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The Responsibility to Protect at Ten

Adrian Gallagher¹ and Jason Ralph²

Abstract

This article introduces the special issue and identifies three key contributions. First, R2P advocates are right to mark the progress that has been made, but that should not – and generally does not – lead norm diffusers to rest on their laurels or to fall into a complacency that sees moral progress as inevitable. Second, the burden of concrete protection practices – whether they be reflected in contributions to peacekeeping missions or the granting of asylum – is being unfairly distributed across international society. This hierarchy is potentially destabilising and it demands that the great powers – or those laying claim to that identity – recognise their ‘special responsibility to protect’. Third, the great powers do have an important responsibility to reconcile the demands of human protection and international peace and security. It is difficult to reconcile these if we look narrowly at the former in terms of intervention, especially military intervention. Reiterating R2P to remind states that other prudent options are available – such as receiving refugees - is an important step, especially in the current context.

Keywords

Norms, moral progress, special responsibilities, hierarchy

2015 marks the 70th anniversary of the United Nations and the 10th anniversary of the Responsibility to Protect (R2P) agreement as set out in paragraphs 138, 139, and 140 of the World Summit Outcome Document. As one cannot detach the latter from the former, let us revisit the world of the 1940s. In 1946, the Director of the Human Rights Division in the UN Secretariat, John P. Humphrey, sent an interoffice memorandum to Henri Laugier;

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As you undoubtedly know, a number of communications from individuals and non-governmental organisations have been addressed to the Commission on Human Rights and to the Secretary-General which relate to human rights and fundamental freedoms. Some of these allege violations of human rights within specific member states³

The statement raises the issue of UN responsibilities regarding human rights violations within states. Humphries goes on to explain:

But these communications which allege violations of human rights within specific Member States give rise to difficulties of the first magnitude. For while the Secretariat must hand them on to the Commission, the latter does not appear to have any right under the Charter to make recommendation to the States in question in regard to them. The facts and circumstances described in the communications are “matters which are essentially within the domestic jurisdiction” of the Member States, with the result that, under Article 2 (7) of the Charter, all intervention (and even a recommendation might and probably would be considered intervention by the Member State envisaged) by the United Nations is excluded. As I understand the situation, no recommendation can be made with regard to a matter “essentially within the domestic jurisdiction of any State” unless the recommendation is made by the Security Council under Chapter VII of the Charter, i.e. when the situation constitutes a threat to peace.⁴

It seems that since its inception, human rights violations within states have created problems of ‘the first magnitude’ for the UN. The sanctity of state sovereignty looms large. A ‘simple’ recommendation by the Commission is viewed as a form of illegal intervention in the domestic jurisdiction of Member States. Only the UN Security Council is deemed to hold such power and this depends on their evaluation of whether an individual crisis constitutes a threat to international peace and security. The statement therefore reinforces the conclusion drawn by the Independent International Commission on Kosovo, ‘human rights were given a subordinate and marginalised role in the UN system in 1945’.⁵

³United Nations Archive, S – 0544 – 0004 – 12. Human Rights Commissions Defence, 28 1946 – 28 October 1947. Interoffice Memorandum from J. P. Humphrey, Director of Division of Human Rights to M. Henri Laugier, Assistant Secretary-General in charge of Social Affairs. 30 August 1946. Adrian Gallagher conducted archival research at the United Nations in New York in 2009.

⁴ *ibid.*, emphasis added.

⁵ The Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000), p. 168.

