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

UN Human Rights Monitors: Essential Advocates of the Responsibility to Protect
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Introduction

Over the past 20 years, the human rights architecture associated with the United Nations (UN) has grown substantially, as has its connection to UN efforts to prevent and respond to the commission of atrocity crimes. Over the past decade, as the Responsibility to Protect (R2P) doctrine has evolved, there have been several cases in which UN human rights mechanisms have invoked it, not only to remind states of their own responsibilities, but also to call for the international community to take action to protect populations from genocide, crimes against humanity, and war crimes.

These cases offer an important opportunity to reflect on the potential for the R2P doctrine to empower UN human rights monitors to provoke collective action by UN Member States in response to atrocity crimes; and, conversely, for UN human rights actors to encourage the UN Security Council to put the R2P doctrine into practice, enhancing its normative force.

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As the same time, these cases also demonstrate that UN human rights actors, like other stakeholders, are constrained by the R2P doctrine’s built-in constraints on coercive action. This is particularly true because, as articulated in the 2005 World Summit Outcome Document, the R2P doctrine is situated within the existing peace and security architecture of the United Nations, which allows any of the five permanent members of the Security Council to prevent the international community from taking action in response to gross human rights violations, even when they amount to atrocity crimes.

**Background**

While the UN Security Council is tasked with the responsibility for maintaining international peace and security, it historically has been reluctant to consider human rights violations as directly relevant to its work. This reflects a longstanding view, held more closely by some UN Member States than others, that human rights conditions are solely a matter of a state’s “internal affairs.” For the first half-century of the UN’s existence, this perspective resulted in the UN Security Council very rarely taking action in response to reports of serious human rights violations, particularly when committed outside the context of armed conflict.

The R2P doctrine seeks to overcome this historic barrier to action. As articulated in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS), the R2P doctrine suggests that a State loses its claim to a right of non-intervention if it fails to prevent “large scale loss of life, actual or apprehended, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”

At the 2005 World Summit, UN Member States for the first time signaled their agreement with the R2P doctrine. The World Summit Outcome Document limits State sovereignty in cases where a State manifestly fails to protect its population from genocide, crimes against humanity, war crimes, or ethnic cleansing (which some refer to

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collectively as “atrocity crimes”).\(^2\) It stresses the responsibility of each State to protect its populations from atrocity crimes (“Pillar 1” of R2P); notes that the international community should, as appropriate, encourage and help States to exercise this responsibility (“Pillar 2” of R2P); and acknowledges that where national authorities are “manifestly failing” to protect their populations from atrocity crimes, and peaceful means have proven inadequate, States must “take collective action, in a timely and decisive manner” (“Pillar 3” of R2P). However, the World Summit Outcome Document also stresses that any action by States to implement Pillar 3 of R2P must take place “through the Security Council, in accordance with the Charter.”

Thus, the Responsibility to Protect framework, at least as endorsed by the United Nations, only permits States to take coercive action under Chapter VII of the UN Charter to prevent or curb the commission of atrocity crimes (not human rights violations falling short of this threshold), and only if such actions have been authorized by the UN Security Council. Under the UN Charter, any such decision is subject to a veto by any of the Council’s five permanent members: the United States, the United Kingdom, France, Russia, and China. The UN Charter considers “coercive action” to include the entire range of measures from authorizing military intervention; to subjecting a State to the jurisdiction of the International Criminal Court without its consent; to imposing targeted sanctions and arms embargoes; or to authorizing the intervention of UN peace operations with a mandate to protect civilians. The World Summit Outcome Document’s reliance on the UN and its Security Council thus designates as “gatekeepers” of the exercise of Pillar 3 of R2P certain actors who have historically rejected the relevance of human rights to the Council’s work, including at least two permanent members that continue to do so today.\(^3\)

