



Syria

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This briefing is designed to shed light on the complex interplay between the situation on the ground in Syria and the normative context that has informed – and continues to inform – the responses of key institutions and actors. There is much that can be learned from the handling of the crisis triggered by the chemical weapons (CW) attacks on Ghouta on 21 August.

Between 21 August and the potentially game-changing remarks by US Secretary of State Kerry on 10 September suggesting that President Assad could avoid military strikes if he ‘turned over’ all his chemical weapons capability, R2P was invoked to justify the use of force. At the same time, many R2P informed voices *opposed* this course of action.

The fact of the diversity of views on what to do about Syria is not in itself a surprise. But for the epistemic community associated with R2P, there is a need for clarity as to the ways in which the range of possible responses to the CW attack are consistent with, or in breach of, the responsibility to protect. Whether ‘we’ like it or not, ‘any principle that helps to legitimise a course of action will therefore be among the enabling conditions of its occurrence’.¹

One of the key fault-lines in the post-21 August debate was the necessity of UN Security Council (UNSC) authorisation, particularly given that Russia had an openly stated preference for keeping the Assad regime in power. This of course is an old fault-line for the human protection regime going back to Kosovo – there was much talk in Washington about the ‘Kosovo precedent’.² Yet the orthodox R2P position is that the 2005 World Summit Outcome Document (WSOD) explicitly places the use of force for human protection within the framework of the UN Charter, and therefore limits authorisation solely to the UNSC.

The ‘authorisation’ question is not the only fault-line in recent R2P debates about Syria. There is also a dispute about what actions are permitted in response to a CW attack that both breaches an international convention outlawing its use *and* is shockingly indiscriminate in its effects. As Gareth Evans put it, ‘proven use of chemical weapons would be profoundly in breach of Syria’s “responsibility to protect”’.³ As the post-21st August phase unfolded, the Obama Administration increasingly chose to frame their proposed military action in relation

R2P IDEAS in brief



to the ban on CW, rather than the persistent crimes against humanity that had been perpetrated by *conventional* weapons for many years. In this respect, to the extent that R2P was informing the President's framing of the issue, it was now about 'war crimes' rather than crimes against humanity.

Box 1 describes the different normative arguments that have been in the public domain post-21 August. They are outlined in detail in Part 2 of this briefing.

Box 1. Contested Arguments for the Authorisation of Force⁴

- A. Orthodox R2P.** A military response without a Resolution contravenes R2P and is not lawful or legitimate. Such a position adopts what some international lawyers describe as a 'restrictionist' understanding of the use of force in relation to the UN Charter.⁵ Rests on a positivist understanding of state rights and responsibilities.
- B. Illegal but legitimate – the Kosovo precedent.** Military action, though inconsistent with the 2005 articulation of R2P *could* be condoned if it attained international legitimacy. This is based on a 'counter-restrictionist' view that use of force for humanitarian purposes does not constitute aggression. Rests on a natural law argument about upholding universal moral standards.
- C. Uniting for Peace.** Some argue that UN General Assembly authorisation is consistent with the UN Charter, albeit not widely regarded by most state actors – especially the Permanent Five (P5) – as a viable alternative to the UNSC. Rests on the view that members of the UNSC act as delegates for UN members as a whole – and therefore have shared responsibility for peace and security.
- D. Constructive non-compliance with legal regime.** This position is outside the conventional R2P framework and majority opinion in international law. It holds the view that existing law has to be broken for new laws to be made.

Prior to discussing R2P in the post-21 August phase, the briefing will re-evaluate the extent to which the framework outlined in 2005 had significant material impact upon the meaning actors gave to the 'facts on the ground'. We show that however much the main protagonists disagreed about what was to be done in relation to Syria, the fact of mass atrocities having been committed had not been challenged during the crisis - and neither was the claim that the Syrian regime had failed to live up to its responsibility to protect.

