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Refugees, internally displaced persons and the ‘responsibility to protect’

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Introduction

This paper explores the implementation of the prevention pillar of the Responsibility to Protect (R2P) doctrine, and assesses its relevance to protection of refugees and internally displaced persons (IDPs). I argue that a political analysis of the recent R2P debates show that the doctrine is at a juncture, and there are costs and benefits to the overall goal of refugee and IDP protection by aligning with the R2P campaign. This paper challenges the proposition that stronger international acceptance of the R2P doctrine leads inevitably to stronger refugee and IDP protection.

The R2P doctrine as set out in General Assembly resolution 60/1 (2005)¹ subscribes to the conception of ‘sovereignty as responsibility’ (Deng et al 1996), and therefore advocates an enhanced role for the international community in relation to states who are unwilling or unable to protect their citizens from the most egregious crimes under international law, specifically; genocide, war crimes, and crimes against humanity, as well as ethnic cleansing (Evans 2008: 31-55).²

I provide a brief outline of the R2P doctrine, but focus on developments in 2009. Since January 2009, the Secretary-General and the General Assembly (GA) have sought to ‘operationalize’ the doctrine but have also debated the concept in order to allay concerns and misconceptions (Secretary-General 2009: 1). R2P can be best understood in this new implementation phase as ‘three pillars and four crimes’ (Munoz 2009), to be implemented in a way that is ‘narrow but deep’ (Secretary General 2009: 2).

The first pillar represents the primacy of state responsibility, the second pillar refers to the duty of the international community to provide assistance, and the third pillar is that the international community will react to violations of genocide and mass atrocity in a timely and decisive manner (Secretary-General 2009: 2). The emphasis of the R2P doctrine in its implementation phase will be on the *prevention* of genocide and mass atrocities.

There has been an expectation among refugee and IDP advocates that R2P will be beneficial, or even revolutionary, in advancing debates on protection of people who are forcibly displaced (cf Edwards 2009: 790). I enumerate the logical and conceptual connections between the goals of R2P and refugee and IDP protection, and they are substantial. The very fact of the political organs of the UN engaging meaningfully and more often with protection debates should be beneficial.

However, there are certain signs that these latest 2009 developments bode ill for refugee and IDP protection, and not because of the more usual charge of political selectivity of R2P, but because of more subtle flaws. This is partly because of the narrow focus of the prevention pillar has combined with the pernicious influence of UN architecture, as I shall describe, and partly because there may be something more fundamentally wrong

¹ Known as the ‘2005 World Summit Outcomes’.

² For an explanation of the elements of these crimes under international criminal law, see A. Cassese 2007.

with the concept itself. As Jose Alvarez puts it, there may be black marks ‘built into the very soul’ of R2P (2007: 6), which the implementation debate brings to light.

In the most comprehensive analysis so far of the benefits of R2P doctrine and refugee and IDP protection, Brian Barbour and Brian Gorlick profess surprise that the grant of asylum as a preventative tool of protection is not mentioned once in the core documents of R2P (2008: 24). I will demonstrate that this was predictable. Refugee and IDP advocates tend to contemplate the R2P doctrine with the overlay of a humanitarian or human rights lens.

Refugees are often perceived by the Security Council as a threat to international peace and security, destabilising influences, especially since 2001, and at best as the ‘passive recipients’ of protection (Edwards 2009: 805).³ Nevertheless, the reference to refugees as the subject of protection does now appear in the Secretary-General’s 2009 report, partly due to UNHCR advocacy. If R2P is to become an ally of refugee and IDP advocacy, there is serious conceptual work to be done to ensure the human rights foundations of the doctrine shine through, and to encourage voices from the Global South.

About R2P

R2P as a doctrine is still marginal to international law, but is increasing its influence in soft law at a rapid rate. R2P had important antecedents, developed over a fairly short time-frame (by UN standards), beginning with the Report of the International Commission on Intervention and State Sovereignty (ICISS), convened by the Canadian Government in December 2001. This was a reaction to the Kosovo and Rwanda conflicts (Weiss 2007), both of which featured the forced displacement of significant population numbers. Subsequent reports showed ongoing UN interest and slightly different iterations of the concept of the R2P, including:

- December 2004: *A More Secure World: Our Shared Responsibility*, Report of the United Nations Secretary-General's High Level Panel on Threats, Challenges and Change;
- March 2005: *In Larger Freedom: Towards Development, Security and Human Rights for all*, Report of the Secretary-General of the United Nations; and (subsequent to the World Summit); and
- 2006: United Nations Security Council Resolution 1674 (April) and resolution 1706 on Darfur (August).⁴

The R2P doctrine as it now stands is derived from three paragraphs of the 2005 World Summit Outcome:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

³ My wider research project relates to reconceptualising refugees and IDPs as transitional justice actors (Harris Rimmer 2009a).

⁴ For a genealogy of the changes to the doctrine at each stage see Bellamy 2006.

This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

The World Summit outcomes also included agreements to establish a Human Rights Council, a Peacebuilding Commission to help countries transition to peace, and a commitment to achieve the Millennium Development Goals by 2015. It was also the forum in which UN members affirmed the Guiding Principles on Internal Displacement⁵ (at para 132). The International Criminal Court has also commenced prosecutions, which has jurisdiction over the four crimes mentioned as the basis of the R2P doctrine, but only after the fact in relation to individual prosecutions.

This paper focuses only on very recent developments, starting in January 2009, with the release by the Secretary-General on *Implementing the Responsibility to Protect*, followed by the consideration of the report by the GA from 21-23 July 2009. These comments therefore represent ‘first thoughts’.

