

Norm Robustness and the Responsibility to Protect

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Abstract

This article begins by critically assessing some of the current measures used to evaluate the status and impact of the Responsibility to Protect (RtoP). It then lays the groundwork for a deeper examination of RtoP's strength by specifying what kind of norm it is, and what it can reasonably be expected to do. The third section engages Zimmerman and Deitelhoff's framework on norm robustness and contestation by positing two arguments. First, the past decade of diplomatic engagement and policy development has brought about greater consensus on RtoP's core elements, and thus enhanced its validity; however, this process has also dampened many of RtoP's original cosmopolitan aspirations. Second, persistent applicatory contestation about RtoP's so-called third pillar is revealing deeper concerns about the norm's justification – thereby leading some actors to avoid framing situations with RtoP terminology. I use two cases to address the broader theoretical questions raised about whether and how language matters in assessing norm robustness: the international community's response to the deepening political violence in Burundi in 2015, and the evolution of the international community's response to the war in Syria (2011–17). While these cases illustrate changing perceptions of the political utility of RtoP language, concrete engagement by the international community, particularly in the Burundi case, indicates that RtoP's validity remains intact. The article concludes that norm decay is not equivalent to norm death, and that RtoP's prescriptions will survive given that they are embedded in a broader normative structure of human rights, humanitarian law, and civilian protection.

Keywords: responsibility to protect, genocide, crimes against humanity and war crimes, Syria, norm contestation

Introduction

At the 2005 World Summit that marked the 60th anniversary of the United Nations, more than 170 heads of state and government unanimously accepted three interlinked responsibilities, which together constitute the principle of the responsibility to protect (RtoP). The first, set out in paragraph 138 of the Summit Outcome Document ([United Nations General Assembly 2005](#)), is the primary responsibility of states to protect their own populations from genocide, war crimes, crimes against humanity, and ethnic cleansing, and the responsibility to prevent the occurrence of these acts. The second, in paragraph 139, is the pledge by states to assist each other in fulfilling their

protection responsibilities. And finally, as members of a broader international community, states declared their readiness to take collective action, in a timely and decisive manner, if any state were “manifestly failing” to protect its population from atrocity crimes.¹ These three provisions are now commonly summarized in academic

- 1 In this article I use the term “atrocity crimes” exclusively to refer to the four acts specified in paragraph 138. Genocide, war crimes and crimes against humanity are defined in international criminal law; ethnic cleansing, while not established as a distinct crime, includes acts that will regularly amount to one of the

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and diplomatic discourse as the “three pillars” of RtoP (Ban Ki-Moon 2009).

The responsibilities articulated in the Summit Outcome Document were designed by their proponents to push states beyond a restatement of the status quo and above the lowest common denominator of state preferences. With concrete failures of collective action in the backdrop (such as the genocides in Rwanda and Srebrenica), diplomats sought to close the gap between the existing legal responsibilities of states, already articulated in international humanitarian and human rights law, and the reality of populations threatened with large scale and systematic violence. The particular frame of the “responsibility to protect” was explicitly crafted by a set of norm entrepreneurs as an alternative to the older concept and practice of humanitarian intervention, as it was believed it would more effectively address the problem of inaction (or selective action) in the face of mass killing (Evans 2008; Bellamy 2011; Thakur 2016a). The notion of *protection* shifted the focus from the claims or rights of intervening states, to the victims of suffering in need of assistance (ICISS 2001: 15). Moreover, the moral idea of *responsibility* enlarged the circle of protective actors available to prevent or respond to atrocity crimes. In the context of RtoP, responsibility was to be understood as arising not from a particular agent’s voluntary action – in other words, causal responsibility – but rather from the very fact of vulnerability. Responsibility in the context of RtoP is thus “about exposure to an event that does not come from us and yet calls to us” (Raffoul 2010: 23).

This context reveals three important features of what I will refer to as the ‘complex norm’ of the responsibility to protect. The first is that RtoP was deliberately institutionalized at the 2005 World Summit as a *political*, rather than legal principle. General Assembly resolutions (like the one which affirmed the content of the Summit Outcome Document) do not themselves constitute sources of international law, though they can be taken as authoritative interpretations of existing legal regimes (Strauss 2009; Welsh and Banda 2010). But more importantly, the preparatory diplomacy surrounding the World Summit clearly shows that it was not the intention of states to create additional legal obligations. Former United Nations Secretary General Kofi Annan, one of the key promoters of RtoP, insisted that his goal was not to develop new law, but rather to both strengthen states’ existing legal commitments to protect their populations and improve implementation of key aspects of international human rights and humanitarian law, including the extraterritorial

aforementioned crimes, in particular genocide and crimes against humanity.

responsibilities set out in the Genocide Convention (Jones 2005). His understanding of RtoP as a political commitment resonated with a variety of states, which, for very different reasons, opposed the crystallization of the principle into a new legal responsibility to prevent and respond to atrocity crimes (Welsh 2013).

The second key feature to underscore is the *directive*, as opposed to prohibitive or permissive, nature of this norm (Sandholtz 2016). While RtoP was conceived partly to bolster prohibitive provisions in international law (for example, the law prohibiting genocide), it is framed *directively*, as at-risk populations *requiring* protection. Nonetheless, as I will argue later, RtoP is unlike many other directive norms in that it does not specify a single or particular behavior from states or other international actors. Instead, as an articulation of a prospective responsibility, RtoP ‘directs’ these actors to bring about a certain state of affairs: protection for vulnerable populations.

The third notable feature of RtoP is its aspirational character. Research on norm life cycles has previously noted that pivotal events or so-called critical junctures constitute one common source of new norms (Florini 1996; Finnemore and Sikkink 1998; Flockhart 2005). As suggested above, the catalytic events that sparked the activity of RtoP’s norm entrepreneurs produced a broad call for change. Yet, the advocates of RtoP also acknowledged that the aspirational principles that have the greatest impact in international society are those that do not stray too far from what members of international society already believe is legitimate. Thus, with another pivotal event in their minds – the contested case of the 1999 Kosovo War, which did not have the express authorization of the United Nations Security Council – the diplomats and political leaders present at the 2005 World Summit negotiated a version of the responsibility to protect that they believed would honor the letter and spirit of the UN Charter and serve as an ally, rather than adversary, of sovereignty (Luck 2010; Bellamy 2011; Thakur 2016a).

This article begins by critically analyzing some of the current measures used to assess RtoP’s status and impact, and showing how they fall short in helping us to understand its robustness as a norm. The second section lays the groundwork for a deeper examination of RtoP’s strength by specifying more clearly what kind of norm it is, and what it can reasonably be expected to do. The third section then engages directly with Zimmerman and Deitelhoff’s framework on robustness and contestation by positing two overall arguments. First, the past decade and a half of diplomatic engagement and policy development has brought about greater consensus on RtoP’s

core elements, and thus enhanced its validity. However, this process has also dampened many of RtoP's original cosmopolitan aspirations. Second, persistent applicatory contestation about RtoP's so-called third pillar is revealing deeper concerns about the norm's justification – thereby leading some actors to seek to avoid framing situations in RtoP terminology. Two cases in particular suggest that actors' perceptions of the utility of RtoP language may be waning, thereby raising broader theoretical questions about whether and how language matters in assessing norm robustness: the international community's response to the deepening political violence in Burundi in 2015, and the evolution of the international community's response to the war in Syria (2011–17). While some advocates of RtoP suggest that language is less significant than what states and other actors actually do in practice, the norm's status as a political principle make the decreasing use of its specific language in particular situations a sign of potential decay. Nonetheless, the concrete engagement and action taken by the international community, particularly in the case of Burundi, indicate that RtoP's validity remains intact: there is still a strong normative belief that the risk or commission of atrocity crimes activates an international responsibility to respond. I also conclude that norm decay is not equivalent to norm death, and that RtoP's prescriptions will survive given that they are embedded in a broader normative structure of human rights, humanitarian law, and civilian protection.

