

ON THE MEANING OF 'RESPONSIBILITY' IN THE 'RESPONSIBILITY TO PROTECT'

*Luke Glanville**

The 'responsibility to protect' (RtoP) concept has emerged rapidly over the last decade to take a prominent place in international discussions about the protection of populations from mass atrocities. However, little attention has been paid to the meaning of the term 'responsibility' in RtoP. 'Responsibility' is a slippery term that can perform a range of functions. This article suggests that, in order to understand the meaning of 'responsibility' in RtoP, we need to examine three things: what actors are responsible for; who actors are responsible to; and the ways in which irresponsible actors may be held to account. Such examination enables us to comprehend better some of the key debates and dilemmas with which the RtoP principle continues to be confronted.

The concept of the 'responsibility to protect' (RtoP) has rapidly emerged over the last decade to take a prominent place in international debate. The concept was first developed in 2001 by the International Commission on Intervention and State Sovereignty (ICISS), an independent commission established by the Canadian government.¹ The commission developed RtoP with the intention of overcoming intractable debate around the earlier concept of humanitarian intervention. Its objective was to shift the terms of debate from arguments about the right to intervene in the affairs of sovereign states to ideas about the responsibility to protect populations from mass atrocities and other large-scale loss of life. The commission wrote of a 'primary' or 'default' responsibility that was borne by individual states for the protection of their own populations, and a 'residual' responsibility that was borne by the wider society of states to act to protect populations, through military intervention if necessary, in instances where states are unwilling or unable to carry out their own responsibilities. Member states unanimously adopted the RtoP principle only four years later at the 2005 United Nations World Summit.² Although the agreement negotiated at the

* Centre for Governance and Public Policy and Griffith Asia Institute, Griffith University. Thanks to Alex Bellamy, Haig Patapan, Wesley Widmaier and the anonymous reviewers for comments that strengthened this article.

¹ ICISS (2001). The commission built on ideas about 'sovereignty as responsibility' that were developed in the 1990s by Francis Deng, Roberta Cohen and others, and that had been championed by UN Secretary-General Kofi Annan. See Annan (1999); Deng (1993); Deng et al (1996).

² UNGA (2005) 'World Summit Outcome', UN Document A/60/1 (24 October 2005), paras 138–39.

Summit was in several important respects a watered-down version of the ICISS concept,³ the basic premise remained intact: states bear a responsibility for the protection of their populations, and the 'international community' bears a responsibility for encouraging and assisting states to perform their responsibilities and for taking collective action to protect populations in situations in which states are 'manifestly failing' to do so.⁴ Since 2005, the Security Council and the General Assembly have adopted a number of resolutions that refer to RtoP,⁵ and its provisions have variously been invoked by states, international organisations and NGOs, to justify and condemn behaviour, and to advocate and deter international action in response to crises in Darfur, Kenya, Georgia, Myanmar, Gaza, Sri Lanka, the Congo, North Korea, Cote d'Ivoire, and numerous states caught up in the so-called 'Arab Spring' of 2011, in particular Libya. The principle today takes a central place in international discussions about the prevention of, and the protection of populations from, mass atrocities and humanitarian crises.⁶

Yet despite these developments, and despite the consequent proliferation of literature around the subject, little attention has been paid to the meaning of the term 'responsibility' in the concept of 'the responsibility to protect'. As we will see, 'responsibility' is a slippery term. It is commonly found to perform a range of functions in legal and moral philosophy, and in domestic and international affairs. Its meaning – or, more accurately, meanings – in the context of RtoP are not obvious. In this article, I seek to demonstrate that clearer understanding of the term and of the way it is used in the context of RtoP can take us a long way towards understanding some of the key debates and dilemmas with which the RtoP principle continues to be confronted. Questions abound as to which responsibilities fall on which actors; and whether actors are accountable, and to whom they are accountable, if they fail to discharge their responsibilities. Too often, the disparate responsibilities entailed in RtoP are conflated in confused attempts to pronounce on the extent to which the concept as a whole has become firmly established as an international norm. Such pronouncements tend to obscure which aspects of RtoP are widely embraced and which aspects remain contested, and they tend to ignore important questions about which actors can be held to account, and by whom, if the norm is breached. Crucially, I suggest that a distinction needs to be drawn between the meaning of 'responsibility' in the idea that *states* have a responsibility to protect their populations and the meaning of 'responsibility' in the idea that

³ See Bellamy (2006).

⁴ The international community can rightly be understood in this context to be equivalent to the international society of states – that is, the member states of the UN that negotiated and agreed to the World Summit Outcome.

⁵ UNSC Resolutions 1674 (28 April 2006), 1706 (31 August 2006), 1894 (11 November 2009), 1970 (26 February 2011), and 1973 (17 March 2011); and UNGA Resolution 63/308 (14 September 2009).

⁶ For two leading assessments of the concept's development, see Bellamy (2011) and Evans (2008).

the *international community* has responsibilities to encourage, assist and enforce this protection. I suggest that close interrogation of the term ‘responsibility’, and in particular its relationship with notions of accountability, in these two distinct aspects of RtoP can enable us to better understand the extent to which we can reasonably expect the responsibility to protect to be performed, and what might be done to further encourage its performance. Such interrogation may also advance our understanding of the concept of ‘responsibility’ more generally, a concept whose relationship with questions of accountability and enforceability is too often imprecisely described.

