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Responsibility to Protect (R2P):
The ICISS Commission Fifteen Years On

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Abstract:
Canada played a crucial role in the birth of the Responsibility to Protect (R2P) norm,
endorsed by the UN General Assembly in 2005, and can remain proud of its achievement
in generating a new international consensus about how to respond to genocide and other
mass atrocity crimes. Good progress has been made against the four relevant benchmarks
– R2P's role as a normative force, institutional catalyst, effective preventive framework
and effective reactive framework. Despite the breakdown of Security Council consensus
over Libya in 2011, and the failure since then of R2P to stop mass atrocity crimes in
Syria, there are grounds for optimism about its more effective implementation in the
future.
(This paper was adapted from a seminar given by the author in his capacity as the 2016–17
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written or edited 12 books, including *Nuclear Weapons: The State of Play 2015*
(co-author), and *The Responsibility to Protect: Ending Mass Atrocity Crimes
Once and for All* (2009). He co-chaired the Canada-sponsored International
Commission on Intervention and State Sovereignty (2000–01), and the Australia-
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Responsibility to Protect (R2P):
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If it was not for Canada we would not have the Responsibility to Protect, the internationally agreed principle unanimously embraced by the world's heads of state and government in the 2005 World Summit and endorsed by the UN General Assembly, that those at risk of genocide, war crimes, ethnic cleansing and crimes against humanity are not nobody's business but the whole world's business – a matter of international peace and security concern – even when such crimes are committed wholly within the boundaries of a single sovereign state.

It was Canada, nobody else, who after a decade of total paralysis by the international community in response to a series of terrible mass atrocity crimes through the 1990s, responded to UN Secretary-General Kofi Annan's despairing and heartfelt plea to the General Assembly in 2000: "If humanitarian intervention is indeed an unacceptable assault on sovereignty, how *should* we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?"

The then foreign minister Lloyd Axworthy – as you will all know, a fiercely principled Pearsonian liberal, a national tradition I'm delighted to see is now back in place in Ottawa after ten years of exile – decided to meet Annan's challenge by establishing a blue ribbon International Commission on Intervention and State Sovereignty (ICISS) to wrestle with the whole range of legal, moral, operational and political questions rolled up in the intervention debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.

When Lloyd – who had known me as a like-minded foreign minister – invited me to co-chair his proposed commission, I didn't need much persuasion. And he gave me a cast made in heaven to work with. My co-chair, Mohamed Sahnoun, a distinguished Algerian diplomat and veteran UN Africa adviser had a delightful capacity to defuse likely tensions, usually with

African parables involving lions, monkeys, crocodiles, scorpions, or all of the above – and an appropriate leavening influence on his sometimes overly exuberant antipodean colleague. Also from the global South there was former President Fidel V. Ramos, the avuncular, cigar-chewing, hero of the Filipino People Power revolution; African National Congress head Cyril Ramaphosa from South Africa, Guatemalan Foreign Minister and later Vice-President Eduardo Stein; and the multi-talented and much-travelled Indian scholar and UN official, Ramesh Thakur (who has spent a good part of his life teaching in Canada).

From the North there were former US Congressman Lee Hamilton, German NATO General Klaus Naumann, and two Canadians: legal specialist Gisele Cote-Harper, and then Harvard-based human rights scholar Michael Ignatieff.[1] Making up the balance of the commission members were the Russian diplomat and parliamentarian Vladimir Lukin, and Cornelio Sommaruga the Swiss diplomat and former long-serving president of the International Committee of the Red Cross, who rather liked my description of him as "a Northerner with Southern characteristics". We also had an outstanding support staff, led by Jill Sinclair, a hugely capable and imaginative diplomat (and nowadays senior Defence official) who was wonderfully refreshing to work with, not least, perhaps, because she sidelined as a nightclub jazz singer, with a personal style owing more allegiance to Haight-Ashbury than the Champs Elysee.