1. Pre- 21 August 2013: R2P and the Framing of Syria as a Humanitarian Crisis

There is no doubt that concerns about the security situation in Syria brought R2P into the diplomatic deliberations. The evidence of mass atrocities being committed is overwhelming. Successive reports by the Independent International Commission of Inquiry on the Syrian Arab Republic (Col) – starting its investigations in 2011 – has consistently documented the

R2P IDEAS in brief



AP R2P

Asia Pacific Centre for the Responsibility to Protect

committal of gross violations of human rights and the plain fact that civilians were ‘bearing the brunt of the spiraling violence’.⁶ Note also the former Special Advisor to the UNSG on R2P referring to crimes against humanity being committed as early as the summer of 2011.

There are two striking features in the successive reports of the CoI on Syria: that the situation on the ground reaches ‘new levels of brutality’ as the conflict continues to a point where 6.8 million people are trapped in conflict-affected areas of the country. Second, while it is acknowledged that crimes against humanity are being committed by several armed groups, the government’s willingness and capacity to use highly destructive and indiscriminate weaponry is unrivalled. And, whoever is using force, it is still the government that has the primary responsibility to ensure protection of the population. The excerpt from the latest CoI makes this point graphically:

Box 2. Human Rights Council: ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’.

‘Government forces conduct their military operations in flagrant disregard of the distinction between civilians and persons directly participating in hostilities. Extensive aerial and artillery capabilities continue to be deployed. Increasingly even less precise weaponry such as surface-to-surface missiles, thermobaric bombs and cluster munitions are being used. There is a strong element of retribution in the Government’s approach, with civilians paying a price for “allowing” armed groups to operate within their towns’.⁷ It is on the basis of the CoI findings that the High Commissioner for Human Rights, Navi Pillay, has repeatedly urged the UNSC to refer the case to the International Criminal Court (ICC). The case for referral was made by the Swiss permanent mission in New York and was co-signed by over 50 UN member states (11 January 2013).⁸

In light of this evidence of a desperate and worsening situation for civilians, as documented by the CoI, there is no question that the Assad government has manifestly failed – through acts of omission and commission - to prevent mass atrocities from occurring in Syria during the previous two and a half years.

NGOs from the region have added their voice to the criticism of the Assad government for systematic massacres. The Arab NGO Network for Development submitted a report to the HRC on 31 May 2012.⁹ The submission found that ‘extreme use of force and excessive violence against civilians still continues’ and that the Assad government had shown ‘no sincerity’ in relation to implementing the Annan plan.¹⁰

It is true that the UNSC has only managed limited action due to significant differences of opinion that have divided the P3 (US, UK and France), and the P5. How far these disagreements have been driven by *genuine* differences of view about the conflict itself, however, is difficult to assess. The P2, led by Russia, have taken the view that the civil war can only be resolved if the Assad government is part of the deliberation, and also, that

R2P IDEAS in brief



military force is not a good way to resolve a political problem. The P3, on the other hand, have consistently regarded Assad as the principal cause and main perpetrator of the atrocities – with little or no prospect for a resolution without coercive measures being adopted leading, eventually, to regime change.

This diplomatic deadlock was apparent throughout 2011 and 2012, as draft resolutions were contested and three tabled resolutions were vetoed.¹¹ These disputes occurred against the backdrop of the NATO-led military action in Libya that was mandated by UN Security Council Resolution 1973. It was not uncommon to read the Libya case as being described ‘as a model intervention’¹² that illustrated how far and fast the norm of the responsibility to protect had travelled in the decade following the ICISS report.¹³

Others, particularly those outside the transatlantic partnership, believed the Libya intervention (‘Operation Odyssey Dawn’) had grafted regime change onto the protection of civilians. This view was triggered by an instance of counter-productive public diplomacy on the part of the leaders of the US, UK and France who released a joint statement on 29 March 2011 in which they restated that the purpose of military intervention was to protect civilians. However, they simultaneously declared that it was ‘impossible to imagine a future for Libya with Qaddafi in it’ and that the ‘pathway to peace’ in Libya required that ‘Qaddafi must go and go for good’.¹⁴ This open discussion of regime change, combined with a military operation that targeted regime infrastructure, took Operation Odyssey Dawn to the limit of what had been authorised; with a consequential collapse in consensus in the UNSC over what ‘decisive measures’ the Council should command in relation to Syria.

