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

Drawing the Red Lines: Gender and Responsibility to Protect in BiH and Israel/Palestine
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The Responsibility to Protect (R2P) norm has been subject to much criticism from feminist scholars – and specifically, gender and peace scholars – because it was drafted without gender analysis and opens up the potential of gender-based crimes as a pretext for military intervention. This essay draws attention to shared common goals between the agenda of Women, Peace and Security (WPS) and R2P norms, and argues for the need to reach a consensus beyond prevention focused on the enforcement of protection of civilians enduring war crimes (Davies 2014). Although the international community (IC) has been able to reach a consensus on international norms, without a consensus on the use of coercive R2P tools, its application and enforcement have been absent or detrimental. Subsequent to an analysis of gender and R2P, this essay examines the drawing of red lines in international strategies in Bosnia and Herzegovina (BiH) and Israel/Palestine.

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R2P norms rose out of an effort to increase the protection of civilians from war crimes, and paves the way towards easing an international consensus on the red lines, the crossing of which warrants an international intervention. Enshrined in the UN Charter in 2005 and 2009, R2P laid a framework for collective international action when a state fails to provide protection for people under its authority threatened by the most grave human rights crimes: namely genocide, war crimes, ethnic cleansing, and crimes against humanity. As noted by Alex Bellamy, R2P “is a label that can be attached to particular crisis in order to generate the will and consensus necessary to mobilize a decisive international response” (Bellamy 2010, 159).

The initial failure of the R2P norm to include gender analysis in its framework received much criticism. Consequently, feminist literature came out against R2P, stressing that it was “developed without adequate attention to the lives of women” (Charlesworth, 2010). There have been recent attempts to bridge the differences and develop a more gendered vision of the R2P framework with a focus on mainstreaming & prevention (Davies 2014; Stamnes 2012). Gender mainstreaming, the process of assessing the implications for women and men in any planned policy action, has become an accepted strategy with a view of promoting equality between men and women. Although gender mainstreaming of R2P and prevention of war crimes are fundamental for more effective international intervention, reaching a consensus on operationalization of the protection norms, particularly related to enforcement, has proved to be a great challenge. Prevention of future war crimes has little meaning in the absence of addressing ongoing war crimes. “Soft tools” are the least likely to have unintended effects; however, they may not have an impact on those who are already engaged in committing war crimes. As noted by Aidan Hehir, “Those who reject the legitimacy of international human rights norms cannot possibly feel compelled to comply with these rights if there is no mechanism for enforcement” (Hehir 2010).

R2P norms currently hold states responsible for the welfare of all citizens under their domain with the fundamental obligation to protect civilians from war crimes. The International Commission on Intervention and State Sovereignty proposed that sovereignty “be made conditional on two basic responsibilities: respect for the
sovereignty of other states and responsibility to provide basic security for one’s own citizens – that is, to refrain from subjecting them to massacres, genocide, or ethnic cleansing” (Ignatieff 2012). The doctrine has become integrated into a practitioner’s tool kit that includes the use of more coercive tools such as international criminal justice mechanisms and military intervention (Western 2011). The notion of sovereignty as responsibility has also shifted the focus of prevention of war crimes from a state-centric to a human-centric approach to security.

The coercive application of the R2P norm has, however, been subject to much debate among gender scholars and international practitioners alike. Pillar Three of the R2P norm gives the IC an obligation to intervene through coercive measures in cases when the state fails to protect its citizens. Coercive measures, in particular military intervention, carry with them many unintended effects such as potentially heightening the levels of violence, increasing sex trade and trafficking linked to the presence of military personnel, escalating human rights abuses against civilians, and heightening patriarchy. Feminist scholars have highlighted the link between militarism and patriarchy (Enloe 1993; Hooper 2001). An externally sponsored nation-building endeavor may also contribute to the construction of exclusive institutions that emphasize the prominence of ex-combatants, marginalize women, and may serve to exacerbate rather than diminish women’s inequality and oppression.