So ICISS was launched in September 2000, and just over a year later, in December 2001 – after five commission meetings, eleven regional roundtables and national consultations across five continents – *The Responsibility to Protect* was born, with the publication, under that title, of our 90-page report and 400-page supplementary volume of research essays, bibliography and background material.[2] Somewhat miraculously, the final ICISS report had in it not a single line of recorded dissent. But along the way just about everything was contestable – and contested.

The name of the report and its sustaining theme was no exception to the contestability rule. At the first of the commission's five meetings, in Ottawa in November 2000, I suggested in

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[1] Ignatieff was to personally experience in his later career, as you will recall, what I told him at the time: that politics, even in a country as gentle and polite as Canada, was a bloody and dangerous trade, and best avoided by normally sane and sensitive souls.
[2] See https://web.archive.org/web/20070731161527/http://www.iciss-ciise.gc.ca/report2-en.asp.

my opening remarks that what we needed was a strong new phrase, one that would capture the flavour of what we all wanted to say about the moral imperative of responding to mass atrocity crimes, be succinct and memorable, and, while having some continuity with the debate of which we had all been part over the past decade, would also mark an escape from its sterility and divisiveness. So far, so good. But then, having spent a few mornings under the shower in the lead-up to our meeting toying with a score or more of different word combinations, I was adventurous enough to suggest that maybe, just maybe, there was such a phrase we could agree met these specifications, and which could even work as the title of our report – "the responsibility to protect". This was met by what I can only describe as a collective, incredulous intake of breath: "Well, we'll have to think long and hard about *that*" was the hardly unreasonable general response. To suggest the report's title before we had even begun to discuss its content, let alone taken any soundings in the dozen consultations that were scheduled to take place around the world, was considered a little presumptuous, even for an Australian.

The achievement of the ICISS report was to fundamentally change the course of the debate, a rather unusual impact for any such commission report to have. Its key contributions were fourfold. First, changing the language of the debate, as just described, from the "the right to intervene" to "the responsibility to protect", making it possible for entrenched opponents to find new ground on which to more constructively engage. Second, broadening the range of actors in the frame so as to include not just international actors able and willing to apply military force, but the whole international community. Third, broadening dramatically the range of responses: whereas humanitarian intervention focused one-dimensionally on military reaction, R2P involves multiple elements in the response continuum – preventive action, both long and short term; reaction when prevention fails, with reaction itself a nuanced continuum from persuasion all the way up to coercive military force; and, finally, post-crisis rebuilding aimed again at prevention, this time of recurrence of the harm in question. Fourth, recognising that however much one might strive to avoid resorting to military coercion that might still be in some cases the only credible option, identifying very clear (and hard to satisfy in all but the most extreme cases) criteria for the use of force.

The process by which the 2001 ICISS report became a unanimous 2005 UN General Assembly resolution is another long story which I will skip over here, except to say that Canada again played a centrally important role (along with, in particular, South Africa and a number of other sub-Saharan states whose active support was absolutely crucial). In the final stages of the World Summit debate a handful of resistant countries, above all India, looked like killing the necessary consensus – until some very effective personal diplomacy from then Prime Minister Paul Martin at the last minute brought them aboard.

In the form in which it was embraced by the World Summit and adopted by the General Assembly, the resolution identified three separate dimensions to the responsibility involved: the responsibility of a state to its own people not to either commit such mass atrocity crimes or allow them to occur (now referred to as Pillar One); the responsibility of other states to assist those lacking the capacity to so protect (Pillar Two); and the responsibility of the international community to respond with "timely and decisive action" (including ultimately with coercive military force if that is authorised by the Security Council) if a state is "manifestly failing" to meet its protection responsibilities (Pillar Three).

It is important to make clear that, as we in the commission conceived it and the UN member states eventually adopted it after four years of protracted diplomatic wrangling, R2P really was designed for pragmatists rather than purists. Its intended contribution was not to international relations theory but political practice. It was designed not to create new legal rules but rather a compelling new sense of moral and political obligation to apply existing ones. It was to generate a reflex international response that genocide, other crimes against humanity, and major war crimes happening behind sovereign state walls were not nobody's business: that sovereignty could never be a license to kill. The bottom line was always to change *behaviour*: to ensure that global policymakers would never again have to look back, in the aftermath of yet another genocidal catastrophe like Cambodia or Rwanda or Srebrenica, and ask themselves – with a mixture of anger, incomprehension and shame – how they could possibly have let it all happen again.

