Article:
Illingworth, R (2022) An R2P Commission: A Proposal for Holding States Accountable to Their Responsibility to Protect. Global Studies Quarterly, 2 (1). pp. 1-12. ISSN 2634-3797

https://doi.org/10.1093/isagsq/ksac012

Global Studies Quarterly (2022) **2**, 1–12

An R2P Commission: A Proposal for Holding States Accountable to Their Responsibility to Protect

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In 2005, the United Nations (UN) committed to a "responsibility to protect" (R2P) against four mass-atrocity crimes of genocide, war crimes, crimes against humanity, and ethnic cleansing. This was a clear commitment acknowledging that states hold responsibilities to consider the protection needs of domestic, and outside, populations. However, holding actors accountable to their R2P commitments is difficult due to the politicization of the norm and the international institutions for implementing it. The result is that the UN lacks the mechanisms for promoting R2P's successful implementation, meaning R2P breaches are all too common and that there is an urgent need to find ways to hold states accountable to their pledges. Applying transitional cosmopolitanism, which calls for an incremental approach in the pursuit of cosmopolitan solutions to contemporary global challenges, this article examines an entirely new and supplementary mechanism to assist in R2P's implementation. The article calls for the creation of an "R2P Commission." This is a suggestion for a body composed of independent elected experts to scrutinize state practice across R2P's "three pillars." It argues that an R2P Commission would provide an effective and feasible supplementary body to enhance R2P's implementation via determinations of where manifest R2P failures have occurred, review of international practice vis-à-vis atrocity prevention and response, and recommendations for altering practice and potential response action.

En 2005, la Organización de las Naciones Unidas (ONU) se comprometió con la "Responsabilidad de Proteger" (R2P, Responsibility to Protect) contra cuatro crímenes atroces masivos: genocidio, crímenes de guerra, crímenes contra la humanidad y limpieza étnica. Se trata de un compromiso muy claro en el que se reconoce que los estados tienen la responsabilidad de contemplar las necesidades de protección de las poblaciones nacionales y extranjeras. Sin embargo, lograr que los actores rindan cuentas de sus compromisos con la R2P es difícil debido a la politización de la norma y de las instituciones internacionales encargadas de aplicarla. El resultado se traduce en que la ONU carece de los mecanismos necesarios para promover el éxito de la aplicación de la R2P, lo que significa que sus incumplimientos son demasiado frecuentes y que existe una necesidad urgente de encontrar formas de hacer que los estados rindan cuentas de sus compromisos. Mediante la aplicación del cosmopolitismo de transición, que exige un enfoque gradual en la búsqueda de soluciones cosmopolitas a los desafíos globales contemporáneos, este artículo examina un mecanismo totalmente nuevo y complementario para ayudar a la aplicación de la R2P. En el artículo se solicita la creación de una "Comisión de la R2P." Se trata de una sugerencia para que un organismo compuesto por expertos independientes examine las prácticas de los estados en los "tres pilares" de la R2P. Se sostiene que una Comisión de la R2P proporcionaría un organismo complementario eficaz y viable para mejorar la aplicación de la R2P mediante la determinación de los casos en los que se han producido fallos evidentes de la R2P, la revisión de la práctica internacional en relación con la prevención y la respuesta a las atrocidades, y mediante recomendaciones para afectar a la práctica y a las posibles medidas de respuesta.

En 2005, L'Organisation des nations unies (ONU) s'est engagée dans une « Responsabilité de protéger » contre quatre atrocités de masse: les génocides, les crimes de guerre, les crimes contre l'humanité et le nettoyage ethnique. Il s'agissait d'un engagement clair reconnaissant que les États avaient la responsabilité de prendre en compte les besoins de protection des populations nationales et extérieures. Il est cependant difficile de tenir les acteurs responsables de leurs engagements dans la Responsabilité de protéger en raison de la politisation de la norme et des institutions internationales chargées de la mettre en œuvre. Il en résulte que l'ONU ne dispose pas des mécanismes nécessaires pour promouvoir la mise en œuvre réussie de la Responsabilité de protéger, ce qui signifie que les violations de la Responsabilité de protéger sont trop fréquentes et qu'il est urgemment nécessaire de trouver des moyens de tenir les États responsables de leurs engagements. Appliquant le cosmopolitisme de transition, qui appelle à une approche progressive dans la recherche de solutions cosmopolites aux défis mondiaux contemporains, cet article examine un tout nouveau mécanisme complémentaire pour aider à la mise en œuvre de la Responsabilité de protéger. Cet article appelle à la création d'une « commission à la Responsabilité de protéger ». Il s'agit d'une suggestion de création d'un organe composé d'experts indépendants chargé d'examiner les pratiques des États dans le cadre des « trois piliers » de la Responsabilité de protéger. L'article soutient qu'une commission à la Responsabilité de protéger constituerait un organe complémentaire efficace et réalisable qui améliorerait la mise en œuvre de la Responsabilité de protéger en déterminant les cas où des échecs manifestes de la Responsabilité de protéger ont eu lieu, en examinant les pratiques internationales de prévention et de réponse aux atrocités et en formulant des recommandations d'affectation de pratiques et d'actions de réponse potentielles.

Introduction: R2P's Accountability Problem

In 2005, member states of the United Nations (UN) committed to a "responsibility to protect" (R2P) against four mass crimes of genocide, war crimes, crimes against humanity, and ethnic cleansing (UNGA 2005). R2P is a now well-established norm in UN's frameworks, setting standards of expected state behavior and making clear that states hold

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Illingworth, Richard (2022) An R2P Commission: A Proposal for Holding States Accountable to Their Responsibility to Protect. *Global Studies Quarterly*, https://doi.org/10.1093/isagsq/ksac012

responsibilities to consider the protection needs of outside populations (Stefan 2021). The R2P norm was clarified as a tripartite "pillar" structure in 2009 (UNGA 2009, paras 11a–11c). Pillar One concerns primary host state responsibility toward its own population vis-à-vis the prevention of the four listed crimes. Pillar Two refers to the responsibility of the international community to assist other states in meeting their primary duty. Finally, Pillar Three declares that the international community has a responsibility to at least consider taking action in response to the "manifest failing" of a state in meeting its primary responsibility.

UN Secretary-General Guterres has noted that "ensuring justice and accountability for atrocity crimes are essential to advancing the responsibility to protect agenda" (UN 2020, para. 16). However, holding actors accountable to their R2P commitments is difficult due to the politicization of the norm and the international institutions for implementing it. This means that states are under no obligation to act, and scrutiny of practice is limited. The main contribution of this article is to explore the creation of an entirely new body designed to promote accountability and strengthen the implementation of R2P's protection responsibilities.

