THE RESPONSIBILITY TO PROTECT AT 10: THE CHALLENGE OF PROTECTING THE WORLD’S MOST VULNERABLE POPULATIONS

Introduction
Daniel Terris and Galia Golan”

On March 8-9, 2015, the International Center for Ethics, Justice, and Public Life at Brandeis University and the Tami Steinmetz Center for Peace Research at Tel Aviv University jointly hosted a conference called: “The Responsibility to Protect at 10: The Challenge of Protecting the World’s Most Vulnerable Populations.” The conference, which took place on the Brandeis University campus, featured presentations by more than two dozen participants from the United States, Israel, and several other countries. Its distinguishing feature was the variety of professional backgrounds that speakers brought to our conversation. Presenters included scholars from numerous fields, distinguished international figures, and practitioners who have worked with NGOs at the ground level in countries directly affected by mass violence. The organizers brought no specific ideological agenda to the conference; our goal was to use the occasion to stimulate candid and productive thinking about the prevention of violence against civilians in many parts of the world.

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1 Conference details at: http://www.brandeis.edu/ethics/events/R2P.html. Papers for the conference are available at [WEB PAGE.] Not all conference participants contributed papers.

go.brandeis.edu/R2P
The year 2015 marked the tenth anniversary of the adoption by the United Nations General Assembly of the principle of the “Responsibility to Protect,” referred to in shorthand as “R2P.” Contained in the 2005 World Summit Outcome Document, the statement followed a decade of political maneuvering designed to spur more coherent international action on behalf of women, men, and children in danger of becoming victims of mass violence.²

Beyond the issue of the “right” of the international community to intervene in the actions of states, an important forerunner of the UN adoption of the principle was the development of the concept of “sovereignty as responsibility.”³ Under this line of thinking, states have formal obligations to prevent harm from coming to citizens and others residing within their borders. If states violate or neglect those obligations, then other members of the international community have a duty – not just the right – to take some form of action on behalf of civilians. This perspective formed a basis for the work of important international commissions in the first years of the 21⁰ century, including the International Commission on Intervention and State Sovereignty. The final report of this body, issued in December 2001, called upon the international community to be more proactive in preventing mass violence, and it also developed principles for actions up to and including military intervention for cases in which all other options were exhausted.⁴

The 2005 United Nations Outcome Document did not offer the strongest articulation of the R2P principle. It limited the “trigger” for R2P to four specific situations: genocide, war crimes, ethnic cleansing, and crimes against humanity. More importantly, it specifically made the UN Security Council the final arbiter for a decision on collective military action. This significantly limited R2P’s potential, since the veto power of the permanent five members of the Security Council has historically been a significant barrier to decisive collective action.

Events of the past decade have severely tested the R2P doctrine. Widespread violence and suffering have hit people hard in countries around the world, including (but not limited to) Sudan, South Sudan, Libya, the Central African Republic, Syria, and North Korea. In none of these situations has the R2P principle produced an unambiguously positive international response. The situations in two of these countries, Libya and Syria, provided particularly dramatic examples of the shortcomings of R2P.

Libya was the most prominent formal test of the R2P principle in action. In 2011, it was clear that large numbers of Libyans were victims or potential victims of mass violence, and that the Qadaffi regime was playing a part in their suffering. Invoking R2P, the Security Council did indeed succeed in authorizing military intervention. At the time, it seemed like a triumph for the R2P principle: strong collective action on behalf of a civilian population. Yet the aftermath of the international action has itself created a series of major problems that have arguably left the Libyan people as insecure as ever. The overthrow of Qadaffi, the unleashing of tribal conflict, and the spillover of the Libyan conflict into other parts of North Africa have left the region in chaos. So in the one instance where the international community has taken a decisive step to implement R2P, the implementation has been little short of a disaster.

Syria represents the opposite situation. Since 2011, it has been clear to the entire world that the Syrian people have been exposed to brutal violence, both from their own government and from many of the groups competing for power there. It is obvious that the Syrian government has itself been a perpetrator of crimes on a vast scale in some areas, and that in other areas it has no power to prevent others from harming civilians. With millions of civilians suffering or threatened, it is hard to imagine a situation that more clearly fits the criteria for invoking the R2P principle. Yet the international community has managed only pinprick actions. The Security Council has been virtually paralyzed, and no other coalition has emerged to settle on meaningful measures to protect
the Syrian population. What good is R2P, many people have asked, if it is impotent in a situation as dire and obvious as Syria?6

The failures of R2P in Libya and Syria – as well as challenges in other parts of the world – have stimulated two basic responses.