So, looking back over the fifteen years since the ICISS report appeared, how well did we succeed in this very ambitious aspiration? Looking at the present catastrophe in Syria, where

R2P gained no traction at all, and the horrible aftermath of the initially successful R2P-based military intervention in Libya, it would be easy to be cynical – as many critics are – and say that the whole enterprise has been a complete waste of time, or worse. But let me give you a more positive stocktake, using as my benchmarks the four big things that R2P was designed to be: a normative force; a catalyst for institutional change; a framework for preventive action; and a framework for effective reactive action when prevention has failed.

R2P as a Normative Force

It may be a stretch – but I'll take it – to say, as the British historian Martin Gilbert did two years after the 2005 World Summit, that acceptance of the responsibility to protect is "the most significant adjustment to sovereignty in 360 years". But it is certainly true to say that there has been continuing growth in acceptance of R2P as a *principle*, or normative standard, in a way that would have been unimaginable for the earlier concept of "humanitarian intervention" which R2P has now almost completely, and rightly, displaced. Although many states are still clearly more comfortable with the first two pillars of R2P than they are with the third, and there will always be argument about what precise form action should take in a particular case, there is no longer any serious dissent evident in relation to any of the elements of the 2005 Resolution.

On the basic issue of principle, a genuine – and unprecedented – global consensus has emerged over the last ten years that state sovereignty is not a license to kill, that mass atrocity crimes – even those committed entirely within a state's borders – *are* the world's business. The best evidence lies in the General Assembly's annual interactive debates since 2009, which have shown ever stronger and more clearly articulated support for the new norm, and in the more than 50 resolutions referencing R2P that have now been passed by the Security Council (more than 40 of them *after* the divisions over Libya in 2011).

R2P as an Institutional Catalyst

All the normative consolidation in the world will not be of much use if R2P is not capable of delivering protection in practice. That means for a start the continued evolution of institutional preparedness, at the national, regional and global level, particularly at the crucial

stages of early prevention, and early reaction to warning signs of impending catastrophe. R2P has been a change agent here, with civilian response capability receiving much more organized attention. The Peace and Stabilization Operations Program announced earlier this year by the new Canadian government, although it has a wider remit than purely R2P situations, is an excellent example of the thinking now going into coordinating more effective responses by multiple agencies to complex political crises abroad. Militaries are also rethinking their force configuration, doctrine, rules of engagement, and training to deal better with mass atrocity response operations, which often need to fall somewhere between peacekeeping and full-scale war fighting.

Of great importance has been the move to establish "focal points" – designated high-level officials whose job is to analyse atrocity risk and mobilise appropriate responses. There are now more than 50 members of the "Global Network of R2P Focal Points" convened by the Global Centre which I chair, still not including Canada I'm sorry to say but I hope that will soon be corrected by the new government. But here as elsewhere more needs to be done – not least at UN Headquarters, where the roles of the Special Adviser on the Prevention of Genocide and, unhappily still only part-time, Special Adviser on R2P, need to be not only recognized, but rationalised, coordinated and strengthened.

R2P as a Preventive Framework

The credibility of the whole R2P enterprise has depended from the outset on giving central importance to prevention. And here, especially in the context of post-crisis prevention of recurrence, R2P-driven strategies have had a number of successes, notably in Kenya after 2008, the West African cases of Sierra Leone after 2002, Liberia after 2003, Guinea and Kyrgyzstan after 2010, and Cote d'Ivoire after 2011. Most peacekeeping operations now have protection of civilians mandates – built on R2P's sister concept of Protection of Civilians in Armed Conflict (POC[3]) – and most of the time those operations are succeeding in keeping the lids on some often very simmering pots.

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[3] See http://www.un.org/en/peacekeeping/issues/civilian.shtml.

