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Protecting civilians at the Security Council: Responsibility or politics?

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"In championing the protection of civilians, we [the Security Council] deliver a message of hope and a signal of the strength of our collective will.
It is within our capabilities to shield the vulnerable from the ravages of conflict and other breaches of peace and security. If we continue to act in concert, over time, our responsibility to protect will surely be met."[1]

1. Introduction

The Security Council has become increasingly concerned with the protection of civilians as a matter of international peace and security over the past decade. It is a key feature of the Council's work today.[2] At present eight out of a total of 16 UN peacekeeping operations have mandates to protect civilians under imminent threat of physical violence. They operate in both conflict and post-conflict societies.[3] Given the visible and practical results for communities affected by conflict, the success of United Nations' action in country situations is often judged on its ability to fulfil these mandates.[4] Yet the Security Council has been criticised for inconsistent decisions to act to defend civilians, as evidenced by the present day inaction on Syria.[5] What motivates the Security Council? Is it purely politics or can it be driven by a responsibility to protect?

The responsibility to protect doctrine ("R2P") could be used as a means to facilitate more consistent action by the Council. It did not widen the definition of the crimes. Rather, it established a useful framework for promoting action by the Council where there is an imminent threat of certain crimes being committed against civilians. Yet the Council has been slow to use R2P. This is perhaps owing to the fact that protection of civilians by the Security Council is driven more by politics than by a sense of responsibility. The crimes covered by the doctrine themselves are not controversial. What is contested by several states on the Council is the use of force proposed by R2P to respond to these crimes by the international community. Notwithstanding these reservations, there are practical means to ensure the implementation of R2P through the

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[1] Nigeria, one of the United Nations' major troop- and police-contributing countries, at the Security Council Open Debate on the Protection of Civilians, 9 November 2010, S/PV.6650, p.27.

[2] Of the thirty resolutions on country situations passed by the Council in 2011, some 45.5% made reference to the protection of civilians. There were similar statistics in 2010.

[3] Ivory Coast, the Democratic Republic of Congo, Haiti, Lebanon, Liberia, South Sudan, Darfur and Abyei.

[4] In the twelfth open debate on protection of civilians, speakers noted that the protection of civilians lay at the heart of the Council's work. See: United Nations Security Council, "Open Debate on Protection of Civilians", 9 November 2010, S/PV.6650.

[5] The evidence of R2P crimes in Syria is widely reported. For example, see: The International Coalition for the Responsibility to Protect, "Crisis in Syria", 16 November 2011: www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria.
It has been widely recognised that the failure to use the responsibility to protect doctrine in Syria was owing to the controversy surrounding its use in the case of Libya, e.g. *Economist*, "Libya Bitten, Syria Shy", 31 January 2012, http://www.economist.com/blogs/newsbook/2012/01/syria-and-un.

mechanisms developed by the Council under the 'protection of civilians' agenda item.

First, this paper will examine the protection of civilians agenda at the Security Council, how it is defined, and challenges with its implementation. Second, the paper will touch on the R2P doctrine, and some of the areas of commonality and difference with the protection of civilians work of the Security Council. Finally, it will show how the doctrine of R2P can be utilised to enhance the protection of civilians by the Security Council even in a highly politicised environment.

2. Protection of Civilians and Responsibility to Protect (R2P) at the Security Council

(i) Protection of Civilians Concept

In the Council's first thematic resolution on protection of civilians in September 1999, it condemned the targeting of civilians; called for respect for international humanitarian, refugee and human rights law; expressed a willingness to take measures to ensure compliance; and to consider how peacekeeping mandates might better address the negative impact of conflict on civilians.[6] The definition of protection of civilians is very broad, and can be taken to mean almost any effort to safeguard the rights of civilians in situations of humanitarian concern. This includes prevention and response to genocide, war crimes, ethnic cleansing and crimes against humanity (the "R2P crimes").