To some observers, the events of the last decade have permanently tainted the idea of R2P. It was, in that view, a nice idea, well intentioned, but in its current form it does more harm than good. Some of that harm may come from the nature of the international actions themselves, as in Libya. But the failure to act on R2P in places like Syria does harm as well, since it exposes the hypocrisy of states and undermines the whole idea of an international order. Better to abandon the principle than to let the whole world see noble principles exposed as mere high-flown rhetoric.

Many other observers, while recognizing R2P’s manifest shortcomings in practice, continue to insist that the events of the last decade demonstrate more the need for a better implementation of an important principle. R2P, they say, was always going to be hard to implement, and there was never any expectation that a vote at the United Nations would itself provide a foolproof safeguard for all of humankind. Can we, they ask, find a way to inch R2P forward, to fortify the international community’s resolution, and to protect against missteps? Ten years, after all, is a short timeframe. To abandon R2P now would be to turn a shoulder of fatalism and indifference to millions of powerless people.

Most of the contributors to our March 2015 conference fall into this second camp – those whom we might call the chastened optimists on R2P. Our proceedings include a range of both theoretical and practical proposals to bring life to the R2P principle. But our gathering included a strong discordant and pessimistic note as well, that the optimists were obliged to consider.

6 On December 18, 2015, the Security Council did adopt Resolution 2254, which endorsed a road map for a peace process in Syria, setting out an early-January 2016 timetable for United Nations-facilitated talks between the Government and opposition members, as well as the outlines of a nationwide ceasefire to begin as soon as the parties concerned had taken initial steps towards a political transition. At the time of the publication of this introduction (February 2016), however, those peace talks are suspended. [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2254(2015)]
Rajan Menon struck that discordant note most forcefully. focusing exclusively on military intervention, Menon argued that the recent failures of R2P are more than growing pains – they are endemic. He articulated a number of the arguments that have been made most prominently against the coherence and effectiveness of R2P. It is inevitable, Menon said, that R2P will be invoked only in cases where the states are weak. Powerful nations will continue to be able to oppress their citizenry with impunity. Furthermore, states (particularly Western countries) have amply demonstrated that they are unwilling to risk the lives of their soldiers when their own strategic interests are not at stake; this drastically reduces the number of situations in which states will be willing to intervene. Moreover, the failure of implementation in Libya and the failure to act in Syria are together undermining the credibility of the international community. R2P, Menon said, is never going to work, and we should stop pretending that it ever will.

Menon, among our participants, was clearest in his dismissal of R2P, but other speakers offered strong critiques. Rosa Brooks, for example, worried that the language of “sovereignty as responsibility” has had unintended consequences. She pointed out that this concept has in effect been adopted by the security establishment as a way of justifying cross-border actions against terrorism. If a government is unwilling or unable to suppress terrorist groups, the argument goes, then it is defaulting on its responsibility as a sovereign power, and other parties are justified in entering the country to do the job. If R2P began as a principle to protect civilians, Brooks warned, its philosophical basis is now being exploited for very different ends.

The principle of R2P had not been formally adopted when the first Gulf War began in the 1990s, but Ofra Bengio rightly pointed out that the debate over R2P ideas began in that decade. In her contribution, Bengio analyzed the failure of the international community – despite the use of overwhelming force – to protect vulnerable populations in Iraq. While she made a limited exception in conceding that the Kurdish population in the north

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9 Ofra Bengio, “America in Iraq: The Price of Opening Pandora’s Box” [Paper based on presentation at March 2015 conference].
of the country was protected in the wake of military intervention, she argued that overall “the outcome of the intervention of outside forces and the international community was on the whole more disastrous than beneficial to the population.”