The realpolitik of the UN Security Council (UNSC)—the primary body charged with responding to R2P breaches—weakens claims such as Bellamy and Tacheva's (2019, 41) that R2P has generated a strong enough sense of accountability upon the UNSC to take action on its R2P responsibilities. Pattison (2015, 196) notes that there is a lack of institutionalization for enforcing duties under R2P, meaning that the norm holds little compliance pull as R2P demands are vague and politicized in their implementation. Glanville (2021, 6–8) has recently argued that R2P represents an "imperfect duty" since its commitments are subject to the judgment of each state, fall on no particular state, and provide no guidance on where to prioritize protection. The result is that states too often fail to fulfil their responsibilities, as they are under no obligation to act, and instances of malpractice are often not adequately responded to. This has been evidenced by protection failures, such as in Syria, where sixteen UNSC draft resolutions have been vetoed to date[1] as well as the situations in Myanmar, and Xinjiang Province, over which no UNSC resolutions have even been tabled.

Protection failures evidence the fact that international reform is needed to support the implementation of the R2P. This article does not offer a proposal that attempts to comprehensively solve this reform debate but rather makes a contribution that speaks to a broader movement of international reform necessary for the advancement of the R2P.

There is an urgent need to find new ways to hold states accountable to their R2P commitments and to promote more consistent compliance moving forward. There are a few scholars who have advocated institutions that would strengthen the implementation of R2P (under Pillar Three) (see Tesón 2006; Archibugi 2008; Hehir 2012; Roff 2013). Yet, as is discussed, the suggestions of these scholars are likely too idealistic and come with practical drawbacks.

Given the difficulties with enforcing R2P compliance, equating accountability with guaranteed enforcement would likely be too ambitious, at least in the short term. However, if we take a less-stringent view of what accountability means, then transitional progress may well be attainable.

In his 2017 report, "Implementing the responsibility to protect: accountability for prevention," Secretary-General Guterres highlighted a need to close the gap between R2P rhetoric and practice, and that "[o]ne of the principal ways in which we can do this is by strengthening accountability and ensuring the rigorous and open scrutiny of practice, in the light of agreed principle" (UN 2017, para. 5). When taken in this way, accountability is about whether the actions of states are critiqued against accepted standards, including the standards to which states have themselves consented. In 2005, *all* UN member states committed to the R2P, meaning that all states should rightly see their practice scrutinized against that (moral and political) commitment. Increased accountability in this way, while short of direct enforcement, can help to influence state actions over time by clarifying expected standards of behavior, raising the social costs of R2P breaches (Glanville 2016, 186–87; Bellamy and Luck 2018, 48–49), and providing guidance for state practice moving forward.

There are many parts of the UN system with a role to play in this vein. This includes both principal organs, such as the UNSC and UN General Assembly (UNGA), and subsidiary organs, such as the UN Human Rights Council (UNHRC) and the UN Joint Office on Genocide Prevention and the Responsibility to Protect (Strauss 2015). The joint office, for instance, has been identified by the Secretary-General as holding significance in "analysing risk, providing early warning and encouraging Member States to take effective action in response to situations" (UN 2021, para. 11). However, with the exception of the joint office,[2] none of the UN's mechanisms are specifically mass atrocity focused, with atrocity prevention often viewed as a by-product of conflict prevention, peacebuilding, development, or human rights work (Strauss 2015, 82).

The work of the UNHRC is especially relevant to R2P in the context of raising awareness of human rights abuses and atrocity cases, fact-finding, and reporting. This may suggest that the UNHRC should be taken as an essential component of UN efforts to tackle mass atrocity. Given the relevance of the UNHRC's work in accountability for atrocity-prevention efforts, the body is given specific attention here. Nevertheless, as is discussed below, the political biases inherent to the UNHRC mean that it cannot be relied on as the primary institution for promoting accountability under R2P.

The weakness of the current institutions suggests a need to establish a new body, one with a specific mass-atrocity focus, aimed at promoting stronger state accountability to R2P duties. This article takes up this challenge by calling for the creation of an "R2P Commission." This is a suggestion for a body composed of elected experts, serving in an independent capacity, operating to scrutinize state practice

[1] Attempts at reforming the veto power of the UNSC's P5 have garnered increasing support and academic debate in recent years. I have argued elsewhere for an informal P5 veto restraint proposal, which improves on current recommendations by better aligning veto restraint with transitional cosmopolitan criteria of effectiveness and feasibility (see Illingworth 2020).

[2] The proposed R2P Commission offered in this article would not infringe on the work of the joint office, as the two bodies would serve largely separate functions that complement rather than interfere with one another. The joint office has an important role to play in R2P's implementation through R2P advocacy, assessing national risk factors and providing early warning of impending crises. The proposal made in this article, however, is aimed at the issue of holding states *accountable* to their R2P commitment. It would achieve this by providing authoritative determinations of where instances of atrocity violence have occurred, and scrutinizing the actions of states in the context of their atrocity prevention and response efforts under R2P's three pillars. Where the work of the joint office may overlap with the R2P Commission is in efforts to provide proactive recommendations on how to address the ongoing atrocity situations. However, this does not necessarily indicate a conflict, as here the R2P Commission could both draw on and support each other's work. The joint office, for instance, could look to "action" recommendations from the R2P Commission by utilizing its diplomatic tools to encourage member states to act on the commission's recommendations.

across R2P's three pillars via determinations of where manifest R2P failings have occurred, review of international practice vis-à-vis atrocity prevention and response, and recommendations for altering practice and potential action.

When exploring the proposal for an R2P Commission, the article adopts a "transitional cosmopolitan" approach (see Gilabert 2017; Brown and Jarvis 2019; Illingworth 2020; Brown and Hobbs forthcoming). Transitional cosmopolitanism calls for an incremental approach in the pursuit of cosmopolitan solutions to contemporary global challenges. It takes the normative ideals of cosmopolitan human protection and the defense of international human rights as its desired end point but advocates for context-appropriate and politically sensitive means for achieving them over time. Such an approach is necessary during the current era of international normative regress, where cosmopolitan values have found themselves under heavy strain. Transitional cosmopolitanism's purpose is to help foster the conditions through which human protection can be strengthened but while working among the practical constraints that stand in the way of achieving ideal progress. Under the transitional cosmopolitan view, nonideal progress is still viewed positively as it can represent an initial step in a process of transformative change over time (Brown and Hobbs forthcoming). Transitional cosmopolitanism accepts that imperfect progress still represents progress and promotes the idea that tempered progress can open up the possibility for further iterative steps and normative gains (Illingworth 2020, 392).

Central to the transitional cosmopolitan approach applied here are the criteria of "effectiveness" and "feasibility" as a means for assessing the normative and practical value of any proposed measure. Effectiveness refers to whether a measure *should* be adopted in order to affect positive change. Feasibility is about whether a measure *could* be adopted and has practical attainability. When analyzing the proposal for an R2P Commission, this article applies three tests for assessing effectiveness and feasibility (Illingworth 2020). These three tests are largely derived from Gilabert and Lawford-Smith's (2012) work on political feasibility. The first test is to determine whether effective progress can be made through adopting the reform measure, whether an identified problem can be at least partly overcome, or whether the measure would open future avenues for progress. The second test is to determine whether the measure would introduce undesirable moral hazards. This is to assess whether the introduction of the measure would bring side effects that may actually damage the cosmopolitan commitment to upholding fundamental human rights. Finally, the third test is to determine the practical potential of a measure. This is to assess whether practical and political obstacles can be overcome and if there is a feasible pathway to obtaining the measure.