Box 3. The Fall-Out Over Libya

By the time of an important UN General Assembly open debate on the protection of civilians in November 2011, it became evident that the contestation over Libya was more than a fall-out between the permanent members of the Security Council. The South African Ambassador to the UN, Baso Sangqu, condemned ‘recent NATO activities in Libya which went far beyond the letter and spirit of resolution 1973 adopted by this Council’. He went on to add: ‘Abusing the authorization granted by this Council to advance political and regime change agendas does not bode well for future action by this Council in advancing the protecting of civilians agenda. This could lead to a permanent state of paralysis within this Council in addressing similar situations in future. Such action could undermine the Council’s credibility in protecting civilians. Regime change, arming civilians and harming of civilians cannot be justified in the name of protecting civilians’.¹⁵ A key element of the South African government’s complaint was the absence of reporting back to the Council.

This view was echoed by Russia in the UNSC. In the debate in the Council on 10 May 2011, Russia agreed that there was ‘a humanitarian imperative’ to protect civilians, but they insisted that states must ‘avoid excessively broad interpretations of the protection of civilians, which could link it to the exacerbation of conflict, compromise the impartiality of

R2P IDEAS in brief



AP R2P

Asia Pacific Centre for the Responsibility to Protect

the United Nations or create the perception that it is being used as a smokescreen for intervention or regime change'.¹⁶

These statements from permanent and elected members of the UNSC indicate that they regard 2005 as being the definitive R2P framework – and there ought to be no going back on the World Summit agreement.

A number of inferences can be drawn from the diplomatic hostility that shrouded the Syria issue in the UNSC. First, the positions of both 'sides' of the debate - the P2 and P3 - often 'lumped' together different rationales for their positions: for instance, on the part of Russia especially, subverting what they regarded as Western arrogance coexisting with significant reservations in relation to the means/ends calibration that had been made by the P3. Second, even the adoption of measures short of force became extremely difficult to arrive at when the vital interests of great powers diverged – with the P3 believing there would be no security in Syria unless Assad was replaced, while Russia, in particular, wanted its loyal ally to remain in power and fearing that 'sanctions' would lead inexorably to regime change. Such a cleavage reminds us that norms guiding international action are limited when they confront powerful governments, intent on massacring civilians in pursuit of regime security at all costs.

Despite the challenging diplomatic environment post-Libya, all members of the Council managed to agree 'that mass killings are taking place and that the government's actions are unethical'.¹⁷ The Council was able to find a brief moment of consensus around Kofi Annan's roadmap for peace¹⁸ and was united in its condemnation of the massacre in Houla in May 2012.

For some in the R2P community, this is about as far as the envelope can be opened – in other words, R2P has helped to bring clarity to the diplomatic debate as to what is happening in Syria, and why the (undisputed) deaths of over 100,000 civilians constitutes a crime against humanity. In other words, the limited consensus that exists about the 'facts on the ground' and its undesirability is itself an achievement, when compared with the denials that have so frequently accompanied the perpetration of genocide and other mass atrocities, such as in the case of Rwanda in 1995.¹⁹ Comparing both cases, it is evident that the diplomatic community has much more quickly agreed that a situation within the domestic jurisdiction of a state is a 'matter of international concern'.

Moreover, as noted previously, the international community was able to agree on many statements and resolutions that were highly critical of the Assad government. The Human Rights Council (HRC) has mobilised effectively to ensure that Syria continues to be reported on in key UN institutions, while the warring parties have been censured many times: *ten* resolutions have been passed on Syria by the HRC and the General Assembly has, by a large

R2P IDEAS in brief



majority, rebuked the Security Council for its failure to take timely and decisive action in this case. And we know that the UN Secretary-General has remained active on the Syria question – not least through the deployment of two heavyweight envoys – Kofi Annan and Lakhdar Brahimi.

2. Post- 21 August 2013: R2P and the Framing of Syria as a Humanitarian Crisis

The phase of global diplomacy following the 21 August use of chemical weapons in Ghouta has triggered many different arguments about the presence/absence of R2P. This was predictable: any time Western powers provide moral arguments for the use of force, R2P is invoked or deplored – and often without evidence of a detailed understanding of the framework and how it has been applied in the past.