(ii) The R2P Doctrine

The doctrine of "responsibility to protect" emerged only over the past decade, although it is grounded in the age-old laws of war. The definition accepted by a majority of states at the General Assembly World Summit Outcome Document in September 2005 states that, "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes…".[7] It continues that "[t]he international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means... to help protect populations from [these crimes]."[8] As a result of this document, if an individual state fails to protect its populations, or in fact perpetrates these crimes, the Security Council must identify these situations and be prepared to act

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[6] Protection of civilians as a separate conceptual thematic issue for Council consideration was first articulated in 1998 in two Secretary-General's reports—on the causes of conflict and promotion of peace in Africa (S/1998/318) and on protection of humanitarian assistance to refugees and others (S/1998/883). In February 1999, a [US?] presidential statement requested a report from the Secretary-General on recommendations for the Council's future work (S/PRST/1999/6), and the first landmark report containing forty recommendations was issued in September 1999. (S/1999/957). On 17 September, the Council adopted its first resolution on the protection of civilians (SCR 1265).

[7] "United Nations World Summit Outcome Document", 2005, GA Res 1, UN GAOR, 60th sess, 8th plen mtg, Agenda items 46 and 120, UN Doc A/RES/60/1 (2005), para. 138.

[8] *Ibid*, para.139.

consistently through a range of measures from diplomacy to the collective use of force.

(iii) The R2P Doctrine and Protection of Civilians: Similarities and Differences

There is a strong relationship between the responsibility to protect doctrine and the protection of civilians work at the Security Council, as has been alluded to. The similarities and differences are set out in a policy paper from the Global Centre for the Responsibility to Protect.[9] Firstly, this paper sets out three key similarities:

- The normative foundation is shared, namely the protection of individuals. They both seek to uphold obligations found in international humanitarian and human rights law.
- Neither is synonymous with military intervention, with both placing emphasis on prevention.
- Both the protection of civilians agenda and R2P specify a role for the Security Council. Protection of civilians involves the guarantee of international humanitarian and human rights law in humanitarian crises, and R2P crimes relate to a narrow set of guarantees under these same international laws and enforced as a last resort by the international community after individual State proves unwilling or unable to do so.

Notwithstanding the significant overlap between the R2P doctrine and the protection of civilians agenda, the paper identifies some differences:

- Protection of civilians extends far beyond the scope of the R2P doctrine: Where protection of civilians addresses violations of international humanitarian and human rights law more generally, R2P is limited to the four crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity.
- The scope of R2P extends beyond conflict situations: Protection of civilians is limited to acts occurring during or immediately after conflict. The R2P doctrine extends to any concerned with preventing and halting the four crimes regardless of where they take place.

These differences are not significant for the purpose of Security Council action on R2P, as will be explored in the next section.

(iv) Security Council and R2P: A Love-Hate Relationship

The R2P doctrine remains much more controversial than protection of civilians at the Security Council. In the open debates on protection of civilians at the Security Council, states are divided on their support for R2P.[10] It may appear at first glance that there is a north-south divide on the issue. In the last open debate in 2011, for example, Cuba, Sudan and Pakistan equated R2P with humanitarian intervention and Pakistan stated that the concept should not be used to undermine state sovereignty. Venezuela criticised the notion

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[9] Global Centre for the Responsibility to Protect, "Policy Brief January 2009: The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict" http://globalr2p.org/media/pdf/GCR2PPolicyBrief_ProtectCivConflict.pdf"http://globalr2p.org/media/pdf/GCR2P PolicyBrief-ProtectCivConflict.pdf, 19 May 2012.

[10] See: "Meeting Record of Security Council Debate on Protection of Civilians", UN SCOR, 65th sess, 6531st mtg, UN Doc S/PV.6531 (2011) and "Meeting Record of Security Council Thematic Debate on Protection of Civilians", UN SCOR, 66th sess, 6650th mtg, UN Doc S/PV.6650 and Resumption 1 (2011).

of R2P more strongly, claiming that it had been manufactured by the ideologues of neoliberalism, and that it had provided the pretext for acts of aggression in violation of international humanitarian and human rights law.[11] When looking at the 94 statements from member countries in their entirety, however, it is clear that a majority of southern states support the R2P doctrine, from Asia to the Middle East and Africa. Regional organisations also show support for the doctrine.[12] Notwithstanding the broad support for the doctrine, R2P maintains a thorn in the side of action because it is seen as a means to use military force to encroach on the sovereignty of states.

