

The UN Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement

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INTRODUCTION

When it was adopted by the United Nations (UN) system in 2005, the doctrine of the Responsibility to Protect (R2P) was meant to provide an implementation mechanism for the international community to respond to governments that were perpetrating the mass atrocity crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity. As R2P is now in its second decade of existence, it is important to evaluate past implementation of R2P by the UN Security Council (Security Council) — the UN body charged with taking collective action when all other preventive efforts have failed and atrocity crimes are being committed or are imminent.

This briefing paper is a summary of a more detailed law review article recently published in the University of Chicago Journal of International Law.¹

An examination of eleven case-studies shows that there are three conditions that emerge as being determinative for whether the Security Council successfully or unsuccessfully implements R2P. First, there is either no obstruction by the government committing mass atrocity crimes, or, if government obstruction does take place, an interested P5 country provides the political will to overcome this obstruction. Second, cooperation exists between regional organizations—like the African Union (AU)—or neighboring regional powers and the Security Council to coordinate a response. And third, the Security Council has at its disposal a rapid response capacity to react to the perpetration of atrocity crimes in an efficient and effective manner to protect civilians.

When any of the identified conditions is absent, implementation is generally unsuccessful. Given these conditions, specific recommendations are made for

strengthening international institutions so that implementation of R2P by the Security Council in the coming decades will better save civilian populations from mass atrocity crimes.

ROLE OF THE UN SECURITY COUNCIL

In the 2009 report, *Implementing the Responsibility to Protect*, Secretary-General Ban Ki-moon presented three pillars to define how to implement R2P within the UN system. These Pillars are: (1) Pillar I, asserting that every state has a responsibility to protect its populations against mass atrocity crimes, which are defined as genocide, war crimes, ethnic cleansing, and crimes against humanity; (2) Pillar II, affirming that the wider international community has a responsibility to encourage and assist states in meeting their Pillar I responsibility; and (3) Pillar III, confirming that if a state manifestly fails to protect its population, the international community must take appropriate collective action in a timely manner and in accordance with the UN Charter. The Secretary-General delivered his report to the General Assembly, where it enjoyed broad support.

The Security Council is considered the preeminent organ for implementing R2P in the UN system when all other actions have failed. As such, the Security Council should make “[d]ecisions about collective action, as well as judgments about whether peaceful means are inadequate and whether ‘national authorities are manifestly failing to protect.’”²

The Security Council's specific role in implementing R2P primarily lies within Pillar III: to facilitate the collective response of the international community

when a state fails to meet its Pillar I responsibility of protecting its own population.

While much commentary on the Security Council’s role under Pillar III focuses upon its capacity to authorize intervention under Article 42 of the UN Charter, Pillar III calls on the Council to engage with a much broader range of potential pacific and non-coercive enforcement measures. These measures include the recommendation or authorization of Chapter VI mechanisms, such as peace negotiations, monitoring or observer missions, and commissions of inquiry.

Additionally, when a state fails to respond to those peaceful and diplomatic efforts, the Security Council can also employ more coercive measures under Article 53 of the Charter, such as sanctions, arms embargoes, or referrals to the International Criminal Court. Finally, the Security Council can authorize military action through the UN or a regional organization, including, for example, establishing a no-fly zone or the deployment of troops. Overall, the Security Council has significant flexibility when responding to an R2P crisis in determining how to implement its responsibility.

IMPLEMENTATION OF R2P BY THE UN SECURITY COUNCIL

Eleven country-specific cases were examined where mass atrocity crimes were committed and the Security Council has invoked R2P in some capacity,³ to varying degrees of success. In order to better evaluate specific conditions that have facilitated the successful or unsuccessful implementation of R2P by the Security Council, the cases are divided into three categories according to the degree of focused engagement by the Security Council: (1) more focused application of R2P in Côte d’Ivoire (2011-2012), Libya (2011-2012), and Mali (2012-2013); 2) a failure to implement R2P in the Democratic Republic of the Congo (DRC) (2010-Present), Sudan (2005-Present), South Sudan (2011-Present), and the Central African Republic (CAR) (2013-Present); and (3) a stalled response by the Security Council in Yemen (2015-Present), Syria (2011-Present), Myanmar (2007-Present), and the Democratic People’s Republic of Korea (DPRK) (2016-Present).