My argument proceeds in four sections. First, I consider the way that responsibility has been understood in legal and moral philosophy, and outline how we might seek fruitfully to conceptualise the meaning of the term in the concept of RtoP. Building on the work of Peter Cane, I emphasise the need to determine three things: what the actor is responsible for; who the actor is responsible to; and the ways in which an irresponsible actor may be held to account. Second, I consider the meaning of ‘responsibility’ in the particular notion that states have a responsibility to protect. I suggest that this meaning is relatively straightforward, since the RtoP principle clearly asserts that states may rightfully be held to account by the international community for the protection of their populations. I briefly locate this newly articulated responsibility in a history spanning several centuries, in which sovereigns have been held to be accountable not only to the society of states but also to God and to ‘the people’ for the protection of those within their territories. In the third and fourth sections, I consider the much less clear meaning of ‘responsibility’ in the notion that the international community itself bears a responsibility to protect populations when their states fail to do so. I observe that, while the specific obligations said to be borne by the international community may be easily identified, it is far less obvious to whom, if anyone, the international community might be said to be accountable for the performance of these obligations, and what mechanisms for enforcement might be available. I suggest that we can begin to tackle these questions by identifying particular actors within the international community – states, regional organisations and international institutions – that may rightfully be understood to bear a particular burden of responsibility to act on behalf of the international community in particular situations to protect populations, and by outlining some of the costs that they might be understood to bear if they fail to discharge this responsibility.

Understanding Responsibility

‘Responsibility’ is a term that can be used in a variety of ways. HLA Hart illustrates this well in an oft-cited passage:

As captain of the ship, X was responsible for the safety of his passengers and crew. But on his last voyage he got drunk every night and was responsible for the loss of the ship with all aboard. It was rumoured that he was insane, but the doctors considered that he was

responsible for his actions. Throughout the voyage he behaved quite irresponsibly, and various incidents in his career showed that he was not a responsible person. He always maintained that the exceptional winter storms were responsible for the loss of the ship, but in the legal proceedings brought against him he was found criminally responsible for his negligent conduct, and in separate civil proceedings he was held legally responsible for the loss of life and property. He is still alive and he is morally responsible for the deaths of many women and children.⁷

Numerous theorists have offered a range of taxonomies of 'responsibility'. Hart's is perhaps the best known.⁸ He identifies five types of responsibility: role responsibility; causal responsibility; legal liability; moral liability; and capacity responsibility. Examples of each can be identified in the story above. More recently, Peter Cane has helpfully highlighted the temporal element in the way the term is used.⁹ He distinguishes between the 'prospective' and 'historic' aspects of responsibility. The prospective dimension of responsibility refers to the responsibilities, duties or obligations that an actor is bound to perform.¹⁰ This is broadly comparable to Hart's concept of role responsibility.¹¹ The historic dimension of responsibility refers to the responsibility, answerability or accountability of an actor who has failed to discharge a prospective responsibility. This historic dimension is similar to Hart's notion of responsibility as liability.¹² In Hart's story, the captain of the ship can be understood as bearing prospective responsibility for the safety of his passengers and crew, and historic responsibility for what happened to them.

As Cane observes, 'historic responsibility is (typically) a function of failure to fulfil one's prospective responsibilities'.¹³ Put another way, prospective responsibilities, when they are not performed, tend to give rise to historic responsibilities. However, one reason for emphasising the distinction between prospective and historic responsibilities, Cane explains, is that the two do not always go hand in hand.¹⁴ An actor may bear an

⁷ Hart (1968), p 211.

⁸ See Hart (1968), pp 211–30. For some others, see Lucas (1993); Baier (1970); Honore (1999); Corlett (2001).

⁹ Cane (2002), Ch 2.

¹⁰ I use the terms 'responsibility', 'duty' and 'obligation' interchangeably in this article when referring to prospective responsibilities.

¹¹ Though see Cane's discussion of the limitations of Hart's idea of role responsibility in Cane (2002), pp 32–33.

¹² Toni Erskine similarly writes of two interrelated understandings of responsibility: 'The first involves *ex ante* judgments regarding acts that ought to be performed, or forbearances that must be observed. The second involves *post facto* assessments of a particular event or set of circumstances for which an agent's acts and omissions are such that the agent is the object of praise or blame.' Erskine (2008), p 701.

¹³ Cane (2002), p 63.

¹⁴ Cane (2002), p 30.

obligation to perform a certain duty, but may not rightfully be held to account for failing to do so, much less being subject to sanction and punishment. As we will see, this issue comes to the fore particularly clearly in relations between sovereign states. In conditions of anarchy, in the absence of a supreme authority governing interstate relations, the notion that states may be accountable for the performance of particular obligations can often be difficult to comprehend. Even more elusive, as we will observe, is the notion that the international community as a whole might be accountable for the performance of duties ascribed to it. In short, the connection between prospective and historic responsibilities is not always clear.

I suggest that we are better placed to understand what is going on here if we introduce a third dimension of responsibility, which complements and clarifies the prospective and historic dimensions. This third dimension is about the direction of responsibility; it is about who the actor is responsible *to*. Only when we consider to whom the actor is responsible can we begin to understand the historic aspect of an actor's responsibility – that is, the accountability of an actor and the blame and punishment that can be imposed upon the actor for failing to discharge a responsibility. This third dimension, the question of the direction of responsibility, is missing from standard accounts of responsibility in moral and legal philosophy. This is perhaps to be expected given that these accounts typically are concerned with ideas about agential responsibility within domestic societies in which legal responsibility is assumed to be directed towards the state and moral responsibility is assumed to be directed towards one's own conscience or to God. Hart, for example, seems to adopt these assumptions in his story of the captain. However, we cannot ignore this question when talking about the responsibilities of individual states or of the international community more broadly. We need to problematise the direction of responsibility; we need to consider who, if anyone, individual states and the broad international community might be answerable *to* when examining the notion that these actors bear responsibilities for the protection of populations. To simply say that these actors bear a responsibility to protect might make clear what the actors are responsible *for*, but it tells us nothing about to whom the responsibility is owed, and therefore leaves us unable to comprehend the accountability of these actors and the means and mechanisms available, if any, for the promotion and enforcement of this responsibility, or for condemnation and sanction when the responsibility is not performed.