Debating RtoP's Strength

On one side of the ledger, it is patently clear that, despite repeated calls to 'never again' allow the most terrible forms of persecution and violence to occur, atrocity crimes remain a feature of the 21st century landscape. From Iraq, Syria and Yemen, to North Korea and Myanmar, to South Sudan and the Central African Republic, acts that may constitute genocide, war crimes, ethnic cleansing and crimes against humanity have occurred in many contexts of conflict, government repression or state breakdown during the period since the 2005 World Summit. While the majority of these acts have been perpetrated by governments or by factions supported by governments, the threats to populations have been heightened by the emergence of violent extremists – such as the Islamic State (ISIL), Boko Haram, and Al-Shabaab - who brazenly flout international humanitarian law and showcase their crimes. Taken together, these situations have created protection challenges of a monumental scale, including the

highest number of displaced persons since the end of the Second World War.

In more general terms, many Member States of the United Nations have yet to become parties to the international conventions that set out the legal framework for the prevention and punishment of atrocity crimes, including the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions and the Rome Statute of the International Criminal Court.² And even among those who have ratified these relevant legal instruments, there is an alarming decline in respect for international humanitarian and human rights law, particularly in situations where national authorities argue that exceptional security threats or political crises justify abrogation from their legal obligations (Ban Ki-moon 2016a). The Syrian conflict, which at the time of writing has claimed the lives of more than 400,000 people and displaced over half of the country's pre-war population, is the most glaring example. The scale of the civilian harm perpetrated in Syria cannot be explained solely as an unintended consequence of the fighting, but rather as the result of both strategic and tactical choices made by warring sides.

In contrast to this seemingly bleak picture, advocates of the norm of RtoP stress its extraordinary progress at a declarative level in a relatively short period of time (Bellamy 2016; Thakur 2016b; Evans 2017). The commitment to protection made by heads of state and government has been publicly reaffirmed many times since 2005. All of the key intergovernmental bodies of the United Nations have discussed and affirmed RtoP in several instances – both in principle and in relation to specific country situations. As of June 2018, the Security Council had adopted more than 50 resolutions that refer to the responsibility to protect, several of which have reminded national authorities of their responsibility to protect their populations³ and at least two of which have authorized peacekeeping missions that have explicitly called for support to national authorities in upholding their

- 2 As of January 2018, 47 UN Member States have yet to become party to the Convention on the Prevention and Punishment of Genocide, 28 have yet to become party to the two Additional Protocols to the 1949 Geneva Conventions, and 71 have yet to become party to the Rome Statute establishing the International Criminal Court.
- 3 See, for example, Security Council resolutions 2014 (2011), 2095 (2013), 2277 (2016), 2288 (2016), 2295 (2016), 2332 (2016), 2317 (2016), 2327 (2016), 2339 (2017), and 2348 (2017).

responsibility to protect.⁴ The General Assembly has continued its consideration of the principle by convening eight annual Informal Interactive Dialogues, referring to the responsibility to protect in two Third Committee resolutions, and agreeing to put RtoP on the formal agenda of both its 72nd and 73rd sessions (in 2017 and 2018). For its part, the Human Rights Council has adopted more than 25 resolutions that feature the responsibility to protect, including three on the prevention of genocide and the majority relating to country-specific situations. In its thematic resolution of 2016, it called upon all UN members to work to prevent potential situations from resulting in atrocity crimes and, where relevant, to address past instances of such crimes in order to avoid recurrence (United Nations Human Rights Council 2016b).

The reply from more skeptical analysts of RtoP is that discussions and resolutions mean very little, when set against a pattern whereby warning signs or clear evidence of atrocity crimes have been present, but where strategic or other considerations have stood in the way of collective action to protect (Reinold 2010). For them, the fact that military intervention occurs in one situation of humanitarian crisis, but not in another, is evidence of the norm's inherent weakness (Hehir 2013). More broadly, the critical scholarly literature is split between those who view the Summit Outcome Document's provisions on RtoP as too assertive - constituting a dangerous challenge to state authority and to norms restricting the use of force (Cunliffe 2010; O'Connell 2010) - and those who see them as lacking ambition and falling short of the structural and legal reforms required to prevent and respond to atrocity crimes (Hehir 2012). Others claim that the norm's coercive dimension makes it highly susceptible to delegitimization, given the "structural problems" that lie at the heart of any attempt to use military means for humanitarian objectives (Paris 2014).⁵

The dichotomous nature of this debate is driven by a lack of common ground both on methodology - i.e., whether language or practice is more significant to norm robustness - and on how we should judge what Zimmermann and Deitelhoff refer to elsewhere in this Special Issue as "facticity" - i.e., the extent to which the content of RtoP serves as guide for action. In order to build up a common framework for assessing RtoP's trajectory and robustness, it is therefore critical to establish what kind

of norm it is, and what behavior we might reasonably expect to follow from its prescriptions.

Unpacking RtoP as a Norm

It is useful to begin by re-emphasizing that RtoP arose out of *political* considerations, rather than legal ones. The text agreed to in 2005 does not, in itself, establish any new legal obligations, but rather authoritatively interprets states' existing obligations to prevent and respond to atrocity crimes and adds a political injunction for them to implement what they have already agreed to. As a political principle, RtoP was designed to serve three functions: to legitimize a shift in expectations about how the international community should view situations involving atrocity crimes; to mobilize greater will to act and raise the political costs of inaction; and to catalyze the development of and investment in tools for prevention and response (Welsh 2016a). I will return to assess progress against these objectives in the next section.

Next, RtoP in its three-pillar form is a 'complex norm', containing more than one prescription. States have a responsibility to protect their own populations from atrocity crimes, to assist others in upholding their responsibilities, and to come together collectively to respond when there are massive protection failures. This complex structure suggests that the degree of RtoP's facticity has to be judged at a variety of levels and in terms of different kinds of conduct. It also creates a situation in which the *breach* of one of the components of RtoP (failure on the part of a national government to protect its population) is meant to act as a trigger for *fulfillment* of another component (the international community's remedial role in protecting). This formulation makes the norm particularly vulnerable to applicatory contestation, given that states can debate whether certain pillars should have greater emphasis - despite the Secretary-General's claim about the equal standing of all three pillars - and when the international community's remedial role has been activated (i.e., when a national government can be said to have "manifestly failed" to fulfill its protection responsibilities). Seen from another perspective, however, the complexity of RtoP has the potential to safeguard its robustness, given that contestation is rarely directed at all three dimensions and frequently seeks to strengthen one aspect even while raising questions about another. Hence, as I will demonstrate further below, even if states raise concerns about the military dimension of RtoP, as some have done in the context of the Informal Interactive Dialogues of the General Assembly, they usually temper their skepticism by emphasizing their support for the first and second pillars of the norm.

4 See Security Council resolution 1996 on South Sudan (2011) and resolution 2085 on Mali (2012).

5 But see Thakur's reply to Paris that these structural problems apply to any international use of force in contemporary world affairs, and are not specific to RtoP (Thakur 2015).

Finally, and perhaps most importantly, the injunction for *collective* action that is part of RtoP's third pillar makes this norm distinct from many of those that are the focus of this Special Issue, or that have been analyzed within the broader International Relations literature. While norms such as the torture ban or the pursuit of criminal accountability are assessed mainly by the degree to which individual states internalize and implement the norm's injunctions, RtoP requires – for fulfillment of its third pillar – the achievement of collective agreement and collective response. Given that this is notoriously difficult to achieve in most aspects of international relations, let alone in the context of responses to atrocity crimes, how are we to judge levels of robustness? Collective action norms of this kind call for a different form of assessment, which focuses on the way in which actors portray situations and deliberate on forms of response.

As a directive norm that calls for collective action, what RtoP's third pillar requires, at a minimum, is what I have previously called 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, through applicatory discourses, on how different actors (national, regional and international) can and should respond (Welsh 2013). But this duty does not define, a priori, what specific response should follow in every case of protection failure, particularly when it comes to the option of military intervention. The appropriateness of different forms of action, as specified in paragraph 139 of the Summit Outcome Document, are deliberated on “a case by case basis”. Thus, while RtoP directs (as described by Sandholtz elsewhere in this Special Issue) it does not set out what particular behavior is required to address a threat to a population.