How, then, should we evaluate the rival claims about what is permissible or prohibited by R2P in relation to the case for military intervention that has been advanced by the US, France and the UK (noting that the UK Government had to take its participation in any proposed action off the table owing to its defeat in the House of Commons on 30 August)?

A. Action without a Resolution Contravenes R2P

The first articulation of R2P to consider is the orthodox 2005 position. In short, without the absence of a UNSC resolution passed under Chapter VII of the UN Charter, there can be no intervention that is justified and legitimated by R2P. What is important about the orthodox account is that any coercive action in the name of R2P must be consistent with the principles and processes contained in the UN Charter, which accords to the UNSC the sole responsibility for mandating force to uphold international peace and security.

Who has taken this restrictive view on the crisis? First, the influential NGO, the International Coalition for the Responsibility to Protect (ICRtoP) has clearly said that any military action undertaken without UNSC authorisation is inconsistent with the 'R2P norm', as outlined in the WSOD.²⁰ Second, many influential UN member states who are traditionally pro-R2P have been against the use of force in Syria – in so doing, they have stuck to the conventional R2P 'script'. This position stems from the fact that the 2005 World Summit agreement on R2P was clear in its insistence that timely and decisive action be taken through the UN Charter, meaning that any enforcement action in the name of R2P must be authorised by the Security Council. Anything else would be simply inconsistent with what states agreed in 2005.

Absent a UNSC resolution, this orthodox R2P position is left with the following options that fall short of the application of military power:

R2P IDEAS in brief



AP R2P

Asia Pacific Centre for the Responsibility to Protect

1. Continue to push for negotiation, while subjecting all parties to the conflict to scrutiny and censure.
2. Pursue measures short of force such as an arms embargo, asset freezes and other economic sanctions, and referring the case to the International Criminal Court, to bring an end to the cycle of violence with impunity.
3. Perhaps most importantly, focusing international attention on the actual protection of Syrian civilians by increasing funding for humanitarian assistance, facilitating safe flight, and dealing with the increasing resettlement problem.

The advantage of this argument is that it maintains a strong presumption against using force unless all members of the Security Council are persuaded of the moral and practical case for intervention, and clearly grounds its understanding of R2P in what states have actually agreed – drawing a sharp line between the R2P agreed by the General Assembly and reaffirmed by the Security Council, which insists upon Council mandating of enforcement action, and other iterations that do not command the consensus of states. Such a position has been put forward by the UN's former Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, John Holmes, who argued in *The Guardian* that 'the best thing outsiders can do to improve the humanitarian situation is to make sure aid agencies have the resources and access they desperately need'.²¹

For those adopting an orthodox R2P position – as set out in the 2005 WSOD – the absence of a consensus in the UNSC is indicative not of 'crisis'²² or a failure of R2P. Instead, it is a realisation that agreement about the use of force is hard to achieve and difficult to sustain in some cases, something recognised by both the UN Charter and the international community's commitment to R2P. Acting without proper authorisation poses a danger to regional and international order, not least in the precedent it sets. Moreover, this position recognises that there are sound prudential reasons to be cautious about the use of force and that these reasons are, to some extent, also reflected in the Council's deliberations.

This orthodox R2P position on Syria has the virtue of staying close to state practice – in other words, it reflects the consensus that the 2005 WSOD established in terms of how the distribution of responsibilities is to be divided between the host state and the international community. But staying close to state practice has its shortcomings. Two of these can be recognised immediately: first, it delivers into the hands of every P5 member the power to stop the Council from exercising its international responsibility to protect; and second, there will always be reasons to delay a decision to use decisive force – as there was in Bosnia and Herzegovina, and Rwanda.²³

B. Military action would be in breach of R2P but could have international legitimacy.

For many activists in world society – and some diplomats too – the lure of R2P was its promise to galvanise more effective international responses when manifest state failure to protect their citizens was occurring. For some, such as Gareth Evans, the whole purpose of

R2P IDEAS in brief



R2P was to serve as a rallying call for action. R2P was, in other words, a response to the profound inaction that accompanied the genocides in Rwanda and Srebrenica in the 1990s.²⁴ The principal causes of this inaction were deemed to be a lack of political will and a lack of unity in the Security Council – precisely the characteristics of the international community’s response to the Syrian crisis. As Samantha Power used to say prior to her roles in the Administration, the problem with American foreign policy is that it has not previously taken risks to save peoples in extreme danger.

