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R2P: From Slogan to an International Ethical Norm

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R2P: From Slogan to an International Ethical Norm

Pınar GÖZEN ERCAN*

ABSTRACT

Following the report of the ICISS in 2001, unanimous adoption of the concept of the responsibility to protect (R2P) in 2005 marked the milestone of a common understanding for responding to mass atrocities. In light of the transformations that R2P has gone through, while some in the mounting literature have been arguing that R2P is a developing legal norm, others have grown more critical of the concept. In the absence of a consensus regarding R2P's status, this article contributes to the literature by arguing that, rather than remaining a slogan or becoming a legal norm, R2P has evolved into an international ethical norm which constitutes a standard for appropriate behaviour for states individually and for the international community collectively. To this end, by distinguishing between the stages of the norm's construction and institutionalisation, the article traces R2P's evolution process and presents an up-to-date analysis in light of the most recent cases as well as the documents adopted within the UN.

Keywords: Responsibility to Protect, Sovereignty as Responsibility, United Nations, International Community, International Ethical Norm.

Koruma Sorumluluğu: Slogandan Uluslararası Etik Bir Norma

ÖZET

2001 yılında ICISS'in raporunu yayınlamasının ardından, 2005 yılında "Koruma Sorumluluğu" nun oybirliği ile kabulü büyük ölçekli insan hakları ihlallerine yanıt vermek için ortak bir anlayışın oluşturulmasında bir dönüm noktası olmuştur. Konuyla ilgili büyüyen literatürde kavramın geçirdiği değişimler ışığında kimileri Koruma Sorumluluğunun gelişmekte olan hukuki bir norm olduğunu iddia ederken kimileri de kavrama daha eleştirel yaklaşır hale gelmiştir. Koruma Sorumluluğunun kazandığı statüye dair bir fikir birliğinin yokluğunda, literatürdeki diğer eserlerden farklı olarak bu makale kavramın bir slogandan öteye gidememek ya da hukuki bir norma dönüşmekten ziyade uluslararası etik bir norm haline geldiğini, dolayısıyla hem devletler için bireysel anlamda hem de uluslararası toplum için genel anlamda bir davranış standardı oluşturduğunu iddia etmektedir.

Anahtar Kelimeler: Koruma Sorumluluğu, Sorumluluk Olarak Egemenlik, Birleşmiş Milletler, Uluslararası Etik Norm.

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Introduction

The International Commission on Intervention and State Sovereignty (ICISS) introduced the notion of the “responsibility to protect” (R2P) to the international community in 2001. In 2006, Gareth Evans, a pioneer of R2P, asserted that “[w]hat we have seen over the last five years is the emergence, almost in real time, of a new international norm, one that may ultimately become a new rule of customary international law.”¹ Evans made this statement a year after the recognition of R2P by its inclusion in the 2005 World Summit Outcome Document. Nevertheless, as humanitarian crises continued to pile up in the following years, some scholars have grown more critical of the concept and its added value.²

After R2P was adopted by the political discourse of the UN, debates on whether the notion has been evolving from a policy³ into an international norm have flourished. So far, cynics of R2P and those who discuss R2P as a norm have contributed to the mounting literature. From the latter, some consider R2P to be a norm without specifying what kind of a norm it is and others talk about its potential as a developing legal norm.⁴ As Bellamy highlights: “There is general consensus that R2P is a norm, but much less agreement on what sort of norm it is.”⁵

In this vein, this article’s original contribution to the literature is the assertion that R2P has evolved into an international *ethical* norm that sets an international standard for appropriate behaviour. Albeit the argument that R2P is an international norm is not new, its classification as an ethical norm is, and this has significant implications regarding the norm’s implementation. Such implications stem from the difference between ethical and legal norms. Legal norms/rules possess legally binding powers and have direct legal consequences in cases of breach of the rule, whereas ethical norms do not have such power. Thus, the characterisation of R2P as an ethical norm delimits the power of R2P in terms of coercing states and/or the international community to act in a certain manner. Accordingly, while R2P defines appropriate behaviour for states as well as the interna-

1 Gareth Evans. *From Humanitarian Intervention to the Responsibility to Protect*, Keynote Address to Symposium on Humanitarian Intervention, University of Wisconsin, Madison, 31 March 2006.

2 For instance, Hehir argues: “While the term ‘Responsibility to Protect’ and its abbreviation ‘R2P’ have very quickly pervaded political discourse, both lack substance and are little more than slogans employed for differing purposes shorn of any real meaning or utility.” Aidan Hehir, “The Responsibility to Protect: ‘Sound and Fury Signifying Nothing?’” *International Relations*, Vol. 24, 2010, p. 219.

3 Some argue that R2P is a slogan or policy urging for action while some others like Lawrence Woocher argue that R2P is “a political framing device to reframe the debate on humanitarian intervention to create consensus.” Lawrence Woocher, interview by author, Washington D.C., October 17, 2008.

4 See, Carsten Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?” *The American Journal of International Law*, Vol.101, No.1, 2007, p.990-1020; and Brian Barbour and Brian Gorlick, “Embracing the ‘Responsibility to Protect’: A Repertoire of Measures Including Asylum for Potential Victims”, *International Journal of Refugee Law*, Vol.20, No.4, 2008, p.533-66.