In light of these features, defining RtoP's strength in terms of whether we see a consistent pattern of military intervention is not an appropriate facticity test for the norm. On the one hand, this standard is too modest, given that it overlooks the many other tools and mechanisms that can be brought to bear to address situations featuring atrocity crimes – mechanisms that were explicitly identified in the Summit Outcome Document in 2005. So while in 2011 military means were used in Libya with the stated aim of protecting civilians threatened by the government, a year earlier, in Guinea, concerted efforts by local, regional, and international actors – which included preventive diplomacy, arms embargos, travels bans, and threats of International Criminal Court (ICC) prosecutions - helped to avert a recurrence of atrocity crimes following the massacre in the country in September 2009. On the other hand, the standard of a consistent pattern of intervention is too demanding, given that the coercive

dimension of RtoP is embedded within the existing collective security system of the United Nations and thus depends upon the particular structure and changing political dynamics within the Security Council (the body with the authority under the Charter to authorize *collective* military action).

As Roberts and Zaum provocatively argued a decade ago, the UN's security system is both collective and unavoidably “selective” – a function of not only the veto power of the permanent members but also the limited capacity of UN Member States to deploy forces to enforce Council mandates and the general reluctance of *all* states to involve the Council in conflicts in which they are parties or which they perceive as resistant to outside involvement (Roberts and Zaum 2007). The casualties of that selectivity have in some cases been all too apparent: during the final phase of the war in Sri Lanka in 2009, in which thousands of civilians lost their lives, the Council did not even consider the conflict on its formal agenda – a fact that was celebrated by some Sri Lankan officials as a testament to their country's skillful diplomacy (backed by Russia and China) and ability to keep international pressure at bay (Kurtz and Jaganathan 2016). In other instances, most notably the ongoing war in Syria, stark differences among major powers have blocked collective decisions by the Council. By the beginning of 2018, Russia had wielded its veto 11 times, thereby defeating Western-sponsored resolutions related to different aspects of the crisis.

It is crucial to emphasize, however, that a slow or inadequate response from the Security Council is not always a function of the interests, alliances, or political motives of particular Security Council members, no matter how powerful they may be in certain instances. The lack of consensus on particular forms of action within the Council can also be shaped by genuine disagreement among its members about either the appropriateness or the feasibility of using particular instruments (including military ones) for humanitarian objectives (Welsh 2016a). In other words, even when the application of RtoP is not in doubt, there can be intense contestation concerning the means that the Council should use to address a particular crisis, resulting in deadlock. In the case of Darfur in 2004–5, for example, Western states concluded that a successful military effort to counter the violence perpetrated by the *Janjaweed* militia could not be mounted, given competing missions in Iraq and Afghanistan, the difficulties associated with the terrain in Sudan, and the risk that such an intervention would have destabilizing effects for neighboring countries. As demonstrated below, a similar kind of debate raged within Western democratic states about the

appropriateness, feasibility and consequences of using military force against the Syrian government during the summer of August 2013, following the gas attack that killed civilians in the suburbs of Damascus.

These examples reveal that RtoP's directive to respond to atrocity crimes exists within a broader normative context in which ethical principles such as 'reasonable prospects of success' and 'do no harm' often hold considerable sway. Indeed, some of the norm's supporters see the former notion, a key principle of Just War theory, as integral to the overall framework of RtoP (Evans 2008). This partly explains, they would argue, why outcomes will vary - and should be expected to vary - from case to case. What is critical for an assessment of RtoP's robustness, then, is not whether military intervention occurs in each and every instance of atrocity crimes, but rather whether a response by the international community is deemed necessary and genuine public deliberation over different kinds of measures takes place.

Assessing Norm Robustness

With these parameters of strength in mind, I now turn to assess RtoP's validity and facticity, and the impact of the contestation around the norm that has occurred since the 2005 World Summit. The analysis above suggests that only some of the indicators for norm robustness that Zimmerman and Deitelhoff identify are applicable to RtoP. While levels of norm acceptance and institutionalization, as well as the nature of third party reactions to violations, can be helpful in evaluating robustness, ratification and compliance are more difficult to apply to RtoP, given the political nature of the norm, its complex structure of prescriptions, and its reliance on collective action for implementation of the third pillar. The sections below also make two additional arguments regarding the relatively strong degree of validity that RtoP enjoys on the one hand, and its vulnerability to decay on the other.

Convergence on Validity

In general terms, the RtoP norm has experienced a relatively high degree of validity (Deitelhoff and Zimmerman 2013). Its prescriptions, at both national and international levels, have encountered very little explicit or direct contestation in the period since 2005. Informed by the annual reports of the UN Secretary General,⁶ there has been extensive consideration of the responsibility to protect in the Informal Interactive Dialogues of the

General Assembly and reaffirmation by Member States of the commitments made at the World Summit. These dialogues have helped to both advance a common understanding of the original concept of RtoP and build support for an implementation framework based on the three supporting pillars. Through the reports, the Secretary General has also improved early warning and assessment of atrocity crime risks within the UN system, and clarified the role of regional and sub-regional arrangements in fulfilling the responsibility to protect.

Statements by representatives of governments at the annual dialogues have noticeably increased over the years, with more and more states actively engaging with the Secretary-General's reports and requesting to take the floor.⁷ In fact, the regularity and breadth of the discussion on RtoP within the United Nations is relatively unique, in comparison with other principles. More importantly, the successive dialogues reveal that many states that originally expressed concern about what some described as a "vague" and "illogical" concept, with "controversy among Members States over [its] meaning" (Government of Iran 2009; Government of China 2009; Government of Malaysia 2009), have come to agree on many of its core aspects, including the notion that the primary responsibility to protect lies with national authorities, and that this responsibility entails prevention. There is also broad consensus that international assistance efforts (for example, through development cooperation or peace-building programs) should be directed at enabling states to address early signs of risk, that "timely and decisive response" to the commission or imminent threat of atrocity crimes should utilize a full range of diplomatic, political, and humanitarian measures, and that the use of force should be a measure of last resort.

A second sign of RtoP's relatively high degree of validity is that the growing convergence of views covers all regions (Rotmann, Kurtz and Brockmeier 2014; Bellamy 2016). The empirical record of deliberation and action makes it harder to argue today, compared with the early years of the norm's development, that RtoP is a Western-only concept. As one multi-national study of state practice concluded a decade after the World Summit: "[T]he 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

6 See Ban Ki-moon 2009, 2010, 2011, 2012, 2013, 2014, 2015a, 2016b.

7 As of July 2017, more than 120 Member States had delivered statements at the Informal Interactive Dialogues. A summary of the dialogues, along with transcripts of statements by Member States, is available at <http://www.globalr2p.org/resources/897>.

international responsibility.” (*Global Public Policy Institute 2015*) Many of the states that were once considered at best skeptical about or at worst hostile to the principle of RtoP have themselves begun to reference and employ it, moving the debate forward from the merits of the principle itself to how it should be implemented in particular cases. Thus, while there is a small set of states – including Cuba, Nicaragua, Venezuela, and Sudan – that has consistently and vocally contested RtoP’s validity, a much larger number of states have explicitly expressed support for the principle as it has been articulated and implemented within the UN. The record of the vote held in September 2017 to place RtoP on the formal agenda of the General Assembly speaks to the regional breadth of this growing consensus.⁸

A closer examination of state discourse also serves to illustrate this gradual convergence on validity. While China’s intervention in the General Assembly discussion of 2009 revealed concerns about RtoP’s scope and potential to erode state sovereignty (*Government of China 2009*), by 2014 its diplomats were describing RtoP as a “prudential norm” and suggesting that it was appropriate for international society to adopt a variety of measures to support its implementation, including the use of force “as a last resort” (*Government of China 2014*). The discourse of other non-Western states, such as Malaysia and India, also reveals a shift in expectations about national and international responsibilities to protect as well as more positive engagement with the norm. By 2015, Malaysia was pointing to the “notable successes in the implementation of responsibility to protect” (*Government of Malaysia 2015*). For its part, while India had initially observed a “cautious go-ahead” on RtoP (*Government of India 2009*), its remarks a decade later contained constructive suggestions on ways to link the principle’s implementation to broader agendas such as peacebuilding and conflict prevention (*Government of India 2015*). Similarly, Indonesia’s statement noted that UN bodies had “come a long way in their efforts to strengthen adherence to the three pillars of responsibility to protect”

and included ideas on how national governments could strengthen implementation of their “pillar one” responsibilities (*Government of Indonesia 2015*).

