

Policy Brief

Policy as Implementation: Reconsidering the Responsibility to Protect Doctrine

By Noamane Cherkaoui

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Adoption of the Responsibility to Protect (R2P) Doctrine at the United Nations' 2005 World Summit constituted a watershed moment for international diplomacy and multilateralism. With multiple pillars, R2P was established to ensure that the international community was better placed to act in the face of mass atrocity. Unfortunately, R2P's poor implementation, and weaponization that has undermined its precepts, have seen it displaced from the holistic framework of state-building and conflict prevention in which it belongs. While it is clear that R2P has benefits as a doctrine, it can be reconsidered to a limited extent to ensure its functioning is optimized, including through United Nations Security Council reform. The UN General Assembly recently adopting a resolution by consensus that calls for a post-veto General Assembly meeting is a positive step on which progress can be built.



THINK • STIMULATE • BRIDGE

INTRODUCTION

The Responsibility to Protect (R2P) is an international security and human rights doctrine established to ensure that the international community is better placed to act in the face of mass atrocities. This policy brief will discuss whether R2P should be reconsidered, particularly in relation to its military components. The central argument in this policy brief is that, while R2P has advantages, its faults lay in the implementation phase, with barriers including the United Nations Security Council's (UNSC) configuration and R2P's lack of inclusion in a holistic framework of state-building and conflict prevention. This argument will be structured around three key points: military components remain an important last resort in R2P; R2P is a tangible response to adverse state behavior; and R2P constrains future military interventions. Based on these, ways to overcome the implementation barriers, including UNSC reform and elevating state-building and prevention efforts, are discussed with reference to a variety of sources and case studies, namely Libya and Syria.

THE RESPONSIBILITY TO PROTECT DOCTRINE

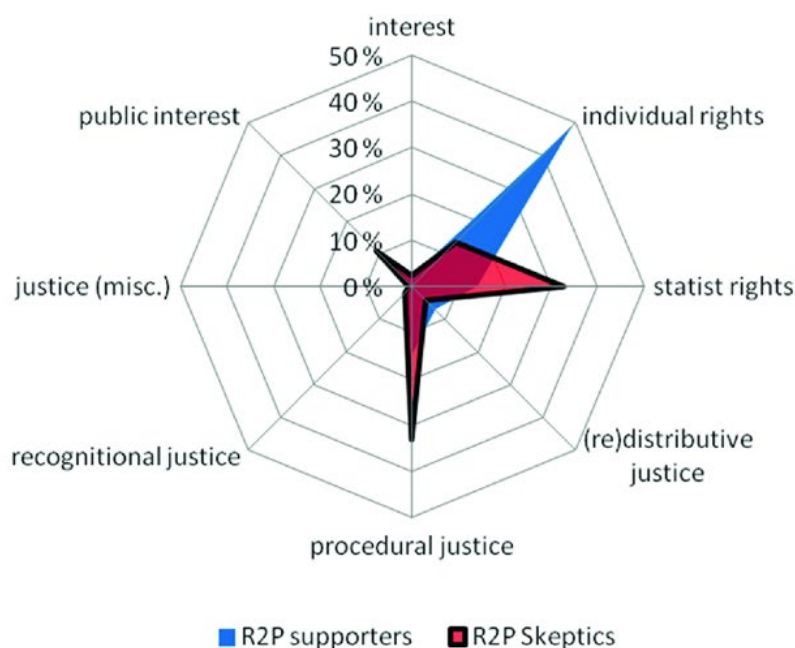
The R2P doctrine arose following a commitment made at the UN 2005 World Summit by all UN member states to ensure that the international community would prevent future genocide, war crimes, ethnic cleansing, and crimes against humanity. It has three pillars:

1. "Every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing.
2. The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility.
3. If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter" (GCR2P, 2021, para.5).