An Informal Interactive Dialogue was held featuring panellists Noam Chomsky (US), Jean Bricmont (Belgium), Gareth Evans (Australia) and Ngigi wa Thiong’o (Kenya) on 23 July, which was followed by a GA plenary meeting where the World Summit outcomes were reaffirmed but considerable criticisms were voiced (GCR2P 2009). On the whole, in my view, this was a healthy airing of concerns, especially from the Global

⁵ E/CN.4/1998/53/Add.2, 11 February 1998

South, suspicious of intervention on generalized grounds. There seem to be some issues with the R2P ‘brand’ rather than the 2005 Outcomes themselves. On 14 September 2009, the General Assembly adopted by consensus its first resolution on the R2P, agreeing to hold further discussions on the international understanding to intervene to stop atrocities from taking place. The resolution notes ‘with appreciation’ Secretary-General Ban Ki-moon’s July report calling for speedy action ‘to turn the promise of the responsibility to protect into practice’.

Prophets and blasphemers

With apologies to Homer, these three paragraphs from the World Summit outcomes have launched one thousand interpretations, with the academy split between prophets⁶ and blasphemers⁷, operationalists and comparators.⁸ The doctrine has also generated a plethora of toolkits, protection ‘pyramids’, and military doctrines, many of which refer to displacement in generalised terms.

The most challenging proposition⁹ for humanitarian actors is whether R2P can be of worth when only weaker states will ever be the recipients of intervention due to the operation of the Security Council. This was the sticking point in the July GA debate, which was framed by an extremely hostile ‘concept note’ sent to states by the President of the GA, Mr Miguel d’Escoto Brockman, to accompany the agenda (Office of the President of the GA 2009).

It stated, inter alia, that ‘[c]olonialism and interventionism used responsibility to protect arguments’ (2009: 1) and that R2P should not become a ‘jimmy in the door of national sovereignty’ (2009: 2). There have often been allegations that R2P has a post-colonial or imperialist tang about it (Busser 2008). The ‘narrow but deep’ strategy seeks to soften these criticisms.

In contrast, by and large, civil society organisations and humanitarian agencies have been positive about R2P, and less interested in the political fine print. In some ways, this is self-interested. As the Secretary-General says: ‘[t]here is a common element in these diverse efforts to help states help themselves: they largely depend on civilian, not military, expertise and presence’ (2009: 18).

⁶ See generally the writings of A. Bellamy and G. Evans.

⁷ See generally J. Alvarez and A. Orford. In the latest volume of the *Michigan Journal of International Law* Anne Orford compares the R2P doctrine to the Holy Roman Empire in Europe for its insistence on jurisdiction without territory.

⁸ See J. Smith 2006.

⁹ As an example of the more conceptual questions raised by the doctrine for humanitarian practice, commentators ask, is R2P really new? Is it repackaging? Does it underscore the obligations states already hold? If so, what value does it add? Is the R2P doctrine as accepted by the UN Summit in 2005 politically palatable in a way that humanitarian intervention was not, and if so why? Does it provide a coherent intellectual framework? (Gareth Evans’ thesis) Are there cases when we need to aim for the ‘least worst’ outcome for civilians? Can an international alliance command consent of the affected population? Is R2P more about principled use of power rather than the political use of power? These were questions raised at a public symposium at ANU on 30 October 2008 on ‘Enhancing Protection of Civilians in Protracted Conflicts’ by humanitarian actors, and can serve as a proxy for sectoral concerns.

The Engaging Civil Society project has undertaken global consultations with civil society with the aim of facilitating advocacy and implementation of R2P around the world (R2PCS, 2009). Even where humanitarian experts like Roberta Cohen have had weighty criticisms of the doctrine, they have come down in support (Cohen 2009). For example, Cohen acknowledges the problem of inconsistency of application and asks four apposite questions of R2P from a humanitarian perspective.

- how far does the application extend? (explored further below in relation to recent conflict in Kenya)
- when does R2P apply, and when does it not, in humanitarian emergencies?
- will R2P politicize humanitarian operations?...To what extent will R2P encourage humanitarian organizations to engage more actively in protecting the physical safety and human rights of civilians caught up in humanitarian emergencies? To what extent will it encourage UN human rights offices to play a protection role in the field, which they have not done so far?¹⁰
- will misconceptions about R2P undermine humanitarian approaches?

But Cohen concludes that R2P is a tool the humanitarian community should support. I suspect this support is grounded in two main reasons, firstly for the simple reason that the aims of the R2P doctrine are noble, and this inspires passion. Who can argue with the proposition that ‘massive and systemic violations of human rights... should not be allowed to stand’? (Annan 1999) Erika Feller from UNHCR expressed the hope in 2006 that the international adoption of R2P will enable states to move beyond issues of sovereignty and security in order to respond in a more pure sense to human suffering:

The significance of the concept of a responsibility to protect is that it does not rest on mandates, or indeed on international conventions. Rather, it comes into play in response to needs... The protection situation may be equally acute for an earthquake victim in Pakistan, for an IDP in the Sudan, or for a victim of trafficking in Eastern Europe (Feller 2006).

The second reason is because many civil society groups and agencies feel that the root of many of their problems in attempting to protect civilians lie in being unable to engage political will from key states in a timely manner, and then convert this will into practical assistance. The R2P doctrine holds such promise, over time, although possibly not yet if the recent GA debates are any guide.

¹⁰ ‘Some NGOs are wary of the use of force for humanitarian purposes under any circumstances and argue that the integration of humanitarian aid into broader political and security frameworks will identify aid workers with one side in a conflict and expose them to attacks. In the DRC, Médecins Sans Frontières has tried to work on both sides of the conflict whereas UN peacekeepers have acted to support the government.’ (Cohen 2009).

As High Commissioner for Human Rights Navi Pillay says; '[w]e should all undertake an honest assessment of our ability to save lives in extraordinary situations' (2009). Much depends therefore, on how the R2P doctrine is implemented. In my view, the 2009 developments are flawed in that even the prevention pillar is too reactive and unnecessarily shallow.