The article is presented in three sections. The second section examines proposals for the creation of an independent body charged with the authority to enforce R2P in practice. This argues that establishing a new institution with legal authority over states and the UNSC would be neither an effective nor a feasible solution to the problem of holding states accountable to their R2P commitments. This leads to the suggestion that instead of seeking a new enforcement body for R2P, we should seek an institution to promote state accountability through expert-based independent fact-finding, scrutiny of state practice, and recommendations for action. The third section discusses the UNHRC as the body that might be argued to be best suited for this role. This section argues, however, that the UNHRC is not appropriate for serving this function due to problems of political bias inherent to its state-based makeup. Finally, the fourth section offers the suggestion for an "R2P Commission." This is a proposal for an entirely new, independent body of elected experts, uniquely charged with holding states to account under the full range of their R2P commitments.

A New Authority for Discharging R2P?

While not writing explicitly on R2P, Tesón (2006, 761) criticizes the UNSC, arguing that the political interests of its members often conflict with human-protection goals. To rectify this, he proposes the creation of a new institution: "The Court of Human Security." The Court's role would be to hear the evidence for any proposed intervention and determine where international response, including the use of military measures, is permissible (Tesón 2006, 772).

Archibugi (2008, 198) has proposed the creation of an elected UN "World Parliament" that would, among other things, be charged with the responsibility for determining where humanitarian intervention should take place. For him, this should be supplemented with a commission of military and civilian humanitarian organizations to decide on appropriate intervention methods and whether military action would be efficacious (Archibugi 2008, 200). He further proposes that a UN standing force be established that would be ready for rapid deployment as required (Archibugi 2008, 201–202).

Hehir (2012) has called for the creation of an "international judicial body." Its role would be to step in when the UNSC fails to act on an atrocity crisis, utilizing fact-finding missions to first determine whether an atrocity crime has been committed and then what international response should follow (Hehir 2012, 233–35). For him, the judicial body would help ensure consistency of response as well as act as a guard against spurious intervention by delegitimizing R2P enforcement response taken outside the UNSC or this judicial body (Hehir 2012, 239–43).

Roff (2013, 100–101) argues that the international system lacks the means to uphold rights, and with treaties and courts politicized in favor of the powerful. In this way, R2P promotes a kind of vicious cycle, empowering the UNSC with the sole authority to respond robustly to atrocity crimes but doing nothing to change the way the UNSC responds to situations. In response, Roff (2013, 122) proposes the creation of an "R2P Institution" to promulgate rules of when, where, and how a duty of R2P should be discharged.

While these recommendations offer useful perspectives, highlighting problems with relying on the UNSC to implement R2P, they do, ultimately, suffer from considerable effectiveness and feasibility restraints.

Regarding the effectiveness of such proposals, the first problem is that they relate only to Pillar Three enforcement action. This ignores a vital question in how to hold the international community accountable for the duty of *assistance* under Pillar Two and its relevance to atrocity prevention. This also overlooks the interlinked concept of cosmopolitan negative duties to avoid the imposition of harm (Linklater 2001; Shapcott 2008) and the actions of international actors—such as arms sales, regime ties, and damaging trade policies—that have been argued to weaken state resilience and contribute to outbreaks of mass atrocity (Shaw 2012; Dunford and Neu 2019; Bohm and Brown 2021). Given that the three pillars are meant to be taken as equal under the R2P concept (Bellamy and Drummond 2011, 181), it is important that attention is paid not just to holding states accountable to their duty to respond under Pillar

Three but also that states are held accountable for their responsibility to assist others, and not undermine this duty of assistance, under Pillar Two.

Second, there appears a problem related to the delivery of *timely and decisive* response in those most extreme cases where events unfold at a dramatic pace. The idea that a panel of independent legal experts could deliver conclusions on timely and decisive enforcement action required in response to fast-moving atrocity crises is doubtful, given the time that would be required to first determine whether crimes are being committed and, second, to determine what enforcement action should follow.[3]

To illustrate this, the UNHRC's Independent International Fact-Finding Mission on Myanmar (IIFFMM) was established in March 2017 and took 18 months to deliver its first full account of violations by the military in Rakhine, Kachin, and Shan states. Further, a subsequent legal case brought to the International Court of Justice in November 2019 by The Gambia in relation to Myanmar's possible breach of the Genocide Convention remains ongoing as of January 2022. This point is not to ignore the crucial fact that the UNSC far too often fails to deliver timely and decisive response to rapidly developing R2P crises but merely that it is unlikely that a legal institution with power over or beyond the UNSC would be able to deliver timely response either.

Regarding concerns about the feasibility of such proposals, there are problems related to the unwillingness of states to be obliged to act under R2P, the challenging political environment within which R2P currently exists, and the desire of P5 states to maintain UNSC preponderance and freedom of decision-making (Bellamy and Luck 2018; Hehir 2018). What this suggests is that establishing a new institution with authority over states and the P5 is likely unfeasible. For instance, Roff (2013, 123) claims that it would be the duty of the UNSC to establish the "R2P Institution" in the first place. Yet, it seems overly ambitious to expect the UNSC and the P5 to willingly agree to forfeit their preponderance in decision-making over matters of international peace and security to a separate body in which they have no control.[4]

Such problems show that we need to temper expectations for what a new institution to promote accountability under R2P could and should deliver. For effectiveness and feasibility reasons, any such body: (1) cannot hold preponderance in decision-making for ongoing crisis, which requires timely and decisive response, and (2) cannot hold supreme authority over states and the UNSC. Given these two requirements, in addition to the less-stringent approach to R2P accountability noted in the introduction (UN 2017), it is argued here that instead of framing R2P's accountability problem as requiring a new enforcement body, we should instead seek an institution to promote accountability for R2P commitments via review and scrutiny of state practice.

The UN Human Rights Council: An Unsuitable Body for Monitoring R2P

The UNHRC, as the UN's primary body for the discussion of human rights, may show promise for holding states to account for their R2P pledges (Strauss 2016, 315–17). The UNHRC adopted its first thematic resolution on R2P in July 2020 (GCR2P 2020b) and prior to this had adopted fifty resolutions referencing R2P (GCR2P 2020a). Pramendorfer (2020, 245) argues that the UNHRC "is uniquely suited to address atrocities by mandating a variety of mechanisms to raise awareness, collect information, and provide recommendations." Such mechanisms include the "universal periodic review" (UPR) and the "special procedure mandates,"[5] which both encourage state compliance with human rights law by highlighting breaches and making recommendations for altering practice (Gaer 2017, 88; Etone 2019, 49–50).

