The Security Council's Role in Fulfilling the Responsibility to Protect

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My reflections on the two decades since the publication of the 2001 report *The Responsibility to Protect* issued by the International Commission on Intervention and State Sovereignty (ICISS) are focused on the ways in which the United Nations Security Council has both acted and failed to act in fulfilling its role in upholding the responsibility to protect (RtoP). This focus does not imply a belief that the Council is the only—or even the most important—actor in protecting populations from the commission or risk of atrocity crimes.[1] But it does acknowledge that, despite both the efforts of those who have been most active in shaping the conceptual evolution of RtoP (including the original ICISS commissioners, particular actors in the UN Secretariat and other intergovernmental bodies, influential scholars, and civil society organizations) and the broad "tool kit" of measures that can be employed in implementing the principle's call for prevention and response, many observers concentrate almost exclusively on the Security Council when evaluating what RtoP has or has not achieved. In short, its prominent position is undeniable, even if some might argue that it is regrettable.

I develop two main arguments concerning the Council's role in shaping both the implementation and perceptions of RtoP. I begin by suggesting that the original ICISS report was somewhat limited in its explication of the Council's responsibilities in concentrating on the authorization of coercive means to address crises

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of human protection. The past two decades have witnessed Security Council members not only employing a variety of diplomatic, political, and humanitarian measures to address atrocity crimes but also adjusting the purposes and practices of peace operations to advance protection goals. On the other hand, the willingness of the commissioners to identify potential alternatives to the Council when its members are paralyzed appears in retrospect to have been not only striking but forward looking, particularly in light of the contemporary realities of geopolitical rivalries and waning commitment to protection norms. Rereading the ICISS report thus serves to highlight the consequences and costs of the particular formulation of the responsibility to protect in the "2005 World Summit Outcome" document, which was less expansive in its view of the actors that should take the lead in operationalizing RtoP's "third pillar."[2]

The Question of "Right Authority"

There are three main reasons for the Security Council's prominence in any discussion of the implementation of RtoP. First, and most obviously, the Council is designated in Article 24 of the UN Charter—one of the most authoritative multilateral treaties we have—as the body with a particular responsibility to manage threats to international peace and security. Moreover, Council decisions, unlike those of most other international organs, are binding on all member states of the UN, even when implementation of the resolutions might conflict with other international obligations.[3]

Second, beyond these formal roles and powers, the Council serves as a forum for two critical processes in contemporary international relations: the management of great power rivalry and facilitation of great power cooperation, and the development and diffusion of norms related to international peace and security. The extent to which the Council effectively carries out these functions is, of course, another question and a matter of considerable debate.

Finally, the Council is one highly visible setting for the operation of multilateralism. As a legitimating process of international decision-making, multilateralism expresses two key values of procedural justice that are foundational to modern international society—what Christian Reus-Smit refers to as "self-legislation" and "non-discrimination."[4] States, as sovereign equals or "peers," participate actively in the creation of the rules to which they are subject. Multilateralism also ensures that rules apply equally to all and seeks to minimize the potential

for power asymmetries and particular national interests to dominate. The Security Council was designed to enable both of these principles to work—albeit among a specific subset of states—in deliberations around collective action to maintain international peace and security. Consequently, when the Council authorizes coercive measures, such as military intervention, its actions are meant to reflect these valued principles of multilateralism. The ICISS commissioners echoed this assumption when they observed that "collective intervention blessed by the UN is regarded as legitimate because it is duly authorized by a representative international body; unilateral intervention is seen as illegitimate because [it is] self-interested."[5]

Various passages in the ICISS report underscore the Security Council's authoritative position in international society as the "linchpin of order and stability." The commissioners insisted that there is "no better or more appropriate body to authorize" military action to protect populations and stipulated that Council authorization must "in all cases be sought" prior to any intervention being carried out. To preempt those who might raise awkward questions about the Council's actual performance, the commissioners went on to argue that the core task is "not to find alternatives to the Council, but to make it work better" than it has.[6]

Nevertheless, given the importance that the commissioners placed on prompt and decisive action in situations featuring allegations of atrocity crimes, they also confronted the realities of Council paralysis and its propensity for "selective security."[7] More specifically, they coupled their prescriptive statements about the need to work through the Council with two further arguments about the conditions for the legitimate use of force to prevent or halt atrocity crimes. First, while the ICISS report acknowledged that a key condition for the effective functioning of the UN's collective security system is the renunciation of states' unilateral use of force for "national purposes," it articulated a significant but often forgotten corollary: that states should also be willing to use force "on behalf of, as directed by, and for the goals of the UN."[8] In other words, states must stand ready to "operationalize" the UN's authority. Second, the commissioners reflected explicitly—and in retrospect, boldly—on how those concerned about preventing and responding to atrocity crimes should address situations in which the Council could not or would not respond in a timely and decisive fashion (a theme I return to below).