Implementing R2P

In January 2009, the Secretary-General released a report on *Implementing the Responsibility to Protect*, consisting, as noted above, of a three-pillar strategy which replaced the earlier ICISS typology of prevent, react and rebuild.

- Pillar one: the protection responsibilities of the state;
- Pillar two: international assistance and capacity-building;
- Pillar three: timely and decisive response;

The strategy 'stresses the value of prevention and, when it fails, of early and flexible response tailored to the specific circumstances of each case' (2009: 2). The Secretary-General canvases a wide array of activity relating to R2P, but notes that R2P requires a 'narrow but deep' response (8).

When a state is bent on committing crimes against its citizens, the Secretary-General recommends moving straight to a 'timely and tailored response' (9). In other words, R2P must keep its focus on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity:

To try to extend it to cover other calamities, such as HIV/AIDS, climate change or the response to natural disasters, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility. (8)

However, he adds:

[t]he Summit's enunciation of the responsibility to protect was not intended to detract in any way from the much broader range of obligations existing under international humanitarian law, international human rights law, refugee law and international criminal law (5).

In fact, under Pillar One, signing treaties, including the 1951 Convention is encouraged:

States should become parties to the relevant international instruments on human rights, international humanitarian law and refugee law, as well as to the Rome Statute of the International Criminal Court. But this is just a first step towards full implementation in practice. (11)

Under Pillar Two, UNHCR as well as other UN actors, is encouraged to use its 'good

offices and public diplomacy efforts' (15) to assist states. UNHCR is also mentioned as an example of an agency with on-site missions that can provide opportunities for delivering 'candid messages', 'directly to key decision makers on behalf of the larger international community, for example, by trying to dissuade them from destructive courses of action that could make them subject to prosecution by the International Criminal Court or ad hoc tribunals' (23). The Secretary-General does acknowledge that human rights activities of the UN can protect lives, and adds:

Less recognized in this context, the work of the Office of the United Nations High Commissioner for Refugees in obtaining grants of asylum and protecting refugees has served numerous potential victims of crimes and violations relating to the responsibility to protect (17).

Finally the Secretary-General talks about R2P as a focal point for current efforts of field agencies:

The United Nations and its range of agencies, funds and programmes have in place critical resources, activities and field operations that are already making important contributions to the elimination of these man-made scourges. They could do that much more effectively if goals relating to the responsibility to protect, including *the protection of refugees and the internally displaced*, were mainstreamed among their priorities, whether in the areas of human rights, humanitarian affairs, peacekeeping, peacebuilding, political affairs or development. Each of these areas of United Nations activity have much to bring to the common effort. The emphasis of the present report is therefore on forging a common strategy rather than on proposing costly new programmes or radically new approaches. (29, emphasis added)

It is clear that refugee and IDP protection are not a clear focus of the implementation phase of the R2P. Humanitarian agencies and civil society groups have walk-on parts, not leading roles, which are saved for high level diplomats, peace-keepers and technocrats (Orford 2009:1014-5). Nevertheless, the relative benefits and disadvantages of the prevention pillar of R2P for refugee and IDP protection are analysed below.

Refugees, IDPs and R2P

There is an obvious connection of intellectual heritage between R2P and the protection of IDPs. The concept of 'sovereignty as responsibility' was developed by Francis Deng and Roberta Cohen and others (Deng et al 1996) as the rationale for the Guiding Principles on IDPs (Weiss 2007: 89-98).

There are two other primary connections between the movement of people and the prevention of genocide and mass atrocities. The forced movement of people is often the first indicator to the international community that an armed conflict is developing from a series of incidents or emergencies (OECD 2009), but can also be epiphenomenal.

Refugee stories of persecution are a good way of identifying whether the conflict may evolve into genocide or crimes against humanity, given the definition of a refugee that is

the subject of an individual status determination focuses on several grounds of persecution including race, religion, political opinion and membership of a social group (1951 Refugee Convention, Article 1). Refugees and IDPs then perform the function of 'barometer' (Edwards 2009: 800 citing UNHCR) or the proverbial 'canary down the mine'. Similarly, refugees and IDPs are often the best judges of when it is safe to return to their country of origin.

The second link is that the international norm of granting asylum to refugees or assistance to IDPs is an important form of protection of civilians during conflict (Barbour and Gorlick 2008). Since the ICISS report in 2001, the aspect of the R2P doctrine that has had most impact on refugee law and related practice of UNHCR is that of access to humanitarian assistance for IDPs (Loescher et al 2008: 67; Mooney 2008).

Yet the protection of IDPs does not feature at all in the Secretary-General's 2009 report, with only a token reference to the importance of asylum as a protection measure. Cohen decries this fact, and draws attention to the lack of evidence of R2P on the ground in the recent case of IDPs in Kenya:

In the case of Kenya, the first and only country to which R2P was applied, some 1,500 people died and some 600,000 were uprooted prior to international involvement. So R2P was not a preventive measure, but it did succeed in halting the violence and preventing further displacement. But should the story end there or should it extend to ensuring that displaced people are effectively protected in the aftermath of violence? Reports show a lack of security for ethnic groups in areas of return, an absence of planning for those who do not wish to return, inadequate compensation for destroyed homes and property. Moreover, thousands still live in camps and temporary settlements. Yet we don't hear any more about R2P in Kenya. Nor do we hear about the promotion of compliance with the Guiding Principles on Internal Displacement with regard to rebuilding. (Cohen 2009)

The ICISS report itself shows that these obvious connections with refugee and IDP protection were not part of the foundation documents and that the conception of refugees in particular is very problematic. The ICISS report in 2001 focuses on refugees not IDPs, and only in two contexts: first, arguing that a major reason for engaging with the prevention of conflict is the avoidance of refugee 'outflows' or other 'spillovers' (ICISS 2001: 5, 70). The second focus of the ICISS report is on the difficulties of facilitating smooth returns to the country of origin in the post-conflict phase (Evans 2008: 168-9).

