

Just Not in the Neighbourhood: China's Views on the Application of the Responsibility to Protect in the DPRK

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Abstract

Much has been written about China's active engagement and progressive approach to the "responsibility to protect," a norm that reframes state sovereignty not as a right but as a responsibility. China's response to the "Report of the UN Commission of Inquiry on human rights in the Democratic People's Republic of Korea (DPRK)," which invokes the norm, however, challenges existing literature. China flatly refuses to uphold the responsibility to protect in the case of the DPRK, despite using previously supported standards to invoke the norm elsewhere and the report's dozens of consensual recommendations. This article is the first to systematically investigate how China has responded to the report. It shows that China's responses are shaped by its exceptionalism and concerns that the responsibility to protect could lead to regime change. I conclude with implications for the broader question of China's engagement with international norms in its near abroad. In my discussion, I draw on interviews with Korean and Chinese foreign policy elites, UN and US officials and DPRK human rights advocates, as well as primary and secondary documents.

Keywords: Democratic People's Republic of Korea; responsibility to protect; human rights; Commission of Inquiry; right to food; mass abuse

Much has been written about China's progressive approach to the "responsibility to protect," a norm that reframes sovereignty as a responsibility, as opposed to a right, of states.¹ As states adopt and internalize that sovereignty means a responsibility to protect populations from mass atrocities, state interests would be constituted in ways that limit abuse of their citizens.² Scholars largely agree that China has moved from outright opposition to the norm to its measured backing.³ China supports the principle that states have a responsibility to protect populations from

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1 International Commission on Intervention and State Sovereignty 2001.

2 Bellamy 2013.

3 Fung 2019b; Foot 2016; Job and Shesterinina 2014; Liu and Zhang 2014; Teitt 2009.

mass atrocities (pillar one), and that international assistance can support a state's capacity to do so (pillar two). Under certain conditions, China is even willing to endorse the international community acting when a state fails in its responsibility to protect (pillar one).

The invocation of the responsibility to protect norm (R2P) in the context of mass abuse in the Democratic Republic of Korea (DPRK), however, challenges assessments of China's overall trajectory of moving towards active engagement with the norm. In the words of one observer, China does "clearly wish the whole issue would simply go away."⁴ In 2014, the "Report of the UN Commission of Inquiry on human rights in the DPRK" (the Report hereafter) stated that Pyongyang's violations of human rights constituted crimes against humanity, particularly in regard to the state's abuse of the right to food, where violations were "essential components" of the political system and that "[the] gravity, scale and nature of these violations revealed a State that does not have any parallel in the contemporary world."⁵ The Report specifically invoked the responsibility to protect in demanding that Pyongyang comply with dozens of measures. It also called for targeted sanctions and the referral of the state to the International Criminal Court (ICC). In contrast to its recent behaviour regarding the responsibility to protect, in this case China consistently refuses to recognize the Report and continues to stymie the Report's progress to move beyond the UN Human Rights Council (UNHRC).

The DPRK case is seminal for understanding the PRC's behaviour with regard to the responsibility to protect and, by implication, it speaks to a broader question of China's engagement with international norms in its near abroad. First, the DPRK case provides an example of the responsibility to protect being applied not only for a chronic case of mass abuse but also for a less invoked interpretation of a crime against humanity: the abuse of the right to food. With China's consistent position on prioritizing socio-economic rights, invoking the responsibility to protect potentially could lead to China's "rhetorical entrapment" to act instead of just speak on the importance of the fundamental right to food.⁶ Second, the DPRK case means that the responsibility to protect would be applied to China's near abroad – and to a security partner no less. Unlike most other responsibility to protect cases, the DPRK is entangled with China's material interests, which may lead to tensions with China's efforts to be a "responsible power."⁷ Perhaps more than in any other case, China approaches the DPRK case like any other great power, privileging its own material interests. Third, the DPRK case departs from China's previous efforts to modify the content of the responsibility to protect norm through proactive engagement.⁸ China does not acknowledge the responsibility to protect in the case of the DPRK, despite using previously agreed standards

4 Haggard 2014.

5 UN General Assembly 2014a, para. 80.

6 Risse-Kappen, Ropp and Sikkink 1999.

7 Richardson 2011; Fung 2019a.

8 Fung 2019b.

to invoke the norm (i.e. that crimes against humanity are being committed) in other cases. China's efforts to counter the recommendations of pillar one and two in this case go against China's traditional support of the norm in these consent-based contexts. China supplements this dismissal with bureaucratic tactics, for example emphasizing that the less powerful UNHRC is the only venue for the Report, and leads the dissent in this case.