5 Alex J. Bellamy, “The Responsibility to Protect—Five Years On”, *Ethics & International Affairs*, Vol.24, No.2, 2010, p.160.

tional community and naturally creates an expectation of conformity, it can neither assure conformity nor legally sanction inconformity.

In building its main argument, the article utilises the “norm life cycle scheme”⁶ of Finnemore and Sikkink. This model enables the researcher to distinguish between different stages of evolution throughout the construction and implementation processes of the norm by identifying progress criteria and thresholds. Thus, it helps the researcher to assess the current status of R2P as an international norm. Nevertheless, it falls short as a tool in explaining the transformation that R2P has gone through, (i.e. why R2P has turned into an ethical norm instead of a legal one). This is why “venue” and “negotiation” are introduced into Finnemore and Sikkink’s model as additional influences in norm evolution analysis.

While tracing R2P’s transformation into an accepted ethical norm, the article benefits not only from secondary sources — that is the narratives of R2P scholars and press releases — but also from primary ones such as Security Council and General Assembly resolutions, public statements, and official reports/documents on R2P as well as interviews with practitioners and state officials. The data used in the exemplification of cases are collections from databases such as the International Coalition for the Responsibility to Protect, the Global Responsibility to Protect and International Crisis Group.

Life Cycle of Norms, Venue and Negotiation

Finnemore and Sikkink note that in the construction of international (and/or regional) norms, “different levels of agreement” among several actors are commanded by “different norms.”⁷ To study these levels, they use the “norm life cycle” scheme comprising of three stages. At Stage 1, “norm emergence”, norm entrepreneurs construct a new norm and introduce it to the international community. This is followed by persuasion efforts of norm entrepreneurs for the norm’s adoption.⁸ Nevertheless, in “most cases, for an emergent norm to reach a threshold and advance to the second stage, it must become institutionalized in specific sets of international rules and organisations”.⁹

The “tipping point” sets the borderline between Stages 1 and 2, and is attained when the norm is adopted by “a critical mass of relevant state actors. [...] What happens at the tipping point is that enough states and enough critical states endorse the new norm to redefine appropriate behaviour for the identity called ‘state.’”¹⁰ Stage 2, “norm cascade”, comes after meeting this threshold. At this stage, a majority of states adopt the norm.¹¹ Socialisation is the key mechanism of norm cascade, and is carried out by norm leaders

6 Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change”, *International Organization*, Vol.52, No.4, 1998, p.887-917.

7 Ibid., p.892-3.

8 Ibid., p.896.

9 Ibid., p.900.

10 Ibid., p.895, 902.

11 Ibid., p.895.

seeking to persuade others to adhere to the new norm.¹² Checkel argues that “following a logic of appropriateness [...], agents accept community or organizational norms as ‘the right thing to do’ [...] and it implies that agents adopt the interests, or even possibly the identity, of the community of which they are a part.”¹³ In a complete cycle, socialisation is followed by internalisation (Stage 3) that is, as Checkel puts it, the end point “where the community norms and rules become taken for granted.”¹⁴

This study adopts the norm life cycle model to distinguish between stages of a norm’s evolution. Yet, with its emphasis placed on persuasion, this model undermines other influential factors such as venue and negotiation.¹⁵ R2P structurally entails responsibilities for international actors at two levels. The first is state’s individual responsibility, and the second is the international community’s responsibility.¹⁶ This multilevel structure leads to different political and/or legal consequences for the involved actors, given that R2P operates alongside well-established legal norms. In order to be able to understand the norm’s evolution under such complex structure, venue and negotiation are added to the analysis since they are of significance in determining the extent of adoption as well as the density of the norm.

Tracing the Process: An Affirmed Ethical Responsibility?

Price argues that:

dilemmas only arise if norms are social facts. Progress may well be had, and even though it may be at the price of the generation of yet new dilemmas, this in itself points to a different ethic than that premised on world politics as a realm of recurrence and repetition devoid of possibilities of humanitarian moral change.¹⁷

From a constructivist point of view, the challenges the international community faces contribute to the emergence of new norms. In this vein, it can be posited that the human rights crises of the 1990s led to the construction of R2P. In responding to mass atrocities against humanity, humanitarian intervention remained a relevant foreign policy

12 Ibid., p.902.

13 Jeffrey T. Checkel, “International Institutions and Socialization in Europe: Introduction and Framework”, *International Organization*, Vol.59, Fall 2005, p.804.

14 Jeffrey T. Checkel, “Process Tracing”, Audie Klotz and Deepa Prakash (eds.) *Qualitative Methods in International Relations: A Pluralist Guide*, New York, Palgrave Macmillan, 2008, p.117.

15 Coleman “defines ‘venue’ as the institutional setting in which an official diplomatic encounter occurs” Kathrina P. Coleman, “Locating Norm Diplomacy: Venue Change in International Norm Negotiations”, *EJIR*, Vol.19, No.1, 2013, p.167.

16 Taking the UN framework as its basis, this article defines the international community as the totality of states formed by the State Members of the General Assembly.