In short, as we proceed to consider the meaning of 'responsibility' in RtoP, we need to bear in mind three dimensions of responsibility: first, what the actor is responsible *for* (prospective responsibility); second, who the actor is responsible *to* (the direction of responsibility); and third, the accountability of an actor who fails to perform a responsibility (historic responsibility). The content of these three dimensions tells us much about the actual nature of the RtoP principle, the degree to which we can expect it to be performed, and the steps that fruitfully may be taken to further its performance. I now turn to the relatively straightforward notion that sovereign states bear a responsibility to protect their populations, which

provides both a useful background and a profound contrast to my subsequent discussion of the more ambiguous notion that the RtoP is also borne by the broader international community.

The Sovereign State's Responsibility to Protect

Sovereignty is sometimes taken to imply the absence of responsibility or accountability. In reality, however, sovereign rulers and sovereign states have been understood to bear responsibility for the protection of their populations in varied and evolving ways since the principle of sovereignty was first articulated in the sixteenth and seventeenth centuries.¹⁵ Thomas Hobbes, for example, famously claimed:

The office of the sovereign ... consisteth in the end for which he was trusted with the sovereign power, namely the procuration of *the safety of the people*, to which he is obliged by the law of nature, and to render an account thereof to God, the author of that law, and to none but him.¹⁶

For Hobbes, the sovereign was responsible and accountable to God alone. Historically, sovereigns have variously been understood to be answerable not only to God, but also to 'the people' and to the international society of states for the performance of their responsibility to protect their populations. Whereas failure to perform responsibilities owed to God has been understood to give rise to the necessity of answering to Him on the day of judgement, failure to perform responsibilities owed to 'the people' or to the society of states has been understood at times to give rise, respectively, to justified internal resistance or external intervention. In other words, sovereigns have owed a 'prospective' responsibility to protect populations to a range of audiences, and this in turn has had a range of implications for the 'historic' dimension of the responsibility. Jean Bodin, for example, insisted in the sixteenth century that the sovereign ruler was not accountable to the people and he denied the people a right of resistance, yet he acknowledged that rulers were accountable not only to God but also to each other for the performance of their responsibilities, and permitted forcible intervention to bring an end to tyranny.¹⁷ In contrast, in the nineteenth century JS Mill implied that sovereign states were accountable to 'the people' but *not* to each other when he permitted peoples to throw off their oppressors while refusing to allow outside intervention to help these peoples achieve liberty.¹⁸

At times, the nature and meaning of the responsibilities borne by states for the protection of their populations have been much less clear. This was particularly the case in the aftermath of World War II, in which an emergent international human rights regime seemingly imposed international

¹⁵ I offer a detailed defence of this claim in Glanville (2011).

¹⁶ Emphasis in original. Hobbes (1996), p 222.

¹⁷ Bodin (1955), Bk II, Chs IV–V, p 69.

¹⁸ Mill (1984), p 122.

responsibilities upon states, while at the same time the firm entrenchment of the rights of states to freedom from external interference meant that states were largely unaccountable to each other for the performance of these responsibilities. For the most part, there was no meaningful sense in which failure to perform internationalised responsibilities to protect human rights gave rise to international condemnation or sanction.

In 1947, international legal scholar Hersch Lauterpacht attempted to resolve this apparent paradox by articulating a distinction between the responsibilities of states and questions of enforcement. He insisted that the question of enforcement ‘must be distinguished from that of the legal obligation of the Members of the United Nations to respect human rights and fundamental freedoms’. He continued:

Even if the United Nations had no power at all to enforce it, directly or indirectly, the legal duty itself would remain in full vigour. Any member disregarding that obligation would be acting contrary to one of the fundamental purposes of the Charter.¹⁹

In essence, Lauterpacht was arguing that states were bound to carry out their human rights responsibilities despite the fact that there was no way of holding them to account if they failed to do so. Such an explanation may seem intuitively reasonable, but it points to the difficulties that we often face in attempting to meaningfully speak of responsibilities borne by sovereign states in their relations with each other. Liability to sanction is often taken to be central to the meaning of responsibility. Hart, for example, suggests that ‘answering or rebutting accusations of charges which, if established, carry liability to punishment or blame or other adverse treatment’ is the ‘primary’ sense of responsibility.²⁰ In the nineteenth century, John Austin had similarly insisted that “‘to lie under a duty or obligation to do or forbear” is to be liable or obnoxious to a sanction, in the event of disobeying a command’.²¹ Yet, while states may have accepted certain international responsibilities for the promotion and defence of human rights after 1945, and while they might have been appropriately subject to blame in some abstract sense if they failed to perform these responsibilities, for the most part they were not answerable to the international community, much less liable to sanction. Sometimes, then, the connection between the prospective and the historic dimensions of responsibility is stretched or even broken. We will see later that it is even more difficult to comprehend meaningfully the historic dimension of responsibilities that are said to be borne by the international community itself according to the RtoP concept since not only are there no

¹⁹ Lauterpacht (1947), p 18.

²⁰ Hart (1968), p 265; see also Cane (2002), p 29.

²¹ Quoted in Kelsen (1945), p 71. Cane observes that, while Hart was critical of Austin’s sanction-based theory of law, sanctions nevertheless played an important part in Hart’s own account of responsibility: Cane (2002), p 30, n 5.

clear mechanisms for sanction, but it is not even particularly clear to whom the responsibility can be said to be directed.

Returning to the central focus of this section, the present-day idea that sovereign states bear a responsibility to protect their populations is, in contrast, not at all difficult to expound. Member states unanimously endorsed the RtoP principle at the 2005 UN World Summit, and clearly delineated just what it is that states are responsible for:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.²²

Moreover, this responsibility is plainly directed to the international community, which can rightfully hold states to account by using 'appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter', and by taking 'collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations'.²³ Thus the prospective dimension, the direction and the historic dimension of the responsibility borne by states to protect their populations are clear.

To be sure, despite the agreement reached at the World Summit and despite the recent implementation of that agreement in the form of Security Council Resolution 1973 authorising the use of force to protect populations in Libya, a small number of states continue to contest the notion that states are accountable to the international community for the protection of their populations.²⁴ It is worth acknowledging, therefore, that I am not suggesting that the notion of states bearing an RtoP for which they can be held to account is universally accepted. Rather, I am simply observing that the meaning of this controversial principle is clear.