In addition, the statements of a number of African countries indicate strong acceptance of RtoP’s validity. For example, one of Africa’s most powerful states, Nigeria, has described RtoP as “representing a global conceptual and policy shift in the notion of sovereignty and security” (*Government of Nigeria 2014*). At the General Assembly dialogue in 2016, Tanzania noted that RtoP now enjoyed “a large measure of political consensus”, rooted in the “admission that the concept of State sovereignty also implies a responsibility to protect one’s citizenry.” Failure to meet this responsibility, it claimed, “triggers a common or collective responsibility shared by other States and other actors to intervene and protect” (*Government of Tanzania 2016*). Even Egypt, which was one of the core opponents to RtoP in the first General Assembly discussion in 2009 as spokesperson for the Non-Aligned Movement, has changed the nature of its public engagement. Rather than raising fundamental issues of validity, its critique is focused on specific issues of implementation. As its representative stated at the dialogue marking the tenth anniversary of the World Summit Outcome: “the debate on the concept of R2P should not be regarded as one on the merit or the value of the concept itself, which we have all concurred to ... but rather reflects the suspicions harbored by some member-states regarding its possible misuse.” (*Government of Egypt 2015*)

Finally, various episodes of applicatory contestation over RtoP have in fact aided the development of this intergovernmental consensus, thereby giving support to theoretical claims about how norm contestation can actually have a strengthening effect, rather than serving as a sign of norm weakness (*Wiener 2008*). As Badescu and Weiss have shown, both the Russian claim about RtoP’s applicability in its action in South Ossetia and France’s argument about the norm’s relevance to the humanitarian crisis in Burma after Cyclone Nargis were strongly disputed by the wider society of states (*Badescu and Weiss 2010*). However, these debates led to a conceptual clarification of RtoP and greater consensus on its scope. Henceforth, member states have articulated their commitment to what the Secretary General’s first Special Adviser, Edward Luck, described as the “narrow but deep approach” to the norm (*Welsh 2015*), rooted in its application to four particular international crimes but open to implementation through a multifaceted toolkit of measures. This process of applicatory clarification, which specifies the nature and implications of the crimes that RtoP is designed to prevent and address, adds weight to Adam Bower’s argument that legal concepts and

8 113 states from every region (including countries such as India, Afghanistan, Chile, Peru, Brazil, Indonesia, Thailand, Malaysia, South Africa, and Morocco) voted to include a supplementary item on the General Assembly agenda entitled ‘The responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity’. There were 21 negative votes and 17 abstentions. During the formal debate that was held during the 72nd session, on 25 June and 2 July 2018, 79 country delegations and the European Union spoke on behalf of 113 Member States.

processes constitute an especially legitimate mode of justification (Bower 2016).

Nevertheless, two caveats to this positive assessment of RtoP's validity are in order. First, while UN Member States all agree that the protection of populations from atrocity crimes is both a national and international responsibility, and that prevention is at the core of this responsibility, their discourse reveals differences over both the weight that should be placed on coercive measures and the processes that should regulate any collective use of military force. This contestation was most evident in the immediate aftermath of the 2011 NATO-led intervention in Libya (Morris 2013; Brockmeier, Stuenkel and Tourinho 2016; Puri 2016), when many states raised concerns about the alleged 'stretching' of the original Security Council mandate to overthrow the Qaddafi regime, and the subsequent support given to the Brazilian government's "Responsibility While Protecting" proposal.⁹ But contestation over the appropriateness of the military dimension of RtoP's third pillar has continued to surface in the annual dialogues, with individual states explicitly referencing post-intervention chaos in Libya as a reason for reassessing RtoP's coercive dimension. Differences of views on both the conditions for the use of force and its management by the UN Security Council also constituted one of the leading factors in the inability of the General Assembly to adopt a substantive new resolution on RtoP in late 2015.

The draft text of the resolution circulated in November 2015 – the first substantive resolution tabled since the 2005 Summit Outcome – contained a number of paragraphs reaffirming support for RtoP and elaborating upon its first and second pillars. However, the proposal from the drafting group¹⁰ confronted difficult negotiations with respect to two operative paragraphs linked to the third pillar that would have: 1) emphasized the need

to implement RtoP "responsibly"; and 2) called for any Security Council authorized use of force under the banner of RtoP to contain both clear mandates and explicit procedures for reviewing progress. Both of these paragraphs were perceived by NATO countries – particularly France and the United States – as implicit criticism of the action in Libya and as an attempt by the General Assembly to place restrictions on the conduct of the Security Council. By the spring of 2016, the negotiations had reached a stalemate, with states unable to agree on a text. Although the reaffirmation of RtoP enjoyed overwhelming support, the inability of the General Assembly to elaborate on the norm's components, after ten years of discussion in informal dialogues, was viewed by some as a sign that the consensus was fraying, largely as a result of persistent concerns about implementation of the third pillar.¹¹

The formal debate on RtoP in the General Assembly during the summer of 2018 reinforces this picture of contestation over the third pillar, as Member States clashed over the issue of military intervention to halt atrocity crimes. The Russian spokesperson represented the furthest end of the spectrum, declaring that while RtoP had "powerful humanitarian potential", it had become associated with "illegal military interference, regime change, State destruction and economic disaster." Iran also raised concerns over the way RtoP had paved the way for "interventionist policies", while Pakistan claimed that what was needed was a "surge in diplomacy, not war". The Government of India attempted a more constructive path, by reaffirming its commitment to the norm and welcoming the broad consensus on the first and second pillars, while at the same time acknowledging the need to address the "legally complex and politically challenging issues" which were connected to Pillar III. "The quest for a more just global order", declared its Ambassador Syed Akbaruddin, "should not take place in a manner that will undermine international order itself".¹²

The second caveat is that the process of developing the consensus on RtoP's validity has enhanced the norm's state centric elements, and downplayed its more cosmopolitan aspirations. The context that gave rise to the articulation of the responsibility to protect, at the end of the 1990s, was marked by reflection upon the lessons of the Rwandan genocide, and the alleged failure

9 On November 9, 2011, the Brazilian Permanent Representative sent an official letter to the Secretary General with a 'concept note' entitled "Responsibility while Protecting: elements for the development and promotion of a concept." (General Assembly 2011) The core proposals of the Brazilian initiative were twofold: first, that efforts to implement RtoP should focus more intensively on prevention; and second, that any authorization of the use of force in the name of RtoP would require clear accountability mechanisms for those employing force in the name of the Security Council.

10 The drafting group was co-led by Australia and South Korea, and was based on a cross-regional representation of states that included, *inter alia*, Malaysia and Brazil.

11 Author's confidential interviews with diplomats at Permanent Missions and non-governmental organisations in New York, November 2015 and March 2016.

12 All formal statements during the debate on 25 June and 2 July 2018 can be found at <https://papersmart.unmeetings.org/ga/72nd-session/plenary-meetings/statements/>. Accessed 10 July 2018.

to intervene to save civilian populations from massacre. One of the key entrepreneurs associated with RtoP's development - the International Commission on Intervention and State Sovereignty (ICISS) - further elaborated on these lessons in its 2001 report, which sought to increase international protection for individuals in situations of severe human rights violations or humanitarian emergency (ICISS 2001). Its work was embedded in a broader paradigm of "human security", advanced energetically by diplomats such as former Canadian Minister of Foreign Affairs Lloyd Axworthy.¹³ This paradigm placed the individual, and his/her security, at the center of international affairs - thereby seeming to challenge the traditionally dominant paradigm of state security. The human security framework was linked to a related belief that globalization, and deep forms of interdependence, had made sovereign frontiers less relevant, and more porous (Thakur 2005: 187). Although various ICISS Commissioners denied strong claims that human security had rendered sovereignty obsolete, the cosmopolitan roots of RtoP did serve to make sovereign rights conditional on the protection of populations.