This article is the first to systematically investigate how China responded to the Report's linking of the responsibility to protect to the DPRK.⁹ The nascent academic literature on responsibility to protect and the DPRK offers little comment on China's role.¹⁰ Indeed, in the extensive Chinese-language academic literature on the responsibility to protect, there is only passing discussion of the DPRK.¹¹ The question of China's role in addressing the DPRK's human rights record is also typically left aside in analysis of bilateral relations.¹² First, I unpack China's engagement with the emerging norm by highlighting China's initial efforts to dismiss the norm during its inception in 2000, its tempered engagement following institutionalization in 2005 and 2009, and finally its support for application of the norm in multiple cases. This brief historical overview underscores the persistent debate about the justification and application of the responsibility to protect. I then show how the DPRK case is an outlier in China's proactive engagement with the norm, driven in part by PRC exceptionalism and concerns that the responsibility to protect could be a pathway to regime change. Paradoxically, China's actions to limit the norm, even when the current enthusiasm for the responsibility to protect is at its nadir post-Libya, is an indicator of China's view that the responsibility to protect has the potential to trigger intervention. Interviews with ROK and PRC foreign policy elites, UN and US officials and DPRK human rights advocates supplement my use of primary and secondary documents.

China's Engagement with the Responsibility to Protect

China's position on the responsibility to protect has evolved since its initial outright opposition to the norm. China now firmly advocates assisting states' capacities to prevent mass atrocities, a principle consistent with the responsibility to protect. As a permanent member of the UN Security Council, China has endorsed the norm's application in several cases; however, it also has a record of blocking the invocation of the norm, reflecting PRC concerns over the undermining of state sovereignty. While China accepts the prudent use of the responsibility to protect, and even the use of force, it does so under two conditions.

9 On whether the application of the responsibility to protect is feasible in the case of the DPRK, see Kondoch 2016; Lee, Shin-wha 2012.

10 Kim, Jawoon, and Bloomfield 2017; Bellamy 2015; Chow 2017; Kondoch 2012; 2016; Lee, Shin-hwa 2012; Liang-Fenton 2007; Kim, Hun Joon 2016. Only Cohen 2014 is an exception.

11 Using the politics, law and military journals of the China National Knowledge Index. Only passing references were made to the Six-party Talks in articles concerning the responsibility to protect.

12 See, e.g., Reilly 2014; You 2001; Lee, Hochul 2013.

The first is that application of the norm must adhere to the 2005 World Summit Outcome language. Second, applying the norm should not result in sudden, significant reforms of the target state's political infrastructure, which would be tantamount to regime change.¹³ China's shift regarding the norm is attributable to two reasons. The first was the clarification that the norm was not a rejection of traditional sovereignty. The second was that China was able to modify the content of the norm, incorporating the protection of the traditional sovereignty concept.

When the International Commission on Intervention and State Sovereignty proposed the responsibility to protect principle as a reconceptualization of sovereignty in response to the international community's failures to prevent genocide in Rwanda and Srebrenica and ethnic cleansing in the former Yugoslavia, China initially took the "hardest line"¹⁴ in defending traditional sovereignty and the state-centric system.¹⁵ China was part of a coterie of states that sought to limit the responsibility to protect before its institutionalization at the 2005 World Summit.¹⁶ Owing, in part, to China's efforts, the responsibility to protect could only be applied to four specified crimes: genocide, war crimes, crimes against humanity and ethnic cleansing, all of which were already addressed in existing international law.¹⁷ States had to cross some threshold of proof that they were "manifestly failing" to protect their citizens; it was no longer a case of them simply being "unable and unwilling" to execute their responsibilities. Further, the international community was to respond in a "timely and decisive manner," following formal UN Security Council authorization – although there was no requirement for the UN Security Council to address crises, only *consider* action. Owing to its permanent seat on the Council, this change gave China greater control to direct if and when the norm could be invoked.

After the 2005 inflection point, China did not join the rejectionists who sought to quash the norm as it now deemed the responsibility to protect to be a lesser challenge to traditional sovereignty. China endorsed the application of the principle to crises in the Democratic Republic of the Congo, Burundi and Sudan's Darfur region.¹⁸ However, China shifted focus to prevent any expansion or reinterpretation of the norm beyond the 2005 agreement,¹⁹ blocking the invocation of the responsibility to protect to address what China saw as Myanmar's internal affairs.²⁰ Instead, China insisted that any revisions to the norm would require endorsement from the UN General Assembly, a virtually impossible task given many developing states' hostility to the norm.²¹

13 Fung 2018.

14 Thakur 2006, 268.

15 International Commission on Intervention and State Sovereignty 2001, 391–394.

16 UN General Assembly 2005.

17 Job and Shesterinina 2014.

18 See UN Security Council 2006a; 2006b; 2006c.

19 UN Security Council 2006d.

20 See UN Security Council 2007a; 2007b. See also Badescu and Weiss 2010.

21 See, e.g., UN Security Council 2006d; 2006e.

Aware of the growing concern about the emerging norm, the special representative for the responsibility to protect prioritized garnering support from Asian states in a region-by-region effort to bolster support for the norm.²² The 2009 follow-up report on implementing the responsibility to protect emphasized that the norm was “an ally of sovereignty, not an adversary,”²³ and reconfigured the 2005 language into the aforementioned three pillars that are crucial for understanding the norm today. In response, China reaffirmed that “National Governments bear the primary responsibility for protecting their own citizens” and that the norm operates in a hierarchy: state protection responsibilities are paramount, and must first be definitively exhausted before the international community is permitted to act.²⁴