As frequently noted, the way in which RtoP was formally endorsed by states at the World Summit gathering of heads of state and government in 2005[9] differs in

significant ways from how it was proposed in the original ICISS report.[10] One obvious difference relates to where the principle of RtoP appeared in the final text of the "2005 World Summit Outcome" document (WSOD). The 2004 report of the High-Level Panel on Threats, Challenges and Change, which was prepared for then–secretary-general Kofi Annan and which built on the ICISS recommendations, endorsed the notion of a "collective international responsibility to protect" in its discussion of collective security and the Chapter VII powers of the Security Council outlined in the UN Charter.[11] The WSOD, by contrast, discusses the responsibility to protect in its section on human rights. This already hints at a possible aversion on the part of many UN member states to consider military intervention for human protection purposes as part of the organization's "standard" practice of collective security. States' concerns about designating the Council as the focal point for the development of RtoP were also reflected in the call by the WSOD for further consideration of the principle in the General Assembly. As a result, for the first five years of RtoP's life, it was the Assembly—not the Security Council—that effectively owned the principle. Edward Luck, the first special adviser to the UN secretary-general on the responsibility to protect, insisted that although the Council would be a major player in implementing RtoP in specific situations, the role of the General Assembly could not be dismissed or minimized, given both the need for all member states "to have their voices heard" and the potential for the Assembly to play an active and even operational role.[12]

That said, even if other actors both inside and outside the UN are positioned as central players in fulfilling the responsibility to protect, the WSOD explicitly calls upon the Security Council, in paragraph 139, to use its full range of powers—articulated in Chapters VI, VII, and VIII of the Charter—if and when other steps to protect populations from atrocity crimes are deemed insufficient. This paragraph's inclusion in the final text was by no means assured, given the contentious nature of the diplomacy surrounding it,[13] but was ultimately made possible by its consistency with existing procedures of collective security decision-making and prevailing conceptions of threats to international peace and security. In other words, many states agreed to endorse the articulation of RtoP in the WSOD precisely because it was *not* seen as transformational.

The deference shown to the Security Council as a key bearer of the international responsibility to protect—at least in its coercive dimension—was first and foremost attractive to permanent members Russia and China. Both states argued throughout the diplomatic bargaining leading up to the Summit that while

international action to address atrocity crimes might be needed, no revision to the Charter and its procedures was required. The more interesting question is why so many other states agreed to this continuation of great power privilege. Members of the Non-Aligned Movement grouping of states, for example, pressed during the negotiations for greater recognition of the Assembly's role—even if subsidiary to that of the Council—in the maintenance of peace and security. For their part, African Union states sought language that would enable the AU to "act first" and secure Security Council approval later.[14] In the end, however, the wording of paragraph 139 represented a compromise that would address what was seen as two greater problems: the possibility that Western states might use force unilaterally, outside of the formal structure of the UN; and the possibility that an atrocity crime situation itself might automatically trigger military action. The text of paragraph 139 thus ensures that each crisis will be addressed anew through the procedures of the Security Council, with no a priori commitment to act.

In sum, rather than embracing "coercive solidarism" as the means to realize protection for populations, the diplomatic agreement on RtoP reached in 2005 affirmed what Murthy and Kurtz have called "consensual solidarism," based on a continued commitment to political negotiation, particularly among the members of the UN Security Council.[15] The text accepted by states at the Summit was neither the revolution that was hailed by some of RtoP's strongest advocates nor the ominous overreach of supranational authority that has been emphasized by some of the principle's fiercest critics.[16] This interpretation is supported by the fact that paragraph 139 does not explicitly articulate an *international* responsibility to protect, which would be automatically activated if the state's primary responsibility to protect its population from atrocity crimes were not fulfilled. Instead, it speaks of states being "prepared to take collective action" on a "case-by-case basis." As I have argued elsewhere,[17] the gradual chipping away at earlier expressions of the international community's collective responsibility was accompanied by a strengthening of its role in helping states to uphold their primary responsibilities—a move designed to accentuate the sovereignty-supporting nature of the WSOD.

The Security Council's Record since 2001

In the period since RtoP was unanimously endorsed by world leaders, the General Assembly has continued to be a core venue for discussing the principle through the annual Informal Interactive Dialogues and, beginning in 2018, with debates

on the Assembly's formal agenda. With increased frequency since 2011, however, the Security Council has passed a series of resolutions referencing RtoP—both in specific cases and in relation to thematic issues.[18] Just as significant, perhaps, is the number of instances featuring either the serious risk or commission of atrocity crimes that did *not* generate active Council engagement. In fact, some of the most controversial cases, such as the closing months of the war in Sri Lanka in 2009–2010 and the atrocity crimes committed in Myanmar in 2016–2017, were not even formally discussed as items on the Council's agenda.