A question remains concerning the effectiveness of sharp R2P tools in forcing an end to atrocities without unintended effects such as the escalation of violence and abuse or marginalization of women. A second challenge relates to the factors that contribute to a political consensus on the use of coercive intervention tools including sanctions, international criminal courts, and military intervention. Scholarly research on R2P has been case-specific, focused on analysis of: cases where the international community failed to intervene to prevent genocide and war crimes, including in Rwanda, Bosnia and Herzegovina, and Darfur; alternatively, cases where R2P has been enacted but with questionable results, such as Iraq, Afghanistan, and Libya; and, finally, cases where there has been an absence of consensus on R2P, including Syria and Gaza.
In the next section, I will briefly highlight two cases, the first where the international community eventually reached a consensus on the need for strong coercive measures, and the second where the IC remains divided. The US played a formidable role in forcibly ending the Bosnian conflict through a military intervention, although it was the fear of political consequences, rather than concern for vulnerable civilians and testimonies about gender and other war crimes, that played the primary role in ending the BiH conflict. The international community’s role in attempts to end the Palestinian/Israeli conflict, protect vulnerable civilians, and prevent war crimes has been limited by lack of consensus on authority, responsibility, and the applicability of R2P. The protection of civilians has either not been placed on the top of agenda of any responsible authority or has not been effective in protecting the most vulnerable from war crimes.

**Bosnia and Herzegovina (BiH)**

The failure to protect civilians in BiH was one of the reasons behind the enactment of R2P norms. Transition to a coercive international intervention in BiH was a gradual process, reflecting an arduous diplomatic battle between American, European, and UN diplomats. There was a wide difference between the way American and European policy makers perceived the conflict in BiH and the manner in which they envisioned its termination (Bildt 1999). From the beginning of the conflict, American leadership favored a military campaign in line with what was interpreted in Washington as Serbian aggression, but they were disinterested in becoming actively engaged. The 1991 infamous quote by James Baker, “we do not have a dog in the fight,” was reflective of the initial American lack of interest in the Yugoslav conflict.

In March 1992, immediately following the referendum and the declaration of Bosnia’s independence, paramilitary forces trained in Serbia crossed into BiH and began a vicious campaign of ethnic cleansing (Little 1996). The United Nations Security Council investigation found that most of the brutal violence, death, and atrocities committed in Bosnia were conducted by paramilitaries against ordinary citizens. As noted in the UN report, “The ethnic cleansing included massacres, rapes, destruction of property, organized extortions, looting and the forcible removal of hundreds of thousand Muslim civilians” (UNSC 1994). Gender crimes were part of the ethnic cleansing and terror...
launched against the civilians. Rape camps, which for the most part targeted Muslim women, were set up in several cities including Foca, Zvornik, Susica, and Zepa.

Although war crimes, criminality, and systematic rape are common parts of war, in the case of BiH they played a prominent role. For extreme nationalist politicians in Serbia, ethnic cleansing was the essential goal of the organized attack and not an unintentional by-product of the war (Cigar 2000). The paramilitary groups sent to BiH from Serbia were given specific orders to rape, pillage, and clear the Eastern Region of BiH, or two-thirds of Bosnia’s neighboring Serbia, of Muslims. The systemic rapes served the dual purpose of terrorizing and humiliating the population of a national group. According to documented communication, top members of the department of the Yugoslav Army believed that the “morale, desire for battle, and will [of Bosniacs] could be crushed more easily by raping women, especially minors and even children” (Salsman 1998, 356).

Approximately 20,000 women and girls testified to being raped, close to 100,000 people were killed in the conflict, and almost 2.5 million people (about half of the population of BiH) were forced from their homes and became displaced internally or as refugees abroad.

By 1993, the extent of the violence against civilians, and the reliance on UN humanitarian assistance – referred to disparagingly in the media as a “band-aid for a gun wound” – was becoming increasingly embarrassing for the EU and the UN (Spitka 2015).

In order to protect the population, the designation of “safe areas” was given to six majority-populated Bosniac towns under Bosniac control, where most of the civilians fled: Sarajevo, Srebrenica, Tuzla, Zepa, Gorazde and Bihac. In effect, the unarmed civilian population, consisting mostly of women and children, was herded into isolated urban pockets surrounded by Serbian paramilitaries or the army. Since there was no enforcement of “the safe areas,” civilians in these cities bore witness to and suffered some of the worst atrocities in the war. Although the UN and human rights groups were calling attention to the vulnerability to war crimes of the civilian populations, the international community did not reach a consensus on the use of coercive tools.