In these conceptions, refugees and IDPs do not meet the threshold of an R2P prevention focus or intervention in their own right; instead, they are characterised as a burden (Chimni 2000: 252). The language of international refugee protection has long been that of 'burden-sharing' (Loescher et al 2008). Even if this was ever a useful description, the 'burden' has changed dramatically in the past twenty years. This is for two reasons: the challenges to refugee and IDP protection have changed dramatically since 2001, and wars themselves have changed in character. The challenges of protection are therefore more complex.

With regards to challenges for refugee and IDP protection, a recent article in *The Economist* titled 'Lost in Limbo' outlined trends in the situation of refugees globally, in the wake of sophisticated policies and techniques employed by Western countries to deny entry to asylum-seekers at the frontier (2009). This is especially since 2001 (Edwards 2009: 775-777).¹¹ The article further reveals that those fleeing persecution are now less likely to cross borders in general, and even those who do struggle to find durable solutions to their plight. While refugee numbers have dropped over the past fifteen years, the number of IDPs is on the rise.

- nearly two-thirds of refugees are now in protracted refugee situations, meaning that 25,000 or more refugees from the same country have been forced to remain in a host country for at least five years;
- about one-third of the over ten million refugees in the world today live in refugee camps; in Africa, it is two-thirds;
- eighty percent of all refugees live in poor rather than in wealthy countries. (The Economist 2009).

As poor host countries are less likely to have the resources to care for refugees, these refugees become more and more dependent on the UNHCR. A recent paper by Amy Slaughter and Jeff Crisp underscores that UNHCR was not designed to provide long-term governance to large refugee populations (2009). Others have raised institutional concerns with UNHCR's role in protracted displacement, including serious deficits of democratic participation and procedural due process (Kagan 2006).

Armed conflict has also changed into 'new wars' (Kaldor 2006), or as the Asia-Pacific Centre for R2P rather demurely terms them, 'uncivil wars' (2009a). Mary Kaldor's conception of 'new wars' is based on the idea that all people from the 'other' side are the enemy, and therefore legitimate targets (2006: 107). She puts forward the disturbing idea that in modern warfare civilian losses are even desirable to the modern military if the aim is to guard against losses of soldiers as much as possible and to heighten psychological harm to the opposing side (2006: 61).

Under these new wars, the lines between mass atrocities and serious human rights violations; emergencies, civil strife and all-out war; between forced displacement and genocidal intent will be blurred, fluctuating lines (von Hom 2005). This may not be a new phenomenon in historic terms but the foundation of international humanitarian law is built on the existence of formal military structures.

We have seen this complexity play out in 2009 in Gaza, Sri Lanka, the DRC, Darfur, Georgia and other places around the globe. We have seen the various parts of the UN

¹¹ Alice Edwards provides an excellent, if depressing overview of the contemporary protection problems. 'The nation-state system in this latter context has witnessed the overall diminution of asylum space due to the erection of toughened border controls and other deterrence measures such as carrier sanctions, administrative detention and reductions in economic and social rights, extraterritorial processing and 'safe third country' arrangements, restrictive definition of the term 'refugee,' and the establishment of lesser protection statuses in replacement of asylum'. (Edwards 2009: 776, 795-6)

machinery struggle to respond to these conflicts, and rarely in a unified manner. In some cases, such as the Human Rights Council special session on Sri Lanka, the attempts have ended in travesty;¹² in others, such as Gaza, UN measures led to recriminations and deadlock in the political forums (Harris Rimmer 2009b). The debate of the Goldstone report in the Human Rights Council in this sitting has already been fraught.¹³ As UNGA 64 began, it was clear that no new country resolutions would be able to find their way to a vote, no matter how bleak a situation was in terms of human suffering.

What was particularly difficult in 2009 was to ensure the protection of civilians in minority groups (Tamils) or weak groups (Palestinians), even when there was evidence that crimes against humanity or war crimes were occurring. Conversely, there is often rhetoric that military interventions are aimed at the protection of the rights of women and children in places such as Iraq and Afghanistan will little evidence of any improvement in their situation for many years afterwards (Harris Rimmer 2009c).

It is because of such complex and interrelated changes to the humanitarian and political landscape that ideas such as human security have gained traction (Edwards 2009). What is needed, therefore, is for the prevention pillar of the R2P to be complex, nuanced and substantial in response to these challenges. The ‘narrow but deep’ approach articulated by the Secretary-General in January is not reassuring in this regard.

Reactions to the prevention pillar

The prevention pillar is the least analysed in the literature (McClellan 2008: 17; Nasi 2009: 2; Bellamy 2009: 118) and has the least institutional resources behind it (Nasi calls it the ‘weakest link’ 2009: 5), yet it is the heart of R2P.¹⁴ Based on the *Human Security Report 2005*, Andrew Mack argued in 2008 that the Security Council should focus more on peace-making and post-conflict peace building, by promoting norms in resolutions, shaping the mandates of peace-keeping operations (PKO), and the referring of cases to the International Criminal Court (ICC). In other words, there should be incremental but practical changes made to implement the responsibility to react.

I argue that the UN must also improve its conflict prevention mechanisms, under which a truly ‘deep’ prevention approach means granting a higher political value to the human rights and gender work of the UN and building better networks with communities (Edwards 2009: 805 citing Guterres). The narrow focus on prevention of conflict has no specific UN machinery or structure behind it if the human rights and development work of the UN is excluded. Thus at present, the R2P prevention pillar lacks adequate institutional and conceptual foundations.