17 Richard Price, “Moral Limit and Possibility in World Politics”, *International Organization*, Vol.62, spring 2008, p.215.

tool while its implementation has been a source of moral¹⁸ and legal divides within the international community. Examples of inaction (as in Rwanda), failed interventions (as in Somalia), or unauthorised interventions (as in Kosovo) have been at the heart of the debates on whether or not to intervene for humanitarian reasons. Humanitarian intervention has commonly been perceived as a “right to intervene” by states. In order not to grant states such a right, the international community refrained from formally establishing humanitarian intervention as a legal measure against grave violations of human rights. Consequently, norm entrepreneurs such as Kofi Annan, Francis Deng and Gareth Evans, among many others, opted to introduce a new notion named “the responsibility to protect” to secure the lives and fundamental rights of masses instead of adhering to the controversial arguments in favour of a “right to intervene.”

First in 1999 and then in 2000, Kofi Annan raised a challenging question: “... if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica — to gross and systematic violations of human rights that affect every precept of our common humanity?”¹⁹ In response to Annan’s repeated calls, former Canadian Minister of Foreign Affairs Lloyd Axworthy in September 2000 initiated the International Commission on Intervention and State Sovereignty (ICISS). The Commission presented its work to the international community in December 2001 with the report entitled “The Responsibility to Protect.”

In the report, the Commission addressed the question of “how humanitarian intervention could be possible.” To this end, it redefined sovereignty to enable and regulate humanitarian intervention. The ICISS put forth “the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”²⁰ By adding the responsibility component to the classical conceptualisation of state sovereignty, the report suggested “sovereignty as responsibility” understanding as a first measure to prevent conscious acts of violence within states. Secondly, it argued, rather than a natural right to intervene, there exist for the international community the responsibilities to prevent, react and rebuild when states fail to uphold their responsibility due to either inability or unwillingness. As Finnemore and Sikkink note,

[t]he relationship of new normative claims to existing norms may also influence the likelihood of their influence. This is most clearly true for norms within international law, since the power or persuasiveness of a normative claim in law is explicitly tied to the ‘fit’ of that claim within existing normative frameworks.²¹

18 For the purposes of this article, the terms ethical and moral are used interchangeably, without the supposed religious connotations of the word moral.

19 ICISS, *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre, 2001, p. vii

20 *Ibid.*, p.viii.

21 Finnemore and Sikkink, “International Norm Dynamics and Political Change”, p.908.

In this vein, R2P entrepreneurs differentiated the “responsibility to protect” from the controversial notion of the “right to intervene” and embedded the concept within the well-established principle of sovereignty. With this, they aimed to preclude any negative connotation stemming from past practices or arguments in favour of forceful interventions.

The initial responses to R2P were mixed, as the report’s release coincided with “the process of hegemonic law-making regarding terrorism utilizing unilateral power and the collective legitimization function of the UN”²² in the immediate aftermath of 9/11. Preoccupied with Afghanistan and Iraq, the Bush Administration did not extend support for R2P.²³ Although they did not oppose R2P in general, “other Security Council members also voiced concerns about committing to any criteria and were unwilling to give up the practice of case-by-case decision making about whether to intervene for humanitarian or any other reasons”.²⁴

The “responsibility to react” component of R2P constituted the most cautiously approached aspect as it allowed for humanitarian interventions. The false invocation of humanitarian reasons for Iraq’s invasion fuelled the suspicion of many states regarding the use of force under R2P framework. As Geliijn Molier puts it, “the American-British attack on Iraq shows how easy the doctrine of humanitarian intervention can be abused.”²⁵ In the meantime, the Darfur challenge – commonly referred to as a major test case for R2P²⁶ – stood out as a strong indication of the immediate need to adopt measures for decisive and timely action. Despite setbacks, persistent persuasion efforts of norm leaders, such as the then Secretary-General Kofi Annan, paved the way for R2P’s institutionalisation through the machinery of the UN.

Institutionalisation of R2P

The institutionalisation of R2P began with the change of venue from the ICISS to the UN, i.e. from a small venue to a large one with much higher legitimacy. Such change not only enabled vast recognition of R2P in four years time, but also eventually led to significant transformations regarding the content of the norm. “From a negotiation perspective, small homogeneous venues promote norm specificity and strength, whereas large venues tend to produce ambiguous and/or undemanding rules because they dilute the influence of ‘outliers’, including norm leaders.”²⁷ At the early stages of institutionalisation, conceptual limits of R2P coincided with the ICISS’s Report. From the three R2P elements – prevention, reaction and rebuilding – to the just cause threshold for military interven-

22 Müge Kınacıoğlu, “‘War on Terror’ and Hegemony: International Law-Making Regarding Terrorism After 9/11”, *Uluslararası İlişkiler*, Vol.8, No.32, Winter 2012, p.68.

23 Macfarlane, Neil S., Carolin J. Thielking, and Thomas G. Weiss. “The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?” *Third World Quarterly*, Vol.25, No.5, 2004, p.983.

24 Ibid., p.983.

25 Geliijn Molier, “Humanitarian Intervention and the Responsibility to Protect after 9/11”, *Netherlands International Law Review*, Vol. LIII, 2006, p.39.

26 See, Cristina Badescu and Linnea Bergholm. “Responsibility to Protect and the Conflict in Darfur: The Big Let-Down”, *Security Dialogue*, Vol.40, No.3, 2009.

27 Coleman, “Locating Norm Diplomacy”, p.169.

tion, the original framework proposed by the Commission constituted the basis for R2P's consideration within the UN.