While such mechanisms promote goals sympathetic with R2P as a means to hold states to account for human rights commitments, they are, however, politically flawed. Recommendations made through the UPR, for instance, are largely determined based on political relationships between the reviewer and the reviewee, both of whom are independent sovereign states (Terman and Voeten 2018), meaning that states often offer complementary approaches when reviewing allies (McMahon 2012, 24; Ramcharan 2019, 163). Thus, such recommendations are often vague and undemanding in their attempts to alter state practice (Carraro 2019b, 1090). Even though recommendations are tempered in this way, their impact is also questionable. An example of this comes from the Philippines, where the Duterte Regime is conducting a campaign of extrajudicial killings and systematic violations of human rights through its "war on drugs" (Gallagher, Raffle, and Maulana 2019). The most recent UPR of the Philippines came in September 2017, and of 257 recommendations made, the Philippines outright rejected 154 (CNN Philippines 2017). In July 2021, Duterte stated that "[w]e still have long way in our fight against the proliferation of drugs" (Reuters 2021), which suggests that the UNHRC's efforts have not been fruitful in altering Duterte's policy.[6]

One important way through which the UNHRC can promote accountability for R2P commitments is through mandating independent "commissions of inquiry" (CoIs). CoIs are ad hoc fact-finding missions. They "assist in ensuring accountability for serious violations [of human rights], which is fundamental in order to deter future violations" (OHCHR 2015, 7). Although it is not the exclusive purview of the UNHRC to mandate CoIs, it has increasingly taken a proactive role in authorizing them when the UNSC has failed to act, for example, in Gaza, Syria, and Myanmar, where any attempt to launch a fact-finding investigation through the UNSC would likely have been vetoed by a P5 member. CoIs are usually focused on finding evidence of genocide, crimes against humanity, and war crimes (Nesbitt 2017, 88), naturally aligning them with the goals of R2P. As evidenced by the ongoing International Court of Justice (ICJ) case involving Myanmar noted above—a result of The Gambia acting on the findings of the IIFFMM—CoIs can promote accountability as a basis for subsequent international action. Other examples of successes include the September 2020 report of the Fact-Finding Mission on Venezuela and the September 2019 report of the CoI on Burundi, both of which employed a "preventative lens" to identify the need for system-wide institutional change as well as the need for continued international engagement with the situation, in order to tackle the conditions of mass atrocity (Pramendorfer 2021). In the case of Burundi, the work of the CoI is accredited for keeping the situation under "intense international scrutiny," which may have

[3] Archibugi's suggestion is stronger in this regard, as his World Parliament would be a political institution with more potential to deliver fast-paced response than a panel of legal experts.

[4] Such a suggestion would seem even less feasible than calling for the abolition of the P5's veto power (see Illingworth 2020).

[5] Another useful component of the UNHRC comes from the work of the UN treaty bodies, which is discussed below.

[6] On September 15, 2021, the ICC prosecutor's request to commence investigation into the war on drugs was granted by the Pre-Trial Chamber I (see ICC 2021).

contributed to the prevention of postelection violence in May 2020 (Pramendorfer 2021).

While UN CoIs serve a positive function, there are, however, weaknesses related to the political processes by which cases are acted upon. (Farrell and Murphy 2017, 13) argue that the makeup of the UNHRC, which contains an Asian–African majority, is vulnerable to accusations of bias as certain issues deemed more significant by these members are more likely to see action. (Van Den Herik 2014, 536) claims that this makes UNHRC-mandated CoIs inflammatory and predisposed to condemning actors before sufficient evidence has been gathered. Others have highlighted that the UNHRC disproportionately focuses on some situations over others (Devaney 2016, 102; Freedman 2013, 243) and that bias has "serious negative consequences in terms of credibility and impartiality, which are key factors for a successful investigation" (Frulli 2012, 1335).

Selectivity means that the UNHRC cannot serve as a reliable mechanism for reviewing state compliance with R2P commitments. If accountability for R2P duties is the goal, it is unlikely that an institution heavily influenced by state interests will be able to deliver on that goal in a way that minimizes bias and selectivity. While the UNHRC has established CoIs for cases such as Syria and Myanmar, it has failed to do so in some other notable cases, such as the ongoing abuse of Uyghur Muslims in China. Violence commencing in the Tigray region of Ethiopia in November 2020 also did not draw a significant response from the UNHRC until July 2021 (Human Rights Watch 2021) nor did the council take a lead in establishing investigative action until December 2021.

Relatedly, politicization can prevent the UNHRC from delivering timely and decisive action. Deliberation and clashes of interest can delay action over whether an investigative mission is launched. For instance, it was a full five months after the violent crackdown against the Rohingya began before the UNHRC launched its fact-finding mission for Myanmar in March 2017. Further, delayed response is perhaps more likely in those situations that occur outside more tangible "crisis points" of armed conflict. The persecution of Uyghur Muslims in China, for example, has been described by the former Executive Director of the Global Centre for the Responsibility to Protect, (Simon Adams 2020), as a "slow-motion genocide," yet as of January 2022, no UN investigative inquiry has been launched.

Another significant problem with the UNHRC is that flagrant human rights abusers regularly attain elected memberships. Recently, Human Rights Watch (2020) issued a call to deny seats to major human rights violators such as China, Saudi Arabia, and Russia. However, all three were elected on October 13, 2020. According to Pramendorfer (2020, 5), "there has never been a time where all 47 of its members fulfilled the minimum requirements for UNHRC candidacy."

Relying on the UNHRC as the main body for promoting state accountability under human rights places responsibility with states themselves. In this sense, states sit in their own judgment. The example of China—which has "persistently block[ed] human rights investigations in its own country and has failed to answer outstanding requests and reminders from at least 17 UN experts or Working Groups for official visits" (World Uyghur Congress 2020)—demonstrates the problem associated with relying on states with poor human rights records to scrutinize global human rights practices (Hehir 2012, 228). Clearly, this is not a sound basis for an accountability mechanism charged with scrutinizing state actions vis-à-vis R2P commitments.

The UNHRC, while prima facie suited to the role, is likely not the solution to the problem of holding states accountable to their R2P. Geopolitics and conflicts of interest persist through the UNHRC as a state-based organ (Chané and Sharma 2016), which hampers the effectiveness of its accountability mechanisms. State-based organs inevitably involve members pursuing their own interests, hindering their effectiveness in promoting accountability for human rights commitments. This is why any mechanism for reviewing state practice under R2P needs to try and minimize the influence of partisanship and state bias. Given the problems identified with previous recommendations and the currently existing institutions, the next section proposes the creation of an entirely new body dedicated to monitoring state compliance with R2P.