Notwithstanding diverging views on R2P, the doctrine has been endorsed by the Security Council in the protection of civilians context. On 28 April 2006, the Council unanimously adopted Resolution 1674 on the Protection of Civilians in Armed Conflict.[13] This contained the first official Security Council reference in support of R2P, which it reaffirmed in 2009 with Resolution 1894.[14] Despite this, R2P has not been regularly included in the work of the Council on protection of civilians. The *Aide Memoire* guide for Council members on agreed language on protection of civilians, for example, does not make reference to the R2P doctrine.[15] In terms of country situations, as mentioned above, the Council has made reference to R2P only once in the controversial case of Libya.

3. Protection of Civilians: Prevention and Response by the Council

(i) Protection of Civilians and Prevention of R2P

The Security Council most often calls on states to protect their own civilians and uses a range of measures to promote adherence. In recent times, it has adopted new compliance measures, in particular through its resolutions on "women, peace and security"[16] and "children in armed conflict",[17] which are directed at a range of actors. Regarding conflict-related sexual violence, for example, Resolution 1960 of December 2010 established a monitoring, analysis and reporting mechanism for situations on the Council's agenda.[18] It

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[11] Venezuela's comments were delivered by Jorge Valero Briceno, S/PV.6531 (2011), *ibid*, paras 45-57.
[12] ECOWAS, "Report on the Regional Policy Forum on the Responsibility to Protect", 12 June 2012, http://globalr2p.org/media/pdf/ECOWAS_Report_on_Regional_Policy_Forum_on_R2P.pdf.
 The main objective of the Forum was to raise awareness on the concept of R2P within the region and to critically examine existing ECOWAS policies and institutions for protecting populations against mass atrocities. The Forum also aimed at identifying frameworks, institutions, and practices within ECOWAS for prevention and effective response to mass atrocities.
[13] S/RES/1674 (2006).
[14] S/RES/1894 (2010).
[15] In order to facilitate the Council's consideration of protection of civilians concerns in a given context, including at the time of the establishment or renewal of peacekeeping mandates, in June 2001, Council Members suggested that an *Aide Memoire*, listing the relevant issues, be drafted in cooperation with the Council (S/2001/614). On 15 March 2002, the Council adopted the *Aide Memoire* as a practical guide for its consideration of protection of civilians issues and agreed to review and update its contents periodically (S/PRST/2002/6). It was subsequently updated and adopted as an annex to Presidential Statement S/ PRST/2003/27 on 15 December 2003.
[16] See the report of Peace Women, an organisation which has worked on the resolutions since the beginning, "About the Women, Peace and Security Agenda", http://www.peacewomen.org/security_council_monitor/about-women-peace-and-security-agenda.
[17] Office of the Special Representative of the Secretary-General for Children and Armed Conflict: http://childrenandarmedconflict.un.org/.
[18] S/RES/1960(2010) para. 8.

called on parties to armed conflict to make specific, time-bound commitments to prohibit and punish sexual violence.[19] It asked the Secretary-General to monitor those commitments. [20] They do not regularly include prevention of R2P crimes.

The Security Council mandates UN peacekeeping troops with an ever-increasing range of activities to protect civilians. For example, the UN peacekeeping force in the Democratic Republic of Congo (DRC), MONUSCO, has been mandated with scores of activities ranging from the protection of particular groups, such as women, children and refugees, to addressing particular issues, such as accountability. [21] While this, to some extent, reflects the complexity of the protection problems in the DRC, it also shows that the Council is giving an ever-increasing range of responsibilities to peacekeepers.[22] The UN Security Council engagement in the DRC includes measures to prevent R2P crimes, such as peacekeeping activities to prevent crimes against humanity committed by the Lord's Resistance Army in Eastern DRC, even if the activities are not framed in these terms.[23] This example demonstrates that the engagement of the Security Council to prevent R2P is currently more incidental than by design.