In summary, the meaning of RtoP as articulated at the UN World Summit in 2005 with respect to the responsibility borne by states to protect their own populations is relatively straightforward. It contains a clear prospective dimension in the form of a responsibility to protect populations from four key crimes. It is a responsibility that clearly is directed to the international community, and it is said that the international community, in turn, rightfully may hold states to account for its performance, through

²² 'World Summit Outcome', UN Document A/60/1, para 138.

²³ 'World Summit Outcome', UN Document A/60/1, para 139.

²⁴ For an indication of international consensus on the enforcement of sovereign responsibilities, see the debate on Resolution 1973 in UN Document S/PV.6498 (17 March 2011) and also Global Centre for the Responsibility to Protect (2009).

military intervention if necessary. We will observe in the next section that the idea that the international community itself bears a responsibility to protect is much less clear.

The International Community's Responsibility to Protect

The 1990s witnessed heated debate about whether the international community had the right to undertake so called 'humanitarian intervention' to protect populations. The RtoP concept that was first developed at the end of that decade reframes that debate by asserting that action to protect populations is not merely a discretionary right borne by the international community but a responsibility. This is the most novel aspect of the RtoP concept, and it would seem to have extraordinary implications for interstate relations. Nevertheless, its precise meaning is not altogether clear. Let us begin this section by outlining the nature of the responsibility that is said to be borne by the international community.

In the agreement negotiated at the 2005 World Summit, member states declared that '[t]he international community *should*, as appropriate, encourage and help states' to carry out their own responsibilities and that it bears 'the *responsibility* to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'. With respect to Chapter VII enforcement of the protection of populations in instances where states had 'manifestly failed' to provide such protection, member states declared that they were '*prepared* to take collective action ... on a case-by-case basis', but they did not explicitly accept that they were *obliged* to do so.²⁵ It was primarily the intervention of US Ambassador to the UN John Bolton that prevented a firmer declaration of responsibility in this part of the agreement. Bolton was reluctant to bind the United States to respond to particular cases in particular ways. Consequently, he sought to reject any suggestion that the United States might be obliged to act when states fail to protect their populations.²⁶ An early draft of the Summit document had stated, 'we recognize our shared *responsibility* to take collective action'.²⁷ Upon reading this draft, Bolton issued a communiqué insisting that it should be made clear that 'the responsibility of the other countries in the international community is not of the same character as the responsibility of the host'. While states might have a legal obligation to protect their own populations, he argued, the responsibility of the 'international community' to act was merely a 'moral responsibility'. Bolton firmly declared: 'We do not accept that either the United Nations as a whole, or the Security Council, or individual states, have

²⁵ Emphasis added. 'World Summit Outcome', UN Document A/60/L.1, para. 138-39.

²⁶ See Luck (2009).

²⁷ Emphasis added. 'Revised draft outcome document of the High-level Plenary Meeting of the General Assembly of September 2005 submitted by the President of the General Assembly', A/59/HLP/CRP.1/Rev.2, 5 August 2005.

an obligation to intervene under international law.' He insisted that member states should therefore 'avoid language that focuses on the obligation or responsibility of the international community and instead assert that we are prepared to take action'.²⁸ Bolton was successful in having the language watered down. Nevertheless, the notion that the society of states bears a responsibility to take collective action to protect populations, where host states are unwilling or unable to do so, has become accepted as a central aspect of the RtoP principle in the years since 2005. It has repeatedly been endorsed by member states, including the United States,²⁹ and it is embraced in UN Secretary-General Ban Ki-moon's 2009 report, 'Implementing the Responsibility to Protect'.³⁰

The prospective dimension of the international community's RtoP, then, is relatively clear: the international community is said to bear a responsibility to encourage and assist states to protect their populations and to use peaceful means and, if necessary, forcible collective action to protect populations in situations where states have failed to do so. Much less clear, however, is the direction of responsibility, and therefore the historic dimension of accountability and liability. The notion that the international community bears an obligation or duty to protect is not accompanied by any developed discussion of notions of answerability or accountability, much less liability, enforcement or punishment if the responsibility is not carried out. This is not surprising. After all, it is difficult to conceive how and to whom the international community could be said to be responsible or answerable. Indeed, the apparent *unaccountability* of the international community, and of particular international institutions such as the UN Security Council, has been the focus of attention by some of RtoP's most thoughtful critics.³¹

A glance at history does not immediately make things much clearer. At various times in history, the international society of states, or a coalition of great powers, has declared a range of international responsibilities such as responsibilities for the protection of populations or for the maintenance of international order. As early as the Peace of Westphalia in 1648 – often taken as a founding moment in the emergence of the international society of states – contracting parties accepted that they were 'oblig'd to defend and protect all and every Article of this Peace against any one',³² and this included an article requiring that states respect the rights of religious minorities.³³ If a violation of the conditions of the Peace could not peacefully

²⁸ Bolton (2005).

²⁹ See, for example, Rice (2009); Barton (2011).

³⁰ 'Implementing the Responsibility to Protect: Report of the Secretary-General', UN Document A/63/677 (12 January 2009), p 9.

³¹ See, for example, Chandler (2004); Cunliffe (2007).

³² 'Treaty of Munster' (1669), Article CXXIII, p 354.

³³ 'Treaty of Osnabruck' (1669), Article 28, pp 228–29.

be resolved within three years, all states were ‘oblig’d to join the injur’d Party, and assist him with Counsel and Force to repel the injury’.³⁴

Numerous other historical examples could be offered. In the nineteenth century, for instance, the society of states bound themselves to take action to repress the slave trade, to punish offenders, and to liberate and protect captured slaves.³⁵ During the late nineteenth and early twentieth centuries, the great powers declared for themselves a responsibility for ensuring the protection of national minorities in newly formed nation-states.³⁶ And in the infamous Article 10 of the Covenant of the League of Nations³⁷ and Article 24(1) of the UN Charter,³⁸ the society of states accepted that they bore responsibility for the protection of the territorial integrity and political independence of states and for the maintenance of international peace and security. However, in each of these situations there was no indication given that the society of states or the great powers were accountable for the performance of their responsibilities. The direction of responsibility and the historic dimension of the responsibility were not outlined. Rather, all that was offered was a vague notion of responsibility or obligation, detached from ideas of accountability – not unlike the international human rights responsibilities adopted by states during the Cold War.