The establishment of the Contact Group in 1994 was designed to formulate a common and more forceful international policy. The Contact Group included representatives of the
United States, Germany, Britain and France, which all increasingly favored a forceful approach against Serbia and the Bosnian Serbs in Pale. Russia, the fifth member of the Contact Group, was against a partisan approach against Serbia but with the collapse of the Soviet Union had its focus elsewhere. By 1994, there was a growing consensus between the EU and the US on the benefits of using NATO airpower. Fearing its potential collapse following the end of Cold War, North American and European policy makers agreed that NATO’s role should be widened and strengthened (Owen 1997, 225).

The arrival of military support from Middle East countries in terms of arsenal and mujahedeen added to the commitment towards urgency of action. Indeed, the fear of an Islamic force in the midst of Europe played a significant role in the change of strategy for both European and American policy makers.

In 1995, as a response to the shelling of civilians in Sarajevo, NATO (with authority from the UN) responded with a limited air campaign. In retaliation, Bosnian Serbs began to take hundreds of UN personnel hostages, chaining them to potential NATO targets such as ammunition dumps and bridges. The hostage-taking contributed to a consensus on the need for even tougher measures. Top European mediators agreed that “the humiliation of the UN forces in the hostage-taking which followed in May [1995] made a strong response necessary” (Bildt 1999, 19). The massacre in Srebrenica also contributed to convincing the IC to continue a policy of decisive partisan intervention. In Srebrenica, almost 10,000 unarmed Bosniac men were massacred while in a “safe area” ostensibly under the protection of the UN. According to former US National Security Advisor Anthony Lake, “The turning point was in 1995 after Srebrenica. European public opinion shifted, and our allies were not looking forward to another winter on the ground in Bosnia where the humanitarian mission would be struggling. The European mood shift allowed us to proceed with military actions that helped to produce the Dayton Accords” (Lake 2006).

The use of NATO was accompanied by a diplomatic push to end the conflict. In August 1995, NATO received the green light from the UN to begin intensive air strikes. US Mediator Richard Holbrooke threatened Bosnian Serbs with continuing air strikes if they did not comply with the demands of the IC. The bombing in BiH was precise, targeting
strategic points and resulting in few casualties, but worked as a pressure cooker on the Serbian leadership. With the NATO force behind him, Holbrooke forcibly negotiated a rapid end to the conflict.

The United Nations also established the International Criminal Tribunal for the former Yugoslavia (ICTY). The ICTY was the first international war crimes court created since the Nuremberg trials. The war crimes tribunal contributed to reconciliation, combatted denial, and helped communities come to terms with the horrors of the conflict. The tribunal also addressed gender-based war crimes and ruled that rape had been used by members of the Bosnian Serb armed forces as an instrument of terror in the Omarska, Keraterm, and Trnopolje camps of northwestern Bosnia.

Although the Dayton Peace Accords have not been without flaws, the peace has held. The negotiations at Dayton focused on territorial divisions between the warring groups that created dysfunctional democracy, with inclusion of minorities and women’s equality remaining low on the agenda. Still, the forceful intervention ended the atrocities, and provided protection for vulnerable citizens; many individuals responsible for the most atrocious war crimes have been tried in the Hague. The international consensus was built around political considerations as well as the crossing of red lines, including the massacre of unarmed men and boys in Srebrenica and the kidnapping of UN troops. However, the bulk of the atrocities, including ethnic cleansing and the use of rape camps, took place at the beginning of the conflict and failed to convince the IC of the need of a more forceful intervention. Exogenous factors such as common US and European fear of an Islamic state in middle of Europe, the public humiliation of international troops, the wish to strengthen NATO, and the absence of Russia (which was occupied with domestic issues) contributed more deeply to the consensus than the fate of vulnerable civilian population.