A closer examination of this checkered pattern suggests two different lines of argument about the way in which the ICISS report considered the Council's role.

Redefining Expectations?

On the one hand, the commissioners now appear to have been too minimalist in their vision of the responsibilities of the Council, concentrating on the authorization of coercive means—most notably military intervention—to address crises of human protection. There are a number of problems with this approach.

First, the effectiveness of so-called pillar three of the RtoP depends on something that is notoriously difficult in international relations: collective action. More specifically, it implies that Security Council members: (1) can agree that the situation they confront is one that features atrocity crimes; (2) are willing to deliberate on possible policy responses to address the threat to a population; and (3) have the capacity to mobilize and deploy resources quickly and decisively. Taking all of these elements into consideration, it is relatively easy to explain why we do not observe a consistent pattern of military action across cases of atrocity crimes. Furthermore, this inconsistency is not simply a feature of power politics. A lack of consensus among Council members at stage 1 or 2 listed above may not always stem from the pursuit of narrow interests or political motives—as present as these might be—but also from genuine disagreement about either the appropriateness or the feasibility of using particular instruments (including military ones) for protection objectives.[19]

Second, different situations clearly call for and permit different policy approaches. Some cases, such as those of Libya and Côte d'Ivoire in 2011, did see military means deployed by the Security Council for protection purposes. Those of Kenya in 2007 or Guinea in 2009, by contrast, saw a more subtle mix of preventive diplomacy, arms embargoes, travel bans, and threats of criminal prosecutions, while those such as Burundi in 2016 entailed human rights monitors

and military experts dispatched by the African Union and a regional mediation effort supported by the Security Council. The record of practice over the last fifteen years or so illustrates that the Council has addressed atrocity crime situations in ways that go beyond the authorization of coercive action, by enabling a range of political, diplomatic, and humanitarian efforts in particular crises. Many of these are well-captured by Alex Bellamy's notion of the "peaceful means in the third pillar."[20] But we should also consider the Council's role in mandating a number of peacekeeping or stabilization missions with robust protection mandates—most notably in the Democratic Republic of Congo, South Sudan, Mali, and the Central African Republic. These authorizations have taken place with the consent of the host state and thus do not conform easily to the original ICISS notion of "intervention."

Finally, the Council has played a more subtle but no less important role in shaping discourses and expectations about when and how state responsibilities for protection should be enhanced. Rather than viewing Security Council references to pillar one—state responsibility for protection—as a sign of RtoP's weakness or inability to stake out a clear role for the international community,[21] it can be argued that the Council's early engagement in a crisis in encouraging national authorities to protect their populations is a critical part of international efforts to prevent escalation. Nor do Council appeals to states to fulfill their primary responsibility to protect necessarily preclude other measures; in some instances, pillar one references have appeared alongside references to the role of international actors in assisting or supporting national protective action.[22] This highlights one of the central features of RtoP itself: it was never intended to be solely an international responsibility, but rather a principle that helped to foster a productive partnership between national and international actors in the service of protection.

Maintaining the Ambition

There is a second line of argument, however, that questions the tendency—present in some scholarly analyses of RtoP—to depict efforts of Security Council members as constituting fulfillment of their protection responsibilities. Despite my elaboration of the ways in which Council members have been active in cases featuring atrocity crimes, its overall record still appears underwhelming. To put it less diplomatically: Should we really let the Council off the hook?

Take the case of Syria's now decade-long civil war. Much ink has been spilled on assessing the impact of the various "double vetoes" issued by Russia and China

on efforts to protect populations, particularly in the early years of the crisis when mediation efforts had greater potential to forestall further escalation and internationalization of the conflict.[23] But the strident approach of many Western governments, which quietly and sometimes not so quietly, promoted regime change in Damascus, also contributed to the inability to find that critical commodity for Security Council action: common ground. Given the ensuing political deadlock within the Council over the legitimacy of different policy measures to address the escalating violence in Syria, most of the initial steps (such as sanctions) were adopted unilaterally or by regional bodies such as the European Union or League of Arab States. In spite of a series of reports by the Independent International Commission of Inquiry on the Syrian Arab Republic (established by the UN Human Rights Council in 2011) and briefings to the Council by the UN high commissioner for human rights, all pointing to the commission of atrocity crimes, it was not until 2014 that the Council reached its first decision. Resolution 2139, passed in February of that year, demanded that parties to the conflict allow delivery of humanitarian assistance.[24] When compliance with that demand was not forthcoming, Council members negotiated further measures, through Resolution 2165, by authorizing UN humanitarian agencies and their implementing partners to use routes across conflict lines and border crossings for the purposes of humanitarian relief.[25]