The third pillar is the most controversial and contested due to various factors, including on sovereignty grounds (Fiott, 2015), which contrasts with the individual rights focus of R2P proponents (Figure 1). Notably, the UNSC's exclusive ability to authorize "military force ... when States manifestly fail to protect their populations" (Šimonović, 2017, p.20), coupled with its legally binding resolutions, are aspects that raise its significance. This means that the UNSC – nominally tasked with the maintenance of international peace and security – and the dynamics between its members, structure, and processes are pivotal in the development of R2P affairs. The UN's endorsement notwithstanding, the principles of the R2P doctrine were not novel, with the African Union already incorporating them in Article 4 of its 2000 Constitutive Act. As detailed by Edward Luck, the previous Special Advisor to the UN Secretary-General on R2P between 2008 and 2012, not only is R2P rooted in the African experience, but there is also "nothing new here in terms of international law. It is all based on existing international law. It is not a radical idea, unless you think expecting national leaders to take responsibility for the way they treat their people is a radical idea. We think this is why states were born: states were born to protect people" (UN, 2011, para. 47).

Figure 1:

Relative distribution of entitlements referred to in statements on R2P



Data R2P supporters 2009-2014: 283 codings in 59 statements by 12 states and 1 state grouping (GoF of R2P)
Data R2P skeptics 2009-2014: 422 codings in 47 statements by 10 states and 1 state grouping (NAM)

Source: Hoffman, 2015

MILITARY COMPONENTS ARE AN IMPORTANT LAST RESORT

Firstly, military components in R2P are an important last resort and ultimately a tool for deterrence. This means that the international community is not in a position to act militarily unless there is a compelling reason to do so. Even then, international action only comes into play once a state abdicates its responsibility as a sovereign jurisdiction, a concept popularized by Deng et al (1998, para.1), holding that “sovereignty can no longer be seen as a protection against interference, but as a charge of responsibility where the state is accountable to both domestic and external constituencies”. This means that a state has an obligation to protect the welfare of its citizens, and the R2P doctrine supports, and prioritizes, many other routes to address this issue beyond military aspects. The former UN Secretary-General Kofi Annan, in a report titled *In Larger Freedom: towards development, security and human rights for all* (2005, p.33), discussed the principles underlying the prospective use of force, including “how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is proportional to the threat at hand; and whether there is a reasonable chance of success”. This results in a painstaking process to ensure that while military components are on the table, they are not the primary reference point.

The context here is crucial; the international community was reeling from the catastrophes in Rwanda and Bosnia and the inadequacy of the international response, and R2P introduced a relative point of leverage that had not been previously conceptualized as a framework. Before its introduction, it was recognized that intervention “may sometimes be the only alternative to failure and retreat” (Roberts, 1993, p.448), and that member states had to make “awkward facts of [crises] fit the procrustean bed of the UN Charter” (Roberts, 1993, p.440). Even on ethical grounds, some had maintained that “military intervention [was] ethically justified when domestic turmoil threatens regional or international security and when massive violations of human rights occur” (Hoffman, 1995, p.29). Accordingly, the R2P doctrine emerged as an applicable remedy, formalizing and offering a wide range of policy tools to address atrocities, including in the diplomatic, economic, political, and institutional realms (UN, 2021). Diplomatic measures can mean closed-door dialogue to reach a compromise, either bilaterally, such as through shuttle diplomacy, or through multilateral forums. Economic measures include sanctions, which can be an effective way of constraining the maneuverability of adverse actors (Peksen, 2017), such as the U.S. Caesar Syria Civilian Protection Act of 2019 targeting the Assad regime (U.S. Congress, 2019). Political measures include capacity building, international assistance, and protection missions, while institutional measures can entail encouraging private and public businesses to engage with NGOs and other entities. Hence, military components remain the last resort, despite how non-linear and constrained timelines can develop given that “sometimes the use of force is the only way of halting and reversing genocide and mass atrocities” (Bellamy, 2009, p.125). Indeed, their high-commitment nature means a preference exists to circumvent this route.