The annual informal dialogues in the General Assembly illustrate a subtle but important evolution from the more individual or 'people' centred vision of the ICISS report. Several states, and particularly those from the developing world, have drawn on the specific text of the Summit Outcome Document not only to emphasize the preeminent role of *national* authorities in the implementation of RtoP, but also to call for international assistance efforts that strengthen state capacity, reinforce sovereignty, and respect different national 'paths' to implementing RtoP. At the 2015 discussion in the General Assembly, India underlined that international assistance "should always be requested by the concerned state before it is offered" and that protection "policies must be nationally owned rather than imposed from outside." (Government of India 2015) Similarly, Egypt's statement at the 2016 General Assembly dialogue suggested that "the principal role of the international community" in implementing RtoP was to "encourage and assist states" (Government of Egypt 2016). In turn, Morocco's representative advised that Pillar II action should focus on buttressing states' own national mechanisms - thereby creating "an environment conducive to protection of their respective populations." (Government of Morocco

2016) But it is China, as Rosemary Foot has argued, which has been the most strategic in efforts to employ RtoP in ways that re-assert normative values such as state sovereignty and 'national ownership'. Its suggestion that national governments should always decide upon the levels and types of international assistance they require, she writes, represents "a demand-led conception" of Pillar II rather than one "stressing the role of international actors as capacity builders working to help a state prevent atrocities." (Foot 2019; see also Foot 2016). China's 2015 statement during the Informal Interactive Dialogue was particularly clear in arguing that the UN needed to "follow the principle of national ownership and leadership, respect the judicial traditions and national reality of countries in distress and avoid producing negative impact on the domestic situation in countries concerned" (Government of China 2015).

Although these statements do not amount to a frontal assault on RtoP, they arguably do represent a conscious attempt to reshape the norm's meaning through a form of 'constructive' contestation. A number of UN members, now led by China, are implicitly challenging more cosmopolitan notions of conditional sovereignty and employing the three-pillar framework of RtoP to reassert the importance of states, *relative to the international community*, in the task of protection. This reflects a continuing unease about the external enforcement of norms through any form of international authority that stands above or outside states themselves. As a result, the validity of RtoP now depends upon adopting a more bottom-up approach - where states fulfil their primary responsibility to protect but also support one another, as peers, in protecting vulnerable populations (Welsh 2016b). This bottom-up perspective, which is also reflected in the Secretary-General's first report on RtoP (Ban Ki-Moon 2009), puts national governments squarely at the centre of efforts to prevent and respond to atrocity crimes - even if it also assigns a key role to the international community.

Mixed Degrees of Facticity

In the period since the 2005 World Summit, many of RtoP's advocates - including key figures in the United Nations (such as the Secretary-General and his Special Adviser on the Responsibility to Protect), Member States who form part of the diplomatic 'Group of Friends' of Responsibility to Protect, and civil society organizations such as the Global Centre for the Responsibility to Protect - have sought to advance this bottom up approach. They have largely avoided more general and controversial normative debates - for example, about the meaning and scope of sovereignty - and concentrated instead on

13 ICISS was funded out of the broader Human Security Programme, created by the Canadian government in 2000, which also included the development of the Protection of Civilians in Armed Conflict agenda of the UN Security Council.

embedding the idea of responsibility for atrocity crime prevention and response into the work of a variety of actors and institutions. This focus on concrete institutionalization has thus far largely succeeded in preventing the contestation over RtoP's third pillar from "radicalizing" (Deitelhoff and Zimmerman 2013).

On one measure of facticity, then, RtoP has had notable success in guiding the development of specific policy and institutional capacity to prevent and respond to atrocity crimes. And as those who have been actively engaged in the norm's implementation would argue, this development should begin 'at home' (Bellamy and Luck 2018). A key example is the appointment of focal points within national governments to coordinate policy development on atrocity crime prevention and response.¹⁴ These national-level officials are critical in giving effect to RtoP's first pillar, insofar as 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 the Rome Statute of the International Criminal Court; and developing laws and institutions to address exclusion and discrimination.

A growing number of states have also developed, or are in the process of developing, what the Auschwitz Institute for Peace and Reconciliation refers to as "national mechanisms" for the prevention of genocide and other atrocity crimes. These are officially established bodies that coordinate collaboration among various government departments and agencies, as well as civil society, to improve state capacity to respond to atrocity crimes – either within or beyond its borders – and are thus an avenue through which national authorities can exercise their "responsibility to prevent" (AIPR 2017). In addition to developing capacity for early warning, these mechanisms include explicit training programs for civil servants, policy recommendations for protecting vulnerable populations, and communications strategies with relevant regional and international organizations. Examples include the national committees for genocide and atrocity crime prevention created by Kenya, Tanzania and Paraguay, as well as the U.S. Atrocities Prevention Board established by the former Obama Administration. Following the 2014 Report of the Secretary-General on RtoP's second pillar, national governments also have

clear guidance on the various ways in which they can assist other states in fulfilling their protection responsibilities, by helping to build key "inhibitors" to atrocity crimes (Ban Ki-moon 2014: paras 43–58). In short, the content of RtoP's second pillar has become even more action-guiding, and is now beginning to shape national governments' approach to development assistance and diplomacy.

Progress in capacity building is also evident, though to a lesser degree, at the regional and international levels. Within the European Union, an RtoP focal point has been appointed to coordinate the work of policy divisions active in different aspects of atrocity crime prevention and response. The EU has also revised its early warning tool, originally designed for conflict prevention, to incorporate indicators relevant to genocide, crimes against humanity, and war crimes. Within the United Nations, implementation of RtoP has benefitted most visibly from the work of the Joint Office for the Prevention of Genocide and the Responsibility to Protect, and from 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" (United Nations 2014). In 2013, the Action Plan for the Secretary General's Human Rights Up Front initiative launched further institutional reforms to strengthen the link between early warning and early action in the UN system (United Nations 2013).

However, it is more difficult to issue definitive judgments about facticity with respect to RtoP's third pillar, given persistent questions about the degree to which paragraph 139 of the Summit Outcome Document is really "action-guiding". As suggested above, the most that can be said of this prescriptive element of the RtoP norm is that states have a duty to *identify* when atrocity crimes are being committed or are imminent, and to *deliberate*, through applicatory discourses, on how different actors (national, regional and international) can and should respond, using diplomatic, political, humanitarian, and – if necessary – military means. The norm itself does not dictate what precise response should follow in any given case. The 2015 report of the Secretary-General elaborates how non-military tools – such as preventive diplomacy, humanitarian action, and political negotiation – can be part of the international community's exercise of its responsibility to protect (Ban Ki-moon 2015a: paras. 37–42), and points to successful cases where these "peaceful means of Pillar III" (Bellamy 2016) have made a difference. Nonetheless, contestation lingers over two difficult issues: the relationship between RtoP's three pillars; and when the responsibilities of the international community under the third pillar are activated.

14 Since 2010, 60 states – almost a third of the UN membership – have appointed national focal points. See the updated complete list at <http://www.globalr2p.org>. (Accessed 15 October 2018)

The Three Pillars: Mutually Reinforcing or Sequential?

The first form of contestation that has placed a “drag” on RtoP’s facticity surrounds the relationship between the norm’s component pillars. Importantly, the Summit Outcome Document itself does not articulate the RtoP norm in terms of pillars; rather, this framework was devised and advocated by the Secretary-General’s first Special Adviser on the Responsibility to Protect, as expressed in the 2009 report of the Secretary General. Nonetheless, despite their absence from RtoP ‘version 1.0’, the three pillars have become a key reference point for state discourse and implementation and there is a high degree of consensus on their content.