When examining these cases, there are three conditions that emerge as being determinative for whether the Security Council successfully or unsuccessfully implements R2P. First, there is either no obstruction by

the government committing mass atrocity crimes, or, if government obstruction does take place, an interested P5 country provides the political will to overcome the government obstruction. Second, cooperation exists between regional organizations or neighboring regional powers and the Security Council to coordinate the R2P response given the particular crisis in each country. Third, the Security Council has at its disposal a rapid response capacity to react to the perpetration of atrocity crimes in an efficient and effective manner to protect civilians.

KEY CONDITIONS IMPACTING SECURITY COUNCIL IMPLEMENTATION OF R2P IN CASE STUDIES			
COUNTRIES	LACK OF GOVERNMENT OBSTRUCTION OR HIGH P5 ENGAGEMENT	SECURITY COUNCIL COOPERATION WITH REGIONAL ORGANIZATIONS	RAPID CAPACITY TO RESPOND
	Conditions Key: ● Fully Present ● Mostly Present ○ Fully Absent ◐ Mostly Absent		
<i>More Successful Implementation</i>			
Côte d'Ivoire	◐	●	●
Libya	◐	●	●
Mali	●	●	●
<i>Lack of Successful Implementation</i>			
Central African Republic	●	◐	◐
Democratic Republic of the Congo	●	◐	◐
Sudan	○	◐	◐
South Sudan	◐	◐	◐
<i>Stalled Response</i>			
Democratic People's Republic of Korea	○	○	○
Myanmar	○	○	○
Syria	○	○	○
Yemen	○	○	○

Evidence from the three case studies in which the Security Council successfully implemented R2P demonstrates that all three conditions for successful implementation were met in each case. This allowed the Security Council to act in a timely and decisive manner to protect civilians from mass atrocity crimes.

Conversely, the four cases with unsuccessful implementation of R2P fail at least one condition, thus preventing the mobilization of forces and resources necessary to stop mass atrocity crimes as the crises were developing. These cases are considered unsuccessful in the sense that the implementation of R2P was not timely or decisive and failed to prevent mass atrocity crimes. Finally, the four cases with a stalled response demonstrate the devastating impact that the Security Council veto and the internal composition of the Security Council can have as it effectively stalls the Council R2P response.

The full law review article on this topic provides a much more detailed presentation of the facts and analysis on the historical, political, and cultural conditions that led to the outbreak of atrocity crimes in each country as well as the actions taken by the Security Council and other authorities, organizations, and individuals in responding to these crises.

More Successful Implementation

By examining R2P implementation in Côte d'Ivoire, Libya, and Mali, it is apparent that a lack of government obstruction—or the ability to overcome government obstruction through the political will of a P5-member state—as well as cooperation between regional authorities and the Security Council and a rapid response capacity, were vitally important for a successful intervention in the face of mass atrocity crimes.

Mali, Côte d'Ivoire, and Libya demonstrate the varying degrees to which government obstruction or cooperation may play out in the face of a mass atrocity situation. In Mali, the sitting government requested intervention from French troops and UN assistance to deal with the crisis, meaning the Malian transitional government actively welcomed international assistance. Both Côte d'Ivoire and Libya demonstrate the Security Council's actions when faced with obstruction. While the illegitimate government in Côte d'Ivoire resisted international intervention, the legitimate and democratically-elected president welcomed assistance from the Security Council, similar to the situation in Mali. Libya presented a different set of issues, however, as Muammar Qaddafi opposed and obstructed outside assistance as he actively perpetrated atrocity crimes against his own people. There, interest from the United States, United Kingdom, and France, strongly supported by regional organizations, provided political will and military possibility to act even in the face of Qaddafi's

obstruction. Therefore, government obstruction in all three R2P cases where the Security Council successfully mobilized action was either absent or overcome through P5-level interest.