Nevertheless, despite the absence of clearly articulated notions of accountability and liability, the idea that the international community might bear certain responsibilities has at times been met with firm resistance from some states. The US Senate, for example, famously refused to ratify the Covenant of the League of Nations, primarily due to fears that Article 10 would bind the United States to intervene anywhere in the world to repel state aggression.³⁹ And we have seen that Ambassador Bolton was similarly wary of endorsing the notion that the international community and its member states might be bound to intervene anywhere in the world to protect populations in accordance with the RtoP principle. The fact that the notion that the international community bears responsibilities is at times resisted by

³⁴ ‘Treaty of Munster’ (1669), Article CXXIV, p 354.

³⁵ See the ‘General Act for the Repression of the African Slave Trade’, signed in Brussels on 2 July 1890.

³⁶ In a cover note attached to a treaty that Poland was to sign after World War I, for example, French Prime Minister Clemenceau insisted: ‘There rests, therefore, upon these [Great] Powers an obligation, which they cannot evade, to secure in the most permanent and solemn form guarantees for certain essential rights which will afford to the inhabitants the necessary protection, whatever changes may take place in the internal constitution of the Polish State.’ Macartney (1934), p 238.

³⁷ Article 10 declares: ‘The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In the case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.’

³⁸ Article 24(1) is discussed in more detail in the following section.

³⁹ See Cooper (2001).

states reluctant to be bound to them suggests that these responsibilities may actually have some force, despite not being accompanied by clear mechanisms for sanction. In fact, there may be much that can be said about both the direction and the historic dimension of the international community's responsibility to protect if we examine it more closely.

To understand the direction and historic dimension of the international community's RtoP, and to begin to comprehend its force, we need to understand the ways in which the responsibility is distributed among particular actors within the community. Some scholars of philosophy and international politics have helpfully suggested that, for the international community's RtoP to be meaningful, it needs to be distributed or allocated to particular actors. They explain that the idea of the 'international community' is too abstract and ambiguous, and that it is not an actor that can meaningfully be accorded responsibilities.⁴⁰ Rather, we need to identify actors – be they individual states, regional organisations or international institutions – that can appropriately be said to bear responsibility on behalf of the community. These scholars then proceed to offer justifications for a range of ways in which the RtoP ought to be distributed.⁴¹ However, this idea need not remain in the realm of theory. In the remainder of this article, I argue that the international community's RtoP is in practice already understood to be distributed among a variety of actors to a significant degree (and this explains, for example, why US officials such as Bolton have been so wary of the principle). We can identify a range of international actors that, willingly or otherwise, already take on a particular responsibility to act on behalf of the international community in certain circumstances to protect populations beyond territorial borders. Moreover, while such responsibility is not strictly enforceable and failure to discharge the responsibility does not give rise to sanction and punishment in ways that we might immediately recognise, there is a real sense in which these actors are understood to be accountable and even liable in some way for the performance of their responsibility.⁴²

Distributing the International Community's Responsibility to Protect

In thinking about how to distribute the international community's RtoP to particular actors, moral theorists have been confronted with the problem that it may be an 'imperfect duty'. Michael Walzer puts it well:

The general problem is that intervention, even when it is justified, even when it is necessary to prevent terrible crimes, even when it poses no threat to regional or global stability, is an imperfect duty – a

⁴⁰ Erskine (2008).

⁴¹ See, for example, Miller (2007); Pattison (2010); Tan (2006).

⁴² It is worth noting that a similar argument to the one that follows could be made about the force of the human rights responsibilities borne by individual sovereign states during the Cold War. Such an argument, however, is beyond the scope of this article.

duty that doesn't belong to any particular agent. Somebody ought to intervene but no specific state in the society of states is morally bound to do so.⁴³

The responsibility or duty to protect populations is said to be 'imperfect', since it is one that cannot morally be demanded of any particular actor on behalf of the international community.⁴⁴ Several moral theorists have responded to this problem by suggesting two key ways in which the responsibility might be understood to be allocated appropriately to particular actors, and therefore 'perfected'. The first is to allocate the duty to particular actors by virtue of some particular qualities that these actors possess. The second is to institutionalise the duty so that it is fairly distributed among a range of actors, so that it is made clearer who in particular bears what duty in a given situation. In this final section, I will examine each of these ideas in turn. Moreover, I will claim that such distribution of responsibility has in fact already begun to be realised in practice, and that there are recognisable costs that can be imposed upon those actors who fail to discharge their particular responsibilities. Thus, to some extent at least, the direction and historic dimension of the international community's RtoP can be clarified.

The first means of allocating responsibility is to identify an actor that stands in a *special relationship* with those in need of protection or has a *special capability* for protecting them. This idea is based on the concept of 'backward-looking' and 'forward-looking' responsibility allocation developed by Robert Goodin,⁴⁵ and it has been applied to the RtoP principle by a number of philosophers, including Kok-Chor Tan.⁴⁶ It is suggested that an actor possessing one of these special qualities may be understood to bear a particular responsibility for performing the RtoP on behalf of the international community. For example, looking backwards, a state might be understood to stand in a special relationship with people in need of protection in another state by virtue of shared historical ties, perhaps including past injustices. Tan observes that former colonial powers are often

⁴³ Walzer (2000), p xiii.