An R2P Commission: A Proposal for Promoting R2P Accountability

It is recommended here that the UNGA establish an "R2P Commission" as a permanent mechanism to determine where manifest R2P failures have occurred, to review international practice vis-à-vis atrocity prevention and response, and for making recommendations for altering practice and potential action. The authority of the UNGA to establish the commission comes from Article 22 of the UN Charter, which states that the UNGA may establish "such subsidiary organs as it deems necessary for the performance of its functions" (UN 1945). The UNGA has utilized this power in the past, for instance, when establishing the Human Rights Council "as a subsidiary of the General Assembly" in March 2006 (UNGA 2006).

The R2P Commission would be comprised of fifteen individuals, elected by the UNGA, each given an equal vote and deliberative voice on the commission. These individuals would be nominated by UN member states for election and should be experts in the field of international human rights and/or humanitarian law so that they possess knowledge relevant to R2P and atrocity crimes. This could include former high-level civil society leaders, academics, international legal experts, or those with experience working on judicial or quasi-judicial bodies. Individuals who have served high-level political roles for their domestic government such as former leaders, government ministers, or UN representatives must be excluded in order to help reduce political bias within the commission. To ensure both continuity and change, experts should be elected on a rotational basis, with staggered elections. A quota system would be required for candidate selections to promote equitable geographical and gender distribution of the R2P Commission, to ensure a legitimate institution is created that is fairly representative of the international community and the UN's membership. The commission's funding should be conducted through a pooled or "basket-fund" mechanism, whereby donors (be they state or private) contribute on an annual basis, with funds directed by the commission into its investigative and report work.

Regarding its functions: the R2P Commission would be responsible for bringing cases onto its agenda. The commission would be empowered with the authority to launch inquiries into cases it wishes to review. For the R2P Commission to launch an inquiry, a super majority vote of ten/fifteen members would be required. Upon hearing the evidence presented by the inquiry, the commission would then be tasked to determine whether a case is reflective of a manifest failing of a state's responsibilities under Pillar

One. This should once again require a super majority of ten/fifteen members. Upon determining that a Pillar One breach has occurred, the commission would then be tasked to review both international assistance to the target state prior to the outbreak of atrocity violence under Pillar Two and international response to the crisis under Pillar Three. Here, the commission would be tasked with delivering a written report directly to the UNGA where its findings and recommendations would be subject to debate by member states.

Regarding Pillar Two, the R2P Commission's report would investigate whether the international community had adequately fulfilled its responsibility to assist the target state in preventing mass-atrocity crimes, highlighting the strengths and weaknesses of international engagement with the target state. Crucially, this aspect of the commission's report would also concern whether international practice may have undermined the goal of atrocity prevention through damaging state actions. Regarding Pillar Three, the R2P Commission would scrutinize international response to the crisis. This would amount to a review of whether the international community had successfully discharged its responsibility in a timely and decisive manner, with particular reference to the UNSC. Here, the commission would also be entitled to offer recommendations, potentially including, but not limited to, a call for states to meet refugee obligations as part of R2P response, UNSC veto restraint over the case, and the application of punitive measures. The R2P Commission would be able to offer further updates on its case reports as time progresses, ensuring that atrocity cases remain under enduring scrutiny.

Test of Effective Progress

The R2P Commission would provide a new institutionalized mechanism specifically devoted to holding states to account for their R2P commitments. One might question the value of establishing a new UN-based institution for R2P, given that the current institutions have often failed to prevent atrocities. However, the R2P Commission would differ from anything that currently exists. The Commission would be centered on the work of independent experts, preventing R2P scrutiny from becoming a political exercise devoid of meaningful review. Commission members should serve free and independently from state interests, allowing for scrutiny of R2P practice to be generated in a more even and universalized way, rather than only in specific instances where political will and interests are favorable.

Independent experts provide knowledge and assessments that are authoritative and more objective than those provided by state representatives seeking to further their country's interests (Boswell 2008; Rodley 2013; Carraro 2019b). As Rodley (2013, 624) argues, "individual experts are more apt than government representatives to be able to bring independent judgement to bear on the neuralgic issue of states' respect (or otherwise) for their human rights obligations." The UN treaty bodies, as just one example of the use of independent experts and their contribution to the work of the UN,[7] highlight the value of using elected experts to review state practice vis-à-vis human rights commitments. The treaty bodies are committees of elected independent experts, which work to monitor state compliance with specific UN human rights treaties.

[7] Other examples include judges of the International Court of Justice and members of the International Law Commission.

Scholars have shown how the work of the treaty bodies influences state practice (Rodley 2013; Ploton 2017; Meier and Gomes 2018). For example, the recent development of follow-up on recommendation grading systems—whereby states are graded from A-E based on a follow-up review of their implementation of treaty body recommendations—is testament to the developing norm of accountability toward international commitments fostered by the treaty bodies. This is evidenced by examples such as Mongolia, which has, following the recommendations of the Human Rights Committee, achieved a "Grade A" by making substantial reform to its criminal justice system (Ploton 2017, 222). The value of independent experts, reflected in the work of the treaty bodies, demonstrates how the findings of an R2P Commission, similarly composed of independent experts, could have an effective role in influencing R2P practice.

An important caveat to acknowledge here is that the R2P Commission would not be *wholly* free from political bias. One way state power may leech into the commission is the candidate nomination and election process. Empowering the UNGA to elect the commission's members will likely infuse state interests with the process. However, this would not necessarily hamper the effectiveness of the body. The commission's deliberation and voting procedure should help to mitigate issues of political bias with individual members. Commission members would hold equal voting power, and the requirement of a super majority of ten/fifteen members in decisions can promote consensus-building via group deliberation and expressed reason-giving (see Brown 2010, 521). This would ensure that decisions are only taken where a large group consensus exists, thus reducing the likelihood that individual state interests could have any notable effect on the body's decisions. As Carraro (2019a) has argued in relation to the UN treaty bodies, politicized electoral processes do not automatically result in the actual conduct of expert bodies becoming politicized. Expert committees function as an independent group dynamic, with their deliberative processes helping to filter out the politicization of individuals, preventing states from being able to control the work of such bodies (Carraro 2019a, 843).

Another way state power and interests could potentially leech into the R2P Commission is through funding. In anticipating this concern, a pooled funding mechanism could be utilized. Pooled funding ensures that donor funding from multiple sources is pooled and allocated to appropriate channels by the institution itself. This allows an institution to ring-fence donations, which means that donor interests will counteract each other, and reduces the potential for individual donors to hold to ransom organizations to further their own political interests (Meghani et al. 2015, 4).

It is not possible to entirely remove the influence of state interests. Nonetheless, electing experts to serve in an independent capacity can provide a more effective way of promoting state accountability than an institution explicitly made up from state representatives working to further their state's interests.