R2P was officially placed on the agenda of the General Assembly first in 2004 with the "Report of the Secretary-General's High-level Panel on Threats, Challenges and Change." This document recognised an individual responsibility of states to protect their populations as well as a collective responsibility to protect for the international community.²⁸ Nonetheless, in the absence of Member States' resolute support, concerns about potential abuses of the norm continued to exist.

In his second formal attempt with the 2005 "Report on UN Reform: In Larger Freedom," Annan suggested R2P as a matter to be discussed under the heading of "Freedom to Live in Dignity" rather than that of collective security. Such move conformed to the ICISS's main objective of changing the discourse from a right to intervene (placing the emphasis on the use of military means) to a responsibility to protect (prioritising prevention). This, signalling a toning down of the "responsibility to react" and a shift in focus towards the "responsibility to prevent," was also an indication of further alterations that R2P was to face in the institutionalisation process.

The date of 24 October 2005 was a milestone for R2P. On this date, with the World Summit Outcome Document, Member States of the General Assembly unanimously accepted a "responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." This marked R2P's affirmation by a "critical mass," which comprised all state members within the UN. Yet, the tipping point was not attained without concessions. As Coleman notes, "[i]n addition to engaging in persuasion efforts, [...] during norm emergence actors bargain over the content of the emerging norm and strike compromises about the scope, precision, ambition and rigidity of its demands."²⁹ The Outcome Document, in two consecutive paragraphs, concisely focused on the responsibilities to prevent and react. Paragraph 138 assigned states an individual responsibility to protect their populations from four grave crimes, and to prevent these crimes as well as their incitement, while Paragraph 139 established the responsibility of the international community in case of state failure and to be evaluated "on a case-by-case basis." In keeping with the spirit of the preceding documents where emphasis was placed primarily on prioritising non-forceful measures, the most critical change on R2P was the narrowing of its scope down to the crimes of genocide, ethnic cleansing, war crimes and crimes against humanity. This reconceptualization constructed the new and limited understanding of the norm, which also helped to remove some of the ambiguities that left room for abuse. While closing the door to the possibility of invoking R2P in cases of natural disasters or calamities such as HIV/AIDS, such delimitation also potentially decreased the number of cases that would be considered in relation to the R2P duties of States. Furthermore, as the wording of Paragraph 139 suggests (e.g. the emphasis on "case-by-case" evaluation), the duties of the international community were purposefully left ambiguous and undemanding. As Bellamy argues, the "2005 consensus was produced

28 United Nations. High Level Panel on Threats Challenges and Change, *A More Secure World: Our Shared Responsibility*, 2004, p.11.

29 Coleman, "Locating Norm Diplomacy", p.167.

not by the power of humanitarian argument but by bargaining away key tenets of the ICISS's recommendations."³⁰ Similarly, Thomas Weiss posits that the "World Summit approved 'R2P-lite'—that is, without specifying the criteria governing the use of force and insisting upon Security Council approval."³¹

The unanimous adoption of R2P, although with limitations, formally placed the notion within the political discourse of the UN. In 2006, the Security Council reiterated paragraphs 138 and 139 in resolutions 1674 ("Protection of Civilians in Armed Conflict") and 1706 (concerning Sudan). In this regard, Chataway argues that "given the substance of paragraphs 138 and 139, and Security Council Resolutions 1674 and 1706, the emerging R2P norm represents the logical consequence of an increasing global consensus on the need for a new rule of customary international law that can effectively protect human dignity and basic rights."³² Yet, it can be observed that neither the Outcome Document, nor the subsequent resolutions in 2006 established R2P as a legal norm, and R2P action was left conditional upon Security Council approval, making it subject to the existing procedures of the UN. This practice did not change after Ban Ki-Moon succeeded Annan as Secretary-General. As demonstrated in the following overview of his statements and efforts, Ban Ki-Moon has repeatedly underlined the importance of effective implementation rather than R2P's legalisation.

Ensuring Effective Implementation

Although the change of venue to the UN has been critical for R2P's affirmation by a "critical mass" and its transformation into an accepted norm, it did not/could not grant the norm's effective implementation at the state and/or international level. Confronted by humanitarian challenges like Darfur, after assuming office Ban Ki-Moon focused on timely and decisive implementation of R2P. Confirming the absence of explicit legal obligations and sanctions arising from R2P, the Secretary-General stated in September 2007: "I will strive to translate the concept of our Responsibility to Protect from words into deeds, to ensure timely action so that populations do not face genocide, ethnic cleansing and crimes against humanity."³³ To this end, Ban Ki-Moon first appointed Juan Méndez as the new Special Adviser for the Prevention of Genocide.³⁴ Following this, on 21 February 2008 Edward Luck was appointed at the level of "Assistant Secretary-General" as Special Adviser *to the Secretary-General* on the Responsibility to Protect.³⁵

30 Alex J. Bellamy, "Whither the Responsibility to Protect: Humanitarian Intervention and the 2005 World Summit", *Ethics and International Affairs*, Vol.20, No.2, 2006, p.167.

31 Thomas Weiss, "R2P after 9/11 and the World Summit", *Wisconsin International Law Journal*, Vol.24, No.3, 2006-07, p.750.