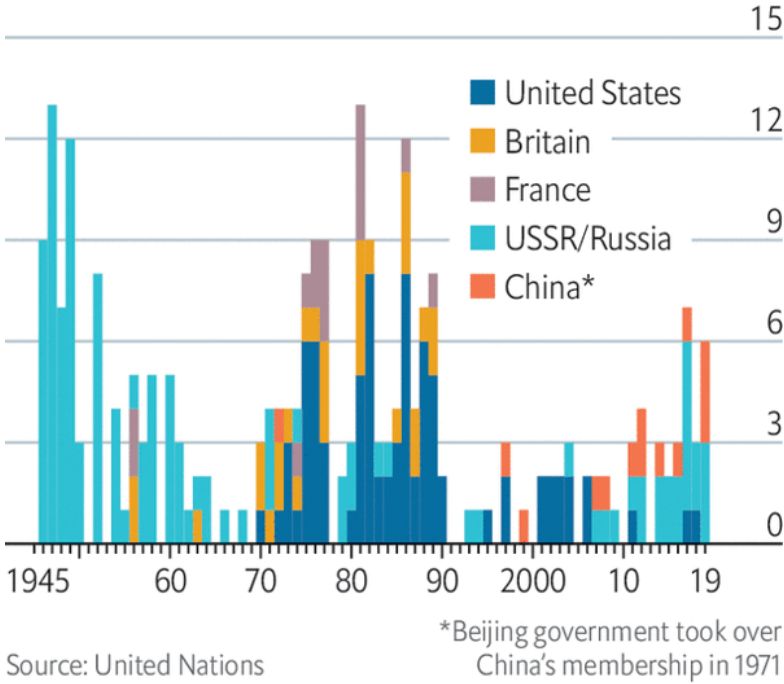
However, R2P’s implementation could be improved by reforming the UNSC. The structure, with permanent member states, reflects an outdated, post-Second World War environment that no longer exists. Powerful states are not given a permanent seat, while those with permanent seats wield a veto that makes collective action moot (Hosli & Dörfler, 2017). There is also a structural imbalance, which leads to the entrenched underrepresentation of certain geographical areas, including Africa and South America. In this regard, the UN through reform of the UNSC could improve its ability to moderate the effects of the realpolitik tendencies that emerge when mass atrocities take place, such as with Russia in Syria. The war in Syria has claimed nearly 500,000 lives according to the Syrian Observatory (AFP, 2021), and Russia has prevented numerous UN Resolutions condemning the Assad regime and its deadly tactics by virtue of its privileged position. Crucially, Russia’s conduct in the UNSC has substantially hindered R2P’s implementation in the Syrian conflict—and concurrently has also exhibited the gravity of R2P’s mandate in ensuring accountability for perpetrators of gross human rights violations. Despite criticism that most R2P enforcement measures predated its creation (Jetrsek, 2013), a state’s humanitarian responsibilities have now been crystallized clearly, after multiple failed responses in the 1990s.

In any case, considering how some powers are “[wed] to a narrow set of foreign policy priorities far removed” from R2P’s objectives (Murray and Hehir, 2013, p.402), increasing the UNSC’s operative consistency, and thereby its credibility, through reform is important. The latter is linked to the undue politicization of the UNSC (Freedman, 2014), which, at a time when the rules-based post-Cold War world order is under threat, highlights the organ’s dysfunction as a pressing, but not inexorable, issue. Some solutions have been proposed, including the Accountability, Coherency, and Transparency Group’s Code of Conduct and the France-Mexico Joint initiative. The latter, launched in 2012, “proposes that 50 UN General Assembly members can call upon the UN Secretary-General to determine if an issue is one of mass atrocity crime. If deemed so, then the P5 would be required to suspend their right to veto over the issue” (Illingworth, 2020, p.396). This solution would involve a more representative body and ensure that a variety of stakeholders are involved in the

process of issuing a divisive veto. However, there is a trend towards limiting the UNSG’s role, which is already narrow due to the nature of their responsibilities as the chief administrative officer. As a result, another proposition is empowering the UN Human Rights Council (UNHRC) to make a due determination if there has been a breach of international peace and security – if so, the UNSC can complementarily supersede. This is constructive as the UNSC’s status as a political body does not leave much room for an objective assessment. Nevertheless, it needs to be noted that the permanent five (P5) members—China, Russia, the United States, France, and the United Kingdom (the last two have not cast a veto since 1989)—have significant interests in seeing their veto power preserved (Figure 2), which is a significant, but not fatal, obstacle in realizing reform.