Given that the Council exercises flexibility to include new issues in peacekeeping mandates to protect civilians, it could incorporate more activities for the prevention of the R2P crimes in these mandates. There is a direct overlap between these crimes and the violations addressed by the Security Council under its protection of civilians mandate. Most often, the Council addresses war crimes under its protection of civilians mandate, but it could also more consistently include activities to prevent elements of genocide, ethnic cleansing and crimes against humanity. There are many organisations producing good analysis of country situations where R2P crimes arise.[24] Security Council action to prevent and respond to these situations consistently would give it much more credibility. This will be examined further below.

(ii) Protection of Civilians and the Use of Force

The contentious issue regarding the implementation of R2P is not prevention, it is the response to R2P crimes, and in particular the use of force. The Council regularly authorises the use of force to protect civilians where a state

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[19] *Ibid*, para.5.

[20] *Ibid*, para.6.

[21] For a list of the Resolutions and Presidential Statements on the DRC, as well as analytical reports on the protection components see: http://www.securitycouncilreport.org/un-documents/democratic-republic-of-the-congo/.

[22] Holt et al, "Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges", Independent study jointly commissioned by the United Nations Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs, 2009, http://www.peacekeepingbestpractices.unlb.org/pbps/Library/Protecting%20Civilians%20in%20the%20Context%20of%20UN%20PKO.pdf, pp.33-75.

[23] The Global Centre for the Responsibility to Protect, Ralph Bunche Institute for International Studies, has a useful analysis of the crimes against humanity in the DRC, the international response and necessary action: http://globalr2p.org/countrywork/country.php?country=87.

[24] For example, the International Coalition for the Responsibility to Protect produces regular country analyses of the threats of R2P: http://www.responsibilitytoprotect.org/.

fails to do so, either to UN peacekeepers, a regional body or to a single state or coalition of state actors.

The Security Council acts most commonly to protect civilians under imminent threat of physical violence, often where there is evidence of war crimes, without making reference to R2P. The international community's potential to use force to respond to R2P crimes, as mentioned above, is one of the main controversies surrounding implementation of the doctrine at the Security Council. The Council most often mandates peacekeepers to use force to protect civilians. But in reality the controversy surrounding these peacekeeping missions is their *failure* to use force to fulfil their mandates.[25] For example, Security Council members expressed dismay at the failure of the peacekeeping force in Darfur, UNAMID, to fulfil their robust mandate to protect civilians.[26] There are many reasons for this perceived inaction by peacekeepers with a mandate to use force,[27] and much has been done at the UN to attempt to ensure consistent action to protect civilians.[28] In a majority of situations, peacekeeping troops with a mandate to use force are not implementing these mandates to protect civilians. Rather, these missions are targeting situations where there is an imminent threat of physical violence which may or may not include R2P crimes. The response to R2P crimes is usually not explicitly stated as the motive for the Security Council. There is one exception: where the Council mentioned the R2P doctrine in a mandate on Libya authorising the use of force to protect civilians.

In the case of Libya, the Council's action to authorise force to protect civilians and its reference to the R2P doctrine was unprecedented. Equally, the subsequent use of force by NATO to effectively remove a head of state was unprecedented. This has not helped to quell the controversy surrounding R2P. In Resolution 1973 of March 2011, the Council demanded an immediate ceasefire and complete end to violence against civilians and authorised

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[25] Alison Giffin states, "Peacekeepers don't know whether, when or how to protect civilians in the midst of conflict or its immediate aftermath" in: "Peacekeepers Protecting Civilians: A Decade of Reform, Stimson Centre for Peacekeeping", 29 March 2010, http://www.stimson.org/spotlight/peacekeepers-protecting-civilians-a-decade-of-reform/. See also Holt, *op cit [or was it the immediately preceeding one?]*.

[26] One member state indicated that it was expected that UNAMID should be active and where necessary aggressive to protect civilians. Several incidents had been made public in recent times, highlighting where peacekeepers have failed to protect civilians under imminent threat of attack by the government or armed groups, despite having a clear mandate to do so. These incidents have received considerable press. See, for example, Rebecca Tinsley, "The Failure of UNAMID", *The Guardian,* 1 January 2009, http://www.guardian.co.uk/commentisfree/2009/jan/01/darfur.