Seventy years on, there is an intense debate over the extent to which international relations has changed. Dividing the RtoP discourse up into three camps we see conflicting interpretations. Authors like Gareth Evans, Alex Bellamy, Tim Dunne, Luke Glanville, James Pattison and Cristina Stefan, see a world in which progress has been made. For example, in the 65 months prior to the UN authorised intervention in Libya (March 2011) there had been just 4 UN RtoP related Resolutions; since then, there have been over 26.⁶ The UN's involvement in crises such as Cote d'Ivoire, Sudan, South Sudan, Yemen, Mali, Somalia, Syria, the Central African Republic, and Iraq – to name just a few – reveals a United Nations becoming increasingly involved in human protection as part of its core business. Of course, there are differences of opinion, but the underlying point is that progress has been made because at the very least, the RtoP is now in the room. Others such as Aidan Hehir, Robert Murray, Theresa Reinhold and Justin Morris view the RtoP as illusionary progress.⁷ It is claimed that the 2005 agreement changed little, if anything, especially in terms of international law. As a result, the victims of mass violence remain dependent on the willingness of the P5, the use of the veto, and rational choice calculations that continue to place the national interest above human protection.⁸ More often than not, UN references to RtoP stress pillar I rather than pillar III which evidences that the international community continues to distance itself from upholding an international responsibility to protect. Again, there are differences between them⁹, yet these sceptical voices argue that the R2P signifies very little in terms of real change. For critics, such as Philip Cunliffe, David Chandler, Noam Chomsky, Tara McCormack, and Alan J. Kuperman, the RtoP is a harmful concept.¹⁰ Whether the RtoP unintentionally increases mass violence (Kuperman); violates the pluralist rules of the world order (Cunliffe); enables the P5 to evade their responsibility to protect (Chandler); or represents the latest form of Western imperialism (Chomsky) - the hymn sheet

⁶ See Global Centre for R2P, 'UN Security Council Resolutions Referencing R2P', <http://www.globalr2p.org/resources/335>, accessed 30 March 2015.

⁷ Aidan Hehir, 'The Responsibility to Protect: "Sound and Fury Signifying Nothing"?'', *International Relations*, 24/2: 218-239 (2010); Theresa Reinold, 'The Responsibility to Protect-Much ado about Nothing?', *Review of International Studies*, 32/S1:55-78 (2010), p. 55.

⁸ For the rational choice perspective see, Robert W. Murray, 'Humanitarianism, Responsibility or rationality? Evaluating Intervention as State Strategy', in Hehir and Murray (eds.), *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (Basingstoke: Palgrave Macmillan, 2013), pp.15-33.

⁹ For instance, Morris shares Hehir's interpretation of how the world is, but differs in his view of how it can be.

¹⁰ Cunliffe sought to 'broaden the debate' to include perspectives which take 'direct aim at the idea [of the RtoP] itself'. See Philip Cunliffe, 'Introduction: Critical Perspectives on the R2P', *Journal of Intervention and Statebuilding*, 4/1: 35-37 (2010). The articles laid the foundation for the subsequent book, Philip Cunliffe (eds.), *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (London: Routledge, 2011).

that they sing from informs the listener that the world would be a better place without the R2P.

Wherever one stands within the debate, the R2P discourse has clearly helped the discipline of IR address one of its key blind spots: mass violence within states. Writing at the same time that the RtoP report was published, Kenneth Campbell highlighted that between 1945 and 1995 neither Foreign Affairs or International Affairs published a single article on genocide while International Studies Quarterly published just one.¹¹ Furthermore, Martin Shaw raises the fact that in 1999, Review of International Studies published a special edition journal on the post-Cold War decade which failed to provide any analysis of the Rwandan genocide.¹² To return to the sentiment expressed by Humphries in 1945, it would seem that violence within states also exposed problems of the first magnitude for the discipline of IR. It seems fair to say that this is simply no longer the case. Five years on from the World Summit, the UN Special Advisor on RtoP, Edward Luck claimed that ‘the ever-expanding literature on the responsibility to protect (RtoP) could now fill a small library’.¹³ Ten years on, the library needs an extension. The articles in this special issue might be filed in that library under three call codes: first, what kind of norm is R2P and what should we expect of it; second, what does the past ten years of international practice and norm centred (i.e. constructivist) scholarship tell us about the R2P and its future trajectory; third, what are R2P’s ‘blind spots’ and how might scholars and practitioners amend their approach to address these.

R2P as a normative aspiration

What does it mean to say R2P is a norm?¹⁴ The word ‘norm’ can be used to describe both an existing social reality and an aspiration for a new and better reality. One describes the is (and may take appropriateness from normality), while the other describes the ought (and takes

¹¹ Kenneth, J. Campbell, *Genocide and the Global Village* (New York: Palgrave, 2001), p. 107. It is difficult to judge this claim without knowing the operational parameters that Campbell upheld when assessing what constituted an article on genocide. For example, there was a handful of review pieces published as well as a very small number of pieces that engaged with genocide more indirectly. Yet the underlying point remains, when one juxtaposes the frequency of genocide within this time period with the lack of IR interest in it, this omission is startling.