China began modifying the content of the responsibility to protect by emphasizing the primacy of traditional state sovereignty. China also began advocating for a greater say for regional organizations at the UN Security Council, early warning systems at the state and regional levels, and a redefinition of “timely and decisive response.”²⁵ For example, China sees states acquiring early warning systems as a long-term commitment to protect populations, recasting the meaning of “timely and decisive response” as not just as a reaction to immediate violence. China approaches the responsibility to protect as a multi-stakeholder and multifaceted effort which should respect traditional sovereignty.²⁶ In so doing, China emphasizes traditional sovereignty as a means through which to achieve the responsibility to protect by assisting state and regional capacity-building.

During this period, China invoked the responsibility to protect pillar one in Libya, Côte d’Ivoire, South Sudan and Yemen in 2011; in Mali in 2012; in Somalia in 2013; and in Syria in 2014.²⁷ Controversially, in 2011 China abstained from a vote on a no-fly zone over Libya, quoting pillar three language.²⁸ The resulting compromise was viewed unfavourably by China, and some see the Libya intervention as the factor behind China’s multiple vetoes against action in the Syria crisis.²⁹ To defend its Syria vetoes, China tentatively floated the semi-official concept of “responsible protection,” which reframed these vetoes as fair and responsible.³⁰ “Responsible protection” established six criteria for intervention that would restrict when non-consensual measures could be applied, emphasizing a means–end trade off. However, the initiative was short-lived, disappearing from PRC discourse after 2012 as China backed the “responsibility while protecting”

22 Interview with former special representative for the responsibility to protect, New York, 2 March 2016.

23 UN General Assembly 2009, 7.

24 UN Security Council 2010, 24.

25 Teitt 2008, 20.

26 UN Security Council 2009. See also Lin 2010.

27 UN Security Council 2011a; 2011b; 2011c; 2011d; 2012; 2013; 2014a.

28 UN Security Council 2011e; Fung 2019a.

29 Sun 2012.

30 Ruan 2012; Garwood-Gowers 2016; Fung 2018.

initiative which championed responsibilities before and after an intervention decision.³¹

The 2014 Report of the Commission of Inquiry on Human Rights in the DPRK

At face value, the silence over the responsibility to protect and the DPRK case is surprising, given that abuses of more limited scope and scale attract more attention.³² Besides the chilling effect of a veto-empowered China, the responsibility to protect is still largely applied to crisis cases of armed conflict and violence and, even according to responsibility to protect advocates, slow-burning, “chronic” cases of human rights abuse are viewed as better suited to other mechanisms.³³ Furthermore, in the context of the DPRK military and nuclear arsenal, it appears that the pillar three options are already precluded.³⁴

Despite sporadic efforts within and outside the UN system, there remains little traction for the responsibility to protect in the context of the DPRK.³⁵ The UN Commission on Human Rights issued its first resolution on human rights violations in the DPRK in June 2003,³⁶ although the next spate of resolutions on the matter, from 2008 to 2013, bear no mention of the responsibility to protect.³⁷ Finding little progress through the special rapporteur, the UNHRC mandated the Commission of Inquiry in 2013 to “investigate the systematic, widespread, and grave violations ... with a view to ensuring full accountability in particular for violations that may amount to crimes against humanity.”³⁸ The Commission held over 240 confidential interviews, used 80 written submissions and departed from the typical closed-door approach by holding public hearings in multiple cities to produce a comprehensive report on DPRK human rights abuses.

The Report found that “systematic, widespread and gross human rights violations have been, and are being committed by the DPRK,” particularly in the state’s control of the right to food, to such an extent that these stood as crimes against humanity.³⁹ Moreover, the Report noted that these were “essential components of a political system.”⁴⁰ It specified that crimes against humanity were being conducted against six population groups in particular: political prisoners, regular prisoners, religious believers, escapees, abductees and starving persons.

31 See, e.g., “Statement delivered on behalf of the Permanent Mission of the PRC to the UN: General Assembly informal, interactive dialogue on the ‘Responsibility to Protect: Timely and Decisive Response,’” unofficial transcription, 5 September 2012, http://responsibilitytoprotect.org/China%20Statement%20_Transcribed_.pdf. Accessed 8 April 2020.