On the other hand, while there is now a very good understanding of the large toolbox of preventive measures available at all stages of the conflict cycle, and a very long tradition of regular lip-service being paid to the need for effective prevention, the record of practical delivery is not nearly as strong as it should be. Part of the problem of getting sufficient resources to engage in successful prevention is the age-old one that success here means that nothing visible actually happens: no-one gets the kind of credit that is always on offer for effective fire-fighting after the event. It is the responsibility of all of us to continue working to change that culture.

R2P as a Reactive Framework

This is where the rubber hits the road. What do we *do* if a state, through incapacity or ill-will, has failed to meet its Pillar One responsibilities? What do we do if prevention has manifestly failed, and mass atrocity crimes are actually occurring or imminently about to occur? The not-so-good news is that on the critical challenge of stopping mass atrocity crimes that are under way, whether through diplomatic persuasion, stronger measures like sanctions or criminal prosecutions, or through military intervention, and acting under either pillar two or pillar three, R2P's record has been mixed, at best.

There have been some success stories: Kenya in 2008, Côte d'Ivoire in 2011 and – at least initially – Libya in 2011. And some partial success can be claimed for the new or revitalized UN peacekeeping operations in Congo, South Sudan, and the Central African Republic. But there have also been some serious failures, certainly including Sri Lanka in 2009. In Sudan, where the original crisis in Darfur predates R2P but the situation continues to deteriorate, President Omar al-Bashir remains effectively untouched either by his International Criminal Court indictment or multiple Security Council resolutions. We are not doing as well as we should be in stopping non-state actors like Boko Haram committing atrocity crimes in territory over which they have control. And, above all, there has been catastrophic international paralysis over Syria.

The crucial lapse in Syria occurred in mid-2011, when the Assad regime's violence was one-sided and containable. Driven by the perception, not itself unreasonable, that the Western powers had overreached in Libya by stretching a limited mandate to protect civilians into a

regime-change crusade, a number of Security Council members then overreached in the other direction: seeing another slippery slope in Syria, the majority gave no support for a resolution even just to condemn the regime's violence against unarmed civilians. And with the Syrian leadership sensing its impunity, the situation deteriorated quickly into the full-scale civil war raging today.

There is no more important or urgent task for R2P advocates than to rebuild consensus within the Security Council as to the right way to handle the hardest of cases, when it may well be that the threat or use of coercive military force is the *only* way of stopping catastrophic atrocity crimes in their tracks. Re-establishing that consensus is not impossible, but it will take time. The "responsibility while protecting" (RWP) proposal put on the table by Brazil in 2011 remains the most constructive of all the suggested ways forward, requiring as it would all Council members to accept close monitoring and review of any coercive military mandate throughout such a mandate's lifetime, and I think it reasonable to hope that some agreement along these lines will eventually be reached.

There are a number of other ways in which Security Council practice could be modified to enhance its responsibility when handling atrocity crime cases, which I also hope will be taken seriously by Council members. They include embracing the Accountability, Coherence and Transparency (ACT) Group's Code of Conduct[4] and the veto restraint initiatives tabled by France and Mexico, both of which are receiving increasing support from the wider UN membership.

Complete, fully effective implementation of R2P remains some way off. But I see no evidence anywhere that anyone wants a return to the bad old days, when the whole UN was a consensus free zone on mass atrocity crime issues. We should never forget how bad those days could be. In November 1975, seven months after the Khmer Rouge had commenced its genocidal slaughter, US Secretary of State Henry Kissinger famously said to Thailand's foreign minister Chatichai Choonhavan: "You should also tell the Cambodians [the Khmer Rouge] that we will be friends with them. They are murderous thugs, but we won't let that stand in our way."

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[4] See http://www.globalr2p.org/resources/888.

As cynical as our political leaders sometimes remain – and as a long-time politician myself, I know a fair bit about that culture – it's hard to imagine any of them today feeling able to talk like that. That's a measure of how far we have come with R2P. And if that's true, it's a great tribute to a great Canadian initiative.