¹² This is taken from the subsequent review piece by Martin Shaw, ‘Strategy and Slaughter’, *Review of International Studies*, 29/2: 269 – 277 (2003), p. 269.

¹³ Edward Luck, ‘The Responsibility to Protect: Growing Pains or Early Promise?’, *Ethics & International Affairs*, 24/4:349-65, (2010), p. 349.

¹⁴ This section draws on Jason Ralph and James Souter, ‘Is R2P a fully-fledged norm?’, *Politics and Governance* (forthcoming).

appropriateness from somewhere else). This can be the cause of some confusion. As a normative aspiration R2P is clear. It articulates a universal standard of appropriate behaviour. States should protect their populations and, when they are deemed to be ‘manifestly failing’ to do so, the international community should protect those same populations. Because this is clear, and because it was unanimously adopted by states in 2005, we might say the R2P is fully-fledged as a normative aspiration. As Alex Bellamy notes, ‘the key debates now are ones about how best to implement R2P, not about whether to accept the principle itself’.¹⁵ The question becomes more complex, however, when we use ‘norm’ to describe social reality. From this perspective we can say that R2P is a norm because states are more conscious of their responsibilities to protect populations (their own and others), and because they are aware that if they fail to protect their own populations, other states (or entities like the ICC) might intervene in their internal affairs. Bellamy offers strong evidence that this is clearly the case. The number of United Nations Security Council resolutions reminding states and UN peace operations of their responsibility to protect has increased.¹⁶ States – if not their populations - are more aware of their responsibility to protect. But it seems any description of R2P as a norm (especially a fully-fledged norm) demands more. If we use that term to describe social reality rather than normative aspiration then we are surely using it to describe the fulfilment of the responsibility R2P articulates and states accept.

Several articles in this special issue discuss the evidence that can lead us to talk of R2P as a social norm that influences state behaviour. They go beyond this, however, to also address the implications of that fact. But the special issue kicks off by revisiting the question of R2P as normative aspiration. This does not mean, we hasten to add, that we disagree with the point Bellamy expresses; the principle that states and international society should protect populations from genocide, crimes against humanity, ethnic cleansing and war crimes has widespread acceptance. What Adrian Gallagher does question, however, is how much R2P advocates should actually aspire to achieve. Gallagher argues that the discourse surrounding R2P suffers from overly inflated expectations and this, in turn, provokes criticism, which, despite being misplaced, makes it harder to defend the concept.

An example of this, Gallagher argues, is the criticism that R2P is failing because the international response to mass atrocities remains characterised by inconsistency. As one

¹⁵ Alex Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2014), p.12.

¹⁶ Bellamy, *The Responsibility to Protect: A Defense*, p.8.

sceptic recently put it, the Libya intervention was far from a high point of R2P influence because it merely revealed ‘the permanence of inconsistency’.¹⁷ Comparing the international response in Syria to the response in Libya seemingly illustrates the point. But for Gallagher this is an unfair assessment of what R2P and those that advocate the concept are trying to do. When states signed up to the World Summit Outcome Document they did not expect a consistent response because they recognised that each situation was different. In this respect those writing on R2P should not expect similar responses and neither should they dismiss R2P as a normative aspiration because it recognises the need to approach the problem on a case-by-case basis. For Gallagher, the critic should concentrate on differentiating ‘legitimate inconsistency – where the complexities of the crisis dictate that there is no consensus on what action should be taken – and illegitimate inconsistency – in cases where the Great Powers are evading their responsibility’. The former is a realistic normative aspiration and when states fail to act legitimately, the R2P acts as a form of normative critique.