\(^2\) UN General Assembly, 2005 World Summit Outcome Resolution, UN Doc. A/RES/60/1 (16 September 2005), para. 138-140.
\(^3\) In one recent example, in the context of a formal meeting of the Security Council addressing the human rights situation in the Democratic People’s Republic of Korea, a representative of China affirmed that “China is always opposed to the Security Council’s intervention in issues that concern a country’s human rights,” and a representative of Russia confirmed his country’s position that, “…the issue of the human rights situation in any given country does not fall within the mandate of the Security Council and should be taken up in the specialized bodies, above all in the Human Rights Council,” UN Security Council, Meeting Record, 7575th meeting, “The situation in the Democratic People’s Republic of Korea,” UN Doc. S/PV.7575 (10 December 2015).
Human Rights Investigators as “Triggers” for the Responsibility to Protect

Over the past 20 years, the UN’s human rights architecture has grown substantially. In 1993, the General Assembly created the post of UN High Commissioner for Human Rights; today, the Office of the High Commissioner (OHCHR) comprises over 1,000 staff members, around half of whom are based in field presences around the world. Though the UN human rights system commands substantially fewer staff and resources than do the UN’s activities in the areas of peacekeeping, development, and humanitarian assistance, it has grown to the point where it is capable of supporting numerous, often simultaneous, fact-finding inquiries into the possible commission of atrocity crimes triggering the applicability of the R2P doctrine. The High Commissioner and OHCHR are independent from the political bodies of the UN, and the men and women who have served as High Commissioner largely have maintained a tradition of outspokenness concerning human rights violations. Additionally, in several cases, the High Commissioner has exercised what is known as the post’s “self-activating mandate” – the ability to initiate human rights fact-finding inquiries even in the absence of a mandate to do so from an intergovernmental body – in cases where the Security Council and Human Rights Council have proven unwilling to call for fact-finding in response to allegations of serious human rights violations indicating the imminent risk or ongoing commission of atrocity crimes.

At the same time, in recent years, the Human Rights Council, the UN political organ dedicated to human rights, has demonstrated an increased willingness to create country-specific and thematic special rapporteurs (independent experts who receive secretariat support from OHCHR), and commissions of inquiry into allegations of the commission

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4 UN General Assembly, Resolution 48/141, High Commissioner for the promotion and protection of all human rights, UN Doc. A/RES/48/141 (20 December 1993).
5 Today OHCHR has over 1,100 personnel, with half deployed outside its Geneva headquarters and dozens of “field presences” (13 stand-alone offices, 12 regional presences, and around 20 human rights advisers to UN country teams; OHCHR also provides support to the 15 UN peace missions that have human rights components). See OHCHR Annual Report 2014, http://www.ohchr.org/EN/PublicationsResources/Pages/AnnualReportAppeal.aspx.
6 The UN Human Rights program receives just over three percent of the total UN budget. See OHCHR, http://www.ohchr.org/EN/AboutUs/Pages/FundingBudget.aspx.
of serious human rights violations (bodies led by independent experts who are supported in their work by an independent secretariat drawn from OHCHR staff). Some observers have attributed this trend to the presence of the United States on the Council since 2009, when it reconsidered its initial refusal to seek election to the body on the grounds that it lacked adequate safeguards on membership to ensure its legitimacy.⁸

These developments – the growth of the High Commissioner’s Office and the creation of the Human Rights Council – have combined to create significantly greater potential for the United Nations to respond in a meaningful way to human rights crises. They have occurred in parallel to the development of the R2P doctrine, and increasingly, human rights mechanisms have identified the commission of atrocity crimes that trigger the R2P doctrine, thereby implicitly or even explicitly calling on the UN Security Council to take coercive action.

**Human Rights and R2P at the United Nations: Four Case Studies**

Since 2005, the UN’s human rights mechanisms have invoked R2P in several different contexts. The following cases focus specifically on those in which they have prevailed upon the UN Security Council to adopt enforcement actions to curb human rights violations that constitute atrocity crimes, pursuant to “Pillar 3” of the R2P doctrine.