32 Teresa Chataway, "Towards Normative Consensus on Responsibility to Protect", *Griffith Law Review*, Vol.16, No.1, 2007, p.210.

33 SG/SM/11182.

34 <http://www.un.org/en/preventgenocide/adviser/>

35 SG/A/1120, emphasis added.

As Finnemore and Sikkink note: “[t]hose stressing the form of the norm argue that norms that are clear and specific, rather than ambiguous and complex [...] are more likely to be effective”.³⁶ The change of venue and the negotiations that made unanimous adoption possible narrowed the scope of R2P to four grave crimes in order to make its boundaries clearer. Nonetheless, ambiguities related to implementation remained. The vaguely defined responsibility of the international community made the norm lose from its strength and made it less demanding by leaving ample room for selective behaviour. This was a setback in terms of effective implementation and it led to reservations from some of the Member States, which were voiced on multiple occasions. Recognising this, the Secretary-General targeted the confusion and/or misunderstandings about the objectives as well as the nature of R2P. In his Berlin Speech (2008), specifically referring to Paragraph 139, Ban Ki-Moon noted:

Caveats aside, this declaration could have profound implications. If Member States can indeed summon the will to act collectively in some cases like this, then others may be deterred from inciting or committing such atrocities. Likewise, if United Nations rules, procedures and practices are developed in line with this bold declaration, then there is less likelihood of R2P principles being used to justify extra-legal interventions for other purposes.³⁷

Subsequently in January 2009, the Secretary-General released a report entitled “Implementation of the Responsibility to Protect.” This was the first UN document that focused solely on R2P. Targeting the concerns of Member States regarding the potential abuses of the norm, the report aimed to develop “fully United Nations strategies, standards and processes for implementing the responsibility to protect.” Based on paragraphs 138 and 139, the Report established the three pillars of R2P as “the protection responsibilities of the State”, “international assistance and capacity-building”, and “timely and decisive response.” Paragraph 67 stated:

The present report ... seeks to shorten the road from promise to practice, fully cognizant of the terrible human costs of delay or retreat. *The policy ideas presented above seek to realize the full potential of the responsibility to protect within the principles, purposes and provisions of the Charter of the United Nations* and paragraphs 138 and 139 of the Summit Outcome, as agreed unanimously at the level of Heads of State and Government.³⁸

The process of fleshing out R2P’s implementation rather than its legalisation, the process continued with plenary meetings in July 2009.³⁹ On the basis of the Secretary-General’s 2009 report, Member States reaffirmed the limited scope of R2P, and agreed that the subsequent task is decisive and timely implementation. The idea that the responsibility to protect lies first and foremost with individual states was placed at the core of the

36 Finnemore and Sikkink, “International Norm Dynamics and Political Change”, p. 907.

37 SG/SM/11701.

38 A/63/677, (emphasis added).

39 Some of the recurring remarks during the debates concerned selectivity in R2P’s implementation, politicisation of cases, as well as the double standards within the UN and the need for reforming the Organisation.

norm, and prevention was emphasised as a priority. Having achieved general consensus on not only the individual importance of the three pillars but also that they complement each other, state representatives put special emphasis on the need to consider military action under Pillar 3 only as a last resort.⁴⁰ Since the very emergence of the norm, the most debated aspect of R2P has been recourse to military measures as part of the collective responsibility to react. For instance, in his opening statement President of the General Assembly noted:

The problem for many nations, I believe, is that our system of collective security is not yet sufficiently evolved to allow the doctrine of responsibility to protect (R2P) to operate in the way its proponents intend, in view of the prevailing lack of trust in developing countries when it comes to the use of force for humanitarian reasons.⁴¹

Many states, especially developing ones, reiterated the President's observation in their statements while affirming the existence of an *ethical* responsibility to react to grave atrocities against humanity. For instance, Hungary posited that the "international community has the moral obligation to give a timely and decisive response" to cases where states fail to uphold their responsibilities.⁴² Kazakhstan noted that it "shares the universal belief that protecting populations from grave human rights violations [...] is a moral imperative,"⁴³ while the Netherlands underlined: "our task is to translate our *moral* commitment into political and operational readiness. This is not a legal discussion, nor should it be."⁴⁴

Following the plenary meetings of 2009, Ban Ki-Moon released two more reports in 2010 and 2011. The first report, entitled "Early Warning, Assessment, and the Responsibility to Protect," primarily focused on the necessary improvements for effective prevention within the R2P framework.⁴⁵ In light of the international community's recent experiences in responding to R2P cases (such as Kenya and Guinea as positive examples on the one hand, and Zimbabwe and Nigeria as negative ones on the other), the Secretary-General's latest report on R2P (A/65/877-S/2011/393) focused on "the role of regional and sub-regional arrangements in implementing the responsibility to protect."

Concerning the operationalisation of R2P, cognisant of regional differences, the Secretary-General urged each region to "move forward, step by step, to ensure that populations are more protected and that the risk of mass atrocity crimes recedes with each passing year."⁴⁶ As in the preceding UN documents that were part of R2P's institutionalisation, the 2011 report too placed the focus first and foremost on the preventive aspects of the norm rather than creating binding obligations for the international community to uphold its collective responsibility to protect.