R2P as a social norm and its implications

But what evidence is there that R2P articulates a new normal? As noted, there are two aspects to this: recognition of the responsibility and fulfilment of the responsibility. We might say that R2P is a norm if states and international society recognise that they have responsibilities, but we surely cannot say that norm is fully-fledged if states – especially the powerful states – show little sign of fulfilling them. This distinction underpins some of the frustration of the sceptics. Optimists can cite the number of resolutions passed at the Security Council as evidence that states are aware of their responsibilities, but ultimately resolutions are statements of intent. They ‘call upon member states’ to fulfil their responsibility. The question of whether states act on that call can too easily be left unanswered. This point is symptomatic of a larger critique, which is that R2P only articulates a general responsibility to protect. In this sense, states may too easily frame an issue as another’s responsibility and the risk, of course, is that vulnerable populations do not get protected or the burden of protection falls on states that are incapable of shouldering it. Again this does not mean R2P optimists cannot point to instances where states have fulfilled their responsibilities in concrete ways. The evidence does suggest, however, that protection burdens are being met by those states

¹⁷ Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council and the Responsibility to Protect’, *International Security*, 38/1: 137-159 (2013).

that are least capable of doing so. This point has been argued elsewhere and it is taken up in the discussion of the articles by Şeyşane and Çelik, and Morris.¹⁸

Before that, however, the articles in this special issue deal with a related question: what are the normative implications that emerge from the social fact that states recognise R2P; that international society expects states to fulfil their responsibilities; and that failure to do so exposes states to social sanction? There is an assumption in much of the literature that this is a sign of normative progress. This reflects some of the assumptions in the discussion of norms by International Relations constructivists, who tend to equate the institutionalisation of a norm with normative progress.¹⁹ The endpoint of the norm life-cycle is that taken for granted quality and, in getting to that stage, ‘norm entrepreneurs’ should expose contestation as hypocritical and regressive.

Gregor Hofmann challenges this view of contestation by drawing on a ‘reflexivist’ constructivist view. Contestation in this sense is not a sign of normative regress; it is in fact intrinsic to the normativity or legitimacy of a norm. Indeed, Hofmann reminds us that R2P was rescued from irrelevance in 2005 by processes of contestation and adaptation. Indeed, among the compromises negotiated at the World Summit one was the understanding that decisions on coercive force would be taken on a case-by-case basis. Moreover, Hofmann makes explicit the point that R2P could only develop as a norm because it was seen to have ‘taken the arguments of opponents seriously’. This is important. It alerts us to the fact that R2P is the product of an imperfect world, which goes back to Gallagher’s point that we should not expect perfection; nor should we, to repeat Alex Bellamy’s words, ‘let the perfect become the enemy of the good’.²⁰

At the same time, the reflexivist constructivist approach deployed by Hofmann warns us of taking the meaning of the 2005 compromise for granted and fixing it in concrete. Contestation does not stop at the point a norm finds expression in a document like the World Summit Outcome Document; and, indeed, as others in this special issue point out, R2P is a complex and indeterminate norm; it should not be a surprise that there is contestation about

¹⁸ See for instance, Jason Ralph, ‘R2P at 10: Looking beyond military intervention’, Opencanada.org, 21 May 2015, <http://opencanada.org/features/r2p-at-10-looking-beyond-military-intervention/>.

¹⁹ Richard Price makes this criticism in the book he edited. Richard Price (ed.), *Moral Limit and Possibility in World Politics* (Cambridge: Cambridge University Press, 2008), pp. 1-52.

²⁰ Bellamy, *Responsibility to Protect: A Defense*, p. 11.

what it means to fulfil its terms. More to the point, if, as the following section suggests, R2P potentially reinforces exclusionary hierarchies within international society then there is danger in accepting its meaning as fixed. To be certain, we are not suggesting R2P as a normative aspiration is being, or should be, contested. Rather, we are suggesting that IR scholarship should reflect on the manner in which R2P is being implemented, and the critical constructivist approach Hofmann deploys facilitates that.

Hofmann's research reinforces the argument of those who suggest norms of procedural justice – centred on the principle of sovereign equality – become more important as the international society adopts more ambitious substantive goals, and mandates more intrusive interventions.²¹ By reiterating sovereignty as responsibility, R2P reinforces the centrality of the state, but by also reiterating the centrality of the Security Council to the implementation of Pillar III, R2P potentially reinforces hierarchies that are seen in some quarters as unequal, anachronistic and illegitimate. The reflexivist constructivist approach warns against dismissing these concerns as obstructionist and regressive. Hofmann notes how R2P proponents have 'refocused their work on prevention and international support for states to build capacities for atrocity prevention'. Prevention is important, but there is a danger if this is pursued as a means of avoiding the contestation surrounding Pillar III implementation.