32 Bellamy 2011, 67–68.

33 Luck 2009.

34 Kim, Jawoon, and Bloomfield 2017, 182.

35 See Havel, Bondevik and Wiesel 2006; 2008. Also see Yeo and Chubb 2018.

36 UN Commission on Human Rights 2003.

37 See Kim, Jawoon, and Bloomfield 2017, 182.

38 UN General Assembly 2013a.

39 UN Human Rights Council 2014, 365.

40 UN General Assembly 2014a.

The Report found that *politicide* – the mass killing of people because of their assigned social class and perceived political opinions – was being conducted on such a scale to possibly be referred to the Geneva Convention on the Prevention and Punishment of the Crime of Genocide. As the Report’s chairperson Chief Justice Michael Kirby repeatedly noted, mass killings and torture resembled Nazi-era atrocities.⁴¹

The Report legitimized the use of the responsibility to protect with regard to the DPRK, specifically stating that the international community should face up to its responsibility to protect as Pyongyang had “manifestly failed” to do so. This language echoes the phrasing of the 2005 World Summit Outcome Document, which is also paraphrased in the Report preamble. Despite the rather ominous language that “the peaceful efforts taken so far have proven inadequate,”⁴² the majority of the Report’s recommended steps to improve human rights compliance in the DPRK were consensual (pillar one efforts), including how other actors could consensually assist Pyongyang (pillar two efforts). The only coercive measures recommended by the Report included targeted sanctions against complicit regime elites and an ICC referral of the country case, under which officials, possibly including the supreme leader Kim Jong Un himself, could face charges.

China was “unhappy” at being named in the Report.⁴³ The Report drew a causal link: noting that the PRC and DPRK security forces collude to forcibly repatriate escapee North Koreans who are then subjected to severe punishment or execution by the Pyongyang regime upon their return.⁴⁴ Thus, China violates international human rights and refugee laws and could therefore be held accountable in future trials of North Korean perpetrators. The Report pointed out that China had a role to play in modifying North Korea’s actions through diplomacy.⁴⁵ Previous UN efforts to address DPRK human rights abuses had not named China,⁴⁶ nor had they directly discussed China’s overall treatment of escapees.⁴⁷ UN resolutions had also avoided directly naming China in connection with refolement practices.⁴⁸ The Report, however, disputed China’s claims that escapees were only economic migrants who had to be deported and that those who were forcibly returned were not punished by Pyongyang. The

41 Walker 2014.

42 UN Human Rights Council 2014, 364.

43 Interview with official from the UN Human Rights Office, Seoul, 13 November 2017.

44 UN Human Rights Council 2014, 127–132.

45 UN General Assembly 2014a, para. 90(f).

46 Other forums have discussed China’s role in the forcible repatriation of DPRK refugees. See Congressional-Executive Commission on China 2012.

47 Cohen 2014, 61–62. Special rapporteur Marzuki Darusman’s report to the UNGA is an exception in that it noted a much covered incident in which 31 North Koreans who had “sought international protection in China were arrested for being in the country illegally.” See UN General Assembly 2012a, para. 57. This particular incident was exceptional as even the UN secretary-general publicly called upon China to offer support to these escapees. See “UN chief voices concern over NK defectors in China.” *Yonhap News Agency*, 8 March 2012, http://www.koreatimes.co.kr/www/nation/2018/03/120_106552.html. Accessed 8 April 2020.

48 See UN General Assembly 2012b; 2013b; 2014b.

publication of the Report indeed upped the ante, as Beijing had been “caught telling untruths” in its defence of criticism of its human rights practices regarding these illegal economic migrants.⁴⁹ In its formal response to the Report, China reiterated that “illegal entry” into its territory was a criminal offence and that it needed to maintain its “national sovereignty and fundamental interests, bearing in mind the stability of the Korean Peninsula.”⁵⁰ China rejected attempts to make the question of forced repatriations “a refugee one” and dismissed moves to “internationalize” China’s approach to such economic migrants.⁵¹

By identifying the regime’s abuse of the right to food, the Report created an even larger issue for China. PRC perceptions on the universality of human rights emphasize the precedence of subsistence and development.⁵² China consistently emphasizes that the right to subsistence encompasses the right to food, namely the right for people to “eat their fill,”⁵³ and that “eradicating poverty and hunger” should be a “top priority for all countries.”⁵⁴ China gives “priority to the protection of the people’s rights to subsistence and development,”⁵⁵ and, in China’s view, solving the right to food is a fundamental means of “improving their basic human rights.”⁵⁶ The PRC prioritizes social and economic rights over civil and political rights,⁵⁷ and Beijing projects this view internationally as a key agent in driving the “second generation” of human rights development, which emphasizes economic and social rights.⁵⁸ If China was so committed to supporting the right to food as a fundamental economic right and key for economic development, then the Report not only put China under the spotlight but it also opened the door for China’s “rhetorical entrapment.”⁵⁹ After decades of supporting the prioritization of economic and social rights, China was now in a position to defend its rhetoric with a suitable response to a state which restricted access to food and economic growth as a matter of government policy. PRC officials were aware that not to respond on the right to food could potentially leave China open to criticisms that it was using this rhetoric instrumentally.⁶⁰

49 Cohen 2014, 74.

50 Letter from PRC ambassador of the Permanent Mission of China to the UN, Geneva, Wu Haitao, to Michael Kirby, 30 December 2013 in UN General Assembly 2014a, Annex II. Interestingly, China permits UNHCR access to other asylum seekers. See Cohen 2014, 71.