The language of Resolution 2139 does invoke pillar one of RtoP by reminding government authorities of their "primary responsibility" to protect the Syrian population. But there is no mention of the *international* responsibilities to address the ongoing threats to that population. More importantly, the concept of "protection" asserted through this resolution significantly dilutes the goals at the heart of RtoP, which entail protection from atrocity crimes. The elected members of the Council did exhibit considerable diplomatic skill during the winter and spring of 2014 in circulating and forging agreement on texts that would (potentially) enable lifesaving supplies to reach pockets of the besieged Syrian population—thereby elevating a critical humanitarian concern. What is less clear is whether we should consider the Council's decision on humanitarian action, in the words of Ralph and Gifkins, as "an R2P-appropriate resolution" that reflected a "collective cosmopolitan consciousness" within the Council.[26] While Resolutions 2139 and 2165 cannot be dismissed as merely symbolic—they do break some new ground in terms of authorizing the delivery of assistance—they barely rise above the lowest common denominator of interstate agreement and fall well short of the ambition to protect

populations from atrocity crimes. Moreover, the legal framework establishing the obligations to facilitate basic humanitarian relief has existed for decades; it did not require the principle of RtoP for its realization. The responsibility to protect was promoted by ICISS, and later endorsed by heads of state in 2005, not primarily to facilitate the delivery of supplies such as food and medical assistance—as critical as these might be in many conflict contexts—but to galvanize efforts to protect populations from widespread and systematic killing that amounts to international *criminal* action. Reducing the Security Council's role in fulfilling the responsibility to protect to one of issuing resolutions related to humanitarian supplies—some of which continue to go unheeded by parties on the ground—illustrates just how low expectations of and ambitions for the Council have become.

When we turn to examine in more depth those few situations in which the Security Council *did* act decisively to address instances of war crimes, crimes against humanity, genocide, or ethnic cleansing, a number of ingredients appear to have been necessary: a lack of obstruction by the government of the state that was at risk of or was experiencing atrocity crimes, or a willingness on the part of one of the Permanent Members (P5) of the Council to address that obstruction; the willingness of all P5 members to vote in favor of the action recommended in a draft resolution, or at least to abstain; active cooperation between the Security Council and key regional states and/or organizations; and the capacity of those carrying out Council-authorized action to mobilize and deploy resources almost immediately. As Jared Genser demonstrates, these conditions were all present in the cases of Libya (2011), Côte d'Ivoire (2011), and Mali (2013)—notwithstanding the controversies associated with the longer-term effects of these operations. By contrast, one or more of these factors was lacking in at least nine instances when Council members went as far as to acknowledge the existence of an atrocity crime situation but could not mount a decisive or rapid response.[27]

Putting aside, for the moment, the issue of the veto, two larger obstacles to joint action emerge from a close review of these cases. The first, which Council members are less capable—but not completely incapable—of overcoming, is the lack of robust support from key regional players. "When regional organizations discourage or reject Security Council engagement," observes Genser, "the Council is more likely to defer a response and abandon its coordination role," which can have devastating effects if those organizations are themselves incapable of addressing the threats to populations.[28] The reluctance of the African Union to accept Council involvement in the cases of Sudan and the Central African Republic at first

delayed and then hampered the Security Council's response, raising larger questions about whether deference to regional actors—even when seen as a way to enhance legitimacy—is always the best strategy for global multilateral actors. In the case of the Democratic Republic of Congo, the regional dimension was arguably even more problematic, as neighbors Rwanda and Uganda not only undermined measures authorized by the Council but also funded and provided soldiers for rebel groups operating in the DRC.

The second constraint on a timely and effective response is the host government's obstruction of UN-authorized actions and/or active perpetration of atrocity crimes through the actions of its military forces or proxies. This has been a recurring theme in both Sudan and South Sudan, as well as in the DRC. But it is here, once again, that we should resist giving Council members a pass. While I do not have the space to conduct a full counterfactual analysis, it is arguable that in all three of these situations one or more P5 members could have invested political capital to pressure national authorities to modify their behavior, and that a unified, strong, and consistent message from the Council as a whole—backed up by clear consequences for the infringement of promises—could have made a tangible difference. Instead, permanent members, as well as other pivotal member states, have too often been reluctant to acknowledge or challenge the behavior of a government that is deemed to have embarked on a positive path of political and economic development. In the case of South Sudan, key Western states on the Council were heavily invested in the success of a newly recognized UN member state, while in Myanmar they were committed to backing the promise of democratization under Aung San Suu Kyi. As veteran UN diplomat Charles Petrie has astutely observed, the tendency of governments in the West to "hold onto the fairy tale," even when on-the-ground realities indicate that the trajectory toward peaceful and inclusive societies is uncertain, has led to missed opportunities to exercise influence in ways that might have forestalled the descent into systematic and widespread violence.[29]

Revisiting the Veto Power of the P5

Let me now turn to the final factor that has affected the ability of the Security Council to fulfill its particular responsibility to protect populations from atrocity crimes: the veto power of the P5. While my discussion above illustrates that the veto is not the only obstacle to timely and decisive response by Council members, the past fifteen years have featured cases in which the exercise of the veto, or the

threat that a resolution will be vetoed, has stymied collective action to address atrocity crimes. Syria is the most high-profile instance of such a situation, but equally worthy of mention are Yemen, Myanmar, and the Democratic People's Republic of Korea—all instances in which one or more of the crimes articulated in the WSOD has been documented.

