



Security Council
Topic 2: Protecting Civilians in Armed Conflict ¹

30 September 2017

How can and should states protect civilians during armed conflict so they are not deliberately or inadvertently harmed? This is one of the most challenging problems facing the Security Council today, as it engages the sensitive issue of state sovereignty, or the right of states to conduct their internal affairs as they see fit. This right is clearly laid out in the UN Charter, which states,

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII [related to international peace and security].²

Thus, according to the Charter, the “[i]nterference in the domestic affairs of a state by another state (or group of states) is illegal”³ unless what is happening within the state endangers international peace and security – that is, relations among states.

Although states are free to do as they like within their own borders as long as they do not harm other states, many states have ratified the Geneva Conventions of 1949, which establish standards for protecting civilians during wartime. According to the Geneva Conventions, both failure to protect civilians and deliberate targeting of civilians are war crimes. States that are party to the Geneva Conventions and that violate their provisions can be tried in the International Court of Justice (ICJ), as long as the state that is charged is a member of the ICJ and is willing to have the case heard before it. In addition, states that are party to the Geneva Conventions and have ratified the treaty establishing the International Criminal Court (ICC) can charge individuals for war crimes. The Security Council can also refer cases to the ICC.

Although the Geneva Conventions, ICJ, and ICC are considerable accomplishments in international humanitarian law, four major challenges remain in protecting civilians from armed conflict:

1. To persuade states that have not signed the Geneva Conventions to do so, and to persuade those that do not belong to the ICJ and ICC to join.
2. To persuade states that are party to these treaties to comply with their requirements.
3. To persuade states that are party to these treaties to hold other states that are also parties accountable for violations.
4. To actually protect civilians during wartime, regardless of whether they are in states that have agreed to uphold international humanitarian law, instead of waiting to punish them when the conflict is over.

¹ This document was written by Samantha Stephens, and Karen Adams with contributions from Kelsi Steele, Nathan Bilyeu, and Nicholas Potratz. Copyright 2017 by Karen Ruth Adams.

² United Nations, “Charter of the United Nations,” Chapter 1, Article 2.7, <http://www.un.org/en/charter-united-nations/>.

³ Gordon Graham, *Ethics and International Relations* 2nd ed. (Oxford: Blackwell Publishing, 2008), p. 99.

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Of these four challenges, the latter is the most vexing. War crimes trials are, by definition, held after war crimes have occurred. They do not address the problem of what the international community can do to help civilians while war crimes are occurring, before states or individuals have been formally charged and tried.

Within states, there are not only courts to try criminal cases, but also police to intervene in and stop violence before it escalates. According to the UN Charter, the Security Council is in charge of policing the international system to provide for international peace and security:

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.⁴

There is no similar provision for human security within the borders of states. Because only the Security Council can authorize UN Member States' use of force for purposes other than self-defense, if civilians worldwide are going to be protected from war crimes, it is up to the Security Council to institute a new standard.

In recent years, many scholars, human rights activists, and states have called for such a standard and have proposed that it be called the "responsibility to protect" (R2P). The idea of R2P is that states have a responsibility to protect their citizens, and when they do not do so, they forfeit their sovereignty and make it necessary for other states to intervene to protect human rights. This idea has caught on to such an extent that, according to former Secretary-General Kofi Annan, "State sovereignty, in its most basic sense, is being redefined. States are now widely understood to be instruments at the service of their people, and not vice-versa."⁵

To date, the Security Council has expressed little interest in establishing and enforcing a new, overarching norm of R2P. The Council has, however, referred to its desire to protect civilian populations in many of its resolutions. Is it time for the Security Council to take a firmer stand on the illegality of force against civilians and the obligation of states to come to the aid of populations whose states are harming them?

History and Current Events

To protect civilians from war, it is important to understand the historical record of war and civilian casualties. In addition, one must understand the Geneva Conventions, ICJ, and ICC. Finally, it is important to understand the concept of the responsibility to protect.

The Historical Record of War

Every year from 1816 to 2017, there was at least one interstate or civil war. From World War II to 2014, there were 248 wars in 153 locations.⁶ More than half of those wars have occurred since 1988.⁷ From 1990 to 2000, there were 118 wars worldwide. In 1999, more than two thirds of armed conflicts had lasted for more than five years and "almost one third had lasted for more than 20 years."⁸

⁴UN, "Charter of the United Nations," Article 24.

⁵ Gordon A. Craig, Alexander L. George and Paul Gordon Lauren, *Force and Statecraft: Diplomatic Challenges of Our Time* 4th ed. (Oxford: Oxford University Press, 2007), 117.

