

R2P: LOOKING BACK, LOOKING FORWARD

Keynote Dinner Address by Professor the Hon Gareth Evans AC QC, Former Foreign Minister of Australia and Co-Chair of the International Commission on Intervention and State Sovereignty, to APR2P/ GCR2P/ Stanley Foundation/ ICRtoP Conference on *The Responsibility to Protect at 10: Progress, Challenges and Opportunities in the Asia Pacific*, Phnom Penh, Cambodia, 26 February 2015

In November 1975, seven months after the Khmer Rouge had marched into Phnom Penh and commenced its reign of genocidal slaughter, US Secretary of State Henry Kissinger famously said to Thai Foreign Minister Chatichai: “Tell the Cambodians that we will be friends with them. They are murderous thugs, but we won’t let that stand in our way”.

It was essentially to make politically as well as morally impossible that kind of response – born of Cold War *realpolitik* – to genocide and crimes against humanity that the concept of the responsibility to protect (R2P) was born.

R2P was also created to make both politically and morally impossible the kind of response we heard to Rwanda in 1994 – “just black African tribes chopping each other up as they have been doing since time immemorial”. And to make impossible the kind of response we so often heard in the 1990s in the Balkans – “just the fires of old nationalist and religious hatred burning themselves out”.

The whole point of the R2P doctrine, in the minds of those of us who conceived it, was above all to change the way that the world’s policymakers, and those who influence them, thought and acted in response to emerging, imminent and actually occurring mass atrocity crimes.

It was to generate a reflex international response that genocide, other crimes against humanity and major war crimes happening behind sovereign state walls were everybody’s business, not nobody’s.

It was to create a new norm of international behaviour which states would feel ashamed to violate, compelled to observe, or at least embarrassed to ignore.

It was to stimulate the creation of new institutional mechanisms, national and international, that would help translate that sense of moral and political obligation to protect into effective action.

The bottom line was always to change behaviour: to ensure that global policymakers would never again have to look back, in the aftermath of yet another genocidal catastrophe, and ask themselves how they could possibly have let it all happen again.

R2P was designed for pragmatists rather than purists. Its intended contribution was not to international relations theory but political practice. It was designed not to create new legal rules but rather a compelling new sense of moral and political obligation to apply existing ones.

Those of us gathered at this important conference approach R2P from multiple different perspectives. We come from different geographic regions; some of us are academics, some practitioners; some of us are more focused on prevention, others more on reaction; some of us instinctively approach problem-solving top-down, others bottom-up.

But what I hope all of us can recognize is that the core motivation that drove R2P from the beginning, and must still be at the heart of the enterprise today, is that mass atrocity crimes are a totally unacceptable assault on our common humanity, and that whatever else we mess up in the conduct of international affair, we must never again be found wanting as an international community when it comes to halting or averting another Cambodia, Rwanda or Srebrenica.

This is the context, and these are the benchmarks, against which R2P's success or failure over the last decade should be measured, and its likely future over the next decade and beyond should be assessed. There are four big things that R2P was designed to be: a normative force, an institutional catalyst, a framework for preventive action and a framework for reactive action. So, looking back, what has R2P achieved so far and, looking forward, what will it achieve in the future, in each of these four areas?

R2P as a Normative Force.

It may be too big a call to say, as the British historian Martin Gilbert did two years after the 2005 World Summit, that acceptance of the responsibility to protect is “the most significant adjustment to sovereignty in 360 years”, but it is certainly true to say that R2P, evolving as it has through successive stages since the original ICISS report, has gained over the last decade much more worldwide normative traction than most observers had thought possible, and certainly did so in a way that remains unimaginable for the concept of “humanitarian intervention” which it has now almost completely displaced.

The best evidence of this is in the annual debates on R2P in the General Assembly, even in the aftermath of the strong disagreements over the Libyan intervention in 2011 which have had many sceptics pronouncing its death rites. Certainly there is less general comfort with the third pillar than the first two, and there will always be argument about what precise form action should take in a particular case, but the basic principles are under no threat. In the most recent annual General Assembly debate on R2P in early September 2014, in which statements were made by or on behalf of 81 states from every regional group, there was overwhelming support for all the basic R2P principles.

Further evidence of the acceptance achieved by R2P lies in the record of the Security Council. For all the continuing neuralgia about the Libyan intervention and the paralysing impact of that on its deliberations on Syria, the Security Council, which had before 2011 passed only four resolutions mentioning R2P, *after* its March 2011 decisions on Cote d'Ivoire and Libya, by the end of 2014 had endorsed 22 other resolutions directly referring to the responsibility to protect, including measures to confront the threat of mass atrocities in Yemen, Libya, Mali, Sudan, South Sudan and the Central African Republic, and had authorised another twelve Presidential Statements employing that language.