1. **R2P in Darfur**

In 2004, in response to the failure of both the UN Security Council and the UN Commission on Human Rights to respond to allegations of widespread extrajudicial killings and other serious human rights violations in Darfur, Sudan, acting High Commissioner Bertrand Ramcharan exercised the High Commissioner’s so-called “self-activating mandate” for the first time, creating an OHCHR Fact-Finding Mission tasked with investigating the allegations of human rights abuse. It found “patterns of massive human rights violations in Darfur perpetrated by the Government of the Sudan and its proxy militia, many of which may constitute war crimes and/or crimes against

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humanity.”\textsuperscript{9} It noted that “[t]he Government of the Sudan has a legal responsibility … to protect all its citizens”\textsuperscript{10} and concluded that “[a]n international commission of inquiry is required, given the gravity of the allegations of human rights violations in Darfur and the failure of the national legal system to address the problem.”\textsuperscript{11}

Despite its historic reluctance to seek the views of the High Commissioner or independent human rights expert mandate-holders, the UN Security Council reacted to the publication of the Fact-Finding Mission’s report by requesting Ramcharan to brief it.\textsuperscript{12} This, together with a decision in September 2004 by then Secretary-General Kofi Annan to dispatch newly-appointed High Commissioner for Human Rights Louise Arbour on a joint visit to Darfur with Juan Mendez, the Secretary-General’s Special Adviser on the Prevention of Genocide, encouraged the Security Council to establish a formal Commission of Inquiry (COI) on Darfur.\textsuperscript{13} Four months later, the COI published a report in which it agreed with the Fact-Finding Mission that atrocity crimes likely had been committed in Darfur and concluded that the Sudanese authorities were unwilling to ensure accountability for them. Although the 2005 World Summit had yet to take place, the COI declared that “sovereignty entails responsibility” and that “the international community must take on the responsibility to protect the civilians of Darfur.”\textsuperscript{14} It recommended that the Council refer the situation in Darfur to the ICC and establish a compensation commission for the victims of violations.\textsuperscript{15} The Council relied on the COI’s report in reaching its historic decision to refer the situation in Darfur to the International Criminal Court on 31 March 2005.\textsuperscript{16}

This early case raised the prospect that that the High Commissioner for Human Rights, together with other UN human rights experts, could serve as an important catalyst to provoke a more meaningful international response to especially grave human rights

\textsuperscript{10} Id., para. 91.
\textsuperscript{11} Id., para. 103.
\textsuperscript{12} UN Doc. S/2004/614 (7 May 2004)
\textsuperscript{13} United Nations Security Council, resolution 1564 (18 September 2004).
\textsuperscript{15} Id., para. 570.
\textsuperscript{16} UN Security Council, Resolution 1593 (31 March 2005).
abuses that demonstrate a government’s inability or unwillingness to protect its citizens from atrocity crimes.

2. R2P in Libya

From the outset of Libyan President Muammar Qaddafi’s crackdown on protesters in early 2011, High Commissioner for Human Rights Navi Pillay was the first UN actor to express serious concern about the risk that the violence could spiral into atrocity crimes. On 22 February, High Commissioner Pillay issued a statement warning that Qaddafi’s forces may have committed crimes against humanity and calling for an international investigation. A statement by the UN Secretary-General’s Special Advisers on Genocide Prevention and the Responsibility to Protect issued on the same day echoed her warning, and specifically recalled Member States’ endorsement of the R2P doctrine at the 2005 World Summit. While the Security Council issued a press statement that day calling on Libya to meet its responsibility to protect its people, it stopped short of authorizing enforcement action against the Qaddafi regime.

Three days later, on 25 February, the Human Rights Council convened a special session on Libya. There, Pillay reminded the council of the World Summit Outcome document, reading its statement on R2P almost verbatim, citing the international community's responsibility “to step in by taking protective action in a collective timely and decisive manner” when a state is manifestly failing to protect its population. In response, the Human Rights Council adopted a resolution calling on Libya to protect its population and dispatching a commission of inquiry to investigate the alleged human rights violations.