⁶ William H. Wiist, et. al. "The Role of Public Health in the Prevention of War: Rationale and Competencies," *American Journal of Public Health* 104, no. 6 (June 2014), pp. 34-47.

⁷ Karen Ruth Adams, "The Causes of War," in Robert Denemark et. al. eds. *The International Studies Compendium Project* (Oxford: Wiley-Blackwell and International Studies Association, 2010).

⁸ Wendy Vanasselt, "Armed Conflict, Refugees, and the Environment," World Resource Institute, July 2003; available at <https://environmentalpeacebuilding.org/library/show/libraryitem-1303>.

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Twentieth-century wars alone killed approximately 140 million people, both civilians and combatants. Most of these deaths (65 to 75 million) occurred in World War II, which was a turning point in three ways. First, it was the single deadliest conflict in history. Second, due to aerial bombardment and other technological changes, the percentage of civilian deaths rose dramatically, from five percent in World War I to 50 percent in the World War II as a whole. This rises to 99 percent when one examines only the US and British bombing of the German cities of Hamburg and Dresden, as well as the Japanese cities of Hiroshima and Nagasaki. Third, since World War II, civil wars have accounted for the vast majority of casualties. Since then, the deadliest were the civil wars in Vietnam, China, and Afghanistan, which together killed more than three million people.⁹

Although overall civilian casualties did not exceed military deaths until World War II, during World War I, Russian, Serbian, and Bulgarian civilian deaths were greater than military losses. In addition, civilians lost their lives when governments used the war to justify domestic brutality. For example, in 1915, Turkey engaged in wholesale slaughter of Armenians for their supposed aid to Turkey's enemy, Russia.¹⁰ The practice of government suppression of civilians' liberties during wartime also became apparent during World War I. According to historian Paul Gordon Lauren, "[t]he detachment that the average person enjoyed in most earlier wars now proved to be virtually impossible. Civilians suddenly discovered their lives and their rights subjected to ever-increasing levels of control, determining their freedom of action, their employment, their diet, and even what they could say or think."¹¹

The Geneva Conventions

Before World War I, some states had agreed to the "Hague Laws," which outlawed the use of certain weapons to ensure that "unnecessary suffering and indiscriminate killing would be avoided in military conflicts ...and, moreover, that military necessity was the benchmark for determining the proper restraints on hostilities."¹² During the war, however, these agreements were ignored.

After World War II, states tried once again to limit the effects of war on civilian lives. In 1949, the four Geneva Conventions were opened for signature and ratification.¹³ These four conventions, together with three Additional Protocols negotiated later, are the basis of "international humanitarian law."¹⁴ Each of the four Geneva Conventions lay out the proper wartime treatment of wounded and sick soldiers (first and second conventions), prisoners of war (third convention), and civilians (fourth convention).

According to Article 3 of the Fourth Convention, the following acts against civilians are illegal:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;

⁹ Adams, "The Causes of War."

¹⁰ Paul Gordon Lauren, *Visions Seen: The Evolution of International Human Rights* 2nd ed. (Philadelphia: University of Pennsylvania Press, 2003), pp. 84-85.

¹¹ Lauren, *Visions Seen*, pp. 84, 87-88.

¹² David J. Bederman, *International Law Frameworks* 2nd ed. (New York: Foundation Press, 2006), p. 239.

¹³ Thomas Buergenthal, Dinah Shelton and David Stewart, *International Human Rights: In a Nutshell* 3rd ed. (St. Paul: West Group, 2004), p. 315.

¹⁴ Bederman, *International Law Frameworks*, p. 241.

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- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.¹⁵

The Fourth Geneva Convention also establishes the responsibilities that all parties involved in a conflict have to one another—and to each other’s civilians. For example, civilian hospitals cannot be targeted by the military; convoys of medicine, food or personnel to help with civilian relief efforts are off limits to military attack; children orphaned in war will be given to caretakers of the same culture and will not be left without resources; civilian communications in war areas will not be interfered with; women are protected specifically against devastating attacks to their person, such as rape; and, “pillage is prohibited.” This is just a sample of the stipulations. The Fourth Convention alone has over 150 articles.¹⁶

The four Geneva Conventions are considered one treaty and therefore require one ratification per state. The first two states to ratify the Conventions were Switzerland and Monaco. Once they had done so, the treaty came into effect. Today 196 states are party to the Geneva Conventions (more parties than there are members in the United Nations).¹⁷

A number of states have also negotiated, signed, and ratified three additional protocols.¹⁸ Additional Protocol I and II (1977) “strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts and place limits on the way wars are fought.” Protocol II was the first international treaty devoted solely to situations of non-international armed conflicts. Additional Protocol III (2005) recognized the “red crystal” as a third international emblem (in addition to the “red cross” and “red crescent”) for health and human rights workers entitled to protection and access to the wounded and imprisoned.¹⁹ Of all of the elements of international humanitarian law, the second Additional Protocol is the most disputed, because of its implications for state sovereignty.