The ICISS commissioners not only exhibited a keen appreciation for the ways in which political dynamics within the Security Council could obstruct the mobilization of a decisive response to the risk or commission of atrocity crimes but also issued a set of concrete demands and suggestions that they believed would enable the Council to realize the ambitious agenda set out in their report. Foremost among these demands was a call for the P5 not to use their veto power when their "vital national interests" were not involved and not to obstruct the passage of a resolution authorizing military action to further protection "for which there [was] otherwise majority support."[30] Recognizing that Charter reform was an unlikely prospect in the near term, the ICISS report appealed to P5 members to agree to a more informal "code of conduct" on veto restraint, arguing that the great powers had a particular interest in ensuring that the Council's standing and legitimacy remained intact.

In the years since the publication of the report, the proposal for veto restraint has attracted significant scholarly scrutiny. Some assessments have underscored why it will face an uphill battle in garnering full support from the P5, given the likelihood that those permanent members wary of supporting coercive action to implement RtoP will portray their opposition as a means to prevent the Council from acting *irresponsibly*. Others have emphasized how the 2003 Iraq War dampened any original enthusiasm among the broader UN membership for "unshackling" Western great powers from the checks and balances offered by the veto.[31] But within the diplomatic world, the idea of restricting the use of the veto has—somewhat unexpectedly—continued to survive. A refined version of the code of conduct was advocated by the French government in 2013, with the addition of a procedural trigger for the activation of veto restraint. In 2015, the Elders (a group of independent global leaders, including former heads of state, who work for peace and human rights) also entered into the debate, requesting that any P5 member exercising a veto in an atrocity situation should provide a rationale for its decision and present an alternative course of action that could achieve the same protection objectives. The proposal that currently enjoys the broadest diplomatic backing is that of the so-called ACT group of states,[32]

which calls upon *all* members of the Council (elected and permanent) not to vote against "any credible draft resolution" intended to prevent or halt atrocity crimes.[33]

To date, however, none of these schemes appears to have had much impact on the behavior of the major powers that occupy permanent seats in the Council.[34] It is also debatable whether there has been a broader effect in raising the political costs of obstruction by one or more members of the P5—one of the key goals that the French government had hoped to advance through its call for voluntary restraint on the use of the veto. Although there have been public criticisms of the Security Council's failure to come to collective agreement in cases such as Syria, as well as condemnations of both Russia and China for their use of the veto,[35] it is difficult to produce clear evidence of a particular P5 member suffering negative consequences as a result of either casting a veto or threatening to withhold support for a draft resolution designed to address a situation of atrocity crimes.

In light of these modest diplomatic gains, and the voluntary nature of the code of conduct, some analysts have turned to "hard" law and seek to build a case for the illegality of P5 vetoes in atrocity crime situations. Jennifer Trahan, for example, suggests that the use of the veto is contrary to three sets of existing legal obligations: those relating to norms with jus cogens status (such as the obligation to prevent and punish genocide); those constraining states from acting contrary to the "purposes and principles" of the UN Charter; and those associated with treaties such as the Genocide Convention and the Geneva Conventions.[36] She goes on to argue that member states of the UN should no longer interpret the right of P5 members to exercise their veto as prior to all other sources of international law, and recommends that the General Assembly seek an advisory opinion from the International Court of Justice as to whether existing international law does, in fact, place limits on veto use.

This discussion of the possible measures available to the General Assembly points to another path for bringing about timely and decisive collective action in response to the threat or commission of atrocity crimes. Such an approach focuses less on trying to change the behavior of P5 members within the Council chamber and more on encouraging a new institutional balance between the Security Council and other intergovernmental bodies. In this respect, the ICISS report looks especially relevant in our current moment of geopolitical rivalry, given its willingness to identify potential alternatives to the Council in situations where political divisions are paralyzing its capacity to function as a forum

for collective security. One such alternative proposed in the report is the commissioners' recommendation that states confronting a stalemate in the Council seek support for action from the General Assembly, meeting in an emergency session under the "Uniting for Peace" procedure. Early reactions to this aspect of the ICISS report were mixed, as some argued that this procedure had been so heavily politicized in the early years of the postwar period, including through its association with efforts to condemn Israeli policies in the occupied territories, that it had ceased to serve as a tool for mobilizing effective action.[37]