51 Letter from PRC ambassador, 30 December 2013.

52 See Zhao 2015.

53 Information Office of the State Council of the PRC 1991.

54 Permanent Mission of the PRC to the UN 2018a.

55 Information Office of the State Council of the PRC 2012. Similar language was used in Information Office of the State Council of the PRC 2016.

56 Information Office of the State Council of the PRC 1995. Similar language was used in Information Office of the State Council of the PRC 1997; 2000. Also see Permanent Mission of the PRC to the UN 2009.

57 Nathan 1994.

58 Kim, Hun Joon 2018; Kinzelbach 2012. See also Chen and Hsu 2018.

59 Risse-Kappen, Ropp and Sikkink 1999.

60 Interview with PRC Ministry of Foreign Affairs official, Washington, DC, 1 March 2016.

The Aftermath of the Report

China's approach to the responsibility to protect in the DPRK case differed from its prior actions in two ways. First, China's rhetoric made no mention of the term "responsibility to protect" with regard to the DPRK. This omission implies China's denial of the Report's findings. Second, China focused its efforts on procedure. By insisting that the Report should come under the remit of the UNHRC and no other UN body, China attempted to restrict the range of options available for the implementation of the Report's recommendations. By focusing on process, in the words of one observer, China astutely bypassed the "political liability of disputing facts by hiding behind procedure."⁶¹

First phase: the Report works its way through the UNHRC and the UN General Assembly

The UNHRC discussed a draft resolution regarding the Report in March 2014.⁶² The traditional critics of human rights reiterated their argument that country-specific content had no place at the UNHRC while emphasizing the touchstone of state sovereignty; however, those who are members of the UNHRC showed some willingness to accept the recommendations of the Commission, as pillar one and two efforts would bolster DPRK sovereignty.⁶³ But China ceded no ground and instead expressed its disappointment about the role the UNHRC was taking to "impede" stability, as the Report's "recommendations were out of touch with the real situation of the Korean Peninsula."⁶⁴ Regardless, the Resolution passed with a recommendation that the UN General Assembly refer the report to the UN Security Council for suitable action, with a view that the "the appropriate international criminal justice mechanism" should be considered, along with targeted sanctions.⁶⁵

The UNHRC effort paved the way for an "Arria-formula meeting" at the UN Security Council, which meant that the Report was filed as a document and not as a regular discussion item.⁶⁶ The chair of the Commission, Michael Kirby, addressed the need for an ICC referral, reminding the UN Security Council that "accountability is not optional."⁶⁷ China boycotted the session, which it viewed as a move that would unnecessarily aggravate the tension on the Korean Peninsula.⁶⁸ Advocate states pushed to have the Report formally added to the UN Security Council discussion agenda.

61 Interview with veteran DPRK human rights advocate, Washington DC, 17 October 2018.

62 UN Web TV 2014a.

63 See, e.g., the views put forward by Belarus, Iran, Laos, Venezuela and Zimbabwe.

64 UN Web TV 2014b.

65 UN General Assembly 2014c.

66 UN Security Council 2014b.

67 Gladstone 2014.

68 "Arria-formula meeting with the Commission of Inquiry on human rights in the DPRK (DPRK)." *What's in Blue*, 16 April 2014, <https://www.whatsinblue.org/2014/04/arria-formula-meeting-with-the-commission-of-inquiry-on-human-rights-in-the-democratic-peoples-repub.php#>. Accessed 8 April 2020.

The pressure continued apace when the special rapporteur, Marzuki Durusman, announced in October 2014 that the manifest failure of the DPRK to execute its responsibility to protect placed “the responsibility to ensure accountability on the international community.”⁶⁹ Durusman continued to pressure China, noting that “the commission of inquiry recommended that China and other States should respect the principle of non-refoulement and, accordingly, abstain from forcibly repatriating any persons to the DPRK.”⁷⁰ Durusman used direct and forceful language to recommend that the Report be put before the UN Security Council for formal consideration, thereby permitting regular briefings from the special rapporteur, and called upon the UN Security Council to refer the DPRK situation to the ICC and apply targeted sanctions to those “most responsible for crimes against humanity.”⁷¹

The UN General Assembly debated the report the following month at its Third Committee, which considers social, humanitarian and cultural issues before voting on whether they are passed on to the UN General Assembly plenary session. China failed in its attempt to persuade the “non-aligned movement” states, which routinely oppose country-specific resolutions, to stop the draft resolution. China then switched tactics and concentrated its efforts on removing the most inflammatory parts of the Report’s recommendations – that the DPRK had committed mass atrocities and that the UN Security Council should implement the entirety of the Report recommendations. China reiterated that the UN Security Council “was not the appropriate forum for dealing with human rights issues.”⁷² These efforts also failed and the resolution was passed by the Third Committee with a vast majority,⁷³ before going forward to the UN General Assembly, where it was also passed.⁷⁴