40 A/63/PV.97-101, (emphasis added).

41 A/63/PV.97, p. 3.

42 A/63/PV.99, p. 24.

43 A/63/PV.100, p. 19.

44 A/63/PV.97, p. 26, (emphasis added).

45 A/64/864.

46 Ibid., p.3.

R2P as a Standard of Appropriate Behaviour

Based on a contextual analysis of the documents adopted within the UN framework, as well as the statements of the Secretary-General, it can be observed that paragraphs 138 and 139 established R2P primarily as a standard of appropriate behaviour for states to follow in their internal affairs and for the international community in its conduct. In its present form, without altering current international law or adding new mechanisms to the existing machinery of the UN, R2P constitutes a standard of appropriate behaviour at two levels. The first, based on the conceptualisation of “sovereignty as responsibility,” is a responsibility to be assumed by states individually. “Responsibility indicates a capacity to act independently and to make decisions without authorization,”⁴⁷ which in this case is that, based on their own judgement and discretion, states protect their populations from the four grave crimes as part of their sovereign powers. The second concerns the collective responsibility of the international community to assist states in upholding their responsibility and to ensure effective enforcement to halt existing violations.

Regarding the first level, it can be argued that UN Member States unanimously accepted with the Outcome Document a national responsibility of states to protect their populations from the four grave crimes. Thus, at the ideational level, as also reaffirmed during the plenary meetings in 2009, R2P has been recognised as appropriate behaviour for states. Nonetheless, such recognition does not necessarily mean that states will undoubtedly follow a logic of appropriateness in their acts. Given that no original binding mechanism has been established to coerce adherence to the norm, the implementation of R2P is mainly dependent on the ethical understanding and the political will of states. Implying a focus on internalisation rather than revising existing principles/rules of international law, the Secretary General noted in his 2011 report that “[t]he ultimate goal is to have States institutionalise and societies internalise these principles in a purposeful and sustainable manner. The more progress that States make towards including these principles in their legislation, policies, practices, attitudes, and institutions, the less recourse will there be to the third pillar (response).”⁴⁸

While Paragraph 138 determines R2P behaviour for states, Paragraph 139 establishes the responsibilities of the international community in terms of assistance, prevention, protection and reaction. Nevertheless, there is a vital distinction between the responsibilities established by these two paragraphs. While both paragraphs place special emphasis on the preventive aspects of R2P, the former has a restrictive impact on the behaviour of states. R2P, as a norm, is in conformity with the established standards of fundamental human rights as reflected in universal human rights documents such as the Universal Declaration of Human Rights (1948) or the legally binding International Covenant on Civil and Political Rights (1966). In this regard, it is possible to talk about previously established sanctioning mechanisms that can be enforced on states in cases of breaches of fundamental human rights through the machineries of the UN and/

47 Hannes Peltonen, “Sovereignty as Responsibility, Responsibility to Protect and International Order: On Responsibility, Communal Crime Prevention and International Law”, *Uluslararası İlişkiler*, Vol.7, No.28, Winter 2011, p.65.

48 A/64/864, para. 11.

or the International Criminal Court, (or in general, on the basis of the 1948 Genocide Convention and the Rome Statute).

Accordingly, it can be observed that states, at least signatories to those conventions, already have certain legal responsibilities that precede the unanimous recognition of R2P. The appropriate behaviour dictated by Paragraph 138 overlaps with these legal responsibilities. Thus, violations of states can be sanctioned by the international community if the international community prioritises ethical considerations in its responses to specific cases. In other words, the existing legal machinery can be mobilised for R2P. Nevertheless, the problem is that in the current international system, due to the absence of a legal body like those in domestic or supranational systems, enforcement is dependent on the political will of the international community. In this vein, the wording of Paragraph 139, while imposing the idea of a responsibility at the international level, also leaves ample room for manoeuvre on the part of the international community. Furthermore, it assigns neither the Security Council nor the UN Member States any liability in case of failure to uphold their collective responsibility.

In a nutshell, following the change of venue, with its institutionalisation through the UN, R2P has gained significance, but not as an international legal norm. With the understanding that was established under the auspices of the UN, R2P has evolved into a singular international ethical norm, rather than a collection of different norms. That is to say, R2P lacks legally binding powers of its own but provides states and the international community with a standard for appropriate behaviour that is based on the prioritisation of ethical considerations, where the main objective is to prevent mass atrocities from occurring.

While R2P overlaps some of the existing human rights norms, it defines the appropriate behaviour in a singular norm by establishing the responsibilities of prevention and reaction. It remains another question to what extent States and the international community have matured in terms of turning their acceptance of an ethical responsibility into practice. In this regard, R2P cases⁴⁹ witnessed since late 2005 provide us with a general picture of how much has been achieved to date.