Andrew Garwood-Gowers' analysis echoes this. Like Gallagher, Garwood-Gowers notes how the post-Libya commentary on the death of R2P is too wedded to a conventional constructivist view of the norm-life cycle and the place contestation has in it; and like Hofmann, Garwood-Gowers notes how concerns about Pillar III have not stopped concrete developments in other areas. The increased willingness of states to reference R2P, suggests that 'there has not been a broader backlash against other components of R2P. In fact, Garwood-Gowers continues, 'contestation over pillar three may actually have strengthened R2P's implementations prospects by generating a convergence of states' expectations around the less controversial pillar two dimension'. But Garwood-Gowers does not rest there. Placing 'undue emphasis' on pillar two, while downplaying 'the ongoing need for pillar three', he concludes, 'could result in R2P's structure becoming unbalanced.' The policy

²¹ Jason Ralph and Adrian Gallagher, 'Legitimacy faultlines in international society. The Responsibility to Protect and Prosecute after Libya', *Review of International Studies*, 41: 553-573 (2015); Bellamy, *The Responsibility to Protect: A Defense*, p. 203.

implication is E. H. Carr-like: the sustainability of the moral progress embodied in R2P requires engagement with, and possible accommodation of, its critics.²²

Some might argue that this kind of accommodation may well lead us to the same attenuated version of R2P that Garwood-Gowers describes as ‘unbalanced’. But this is not necessarily the case. Critics in Brazil and China have floated ideas – such as Responsibility while Protecting (RwP) and Responsible Protection (RP) – that stress the importance of procedural checks and balances that can hold the powerful states to account for the manner in which they implement international society’s Pillar III mandate. Moreover, because these ideas reflect a concern among the emerging powers that they reject the ‘norm-taker / norm-maker’ hierarchy implicit in conventional constructivist accounts of norm diffusion – their post-colonial identity demands they be seen as norm-shapers – it suggests a post-Western world is not necessarily a post-interventions world.²³ Indeed Garwood-Gowers poses the intriguing possibility the China will become pro-interventionist as it develops global interests. Of course, this could pose as many problems for R2P as it solves, but the point remains: those at the top of the hierarchy of states need to be held accountable for the manner in which they implement R2P.

The possibility that the ‘nom-taker / norm-maker’ hierarchy underpins the positions of two states that have contested what it means to implement R2P – Brazil and South Africa – is discussed by Kenkel and de Rosa, and Malte Brosig and Nathalie Zahringer respectively. Drawing on Amitav Acharya’s concepts of norm localization and norm subsidiarity, Kenkel and de Rosa, argue that Brazil’s RwP initiative can be interpreted as an attempt to breakdown this hierarchy by pitching an idea that is very much of, and in some ways for, the Global South. As Kenkel and de Rosa explain Brazil’s identity as a post-authoritarian state committed to human rights meant it could not oppose R2P; but simultaneously, its identity as a post-colonial state sensitive to northern interference made its cautious. But Kenkel and de Rosa contribution goes beyond this somewhat static account of the R2P norm and state

²² See E.H. Carr, *The Twenty Years' Crisis, 1919-39. An Introduction to the Study of International Relations*, 2nd edn. (Basingstoke, UK: Palgrave, 2001), pp. 151–2.

²³ See Brian L. Job and Anastasia Shesterinina, ‘China as a Global Norm-Shaper: Institutionalization and Implementation of the Responsibility to Protect’, in Alexander Betts and Phil Orchard (eds.), *Implementation and World Politics. How International Norms Change Practice* (Oxford and New York: Oxford University Press, 2014), pp. 144-59. See also audio recordings from ESRC Seminar 4, ‘China and The Responsibility to Protect’, University of Leeds, December 2014, <http://iisr2p.leeds.ac.uk/current/responsibility-to-protect-and-prosecute/>.

identity. Brazil has a third identity, that of ‘an emerging power’ and this is significant in understanding the development of RWP.