Figure 2:

Axis of No
United Nations Security Council, number of vetoes



Source: United Nations

The Economist

While removing the veto altogether is an unlikely proposition (Webb, 2014), facilitating veto restraint might be more feasible and “will rest on continued campaigning in the UN, wider advocacy groups, and particularly on the attitudes of the P5 members themselves” (Illingworth, 2020, p.414). This has been emphasized recently by the UN General Assembly adopting a resolution by consensus that arranges for a General Assembly meeting after every veto within ten days “to explain why the resolution at issue would not have furthered the maintenance of international peace and security” (USUN, 2022, para. 2). While this remains mostly rhetoric, it is a striking step towards accountability. Other avenues that have been proposed include “the UNSC [becoming] legally subordinate to the ICJ” (Thakur, 2008, para.21). This would constitute a more dramatic change from the status quo, and, while currently not realistic, would force comfortable P5 states to recalibrate the metrics by which they arrive at self-seeking decisions.

R2P HAS PROVIDED A TANGIBLE RESPONSE

Secondly, R2P has provided a tangible response to adverse state behavior. This includes its invocation in 86 UNSC resolutions since 2006, dealing with a wide variety of crises (Figure 3).

Figure 3:

References to R2P in UNSC Resolutions

DATE	DOCUMENT #	SITUATION OR ISSUE
15/3/2022	S/RES/2625	South Sudan
20/12/2021	S/RES/2612	Democratic Republic of the Congo
12/11/2021	S/RES/2605	Central African Republic
28/5/2021	S/RES/2577	South Sudan
27/4/2021	S/RES/2573	Protection of Civilians in Armed Conflict
12/3/2021	S/RES/2567	South Sudan
18/12/2020	S/RES/2556	Democratic Republic of the Congo
12/11/2020	S/RES/2552	Central African Republic
12/3/2020	S/RES/2514	South Sudan
19/12/2019	S/RES/2502	Democratic Republic of the Congo
15/11/2019	S/RES/2499	Central African Republic
29/3/2019	S/RES/2463	Democratic Republic of the Congo
15/3/2019	S/RES/2459	South Sudan
27/2/2019	S/RES/2457	Silencing the Guns in Africa
13/12/2018	S/RES/2449	Syria
14/11/2018	S/RES/2444	Somalia
30/10/2018	S/RES/2439	Democratic Republic of the Congo
13/7/2018	S/RES/2429	Sudan and South Sudan
13/7/2018	S/RES/2428	Sudan and South Sudan
6/6/2018	S/RES/2419	Maintenance of International Peace and Security
24/5/2018	S/RES/2417	Protection of Civilians in armed conflict
27/3/2018	S/RES/2409	Democratic Republic of the Congo
30/1/2018	S/RES/2399	Central African Republic
10/12/2017	S/RES/2393	Syria
8/12/2017	S/RES/2389	Great Lakes region

15/11/2017	S/RES/2387	Central African Republic
14/11/2017	S/RES/2385	Somalia
5/9/2017	S/RES/2374	Mali
29/6/2017	S/RES/2364	Mali
29/6/2017	S/RES/2363	Sudan and South Sudan
21/6/2017	S/RES/2360	Democratic Republic of the Congo
31/3/2017	S/RES/2349	Peace and Security in Africa (Lake Chad Basin)
31/3/2017	S/RES/2348	Democratic Republic of the Congo
8/2/2017	S/RES/2340	Sudan and South Sudan
27/1/2017	S/RES/2339	Central African Republic
21/12/2016	S/RES/2332	Syria
16/12/2016	S/RES/2327	South Sudan
10/11/2016	S/RES/ 2317	Somalia
12/8/2016	S/RES/2304	South Sudan
26/7/2016	S/RES/2301	Central African Republic
29/6/2016	S/RES/2296	Sudan (Darfur)
29/6/2016	S/RES/2295	Mali
31/5/2016	S/RES/2290	South Sudan
25/5/2016	S/RES/2288	Liberia
3/5/2016	S/RES/2286	Protection of Civilians (Health Care in Armed Conflict)
30/3/2016	S/RES/2277	Democratic Republic of the Congo
27/1/2016	S/RES/2262	Central African Republic
22/12/2015	S/RES/2258	Syria
18/12/2015	S/RES/2254	Syria
15/12/2015	S/RES/2252	South Sudan
9/12/2015	S/RES/2250	Maintenance of International Peace and Security
9/10/2015	S/RES/2241	South Sudan
2/9/2015	S/RES/2237	Liberia
29/6/2015	S/RES/2228	Sudan (Darfur)
28/5/2015	S/RES/2223	South Sudan
22/5/2015	S/RES/2220	Small Arms and Light Weapons