This encouragement by the High Commissioner and Human Rights Council may have spurred some members of the UN Security Council to adopt their first enforcement

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17 OHCHR press release, “Pillay calls for international inquiry into Libyan violence and justice for victims (22 February 2011),
18 UN Secretary-General Special Adviser on the Prevention of Genocide, Francis Deng, and Special Adviser on the Responsibility to Protect, Edward Luck, on the Situation in Libya (22 February 2011).
resolution on Libya the following day. The Security Council resolution cited the Libyan authorities’ responsibility to protect their population and authorized measures under Chapter VII, including referring Libya to the ICC, creating an arms embargo, and establishing a sanctions regime in which the criteria for listing included the commission of serious human rights abuses. The resolution was indeed historic: it was only the second time that the Council had agreed to refer a situation to the ICC; and also only the second time that it had agreed to impose targeted sanctions against individuals for committing violence against civilians.

Yet even in the face of these actions by the Security Council, Qaddafi only escalated his brutal crackdown. Council members were divided as to whether to take more drastic measures, and particularly whether to implement a no-fly zone. Another statement by the High Commissioner, issued on March 10 and warning that the Libyan government’s aerial bombing and use of tanks against civilians could amount to crimes against humanity, failed to provoke further Security Council action.

On March 14, the Deputy High Commissioner for Human Rights, Kyung-wha Kang, delivered a statement to the Human Rights Council on High Commissioner Pillay’s behalf clearly calling for more assertive measures. Recalling the World Summit Outcome document, she clearly stated that as Qaddafi’s government had “chosen to attack civilians with massive, indiscriminate force … the responsibility to protect them now falls upon the international community.” The High Commissioner’s statement urged “all relevant bodies of the United Nations to take all appropriate measures to stop the violence and bring a peaceful end to the conflict” (emphasis added). In this context, the High Commissioner seemed to endorse the call to the Security Council to authorize military intervention in Libya in the form of a no-fly zone. Three days later, on March 17, the Security Council voted to authorize the no-fly zone over Libya and all necessary means

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22 UN Security Council, resolution 2214 (27 March 2011).
25 Id.
to enforce it, again citing the responsibility of the Libyan authorities to protect the population.26

In this case, while the High Commissioner for Human Rights was far from the only observer calling on the UN Security Council to act forcefully in the fact of Qaddafi’s attacks on Libyan civilians, her implicit support for military intervention in response to the commission of atrocity crimes was unprecedented, and may have encouraged the Security Council to authorize the use of force against the Qaddafi regime.

3. R2P in Syria

In March 2011, High Commissioner Pillay was the first UN system actor to raise the alarm about Bashar al Assad’s crackdown against protesters;27 and when in late April 2011 the Human Rights Council convened its first special session on Syria, the High Commissioner’s office was also the first to suggest that atrocity crimes triggering the R2P doctrine were occurring. At the Special Session, Deputy High Commissioner Kang reported that Syrian forces had engaged in “widespread, persistent and gross disregard for basic human rights” and recalled the government’s responsibility to protect its own population.28 The Council responded by requesting an OHCHR Fact-Finding Mission into human rights violations and crimes committed in Syria.29

The OHCHR Fact-Finding Mission reported in August 2011 that the scale and nature of the violations it had documented might amount to crimes against humanity.30 The Human Rights Council responded by creating a commission of inquiry (COI) to continue investigating the violations,31 and the Security Council invited the High Commissioner to brief it. In her statement to the Council, Pillay urged Council members to refer the situation in Syria to the ICC.32 The following month, a group of Security Council

28 “Pillay denounces escalation of Government crackdown in Syria, calls for immediate end to killings,” OHCHR news release, April 25, 2011.
32 Navi Pillay, statement to the Human Rights Council 17th Special Session on “Situation of human rights
Member States proposed a draft resolution that called on Syria to cease violations and cooperate with the COI; however, China and Russia vetoed the resolution.\textsuperscript{33}