Further, these cases demonstrate the vital importance of cooperation between regional organizations and the Security Council to determine the best response given the nature of the crisis in each country. In Côte d'Ivoire and Mali the AU and Economic Community of West Africa (ECOWAS) acted efficiently and effectively to condemn the outbreak of violence and atrocity crimes. ECOWAS was particularly active, calling on the Security Council to authorize or strengthen UN missions to help protect civilians in affected states. In Libya, the regional Gulf Cooperation Council (GCC) and League of Arab States played a major role in requesting the UN to authorize a protective no-fly zone. Taking into account other sources of input—such as civil society, the General Assembly, and the Human Rights Council—the Security Council's subsequent resolutions were supportive of regional organizations and in line with their recommendations. Importantly, the Security Council seized and maintained its leadership role as the international body to implement R2P action while authorizing missions and deploying resources in line with the recommendations of regional authorities.

Finally, all three cases illustrate the importance of a rapid response capacity for the Security Council to act timely and decisively in the face of humanitarian crises. In Côte d'Ivoire, the UN had a peacekeeping mission on the ground with which the Security Council could engage by expanding and strengthening its mandate. In Mali, military capacity came from the deployment of a UN peacekeeping mission, with the support of ECOWAS. And in Libya, the military capacity came from a coalition of member states. In all cases, response capacity existed so that troops and resources could be deployed rapidly following the Security Council decision.

Taken together, the existence of all three conditions led the Security Council to implement its mandate in a timely and decisive manner, as is required by the principle of R2P. Their timely and decisive authorization of missions succeeded in protecting civilian populations from imminent or ongoing mass atrocity crimes.

Lack of Successful Implementation

The four case studies in the DRC, Sudan, South Sudan, and CAR demonstrate that the Security Council's implementation of R2P is generally unsuccessful when fewer than all three conditions are met.

First, active government obstruction by the state perpetrating atrocity crimes seriously hinders political action. Obstruction by the Sudanese and South Sudanese governments hindered the deployment of UN missions and led to AU missions that largely lacked the resources to effectively carry out their mandate as mass atrocity crimes were occurring. Further, in none of these cases were there P5 member states that provided the political will to overcome government obstruction in order to launch a more effective R2P response.

Second, cooperation between regional organizations and neighboring countries and the Security Council was lacking in the cases of Sudan, CAR, and the DRC. In Sudan and CAR, regional organizations like the AU, the League of Arab States, ECOWAS, and the Economic Community of Central African States were working to solve the local crises. While regional organizations are essential to successfully implementing R2P, cooperation and communication between the organizations and the Security Council fell short. In the case of Sudan, the AU and the League of Arab States were particularly averse to Western or UN-led intervention, which meant that the resources available to a potential UN-led mission were unavailable to address the humanitarian crises. The statement by African leaders that Sudan was an "African responsibility" was mirrored in the crisis in CAR years later, when the AU representative told the Security Council that CAR presented an "African challenge" to be met by engaging the whole continent of Africa—not the whole international community. Deference to regional leadership in the context of R2P delayed the reaction of the Security Council.

Additionally, in the cases of the DRC and CAR, regional countries and neighboring states sometimes actively undermined political stability and helped facilitate the perpetration of atrocities against civilian populations. In the DRC, Rwanda and Uganda provided support to rebel groups, thereby enabling the commission of mass atrocity crimes. In CAR, rather than assisting with political stability, Chadian peacekeepers facilitated the movement of ex-Seleka fighters to regroup, thereby also facilitating the commission of further mass atrocity crimes. Both the aversion of regional organizations and the active undermining by regional states in the crises in

Sudan, CAR, and the DRC contributed to the unsuccessful implementation of R2P by the Security Council.

Third, all four cases demonstrate a lack of rapid response capacity. In all four crises, UN missions were deployed either too late or with too few resources to effectively carry out their civilian protection mandate. While the response to the crisis in the DRC was severely delayed, the authorization of the Force Intervention Brigade demonstrates the potential of the Security Council's R2P engagement. The Brigade engaged with two conditions—regional and Security Council cooperation as well as rapid response capacity—and was successful in defeating the rebel group that had been perpetrating mass atrocity crimes against civilian communities. The Brigade encapsulated the conditions that helped make the implementation of R2P in Mali, Libya, and Côte d'Ivoire much more successful.