Uriel Abulof, for his part, dissected some of the initial conceptual issues that weakened R2P from the beginning. He argued that invoking “sovereignty as responsibility” gave too prominent a place to the conception of sovereignty itself, at the expense of other important principles like human liberty. Abulof suggested that R2P began with a Lockean emphasis on rights and liberty, but that its language and mechanisms shifted quickly – even in its theoretical inception – towards too much emphasis on protecting “Leviathan,” the bases of state power. He urged a return to bringing the language of “personal responsibility and social solidarity” back to the R2P discussion, in order to provide alternative paths towards justice and dignity for the vulnerable.

No contributor to our gathering denied the immense challenges involved in bringing R2P to life, but most of our participants found themselves seeking ways to learn from the lessons of the past to improve the prospects for the future. Andreas Teuber, for his part, drew inspiration from the future on the intellectual leaps that led to the development of the R2P doctrine; Teuber paid particular attention to the influence of scholars like Michael Walzer, who offered alternatives to the predominant realist paradigm.

Some participants, more concretely, looked to certain events of the past 25 years as evidence that intervention on behalf of civilians has had limited successes in the past. Richard Goldstone and John Shattuck spoke to their own personal experiences in connection with the conflict in Bosnia-Herzegoivina in the mid-1990s, where NATO action helped bring about the (admittedly imperfect) Dayton Peace Accords. Goldstone also pointed to the NATO intervention in Kosovo as an instance where military action was described by one commission as “illegal but legitimate.”

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10 Uriel Abulof, “Behemoth vs. Leviathan: Revisiting the Responsibility to Protect” [Paper based on presentation at March 2015 conference].
11 Andreas Teuber, "Responsibility to Protect: Morality, Politics, Law" [Oral presentation at March 2015 conference].
12 "Justice and Accountability” [Proceedings from a Roundtable Discussion at the March 2015 conference].
13 Richard Goldstone, "Kosovo and the Birth of R2P” [Oral presentation at March 2015 conference].

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pre-dated the formulation and adoption of R2P, they involved military intervention where humanitarian motivations were at least part of the calculus. The presentations by Goldstone and Shattuck suggested that history offers lessons of hope for the implementation of R2P in specific circumstances.

One topic that engaged a number of speakers was the role of the Security Council. Hans Corell, speaking from his experience as a former Under-Secretary-General for Legal Affairs, voiced particularly strong concern that the permanent five members of the Security Council have created harmful and unnecessary obstacles to collective action. Contributors were generally skeptical about the prospects for major changes in the structure of the Security Council; instead, they explored ways of modifying current practice. Corell, among others, urged that international pressure be brought to bear to persuade the members of the P5 to forego the use of the veto in situations related to the protection of civilians from mass violence. Gillian Sorensen echoed Corell’s call, with special attention to the role that public opinion can play in the United States and other powerful and influential countries.

Mordechai Kremnitzer advanced a new way of thinking about the fundamental legal and moral principles of R2P. He argued that situations of genocide and ethnic cleansing were not simply attacks upon civilian populations – by breaching international standards in such egregious a way, genocide and ethnic cleansing represent attacks on the international community as a whole. If the international community has been attacked, Kremnitzer reasoned, then it has the right of self-defense. Since self-defense is a basis for military action under international law, then interventions in support of distressed populations could be undertaken without necessarily acquiring the formal backing of the Security Council. His line of thinking suggested a nimbler approach to collective action.

14 “Justice and Accountability” [Proceedings from a Roundtable Discussion at the March 2015 conference].
15 Some recent initiatives are focused on establishing new voluntary norms on the use of the Security Council veto in situations of humanitarian crisis. See http://www.globalr2p.org/our_work/un_security_council_veto_restraint.
17 Mordechai Kremnitzer, “Responsibility to Protect - A right of self-defense for all states against atrocities” [Paper based on presentation at March 2015 conference].
Others urged more creative and active approaches to the first two “pillars” of R2P: prevention by states themselves, and help from the international community to strengthen states in the service of prevention. Chen Kertcher openly worried that a focus on the question of military intervention was hindering proactive policies that might make armed action unnecessary.\(^\text{18}\) Naomi Kikoler, speaking from her experience on the ground in the Central African Republic, called for better analysis of local conditions in the early stages of a conflict; attention to the political dimensions of conflict, she warned, often overshadowed the enactment of preventive measures that might aid the civilian populations.\(^\text{19}\)