**Responsibility to Protect Civilians in the Israeli/Palestinian Conflict**

Unlike in BiH where the IC eventually agreed on a decisive and forceful intervention, reaching a consensus in the Israeli-Palestinian case has been arduous. The failure to agree on responsibility for the violence as well as the protection of all civilians has left the most vulnerable civilians exposed to war crimes. Military and paramilitary activities by Israel
and Palestinian armed groups, including Hamas, have targeted civilian populations in their homes, schools, and open spaces. Disputes between the main interveners – including the US, EU, UN, Middle Eastern states and Russia – over responsibility for the violence have defined the contentious international intervention process in the Israeli/Palestinian conflict. The Quartet was created to enhance a coordinated intervention, but deep divisions within the Quartet have limited its functioning and prevented effective measures (Spitka 2015). Although a working consensus has been reached on the need to end the Occupation, strengthen Palestinian institutions, and negotiate towards the establishment of a two-state solution, the international community has thus far found it impossible to navigate a united response that prioritizes the protection of civilians.

Issues related to gender have remained invisible under the larger accusations of wrongdoing by Israel and Palestinian armed groups. Although the reality of women is radically different between those living in Gaza, the West Bank, and East Jerusalem, and those living under Israeli (versus Palestinian) authority, all civilians are vulnerable to purposeful attacks. Women, as all people living within Israel, are impacted by terrorism and rocket attacks that target civilians and serve to justify the Israeli occupation and military crackdown on the Palestinian population. UN Resolution 2010/6 expressed deep concern about the “grave situation of Palestinian women in the Occupied Palestinian Territory, including East Jerusalem, resulting from the severe impact of the ongoing illegal Israeli occupation and all of its manifestations…” (RES 2010). Palestinian women living in the West Bank and Gaza are impacted by numerous factors that negatively affect their lives, including the military occupation, external violence, internal (domestic) violence, sanctions, lack of freedom of movement, poverty, evictions and house demolitions. Gender issues such as trafficking of girls, forced prostitution, child marriages, and femicide (honor killings) are all too common but kept out of the limelight. Gender-based crimes are compounded in areas with the weakest Palestinian legal authority, such as Gaza and Area C, where perpetrators can act without impunity.

The vulnerability of the civilian population to war crimes can be argued to be present for all civilians; however, it is most relevant in, and has been most frequently been linked to, Gaza, in particular the events of the recent Gaza wars. With a population of 1.8 million,
Gaza is one of the most densely populated areas of the world. Denied free access to other parts of Occupied Palestinian Territory and to the outside world, the civilian population is almost entirely dependent on foreign aid. Economic blockades, severe fuel and water shortages, and Israeli restriction on many items, including basic construction materials, have left much of the population vulnerable. Women’s reality in Gaza lies under a layer of harshness stemming from the occupation, militarism, chauvinism, political recriminations, and opportunism that revolves around blaming of the other side. The interconnectedness of the occupation, extremism, domestic violence against women, economic hardship, and war seems to be lost on many observers who tend to place blame on one of the sides in the conflict. The sensitivity of discussing the situation of women living under multiple layers of oppression by Hamas, the Israeli occupation and international blockade, and wars leaves women and children particularly vulnerable to war crimes. However the lack of consensus remains on whether the abuses are severe enough to warrant the international obligation of Responsibility to Protect.

The 2008 and 2014 Gaza wars resulted in many civilian deaths, accusations of war crimes, threats of sanctions, and discussions about bringing those responsible to justice; however, lack of consensus among the key interveners and indifference to human suffering has thus far powered only marginal intervention beyond investigations and humanitarian assistance. The UN inquiry into the 2008 Gaza war, headed by Richard Goldstone, accused Israeli defense forces and Hamas of war crimes, crimes against humanity, and serious violations of international law, and it recommended further investigation and bringing those responsible to justice (Mission 2009). The EU Parliament endorsed the report, while the US Congress voted the Goldstone report to be “irredeemably biased” against Israel and called on President Obama to maintain his opposition to the report. Washington persuaded Palestinian leadership to shelve their complaints to the international legal forums. A US diplomatic plan known as a “non-paper,” presented by George Mitchell’s team, outlined that “during negotiations it [the PA] will refrain from pursuing or supporting any initiative directly or indirectly in international legal forums…” (Swisher 2011, 67). Palestinian President Abbas gave in to the pressure, and the Palestinian public responded with uproar and disillusionment, contributing to the further plummeting credibility of the moderate West Bank leadership.
The more recent and deadlier 2014 Gaza War also resulted in external investigations and accusations of war crimes. The July/August hostilities that were a response to rocket fire and a terrorist incident against Israeli youths destroyed residential buildings and schools, resulting in many civilian deaths, destruction of much infrastructure, and displacement of close to a third of the population of Gaza. An investigation by the United Nations Human Rights Council found serious violations of international humanitarian and human rights law by both Israel and Palestinian militants that may be considered war crimes (Council 2015). The UN report noted that, of the 2,251 people killed in Gaza, 1,462 were civilians. Non-governmental organizations have estimated that 241 women and 370 children were killed while inside their homes. The 2014 Gaza war was particularly hard on women. As noted in an interview within the report, “This war was different from previous wars, especially for women. Civilians were attacked particularly in their homes. The home is the domain of the women…” (Council 2015, 31).