Looking through the lens of the three conditions—government obstruction, regional authorities and Security Council cooperation, and rapid response capacity—the Security Council failed to implement its R2P mandate in response to the crises in the DRC, Sudan, South Sudan, and CAR. Each case was missing at least two of these crucial conditions. Just as the successful implementations in Mali, Libya, and Côte d'Ivoire demonstrate that all three conditions are necessary for proper implementation of R2P, a missing condition means that the Security Council faces serious obstacles in properly implementing R2P to protect civilians from mass atrocity crimes.

Stalled Response

Finally, the four case studies in Yemen, Syria, Myanmar, and DPRK reveal that a fourth condition has also prevented the Security Council from implementing its R2P mandate: the P5 veto. As these cases demonstrate, the overruling power of the Security Council veto, or the threat of the veto, can stall response from the beginning or even after initial steps have been taken by the Security Council to implement its R2P mandate. This condition is separate from the three discussed above because the veto can stop Security Council action fully and completely.

In the case of Yemen, while the Security Council invoked Yemen's Pillar I R2P responsibility, there has been no further action to implement R2P, because the United States and United Kingdom continue to assist the Saudi-led intervention, which is arguably helping perpetrate

mass atrocity crimes against Yemeni civilians. In short, two P5 countries are deeply involved and have not asked for Security Council support. In the cases of Syria, Myanmar, and DPRK, the Security Council has been stalled based on the threatened veto of Russia and/or China. Even if other factors like government obstruction, cooperation between regional organizations and the Security Council, and rapid response capacity may not be missing in these cases, these conditions are secondary to the fourth factor of the veto, which has effectively stopped all Security Council action. As meaningful engagement with the Security Council's R2P mandate in these crisis situations remains gridlocked, governments continue to perpetrate and enable mass atrocity crimes against civilian populations.

RECOMMENDATIONS: IMPROVING THE UN SECURITY COUNCIL'S IMPLEMENTATION OF R2P

The analysis of the Security Council's country-specific implementation of R2P demonstrates the complexities and singularities that set each situation apart, but it also allows for the emergence of a set of factors that, when taken together, consistently have determined whether the Security Council will succeed or fail in its responsibility to implement R2P. What follows are recommendations for achieving better outcomes along those key factors, with the overarching goal of improving future Security Council implementation of R2P.

A. Political Will

In any situation that requires the involvement of the Security Council to effectively protect a population from mass atrocities, a government's willingness to accept the aid of the Security Council can either lower the bar for Council engagement or dramatically raise it. In situations where the government is willing to accept Security Council involvement, the barriers to engagement and thus the political will required by Council members are manageable. However, in situations where the government is unwilling to accept Security Council involvement, the bar for engagement becomes much higher and must be overcome with much greater political will from Council members, usually requiring the strong support of an influential P5 member.

In Côte d'Ivoire and Mali, the legitimate governments welcomed Security Council involvement, allowing the Council to engage with its R2P obligations with relative ease and, ultimately, with success. In Libya, while the government did not welcome Security Council action, the extraordinary political will of the United States, United Kingdom, and France, with strong support from regional organizations, overcame the increased barriers to engagement. Conversely, the Security Council's engagement fell short in Sudan and South Sudan, where the government's resistance to Council action was not overcome by a P5 member's strong will to engage.

While the political will of the Security Council members to engage with the Council's responsibility will always be subject to concerns of national self-interest to some degree, elevating the profile of abuses taking place in a country can occasionally shift the balance of political will in favor of engagement. Civil society groups' and UN human rights bodies' work to highlight ongoing abuses helps Security Council members understand the urgency of acting in a particular situation while also creating public pressure on Council members, with both of those mechanisms tending to increase the overall political will to engage. In the interest of positively influencing the political will of Security Council member states, the international community should increase its support for civil society groups and UN human rights bodies that alert the Council of abuses and hold the Council accountable for its response. Given this crucial role with regard to R2P, it is unacceptable that just 3.5 percent of the UN general budget goes towards the organization's human rights bodies, and members of the international community should seek to correct this.