Where some states continue to raise concerns, however, is in relation to sequencing. The original three pillar framework set out in 2009 suggests that the pillars are of equal weight, mutually reinforcing, and non-sequential. In this formulation, the state’s primary responsibility to protect does not evaporate when states request international assistance to fulfill their protection responsibilities, or when the international community provides emergency protection capacity (Ban Ki-moon 2016b). General Assembly discussions of RtoP nonetheless reveal that a set of states believes that the responsibility to protect is first and foremost a national responsibility, and that the role of the international community is secondary: the latter comes into play only when national capacity is proven to be insufficient.¹⁵ This view was also represented in the negotiations over a new General Assembly Resolution in 2015, when certain states opposed the language of “equal and mutually reinforcing pillars”. Moreover, some states conflate the entire third pillar with the use of military means, and thus frame the role of the international community – rather than the more specific exercise of military force – as a matter of “last resort”. Although this form of contestation appears to operate on an interpretive level, and therefore does not constitute a threat to the norm’s validity, the persistent debate over sequencing could be seen as a proxy for a deeper belief that the pillars of RtoP are hierarchical, with the first pillar having the greatest validity.

More broadly, the degree to which RtoP enjoys high levels of facticity has been affected by continuing contestation over both the appropriateness and nature of the

use of military means under the third pillar. On one reading, the controversy that erupted after the 2011 Libyan intervention can be seen as a continuation of applicatory contestation: the debate was not about whether military force to protect civilians is appropriate, but rather about whether all political and diplomatic means had been exhausted, and whether the use of force represented a ‘last resort’. On this reasoning, the debate post Libya may have been lively, but does not damage RtoP’s validity. Indeed, the discussion has in some ways played a productive role by bringing to the fore aspects of RtoP that were always present, but which were underemphasized in the decade after 2005 – namely, the need for focus on rebuilding *after* protection. We might therefore conclude that complex norms, such as RtoP, may in fact have extra armor against the forms of contestation that are potentially degrading, as disagreement over one element may serve to strengthen other dimensions of the norm.

Nevertheless, contestation in the period after 2011 has injected a new element into the discourse surrounding RtoP that carries the potential to make collective action through the UN Security Council less likely, and thus to ‘hollow out’ a key part of the norm’s core. Although the 2005 Summit Outcome Document indicates that states support the use of the Security Council’s powers under the collective security provisions of the Charter to respond to situations featuring atrocity crimes on a case-by-case basis, the intervention in Libya raised questions about how those who use force on behalf of the Council can and should be accountable. In other words, while the language of paragraph 139 was meant to guard against abuse of the principle of RtoP, the experience of Libya has suggested to some states that further measures are needed. Since 2011, a new kind of political coalition has thus formed which includes both pro-RtoP states that opposed the stretching of the NATO mandate given by Resolution 1973 in the particular case of Libya, and developing countries that have always worried about the prospect of externally-imposed regime change (Brockmeier, Stuenkel and Tourhino 2016). As the negotiations over the draft General Assembly Resolution in 2015 reveal, this coalition is opposed by the so-called P3 members of the Security Council (the United States, France and the United Kingdom), who remain resistant to any mechanisms that would dilute the Council’s freedom of maneuver to respond to threats to international peace and security, or submit the Council’s actions or delegation to a form of oversight.

Uncertainty and Applicability

The second form of contestation that has affected RtoP’s facticity has surfaced in particular country situations,

15 This concern was voiced by a number of states at the Thematic Event of the President of the General Assembly on the Responsibility to Protect, 26 February 2016. See especially the comments of Egypt, Venezuela, and Cuba. A summary of all statements is available at <http://www.globalr2p.org/resources/897>.

and revolves around the question of whether the international community's responsibility to assist or respond has been activated. While the Summit Outcome Document productively specified the scope of RtoP by reducing the more general threshold of "large scale loss of life" - originally set out in the ICISS report - to the identification of four specific crimes and violations, debate over what situations feature atrocity crimes, or the imminent risk of atrocity crimes, has continued. In short, greater norm precision has not ended contestation over the applicability of elements of RtoP in real-world cases. This contestation has been particularly pronounced in retrospective discussions concerning the Libyan case, as critics now claim that the capacity of Qaddafi to engage in large-scale massacres was greatly overstated and that the framing of the crisis through the lens of responsibility to protect was misplaced (Kuperman 2013).

Contestation over framing was also evident in discussions among members of the Security Council in 2015–16 regarding the deepening political crisis in Burundi, which resulted in widespread human rights violations and systematic killing. One group of states (including Permanent Members France and the UK and non-permanent members Chile, Nigeria and Lithuania) explicitly framed the situation as one involving the growing risk of atrocity crimes. The group supported a briefing to the Security Council (on November 9, 2015) by the Special Adviser on the Prevention of Genocide, and proposed robust language for a Security Council resolution that would have called on the Government of Burundi to fulfill its responsibility to protect. But other Council members (particularly Russia) were adamant that the situation was not one relevant to RtoP, opposed any consideration of a Chapter VII-authorized deployment of UN forces, and prevented the inclusion of RtoP language in the resolution that was eventually tabled to address the crisis on November 12, 2015.¹⁶ Russia (and China) also voted against a subse-

quent UN Human Rights Council resolution that dispatched independent experts to Burundi to investigate allegations of torture, summary executions, and forced disappearance (United Nations Human Rights Council 2015b).

Syria offers another illustration of how perceptions of the political utility of RtoP language have evolved. Given the political deadlock within the UN Security Council over the legitimacy of international efforts to address the violence, most of the initial measures taken in response to the intensifying violence in Syria were adopted independently rather than collectively. For example, the United States imposed sanctions, as did the Arab League and the European Union. The first Resolution passed by the Security Council came only in February 2014 and was focused on a narrow objective: demanding that parties to the conflict allow delivery of humanitarian assistance.¹⁷ The agreed upon language of this Resolution - along with subsequent Council decisions¹⁸ - does invoke Pillar I by reminding government authorities of their responsibility to protect the Syrian population. But the broader *international* responsibilities associated with RtoP were not articulated by the Council. Although some scholars have tried to depict the Security Council's resolutions on humanitarian relief operations as a form of RtoP 'in action', and an example of the pursuit of pragmatist ethics by Western diplomats in the face of narrow room for maneuver (Ralph 2018), this approach risks substantially diluting what is meant by "protection", especially in the context of RtoP. The norm was designed not primarily to facilitate the delivery of life-saving supplies, such as food and medical assistance - for which there was already a well-established legal framework - but rather to ensure protection from widespread and systematic killing that amounts to international criminal action.

Nor did the three pillars of RtoP play a particularly prominent role in Western public discourse over Syria, when measured in terms of elite media content. An examination of approximately two hundred and fifty articles

16 See Security Council Resolution 2248 (2015). The resolution mentions more generally the responsibility of the Government of Burundi "for ensuring security in its territory and protecting its population with respect for the rule of law, human rights and international humanitarian law". Its operative paragraphs, *inter alia*, urge the Burundian authorities to accept the regional mediation effort (endorsed by the African Union); and express the intention of the Council "to consider additional measures against all Burundian actors whose actions and statements contribute to the perpetuation of violence." Earlier drafts contained more specific references to RtoP, including the early warning role of the Special Advisers on the Prevention of Genocide and Responsibility to

Protect. Author's confidential interviews with representatives of civil society and diplomats from Permanent Missions in New York, December 2015.

17 See Security Council Resolution 2139 (2014). Previous resolutions tabled earlier on in the crisis, proposing more robust international action (such as Security Council-authorized sanctions), were vetoed.