⁴⁴ For Kant, a duty is imperfect due to the lack of specificity of claimants rather than the lack of specificity of agents. Nevertheless, it has become common in recent years to adapt Kant's formulation and to label the duty to protect populations, which lacks a specified agent, as imperfect. For a justification, see Tan (2006), pp 94–96. Carla Bagnoli argues that the duty to protect populations is in fact a 'perfect duty' that falls on every actor with the capacity to discharge it by virtue of its being a duty of justice rather than a duty of beneficence or charity. Heather Roff agrees with Bagnoli, but concedes that the duty is best rendered as merely a 'provisional perfect duty' since it is not one that can be enforced at present: Bagnoli (2006); Roff (2011). While the arguments of Bagnoli and Roff may have merit, they do not appear to clarify the historic dimension of the responsibility, other than to imply that those actors that fail to discharge this perfect duty may be morally accountable to God or to their own (collective) consciences.

⁴⁵ Goodin (1985), pp 117–35; see also Miller (2001).

⁴⁶ See Miller (2007); Pattison (2010); Roff (2011); Tan (2006).

understood to bear a particular responsibility to ensure the ongoing peace and stability of a former colony. Alternatively, looking forwards, a particular state might be said to be responsible for acting on behalf of the broader community because it is the most capable of doing so. This responsibility might arise due to the state's military strength or its geographical proximity to the people in need. Of course, claims of a special relationship can be contested and the burdens imposed upon those with special capacity may be said to be unreasonable.⁴⁷ Nevertheless, Tan and others insist that it is plausible that we can at times identify particular actors who may reasonably be expected to act. The argument is not that the identification of actors with these special qualities frees other actors from their obligations to assist or facilitate the protection of populations. Rather, it is simply that we may be able to identify actors that 'stand out' and bear a particular duty to act on behalf of the community.⁴⁸

I want to suggest not only that such arguments for the allocation of international responsibility are morally plausible, but that states already recognise that the responsibility to protect is allocated in these kinds of ways; that particular states bear particular responsibilities to act in particular circumstances; and that failure to discharge these responsibilities can have consequences. Tan himself observes that the United States was widely perceived to be the appropriate actor to intervene in 2003 to put an end to a thirteen-year civil war that had caused immense suffering in Liberia by virtue of its historical ties to the Liberian people.⁴⁹ In June of that year, the British Ambassador to the UN, Sir Jeremy Greenstock, suggested that the United States was 'the nation that everyone would think would be the natural candidate' to act because of its historical ties,⁵⁰ and the following month US Congressman Donald Payne exhorted the Bush administration to act, declaring: 'We do not want the blood of Liberians on our hands.'⁵¹ President Bush conceded that the United States' 'unique history with Liberia' had 'created a certain sense of expectations' that the United States would act to end the violence, and he then sought to minimise the domestic and international political costs of not yet having deployed peacekeepers by insisting that more information still needed to be gathered and that Liberian President Charles Taylor first had to step down.⁵²

Perhaps the clearest example is the case of the Rwanda genocide in 1994, in which the United States similarly recognised that it was perceived to bear a particular responsibility to act on behalf of the international community to end the violence, this time not because of historical ties but presumably because of the military capability of the United States and its

⁴⁷ Tan (2006), pp 101–2.

⁴⁸ Tan (2006), pp 98, 101.

⁴⁹ Tan (2006), p 97.

⁵⁰ Quoted in Tan (2006), p 97; see also Westcott (2003).

⁵¹ Quoted in Bumiller and Schmitt (2003).

⁵² Bumiller and Schmitt (2003). The United States was also urged to act by France, West African countries and the United Nations.

role as a leading power. The Clinton administration famously avoided using the term ‘genocide’ to describe the atrocities being committed in Rwanda out of fear that such characterisation would activate domestic and international expectations, and perhaps even legal obligations to act. An infamous discussion paper prepared by the Office of the Secretary of Defense advised: ‘Be Careful. Legal at State was worried about this yesterday – Genocide finding could commit the USG (US government) to actually “do something”.’ A subsequent internal State Department memo to Secretary Warren Christopher insisted that ‘A USG statement that acts of genocide have occurred would not have any particular legal consequences’, but it recognised that, ‘Although lacking legal consequences, a clear statement that the USG believes that acts of genocide have occurred could increase pressure for USG activism in response to the crisis in Rwanda.’⁵³ Tacitly acknowledging its responsibility to act, the administration worked to avoid the costs of inaction by framing the violence not as genocide, but rather as an intractable civil war about which the international community could do little.

In both the Liberian and the Rwandan cases, and arguably several others in recent years,⁵⁴ it was recognised that a particular actor had a particular responsibility to carry out the international community’s RtoP because of its special relationship or special capacity, and that failure to act would attract certain – albeit marginal – costs. In the case of the Rwandan genocide in particular, the United States was successfully able to restrain the perception that it had a responsibility to act, and consequently it was in no way compelled to respond to the atrocities in ways that were not in accord with its perceived national interests. Nevertheless, the private and public statements of the Clinton administration demonstrate that it did recognise that it had a particular responsibility to act, and that it was answerable to both domestic and international societies, to some extent at least, for the performance of the responsibility. To be sure, it was never contemplated that the failure of the United States to act could have been subject to sanction or enforcement. Nevertheless, it was understood that failure to successfully justify inaction could incur socio-political costs in terms of domestic support and international reputation.

The second means of allocating responsibility is institutionalisation. This idea was outlined by Henry Shue in a well known article ‘Mediating Duties’, and subsequently developed in the ‘afterword’ to the second edition of his classic text, *Basic Rights*.⁵⁵ Shue suggests that we need institutions to

⁵³ See ‘Discussion Paper, Office of the Deputy Assistant Secretary of Defense for Middle East/Africa Region, Department of Defense, May 1, 1994’, available as document 6, and ‘Action Memorandum: Has Genocide Occurred in Rwanda, May 21, 1994’, available as document 14 at www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.html.

⁵⁴ The statements of the Bush administration with respect to the crisis in Darfur that began in 2003, for example, again reveal a perception that the United States had a particular responsibility to act to protect civilians. See Glanville (2009).