28/4/2015	S/RES/2217	Central African Republic
26/3/2015	S/RES/2211	Democratic Republic of Congo
3/3/2015	S/RES/2206	Sudan and South Sudan
22/1/2015	S/RES/2196	Central African Republic
25/11/2014	S/RES/2187	South Sudan
21/8/2014	S/RES/2171	Maintenance of international peace and security – conflict prevention
15/8/2014	S/RES/2170	Threats to international peace and security caused by terrorist acts
14/7/2014	S/RES/2165	Syria
27/5/2014	S/RES/2155	South Sudan
16/4/2014	S/RES/2150	Threats to International Peace and Security- prevention of genocide
10/4/2014	S/RES/2149	Central African Republic
22/2/2014	S/RES/2139	Syria
28/1/2014	S/RES/2134	Central African Republic
5/12/2013	S/RES/2127	Central African Republic
10/10/2013	S/RES/2121	Central African Republic
26/9/2013	S/RES/2117	Small Arms and Light Weapons
12/3/2013	S/RES/2095	Libya
6/3/2013	S/RES/2093	Somalia
19/12/2012	S/RES/2085	Mali
12/3/2012	S/RES/2040	Libya
27/10/2011	S/RES/2016	Libya
21/10/2011	S/RES/2014	Yemen
8/7/2011	S/RES/1996	South Sudan
30/3/2011	S/RES/1975	Côte d'Ivoire
17/3/2011	S/RES/1973	Libya
26/2/2011	S/RES/1970	Libya
11/11/2009	S/RES/1894	Protection of Civilians
31/8/2006	S/RES/1706	Sudan (Darfur)
28/4/2006	S/RES/1674	Protection of Civilians
27/1/2006	S/RES/1653	Democratic Republic of the Congo and Burundi

Source: Global Centre for the Responsibility to Protect, 2022

R2P's track record shows that it is a doctrine that has been endorsed in a manner mostly consistent with the basis of its initial existence. Significantly, its formulation has encouraged "evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention" (Evans and Sahnoun, 2002, para.7). However, while the bark is there, R2P's occasional lack of bite is due to issues that revolve more around poor implementation than an emphasis on military components. For example, NATO's 2011 intervention in Libya prevented a brutal dictator from stifling dissent and consolidating power. Its intervention prevented the deaths and imprisonment of many people and initiated a nascent democratic transition in the country (Mühlberger, 2012). It may also have introduced the "progressive effect of deterrence" (Pommier, 2011, p.1082), since the threat of military force can "help strengthen deterrence of would-be perpetrators" (Sewall et al., 2010, p.12). It is notable that Libya endured a crisis not solely because of Gaddafi's downfall—the momentum behind which came from the grassroots, and which led to two years of relative stability—but mostly because of a lack of a robust state-building plan with security-sector reform aspects (Chivvis et al., 2012). In what can be regarded as the "responsibility to rebuild" (Keranen, 2016, p.331), this should dovetail with R2P and ensure that states commit to a holistic intervention process.

State-building, which can be regarded as complementary to peace-building (Parlevliet, 2017), can take many forms and include many attributes, all of which facilitate a far-sighted approach to humanitarian interventions. In sum, the aim would be to "cultivate and protect responsible local leaders in communities throughout the nation and help local and national leaders to work together in a democratic system of political networks that reach out to the entire population" (Myerson, 2017, p.14). While the UNSC has an important role to play in this regard, it remains fragmented, a dynamic encapsulated by events such as Russia blocking the release of the 2020 Libya report by the UN Panel of Experts (Lederer, 2020). As a result, it is difficult to foresee markedly better prospects in this regard as long as reform is delayed.