The COI on Syria first invoked R2P explicitly in a February 2012 report, in which it found that responsibility for crimes against humanity in Syria lay at “the highest levels of government” and that the government had “manifestly failed in its responsibility to protect the population.”\textsuperscript{34} The COI called on the international community “to consider implementing the jurisdiction of suitable international justice mechanisms,” which was understood as a call for the Security Council to refer the situation in Syria to the ICC. That month, a group of Security Council Member States proposed another resolution urging the Syrian government to cooperate with the COI; Russia and China again vetoed it.\textsuperscript{35}

As the conflict in Syria escalated, UN Security Council Members requested additional formal briefings by High Commissioner Pillay, who consistently called on the Council to refer the situation in Syria to the ICC. They also requested informal “Arria-Formula” briefings by the members of the COI; in June 2013, the COI members called on the Security Council to place an arms embargo on all parties to the conflict in Syria.\textsuperscript{36} In September 2013, Pillay responded to allegations that the Syrian government had used chemical weapons against its adversaries. At no point had international support for outside military intervention to curb the conflict been greater. Pillay told the Human Rights Council that “this appalling situation cries out for international action” and endorsed an arms embargo but, in contrast to her approach to the conflict in Libya, she warned against a military response, saying that this would risk “igniting a regional conflagration, possibly resulting in many more deaths and even more widespread misery.”\textsuperscript{37}

\textsuperscript{33} UN Security Council, Meeting Record, UN Doc. S/PV.6627 (4 October 2011).
\textsuperscript{34} Report of the Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/19/69 (22 February 2012).
\textsuperscript{35} UN Security Council, Meeting Record, UN Doc. S/PV.6711 (4 February 2012).
Since 2013, Security Council Members have agreed on a handful of non-coercive measures to address the conflict in Syria, such as verifying and destroying the Syrian government’s chemical weapons stockpiles and promoting peace talks aimed at forming a transitional government. In 2014, Council Members adopted a resolution allowing the UN to deliver humanitarian aid to Syria across conflict lines even in the absence of the Syrian government’s consent; however, the resolution did not refer to Chapter VII of the Charter, nor threaten to punish non-compliance with the resolution with coercive measures.

Aside from these limited accomplishments, the Security Council has failed to respond to findings by UN human rights actors of the commission of atrocity crimes. In May 2014, a number of Security Council Members proposed a draft resolution that would have referred the situation in Syria to the ICC; China and Russia vetoed it. In its reports and “Arria-formula” briefings, the members of the COI have reiterated “the manifest failure of the Government to protect its population from gross human rights abuses,” and stressed that “the international community, through the United Nations, bears the responsibility of protecting the Syrian population from such crimes.” COI members have called on the Security Council to adopt targeted sanctions against those implicated in egregious violations; to consider creating an ad hoc international tribunal as an alternative to an ICC referral; and to “impose more assertive measures” to follow up on its own resolutions on Syria. The Council has declined to act on these recommendations.

Over the course of the conflict in Syria, human rights actors have appealed to and have had the opportunity to interact with members of the UN Security Council to an unprecedented degree. They have unambiguously invoked R2P and established the presence of atrocity crimes and “manifest failure” by the State to protect its population. According to the R2P doctrine, these appeals should trigger international action. Yet they

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38 See, e.g., UN Security Council Resolution 2118.
39 UN Security Council Resolution 2165.
40 UN Security Council, Meeting Record, UN Doc. S/PV.7180 (22 May 2014)
42 Id., at para. 146.
have been insufficient to prevent Security Council Member States with veto power from blocking enforcement action by the international community in the manner prescribed by the World Summit Outcome Document. This failure has called the normative force of the R2P doctrine, as well as the legitimacy and relevance of the UN Security Council, into serious question.