But while twenty years ago, the ICISS commissioners might have appeared overly optimistic in their expectations of the General Assembly, our present decade demands a second look at how different intergovernmental bodies can play a role in crises featuring atrocity crimes. Indeed, whereas at the turn of the century the Security Council was exhibiting renewed confidence and relative cohesion as it emerged out of the Cold War period, and thus could credibly resist efforts by other actors to either oversee its activities or share the responsibilities for managing peace and security, today the reality is strikingly different. Not only are vetoes exercised more frequently, but the Security Council chamber itself has become a forum for mutual recrimination. Within this context, determined diplomats have managed to secure a few important "wins" within the General Assembly—most notably through the creation in December 2016 of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (known as the IIIM). In addition, the Human Rights Council—another product of the 2005 World Summit—has played a significant role in mandating the creation of commissions of inquiry and fact-finding missions to gather information and evidence in situations featuring atrocity crimes. Finally, calls have been growing louder for the UN secretary-general to exercise the policy-proposing powers that are available to his office under Article 99 of the Charter in order to ensure that atrocity crime situations are deliberated rather than "ducked" by Security Council members.

Conclusion

Writing two decades ago, the ICISS commissioners recalled a warning from then–UN secretary-general Kofi Annan: "If the collective conscience of humanity . . . cannot find in the United Nations its greatest tribune, there is a grave danger

that it will look elsewhere for peace and for justice."[38] Looking at the past five or six years of the Security Council's performance—including its paralysis in the face of the grim siege of the Syrian city of Aleppo in December 2016, its virtual non-reaction to the attacks by Myanmar state security forces against the Rohingya in 2017,[39] its limited response to the ongoing humanitarian catastrophe in Yemen, and its inability for months to agree on a statement or resolution regarding the COVID-19 pandemic—it is tempting to conclude that we have already crossed over into that dangerous terrain. Contrary to the predictions of ICISS, however, we have yet to see an institution or forum supplant the UN as the focal point for the pursuit of peace and justice. Instead, there is a gaping black hole, as multilateralism comes apart at the seams.

Skeptics may rightly point out that all of the alternatives to the Security Council—particularly the General Assembly—continue to face structural and political barriers to exercising their full potential, as components of an integrated structure, for addressing threats to international security and responding to atrocity crime situations. Nonetheless, the current crisis of multilateralism, which was extensively debated at the virtual events in 2020 marking the seventy-fifth anniversary of the UN, presents a unique moment to revitalize and reinvest in mechanisms of global cooperation, lest they slide further into deadlock and irrelevance. A variety of proposals to improve performance and accountability have been tabled, including the creation of a UN parliamentary assembly that would enable further consideration of the domestic impact of multilateral decisions and increase democratic oversight of key components of the existing UN system.[40] If such a scheme were to be realized—and this remains a big if—it could serve as a catalyst for more extensive reforms of both the General Assembly and the Security Council, as well as erode the latter's monopoly on the right to propose policies to manage international peace and security. At the time of writing, we do not know whether the opportunity presented by crises will be seized or if stasis and retrenchment will ensue. After all, while crises have been relatively frequent in the history of our modern international system, meaningful transformation of institutions and political orders has been much less common. Let us hope that vulnerable populations around the world do not continue to pay the price for our collective failure of imagination and resolve.

NOTES

[1] For the purposes of this essay, I use the term "atrocity crimes" to refer to the four acts stipulated in paragraphs 138 and 139 of the "2005 World Summit Outcome" document—namely genocide, crimes

against humanity, war crimes, and ethnic cleansing. See United Nations General Assembly, "2005 World Summit Outcome," A/RES/60/1, September 16, 2005.

[2] The UN secretary-general's first report on the responsibility to protect, issued in 2009, elaborates three pillars for implementation. Pillar one refers to the primary responsibility of the state to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing; pillar two sets out the responsibility of the international community to assist states in fulfilling their protection responsibilities; and pillar three calls for collective action at the international level to protect populations when national authorities are "manifestly failing" to do so. See Ban Ki-moon, "Implementing the Responsibility to Protect: Report of the Secretary-General," A/63/677, January 12, 2009.

[3] For an overview of the Security Council's roles, powers, and key functions, see the introduction to Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum, eds., *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945* (Oxford: Oxford University Press, 2007), pp. 1–60.

[4] Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations* (Princeton, N.J.: Princeton University Press, 1999), pp. 129–34.

[5] International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, December 2001), para. 6.9.

[6] Ibid., paras. 6.8 and 6.14.

[7] Adam Roberts and Dominik Zaum, *Selective Security: War and the United Nations Security Council since 1945*, Adelphi Papers 395 (Abingdon, U.K.: Routledge, 2008).

[8] ICISS, *Responsibility to Protect*, para. 6.12.

[9] UN General Assembly, "2005 World Summit Outcome."