Israeli justification for the military campaign was the ongoing rocket fire launched by armed groups from Gaza. Between July and August 2014, Palestinian militants indiscriminately fired 4,881 rockets and 1,753 mortars towards Israel, killing 6 civilians (Council 2015). Alarms and safe rooms prevented loss of more Israeli civilian lives; however, most civilians were under the threat of bombardment and unable to move freely. The protection of the civilian population is on a different scale and essentially non-existent or completely ineffective in Gaza. Since Gaza is both under Israeli effective control and under the governing authority of Hamas, a fundamental question is who is responsible for the protection of the civilian population in Gaza. Palestinian-ruling Hamas prioritizes fighting Israel and the arming of civilians over providing for their protection. Although women and girls in Gaza lack fundamental rights and freedoms, they have the freedom to be trained as militants. The lack of a peace process, basic human needs, and hope for change or flight, leave few options for desperate individuals.

The last Gaza war was an illustration of the absence of protection of civilians living within the Strip. Israeli Defense Forces (IDF) claimed that measures such as leaflets recommending evacuation and a small blast on the roof was intended as warning for people to evacuate civilian buildings targeted for destruction. However, many civilians
had nowhere to flee; no location in Gaza was considered safe, and even those areas that were designated as “safe,” such as UN schools, were purposely or inaccurately targeted. In densely populated areas, the “small blasts” created much confusion and individuals, particularly those living on lower floors, did not always realize their building was targeted, or were hurt or killed while escaping the building (UN Report, p 65). In addition, children, the elderly, and disabled people, and those providing for their care, were the most challenged to escape. To add to the already challenging situation, Hamas authorities recommended to the civilian population to ignore IDF instructions and remain in their homes. In some cases, armed groups including Hamas purposely fired from built-up areas and prevented civilians from evacuating (UN Report). The IDF then considered all those who remained in areas designated to be hit as voluntary shields.

Some densely populated neighborhoods were particularly targeted in the war. During the Shuja’iya operation on July 19 and 20, the IDF treated the highly populated area as a single military objective. In an interview, an IDF soldier told the organization Breaking the Silence that when the news of the battle in Shuja’iya broke, “One of the most senior officials in the IDF, […] just marked off houses on an aerial photo of Shuja’iya, to be taken down. […] It’s not like in every building that was struck in Shuja’iya there was some Hamas militant or somebody firing at our forces.”

According to interviews with IDF soldiers who took part in the operation, the rules of engagement in 2014 were far more lax. “In previous times we had entered Gaza, a D9 [armored bulldozer] would go in and everyone drove in its trail. But in this operation they decided to do something different – just to enter as an offensive. A row of tanks go in, they spread out wide, get into position, identify ‘suspicious spots’, fire as required. The rules of engagement were very, very lax. […] There was no such thing as requesting authorization. Just fire.”

Discussing the operation in Bureij, an interviewed IDF soldier noted, “I remember it, all the tanks were standing in a row, and … I asked my commander: ‘Where are we firing at?’ He told me: ‘Pick wherever you feel like it.’ And later, also, during talks with the

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1 Testimony # 110, Breaking the Silencep.234; http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1
2 Breaking the Silence. This is how we fought in Gaza; testimony 43, p. 110; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1
other guys – each one chose his own target, and the commander, on the two-way radio, called it ‘Good Morning al-Bureij’.”