Second phase: the Report at the UN Security Council

After considerable political effort, the Report was added to the UN Security Council agenda at the end of December 2014. This move not only paved the way for discussion of the Report and its findings but also ramped up the pressure on Pyongyang with regard to its human rights situation with a new range of policy options, from public sessions and non-binding press or presidential statements to binding resolutions that could include even coercive language. Such measures would require a broadening of the agenda so that there was an implicit connection drawn between the nature of the regime and the interests of international peace and security. China led the pushback against the new item, with Russia in support. In the PRC’s view, the responsibility to protect had no relevance in this particular case. China did not deny “the existence of large-scale violations

69 UN General Assembly 2014d, para. 16.

70 Ibid., para. 51.

71 Ibid., para. 53.

72 UN General Assembly 2015a, 10.

73 UN General Assembly 2014e.

74 UN General Assembly 2015b.

of human rights,” which is the first and only time that China recognized the massive abuse of human rights by Pyongyang – although still without acknowledging the invocation of the responsibility to protect. But, China opposed “exploiting” the human rights abuses in the DPRK in order to refer the country to the UN Security Council and dismissed the idea that the DPRK posed a threat to international peace and stability.⁷⁵ China’s efforts failed to garner enough support and as vetoes could not be used in procedural meetings, a motion was passed to add the Report to the agenda. The UN Security Council would now “remain seized of” the DPRK case, thereby permitting Council members to request formal debates about the DPRK case for at least the next three years.

It took almost a year for the Report to finally appear on the UN Security Council agenda. The UN high commissioner for human rights, Zeid Ra’ad al Hussein, stated that the DPRK’s record was indeed a “threat to international peace and security” and that the UN General Assembly “may well call on the Security Council to take action,” a move which, in his view, was “essential.” The under-secretary-general for political affairs, Jeffrey Feltman, emphasized the DPRK’s responsibility to its population and recognized that “the international community has yet to find and agree on an effective way to address” the conditions highlighted in the Report; however, he only went as far as to say that “serious violations of human rights often serve as a warning sign of instability and conflict.”⁷⁶ China argued that these officials “should discharge their respective responsibilities and refrain from encroaching on the function of others.”⁷⁷ China re-emphasized its view that the human rights situation in the DPRK did not constitute a threat to international peace and stability and that the “Security Council is not the place to address human rights issues.”⁷⁸ Ultimately, China’s efforts fell short: the resolution was passed and the UN Security Council would remain seized of the matter, meaning that the DPRK would remain on the agenda for the following three-year period.

The UNHRC was engaged with the DPRK case through 2015 and 2016, passing resolutions calling for the full implementation of the Report’s recommendations.⁷⁹ The UN General Assembly called upon the UN Security Council to continue considering the Report’s recommendations in their entirety.⁸⁰ China’s attempts to block the UN Security Council from discussing the human rights situation in the DPRK failed in December 2016,⁸¹ although China concluded that continuing discussions were of “no benefit whatsoever.”⁸²

75 UN Security Council 2014c, 2.

76 UN General Assembly 2015c.

77 UN Security Council 2015.

78 Ibid.

79 UN General Assembly 2015c; 2016a.

80 UN General Assembly 2015d.

81 By 9 votes in favour to 5 against (Angola, China, Egypt, Russian Federation, Venezuela), with 1 abstention (Senegal). See UN Meetings Coverage 2016.

82 UN Security Council 2016, 2.

Third phase: the merging of DPRK human rights and non-proliferation discourses

In January 2017, the UN General Assembly increased its pressure on Pyongyang by noting that “the commission’s finding that the body of testimony gathered [in the Report] and the information received provide reasonable grounds to believe that crimes against humanity have been committed in the DPRK, pursuant to policies established at the highest level of the State for decades and by institutions under the effective control of its leadership.”⁸³ Once again, it called for the case to be referred to the ICC. China had already acknowledged its opposition to such a move by stating that it “did not join the consensus.”⁸⁴ The UN General Assembly and China adopted the same stances again in 2018.⁸⁵

Pressure was ramped up further by the findings of the Group of Independent Experts, a group convened to address the appropriate and practical measures necessary to ensure accountability for crimes against humanity. Such measures can include referral to the ICC.⁸⁶ The Group of Independent Experts reminded the international community of its responsibilities for collective action when states manifestly fail in their responsibilities and pointedly reminded the UN Security Council that it could recommend referral to the ICC or “[consider] the establishment of an ad hoc international tribunal.”⁸⁷ The pressure for accountability was continued by the reports from the special rapporteur,⁸⁸ the UNHRC,⁸⁹ and the UN General Assembly.⁹⁰