The R2P Commission could promote accountability across R2P's three pillars. Regarding Pillar One, the commission would provide a dedicated body for launching investigative missions and for determining whether manifest breaches of a state's R2P are evident. This would be advantageous in three ways: (1) the UN would no longer be largely dependent on fact-finding inquiries being launched by state-based bodies, where investigative action may be rejected, (2) the R2P Commission, dedicated to the specific purpose of monitoring R2P compliance, would be better placed to launch investigations in a timely and decisive

manner, consistent with R2P pledges (UNGA 2005, para. 139). This would help promote prompt investigative action. (3) The R2P Commission would provide a means for generating "lessons learned" from past atrocity cases. Regarding this third point, Strauss (2015, 71–75) has identified in the context of the UN treaty bodies that review procedures can make valuable contributions to atrocity prevention by identifying risk factors and avenues for mitigation measures in future cases. Tacheva (2021) has recently put forward a substantive list of nine determinants for a state's "manifest failing" to protect its populations against the four mass-atrocity crimes under R2P. These relate to areas such as the gravity and imminence of atrocities as well as host state intent, capacity, and cooperative willingness. These criteria could go a long way to addressing the current "ambiguity and inconsistency" (Gallagher 2014, 435) that surrounds understandings of what constitutes a manifest failing. The R2P Commission could utilize the criteria put forward by Tacheva as a means of determining where Pillar One failures have occurred, serving as a useful means for review of state practice, developing understandings of how manifest failure criteria apply in practice, and generating accountability for where manifest R2P failings have occurred/are occurring.

In addition to being a permanently established institution to determine manifest failures of R2P Pillar One, what is particularly novel about the R2P Commission is that it would also promote accountability for R2P's international responsibilities. This is where the work of the R2P Commission would go beyond that of UN CoIs. Fact-finding missions and CoIs are focused on finding evidence of the commission of atrocity crimes, while the reports submitted by the R2P Commission to the UNGA would involve scrutiny of international state practice in atrocity prevention and response efforts. This means that while CoIs are focused on identifying breaches relevant to R2P Pillar One, the reports of the R2P Commission will additionally be focused on highlighting R2P Pillar Two and Three breaches.

This is an attempt to reduce the focus of R2P crises as "problem state" issues (see Shaw 2012), to instead appreciate that R2P is multifaceted (Welsh 2013), with its success dependent not just on states meeting domestic obligations but also in their commitments to preventing atrocity crimes abroad. The R2P Commission would provide a mechanism to scrutinize international practices, which are conducive to the outbreak of atrocities, as well as a means to hold the UNSC to account for its preponderance over Pillar Three response. The commission would exist to highlight malpractice, provide recommendations, and pressure states into compliance. Its findings could provide useful contributions to the normative development of R2P through Secretary-General reports, as well as R2P debates within the UNGA, which are now a formal item on its agenda. Going forward, this would offer valuable lessons in how practice ought to be altered to better meet states' international responsibilities.

Regarding Pillar Two duties of assistance, the R2P Commission could provide a means for holding states to account for damaging practices linked to the commission of atrocities—such as arms sales and support for oppressive regimes—which scholars have argued undermine the Pillar Two duty of assistance within R2P (Dunford and Neu 2019; Bohm and Brown 2021). For instance, there is scope for complementarity between an R2P Commission and scrutiny of the international arms trade. The commission can provide an independent mechanism for monitoring state practice vis-à-vis the arms trade, something that is currently lacking with international arms regulation and that has been argued as important for fulfilling the goals of R2P (Henderson 2017). The Arms Trade Treaty (ATT), for instance, exists to regulate the flow of conventional arms internationally, with part of its aim to promote R2P-related concerns by helping to curb arms flows to situations where atrocity crimes may occur (UN 2013 Article 6). However, problems exist with the ATT's enforcement, weakening its ability to serve R2P goals. States party to the ATT continue to supply arms to human rights abusers (Stavrianakis 2016). This is evidenced by examples such as aircraft supplied by the United Kingdom making up around half of the Saudi Air Strike Force (Perlo-Freeman 2020, 184). Arms deals between the two endure despite the Saudi-led coalition's campaign of war in Yemen, which has led to breaches of international humanitarian law and a grave humanitarian crisis (UNHCR n.d.).

ATT breaches may be attributable to the weakness of its accountability mechanisms (Pytlak 2020). This is a weakness of the ATT that the R2P Commission could help address.[8] The commission could provide a body for scrutinizing arms transfers linked to outbreaks of atrocity violence. Increased accountability and the subsequent political pressure that ensue from having one's actions directly linked to atrocity violence may force states to reconsider their arms sale practices, even if only for the instrumental reason of maintaining a favorable public image. The R2P Commission could provide the means for scrutinizing state practice for this purpose.

Regarding the commission's role in scrutinizing international response under Pillar Three, there are also useful avenues for progress. Review of international response and recommendations from an independent expert body can provide legitimacy to calls for R2P-based action. This may open up the potential for influencing future UNSC behavior if the international community were to increase pressure on its members as a result of the commission's findings. This could, for instance, be one way of increasing pressure on the P5 to employ veto restraint over matters of R2P concern. The commission's recommendations may also help influence the UNSC to take actions on an R2P case, such as through political condemnation, the employment of sanctions, or referral to the International Criminal Court (ICC).

Regarding the latter, as the Rome Statute only empowers the UNSC to refer cases to the ICC (Mills and Bloomfield 2018, 107), the R2P Commission could only recommend that the UNSC do this. Nevertheless, a recommendation by an impartial, internationally legitimate R2P Commission for a case to be referred to the ICC could help to provide legitimacy to UNSC case referrals and reduce accusations of political bias. This may subsequently increase the likelihood of state compliance with the ICC's follow-up demands, which is something that the politicization of ICC case referrals has thus far negatively affected (Mills and Bloomfield 2018; Saba and Akbarzadeh 2020).

Furthermore, even if pressure resulting from the commission's findings is not enough to influence UNSC practice, recommendations issued from an independent and legitimate review body could legitimize R2P action taken through other channels such as the UNGA's "Uniting for Peace" (UfP) mechanism (UNGA 1950) and the assembly's related powers to make recommendations in the name of international peace and security under articles 10-11 of the UN Charter.

[8] The R2P Commission would not serve as a direct treaty monitoring body for the ATT but the Commission's function would be complementary to efforts to curb international arms flows.

It must be noted that UfP has remained somewhat underutilized since its passage, having only been invoked in eleven or twelve instances since 1950.[9] Nevertheless, it is a power that does exist, and as is discussed below in section Test of Practical Potential, the UNGA has taken an increasingly active role in discharging its R2P in recent years, suggesting that the UNGA may choose to take a more proactive role in R2P's implementation moving forward. The UNGA has ample scope to respond assertively to humanitarian emergencies and, therefore, crises relevant to R2P (Krasno and Das 2008, 182). The UNGA has the power to recommend—though not enforce (Henderson 2014, 506–507; Higgins et al. 2017, 977)—the use of coercive and noncoercive measures. This can include not only recommendations for the use of military force if necessary (Richardson 2014, 140; White 2015, 305), but also, among other things, recommendations for the adoption of sanctions, measures in the name of preventive diplomacy, humanitarian assistance, and the request for advisory opinions from the ICJ (Barber 2021). Given that the R2P Commission is envisioned here as a subsidiary organ of the UNGA, the commission could have an important relationship with the assembly and its power to pass recommendatory resolutions in the name of maintaining international peace and security. The R2P Commission would provide an authoritative and legitimate expert body to make recommendations that the UNGA could choose to act on in instances of UNSC failure.