R2P in Practice

The international community's track record in upholding its responsibility allows us to reflect on R2P's regulative aspects. In the post-2005 period, the Security Council has affirmed the responsibility of states to protect their populations in numerous resolutions that it has passed on specific cases. In the meanwhile, there have been numerous cases where the responsibility to prevent was far from being satisfied, so that the necessity to adopt enforcement measures under Pillar 3 arose but was not realised. Regarding

49 Cases such as Darfur, Democratic Republic of Congo, Kyrgyzstan, Zimbabwe, Sri Lanka, Nigeria, Myanmar and Syria, in general have their roots as internal conflicts in the former decade(s). Corresponding to a time between 2008 and 2011, these conflicts escalated to a level that qualified them as R2P cases.

prevention, the international community's response to the cases of Kenya (2008) and Guinea (2009) became examples where the collective responsibility to protect was attained at an early stage without any need to resort to coercive measures. In these cases, the keen interest of regional actors such as the African Union (AU) and Economic Community of West African States (ECOWAS) seems to have played a vital role in the prompt reaction. On the other hand, lack of regional support impacted negatively in the cases of Zimbabwe (2008) and Nigeria (2010) as regional organisations refrained from active involvement.

As a consequence of the understandings of "case-by-case" evaluation and opting for military intervention only as a last resort, the international community has generally not been eager to take forceful action even in cases that necessitated so. In most situations, UN resolutions acknowledged the existence of severe violations of human rights and/or international humanitarian law. Accordingly, it urged responsible bodies to end these violations and reminded them of their responsibility to protect their populations. Nevertheless, also troubled with capacity and/or capability issues (such as the lack of a permanent UN military force), the Security Council has refrained from employing forceful measures and interfering in the domestic affairs of these states in the absence of the consent of the affected state. Darfur has been a prominent example of adherence to the principle of state sovereignty (in its classical sense), where, despite the severity of the atrocities being committed, the UN insisted on obtaining Sudan's consent to deploy the peacekeeping forces that would replace the AU mission. Putting the matter in a nutshell, Annan notes: "We were slow, hesitant, uncaring and we had learnt nothing from Rwanda".⁵⁰

Notwithstanding the lack of collective action in many cases, in responding to unilateral invocations of R2P, the international community has been consistent as it has conformed to the restrictions of the norm. While human rights violations perpetrated by the government forces of Burma caused serious concern, in 2008, French Foreign Minister Bernard Kouchner invoked R2P on the grounds that the Burmese Government had been blocking humanitarian aid that was sent to Myanmar after Cyclone Nargis. Kouchner argued: "We are seeing at the United Nations if we can't implement the 'responsibility to protect,' given that food, boats and relief teams are there, and obtain a UN resolution which authorizes the delivery (of aid) and imposes this on the Burmese government."⁵¹ Reaffirming the limited scope of R2P as dictated by the Outcome Document, Kouchner's controversial claim to adopt forceful measures for delivering humanitarian aid was rejected outright, and his call became an example of wrongful invocation.

In the 2008 South Ossetia crisis, Russia invoked R2P as a justification for military intervention. Prior to the military operation, the Permanent Representative of the Russian Federation to the UN, Vitaly Churkin, invoked R2P on the grounds of the protection of Russian citizens residing in South Ossetia who, he claimed, were subjected to genocide.⁵²

50 BBC, "Never Again Programme Transcript", 2005, <http://news.bbc.co.uk/2/hi/programmes/panorama/4654093.stm>, (Accessed on 20 January 2013).

51 Claudia Parsons, "France urges U.N. council to act on Myanmar cyclone", *Reuters*, 7 May 2008.

52 ICR2P, "Georgia-Russia Crisis and R2P", 2008, <http://www.responsibilitytoprotect.org/in->

Nonetheless, the international community, while not sanctioning Russia's unilateral and unauthorised use of force on Georgia, did not grant it recognition as a legitimate R2P action either.

Two recent and exceptional cases where enforcement measures were implemented under Pillar 3 are those of Côte d'Ivoire and Libya. In the former, UN Special Advisers, in a press conference in January 2011, stated that "urgent steps' should be taken, in line with the responsibility to protect, to avert the risk of genocide and ensure the protection of all those at risk of mass atrocities."⁵³ Confronted by the increasing level of violence, the Security Council adopted further measures with Resolution 1975. Recalling past resolutions making reference to paragraphs 138 and 139, the Council reaffirmed "the primary responsibility of each state to protect civilians." Considering the situation a threat to international peace and security, and acting under Chapter VII, it gave mandate to the UN Operation in Côte d'Ivoire "to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment, including to prevent the use of heavy weapons against the civilian population."⁵⁴

Likewise, in the case of Libya, with Resolution 1973 the Security Council reiterated "the responsibility of the Libyan authorities to protect the Libyan population." Acting under Chapter VII, it authorized a no-fly zone on the basis of which NATO carried out its military operation. In a press conference, the Secretary-General stated: "The Security Council today has taken an historic decision. Resolution 1973 (2011) affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own Government."⁵⁵ Yet, it is important to note that in the case of Libya the way the operation was carried out and the limits of the mandate became issues that spurred criticism against the intervention as well as the leading interveners.⁵⁶ The operation itself led to the consideration of supplementary components to R2P. For instance, Brazil suggested: "a complementary set of principles and procedures, which it has labelled 'responsibility while protecting' ('RWP')" needs to supplement R2P in implementation.⁵⁷ In this vein, the intervention in Libya has also been significant in terms of revealing the shortcomings of "R2P-lite", specifically of its implementation at the level of Pillar 3.

dex.php/crises/178-other-R2P-concerns/2749-the-crisis-in-georgia-russia, (Accessed on 27 March 2012).