¹² 11th special session of the Human Rights Council: "The human rights situation in Sri Lanka" - 26 and 27 May 2009; Adopted resolution S/11/1 ‘Assistance to Sri Lanka in the promotion and protection of human rights’.

¹³ Final report of the United Nations Fact Finding Mission on the Gaza Conflict, 15 September 2009, due for debate on 29 September 2009, available at http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf.

¹⁴ As the Secretary-General recently warned, ‘[t]he world is over-armed and peace is under-funded’. Secretary-General's opening address to the 62nd Annual DPI/NGO Conference – ‘For Peace and Development: Disarm Now!’ Mexico City, 9 September 2009.

Based on a close reading of the Secretary-General's speech, and structured around the analysis of this issue raised by Alex Bellamy in a recent article in *International Studies Perspectives* (Bellamy 2009), my argument is that the 'narrow but deep' strategy for prevention activities is politically understandable but logically misconceived, and will militate against the doctrine holding value for the protection activities of UNHCR and other actors.

I address Bellamy's six arguments against broadening the scope of protection activities from a human rights and human security perspective. One particular point of difference is the attitude taken to economic injustice and forced displacement. The mismatch between civilian's fear of displacement in armed conflict, captured by a recent ICRC survey, and the way R2P deals with refugees and IDPs provides an excellent example of how R2P could benefit from voices from below.

The 2009 developments show a clear shift away from the idea of prevention of root causes in the ICISS report (2001: 23). Bellamy argues that the ICISS report put forward an 'unclear conception of prevention' (2009: 119). He notes that diplomatic ideas of prevention are associated with early warning, preventative diplomacy, and crisis management (119), as opposed to structural prevention focused on the root causes of conflict such as economic inequality and underdevelopment.

Components of conflict prevention under this conception 'point to good governance, human and minority rights, environmental protection, security sector reform and legal reform' as crucial elements (120), in other words, a classic human security approach. Bellamy has six problems with this approach from an 'R2P advocate' perspective. He claims:

1. It is difficult to discern measures directed specifically at conflict prevention and those only indirectly related to violence. Structural prevention makes it 'almost impossible' to 'define a clear range of measures'.
2. There is no direct causal link between economic equality and the commission of genocide and mass atrocities (citing Nazi Germany and Former Yugoslavia as examples).
3. There are myriad political problems with attaching structural prevention to R2P, because states would claim interference with domestic affairs.
4. A focus on structural prevention would create 'turf' issues between diplomats and development actors.
5. There is a branding issue – advocates need 'to protect R2P's conceptual identity against those who would weaken it by applying it to scenarios such as generalized human rights abuse or environmental degradation'.

6. There is no support in the Global South for such a widening of R2P to include structural prevention. (120)

Bellamy notes that this ‘is *not* an argument for narrowing the scope of conflict prevention per se’ (120), and then goes on to focus efforts under R2P on the protection of civilians by peacekeepers (as does Nasi 2009) and early warning diplomatic efforts (120-124). One might put forward arguments about the factual claims in contentions 2 and 6.

One might also comment that the six objections display a certain defensiveness, which may be a reaction to the politics involved. There is also an absence of interest in the aims of UN beyond the maintenance of international peace and security in very traditional terms, where refugees remain burdens. For a doctrine built on human rights norms, there is a strange relationship between the two, and the same could be said for human rights in the Security Council generally (McClellan 2008: 15).

A critical analysis

R2P is cloaked in human security language, but the World Summit Outcome emphasised a very traditional sense of security and sovereignty as exercised by high diplomacy backed by the threat of military intervention (McClellan 2008: 12, 13). R2P therefore speaks of the importance of the prevention of mass atrocities but Bellamy is right that this does not mean the type of ‘structural prevention’ or human rights violations leading to forcible displacement that refugee and IDP advocates might strive for.

The problem with Bellamy’s argument is, of course, that it is not preventative at all. The deployment of peacekeepers, the crisis management activities of diplomats, these all flow from an armed conflict already in full flight, from the international community acting, as it usually does, within a ‘discipline of crisis’ (Charlesworth 2002).

The causal links between structural inequality and mass atrocity crimes which Bellamy needs as proof of worth will vary with context and will not come sign-posted as leading to genocide, and might happen at a blisteringly rapid pace. It is more likely that the link to genocide and mass atrocity will not be found in relation to minority groups or weak states. Is the link between military intervention and protection of civilians backed by any firm evidence? Rwanda is the situation the world wants to avoid, but even in Rwanda events may unfold differently in the future.

A preventative approach to the risk of mass atrocity means that such interventions may sometimes be proved wrong, because judgments are made genuinely before the fact. Getting that judgment as correct as possible will be crucial. Fears that the intervention pillar has the capacity to undermine the neutrality of humanitarian assistance are well-founded, and this will affect the credibility of the prevention and reaction pillars.

In my view, the best basis of protection of civilians in a time of conflict is trust in the international community during peacetime, and the best chance of an early warning is to hold a legitimate place of trust in the affected community beforehand, as a neutral supporter and provider of human rights protections and development assistance. This is a contention which requires research data to test it.

The most effective organisation in providing protection in Gaza this year, in my view, was the ICRC and the Red Cross family, but because of the confidentiality requirements of their mandate, their role in protection does not allow for the broader task of alerting the international community to an impending crisis. Notably UNRWA is developing a stronger protection focus.

The best providers of protection assistance might often be non-governmental, but an overt protection mandate will require adjustment for many agencies.¹⁵ The future success of the prevention pillar in part relies on taking civil society organisations seriously and the voice of civilians more seriously to ask their consent in building the foundations of trust. The Global South may better respond to this approach, and the R2P ‘brand’ may also benefit in the process.