At the December 2017 meeting of the Council, China re-stated its views that peace and security on the Korean Peninsula should be the priority and that human rights matters did not belong at the UN Security Council. At the same meeting, assistant secretary-general for political affairs, Miroslav Jenča, reiterated that the international community should address its “collective responsibility to protect the population of the DPRK if the State does not protect its own citizens.”⁹¹ More worrying for China is the use of the responsibility to protect norm by other specialist groups. For example, the 1718 Sanctions Committee, which previously managed the oversight of energy sanctions against Pyongyang, began to use responsibility to protect language in its reports.⁹² And, more recently, the UN special rapporteur for human rights in the DPRK called for talks with the DPRK on nuclear issues to be combined with talks about human rights.⁹³ China has flatly rejected these calls.⁹⁴

83 UN General Assembly 2017a.

84 UN General Assembly 2016b.

85 UN General Assembly 2018a; 2017b.

86 UN General Assembly 2017c.

87 Ibid.

88 UN General Assembly 2017d.

89 UN General Assembly 2017e.

90 UN General Assembly 2017f.

91 UN Security Council 2017a.

92 UN Meetings Coverage 2017.

93 UN General Assembly 2018b; Nebehay 2018.

94 Permanent Mission of the PRC to the UN 2018b.

China's Approach to the Invocation of the Responsibility to Protect for the DPRK

China's standard position regarding the use of the responsibility to protect at the UN Security Council focuses on the use of the norm according to the guidance agreed upon in the 2005 World Summit Outcome Document. While China consistently supports the sanctity of state sovereignty in the context of any intervention, it does acknowledge that states have a responsibility to protect populations and has regularly employed the term "responsibility to protect" in its formal language at forums such as the UN Security Council. However, China's engagement with the responsibility to protect norm with regard to the DPRK differs in two key ways.

First, China has consistently refused to use the term "responsibility to protect" in reference to the DPRK case. A careful reading of statements given by the PRC at the UN Security Council, UN General Assembly and the UNHRC finds no reference to the term in respect of the DPRK, even after publication of the Report. Therefore, China does not accept the use of the norm in this case. Its deliberate omission of the term is at odds with its stance in dozens of UN Security Council resolutions and regular discussions about the norm, even in contested cases such as Libya, Syria and Venezuela. This silence permits China to expand the gap between the Report and all the subsequent UNHRC, UN General Assembly and UN Security Council output that does employ the term. Thus, China can dismiss the application of the norm to the DPRK case without actually dismissing the norm entirely. China reined in the application of the responsibility to protect norm in line with the 2005 World Summit Outcome Document standards, which arguably do still support state sovereignty; to entirely reject the norm would be too costly.

Second, China's diplomatic manoeuvres reflect a consistent focus on adherence to procedure. Accordingly, the PRC views the UNHRC as the routine and appropriate venue for the discussion of the Report. External observers note that "China knows that [DPRK human rights] conditions are very tough."⁹⁵ In China's view, it is not that the DPRK human rights issues are subjugated to traditional peace and security issues; human rights issues are not under the purview of the UN Security Council to begin with. This is consistent with China's prioritization of the peace and security of the Korean Peninsula, which should include denuclearization and the use of politically negotiated solutions, as the only means forward. However, this focus on process has two contradictory effects. While China's approach attempts to limit the expansion of the emerging DPRK responsibility to protect discourse at the UN Security Council, China still permits the "lesser of two evils": the linking of the responsibility to protect to the broader human rights agenda, as opposed to the international peace and security agenda, by insisting that the UNHRC is the appropriate venue in which to discuss the Report.

95 Interview with former US special envoy for North Korean human rights issues, Washington, DC, 19 October 2018.

What Explains China's Approach to the Report?

With PRC material interests with a contiguous nuclear-armed security partner and the Report's release coming at the height of a Korean Peninsula nuclear crisis, China was cautious about the implementation of the responsibility to protect norm in reference to the DPRK. China's preference is for a retention of the status quo, with no mention of the norm, and for human rights and security issues to remain bifurcated. To apply the responsibility to protect norm in the DPRK would be "dangerous" as the norm "cannot solve all the problems of the political system, regime, nuclear status [of the DPRK]."⁹⁶ However, China's complete disinterest in the Report's consensual recommendations remains curious. Moreover, China's record with the responsibility to protect shows that it is an adaptable and responsive player to the changing applications for the norm, indicating that China anticipates that other states will attempt to apply the norm to new issues.

Interviews reveal that China conceives of the responsibility to protect as a norm that "applies to other places," not those in "China's neighbourhood."⁹⁷ This suggests an exceptionalism logic: norms should apply differently to different states – that is, the responsibility to protect is a norm that is best applied to states that are geographically distant, weaker and politically marginal to China. Such states might be more acceptable sites to target with the responsibility to protect – and potentially have their sovereignty violated. Contiguous partner states are certainly unacceptable targets for the responsibility to protect norm as they are in China's near abroad – although this is not to say that the responsibility to protect norm can be applied in geographically removed places without consideration, as demonstrated by China's record of blocking invocations of the responsibility to protect. In this respect, China's traditional worldviews and strategic thought shape its behaviour regarding its near abroad, and Beijing's sustained and complete rejection of the responsibility to protect in the DPRK case is an exercise in agenda-setting power.⁹⁸ By setting parameters for a responsibility to protect that excludes the DPRK, even though the language invokes previously agreed upon 2005 standards supported by China, indicates that China acts like other great states that use exceptionalist claims to assert that they should not be bound by international norms in the way that other states may be.