Nonetheless, some advocates have argued that although military force without a Security Council mandate might contravene the terms of R2P as agreed in 2005, there are circumstances in which unauthorised force for humanitarian purposes might be legitimate. As Evans argued, ‘there is a principled way through the dilemma. It involves establishing whether any form of military action against the Syrian regime in response to last month’s horrific chemical weapons attack would be legitimate and wise, and then—if such a case can be made—having a credible answer to the question of whether such action could still be justified in the absence of Security Council endorsement.’²⁵

Not surprisingly, the principled avenue held out by Evans is the decision-making criteria for intervention articulated by the Commission he led in 2001. Evans finds grounds for thinking that most of these criteria have been satisfied by the bloodshed in Syria, with the possible exception of the ‘balance of consequences’ calculation, which would depend very much on subjective judgments about the likely direct costs of military action and the likely impact on the actions of other actors (would Assad escalate? Would the rebels escalate? Would it make them more or less willing to negotiate?). If leaders could plausibly demonstrate that these conditions were satisfied, then it might be possible for them to legitimise what would otherwise be an illegal use of force on the grounds of the overwhelming moral need for action.

Breaking international rules and asking for such actions to be condoned is appealing because it offers a principled pathway to legitimation in the event of a divided Security Council – an impediment to action that the 2005 agreement found no way round. Michael Ignatieff puts this moral formula succinctly when he noted ‘what law forbids conscience may still command’.²⁶

As attractive as this ‘illegal but legitimate’ formula may seem on the surface, it has a number of limitations:

- How much legitimacy is needed, and from whom? Prior to the diplomacy of disarmament ‘track’, the US administration was struggling to claim there was legitimacy for military action. Condemnation of the Assad regime – and other atrocity perpetrators in Syria – had not been short on the ground, but outright support for the use of force appeared only to have the backing of France, the UK, Australia, and Turkey. Tellingly, even the G20 statement put out by 11 countries

R2P IDEAS in brief



AP R2P

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- only called for ‘a strong international response’, rather than the planned punitive strikes.²⁷ A further problem in pushing the ‘illegal but legitimate’ claim was also the lack of domestic support for such action in many liberal states – and the opposition to the military action favoured by the executive in the UK and the US.
- The legitimating ‘criteria’ themselves have limited international authority. Remember that before ICISS there was Tony Blair, who advanced criteria for decision-making on the use of force at the time of the Kosovo crisis²⁸ and applied those same criteria to justify the 2003 invasion of Iraq. In other words, the criteria are selected and defined by the same actors who seek to use them to justify armed intervention without a Security Council mandate. In their most recent guise, Brazil suggested that criteria be used by the Council itself. That is, as a further restriction on Council action not as a way of navigating around the Council.
 - The manner in which the criteria are used to evaluate situations is highly subjective and open to contestation. One could use the criteria to make plausible arguments that are precisely the opposite of what Evans argues. Some criteria are almost impossible to resolve in actual cases: for example, as Clausewitz’s concept of the ‘fog of war’ teaches us, it is never possible to make forward-thinking judgments about the balance of consequences in war with any degree of certainty.
 - Advancing this line of argument would likely only confirm the suspicions of a large portion of international society; that the West did not enter into its agreements on R2P in good faith and that it is merely using the language of R2P as a convenient framework to justifying the use of force when it suits its own purposes to do so. This would, in turn, help to legitimise opposition to R2P, with at least two sets of negative consequences. Not least, it would make it more difficult to bring R2P to bear across the full range of protection issues. This is significant, bearing in mind that Syria is only one of the many cases in which the Council is confronted with the problem of mass atrocities. In around ten others, it has applied the R2P lens to good effect in responding to mass atrocities. This could be undermined if R2P lost ground in the battle for legitimacy.