B. Cooperation with Regional Organizations

Given the global scope of the UN's work and the vast demands on the organization, regional organizations can play an important role in responding to R2P situations. In situations where regional organizations are substantially involved, those organizations' attitudes towards Security Council involvement can profoundly shape the Council's own response—for better or worse. When regional organizations welcome Security Council engagement and support the Council coordinating the international response, the Council is better able to engage with its R2P responsibility and more likely to be successful in responding to the situation. When regional organizations discourage or reject Security Council engagement, the Council is more likely to defer a response and abandon a coordination role—actions

which can have devastating effects if regional organizations ultimately fail to resolve the situation.

Effective cooperation with ECOWAS in the case of Côte d'Ivoire, with the GCC and the League of Arab States in the case of Libya, and with the AU and ECOWAS in the case of Mali—cooperation characterized by regional organizations' acceptance of Security Council involvement, the Council's receptiveness to the requests of regional organizations, and the Council's central coordination role—enabled it to uphold its responsibility to protect in a timely and decisive manner in those cases. Conversely, the AU's hostility towards Security Council involvement and leadership in the cases of Darfur and CAR delayed meaningful Council engagement under R2P and handicapped its eventual response. The actions of regional powers Rwanda and Uganda initially undermined Security Council efforts in the DRC and precluded both a strong regional response and regional coordination with the Council.

To have a coordinated response from the Security Council and regional actors in future atrocity situations, the Council needs to focus on the actions of regional organizations and support their work, and also rise to its role coordinating a coherent international R2P response. To enhance this capability, the UN should undertake capacity-building efforts with key regional organizations and build joint response mechanisms with those organizations to establish a greater degree of trust and better coordinate future responses to emerging crises.

C. Rapid Response Capacity

Once the Security Council makes the decision to respond to a situation, the international community's ability to respond rapidly is of crucial importance. Because UN missions take an average of six months to deploy, even the immediate authorization of a UN mission may not allow for a sufficiently timely response to a rapidly escalating situation. Some of the factors that can enable a rapid response include: the presence of a previously established and well-equipped UN mission and the willingness and ability of relevant regional organizations and outside countries to quickly deploy their own resources. The presence of at least one of those factors can increase the chances that the Security Council response will effectively prevent mass atrocities.

In the cases of Libya and Mali, outside countries were willing and able to respond rapidly, saving the lives of countless civilians. In the case of Libya, the United

States, United Kingdom, and France declared their intention to act the day after the Security Council adopted a resolution authorizing them to do so, and had deployed the necessary forces within a week. Likewise, in the case of Mali, France responded the day after receiving Security Council authorization. In the case of Côte d'Ivoire, a rapid response was enabled by the existence of a previously established French-led mission on the ground, in addition to short-term borrowing of forces and equipment from a well-equipped mission in nearby Liberia. Conversely, outside countries were not especially willing to marshal their own resources to respond rapidly to situations in DRC, Sudan, and CAR and previously established UN and regional missions in those countries were under-equipped and unable to respond rapidly as the situations on the ground deteriorated.

Because the conditions necessary for a country-led or region-led rapid response may not always be present and the existence of a previously established and well-equipped UN mission cannot be assumed, there is a real need for the UN to develop a rapid response capacity. The most feasible and sustainable way to do so could be for the UN to contract private military and security companies to act as a standing rapid-reaction force on a short-term basis.⁴ Security Council members should give this and other arrangements for a rapid-reaction force serious consideration in order to enable a timely response to future R2P situations.

D. The Veto

While the aforementioned factors weigh heavily on the likelihood of successful Security Council engagement on the basis of R2P, the most significant factor of all rests in the institutional architecture of the Security Council itself. According to the UN Charter, the permanent five members of the Security Council have the power to block any Council resolution to which they do not give consent. That this veto power has repeatedly been invoked to block Security Council efforts to halt mass atrocity crimes is unacceptable. In Yemen, Syria, Myanmar, and the DPRK, the use or threatened use of the veto by one or more permanent members of the Security Council has resulted in the continuation of mass atrocity crimes and tremendous loss of life.