Furthermore, it is important to note that the influence R2P has had in the face of adverse state behavior has arisen despite claims that R2P itself causes gridlock. According to Patrask (2013, para.4), the "possibility of a military intervention in Syria without UN authorization has hardened opposition to other UN measures and undermined unified support for a mediated solution to the conflict". Notably, more than 16 draft resolutions on Syria were vetoed in the UNSC up to 2020 (UN, 2021), which is reflective of an authorization-seeking process that is not tenable. However, the UNSC has attempted to partially counter impunity by referring to R2P in "its resolutions and statements on the crisis, has condemned the killing of civilians, supported negotiations, mandated investigations, authorized a monitoring mission (UNSMIS), mandated and supervised the removal of chemical weapons, and (for the first time in its history) authorized the delivery of humanitarian assistance without the host government's consent" (Bellamy, 2015, p.173). Ultimately, bad faith behavior abounds, a dynamic exhibited in the Chinese and Russian vetoes of cross-border aid deliveries to Syria (Charbonneau, 2020), and the Russian blockage preventing a UNSC resolution on its conflict with Ukraine (UN, 2022). This suggests that it is a defective UNSC structure that permits states to elevate their perceived strategic interests with limited consequences, not an insincere concern for humanitarian issues. Accordingly, UNSC reform would be a development that would bolster R2P in general and the implementation of its multi-pillar repertoire in particular.

CONSTRAINING FUTURE MILITARY INTERVENTIONS

Thirdly, what has been observed throughout modern history is the propensity of the nation-state to intervene for ostensibly humanitarian purposes. Interventions have occurred in the past and will continue to occur, with Morgenthau (1967, p.425) deeming intervention “an instrument of foreign policy as are diplomatic pressure, negotiations, and war”. However, defining the basis of intervention is an aspect that validates the urgency of the demand-driven R2P doctrine and its attempt to establish multilateral rules for these efforts. For example, R2P ensures that interventions are consensus-based and are constrained by incremental, requirements including a state’s responsibility to defend its citizens, assist others, and protect others (UN, 2021). These underpinned the relatively successful case of the Côte d’Ivoire in 2011, when the UNSC unanimously adopted Resolution 1975 condemning violence there from different sides after an election. The Resolution cited “the primary responsibility of each State to protect civilians,” and affirmed that the United Nations Operation in Ivory Coast could use “all necessary means to protect life and property” (UN, 2011, p.2). This instance showed how an intervention was constrained by a multilateral forum recognizing the shared responsibility to protect, as opposed to unilateral attempts to rework the status quo or otherwise ignore a perilous situation.

Additionally, these constraints increase the legitimacy of interventions that do transpire under the R2P banner and its three pillars. Interventions are not monolithic, and UNSC reform could facilitate less selectivity in the international community’s response to mass atrocities—in what Hehir (2013, p.137) called the “permanence of inconsistency”. Since intervening states are led “in an ad hoc fashion by political leaders balancing national interests, legal considerations, world opinion, perceived costs, and humanitarian impulses” (Bellamy, 2013, p.3), giving five states unilateral veto power elevates self-interest as the guiding principle in a hypothetical triage process for humanitarian crises. Reforming the UNSC would also increase its transparency. It generally has opaque decision-making processes and negotiations; some have even gone so far as to call for text-based negotiations as a result (UN, 2019).

In a similar vein, R2P’s constraining of future military interventions should dovetail with enhanced conflict prevention efforts. “Prevention is increasingly viewed as crucial in R2P” (Bohm and Brown, 2020, p.94), particularly, but not exclusively, in relation to elements associated with Pillar II. For instance, the former UN Deputy Secretary-General mentioned “integrating a prevention agenda into national, regional, and international frameworks for action”, as well as the international community supporting “national authorities in addressing root causes and building or strengthening the ways to counter atrocity crimes—such as by inter-communal dialogue, reform of the security sector, and mechanisms for reconciliation and transitional justice” (UN, 2016, para.7). These constitute potential ways to help prevent future atrocities, with R2P’s combination of non-coercive and coercive measures requiring a forward-looking and long-term foundation for maximum impact. In fact, the 2014 UN Secretary-General-endorsed Framework of Analysis for Atrocity Crimes refers to risk factors including “armed conflict or instability, a record of past violations, weak state structures, motive and capacity of instigators, lack of local resilience, and particular triggers” that must be addressed (Bohm and Brown, 2020, p.76).