C. *Uniting for Peace Resolution*²⁹

The Uniting for Peace Resolution (United Nations General Assembly Resolution 377) of 1950 stipulates that the UN Security Council has ‘primary responsibility’, not ‘exclusive responsibility’, for peace and security. If the Security Council fails to take action to prevent or end a particular situation, the General Assembly has competence under the Charter to recommend (but not authorise) military measures. The backdrop to Uniting for Peace was the perceived abuse by the Soviet Union of its veto right in the Council – an argument that

R2P IDEAS in brief



AP R2P

Asia Pacific Centre for the Responsibility to Protect

Susan Rice frequently made during her time as US Ambassador to the UN during Obama's first term.

The advantage of a Uniting for Peace resolution is that it keeps possible military action within the framework of the UN. Additionally, as noted in the ICISS report of 2001, if a two-thirds majority to military action could be secured in the UNGA, this would give a significant measure of international legitimacy to an intervention.

As noted above, the General Assembly has been active in the Syria crisis, and the more the UNSC appears deadlocked, the louder the clamour for the UNGA to step into the breach. It is also positive because, according to the WSOD, it is the UNGA that is the primary institution in advancing R2P.

That said, there are good reasons why states, when contemplating the use of force for protection purposes, have not tried to push for a vote in the General Assembly. These include:

1. Most obviously, the fear that they would not command a majority – particularly given the opposition to such interventions by significant blocs such as the Non-Aligned Movement (NAM).
2. Those countries searching for international legitimacy are the P3, and they will be reluctant to invoke a covering rule that eroded the centrality of the Security Council.
3. Related, when this issue has been debated in Western capitals, there has often been a concern that the Assembly lacks 'the legal competence to determine enforcement action of this kind'.³⁰

D. 'Constructive non-compliance' with current legal regime on the basis of combined logics of humanitarian necessity and the 'national security' concerns of Western powers.

Limited military action for humanitarian ends has been justified on the grounds that deterring and degrading the future use of WMD capability will prevent further conscience-shocking attacks like those of 21 August. This justification is outside the conventional view of the R2P regime. It merits consideration, however, in view of the fact that many governments that were pushing for a military response to the 21 August massacre have woven two normative arguments together: the goal of protecting civilians from future possible 'gassing', through degrading the Assad government's capability to use chemical weapons.

An early and important instance where 'security' and 'humanitarian' logics were interwoven occurred in the legal advice delivered by the UK Government's law officers. The document

R2P IDEAS in brief



AP R2P

Asia Pacific Centre for the Responsibility to Protect

argues that the Syrian government's use of chemical weapons is a breach of customary international law and is both a war crime and a crime against humanity (two of the atrocity categories that R2P is designed to prevent or eradicate). *See Box 4.*³¹

Box 4. UK Government Legal Position, 29.8.13

'If action in the Security Council is blocked, the UK would still be permitted under international law to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the further use of chemical weapons by the Syrian regime. Such a legal basis is available, under the doctrine of humanitarian intervention...'

The document goes on to list three conditions that would have to be met: severity of suffering; last resort; any application of force is consistent with necessity and proportionality.

Given that the Government motion on participating in US-led action was defeated, it is clear that the UK Parliament was not persuaded by the legal case, and neither were influential R2P advocates. Gareth Evans described it as a 'heroic' but unpersuasive effort³² on the part of the legal advisors who drafted the guidelines. Evans also reminds us of one of the lessons from 2003 being that innovative legal arguments, far removed from conventional understandings of international rules, 'is to put at risk the credibility of the whole humanitarian civilian protection enterprise'.³³

In an op-ed article that attracted considerable attention, Ian Hurd took up a similar position to Evans by counselling the Obama administration to 'not pretend that there is a legal justification in existing law'.³⁴ Yet rather than breaking the law and then 'asking for forgiveness' – the condoning route – Hurd suggests that the countries supporting intervention should 'assert that international law has changed' – a strategy that he calls 'constructive noncompliance'.³⁵

What, precisely, has 'changed' such that new legal understandings need to be forged? Hurd believes that the combined experience of the last 11 years, through the ICC and the tribunals for Cambodia, Rwanda, and the former Yugoslavia, 'reflect a growing consensus that the perpetrators of atrocities should be punished'.³⁶ Such a view has the support of a minority of lawyers who argue that states have a responsibility to enforce respect for international humanitarian law, including the provisions on war crimes.