4. R2P in North Korea

The Democratic People’s Republic of Korea (DPRK, North Korea) has been ruled since 1948 by a totalitarian regime established by Kim Il-sung and continued by his son Kim Jong-il and grandson Kim Jong-un. Despite the regime’s extreme restrictions on movement and the spread of information within and outside the country, the publication of testimonials by refugees and former hostages in the 1980s and 1990s began to reveal that the leadership was engaged in human rights violations on an extreme scale.

In 2004, reacting to such testimonials, the Human Rights Council’s predecessor institution, the Commission on Human Rights, created a Special Rapporteur on North Korea. By 2007, the Special Rapporteur had noted calls by NGOs to apply the R2P framework to North Korea and in 2009, he called for the Security Council to act, saying that it should “adopt measures to prevent egregious violations, protect people from victimization and provide effective redress.”

In early 2013, High Commissioner Navi Pillay issued a statement agreeing that the human rights abuses in North Korea could amount to crimes against humanity, and the Special Rapporteur directly invoked R2P, stating that “in line with its commitment at the 2005 World Summit, the international community, through the United Nations, has the responsibility to use appropriate peaceful means to help protect the population in [North Korea] from crimes against humanity.” Both the Special Rapporteur and the High Commissioner called for Human

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Rights Council to create a commission of inquiry on North Korea, and it did so in March 2013.\textsuperscript{47}

In its February 2014 final report to the Human Rights Council, the COI on North Korea cited the World Summit Outcome Document and affirmed North Korea’s “manifest failure … to protect its population from crimes against humanity.”\textsuperscript{48} The COI found that diplomatic, humanitarian, and other peaceful means had been tried and proven inadequate, and therefore the UN Security Council had an obligation to take “decisive, yet carefully targeted action.” Among other steps, the COI called for the Security Council to refer the situation in North Korea to the ICC, and to implement targeted sanctions against for those most responsible for crimes against humanity. The Human Rights Council welcomed the COI report, and in a March 2014 resolution urged the UN General Assembly to submit the report to the Security Council so that it could take action to ensure accountability, “including through referral to an appropriate international criminal justice mechanism, and consideration of targeted sanctions.”\textsuperscript{49}

In December 2014, responding to the COI’s recommendations, the UN Security Council added the human rights situation in North Korea to the Council’s agenda and requested its first-ever briefing on the subject (these were procedural decisions and thus not subject to a veto).\textsuperscript{50} The Assistant Secretary-General for Human Rights (a post created in 2010 for the head of OHCHR’s New York Office) addressed the Council, invoking the international community’s responsibility to protect, and urging the Council to refer the situation in North Korea to the ICC and adopt targeted sanctions. However, China vigorously indicated its opposition to the Security Council’s consideration of North Korea’s human rights violations, citing these as irrelevant to the Council’s task of maintaining international peace and security. Recognizing the very strong likelihood that China (and Russia) would veto any substantive resolution, other members of the Security

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\textsuperscript{50} UN Security Council, UN Doc. S/PV.7353 (22 December 2014).
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Council declined to seek further substantive action by the Council, though several indicated their support for the measures recommended by the COI. Although nine of the Council’s 15 members voted to convene a second formal meeting on the subject of human rights violations in North Korea in December 2015, they once again refrained from proposing any substantive action in the face of statements by representatives of both China and Russia reaffirming their opposition to the Security Council’s consideration of human rights conditions in North Korea (or in any other context). 51

In the case of North Korea, the UN Security Council once again has proven unwilling to respond in a meaningful way to a mounting series of persuasive appeals by UN human rights actors to take action to protect the population of a UN Member State in the face of a government’s manifest failure to curb the commission of atrocity crimes. The Council is paralyzed in the face of opposition by two Permanent Members who perceive the commission of human rights violations amounting to atrocity crimes as irrelevant to the Council’s task of maintaining international peace and security (one of which also considers the stability of the ruling regime as vital to its national interests). The case of North Korea, unlike those of Darfur and Libya but like that of Syria, demonstrates the limited capacity of human rights actors to affect the realpolitik calculations governing action by the Security Council, and the limited normative force of the R2P doctrine when it comes into conflict with the national interests of one of the Security Council’s permanent members.