53 UN, "Press Conference by Secretary-General's Special Advisers On Responsibility To Protect, Genocide, in Connection With Situation in Côte D'ivoire", 2011.

54 S/RES/1975, 2011, p. 3.

55 SG/SM/13454.

56 For instance, Gareth Evans notes that Brazil, Russia, India and South Africa were the leading states criticising NATO-led implementation. "Their complaints have not been about the initial military response ... but what came after, when it became rapidly apparent that the three permanent member states driving the intervention (the US, UK and France, or "P3") would settle for nothing less than regime change, and do whatever it took to achieve that". Gareth Evans, "The Responsibility to Protect After Libya and Syria", *Annual Castan Centre for Human Rights Law Conference*, Melbourne, 20 July 2012.

57 Ibid.

Regarding the implementation of coercive measures, Chesterman notes that from an international lawyer's point of view, the case of Libya "is interesting but not exactly groundbreaking [as] Security Council Resolution 1973 (2011) was consistent with resolutions passed in the heady days of the immediate post-cold war era."⁵⁸ Although one may argue that the international community has been much less reluctant in terms of authorizing military intervention given the recent examples of Côte d'Ivoire and Libya, the authorisation of the use of force still remains dependent on political factors rather than ethical considerations and necessity. It can be observed that in the case of Côte d'Ivoire, the AU and ECOWAS were actively involved in the crisis resolution process. Similarly, concerning Libya, Ban Ki-Moon notes that in the adoption of Resolution 1973 "the Security Council placed great importance on the appeal of the League of Arab States for action."⁵⁹ On the other hand, even though intervention would be favourable in the case of Syria, given the lack of regional support (as the Syrian government continues to protect its strong ties with regional countries), as well as Russia's and China's explicit opposition against military action, it would not be possible to pass a resolution enabling action under Chapter VII mandate. The implementation of R2P through humanitarian intervention remains an exception rather than a pattern. Above all, R2P has transformed in a way that the use of force is relegated to the background and conditioned upon Security Council authorisation. Since the unanimous adoption of paragraphs 138 and 139, the international community has several times failed to uphold its responsibility to protect, be it in terms of prevention or reaction. Yet, the failure of the international community does not necessarily mean the failure of the norm too. There is much more progress to be achieved to turn R2P into a widely practiced norm. Nevertheless, the norm has established itself visibly within the UN discourse by defining appropriate behaviour for states in the form of an ethical norm, instead of a legal one, as can be inferred from the increasing references to R2P in UN resolutions. As Bellamy argues, "[w]here it was once a term of art employed by a handful of likeminded countries, activists, and scholars, but regarded with suspicion by much of the rest of the world, R2P has become a commonly accepted frame of reference for preventing and responding to mass atrocities."⁶⁰

Conclusion

Different from the existing literature, this article asserts that R2P has evolved into an international ethical norm, which lacks legal powers but establishes a standard of appropriate behaviour for states and the international community. In this vein, how we define R2P impacts its future implications and prospects for implementation as it directly defines its operational limits and mechanisms. Throughout its institutionalisation, with the change from a smaller venue to an internationally legitimate large venue, i.e. from the ICISS to

58 Simon Chesterman, "Leading from Behind: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya", *Ethics & International Affairs*, Vol.25, No.3, 2011, p.279-80.

59 SG/SM/13454.

60 Bellamy, "Libya and the Responsibility to Protect", p. 1.

the UN, R2P became limited in scope and its main emphasis has been clearly placed on prevention. While this enabled R2P to be embraced by the international community, it also made R2P a much less demanding norm. As revealed in the track record of the international community's responses to various cases, the acceptance of R2P as an ethical standard of appropriate behaviour has not warranted its effective and timely implementation without discrimination. In this vein, in upholding the responsibility to protect, so far the greatest challenge has proven itself to be the international community's commitment to act under Pillar 3.

Before we can talk about R2P as a widely implemented international ethical norm, there are still numerous challenges to take on. At the state level, as Ban Ki-Moon highlighted in 2009, "if principles relating to the responsibility to protect are to take full effect and be sustainable, they must be integrated into each culture and society without hesitation or condition, as a reflection of not only global but also local values and standards."⁶¹ Effective enforcement of unprejudiced sanctioning mechanisms already present in the UN machinery can provide the necessary deterrence against perpetrators of grave atrocities at the state level. At the international level, there is need to return to the original proposals of the ICISS and reconsider the issue of the UN reform alongside the improvement of physical capabilities of the Organisation.

Considering the changes that have been taking place in the common understanding and practice of the international community in the recent decades, it is possible to argue that ethical considerations regarding human rights matters have gained importance on the international platform. Nevertheless, serious cases of large-scale human rights violations continue to test the international community's commitment to uphold its collective responsibility. In this regard, although the construction and institutionalisation of R2P as an ethical norm has been a positive step, the system is prone to be crippled by political factors such as regional alliances/politics, insufficient military capabilities of the UN, and the politically imbalanced structure of the Security Council, as well as the prioritisation of individual interests of states. In this regard, there is need for the international community, and more specifically the permanent members of the Security Council, to show a genuine political will to place the reformation question on the agenda. Without structural transformation of the international political system, and specifically the UN, no one can guarantee effective implementation of the international community's responsibility to protect.

61 A/63/677, para. 20, p. 12.

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