While the creation of new legal rules relating to ingenious argument on the surface, we would argue that if one digs a little deeper it becomes evident that there are several major challenges for the creating of what Hurd calls 'a new legal path'.

R2P IDEAS in brief



- The political costs of socialisation. We know from the norm life-cycle literature that the distance to travel from the initial stage of entrepreneurship to tipping point to internationalisation is vast; if norms around basic human rights or criminal accountability are our guide, then the 'new' path should be measured in decades rather than months or years.³⁷ On one reading of the R2P story, the time period from Annan's challenge to the international community to the World Summit Outcome Document was relatively short. Yet prior to the millennium challenge to establish a new framework for protecting civilians from mass atrocities, there had been a great deal of moral and institutional learning through the 1990s.
- The potential for blowback. Even activist states on the use of force for humanitarian purposes have been reluctant to advance the idea of a new legal norm, because they worry about the uses other states might make of such a norm. During the 1990s, Western leaders were concerned that Iran might use a norm of humanitarian intervention to justify intervention in Iraq. Likewise, numerous Middle Eastern states could apply the norm to intervene in the Occupied Palestinian Territories. These are not idle concerns. In 2008, Russia used precisely this type of argument to justify its military incursions into Georgia.
- This line of analysis relies on a very expansive interpretation of international law and an implausible degree of hope. Although international law is indeterminate, there are limits to what can be plausibly justified.³⁸ Typically, a proactive action-based approach to changing international law succeeds only when the existing law is in a state of crisis and where there is a groundswell of opinion which holds that the law is anachronistic and in need of change. No such opinion exists outside a small circle of Western academics, and even smaller circle of Western states in relation to the rules on the use of force. As such, there is little reason to think that international society would view these arguments as anything other than self-serving justifications for clear violations of established law – much as the world judged the 2003 invasion of Iraq.

As we have shown in this brief, R2P has been present throughout the Syria crisis. In the pre-21 August R2P has informed the positions taken by key actors in the grinding and acrimonious diplomacy between the Assad regime, its regional neighbours, key 'capitals', and various organs of the UN particularly the Human Rights Council and the work of the International Commission of Inquiry appointed by the Council. This process quickly arrived at the view that the host government had manifestly failed to protect the Syrian people – even if it was not the only actor committing mass atrocities, it was still failing to exercise its primary responsibility to protect.

It was only after the CW attacks that there was a strong push for a humanitarian coalition of the willing to be formed in order to take military measures to deter and degrade the

R2P IDEAS in brief



AP R2P

Asia Pacific Centre for the Responsibility to Protect

regime's CW capability. This push by the UK, US, and France, invoked the language of the international community's responsibility to take decisive action in the event of further deadlock in the Council. In effect, from an analytical point of view, different understandings of the norm were being debated – a version of the ICISS report of 2001 in which coercive measures could, under certain conditions, be adopted when one of the permanent members uses a veto to prevent an outcome that could save lives. This brief has argued that there are risks associated with this route and that the resilience of the R2P norm depends on its usage remaining consistent with the operative paragraphs of the WSOD.

Among the various normative arguments available to decision makers, R2P has held less sway than enforcement action to enforce the ban on CW. In terms of future research, it will be intriguing to reflect further on how domestic publics in several key states would appear to have pushed back against the 'call to arms' by their political leaders. As Cameron, Hollande and Obama discovered, their plan to strike targets in Syria in the immediate aftermath of 21 August was severely inhibited by the perceived absence of legitimacy for such action.

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R2P IDEAS in brief



AP R2P

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³⁷ Martha Finnemore and Kathryn Sikkink. 1998. 'International Norm Dynamics and Political Change', *International Organization* 52:4 (1998), p. 898.

³⁸ As Skinner argues, norms can be 'stretched' but they are not 'indefinitely modifiable'. See Skinner, *Visions of Politics* pp.155-7.