Brazil’s emerging power identity is almost exclusively a factor of its position in the international distribution of material power. However, Kenkel and de Rosa argue that by proposing amendments to the manner in which a global norm like R2P is implemented, Brazil was putting the ideational gloss on this new identity. Emerging powers are norm-shapers and to consolidate that identity Brazil had to be seen to influencing the direction of global norms. RWP was as much about ‘middle powership’ than it was about R2P. This is an important insight and it illustrates how the emergence of new powers like Brazil and China is not necessarily threat to R2P. Indeed, it can be argued – following Kenkel and de Rosa – that R2P is defining what it means to be an emerging power. To be seen as powerful, a state has to engage with R2P and fulfil its special responsibilities. It is also important, however, to properly understand the implications of this insight, for there is a danger that by locating RWP in the specific circumstances of Brazilian history and its geopolitical position, Brazil’s contribution to the development of a global consensus on Pillar III is dismissed. As the other contributions to the special issue suggest, RWP has merit for addressing the concern that R2P is an expression and reinforcement of a hierarchy of states. It should not be tied to the unique circumstances of its emergence.

The norm-taker / norm-maker hierarchy also informs Brosig and Zahringer’s analysis of South Africa’s engagement with R2P. They too draw on the work of Amitav Acharya and like Kenkel and de Rosa analysis of Brazil’s relationship to R2P they find South Africa’s approach is characterised by a similar pattern of contestation in the context of broader conformity. South Africa’s recent history of course meant the post-apartheid regime was strongly committed to ‘a human rights foreign policy’, and its emergence as a regional power meant it has ‘little option’ but to engage international society on R2P. Yet also like Brazil, South Africa’s foreign policy is influenced by the legacy of colonialism, and its opposition to ‘structural inequality and the abuse of power in the global system’ is at the core of its foreign policy. It is this that informed its apparent backtracking on the UN Security Council mandated intervention in Libya. The issue for South Africa was twofold: that the North Atlantic Treaty Organisation (NATO)-led coalition saw ‘regime change’ as a proper outcome (even if it was not its intention); and those that disagreed with this judgment were seemingly unable to influence the powerful as they implemented the mandate. Where the first reflects a

prudential bias toward dialogue with state authorities, the latter reflects a procedural concern about how to keep the powerful in check as they act on behalf of international society. Neither of these necessarily rules out support for pillar III operations, but, as Brosig and Zahringer point out, it does reinforce the importance of accountability if R2P is to avoid reinforcing regressive hierarchies.

Special Responsibilities to Protect

Volkan Şeyşane and Çiğdem Çelik continue the focus on emerging powers with their analysis of R2P and Turkey's foreign policy. Indeed, their analysis reinforces the argument that engagement with R2P is considered a practice that helps constitute the 'emerging power' identity. Turkey is, however, something of a different case because of its geographic proximity to the Syria crisis. Turkey, one might argue, has a 'special responsibility to protect' by virtue of its geography, and indeed Şeyşane and Çelik argue that opening its border to refugees fleeing that crisis, Turkey is fulfilling that responsibility.²⁴ This is an important point and it reveals a blind spot in the analysis of R2P sceptics and optimists. The former's assessment of R2P's failings tends to overlook the fact that refugee populations are being protected. But then it would be wrong to see this as evidence that 'international society' is fulfilling its R2P. The vast majority of Syrian refugees are being protected by just five states: Turkey, Lebanon, Jordan, Iraq and Egypt. To not acknowledge this fact risks reinforcing international hierarchies and the legitimacy concerns that go with them.²⁵

Şeyşane and Çelik's wider account of Turkey's response to the crises in Libya and Syria also reveals something about the legitimacy faultline that runs through the debate on Pillar III. With respect to the Libya intervention, Turkey echoed South Africa's concerns about how Resolution 1973 was being implemented. It argued, Şeyşane and Çelik note, that an emphasis should have been placed on humanitarianism in the overall context of political attempts to find a political solution to the crisis. It had reservations about regime change. This evidence suggests that among the 'emerging powers' considered in this special issue – China, Brazil, South Africa and Turkey – there is a consensus on the need for Pillar III but that coercive interventions should avoid – for prudential reasons – regime change. This can be contrasted

²⁴ A special responsibility is often thought of as 'significantly more strenuous' or demanding than a general responsibility. See Shelley Kagan, 'Causation and responsibility', *American Philosophical Quarterly*, 25/4: 293-302 (1988).

²⁵ See Jason Ralph, 'R2P at 10: Looking beyond military intervention'.

with the more sanguine view about regime change, which the French, British and US displayed with respect to their intervention in Libya. Recent events in that country suggests the concerns of the emerging powers are well placed and not necessarily self-regarding.