[27] Holt et al, *op cit*, pp.5-9. This report contains a very thorough analysis of the challenges facing peacekeepers in protecting civilians. It finds that there was very little clarity on what protection means to those who are supposed to be offering it and confirmed the dearth of guidance on how to protect.

[28] In the past few years, there have been many efforts at the UN to try to bring some predictability to how peacekeepers interpret their mandates to protect civilians, which assists in a more consistent interpretation of peacekeepers' responsibilities as determined by the individual missions. An operational concept of protection of civilians was developed, which narrowed it to the following three areas: protection through political process; providing protection from physical violence, including establishing a deterrent presence; and taking proactive steps to reduce the vulnerability of civilians; and establishing a protective environment. The development of this operational concept helped to narrow the scope of UN peacekeepers' work to protect civilians. "Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations", United Nations, DPKO/DFS, 2010, http://www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/viewdocument.aspx?id=2&docid=1128. At the same time it was issued in 2010, new guidance was issued on how to develop strategies in each mission country to define in concrete terms what protection of civilian activities would take place in each context depending on the particular threats faced. Three UN peacekeeping missions have these strategies in place now: DRC, Cote d'Ivoire and Darfur.

member states "to take all necessary measures… to protect civilians and civilian populated areas under threat of attack" in Libya, acting nationally or through regional organisations or arrangements, and acting in cooperation with the Secretary-General.[29] The preamble made reference to R2P.[30] After the NATO action in Libya, divisions over the interpretation of this mandate and how it was carried out have been the focus of intense discussions at the United Nations headquarters in New York. The resolution remains one of the Council's most controversial decisions on the protection of civilians.[31] However, the situation in Libya has not hampered the Council's work on protection of civilians, which has continued and even strengthened in some areas.[32] Resolution 1973 had arguably more serious consequences for the R2P doctrine. This paper will next examine the ongoing controversy surrounding the R2P doctrine, and how the doctrine could nevertheless be used more effectively by the Security Council to obtain positive results for civilians under threat of R2P crimes.

4. Responsibility to Protect at the Security Council: One Step Forward and Two Steps Back

(i) R2P and Libya: One Forward and Two Steps Back at the Council

The Secretary-General made it clear that the Security Council had intended to invoke the R2P doctrine in the situation in Libya in his press statement on the day it authorised the use of force to protect civilians: "Resolution 1973 (2011) affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own Government."[33] At first glance, this was a success for the R2P doctrine because it was finally being implemented in a real scenario. One step forward. But it soon became clear that the R2P doctrine had been invoked in the case of a resolution that was so controversial that it is unclear when the Security Council may use it again to protect civilians in a country situation. Libya was thought by some commentators to have done "grave, possibly irreparable damage" to R2P.[34] The result has been inconsistent

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[29] It states at para. 4 that the Security Council, acting under Chapter VII of the UN Charter, "Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of SC/RES/1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council, S/RES/1973 (2011), para. 4.

[30] "Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians", S/RES/1973 (2011), preambular paragraph.

[31] Bellamy, Alex J, and Williams, Paul D, "The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect" (2011) 87(4*) International Affairs* 825.

[32] For a discussion of some of the strengthened language of protection of civilians mandates of the Security Council, especially on the issue of accountability, after the Libya resolution, see: Security Council Report, "Cross-Cutting Report: Protection of Civilians", p.3.

[33] United Nations Press Release, Secretary-General, 'Secretary-General Says Security Council Action on Libya Affirms International Community's Determination To Protect Civilians from Own Government's Violence' (UN Press Release SG/SM/13454, 18 March 2011), http://www.un.org/News/Press/docs/2011/sgsm13454.doc.htm.