The Geneva Conventions have been effective in improving the situation for soldiers and civilians in many international conflicts. For example, in 2000, when Ethiopia and Eritrea were fighting a brutal war, representatives from the International Committee of the Red Cross (ICRC) were able to visit 1,000 Ethiopian POWs and 4,300 civilian internees, exchange 16,326 messages between Ethiopian and Eritrean POWs and their families, organize safe passage across the front lines for 12,493 civilians of Ethiopian origin, and distribute aid to over 150,000 civilians affected by the conflict.²⁰

According to the Geneva Conventions, it is the responsibility of states to “impartially investigate whether serious violations occurred [by members of their forces or other persons under their jurisdiction], and impose

¹⁵ International Committee of the Red Cross (ICRC), “Convention IV relative to the Protection of Civilian Persons in the Time of War,” Geneva, 12 August 1949, International Humanitarian Law – Treaties & Documents, available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5>.

¹⁶ ICRC, “Convention IV relative to the Protection of Civilian Persons in the Time of War.”

¹⁷ ICRC, “The Geneva Conventions: The Core of International Humanitarian Law,” <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>.

¹⁸ State parties to Additional Protocols I and II are listed on the ICRC website at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P> and <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=475&ps=P>

¹⁹ ICRC, “The Geneva Conventions: The Core of International Humanitarian Law.”

²⁰ Philip Spoerri, “The Geneva Conventions of 1949: Origins and Current Significance,” Ceremony to celebrate the 60th anniversary of the Geneva Conventions, 12 August 2009, International Committee of the Red Cross website, <https://www.icrc.org/eng/resources/documents/statement/geneva-conventions-statement-120809.htm>.

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punishments on individuals found guilty that are commensurate with their deeds.”²¹ When self-monitoring is insufficient, states and individuals may be tried in the courts of states that have “universal jurisdiction.”²² This rarely happens, however, because states are reluctant to set a precedent that might one day be turned against their own citizens.

Alternatively, individuals who perpetrate war crimes may be tried in *ad hoc* (one-time) tribunals such as the Nuremberg Trials (established by the victorious allies after WWII) and the tribunals for Rwanda and the former Yugoslavia (established by the UN Security Council). *Ad hoc* tribunals are often seen as “victor’s justice,” however. States that win wars have not historically been held accountable for violations of IHL.

International Court of Justice (ICJ)

Another possible venue for trying war crimes violations is the ICJ, which is the court of the United Nations. According to the UN Charter, the ICJ’s purpose is to hear and rule on disputes between states. If Member States wish to sue each other for violations of international treaties such as the Geneva Conventions and Additional Protocols, they may do so as long as each is a party to those agreements, a party to the Court, and interested in having the Court rule on their dispute.

Although the ICJ could, therefore, enforce international humanitarian law, most cases that states refer to it pertain to violations of state boundaries and trading interests, not human rights.²³ In fact, in the 50 years since the Convention on the Prevention and Punishment of the Crime of Genocide came into force, just one case has been filed with the ICJ on this topic, that of Bosnia-Herzegovina and Croatia vs. Serbia.²⁴

States have been known to agree to have the ICJ hear a case, then withdraw from the Court when it rules against them. This was what happened in the 1984 case of Nicaragua vs. United States of America. When the ICJ ruled that the US had violated Nicaraguan sovereignty by laying mines in its harbors, the US withdrew from the Court and refused to pay the penalty.²⁵

International Criminal Court (ICC)

In the early post-Cold War era, states and human rights activists frustrated with the fact that many political and military leaders get away with inadvertent and deliberate harm to civilians decided to establish a new international court, the International Criminal Court (ICC). Instead of trying states, the ICC tries individuals such as military commanders, soldiers, and heads of state. The focus on individuals increased state willingness to participate in the Court because states themselves cannot be charged. Thus, the ICC, like the ICJ, was written with a great deal of concern for retaining state sovereignty.

The ICC came into force in 2002, when the Rome Statute authorizing it was ratified by 60 countries.²⁶ Currently, 108 of the UN’s 193 Member States have ratified the Rome Statute. Among the states that have not

²¹ Human Rights Watch, “Q & A on Accountability for Violations of International Humanitarian Law in Sri Lanka,” 27 April 2009, <http://www.hrw.org/node/82756>

²² Henry Kissinger, “The Pitfalls of Universal Jurisdiction,” *Foreign Affairs* (July/August 2001), available at <http://www.globalpolicy.org/intljustice/general/2001/07kiss.htm>; Kenneth Roth, “The Case for Universal Jurisdiction,” *Foreign Affairs* (September/October 2001), pp. 150, available at <https://www.foreignaffairs.com/articles/2001-09-01/case-universal-jurisdiction>.