Human Rights Watch, Amnesty International, and other organizations that investigated the conflict found indiscriminate and not-proportionate targeting of civilians, including at UN schools that were sheltering fleeing civilians. The Human Rights Council Report noted that “impunity prevails across the board” and recommended an enquiry into war crimes by the International Criminal Court (ICC) (Council 2015). However, the US rejected the UN investigative report and remained steadfast against the ICC. In a statement, the US State Department noted, “It is a tragic irony that Israel, which has withstood thousands of terrorist rockets fired at its civilians and its neighborhoods, is now being scrutinized by the ICC…” (State 2015). A year after the last Gaza conflict, little has changed on the ground. Hamas continues to shoots rockets into Israel, Israel retaliates, and there is little pressure on ether side to protect civilian lives. “Mowing the lawn” has become a frequently used term in the claim that Israel, every couple of years, needs to conduct a military operation in Gaza in order to suppress and punish terrorist groups.

If one, for a moment, removes the controversial issue of blame, the question remains whether any authority is providing protection to vulnerable civilians. Currently, the civilian population, particularly that living in Gaza, is vulnerable not to the harshness of the occupation and economic sanctions, and but also to potential war crimes. Women remain vulnerable not only to bombs and sanctions, but also gender-based crimes. Although Israel and Palestinian armed groups including Hamas have crossed red lines and failed to provide adequate protection for civilians, the IC has remained divided over the use of measures that go beyond humanitarian assistance. Effectiveness of any coercive action without international consensus is unlikely to have an impact. Failure to provide protection to civilians in Gaza is another failure of the international community to live up to its obligation to protect civilians from war crimes. Considering other ongoing regional conflicts such as in Syria and Yemen, where civilians are vulnerable

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3 “Good Morning al-Bureij”, testimony # 783044, Breaking the Silence, http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1
and R2P is also relevant, the Israeli/Palestinian conflict will likely remain under the radar until the next Gaza war. In the meantime, Israeli civilians remain vulnerable to ongoing attacks by armed individuals and groups and civilians living within West Bank and Gaza are vulnerable to violent incursions by the Israeli army.

**Conclusion**

R2P norms have paved the road towards prioritizing a human-centric approach to security that can be used as a bridge to create an international consensus on the need for intervention that goes beyond humanitarian assistance. When it comes to stopping ongoing war crimes against civilians, R2P norms are ineffective without the use of coercive tools such as targeted sanctions, international legal action, and the use of an external military force. In order to be effective, coercive tools require cooperation and a consensus on action among the interveners that need to come under the authority of the UN. In BiH, the use of forceful, coercive tools was necessary but only became possible subsequent to an international consensus sanctioned by the UN. The consensus was built around endogenous as well as exogenous factors. Although military intervention was instrumental in ending the Bosnian conflict, it resulted in few casualties and was conducted in parallel with a peace agreement and establishment of an international criminal tribunal. The protection of civilians in the Israeli/Palestinian conflict has been blocked not only by the lack of cooperation from Israeli politicians and Palestinian armed groups, but also by international partisan politics. Ongoing disputes regarding responsibility for the violence have prevented the use of stronger and more effective tools that would prioritize the safety and welfare of all civilians, Israelis and Palestinians alike.

Gender and peace scholars would do well to move beyond a focus on prevention and participation to examine the effectiveness of stronger measures in cases where civilians are vulnerable to war crimes, ethnic cleansing, genocide, and crimes against humanity. Cases such as Bosnia, Gaza, and present-day Syria point to situations where there is a complete disregard for the safety of the civilian population, although the international community is under obligation to take action which goes beyond humanitarian aid. The cases also draw attention to the vital ingredient of consensus on the use of coercive tools, without which intervention remains ineffective. As gender scholars have pointed out,
enforcement tools cannot be a blank check opening the door to military intervention that risks more lives and with unintended effects such as abuse of women. Both the prevention of war crimes and the participation of women are fundamental in the formulation and application of international norms. However, the protection of civilians suffering from serious war crimes requires a consensus on the use of stronger tools. Otherwise, international intervention – regardless of its intention – is indeed placing a band-aid on a gun wound.
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