Yet with respect to Turkey the picture is not this simple. While Turkey expressed reservations concerning regime change in Libya, Şeyşane and Çelik note that its stance on Syria is the complete opposite. It has joined those calling for the Assad regime to step aside. This is an important reminder that the faultlines on how to implement R2P are not fixed; states assess – and should assess – the merits of intervention on a case-by-case basis, which sometimes leads (as Gallagher notes) to legitimate inconsistency. It is perhaps fair to note, however, that some states are more pre-disposed to opposing regime change (if not Pillar III interventions) based on a particular view of the role the state plays in protecting human rights. For their part, Şeyşane and Çelik criticise Turkey's commitment to regime change in Syria arguing that it is inconsistent with its responsibility to protect.

The argument that Turkey had a special responsibility to protect by virtue of its geographical proximity to the Syrian crisis is problematic. As noted, because the World Summit Outcome Document only codifies a general responsibility to protect, the distribution of the burdens of protection can be arbitrary and unfair. Geographical proximity make it obvious why Turkey and other states bordering Syria are best placed to protect refugee populations, but there are equally obvious reasons why these states cannot by themselves provide longer term protection. Without allocating a special responsibility to protect that is based on capability, as opposed to geographical proximity, R2P risks imposing burdens on states that are incapable of shouldering them.²⁶ The literature on R2P has two blind spots in this respect: a failure to see asylum as a means of fulfilling the responsibility to protect those fleeing R2P situations; and related to that, given that 80% of the world's refugees are protected by developing countries, the way in which the politics of protection potentially reinforces a hierarchy of states.²⁷

²⁶ See Mlada Bukovansky, Ian Clark, Robyn Eckersley, Richard Price, Christian Reus-Smit and Nicholas J. Wheeler, *Special Responsibilities. Global problems and American power* (Cambridge: Cambridge University Press, 2012); Jason Ralph and James Souter, 'Did the UK and Australia have a special responsibility to protect the Iraqi people from Islamic States in 2014', *International Affairs*, 91/4: 709-723 (2015).

²⁷ Alexander Betts, 'Forget the 'war on smuggling', we need to be helping refugees in need', *The Guardian*. Comment is Free, 26 April 2015, http://www.theguardian.com/commentisfree/2015/apr/25/war-on-trafficking-wrong-way-to-tackle-crisis-of-migrant-deaths?CMP=share_btn_tw. This journal began the discussion in 2010. See special double issue of *Global Responsibility to Protect* Vol. 2 (1-2); see also Sara Davies and Luke

By talking about the special responsibilities of the P5 on the Security Council, Justin Morris begins the process of what should be expected of the great powers. For Morris, R2P has added to, and complicated, the P5's special responsibility, which had previously been limited to maintaining international peace and security. This 'dual' special responsibility is allocated by virtue of their 'material abundance'; and, indeed, the P5's veto power is grounded on an understanding the great power consensus was necessary before international society could authorise the use of force. Without it, international action risked war between the great powers, which of course contradicted the Council's very purpose. This 'logic of 1945' pertains today Morris argues, which is why opposition to the idea that the P5 have a 'responsibility not to veto' (RN2V) in R2P situations should not be dismissed as irresponsible. As Morris puts it, opponents of RN2V are making a normative point. Their position 'cannot ... be understood in terms of the self-interested pleadings of the materially privileged'.

This strikes us as an important point. A cosmopolitan responsibility to protect does not – to use Alex Bellamy's phrase – 'crowd out' other ethical considerations.²⁸ It can, and – if cosmopolitan progress is to be sustained – it must, be reconciled with the ethical concerns Morris stresses, such as international peace and security. At the same time R2P's advocates often stress that military intervention is not the only way to protect the vulnerable. When military power is redundant it does not mean the P5 suddenly become incapable or that their special responsibilities somehow diminish. Their material capabilities – and indeed those of the aspirant permanent member states – surely demand that they seek other ways of reconciling their dual special responsibility.

This reinforces the need to consider asylum as a means of discharging the responsibility to protect. It can be reconciled with the responsibility to maintain international peace and security more easily than military intervention. As Brian Barbour and Brian Gorlick put it: '[t]here may be no easier way for the international community to meet its responsibility to protect than by providing asylum and other international protection on adequate terms'.²⁹

Glanville (eds.), *Protecting the displaced: deepening the responsibility to protect* (Boston, Leiden: Martinus Nijhoff Publishers, 2010).