[34] Reiff David, "R2P, RIP*", New York Times*, 7 November 2011, http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html?pagewanted=all&_r=0.

action or a failure to act by the Security Council in the face of threats to civilians of R2P crimes, as demonstrated currently in the case of Syria.[35] Two steps back. In the case of Syria, the R2P doctrine is said to be on trial.[36]

The International Coalition for R2P laments that, as yet:[37]

> neither the resolution [1674] nor the Summit Outcome Document automatically ensure that timely action will be taken by the Security Council. The World Summit Outcome language leaves the Security Council the discretion as to when it might act ("on a case by case basis"). For millions of civilians suffering or at risk of violence as a result of armed conflict, Security Council action often come too late, if at all.

The Coalition suggests that "reform of the Security Council's working methods – for example, an agreement by permanent Council members to refrain from use of the veto in instances of genocide, war crimes, crimes against humanity and ethnic cleansing – is also imperative."[38] However, the implementation of R2P need not wait for Council reforms and can be achieved through other means that will be explored further in the next section.

The reluctance of the Council to include R2P in its decisions on country situations is due in part to the stigma attached to the concept, as mentioned, which has been wrongfully conflated with military intervention in situations where this entails a violation of a state's sovereignty.[39] This was arguably even more the case after the Security Council authorisation to use force to protect civilians in Libya, which some argued was used by NATO to overstep their mandate and remove the head of a sovereign state.[40] The reality remains, however, that the majority of states still support the R2P doctrine and that it can still be used by the Security Council as it was intended: to promote state actions to protect their own citizens and provide a framework for the Security Council to act where states manifestly fail to do so. The controversy surrounding the implementation of the mandate in Libya was due to the way that it had been interpreted on the ground. Creative means have been proposed to address the way mandates are interpreted to facilitate the responsibility of international organisations while carrying out these mandates.

(ii) Responsibility of International Organisations While Protecting

One positive development following the Council action on Libya that may help to debunk myths surrounding R2P was the proposal by Brazil to develop a

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[35] For example, the International Coalition for the Responsibility to Protect identified crimes against humanity perpetrated by the Syrian government in its report "Crisis in Syria", http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria.
[36] Bellamy Alex and Dunne Tim, "Syria: R2P on Trial" *Lowy Institute of International Policy*, 5 June 2012, http://www.lowyinterpreter.org/post/2012/06/05/Syria-R2P-on-trial.aspx.
[37] International Coalition for the Responsibility to Protect, "Security Council Focus on Responsibility to Protect", http://responsibilitytoprotect.org/index.php/about-rtop/related-themes/2414--rtop-and-protection-of-civilians-debates.
[38] *Ibid.*
[39] Global Centre for the Responsibility to Protect, "R2P: Perceptions and Misperceptions, Factsheet", 13 June 2011 http://globalr2p.org/media/pdf/GCR2P_R2P_Perceptions_and_Misperceptions_14_June.pdf"http://globalr2p.org/media/pdf/GCR2P_R2P_Perceptions_and_Misperceptions_14_June.pdf, at 19 May 2012.
[40] Bellamy Alex, "R2P and the Problem of Regime Change", (2011) *e-International Relations*, http://www.e-ir.info/wp-content/uploads/R2P.pdf.

concurrent principle of "responsibility while protecting".[41] This draws attention back to the main principles of R2P and addresses some of the concerns with its application. Firstly, the principle emphasises prevention as the best policy; which would bring the discourse on responsibility to protect back to its intended emphasis, and away from the contentious issue of intervention.[42] Secondly, it proposes strict limits on the use of force to protect civilians and accountability for those to whom authority is granted to use force. This may help to alleviate the concerns of the opponents of R2P about the way the use of force may be misused in the name of R2P, as well as going some way to setting straight the nature and purpose of the concept. The Special Advisor of the Secretary General on the Prevention of Genocide expressed support for this principle as a means to implement the R2P doctrine, while the Special Advisor on R2P warned against creating new principles that detract from R2P.[43] Carefully managed, this new concept could help to garner political support needed for more consistent action on R2P by the Council.

