undermine a state's capacity, or that of non-state armed groups, to commit mass atrocities.

Conclusion

Most international responses to mass atrocity situations require sustained diplomatic dialogue about how a state can uphold its responsibility to protect and how the international community can both assist and compel them to do so.²⁸ Very few situations require coercive military measures, although it is worth noting that ten out of sixteen current UN peacekeeping operations (involving 95% of the more than 124,000 peacekeepers on active duty) have explicit protection of civilians mandates.²⁹ These peacekeepers, operating with the consent of the host state, are upholding our international responsibility to protect every day, including by sometimes using force to provide sanctuary for the world's most vulnerable people.

There is no magic formula to prevent or halt mass atrocities. Each country and every conflict is different. Measures that work in one context, may be counter-productive in another. Avoidance of the use of force does not necessarily guarantee a greater level of success or support for efforts to prevent or halt mass atrocities. Even the most pacific of measures may face criticism from a dwindling minority who still believe that any action constitutes an unjustified intervention in the domestic affairs of a sovereign state.

Nevertheless, we should remember that R2P remains – at its heart – an essentially preventive doctrine. R2P is about overcoming the threat of mass atrocities in a way that honors our humanitarian principles, upholds international law and respects both national sovereignty and the universal right of all human beings to be protected from these unconscionable crimes. Above all else, this means that R2P's proponents and practitioners should learn from the past and continue to refine effective measures that do not involve the use of force.

²⁸ I elaborate on this point further in S. ADAMS, *The 'Responsibility to Protect' at 10*, E-International Relations (2015).

²⁹ "United Nations Peacekeeping." *UN News Center*. UN. Web.