[10] See, for example, the discussion in Thomas G. Weiss, *Humanitarian Intervention* (Cambridge, U.K.: Polity, 2007), p. 117.

[11] See United Nations Secretary-General, High-Level Panel on Threats, Challenge and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004).

[12] Edward C. Luck, "Taking Stock and Looking Ahead—Implementing the Responsibility to Protect," in Hans Winkler, Terje Rød-Larsen, Christoph Mikulaschek, eds., *The UN Security Council and the Responsibility to Protect: Policy, Process, and Practice*, Favorita Papers 01/2010 (39th IPI Vienna Seminar, Diplomatic Academy of Vienna), pp. 61–70, at p. 65.

[13] For an analysis of the negotiations, see Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (London: Routledge, 2011), pp. 21–25; and C. S. R. Murthy and Gerrit Kurtz, "Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory," *Global Society* 30, no. 1 (2016), pp. 38–53.

[14] This sequence was followed in the case of ECOWAS (the Economic Community of West African States) action in Liberia in 1992. Subsequently, in Article 4(h) of the Constitutive Act of the African Union, the AU asserted "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances," and did not specifically indicate the need for Security Council authorization (African Union, Article 4(h), Constitutive Act of the African Union, Lomé, Togo, Gulf of Guinea, July 11, 2000). According to some legal scholars, this omission means that the Constitutive Act could change the traditional, hierarchical relationship between the Security Council and regional organizations (as outlined in Chapter VIII of the UN Charter). See, for example, Jean Allain, "The True Challenge to the United Nations System of the Use of Force: The Failures of Kosovo and Iraq and the Emergence of the African Union," *Max Planck Yearbook of United Nations Law* 8, no. 1 (2004), pp. 238–89.

[15] Murthy and Kurtz, "Responsibility as Solidarity," p. 39. These authors draw the terms "coercive" and "consensual" solidarism from Andrew Hurrell, *On Global Order: Power, Values, and the Constitution of International Society* (Oxford: Oxford University Press, 2007), pp. 63–65.

[16] For an example of this form of critique, see Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge, U.K.: Cambridge University Press, 2011).

[17] See Jennifer M. Welsh, "Norm Contestation and the Responsibility to Protect," *Global Responsibility to Protect* 5, no. 4 (2013), pp. 365–96.

[18] For the most up-to-date list of Security Council references to RtoP, see the website of the Global Centre for the Responsibility to Protect: www.globalr2p.org/resources/un-security-council-resolutions-and-presidential-statements-referencing-r2p/. According to the Global Centre, as of June 2021 the Council had made approximately ninety references to RtoP in its resolutions. This number has been challenged by some on the basis of its overly inclusive approach, which considers references to the broader concept of the "protection of civilians," and not only the protection of populations from the atrocity crimes specified in the "2005 World Summit Outcome." Using a more restrictive definition, the number of references would still reach at least fifty.

[19] For further elaboration on why we should resist assessing RtoP solely on the basis of its capacity to generate military intervention, see Jennifer M. Welsh, "The Responsibility to Protect after Libya and Syria," *Daedalus* 145, no. 4 (Fall 2016), pp. 75–87.

[20] Alex J. Bellamy, *The First Response: Peaceful Means in the Third Pillar of the Responsibility to Protect* (Muscatine, Iowa: Stanley Centre for Peace and Security, December 2015), stanleycenter.org/publications/pab/Bellamy3rdPillarPAB116.pdf.

[21] As an example, see Aidan Hehir, *Hollow Norms and the Responsibility to Protect* (Houndsmills, U.K.: Palgrave Macmillan, 2019).

[22] For analysis of how Council resolutions and presidential statements have related to the different pillars of RtoP in a series of cases between 2005 and 2018, see Jared Genser, "The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement," *Chicago Journal of International Law* 18, no. 2 (Winter 2018), pp. 420–501.

[23] See, for example, Justin Morris, "Libya and Syria: R2P and the Spectre of the Swinging Pendulum," *International Affairs* 89, no. 5 (September 2013), pp. 1265–83; Alex J. Bellamy, "From Tripoli to Damascus? Lesson Learning and the Implementation of the Responsibility to Protect," *International Politics* 51, no. 1 (January 2014), pp. 23–44; Roland Paris, "The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention," *International Peacekeeping* 21, no. 5 (October 2014), pp. 569–603; and Aidan Hehir, "Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring," *Cooperation and Conflict* 51, no. 2 (November 2015), pp. 166–83.

[24] United Nations Security Council, Resolution 2139, S/RES/2139, February 22, 2014.

[25] United Nations Security Council, Resolution 2165, S/RES/2165, July 14, 2014. Notably, this resolution authorized these actions *without the need for consent* from the Syrian government.