While none of these have authorized a Libyan-style military intervention, and a great many references are in pillar one terms, referring to states bearing the primary responsibility to protect their own populations, they make clear that the Council is comfortable with both the language and substance of the doctrine in all its dimensions.

With the weight behind it of a unanimous General Assembly resolution at head of state and government level, and with all the further UN member-state acceptance it has acquired since, as described above, R2P can certainly be described in moral and political terms as a new international *norm* – and, moreover, not just an “emerging” one. It does not create more legal obligations than already exist under international law in relation to genocide, other crimes against humanity and war crimes, but it does amount a new standard of behaviour, and a new guide to behaviour, generally accepted as such, for every state.

All that said, there is more work to do to consolidate R2P’s normative force. There are still significant differences evident across the world in the nature and degree of individual state policymakers’ commitment to R2P – intellectually, morally and emotionally – and it is important that these be minimized in the years ahead if the new norm is to further consolidate and flourish, and be the framework within which atrocity crime issues are effectively addressed in practice.

Of course if a norm is aspirational, rather than just boringly descriptive of universal existing practice, getting it fully embraced in principle is not going to guarantee effective implementation in practice. But if norm consolidation is not a sufficient condition for practical delivery, it is certainly a necessary one.

The major task for R2P advocates in the near future is to encourage a *mindset* convergence in this respect among the states, and groups of states, that will matter most in the world of the 21st century – not just the US, China, European Union and Russia, but emerging major powers like the other “BRICS” states, India, Brazil and South Africa. My judgement, for what its worth, is that we are not as far away from achieving that as is sometimes assumed, but more persuasion and pressure from other state actors and civil society, of the kind that many participants in this conference are engaged in mobilising, will certainly still be required.

As to the *United States*, there is little risk of it engaging in the general adventurism and militarisation of R2P of the kind feared by so many of its critics, particularly in the global South: at least since the end of the George W. Bush presidency, getting the US started looms as a bigger concern than stopping it. While its military response to the Islamic State, or Da’esh, in Syria and Iraq might be thought to be an exception to the much more cautious trend of recent years, there has been a clear R2P justification for it in the terrible atrocities perpetrated by the militants (separate and distinct from the more problematic homeland-terrorism rationale), the scale of the operations has been modest, and they have been undertaken with the express or implicit support of the governments of the states involved.

Generally the US has been a strong supporter of the R2P norm in a UN context, and has played a leading role in developing early warning and response preparedness, and nuanced

military response strategies, that have been useful models for other states. The only really disappointing, and frustrating, aspect of the US commitment, from an R2P norm entrepreneurship perspective, is the deliberate decision of the Obama administration to refrain, other than in an in-house UN context, from actually using “responsibility to protect” terminology: the main privately stated reason being a domestic political one, viz. not to stir up those many forces in the country deeply sceptical of any terms associated with national or international legal obligations. Those of a more sceptical cast of mind might be minded to think it another example of something not made in the US not existing. Either way, the reluctance has not been helpful.

In the case of the *UK* and *France*, the enterprise of achieving greater international consensus around the application of R2P would benefit from a rather more cautious approach to the use of coercive military force than they have tended to exercise so far, certainly when they overreached in Libya in 2011: sentimental attachment to “humanitarian intervention” in the UK, and Bernard Kouchner’s “*droit d’ingérence*” in France, is still somewhat evident. But they do both get it about R2P, and their leadership in Europe continues to be necessary. The other major EU power, Germany, continues for obvious historical reasons to be almost painfully unwilling to use military power in any context: if that position were to prevail, R2P would lose the cutting edge it will always need to be a completely effective atrocity-curbing tool.

China – contrary to many expectations – did not play any kind of spoiling role in the debate leading up to the World Summit debate which embraced R2P in 2005, and has not been the strongest obstructive voice since. It did not oppose the initial Resolution 1973 on Libya, and has framed its subsequent objections not absolutely but in terms of the need to use “extreme caution” in authorizing the use of force to protect civilians, and to “fully and strictly” implement Security Council resolutions and not ‘wilfully misinterpret’ them: it has expressed strong support in that context for the concept, initiated by Brazil, of “Responsibility While Protecting” with its two key elements of close attention by the Security Council to agreed prudential criteria like last resort and proportionality before granting any military mandate in atrocity crime cases, and close monitoring of the implementation of any such mandate during its lifetime.