18 See Security Council Resolutions 2165 (2014), 2254 (2015), 2258 (2015), and 2332 (2016). The Human Rights Council also passed fourteen resolutions between December 2011 and October 2016 that referenced the responsibilities of the Syrian authorities under Pillar I.

or opinion pieces in leading English and French-language newspapers that explicitly mentioned RtoP in the period between June 2011 (when the crackdown on protests in Syria began) and the siege of the city of Aleppo (in December 2016), reveals that a third of the references to “responsibility to protect” occurred during the summer of 2013, when Western countries were debating how to respond to the chemical attacks that killed civilian populations in the suburbs of Damascus.¹⁹ Western leaders or diplomats rarely used RtoP terminology in the first year of crisis (from June 2011 to August 2012), despite commentators noting that the number of Syrians killed and the nature of the violence was as severe – if not worse – than what had occurred in Libya prior to international action. The lack of references to RtoP is also curious given Commission of Inquiry reports that clearly determined that military commanders and government officials had committed “widespread, systematic rights violations that constituted crimes against humanity” (United Nations Human Rights Council 2012). Instead, fall-out from the earlier NATO intervention in Libya led many Western actors to question the political utility of framing the situation in Syria in RtoP terms.²⁰ Even Kofi Annan, who served as envoy to Syria for the UN and Arab League in 2012, acknowledged that the manner in which RtoP had been implemented in Libya had limited the political space for agreement on a collective response by the major powers to the Syrian crisis. In an opinion piece in *Le Monde*, Annan wrote that “Les Russes et les Chinois considèrent qu’ils ont été dupés ... Des que l’on discute de la Syrie, c’est l’éléphant dans la pièce.” (Annan 2012) (The Russians and the Chinese consider that they have been duped ... As soon as we discuss Syria, it [Libya] is the “elephant in the room”).

One of the few influential voices that did cite RtoP, the French public intellectual Bernard-Henri Levy, mounted a strong prudential argument against using Libya as a precedent for Syria. While there was clearly a just cause for intervention in the latter case, he argued, the less favorable context for military action and the likelihood of negative consequences made the employment of other diplomatic tools the more ‘responsible’ choice

(Levy 2012). There was also a lively debate initiated by senior Republican Senators in the United States in the first half 2012, which referenced the principle of RtoP and focused on alternatives to military intervention – most notably the possibility of arming Syrian opposition groups to enable them to self-protect against government sponsored violence (Krauthammer 2012). But such discussions of alternative ways to implement the international community’s responsibility to protect proved to be the exception rather than the rule. After the brief debate that occurred on the pages of Western newspapers in August 2012, over the possibility of creating safe zones in Syria, explicit invocations of RtoP virtually disappeared.

The renewed spike in references to RtoP in the summer of 2013, while part of the rationale for urging robust international action in response to the chemical attacks, should be seen within a discursive context that was shifting from a call to *protect* populations to an imperative to *punish* a government that had allegedly used weapons of mass destruction. The situation in Syria had already amounted to a “manifest failure” on the part of national authorities to protect populations well before the August 2013 incident involving chemical weapons. Yet, it was only at this point in the crisis that the public discourse – particularly in France – appealed to the international community’s responsibility to protect, placing the conflict alongside historical incidences of atrocity crimes, such as in Kosovo in 1999.²¹ Although the discourses of protecting and punishing were linked, they also evinced different logics – the former about taking collective action to respond to and prevent the commission of atrocity crimes and the latter about the need to preserve the potency of a normative taboo against the use of a banned weapon (Carpenter 2013).

It was the second logic, which built upon President Obama’s warning about crossing a ‘red line’, that dominated the political discourse about Syria in the autumn of 2013, and not the appeal to an international responsibility to protect. Indeed, the former president of Médecins sans Frontières, Rony Braumann, described President Hollande’s summoning of RtoP as disingenuous and an “abus de langage” (abuse of language), given that real protection for civilians was unlikely to be forthcoming (Truong 2013). For his part, President Obama studiously avoided invoking RtoP when making the case for airstrikes, stressing instead the need to enforce the worldwide ban on the use and production of chemical

19 This Factiva search included *Le Monde*, *The Times*, *The Financial Times*, *The Guardian*, *The New York Times*, *The Washington Post*, and *The Globe and Mail*.

20 Two French journalists, writing in 2012, noted that RtoP had been only weakly invoked “à ce point inaudible, du moins conteste, par d’importants pays du Sud (Brésil, Inde, Afrique du Sud) que les diplomates occidentaux ... évitent d’y faire la moindre référence” (Ayad and Nougayrede 2012).

21 Then French President Francois Holland explicitly invoked RtoP as part of the rationale for considering military action in a speech on August 27, 2013 (Chatelot 2013).

weapons. Commenting on the administration's framing of the case for military action, the U.S. Holocaust Museum's Michael Abramowitz suggested that the President and his advisors did not view RtoP as having the power to mobilize public support for action. "Saving lives", he wrote, "is a hard sell these days" (Abramowitz 2013). In the UK, those publicly making the argument for the use of force proved more willing to speak about the "humanitarian" imperative, including by claiming (controversially) that military action without Security Council authorization was legal (Rifkind 2013). Nevertheless, the defeat of a government motion in the House of Commons on August 29 that would have authorized military action that was "legal, proportionate and focused on saving lives by preventing and deterring further use of Syria's chemical weapons" prompted public debate on whether the country was retreating from its commitment to act robustly to protect civilians in peril.²²

Following the flurry of diplomatic efforts to remove chemical weapons from Syria in 2013, the conflict settled into a grinding stalemate in which civilians continued to be subject to deliberate attacks and, in the case of cities like Madaya and Aleppo, siege and starvation. Yet the role of the international community was framed not in terms of the responsibility to protect, but in one of two ways: offering support to UN-sponsored efforts to negotiate a solution, or pressuring warring parties to enable the delivery of humanitarian assistance. It is particularly notable that RtoP terminology appeared less than 30 times in key Western newspapers in 2015 and 2016, despite mounting reports of war crimes and other atrocity crimes from the Independent International Commission of Inquiry on the Syrian Arab Republic (United Nations Human Rights Council 2015a and 2016a).

The Role of Terminology in Norm Contestation

The cases of Burundi and Syria thus bring into focus the role of terminology in norm contestation. More specifically, they raise the question as to whether a norm's robustness depends (partially) on its explicit invocation by actors in real-world cases. Many advocates of RtoP insist that the absence of specific language cannot be taken as evidence of lack of commitment to the norm. Whether states speak specifically in the terms of RtoP is less important than whether real practice supports prevention

of, or response to, atrocity crimes. Though there is some merit to this assertion, the *political* nature and purpose of the norm of RtoP arguably makes it more important that it is explicitly invoked. If one of the norm's purposes is to identify situations of concern and mobilize action, the absence of its framing language could be a sign that applicatory contestation is having a knock-on effect on the norm's validity.

Some of the more critical scholars of RtoP have begun to develop this point, by underscoring the fact that while the Security Council has tabled a number of resolutions containing language related to RtoP,²³ the majority of these have referenced the first pillar. Invocations of Pillar III language, by contrast, are in short supply. This contrast suggests to them that there is a waning commitment to asserting and acting upon the international community's responsibility to protect in the 'hard' cases, when governments are unable or unwilling to protect their populations (Hehir 2015). But there are two problems with this line of argument. First, it tries to cherry pick particular elements from a complex norm by claiming that only a robust response from the international community, to a manifest failure to protect populations, represents the 'real' RtoP. And second, this judgment glosses over the reality that there were very few cases in the period under examination in which coercive action by international actors (without the consent of the state) was conceived as possible or appropriate. It is thus premature to conclude, from this argument at least, that RtoP's very validity is at stake.

The willingness of Western actors to forego RtoP language in the Burundi case, and the circumscribed manner in which it was deployed in the Syrian case, does seem to demonstrate that actors are less convinced of the political utility of the terminology – particularly in the years after the controversial intervention in Libya and the contestation it engendered. But does this also mean that the norm's audiences are less persuaded by RtoP's prescriptions? This is the more pertinent question for judging norm robustness.

The characterization of and response to the violence in Burundi and Syria would amount to a weakening of RtoP's robustness *only if* it could be shown that the duty of conduct prescribed by the norm failed to materialize in these situations. Returning to the standard I set out earlier, two questions would seem especially important. First, did the majority of actors (both states and other key international actors) view the violence as grave enough

22 In September 2013, a cross-party group of senior politicians, including former government cabinet ministers, wrote to the leaders of Britain's three main political parties urging them to not to see the defeated motion on Syria as the end of country's "responsibility to protect civilians" (Wintour 2013).

23 See, in particular, Security Council Resolutions 1975 (2011), 1996 (2011), 2085 (2012), 2121 (2013), and 2150 (2014).

to point to the risk or commission of atrocity crimes – thus constituting a matter of *international concern*? And second, did states at both the regional and international level deliberate on various forms of response and utilize national and international policy tools to address the situation?