By way of example, addressing instability in the Sahel, which was accelerated by events in Libya, would be better served by proactive measures that deal with structural issues. The volatile security environment and concomitant governance vacuum in the Sahel are ongoing challenges that require cross-border cooperation and multilateral efforts to assist states in

assuming their responsibility to protect their citizens. A report by the People's Coalition for the Sahel, which includes the Global Centre for the Responsibility to Protect, recommends "a radical reorientation from the current counterterrorism and militaristic approach to the crisis in the Sahel, to one that prioritizes civilian protection, dialogue between all parties to the conflict, tackling corruption, improved access to aid, and an end to impunity" (PCS, 2021). Regional voices are likewise important for sustainable solutions, and they can play a role in matters like migration, security, development, and south-south coordination. Ultimately, an increased focus on R2P's preventative precepts would go a long way to ensuring the need for future military interventions under R2P's third pillar is minimized.

CONCLUSION

There is an extensive debate on the merits of R2P and whether it needs to be reconsidered. While it is clear that it is advantageous as a doctrine, it can be reconsidered to a limited extent to ensure its functionality is maximized. There are three reasons behind its enduring relevance: military components are an important last resort, R2P has provided a tangible response thus far, and future military interventions are now comparatively constrained. The best way to maximize its functionality is to improve its implementation, which should begin with reform of the UNSC and the inclusion of R2P in a holistic framework of state-building and conflict prevention.

First, military components are not a primary route and are only employed once R2P's toolbox fails in the face of an ongoing atrocity. This means that as leverage it is valuable and ensures that non-interference principles—incidentally a boon for autocrat leaders—are conditional, increasing deterrence. Second, the R2P doctrine has been effective in formalizing a response to various atrocities that have occurred since its inception. It has been invoked in more than 80 UNSC resolutions relating to various sensitive conflict zones. Finally, interventions, which occur either way, are now constrained—at least theoretically—by guidelines that attempt to ensure that any intervention is in good faith and not untimely. Interventions are not monolithic and facilitating consensus around a set of precautionary principles is a positive step.

However, there is room for improvement with respect to implementation. First, reforming the UNSC is crucial; the structural imbalance and lack of geographic parity mean that business as usual is a barrier to the successful implementation of R2P. Considering the UNSC's outdated and inconsistent veto dynamics, there has been momentum towards addressing the undue politicization that has largely overshadowed its mandate of maintaining international peace and security. This includes the UN General Assembly now automatically convening a meeting after a veto is cast, in which the implicated P5 member is afforded an opportunity to justify its decision in line with the UN Charter. This is a foundation on which progress can be built, perhaps towards empowering the UNHRC to make objective determinations on when R2P's pillars should be triggered. Second, there needs to be more emphasis placed on state-building once a humanitarian intervention does occur. This would go hand-in-hand with peace-building, through which the root causes of conflicts and the lack of local capacity in conflict zones should be addressed. R2P must also be reinterpreted as a preventative doctrine, not a reactive one, with the undue onus on its third pillar detracting from its versatility. Hence, R2P will work most constructively in tandem with proactive measures that assist states in assuming their responsibility to protect their people.

Overall, reconsidering the R2P doctrine is not about radically modifying or attenuating R2P—it is about improving its implementation. While an international norm in compelling behavior under conditions of anarchy has inherent limitations, this does not preclude active efforts to learn from history to avoid its repetition as farce.

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Noamane Cherkaoui

Noamane Cherkaoui researches North Africa geopolitics and security as part of the Strategic Monitoring and Analysis Unit at the Policy Center for the New South. He graduated from the University of Otago in New Zealand with the Dean's Award. He is also a postgraduate in International Relations at the University of Leicester, with his dissertation being on Libya's internationalized conflict from a security perspective.

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The views expressed in this publication are those of the author.

Policy Center for the New South

Building C, Suncity Complex, Al Bortokal Street Hay Riad 10100 - Rabat

Email : contact@policycenter.ma

Phone : +212 (0) 537 54 04 04 / Fax : +212 (0) 537 71 31 54

Website : www.policycenter.ma