Beijing is becoming increasingly outspoken on international relations issues, but at the same time is increasingly visibly self-conscious about China’s need to be seen to be playing a constructive, responsible role in international affairs. It should not be assumed to be instinctively unresponsive to the need for sometimes quite robust cooperative responses to mass atrocity crimes.

The remaining P5 member, *Russia*, was in the lead-up to 2005, and has been since, a more obdurate opponent of robust action, but in the event opposed neither the World Summit Outcome Document, nor the 2011 Libya resolutions, nor many other Security Council resolutions and Presidential Statements referring to R2P. It in fact explicitly *relied* on R2P to justify its own military invasion of Georgia in 2008 but this generated a strongly negative international response, and R2P was not in fact invoked – although many had expected it to

be – in its equally unhappy annexation of Crimea in 2013 and continuing intervention in Ukraine.

Russia has been the main blocker of any effective resolution in Syria, particularly in the early months when a united Security Council front could have made a big difference. Its intransigence has been primarily driven by the *realpolitik* of its close and long-standing economic and strategic relationship with Damascus and the Assad regime has constantly prevailed., and it is not to be assumed that its intransigence will be as complete in other contexts in the future if the tensions over Ukraine which are currently poisoning relationships with the US and EU countries can be resolved. Russia's stated objections to R2P in recent years have been much more directed to the way in which R2P was applied in Libya ('double standards dictated by short term circumstances or the preferences of particular states') than to its inherent normative content. Senior officials have shown serious interest in the "Responsibility While Protecting" concept as a way of re-establishing broader Security Council consensus

Of the remaining BRICS threesome (India, South Africa and Brazil), *India's* position is the most relevant for this region. India was the last significant state to be persuaded to join the 2005 consensus, and has remained a generally unenthusiastic supporter of R2P since (save in the context of the Sri Lankan issue in 2009, when Foreign Minister Pranab Mukherjee called on the Colombo government to exercise its responsibility to protect its own citizens). It has generally focused not on opposing military force so much as setting conditions for its exercise, including that it 'be the measure of last resort and be used only when all diplomatic and political efforts fail' and that Security Council mandates be closely monitored: it has been a strong supporter in this respect of "Responsibility While Protecting".

India has wanted to be seen internationally as a champion of human rights and democracy, but at the same time to maintain its noninterventionist credentials with the Non Aligned Movement (NAM), a difficult balance to maintain (as, comparably, is its position as simultaneously a global champion and national resister of nuclear disarmament). It seems reasonable to assume that as Delhi looks more and more to assuming a global leadership role, it will contribute to bridge-building on these issues in a more active and systematically constructive way: again it is crucial that the P3 and others be responsive to its concerns about the potential misapplication of military force in R2P contexts.

R2P as an Institutional Catalyst.

All the normative consolidation in the world will not be of much use if R2P is not capable of delivering protection in practice. The continued evolution of institutional preparedness, at the national, regional and global level, is absolutely crucial if R2P is to move beyond rhetoric to effective practical implementation, particularly at the crucial stages of early prevention, and early reaction to warning signs of impending catastrophe.

Although much more needs to be done, the story in this respect so far has been reasonably encouraging. Particular effort is going into the creation of "focal points" within key national governments and intergovernmental organizations, namely high-level officials whose

designated day-job it is to analyse mass-atrocity risk situations and to energise an appropriately swift and early response within their own systems and in cooperation with others. The joint NGO-government initiative led by the Global Centre to establish a global network of such focal points had seen by the end of 2014 over 40 states signed up, from every region of the world, although Asian countries has been slower than those in other regions to sign on.

Although in some cases cosmetics need to be matched by more substance, the reality is that from Uruguay to the United States, from the DRC to Cote d'Ivoire, from Lithuania to New Zealand – as well as in the UN itself with the Joint Office of the Special Advisers for the Prevention of Genocide, and R2P – there is a large and growing group of states building a real community of commitment.

More institutional response capacity is needed in the civilian sphere in the form of the organization and resourcing of civilian capability able to be utilized, as occasion arises, for diplomatic mediation, civilian policing and other critical administrative support for countries at risk of atrocity crimes occurring or recurring: commitments to develop that capability have to date been more often rhetorical than real.

But probably the most crucial institutional need for the future is to create a culture of effective support for the International Criminal Court and the evolving machinery of international criminal justice, designed to enable not only trial and punishment for some of the worst mass atrocity crimes of the past, but potentially providing an important new deterrent for the future.