⁵⁵ Shue (1988, 1996).

mediate the duties that all actors have to protect the rights of others. They are necessary both for reasons of efficiency and in order to provide respite for actors who might otherwise be unfairly burdened. Institutions assign duties to particular actors and specify their content. Thus they transform 'imperfect' duties into 'perfect' duties that can strictly bind actors. He claims that the development of institutions to mediate duties for the protection of the rights of others is itself a duty that we all bear:

If institutions are players of as much importance as I have maintained throughout and can implement positive duties effectively, among the most important duties of individual persons will be indirect duties for the design and creation of positive-duty-performing institutions that do not yet exist and for the modification or transformation of existing institutions that now ignore rights and the positive duties that rights involve.⁵⁶

Shue suggests that, in order for the rights of individuals to adequately be protected in a violent world, 'Waves of duties may need to be performed and ... webs of duty-bearers may need to become involved at various stages.'⁵⁷ The institution that bears the 'primary duty' for the protection of populations is, of course, the sovereign state. However, since it is clear that states are often unwilling or unable to discharge their responsibilities, Shue argues that it is necessary to develop institutions beyond the state that can carry out 'default duties' to protect populations when required.⁵⁸

In recent years, a number of scholars have applied this concept of institutionalisation to the RtoP principle.⁵⁹ They argue that, if we accept that the international community bears a duty to protect, all actors within this community have an obligation to 'perfect' the duty by cooperating and coordinating to develop mediating institutions that can implement effectively diplomatic, humanitarian and other peaceful measures, and also coercive measures, to protect populations when their governments fail to do so. Institutionalisation is said to be necessary so that the responsibility to protect is allocated and specified, and so that particular identifiable actors can be held accountable for its performance.

I again want to suggest not only that such arguments for the allocation of international responsibility are plausible in the abstract, but that the international community's RtoP can be understood to be already quite clearly allocated in this regard, in certain situations at least; that particular international institutions and regional organisations already bear particular responsibilities to act in particular circumstances; and that failure to discharge these responsibilities can have consequences. I will briefly

⁵⁶ Shue (1988), p 703.

⁵⁷ Shue (1996), p 166.

⁵⁸ It will be recalled that this language of 'primary' and 'default' duties would subsequently be adopted in the ICISS report.

⁵⁹ See Pattison (2010); Roff (2011); Tan (2006).

consider the examples of the UN Security Council and the African Union in turn.

Article 24(1) of the UN Charter provides:

‘In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Since the early 1990s, the Security Council repeatedly has adopted resolutions variously declaring human suffering, humanitarian crises and mass atrocities occurring within states to constitute a threat to ‘international peace and security’. The Council has done so in order to establish its authority to pass judgement on these crises, and it has on these grounds proceeded to condemn host states for failing to prevent or resolve these crises, and at times to authorise sanctions and military interventions in these states. It would seem that, in categorising these kinds of crises as threats to international peace and security, the Security Council has taken upon itself not merely a legal right but a burden of responsibility to deal with them in accordance with Article 24(1). Moreover, since the 2005 World Summit, a similar argument can be made without having to rely on the language of Article 24(1).

Given that the international community has accepted that it has a responsibility to protect populations, the Security Council rightly can be understood to bear the particular responsibility to authorise coercive measures, where appropriate, by virtue of its claim to an exclusive right to decide on such matters under the UN Charter.⁶⁰ Put simply, if an institution is understood to have the sole right to carry out a specific aspect of the duty to protect, then that specific duty rests ‘perfectly’ with that institution. Certainly, the Security Council may rightfully exercise discretion in determining the most appropriate way of responding to individual crises. However, in claiming the right to respond, it also takes on the responsibility to do so where appropriate. Moreover, it would seem to follow that individual states that enjoy Council membership at a given time have a duty to table and facilitate the passage of appropriate resolutions, and the five veto-wielding permanent members of the Council have a duty to refrain from impeding the Council by vetoing or threatening to veto draft resolutions that would authorise the effective protection of populations.

To be sure, the direction and historic dimension of the Security Council’s responsibility are far from clear. It is difficult to imagine how the Council or its individual members might be sanctioned for a failure to respond adequately to a humanitarian crisis or mass atrocities. However, there is a sense in which such failure can be understood to have a meaningful

⁶⁰ For an alternative interpretation of the Security Council’s ‘responsibility’ under RtoP, see Orford (2011).

cost to the extent that it weakens the perceived legitimacy of the institution. Consider the example of NATO's intervention in Kosovo in 1999. This intervention was not authorised by the Security Council. Nevertheless, it was judged to be legitimate by a significant proportion of the international community since it was perceived that the Council, and in particular permanent members China and Russia, had failed to discharge the responsibility to effectively respond to the brutal treatment of Kosovar Albanians at the hand of Serbian forces. The broad acceptance of NATO's action can be read as implicit judgement that the consequence of the Council's failure to carry out its responsibility to authorise military intervention ought to be that it could not justifiably claim the exclusive right to determine the occasions in which the use of force was justified. Thus the legitimacy of the Council was undermined. While the historic dimension of the Council's responsibility may be difficult to measure, therefore, there is a real sense in which it can be held to account by the international community. The authority and power of the Council is dependent on its perceived legitimacy.⁶¹ Failure to discharge its responsibilities can lead to its legitimacy being damaged and its claims to exclusive prerogatives being challenged.⁶²

A similar story can be told about the African Union (AU). Article 4(h) of the Constitutive Act of the AU, signed on 11 July 2000, accords the regional organisation 'the right ... to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'. This provision was the first international treaty to provide such a right. It has been reported that the intention of the contracting parties in including this provision was not merely to establish a right of intervention but to declare the exclusive right of African states to develop and implement their own solutions to crises on the African continent. The provision was particularly pushed by Libyan leader Moammar Gaddafi, who intended that it would make it more difficult for non-African states to justify intervention in Africa.⁶³ In claiming an exclusive *right* to resolve its own crises – often framed as the right to develop 'African solutions to African problems' – the AU has arguably taken upon itself the *responsibility* to do so on behalf of the international community. In other words, given the widespread acceptance that the

⁶¹ For a discussion of Security Council legitimacy, see Hurd (2007); Morris and Wheeler (2007).