5. Protection of Civilians as a Vehicle for Implementing R2P

In the meantime, the protection of civilians agenda at the Security Council can provide a useful vehicle for implementing the R2P mandate. As previously mentioned, protection of civilians entails a wide range of activities and there is enough flexibility to include the prevention and response of R2P crimes among these. In terms of implementing the R2P doctrine, the Secretary General set out in 2009 three main pillars.[44] The first emphasises the primary responsibilities of the state to protect civilians. The second relates to international assistance and capacity building to assist states to protect civilians. The third pillar entails timely and decisive response to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity. In this section, I will consider briefly how protection of civilians activity at the Council can be used to facilitate prevention and response of the crimes elaborated in the R2P doctrine.

There are a number of initiatives at the Security Council that have developed under the rubric of the protection of civilians agenda that can be utilised to monitor, report on and call to action the Security Council where there is a threat of genocide, ethnic cleansing, war crimes and crimes against humanity set out in the R2P doctrine. Three practical examples will be used to highlight this point.

(i) Protection monitoring and reporting to the Security Council

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[41] The concept of responsibility while protecting was first raised by the President of the General Assembly in the opening statement in September 2011. Brazil then circulated a concept paper to the Security Council in November 2011, A/66/551-S/2001/701, 11 November 2011, http://www.globalr2p.org/media/pdf/Concept-Paper-_RwP.pdf.
[42] Many scholars and practitioners have stated that the focus of R2P should be on prevention. For example, see the Oxford Institute for Ethics, Law and Armed Conflict work on the project 'Prevention toolbox: Systematising Policy Tools for the Prevention of Mass Artocities', December 2012, at: http://www.elac.ox.ac.uk/R2P/index.html.
[43] For example, see: Sheri Rosenberg, "Responsibility to Protect: A Framework for Prevention", *Global Responsibility to Protect 1,* Martinus Nijhoff Publishers, (2009) 442-477, http://responsibilitytoprotect.org/The%20Responsibility%20to%20Protect%20A%20Framework%20For%20Prevention%20(Rosenberg).pdf.
[44] General Assembly, "Implementing the responsibility to protect: Report of the Secretary General", A/63/677, 12 January 2009.

One of the key impediments to timely action by the Security Council has been access to accurate and reliable information about protection of civilians issues. The whole UN system can work together to ensure that reliable information is received by the Council, in order to facilitate its timely action. Security concerns in areas of conflict and resulting lack of access for UN staff can mean that only one or two actors, if any, have access to reliable information. And they may be reporting for different purposes, such as the delivery of assistance, and not therefore necessarily be able to determine all of the elements needed to establish that crimes are occurring.

The Security Council has established a monitoring and reporting system under its protection of civilians mandate to try to improve reporting on particular issues. One such reporting requirement, for grave violations against children in armed conflict, worked well to improve reporting to the Security Council and ensure compliance mechanisms. There is another reporting mechanism being set up for sexual violence in conflict under Resolution 1960, as mentioned above. The complementary reporting mechanisms can incorporate reporting to the Security Council on elements of the crimes set out in the R2P doctrine. For example, both reporting mechanisms require reporting on sexual violence. For example, the element of intent to destroy a particular group through sexual violence,[45] an element of the crime of genocide,[46] could be incorporated in this reporting. This would be useful information for the Security Council to engage in early action with states and other actors to prevent the crimes in the R2P doctrine before any coercive international action.

(ii) Security Council Expert Group on Protection of Civilians

To better understand the reality within the countries on the Security Council agenda, the UK recently established an informal Expert Group to brief the Security Council members on protection concerns by theme, in advance of them passing resolutions on particular countries. These are closed briefings by United Nations humanitarian actors, after consultation with various groups working to protect civilians on the ground. This Expert Group has been effective in raising the awareness of Security Council actors to current

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[45] Catherine MacKinnon, appointed in 2008 as the International Criminal Court as Special Advisor on Gender Crimes, explains well the link between sexual violence and genocide, in "Rape, Genocide, and Women's Human Rights", 17 *Harv. Women's L.J. 5* (1994).

[46] The international legal definition of the crime of genocide is found in Articles II and III of the 1948 Convention on the Prevention and Punishment of Genocide.