In the military sphere, the main need is to have in place properly trained and capable military resources available both for rapid 'fire-brigade' deployment in Rwanda-type cases, and for long-haul stabilization operations like those in the Congo and Sudan, not only in no-consent situations, but where vulnerable governments request this kind of assistance. And although the establishment of effective military rapid reaction forces on even a standby basis remains more an aspiration than a reality, key militaries – again with the US playing a prominent role - are devoting serious time and attention now to debating, and putting in place, new force configuration arrangements, doctrine, rules of engagement and training to run what are now being increasingly described as 'Mass Atrocity Response Operations' (MARO).

Here as elsewhere, regional organizations can be expected to play an ever more important role, exercising the full range of the responsibilities envisaged for them in Chapter VIII of the UN Charter. So far, although both the European and African Unions have shown occasional willingness to act collectively, only ECOWAS in West Africa has so far shown a consistent willingness to respond with a full range of diplomatic, political, economic and ultimately military strategies in response to civilian protection crises.

But regional and sub-regional organizations in Latin America, and above all here in Asia, have lagged a long way behind. I hope very much that this conference, and the work of the

Asia-Pacific Centre which has contributed so much to our deliberations, will generate some new momentum in this respect.

One important point that has emerged from our discussions is that in the future we may need to broaden our focus beyond the formal institutional players in national governments, and in regional and global intergovernmental organizations. Non-state actors in civil society are going to be ever more significant drivers, in this context as in many others. And Ed Luck has made the interesting suggestion that, given the role that individual citizens – and officials – have so often played as participants in genocidal bloodshed or as passive bystanders, there is a case for developing and promoting, in parallel with the R2P, the idea of the “Individual Responsibility to Protect”.

R2P as a Preventive Framework.

The credibility of the whole R2P enterprise has depended from the outset on giving central importance to prevention, in three different contexts. First, long before any atrocity crime has occurred or been threatened, but when ethnic or religious or other tensions, unresolved economic or other grievances, or manifest governance inadequacies, or all of the above, suggest there may be a serious problem in the making unless these underlying issues are systematically addressed. Second, when warning signs – like overt hate propaganda – begin to accumulate, and more rapid and focused preventive responses have to be mounted if catastrophe is to be averted. And third, in a post-violence situation, where the crucial need is to rebuild the society in a way which seriously addresses all the underlying causal issues, and ensures that the whole ugly cycle does not recur.

It needs to be acknowledged, in talking about this dimension of R2P, that at least when one is talking about prevention in the long-term structural senses described above, aiming at stopping the original occurrence and subsequent recurrence of catastrophe by addressing underlying causes, the R2P mission is for the most part indistinguishable from two or three others – the *conflict prevention* mission, the general *human rights violation-avoidance* mission, and to some extent the *development* mission as well. But the point that matters here is that while structural prevention may not be an exclusive R2P concern, it is unquestionably R2P core business, and we ignore it at our peril. Some states may be more comfortable than others in talking about long-term structural prevention in R2P terms: but what matters is that, whatever frame of reference they choose, they just get on with the task.

The good news about prevention is that the toolbox of relevant measures at all preventive stages – across the whole spectrum of political and diplomatic, economic and social, constitutional and legal, and security strategies – is well known, and as experience accumulates, and lessons-learned literature proliferates, there is an ever more detailed and sophisticated understanding by professionals of the detailed strategies that are likely to be most effective, and cost-effective. One theme strongly emphasized in commentary from the global South, and emerging from hard experience on the ground, is the critical need for more sensitive attention to be paid by external interveners and assisters to local social dynamics and cultural realities, and the perceptions of their own requirements by local populations at all levels.

It is also encouraging that, stimulated by the reports of the Secretary General to member states, prepared by Jennifer Welsh, in 2013 on “State responsibility and prevention” and 2014 on “International assistance and the responsibility to protect”, recent General Assembly Interactive Dialogues on R2P have placed renewed attention on both the preventive toolbox generally, and capacity-building and other preventive strategies in the context of the Pillar Two “assistance” responsibility.

The less good news is that while there is a long tradition of regular lip-service being paid to the need for effective prevention, in both national and international debates, the record of practical delivery is not stellar. Part of the problem of getting sufficient resources to engage in successful atrocity, or conflict, prevention is the age-old one that success means that nothing visible actually happens: no-one gets the kind of credit that is always on offer for effective fire-fighting. And it’s an iron law of politics that it is like bathing a very recalcitrant dog to get anyone excited about supporting something for which he or she is unlikely to get any recognition.

R2P as a Reactive Framework.

This is where the rubber hits the road. What do we *do* if a state, through incapacity or ill-will, has failed to meet its Pillar One responsibilities? What do we do if prevention has manifestly failed, and mass atrocity crimes are actually occurring or imminently about to occur?

R2P from the outset has involved a whole continuum of both non-coercive and coercive responses, and is absolutely *not* about coercive military interventions alone, notwithstanding that these have taken over so much of the ongoing debate.