⁶² With respect to the particular accountability of the permanent members of the Security Council, UN Secretary-General Ban Ki-moon has recently observed: 'Within the Security Council, the five permanent members bear particular responsibility because of the privileges of tenure and the veto power they have been granted under the Charter ... Across the globe, attitudes have changed in important ways since Cambodia, Rwanda and Srebrenica, raising the political costs, domestically and internationally, for anyone seen to be blocking an effective international response to an unfolding genocide or other high-visibility crime relating to the responsibility to protect.' 'Implementing the Responsibility to Protect', para 61.

⁶³ See Welsh (2007), p 379, n 51.

international community bears a responsibility to protect populations, and given that the AU claims the authority to protect populations on the African continent, the AU can be understood to bear a particular duty to carry out RtoP in Africa. Moreover, while it may not strictly be enforceable, there is a clear ‘historic’ dimension to this responsibility, just as there is with the Security Council. Failure by the AU to discharge its RtoP has costs. For example, in the early years of the crisis in Darfur, many African states and also many non-African states repeatedly insisted that the international community ought to allow the AU to take the lead and work with the Sudanese government to end the suffering. By 2006, however, it had become clear that the regional organisation had been unable to resolve the crisis, that its troops deployed in Darfur lacked the capacity to end the violence, and that the AU’s claim that it possessed the right to determine the use of force and to exclusively deploy its own troops would need to be overruled by the broader international community. Consequently, the Security Council worked to gain AU and Sudanese consent to a hybrid UN-AU force made up of both African and non-African troops, and it authorised its deployment in July 2007.⁶⁴ The cost of failure by the AU to carry out effectively its responsibility to protect Africans, therefore, is that the international community may challenge and even reject the organisation’s claim to the exclusive right to determine and implement appropriate responses to crises on the continent.

In summary, through consideration of the ways in which the international community’s RtoP is already understood to be distributed among particular actors, either by virtue of their special qualities or through institutionalisation, we can begin to understand both to whom the responsibility is owed and the mechanisms and means for accountability in instances where the responsibility is not performed. Alex Bellamy has usefully suggested that the RtoP principle suffers from the problem of indeterminacy. He posits that, while the responsibilities borne by *states* to protect their populations might be relatively clear, it is seldom clear what the responsibility borne by the *international community* requires in a given situation. Not only is there ongoing tension between the RtoP principle and the principle of non-interference, but in any particular case there tend to be competing judgments about the extent to which a state has failed to protect its population and competing assessments of the most prudent response.⁶⁵ While this may be accurate, the fact that international actors at times feel compelled to excuse their inaction or to justify the sufficiency of whatever actions they have taken, as was demonstrated particularly clearly in the case of the Rwandan genocide, reveals that we do possess firm intuitions about responsibilities that ought to be performed in certain situations and about the actors who ought to perform them. Moreover, the fact that international actors at times bear some cost for failing to discharge their responsibilities, as was demonstrated in the examples of the Security Council and the African

⁶⁴ UNSC Resolution 1769 (31 July 2007).

⁶⁵ Bellamy (2010), pp 161–62.

Union, reveals that there is a recognisable 'historic' dimension to this responsibility. This is not to argue that the international community will in all or even most instances effectively act to protect populations in situations where their governments fail to do so. Rather, it is merely to explicate how we fruitfully might understand the meaning of 'responsibility' in the RtoP principle.

Conclusion

The objective of this article has not been to defend the ethics of the RtoP concept or to assess its strength as a norm. Rather, the objective has been to offer some necessary clarification as to what the concept actually entails. Only once we appreciate the distinct meanings of 'responsibility' in the various aspects of RtoP can we begin to grapple coherently with the implications of RtoP for the practices of states. It is hoped that this examination enables us to clarify some of the tools available for understanding the extent to which we reasonably can expect the responsibility to be performed and for comprehending some of the mechanisms available for further encouraging its performance. It has forced us to consider the existing allocation of responsibility in the international community and the available means for holding particular bearers of responsibility to account. If we were to accept that the RtoP principle is indeed a principle of moral value, then we would no doubt conclude that more needs to be done to ensure its performance. This would require not only strengthening the capacities of states and encouraging them to protect their own populations, but also strengthening international institutions, further clarifying the allocation of international responsibility, and enhancing the mechanisms of accountability and even liability that are activated when relevant actors fail to discharge their duties on behalf of the international community. If Shue is correct, then the responsibility to pursue such measures may fall on us all.

To conclude, it is worth briefly outlining some important implications that this study may have for our understanding of the concept of 'responsibility' more broadly. Cane helpfully insists that 'study of actual and contextually determinate responsibility practices can contribute to our understanding of responsibility generally'.⁶⁶ The present study has particularly highlighted some of the difficulties in comprehending the relationship between the notions of responsibility and questions of accountability and enforcement in the international arena. It has suggested that the direction of responsibility cannot be taken for granted and needs to be problematised. Clarification of the direction of a given responsibility can be crucial to understanding the relationship between its 'prospective' and 'historic' dimensions. Further, the absence of clear and recognisable mechanisms for sanction and punishment that we sometimes observe when actors fail to perform certain responsibilities in the international arena invites us to consider some of the more nuanced ways in which actors can be, and

⁶⁶ Cane (2002), p 30.

indeed often are, held to account. In particular, I have observed that the cost of international actors' failure to discharge responsibilities has at times been a diminution of their perceived legitimacy. Given that the authority of international actors can be so dependent on perceptions of legitimacy, this is no small cost to pay. The relationship between the slippery concept of responsibility and the similarly evasive concept of legitimacy, then, may reward further consideration.

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