A key feature of human rights and human security is that ‘people matter’ (McClellan 2008: 21; Edwards 2009: 787, 802). R2P rhetoric espouses this, but the implementation phase lacks any sense of the importance of the empowerment of affected civilians (Orford 2009:1011), and does not acknowledge the participation rights built into the humanitarian agencies of the UN, or even the ‘soft power’ approaches of the UNGA Third Committee.

Often it seems that R2P is the forum for a conversation or power struggle between the UNGA and the Security Council, rather than outreach from the UN to civilians in need of protection, who are mainly in the Global South (Orford 2009: 995). While some scholars have pointed out that the development and promotion of R2P have overlooked important perspectives, such as those of women (McPhedran, Sherret and Bon 2005), dissonant voices ‘from below’ have not yet been adequately acknowledged by the R2P mainstream.

The voices of civilians from the Global South have insights to offer. Forced displacement is a primary fear of civilians experiencing armed conflict, and I assert that prevention of displacement will go a long way to preventing genocide and mass atrocities. How far is an inexact science, but in my view that such prevention would be a sounder investment by the international community than a pure focus on peacekeeping and diplomacy.

A recent ICRC survey *Our world. Views from the field* gave voice to the impact of hostilities on civilians. It asked civilians about their personal experiences, needs, worries, expectations and frustrations of conflict-affected populations in eight countries: Afghanistan, Colombia, the Democratic Republic of the Congo (DRC), Georgia, Haiti, Lebanon, Liberia and the Philippines.

Of the more than 4,000 people surveyed, 44% overall said they had personally experienced armed conflict. The highest figures were in Liberia (96%), Lebanon (75%) and Afghanistan (60%). Around 66% of all respondents said they had felt the consequences of hostilities, even if they did not consider themselves personally or directly affected. This includes almost everyone in Lebanon (96%), Liberia (96%), Haiti

¹⁵ Many humanitarian aid workers have difficulty with the concept of protection and argue that going beyond delivering food, medicine and shelter could lead to denial of access and to their own expulsion. It is political, they say, to advocate for the physical safety and human rights of IDPs, and will interfere with their relationships with governments on humanitarian and development issues. Other aid workers, however, consider protection essential to their work, and argue that when genocide and atrocity crimes are being committed, neutrality is not an option’ (Cohen 2009).

(98%) and Afghanistan (96%).

The survey reveals that displacement, separation from family members and a lack of access to basic necessities are among people's most common experiences and biggest fears (2009: 3). It also gives a rare insight into what people on the ground fear most from conflict and what they want from the international community. It is my contention that the R2P doctrine and UN machinery should be more attuned to these express desires and fears.

There may therefore, be better ways than those envisaged by the R2P doctrine of maintaining and enhancing a civilian humanitarian 'space' in a conflict or emergency zone, and of course Bellamy states that the narrow approach of R2P does not detract from other conflict prevention activities. But in political terms, it does just that - all the 'oxygen' has so far been taken by military intervention aspect of the doctrine. The game so far is a zero-sum game.

In the 1990s there was a nascent debate about a right to humanitarian assistance and the need for a 'humanitarian space' for NGOs (building from the Red Cross protections in the Geneva Conventions) that seems to have been completely derailed in this decade in UN forums by discussions about the military intervention aspects of the R2P doctrine. There were some positive signs that this debate was coming back into vogue in the Secretary-General's recent report on the protection of civilians in May and the High Commissioner for Human Rights report on the prevention of genocide for the 10th session of the Human Rights Council.¹⁶

Finally, the narrow focus of prevention excluding serious human rights violations is misguided because the international criminal offences in question were not designed as a basis for preventative activity, but for justice and punishment (Orford 2009: 1006). The 2007 *Bosnian Genocide* case in the ICJ does give useful guidance on the components of a state's responsibility to prevent genocide (McClellan 2008: 23).

But these crimes, especially genocide, sit at the apex of human rights law, as part of a continuum of violations which deny common humanity and integrity of an individual. Generalised human rights violations or environmental disasters may need to engage R2P in a particular context, depending where they sit on the continuum, as they may be the best indicator of crimes against humanity unfolding. If the aim is truly prevention of mass atrocities, we need to keep an open mind. Cohen explains:

While atrocity crimes can be expected to produce emergency situations and displacement, they are not the only cause. There will be many humanitarian situations where R2P will not apply. Natural disasters and climate change, for example, can be expected to uproot tens of millions and create severe assistance and protection problems. R2P advocates have ruled out applying the concept to natural disasters, but this decision may be questionable in cases where crimes against humanity are committed in response to disasters and the victims are in need of international protection. The debate over Cyclone Nargis in Burma brought that problem to the fore (2009).

¹⁶ S/2009/277, 29 May 2009, and A/HRC/10/25 (advanced unedited version).

The arguments to keep a narrow prevention focus are more logical when considering the politics of the triggers for interventions, or timely and decisive action. Those triggers should have a firm and objective basis in international law. Prevention activities should build on those exceptions to sovereignty that are already accepted by most states, long-term, culturally appropriate human rights and development work, and as bottom-up as possible.

So the prevention pillar of R2P at present faces the real prospect of being 'narrow but shallow', forcing a rebranding of the work of the human rights and humanitarian agencies of the UN, but not making any real attempt to make this relevant architecture of the UN focus on proactive attempts to prevent serious human rights violations or prevent forced displacement as a protection activity.

Anne Orford would not be surprised by this finding. She states that the R2P doctrine 'stands in a complicated relationship to a long tradition of absolutist or authoritarian state theorising in which the relation between state and subject was figured in terms of protection and obedience' (Orford 2008).

She argues that the overall effect of this is 'radically to politicize the international law relating to human rights and development, use of force and post-conflict administration' (2008). The juncture faced by refugee and IDP advocates may be to eschew R2P, unless their support can be earned by a genuine focus on the prevention of forced displacement amongst its goals.