Article II describes two elements of the crime of genocide:

1) the *mental element,* meaning the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such", and

2) the *physical element* which includes five acts described in sections a, b, c, d and e. A crime must include *both elements* to be called "genocide."

concerns, and has enabled it to address emerging concerns.[47] If the regular briefings were to include elements of ethnic cleansing, genocide, crimes against humanity and war crimes as a regular feature, these issues are also likely to find their way into the resolutions on protection of civilians.

(iii) Consistent and Timely Action where States Fail to Protect?

It is difficult to ensure consistent and timely Council action in all situations where states fail to protect their citizens, owing to the structure of the Security Council. This is the case for issues relating to the protection of civilians and the R2P doctrine. The Special Advisors to the Secretary-General on R2P and the Prevention of Genocide attempted in recent years to set up a framework and mechanism to ensure prompt and timely action by the UN in the event of imminent threats of R2P crimes[48], through a high-level meeting chaired by the Secretary-General that would meet within weeks to propose a set of recommendations. This could, of course, include, Security Council action.

One of the stumbling blocks with this new procedure was the evidence required to trigger the procedure. Clearly there does not need to be evidence that the crimes had been committed, as this can take years for courts to establish. The Special Advisors commissioned a project to determine the criteria and threshold for determining an imminent threat of crimes in the R2P doctrine occurring.[49] In the meantime, there is no procedure in place to guarantee timely or consistent action in the face of crimes in the R2P doctrine. The greatest challenge remains a means of ensuring that the Security Council will act in all situations where civilians are under threat of R2P crimes. The challenge is to find a way to oblige states to prioritise a responsibility to protect, over their political agendas.

6. Conclusion

In conclusion, the links between the protection of civilians and R2P agendas at the Security Council are clear, yet there is not a universal agreement of the Security Council members to act in a consistent manner to protect civilians from R2P crimes, as is demonstrated by its inaction in Syria. One of the key reasons for this is the fact that R2P has been falsely equated with international intervention and the use of force, criticised by some states as an encroachment on the principle of state sovereignty. Even strong advocates for R2P recognise that, "It is vital that fulfilling and advancing the well-established agenda of the protection of civilians in armed conflict is not held hostage by

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[47] For example, land, housing property rights were included in a resolution on Cote d'Ivoire in 2010 for the first time after humanitarians reported to the Security Council Expert Group that it was a protection concern for returning displaced people in the west of Cote d'Ivoire. SC/RES/1880(2009), para.17.

[48] On 9 August 2010, the Secretary-General addressed an informal interactive General Assembly dialogue on "Early warning, assessment and the responsibility to protect" as part of the General Assembly's continued consideration of the emerging concept. The Secretary-General's report on the issue highlights existing early warning and assessment mechanisms within the UN system, identifies gaps and proposes ways to improve the UN's ability to use available early warning information effectively, including information from field operations, and to improve early, flexible and balanced responses where there is a risk of the genocide, crimes against humanity, war crimes or ethnic cleansing. A/64/864(2010).

[49] The Office of the Special Advisor on the Prevention of Genocide lists the ongoing project of Dr Susan Bench, "Dangerous Speech on the Road to Genocide": http://www.un.org/en/preventgenocide/adviser/projects.shtml.

the controversy associated with R2P."[50] There was a glimmer of hope for change in the Security Council when it used R2P in its action in Libya. But this soon faded with the controversy surrounding the way that NATO carried out the mandate.

The Security Council is not likely to implement R2P regularly in country situations in the near feature, even where there is evidence of the crimes it addresses. In the meantime, the protection of civilians framework at the Security Council can be used to assist in achieving other aims of the responsibility to protect doctrine by integrating the identification and prevention of the crimes into its work. Improved monitoring and reporting, for example, can encourage Security Council to take preventative action. The best that can be hoped for is that improved monitoring and reporting through various means and channels to Security Council members will encourage them to demonstrate a responsibility to act. After all, this is what states undertook to do with the R2P doctrine. It relies on states to exercise a moral responsibility to act in situations where there are threats of R2P crimes, and to prioritise a responsibility to protect civilians over their political agendas.

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[50] Global Centre for R2P, Policy Brief: "The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict", January 2009, p.1.