²⁸ Alex Bellamy, *Responsibility to Protect. A Defense*, p.104.

²⁹ Brian Barbour and Brian Gorlick, 'Embracing the "responsibility to protect": a repertoire of measures including asylum for potential victims', *International Journal of Refugee Law*, 20/4:533-566, (2008) p.533. See

The point here is that the great powers are burdened by their special responsibility to preserve international peace and security, but there are ways the great powers can use their material wealth to fulfil their special R2P without necessarily running up against this dilemma. Thus, Jennifer Welsh writes that states have ‘a variety of instruments at their disposal to prevent such crimes from occurring or to respond to their commission’.³⁰ More specifically, she reminds us that the ‘UN Secretary General has explicitly discussed the potential contribution states can make in preventing atrocity crimes through ensuring grants of asylum and refraining from refoulement of persons fleeing violence (with the help of UNHCR, where appropriate)’.³¹

But then, as Welsh also reminds us, this requires more reflection on the meaning of R2P before it is taken it reaches a taken for granted quality. Specifically, and in the context of Europe’s commitment to R2P since 2005, she writes that R2P is:

still very much as a foreign policy issue: i.e., as something we do ‘outside’ our borders. In only rare cases, has the conversation turned inward, to ask what the prevention and response to atrocity crimes could mean for the European heartland itself. But if the spirit behind RtoP is one of collective responsibility - as opposed to a discretionary right to respond - then European states must ask themselves what actions they are taking as part of the shared task of protecting populations.³²

Since writing these words, of course, the refugee situation in the Mediterranean region reached the crisis point and that has prompted the kind of reflection Welsh called for.³³ It is an open question as to whether asylum and refugee protection will feature more strongly in future R2P discourse. But as Hofmann tells us, the meaning of a norm is in constant process of iteration and reiteration, and this means such developments are not impossible.

As we look forward to the next ten years, there are possibly three key points to take from this special issue. The first is that advocates of R2P are right to mark the progress that has been

also Sara E. Davies and Luke Glanville (eds.) *Protecting the Displaced. Deepening the Responsibility to Protect*; and Phil Orchard, ‘Implementing a Global Internally Displaced Persons Protection Regime’ in Alexander Betts and Phil Orchard (eds.), *Implementation and World Politics. How International Norms Change Practice* (Oxford: Oxford University Press, 2014).

³⁰ Jennifer Welsh, ‘Fortress Europe and the R2P: framing the issue’, EUI Forum, European University Institute, 17-18 November 2014, <http://www.eui.eu/Documents/RSCAS/PapersLampedusa/FORUM-Welshfinal.pdf>

³¹ *ibid.*

³² *ibid.* We are grateful to James Souter for this point.

³³ See also Emma Haddad, ‘EU Migration Policy: Evolving Ideas of Responsibility and Protection’, *Global Responsibility to Protect*, 2/1: 86-100 (2010).

made, but that should not – and generally does not – lead norm diffusers to rest on their laurels or to fall into a complacency that sees moral progress as inevitable. The Libya intervention was neither the success that its advocates claim, nor was it a nail in the coffin that R2P sceptics and critics are too quick to lower. But it was a warning that the consensus negotiated ten years ago can unravel if state practice becomes too conscious of the norm-maker / norm-taker hierarchy and forgets the lessons of R2P’s development, which is that states, especially emerging powers, more easily sign up to the principle if they can represent themselves as norm-shapers. The second point is that the burden of concrete protection practices – whether they be reflected in contributions to peacekeeping missions or the granting of asylum – is being unfairly distributed across international society. This hierarchy is also potentially destabilising and it demands that the great powers – or those laying claim to that identity – recognise their ‘special responsibility to protect’. Finally, the great powers do have an important responsibility to reconcile the demands of human protection and international peace and security. It is difficult to reconcile these if we look narrowly at the former in terms of intervention, especially military intervention. However, R2P is indeterminate and that is its potential virtue. It encourages – or rather demands – creative diplomatic solutions to the moral dilemmas of a cosmopolitan international society. Reiterating R2P reminds states that receiving refugees remains a prudent option when humanitarian intervention is not an important step, especially in the current context.