Conclusion

Marc Anthony's famous eulogy in Shakespeare's *Julius Caesar* offers a series of inversions, denouncing Caesar's murderers while seeming to praise them. Unlike him I have come to praise R2P, not bury it, noting that R2P advocates are 'all honourable men'. But the doctrine needs more work to become something conceptually sound and useful for refugee and IDP protection. Based on an analysis of the 2009 debates, refugee and IDP protection is peripheral to the R2P doctrine, and may be excluded from activities under the prevention pillar.

I have argued that more analytical complexity around the idea of prevention is welcome, and more nuance and critique is required in implementing the prevention pillar of the R2P, not less. It would benefit from the insights of many intellectual fields of study – criminology, human security – not just international relations or law. This broadening and deepening may improve R2P's political reputation with the Global South as well. In particular, R2P currently displays a very top-down approach, antithetical to the human rights basis of the doctrine. I have argued that:

The need to maintain a high threshold/hierarchy of crimes such as genocide as a trigger for intervention is logical but flawed when applied to the prevention pillar. This is most obvious when it comes to the treatment of refugees and IDPs by the R2P doctrine. A 'narrow' focus that does not consider structural gender inequality, economic injustice or minority rights is unlikely to prevent genocide and mass atrocity.

Prevention strategies rely on 'soft power' but are narrowly defined again to mean UN's political arm, diplomacy and SC actions other than military. Civil society actors need to become more central to the realisation of R2P aims.

The combination of these two flaws plus lack of ongoing UN engagement in developing countries which emphasise the protection of the human rights of civilians in times of peace, mean that there is a weakened basis for humanitarian assistance to minority groups within a state, or weak groups/states during conflict.

The R2P doctrine could be more important if it moved beyond the concept of passive protection needs to a focus on the rights of those affected by conflict to design solutions for its resolution. This may be the real test of R2P.

References

- Abramowitz, M. & T. Pickering 2008, 'Making Intervention Work: Improving the UN's Ability to Act', *Foreign Affairs* (September/October) 87(5): 100-109.
- Alvarez, J. 2007. The schizophrenias of R2P. Hague Joint Conference on 100 years of international law, 30 June.
- Asia-Pacific Centre for R2P 2009a. Protecting Civilians in Uncivil Wars. Brisbane, August.
- Asia-Pacific Centre for R2P 2009b. Preventing Genocide and Mass Atrocities. Brisbane, June.
- Asia-Pacific Centre for R2P 2009c. R2P and the protection of civilians: Asia-Pacific in the UN Security Council: update 1. Brisbane, February.
- Belloni, R. 2006. 'The Tragedy of Darfur and the Limits of the 'Responsibility to Protect'' *Ethnopolitics*, 5(4) November: 327-346.
- Barbour, B. and Gorlick B. 2008. 'Embracing the 'Responsibility to Protect': a repertoire of measures including asylum for potential victims'. *International Journal of Refugee Law* 20:4, 533-566.
- Bellamy, A.J. 2009. 'Realizing the Responsibility to Protect', *International Studies Perspectives*: 10(2): 111-128.
- Bellamy, A.J. 2008. 'The Responsibility to Protect and the problem of military intervention', *International Affairs* 84(4): 615-639.
- Bellamy, A.J. 2006. 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', *Ethics & International Affairs* 20(2): 143-169.
- Busser, M. 2008. 'Interrogating the Ethics of the Responsibility to Protect'. Paper presented at the annual meeting of the ISA's 49th Annual Convention, Bridging Multiple Divides, Hilton San Francisco.
- Cassese A. 2007. *International criminal law*. (2nd ed), Oxford: Oxford University Press.
- Chandler, D. 2004. 'The responsibility to protect? Imposing the 'Liberal Peace'', 11 *International Peacekeeping* 1, Spring: 59-81.
- Charlesworth, H. 2002. 'International Law: A Discipline of Crisis'. 65 *Modern Law Review* : 377-392.
- Chimni B.S. 2000. 'Globalization, Humanitarianism and the Erosion of Refugee Protection' 13 *Journal of Refugee Studies* 243.
- Cohen R. 2009. 'The responsibility to protect: The Human rights and humanitarian

dimensions', Harvard Human Rights Journal Annual Symposium, February. Accessed from <http://www.reliefweb.int/rw/rwb.nsf/db900SID/VDUX-7PTTLY?OpenDocument>,

Cooper, R.H. and J. Voïnov Kohler (eds.), *Responsibility to Protect: The Global Moral Compact for the 21st Century*, New York: Palgrave Macmillan, 2009.

Deng, F., Kimaro, S., Lyons, T., Rothchild, D., and Zartman I. W. 1996. *Sovereignty as responsibility: conflict management in Africa*. Washington, DC: Brookings Institution Press.

Edwards, A. 2009. 'Human security and the rights of refugees: transcending territorial and disciplinary borders', 30 *Michigan Journal of International Law* 3: 763-807.

Evans, G. 2008. *The Responsibility to Protect: Ending mass atrocity crimes once and for all*. Washington DC: Brookings Institution Press.

Evans, G. and Sahnoun, M. 2002. 'The Responsibility to Protect' *Foreign Affairs*, Nov/Dec, 81(6), pp. 99-110.

Feller, E. 2005. 'The Responsibility to Protect – Closing the Gaps in the International Protection Regime and the New EXCOM Conclusion on Complementary Forms of Protection.' Speech delivered at Moving on: Forced Migration and Human Rights conference, NSW Parliament House, Sydney. 22 November.

Global Centre for the Responsibility to Protect, 2009. *Implementing the Responsibility to Protect: the 2009 GA Debate: an assessment*, New York, August.

Global Centre for the Responsibility to Protect, 2008. *The Georgia-Russia Crisis and the Responsibility to Protect: Background Note*, New York, 19 August.