Finally, it is worth addressing some concerns over the effectiveness of the R2P Commission, which may have arisen. First is the problem of enforcement capability. As noted, the commission would only have the power to recommend, not demand compliance, and thus it would not be a guarantee for overcoming lack of political will to act on crises. However, as argued above, any attempt to enshrine a body with the capacity to enforce itself upon states, above or separate to the UNSC, would not be a feasible recommendation. Therefore, for now at least, we must rely on the socialization of states into adhering to the demands of an R2P Commission as a result of political pressure and self-interest. The scrutiny that comes about from the R2P Commission's work would be unlikely to influence the will to act in all cases, but it may be enough to shame and/or influence states into taking action in some situations. The commission would not be a panacea for R2P's ills, but it would be an iterative, transitional mechanism, which can offer some effective avenues for progress. Over time, state practice may become more conducive to following the demands of the R2P Commission as the legitimacy of its decisions develop. At the very least, the Commission would provide an international body to scrutinize all aspects of states' R2P, preventing practice that runs anathema to R2P from being ignored and providing a window of opportunity to discuss and shape the practices of expected state behavior.

Second is the R2P Commission's limited ability to serve timely and decisive response due to the high level of deliberation required to deliver recommendations on how to address complex crises. However, the commission would still provide a dedicated body for monitoring R2P that would be able to (1) authorize investigative action promptly in response to unfolding crises and (2) deliver findings and recommendations through expert-based scrutiny. The R2P Commission would provide a devoted R2P institution that actively works to identify atrocity cases and provide solutions for how to ameliorate them. The R2P Commission may not be an ideal solution to the issue of timely and decisive R2P response, but it would still provide a nuanced mechanism for improving current practice. Its work may be particularly useful for slower, more drawn-out cases, where atrocities have occurred against a backdrop of human rights abuses developed over a longer period of time, such as has been the case with the Uyghur in China, the Israeli occupation of Palestinian territories, and the large-scale human rights violations in Burundi.

Test of Moral Hazard

Moving onto the second transitional cosmopolitan test regarding whether the advent of the R2P Commission would introduce damaging moral hazards that may undermine the scope for effective and feasible progress, one concern that should be flagged is the potential negative fallout that can ensue from criticizing state practice. Gallagher (2021), for instance, aware of the backlash that can result when state actors react negatively to shaming, argues in favor of a "pragmatic approach" to shaming, which takes account of both the potential intended and unintended consequences of such actions. Discussing the UNHRC's UPR process, Etone (2019, 42–45) is outright skeptical of the value of attempts to force compliance or name and shame. He claims that these can actually reduce compliance by harming cooperation between states and weakening human rights implementation overall. Welsh (2013, 395) also claims that the remedial duty of the international community under R2P is highly contentious, meaning that we ought to avoid the "spectre of external enforcement." For some, it may appear then that a focus on softer forms of state engagement and cooperation are more appropriate for achieving compliance with human rights and R2P commitments than attempts to shame and criticize state practice.

This line of argument is perhaps an important one to acknowledge when framed in the context of bodies, such as the UNHRC, which are purposely designed to promote state cooperation. The UNHRC is, after all, a political body designed to promote cooperation through dialogue and engagement over human rights. Yet, the recommendation of an R2P Commission would not infringe on the UNHRC's political role in promoting state cooperation and softer forms of engagement with human rights issues. Instead, the recommendation made here would provide a point for criticism of state practice, which is necessary to shape the standards of expected behavior by clarifying what appropriate action is. Research, backed by examples of successful atrocity prevention such as Kenya (2009, 2013), Guinea (2009), and Kyrgyzstan (2010) (see Bellamy and Luck 2018, chap. 7), has shown that diplomatic pressure can help in altering actor's behavior and reducing mass-atrocity risk and scope (DeMeritt 2012; Krain 2012).

Crucially though, the fact that the R2P Commission would exist to scrutinize the full range of R2P commitments relating to domestic *and* international responsibilities would prevent naming and shaming from becoming a practice simply channeled at (typically non-Western) "problem states." Increasing evidence of western hypocrisy—present in its own practices such as arms sales, regime ties, and the irresponsible use of military technology—has partly contributed to an erosion of the usefulness of naming and shaming in recent years, as human rights abuses, or those who shield them, have simply deflected criticism back at western states (Glanville 2021, 157). Calling out the practice of the wider international community, including that of Western states,

[9] UfP has been invoked in twelve instances if one counts the UNSC's removal of the Korea item from its agenda in 1951 before the issue was taken up by the UNGA.

would provide an unbiased approach, which institutions such as the UNHRC have been accused of lacking. The R2P Commission is about monitoring the full range of R2P commitments, including international duties of assistance and response, and not just that of individual state compliance with domestic obligations. This would result in a more universalized critique of state practice, reducing the possibility for claims that the commission would simply be a liberal-Western tool designed to infringe on the interests of non-Western states. This should help allay fears that a new body for reviewing the implementation of R2P's three pillars would become politicized to the point that it actually hindered state compliance with human rights and R2P obligations.

Test of Practical Potential

Finally, regarding the third transitional cosmopolitan test and whether the R2P Commission is a feasibly attainable recommendation, there are numerous arguments related to feasibility in the context of achieving requisite state will to establish an R2P Commission. These may relate to a lack of state will to enact R2P-based action, an unwillingness to alter the current R2P consensus, a wish to avoid being shamed for malpractice, and a desire to maintain state preponderance, particularly of the UNSC's P5, in the implementation of R2P (see Morris 2016; Welsh 2019). There is not the space here to explore these factors, but suffice to say, there are a number of constraints in the way of establishing an R2P Commission, and in achieving state compliance with its findings, which would need to be overcome.

One point to reiterate here in response to these concerns is that the proposal of an R2P Commission reflects a hybrid system. The commission would be dependent on states for its existence and for electing its composition, but it would become independent once elected. This hybridity fits with the statist approach inherent to R2P and is a necessary requirement in an attempt to attain state "buy-in" to the proposal by utilizing an inclusive process that engages with states to establish and maintain the commission's composition.

A degree of state buy-in will be necessary for attainting the requisite will to establish such an institution in the first place and for the body to achieve practical impact through state compliance with its findings. Emphasizing that the recommendation for an R2P Commission is made with a mind to assist states in the implementation of their R2P commitments, rather than work against them and their interests, would be an important line of argument to enhance the feasibility of its adoption. Again, it should be stressed that the commission would not supplant the power of states or the primacy of the UNSC in decision-making. Furthermore, the fact that the commission would scrutinize the full range of states' three-pillar R2P commitments should contribute to the feasibility of the recommendation by alleviating fears that such an institution would exist only to target particular states.