Prevention, other contributors stressed, involves new and better tools and analysis. Benjamin Valentino presented a new “early warning” system for genocide, developed in conjunction with the U.S. Holocaust Museum and Memorial. This on-line tool integrates real-time data to give strong indicators about nations and regions where genocide and mass violence are most likely to erupt.\(^\text{20}\) Of course, weighing those indicators and deciding on which actions to take requires a further level of consideration. Benny Miller suggested that the international community should pay more attention to what he calls the “state-to-nation balance” when considering interventions.\(^\text{21}\) The degree to which national boundaries conform to homogeneous peoples, Miller argued, strongly constrains the options both for intervention and for eventual outcomes.

The mix of scholars and practitioners at our conference made for a lively consideration of the role of a wide variety of actors in the R2P process. Christen Broecker detailed the role that the UN’s human rights mechanisms played in prodding action (or at least the consideration of action) in four key situations: Darfur, Libya, Syria, and North Korea.\(^\text{22}\) Adrienne Fricke described the eroding confidence that Syrian democracy activists feel in

\(^{18}\) Chen Kertcher, “Implementing the R2P Agenda for Peace Operations” [Paper based on presentation at March 2015 conference].

\(^{19}\) Naomi Kikoler, “R2P and the Central African Republic” [Oral presentation at March 2015 conference].


\(^{22}\) Christen Broecker, “UN Human Rights Monitors: Essential Advocates of the Responsibility to Protect” [Paper based on presentation at March 2015 conference].
the international community, following its long-term inaction despite the increasing violence and desperation in their country. Karen Naimer, focusing on the Democratic Republic of the Congo, showed that ground-level efforts by NGOs like Physicians for Human Rights can strengthen local capacity to counter mass violence. Jared Genser exemplified the role that pro bono lawyers can play in documenting and bringing to public attention new R2P situations through his own work on the situation in North Korea. And Alain Lempereur argued that for-profit corporations can play a role in offering direct and tangible protection to civilians in places where they have ongoing operations.

Timea Spitka focused on the problem of omitting explicit considerations of gender from the R2P discussion. On the one hand, she argued, failure to recognize the specific threats faced by women in situations of mass violence has often resulted in disproportionate suffering. On the other hand, she continued, women often suffer disproportionately in situations where humanitarian intervention does take place – ironically often through sexual violence at the hands of those troops that have been brought in to protect the civilian population. Spitka also focused on what she saw as the uneven application of R2P in the Middle East, especially in relation to the Israeli-Palestinian conflict. Yet her ultimate conclusion was not that R2P should be abandoned; instead, the international community should come to “a consensus on the use of stronger tools.”

The majority of our participants faced honestly and squarely the fact that R2P has not yet lived up to its promise. Yet they were more inclined to blame this on the failures of governments, not on the failure of the principle itself. Our speakers joined the realists in their fundamental conviction that government action most frequently has its origins in

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23 Adrienne Fricke, "R2P and the International Community’s Response to the Crisis in Syria" [Oral presentation at March 2015 conference].
26 Alain Lempereur [Point based on an oral presentation at March 2015 conference].
27 Timea Spitka, “Drawing the Red Lines: Gender and Responsibility to Protect in BiH and Israel/Palestine” [Paper based on presentation at March 2015 conference].
motivations of self-interest. Yet many also drew on history, scholarship and their experiences in the field to argue that emerging coalitions of actors – including international bodies, NGOs, corporations, and civilians themselves – have acquired new opportunities in an age of technology to alter the dynamic even among the world’s most powerful nations. If R2P has a future, it may depend on an expanded definition of collective action.

The Responsibility to Protect at 10: the Challenge of Protecting the World’s Most Vulnerable Populations

March 8-9, 2015 – Brandeis University

Conference Organizers

- The International Center for Ethics, Justice and Public Life at Brandeis University
- The Tami Steinmetz Center for Peace Research at Tel Aviv University

Cooperating Institutions

- The United States Holocaust Memorial Museum
- The Jacob Blaustein Institute for the Advancement of Human Rights
- The Master's Program in Coexistence and Conflict at the Heller School for Social Policy and Management at Brandeis University
- The Brandeis International Journal

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