In part, China's response to the DRPK case also highlights its concerns that the responsibility to protect norm could be used as a "Trojan horse" – that is, when intervention under the responsibility to protect is actually a vessel for an ulterior objective of unseating the DPRK government.⁹⁹ Indeed, China introduced the term "regime change" into its UN foreign policy lexicon regarding the DPRK once the responsibility to protect language morphed into other foreign policy discourse that was traditionally devoid of the term. For example, when the

96 Interview with senior UN scholar, Shanghai, 26 April 2018.

97 Interview with PRC Ministry of Foreign Affairs official, Washington, DC, 1 March 2016.

98 Easley and Park 2016.

99 McMillan and Mickler 2013, 286. See also Bellamy 2005.

UN Security Council expanded sanctions against the DPRK, China pointedly reminded fellow Council members that they “don’t seek foreign-imposed regime change; don’t incite a collapse of the regime.”¹⁰⁰ China’s discursive shift reflects its concerns that there are changing meanings attached to pillar three actions under the responsibility to protect, where non-consensual actions are linked to government accountability for mass crimes. The consistent focus in the broader media and within the UN system on the ICC option for the DPRK certainly fed such concerns. By invoking the responsibility to protect, ICC referrals for Sudan and Libya led to the indictments of both states’ leaders, applying pressure on those regimes and blurring distinctions between foreign-imposed regime change and UN-led intervention.

Conclusion

The case of the responsibility to protect with respect to the DPRK challenges the conventional wisdom that China has a largely progressive approach to the norm. In this particular case, China refuses to recognize the application of the norm to the DPRK and uses bureaucratic tactics to limit the influence of the Report. Combined, these changes represent a significant departure from how China has supported the norm in other cases – especially when consensual measures are recommended under pillars one and two – and when the responsibility to protect is invoked within the confines of the 2005 standards. It is important to distinguish that although China is hostile to the application of the responsibility to protect norm in the DPRK case, it is not dismissive of the norm entirely. China has worked within existing pathways to limit the Report rather than choosing to rout the responsibility to protect in its entirety. China has invested significantly in modifying the normative content of the responsibility to protect so that it is more attune to traditional sovereignty. To completely reject the responsibility to protect would be foolhardy, given the sunk costs in reforming its norm content, especially when considering the dwindling number of states that completely reject the concept.

By implication then, the case of the responsibility to protect as applied to the DPRK speaks to broader questions of China’s engagement with international norms. A combination of material factors, preference for the status quo, PRC exceptionalism and underlying scepticism regarding Western humanitarian motives explain why China’s approach to the responsibility to protect in the DPRK is so different from its previous behaviour regarding the norm. In terms of China’s near abroad, norms that may provide an outright challenge to the sanctity of China’s primacy in its own neighbourhood will have short shrift. More traditional PRC normative views about China’s near abroad – including the preference for strategic stability and deference to

100 Quoting Chinese ambassador Liu Jieyi. UN Security Council 2017b. Also see Ambassador Liu’s comments in UN Security Council 2017c.

China's prominence – supersede norms vectored from abroad. Unsurprisingly, it can be seen from this case that China remains a distinctly cautious actor regarding the expansion and liberal reinterpretation of the responsibility to protect. China's attempts to use policy procedure and bureaucratic leeway to respond to the Report also reflects China's ability to translate rhetoric and mount a response to sequester normative development. As China continues to nurture its presence in international institutions, the importance of understanding the limits of China's normative engagement and its abilities to push back against liberal normative expansion will only increase.

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摘要：「保护的责任」是一个将国家主权演释为责任、而非权力的规范。不少研究着笔于中国对其探取积极参与和进取的态度。但就「朝鲜民主主义人民共和国人权状况调查委员会报告」提及该规范，中国的反应却与现有文献有所落差。虽然是次朝鲜案例引用了先前中国支持的标准来提及「保护的责任」，「报告」亦指出数十项和解的建议，中国却断然拒绝「保护的责任」被应用于朝鲜。本文首次有系统地调查中国如何对该「报告」作出回应。本文亦会描述「中国例外论」及对于「保护的责任」有可能导致政权更迭并塑造行为的担忧。我会以中国对在周边地区实行国际规范的取态作结。充分的一手及二手资讯，将辅以与韩国及中国外交精英、联合国官员、朝鲜人权倡导者的访问。

关键词: 朝鲜民主主义人民共和国; 「保护的责任」; 人权; 调查委员会; 食物权; 大规模虐待

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