Many observers have noted that, “the use or abuse of the veto is responsible for some of the [UN Security] Council's most conspicuous failures, when it does not intervene in time, or with sufficient force, to protect the victims of genocide and other comparable crimes.”⁵

Some of those observers have also proposed potential solutions to this problem, with the France/Mexico Initiative and the ACT Code of Conduct emerging as the two most widely supported proposals. As of June 2018, 96 UN member states had signed onto the France/Mexico Initiative calling for the voluntary restraint of the veto in mass atrocity situations and 115 member states had signed onto the ACT Code of Conduct calling upon all Security Council members to refrain from voting against efforts to prevent or halt mass atrocities and requiring transparency from vetoing states on their reasons for employing the veto. The Security Council should seriously consider the adoption of either the ACT Code of Conduct or the France/Mexico Initiative to restrain the use of the veto in mass atrocity situations and rise to meet its R2P responsibility, and the UN Secretary-General and broader international community should demand that the Council do so.

CONCLUSION

Much has happened since the initial discussions of R2P in 2001 and the formal adoption of R2P in 2005. The doctrine of R2P grew out of the failure of the international community to respond to governments committing widespread and systematic atrocity crimes against their own people in Rwanda, Bosnia, and Kosovo during the 1990s. The development and adoption of R2P was meant to codify existing responsibilities under international law and provide a better mechanism to prevent similar atrocity crimes in the future.

Since its adoption, the Security Council has acted on its R2P mandate at various times, both successfully and unsuccessfully. R2P implementations were successful when the government did not obstruct international efforts to assist with the prevention of mass atrocity crimes (or such obstruction was overcome by a powerful country's desire to engage to protect civilians), cooperation existed between regional organizations and the Security Council, and the Council had the capacity to respond rapidly to the developing or imminent crisis. In all unsuccessful implementations, at least two of these conditions were notably absent. Further, a fourth and overriding condition—the use of the veto by a Security Council member—has prevented the Council from successfully implementing R2P in certain cases regardless of the other conditions.

Examining both the successful and unsuccessful cases of R2P implementation allows for important takeaways

that can inform the Security Council's actions in future invocations of R2P. Notably, international institutions can be strengthened to encourage and support the existence of the three necessary conditions while internal institutional commitments by Security Council members can ensure that the veto does not obstruct collective action in the face of future mass atrocities.

While the Security Council's inaction regarding the crisis in Syria stands front and center in recent memory, a more comprehensive analysis of Security Council implementation of R2P reveals that there is more to R2P than this notable failure might suggest. As is evident in the preceding analysis of Security Council implementation of R2P since its codification in 2005, certain conditions must be present to allow for successful implementation, and there is much that can be done to foster the presence of those conditions. It is now up to the international community to strengthen the institutions and mechanisms that will allow the Security Council to respond in a timely and decisive manner to future mass atrocity crimes and more consistently uphold its responsibility to protect.

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¹ Jared Genser, *The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement*, 18.2 CHI. J. INT'L L. 419-500 (Winter 2018), available at <http://bit.ly/r2pgenser>. The views expressed in this paper are those of the author and do not represent the views of the Global Centre for the Responsibility to Protect.

² UN Secretary-General, *Early Warning, Assessment and the Responsibility to Protect*, U.N. Doc. A/64/864 (July 14, 2010)

³ This means that the Security Council as an institution or individual members specifically referenced in individual statements, presidential statements, and/or resolutions either the "responsibility to protect" or "failure to protect" to explain their actions.

⁴ Jared Genser & Clare Garvie, *Contracting for Stability: The Potential Use of Private Military Contractors as a United Nations Rapid-Response Force*, 16.2 CHI. J. INT'L L. 439-481 (2016), available at <http://bit.ly/pmscgenser>

⁵ *A UN Fit for Purpose*, The Elders, <https://perma.cc/UBJ4-HLVT> (last visited May 15, 2018).