It is not possible to claim with certainty that the R2P Commission could receive the requisite votes in the UNGA to be established. Yet, the increasingly active role that the UNGA has shown in discharging its R2P offers scope for optimism. The UNGA has now placed discussion of R2P on its formal agenda as of May 2021 and has taken action in response to R2P crises and UNSC failures. For example, over Syria, the UNGA has taken action to "fill the gap" left by UNSC failure (Richardson 2014, 139), passing resolutions condemning UNSC failure and mass human rights violations committed by Syrian authorities (see UNGA 2012) as well as establishing the international, impartial, and independent mechanism on Syria (Russo 2020). Additionally, in response to the February 2021 coup in Myanmar, the Assembly passed resolution A/75/L.85 in June 2021, by a 119-1 vote, which called for the cessation of violence and the suspension of arms supply to Myanmar (UNGA 2021). Further, the widespread support that P5 veto restraint measures have now garnered[10]—including over half of the UN's membership—demonstrates that the vast majority of UN member states wish to see more consistent and effective R2P implementation, which offers promise that member states would be favorable to establishing an R2P Commission.

What this also shows is that while the UNSC has often failed to discharge its R2P, suggesting that the feasibility of the UNSC acting on the R2P Commission's findings would be limited, the UNGA perhaps offers a more promising route. While positive UNGA receptiveness to the findings of the R2P commission would not be a given, the examples of UNGA action and its generally favorable attitude to R2P offers a point for tempered optimism.

It has been argued here that the UNGA should establish the R2P Commission as a UN body and subsidiary organ of the Assembly. It would be favorable for the UNGA to establish the R2P Commission due to the potential for readily utilizing other elements of the UN system to assist in its work, for instance, support from the Office of the United Nations High Commissioner for Human Rights in designing fact-finding missions. Further, as argued, as a subsidiary organ of the UNGA, the R2P Commission would also have a direct link to the use of UfP and the recommendatory powers of the General Assembly to act on R2P crises in instances where the UNSC has failed to exercise its responsibilities. The political capital of the UNGA also points to the favorability of establishing the commission within the UN system, given that were the body established, this would mean that it was supported by the world's universally representative state body, providing the R2P Commission with international legitimacy and a clear mandate to hold UN member states accountable to their R2P commitments.

However, should it be deemed politically unfeasible for the UNGA to establish the R2P Commission, then it would be desirable for states to establish the commission through another channel. This would essentially require that states forego the UN route and instead establish the R2P Commission through a separate treaty law. This would weaken the efficiency and legitimacy of the R2P Commission in comparison to if it were established as a UN body, but it would at least bring the advantage of circumventing the feasibility concern of requiring widespread support from UN member states. This would mean that mass state buy-in to the R2P Commission would not be essential, at least not in the short term.[11]

Arguing for the creation of a representative and democratic UN Parliament, Archibugi (2008, 174) claims that a formal constitutional reform of the UN is very difficult. More realistical, he argues, would be the formation of such a body through treaty law, signed by like-minded states, with the hope that other states would follow suit over time as the institution demonstrates success. Notably, this is the

[10] As of October 2021, the ACT Code has the support of 117 UN member states (plus two observers) – well over half the UN's membership (GCR2Pa n.d.). The "France–Mexico initiative" for veto restraint also garners widespread support from 103 states (plus two observers) (GCR2Pb n.d.).

[11] Of course, if the commission were established this way, attaining greater state buy-in would still be a desirable goal to work at over time in order to promote the legitimacy of, and compliance with, its findings.

approach that has been taken with the ICC, another ambitious international institution that would have doubtlessly seemed unfeasible in the decades prior to its creation. Should the UN route be closed off, it would therefore be logical for a small group of willing states to establish the R2P Commission, in the hope that its membership and legitimacy would develop over time.

It is worth ending here by highlighting a quote from Rodley (2013, 647), eloquently noting that, "[o]ccasionally, a catalytic event or chain of events occurs that makes radical institutional change, considered unrealistic yesterday, become tomorrow's necessity." For Rodley, institutional developments such as the ICC provide evidence of how quickly something that seems prima facie unfeasible in the immediate short term can become a living reality. Even if it is the case that the R2P Commission may seem an improbable recommendation in the short term, this does not render the proposal fundamentally unfeasible. Given the global challenges presented by R2P failures—such as state failure, mass refugee crises, and the damage to human rights—it may very well be the case that "radical institutional change" is indeed necessitated.

Conclusion

A key problem with R2P is the lack of means for enforcing state compliance with the norm. Yet, it is unfeasible to suggest that a new institution could be created with authority over states to determine where R2P action must take place or where state practice must change. Such a recommendation would also face practical drawbacks relating to timely and decisive response, undermining its effectiveness. Consequently, while favoring the UN Secretary-General's less-stringent view of what R2P accountability should entail (consistent critique of state practice against accepted standards), it has been argued here that we can promote state accountability under R2P, but in ways that would not infringe on timely and decisive response, or on the vital interests of states themselves. The UNHRC was discussed as the prima facie best-suited institution for promoting R2P accountability through its ability to highlight malpractice and pressure states. However, as argued, the UNHRC is not an appropriate body for holding states to account for the full range of their R2P commitments due to problems of bias and partisanship inherent to its state-based makeup.

In response to these challenges, the article proposed the creation of an "R2P Commission." This is a suggestion for a hybrid body comprised of experts elected by the UNGA, uniquely charged with scrutinizing the implementation of R2P. The R2P Commission can effectively promote accountability under the three-pillar R2P approach. The commission would provide a permanent mechanism to determine where manifest R2P failures have occurred, to review and clarify appropriate international practice vis-à-vis atrocity prevention and response, and to make recommendations for altering practice and potential further action. The fact that the commission would exist to scrutinize both the domestic and the international aspects of R2P would provide for a holistic approach, appropriate to R2P norm, which seeks to go beyond merely highlighting "problem states." This would allay fears that the commission would present a moral hazard by damaging state cooperation by simply calling out domestic R2P breaches and becoming perceived as a "Western tool." Further, the fact that the commission would be a hybrid system, involving states in its maintenance and not possessing power above them, helps to promote its feasibility.

While the recommendation for an R2P Commission may not be as revolutionary as establishing an institution with power to enforce R2P, since it would only possess a review and recommendatory function, such an institution nevertheless offers a new, transitional step for promoting state accountability under R2P. The impact of such a body could be enough to affect state practice and contribute to an application of R2P more aligned with cosmopolitan human protection as standards of appropriate behavior are reinforced, malpractice more consistently drawn to attention, and proactive recommendations are offered for addressing atrocity crises.

Acknowledgments

I would like to thank colleagues at British International Studies Association and the European Centre for the Responsibility to Protect who provided comments on previous versions of this article, especially Professor Adrian Gallagher, Professor Garrett Wallace Brown, Professor James Pattison, and Dr Cristina Stefan for their feedback on previous versions of this article. I also thank the anonymous reviewers for their comments.

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