[26] Jason Ralph and Jess Gifkins, "The Purpose of United Nations Security Council Practice: Contesting Competence Claims in the Normative Context Created by the Responsibility to Protect," *European Journal of International Relations* 23, no. 3 (September 2017), pp. 630–53, at pp. 647, 641.

[27] Genser, "The United Nations Security Council's Implementation." The nine cases include the Democratic Republic of the Congo, Darfur, Blue Nile and South Kordofan, South Sudan, Syria, Yemen, North Korea, the Central African Republic, and Myanmar.

[28] Ibid., p. 498.

[29] "UN Response to Atrocities: A Conversation with Ambassador Gert Rosenthal and Mr. Charles Petrie" (event recording, panel discussion, Global Centre for the Responsibility to Protect, CUNY Graduate Center, New York, November 19, 2020), www.globalr2p.org/resources/panel-discussion-un-response-to-atrocities-a-conversation-with-ambassador-gert-rosenthal-and-mr-charles-petrie/.

[30] ICISS, *Responsibility to Protect*, para. 6.21.

[31] Justin Morris and Nicholas J. Wheeler, "The Responsibility Not to Veto: A Responsibility Too Far?," in Alex J. Bellamy and Timothy Dunne, eds., *The Oxford Handbook of the Responsibility to Protect* (Oxford: Oxford University Press, 2016).

[32] The acronym ACT stands for Accountability, Coherence and Transparency. The ACT group is concerned with the broader theme of Security Council working methods, of which use of the veto is one component. At the time of writing, 120 member states of the UN have supported the code of conduct.

[33] The three schemes for veto restraint put forward by France and Mexico, the Elders, and the ACT group of states are further explained and assessed by Bolarinwa Adediran in "Reforming the Security Council through a Code of Conduct: A Sisyphean Task?," *Ethics & International Affairs* 32, no. 4 (Winter 2018), pp. 463–82.

[34] At the time of writing, only France and the United Kingdom have publicly backed the ACT code of conduct.

[35] As of September 2020, Russia had cast fourteen vetoes in relation to the Syrian conflict, while China had cast eight.

[36] Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (Cambridge, U.K.: Cambridge University Press, 2020).

[37] Dominik Zaum, "The Security Council, the General Assembly and War: The Uniting for Peace Resolution," in Lowe et al., *Security Council and War*, pp. 163–68. Zaum also notes that Security Council members, over time, have become less likely both to invoke the procedure and to act on requests from the General Assembly under the Uniting for Peace resolution (General Assembly Resolution 377[V]).

[38] Kofi Annan, quoted in ICISS, *Responsibility to Protect*, para. 6.22.

[39] The only formal response was the adoption of a statement issued by the president of the Security Council stressing the "primary responsibility of the Myanmar government to protect its population."

United Nations Security Council, "Statement by the President of the Security Council," S/PRST/2017/22 (statement presented at the UN Security Council, 8085th meeting, November 6, 2017), p. 1.

[40] See Maja Brauer and Andreas Bummel, *A United Nations Parliamentary Assembly: A Policy Review by Democracy without Borders* (Berlin: Democracy without Borders, September 2020), www.democracywithoutborders.org/files/DWB_UNPA_Policy_Review.pdf.

Abstract: The principle of the responsibility to protect (RtoP) conceives of a broad set of measures that can be employed in preventing and responding to atrocity crimes. Nevertheless, the UN Security Council remains an important part of the implementation architecture, given what the International Commission on Intervention and State Sovereignty referred to as its authoritative position in international society as the "linchpin of order and stability." As part of the roundtable "The Responsibility to Protect in a Changing World Order: Twenty Years since Its Inception," this review of the Council's role in fulfilling its responsibility to protect advances two somewhat contrasting arguments about the original ICISS report. First, it suggests that the commissioners may have underestimated the Council's potential contribution, by concentrating on the authorization of coercive means to address crises of human protection. Over the past two decades, the Security Council has not only employed various diplomatic, political, and humanitarian measures to address atrocity crimes but also adjusted the purposes and practices of peace operations to advance protection goals and more subtly shaped discourses and expectations about state responsibilities for protection. However, I also argue that the willingness of the ICISS to identify potential alternatives to the Security Council when its members are paralyzed appears in retrospect to have been both bold and forward looking, in light of the Council's failures to act in a timely and decisive manner to protect amid crises and the contemporary realities of geopolitical rivalry. The article concludes by suggesting that future efforts to protect populations from atrocity crimes should focus not only on the herculean task of trying to change the behavior of P5 members of the Council but also on encouraging a new institutional balance between the Security Council and other intergovernmental bodies.

Keywords: responsibility to protect (RtoP), atrocity crimes, UN Security Council, International Commission on Intervention and State Sovereignty (ICISS), 2005 World Summit Outcome, multilateralism, use of force, UN General Assembly, Uniting for Peace