Those reactive responses include diplomatic peacemaking, political incentives as well as political sanctions, economic incentives as well as economic sanctions, offers of amnesty as well as threats of criminal prosecution, the jamming of radio frequencies by non-forceful means, arms embargoes as well as the use of arms, and various kinds of peacekeeping falling short of full scale peace enforcement. And the application of coercive military force can of course take the form of Pillar Two assistance rather than invariably more controversial Pillar Three intervention – when done at the invitation of the government unable to deal alone with a mass atrocity situation not of its own making. All this is not as well understood by policymakers and commentators as it should be, and needs to be constantly reinforced.

But however much one may seek to preference non-military solutions, the reality is that in some R2P situations – classically Rwanda – only coercive military force would have halted the atrocities. And some of these situations will allow little or no time for systematically exhausting options short of military force: where large scale killing is occurring or manifestly imminent, a quick judgement may have to be made that no lesser action is capable of halting or averting the harm.

One hears from some academics¹ (and nervous officials) that there are a whole set of intractable structural problems involved in *any* coercive military intervention designed to halt an actual or avert an imminent mass atrocity crime, including mixed motives (interveners will often have self-interested as well as altruistic aims), the counterfactual problem (the impossibility of *proving* that any given number of people would have died without the intervention), the conspicuous harm problem (there is bound to be at least some collateral civilian damage), the end-state problem (how to leave after an intervention without the harm recurring), and the inconsistency problem (how can you intervene anywhere if you can't do so everywhere you ideally should).

My practitioner-focused response to these anxieties, however, is straightforward: welcome to the real world. Any decision-making in any real crisis almost invariably involves hard judgment calls, weighing and balancing considerations that almost never all point conveniently the same way. R2P is a framework for action for pragmatists, not purists, and this is very well understood by those who have to apply it, not just write about it.

Because of the degree of sensitivity and difficulty involved in any decision to use coercive military force – against the will of the government of the state concerned – it has been assumed from the outset by most R2P advocates, certainly me, that it would only be in the most extreme and exceptional circumstances that it will be authorised by the Security Council. And so it has proved to be, with only the Cote d'Ivoire and Libya cases in 2011 giving rise to such a mandate. It is impossible to know how many thousands of lives were saved in Benghazi by that initial intervention in Libya, but certainly possible to argue that had the UN Security Council acted anything like as swiftly and robustly in the 1990s, 8000 men and boys in Srebrenica, and close to 800,000 men, women and children in Rwanda, would still be alive today.

But of course the Libya case, as already noted, whatever the initial lack of controversy has subsequently proved desperately divisive, because of the widespread perception – certainly among the influential BRICS group members – that the P3 members unacceptably transformed a limited civilian protection mandate into an open-ended regime change one. If R2P is to have a future in all the ways that it needs to – if we are not, in the face of extreme mass atrocity situations, to go back to the bad old days of indefensible inaction as with Cambodia, or Rwanda, or Bosnia, or of otherwise defensible action taken in defiance of the UN Charter, as in Kosovo – then a solution simply has to be found to the current post-Libya stand-off. The good news, I believe, is that a solution is in sight should agreement be able to be reached on some variant of the “Responsibility While Protecting” proposal originally put on the table by Brazil, in which Russia, China and India, among others, have all shown interest.

Overall, while there are certainly plenty of challenges ahead for R2P, there are many grounds for optimism about its future of R2P over the next decade and beyond. It is important to emphasise again that the disagreement now evident in the UN Security Council *is* really only

¹ Notably Roland Paris, ‘The “Responsibility to Protect” and the Structural Problems of Preventive Humanitarian Intervention’, *International Peacekeeping*, Vol 21, No 5, 2014, pp. 569-603.

about how the R2P norm is to be applied in the hardest, sharp-end cases, those where prevention has manifestly failed, and the harm to civilians being experienced or feared is so great that the issue of military force has to be given at least some prima facie consideration. There is much more to the R2P project than just these extreme late-stage situations, and much to indicate that its other preventive, reactive and rebuilding dimensions all have both wide and deep international support.

Policymakers now around the world do understand the stakes, and the imperative for cooperative action, much better than they used to. I don't believe that anyone really wants to see a return to the bad old days when appalling crimes against humanity committed behind sovereign state walls were seen by almost everyone as nobody else's business.

And I think we can be optimistic enough to believe that R2P principles are already so internalised and embedded that no leader knowing of such crimes will ever say again to a counterpart what Kissinger did to Chatichai in 1975. I may be wrong but we must all hope that I'm right, and together work like hell to ensure that I am.

GE26ii15