Conclusion

As these case studies demonstrate, over the course of the last decade, as the Responsibility to Protect Doctrine has become more deeply rooted in discourse at the United Nations, UN human rights mechanisms have demonstrated their willingness to push the intergovernmental bodies of the UN to act on it, including by invoking “Pillar 3” of the doctrine authorizing coercive action by the international community. Indeed, in several key cases human rights mechanisms have appealed to the UN Security Council to take collective enforcement actions under Chapter VII of the Charter to curb the

commission of serious human rights abuses amounting to atrocity crimes, and they have justified their calls for these actions by referring to the R2P doctrine.

However, UN human mechanisms have generally been more willing to recommend certain enforcement actions than others. They have most frequently recommended that the UN Security Council refer situations in which atrocity crimes appear to be occurring to the ICC, and in recent years have also called for the Council to impose targeted sanctions and arms embargoes. They have generally refrained from explicitly endorsing UN-authorized military intervention or no-fly zones; however, in the case of Libya, the UN High Commissioner for Human Rights implicitly endorsed this action, justifying it as a last resort.

To some extent, the UN Security Council has been receptive to these appeals. Since 2011, the Security Council has proven more willing than ever before to request briefings by the High Commissioner. This is in part because the High Commissioner’s Office has grown to a point that has enabled it to authoritatively document human rights violations occurring in crisis situations around the world; and in part because the UN Human Rights Council has authorized OHCHR to support fact-finding missions and commissions of inquiry on several contemporary crisis situations involving the perpetration of atrocity crimes. In some cases, particularly in Darfur and Libya, the Security Council’s response to a crisis situation seemed to have been materially affected by appeals from the High Commissioner for Human Rights. Although the enforcement actions the Security Council has taken in response to violations in Darfur and Libya ultimately have not been sufficient to protect the populations of those States from atrocity crimes, the fact that human rights actors were able to help spur coercive international action should not be overlooked.

Yet for every case in which the UN Security Council has acted in response to an appeal by the High Commissioner or the members of a commission of inquiry, there have been cases in which such appeals have been insufficient to provoke agreement among Council members to respond in a meaningful way. The situations in Syria and North Korea are perhaps the most obvious, if not the only, examples of the Council’s paralysis in the face of voluminous documentation of human rights violations likely amounting to atrocity
crimes. Given this mixed record, the normative pull of the R2P doctrine and the legitimacy of the UN Security Council’s claim to regulate the use of force between States have come into question.

Despite serious shortcomings, the contribution of UN human rights mechanisms to the realization of the Responsibility to Protect has been significant. In the last 10 years, concurrent with the development of the R2P doctrine, the UN Security Council has, on the whole, become increasingly attuned to the importance of “protection of civilians” in armed conflict situations. The Human Rights Council’s authorization of commissions of inquiry on situations such as Syria and North Korea has ensured that the UN system has investigated the commission of atrocity crimes notwithstanding objections by States with veto power at the Security Council. The documentation produced by these independent human rights investigations is a significant contribution to the historical record of contemporary crises, and it provides an indispensable basis on which State and non-State actors can appeal to the Security Council, and on which Council members will be able to rely should political dynamics shift in the future so that they are able to agree on action. This will be true whether or not Security Council members ever agree, as has been proposed by France and a coalition of other states, to adopt a “Code of Conduct” governing the use of the veto to reduce the likelihood of its use in situations where atrocity crimes have been committed.52

Those who wish to see the R2P doctrine gather normative force in the decade ahead should recognize the contribution that human rights monitors have made to its development this far. They should also protect and strengthen the components of the UN system that make this contribution possible: an independent High Commissioner for Human Rights with adequate resources and qualified staff capable of undertaking human rights monitoring in the most challenging crisis situations; and a Human Rights Council with a membership that is willing to take up the responsibility to investigate allegations of atrocity crimes, even when the Security Council is not.