Greatbatch, J. 1989. 'The Gender Difference: Feminist Critiques of Refugee Discourse' *International Journal of Refugee Law*, 1:4, 518-527.

Grono, N. 2006. 'Briefing — Darfur: The international community's failure to protect.' *African Affairs* 2006, 105(421): pp.621-631.

Harris Rimmer, S. 2009a. 'Reconceiving Refugees and Internationally Displaced Persons as Transitional Justice Actors' *CIGJ Issues Paper No.8*.

Harris Rimmer, S. 2009b. 'In Praise of Prevention: subverting the R2P doctrine', Paper delivered to ANZSIL conference, Wellington NZ, 2 July.

Harris Rimmer, S. 2009c. 'Struggling for women's rights in Afghanistan', *South Asia Masala*, September.

International Commission on Intervention and State Sovereignty, 2001. *The Responsibility to Protect*, International Development Research Centre, Ottawa, December 2001.

International Committee of the Red Cross (ICRC) 2009. Our World: View from the Field. Summary Report, available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/research-report-240609>, accessed 1 June 2009.

Kagan, M. 2006. 'The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination' *International Journal of Refugee Law* 18(1):1-29.

Kaldor, M. *New and old wars: organized violence in a global era*. Cambridge: Polity, 2006.

Kuperman, A. J. 2009. 'Rethinking the Responsibility to Protect', *The Whitehead Journal of Diplomacy and International Relations*, winter/spring, pp 33-43.

Loescher G., Betts A., and Milner J. 2008. *The United Nations High Commissioner for Refugees (UNHCR): the politics and practice of refugee protection into the twenty-first century*. London: Taylor & Francis.

McClellan, E. 2008. 'The Responsibility to Protect: the role of international human rights law'. *Journal of Conflict and Security* (advance access 30 June): 1-30.

McPhedran, M., L. Sherret, and J. Bond, 2005. 'R2P Missing Women: Canada's Responsibility to Perceive' (*International Women's Rights Project Discussion Paper*), Available at: http://www.iwrp.org/pdf/R2P_mcphedran.pdf.

Mooney, E. 2008. 'The Guiding Principles and the Responsibility to Protect', *Forced Migration Review* (Special issue GP 10: Ten Years of the Guiding Principles on Internal Displacement), December, 11-13.

Munoz 2009. 'The Responsibility to Protect: three pillars and four crimes'. *Human Rights and Human Welfare*, Working Paper No. 53, 1 August.

Nasi, H. 2009. 'Operationalizing the Responsibility to Protect and Conflict Prevention: dilemmas of civilian protection in armed conflict' *1 Journal of Conflict and Security Law* (advanced access 18 July 2009).

OECD 2009, *Conflict and Fragility: Preventing Violence, War and State Collapse: The Future of Conflict Early Warning and Response*. (Report available at <http://oberon.sourceoecd.org/v1=4380558/cl=42/nw=1/rpsv/ij/oecdthemes/99980010/v2009n6/s1/p11>, accessed 1 June 2009).

Office of the President of the General Assembly 2009. *Concept note on responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*. 17 July.

Orford, A. 2008. *The Responsibility to Protect and the politicization of international law*. Workshop at RegNet, ANU, November.

Orford, A. 2009. 'Jurisdiction without territory: from the Holy Roman Empire to the

Responsibility to Protect' 30 Michigan Journal of International Law 3: 981-1015.

Responsibility to Protect – Engaging Civil Society 2009. Global Consultative Roundtables on the Responsibility to Protect: Civil Society Perspectives and Recommendations for Action (R2PCS, New York, January).

Slaughter, A. and J. Crisp 2009. A surrogate state? The role of UNHCR in protracted refugee situations. New Issues in Refugee Research, Research Paper No. 168, UNHCR Working Paper, January.

Smith, J. 2006. 'The Responsibility to Reflect: Learning Lessons From Past Humanitarian Military Interventions' Journal of Humanitarian Assistance, March.

Stahn, C. 2007. 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm', The American Journal of International Law 101(99): pp99-120.

Thakur, R 2003. 'In defence of the responsibility to protect' The International Journal of Human Rights 7(3), October, pp. 160-178.

The Economist 2009. 'Lost in Limbo', 27 August, available at <http://www.economist.com/world/international/displaystory.cfm?story_id=14302845>, accessed 1 September 2009.

United Nations, 2009. President of the 63rd session UNGA, Interactive thematic dialogue of the UN GA on the R2P, 23 July 2009.

United Nations, 2005 World Summit Outcome, GA Res. 60/1, U.N. Doc. A/Res/60/1, 24 October 2005.

United Nations, In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary-General (2005) UN Doc. A/59/565

United Nations, A more secure world: Our shared responsibility, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change (2004).

United Nations Secretary-General 1999. 'Secretary-General presents his annual report to the General Assembly' Press release SG/SM/7136, 20 September.

Von Horn, H. 2005 'The Responsibility to Protect and the Root Causes of Conflict' Medicine, Conflict and Survival, 21(1) January, pp 44-47.

Warner, D. 2003 'Responsibility to protect and the limits of imagination' The International Journal of Human Rights, 7(3) October, pp 154-159.

Weiss T.G. 2007. Humanitarian intervention: ideas in action. Cambridge: Polity.

Weiss, T.G. 2004. 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era' Security Dialogue, 35: pp 135-153.

Wheeler, N. 2005. 'A Victory for Common Humanity? The responsibility to protect after

the 2005 World Summit.” Paper presented to ‘The UN at Sixty: Celebration or Wake?’ Faculty of Law, University of Toronto, Canada, 6-7 October 2005.

Wheeler, N.J. and F. Egerton 2009. ‘The Responsibility to Protect: ‘precious commitment’ or a promise unfulfilled?’ The Global Responsibility to Protect, Vol. 1, No. 1, pp. 1-19.