The evidence from the Burundian case indicates that the validity of the normative content of RtoP, including the prescriptions related to the role of the international community, remains strong. Members of the Security Council who advocated for UN-sponsored action in the autumn of 2015 maintain that the overall purpose of Resolution 2248 (and subsequent Council decisions) was to implement the responsibility to protect. The fact that particular terminology did not appear in the final text was a compromise to avoid a Russian abstention, which might have diluted the message being sent to national authorities in Bujumbura. A unanimous vote, in the words of one diplomat, “created the appearance of a united international community prepared to take further steps if the violence escalated.”²⁴ Although some might read the Russian position on Burundi as a form of validity contestation, given that its representatives tried to suggest that violence that was ‘merely’ political was a matter for the sovereign government of Burundi, Russia’s more general engagement with RtoP suggests it is not fully rejecting the norm but rather trying to shape its meaning – particularly to emphasize prevention and national ownership, and to act as “watch-dog” against any Western-driven abuse of the principle (Kurowska 2014).

Furthermore, the broader actions of the international community – which the Russian government itself helped to sponsor – demonstrated a belief in the legitimacy of using a variety of measures preventively to alter the behavior and dynamics inside the Burundian state that were creating the potential for wide-spread atrocity crimes. These steps included human rights monitors and military experts dispatched by the African Union; a regional mediation effort supported by the Security Council; contingency planning by the United Nations for an increased field presence (which ultimately resulted in a Security-Council authorized deployment of UN police units); a Security Council mission to Burundi in January 2016; and continued updates to the Council by the Secretary General on both the political crisis and the human violations in the country, including “*on any public incidents of incitement to hatred and violence* (emphasis added).”²⁵

This kind and this level of Security Council engagement in a situation that did not constitute a formal armed conflict reflects a significant evolution in expectations about the role and responsibilities of the international community. It is also in marked contrast to the approach taken by the international community in the context of previous crises in Burundi (in the late 1980s and mid 1990s). In these crises, international action was focused solely on elite negotiations and power-sharing arrangements (Lotze and Martins 2015).

The evidence in Syria might appear, at first glance, to point overwhelming to norm weakening. It is undeniable that RtoP language declined in usage, as perceptions of its political utility changed; that collective action to protect populations was neither timely nor decisive; and that the role of the Security Council was focused on humanitarian assistance, rather than protection from atrocity crimes. Nonetheless, belief in the normative content of RtoP has also been evident in a variety of (sometimes unexpected) ways. The majority of Council members have viewed the crisis, from its earliest stages, as a situation featuring international crimes, and as one requiring some form of collective response. More importantly, the international community is much broader than the Security Council. Throughout the civil war in Syria, the UN Human Rights Council has remained actively engaged, most notably through its Commission of Inquiry, which has documented and deplored the failure to uphold the responsibility to protect. In addition, in a non-binding resolution on August 2, 2012, the UN General Assembly explicitly condemned the Council for its inability to uphold its responsibility to address the mounting crisis. Following the defeat of Western-sponsored efforts to refer the situation in Syria to the International Criminal Court, the Assembly in December 2016 took the unprecedented step of passing a resolution to create what is now known as the IIM: the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic (United Nations General Assembly 2016). The mandate of this new kind of accountability mechanism – to collect and analyze evidence of atrocity crimes and human rights violations in Syria with the aim of facilitating future international criminal proceedings – reflects the view of the overwhelming majority of UN member

come Document not only notes the primary responsibility of national authorities to protect populations from atrocity crimes, but also indicates that this responsibility “entails prevention of such crimes, including their incitement.”

24 Author’s confidential interviews with diplomats at Permanent Missions in New York, December 2015.

25 Security Council Resolution 2303 (2016). It should be recalled here that paragraph 138 of the 2005 Summit Out-

states that the violence perpetrated over the course of this long conflict is not subject solely to the domestic jurisdiction of the Syrian state, but is a matter of deep international concern.

Conclusion

This article has sought to transcend the conventional debate over RtoP's status and impact as a norm, by utilizing the parameters of norm robustness provided by the editors of this Special Issue. It does so by clarifying RtoP's political nature, elaborating on the three sets of prescriptions that make up this complex norm, and illustrating how RtoP's third pillar - which requires *collective* action for its fulfillment - poses challenges for measuring norm robustness. It then showed how applicatory contestation over the first decade of RtoP's existence has brought about a high degree of consensus on RtoP's core elements, thereby enhancing its validity. However, I also demonstrated how some of RtoP's initial cosmopolitan aspirations became muted as its state-centric foundations were emphasized. Furthermore, persistent applicatory concern over RtoP's third pillar - displayed most vividly in the recent 2018 formal debate in the UN General Assembly - has opened up deeper forms of contestation around its content and potentially its validity. This latter form of contestation has in some cases had a negative impact on the willingness of actors to frame situations explicitly in RtoP terms, arguably weakening the political utility of its language.

Nevertheless, two factors work to buttress support for the norm. First, RtoP is embedded in a deeper and broader normative complex that includes genocide prevention, particular principles of international humanitarian law, accountability for international crimes, guarantees of "non-recurrence", and the protection of civilians in armed conflict (Kurtz and Rotmann 2016). Given that many of the obligations associated with this more general framework have been strengthened and formalized in recent decades, it is hard to foresee the "death" of RtoP. This feature of embeddedness is illustrated by the most recent report of the UN Secretary General on RtoP, in 2017, which explicitly links implementation of the RtoP norm to a number of institutionalized procedures for preventing and responding to violations of international human rights and humanitarian law. This includes, for example, the Universal Periodic Review process of the Human Rights Council (Guterres 2017).

Second, substantial progress in implementation is already underway with respect to RtoP's first pillar, where state practice is conforming in a reasonably straightforward way to what scholars of international norms would

expect: national/domestic-level actors interpreting and 'localizing' an international norm within their particular context (Betts and Orchard 2014; Bellamy and Luck 2018). The key question for RtoP's future robustness is whether the contestation over the particular issue of the use of military means can play a productive function, potentially leading to amendments to the provisions for the use of force, or whether it will erode the painstaking consensus that has been built over the need to prevent and respond to atrocity crimes.

More generally, the analysis in this article has shown that all three features of RtoP - its political, directive and aspirational nature - have implications for the framework of norm robustness proposed by Zimmerman and Deitelhoff. In particular, the general conjectures advanced for robustness - specifically those related to institutionalization - may need to be adjusted or further specified, depending on the type of norm under examination. First, as an aspirational and political norm, RtoP has been particularly susceptible to the impact of particular cases of action or inaction in the face of atrocity crimes. These instances have given rise to intense periods of contestation that have shaped understandings of the norm's application and stretched to questions about the norm's deeper validity. Second, directive norms that do not specify a course of action present particular difficulties for assessing a norm's impact. As I have argued, RtoP's complex character, containing three sets of prescriptions, requires different kinds of conduct by national, regional and international actors. Consequently, any overall judgment about the norm's robustness requires an integrated assessment of forms and levels of contestation. One of the central findings of this article is that complex norms can actually appear *more* robust, given that contestation normally only challenges one of their dimensions (leaving other prescriptive elements intact or even strengthened).

The final and more general point raised by the case of RtoP relates to temporality. How should we judge the dynamics of (relatively) new norms? A little more than a decade after the World Summit, any evaluation of the norm of the responsibility to protect needs to assess its robustness not just in terms of how close the international community is to meeting its stated aspiration - a world in which atrocity crimes are prevented or minimized - but also in terms of the degree to which it has changed expectations, which are largely framed in discourse. Furthermore, that assessment should take place in relation to other normative projects. The international human rights regime, for example, while powerfully expressed in 1945, took decades to mature and catalyze concrete changes in state behavior (Moyn 2010). Indeed, aspects of the

regime remain heavily contested (Hopgood, Snyder and Vinjamuri 2017). Some might therefore argue that it is far too soon to definitively pronounce on RtoP's robustness, given that it is still in the early stages of what is likely to be a long and "unsteady life".²⁶

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