²³ International Court of Justice, “Cases: List of All Cases,” available at <http://www.icj-cij.org/en/list-of-all-cases>, accessed 29 September 2017.

²⁴ Bederman, *International Law Frameworks*, 109.

²⁵ ICJ, “Nicaragua vs. United States of America,” 1984, available at <http://www.icj-cij.org/en/case/70/judgments>.

²⁶ International Criminal Court, “About the Court,” <https://www.icc-cpi.int/about>

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ratified it are the US, Russia, Israel and China.²⁷ These states are concerned about the “tension between enhancing the international legal justice system and encroaching on ... [the] legitimate use of force.”²⁸ In fact, the US has been so concerned about this that it passed domestic legislation saying that its citizens do not fall under ICC jurisdiction. Moreover, the US threatened to withdraw support for UN peacekeeping operations until the ICC agreed never to charge UN peacekeepers and other troops authorized by the Security Council, such as those operating in Afghanistan.²⁹

According to the Rome Statute, the ICC has jurisdiction over individual war crimes, crimes against humanity, and genocide. Like the ICJ, the ICC can only hear cases in which states that have signed the ICC are involved. Specifically, only citizens of participating states or individuals who committed war crimes in participating states can be tried. Moreover, according to the Rome Statute, the ICC can hear and rule on cases only in states in which courts have ignored the issue.

ICC cases are either selected by ICC judges or referred to the Court by the Security Council. The involvement of the Security Council has raised questions about whether citizens of the Permanent Five members of the Security Council could ever be held accountable for war crimes that their governments did not want to prosecute. In deciding whether to accept a case, the ICC must determine whether the individuals in questions recklessly or intentionally committed war crimes, crimes against humanity, or genocide. According to the Rome Statute, war crimes are “grave breaches of the Geneva Conventions” (Article 8). Crimes against humanity involve “a widespread or systematic attack directed against any civilian population” (Article 7). Genocide consists of acts intended “to destroy, in whole or in part, a national, ethnical, racial or religious group” (Article 6).³⁰

To date, 22 cases related to war crimes, genocide, and crimes against humanity have been referred to the ICC. The cases involve individuals in or from the countries of the Central African Republic, Cote d’Ivoire, Sudan, Uganda, Kenya, Libya, Mali, and the Democratic Republic of the Congo.³¹ The ICC’s first trial, which began in January 2009, was against Congolese warlord Thomas Lubanga.³² Lubanga was convicted in 2012 of enlisting child soldiers under the age of 15. He is serving a 14-year sentence for the conviction.³³

The ICC has profound implications for the protection of women in conflict. Although the Geneva Conventions laid the legal basis for prosecuting rape as a war crime, until the 1990s, there were no efforts to do so. Only after the civil wars in Rwanda and Yugoslavia, which involved mass rapes, did international criminal tribunals begin to hear and rule on cases of sexual violence.³⁴ In 2002, these crimes became illegal and subject to prosecution by the ICC in states that had ratified the Rome Statute. According to the ICC, depending on the reason rape and other forms of sexual violence occur in conflict situations, they can be war crimes, crimes against humanity, or part of a campaign of genocide. In March 2016, Jean-Pierre Bemba Gombo, leader of the Mouvement de Libération du Congo, a Congolese militant group that operated in the Central African Republic, was convicted of war crimes and

²⁷ Human Rights Watch, “Rome Statute Ratifications,” <http://www.hrw.org/legacy/campaigns/icc/ratifications.htm>.

²⁸ Jennifer K. Elsea, “CRS Report for Congress: US Policy Regarding the International Criminal Court,” *Congressional Research Service*, Library of Congress, updated 29 August 2006, p. 21.

²⁹ William Schabas, *An Introduction to the International Criminal Court* (Cambridge: Cambridge Univ. Press, 2004), p. 29.

³⁰ International Criminal Court, “Rome Statute,” 1998, <http://legal.un.org/icc/statute/romefra.htm>.

³¹ International Criminal Court, “Defendants,” <https://www.icc-cpi.int/cases#>, accessed 27 September 2017.

³² “The worst crimes, the law and the UN Security Council: Braced for the aftershock,” *Economist*, Vol. 390, 7 Mar. 2009, p. 67.

³³ International Criminal Court, “Defendants.”

³⁴ Center on Law and Globalization, “Consensus Increases on Rape in International Law,” http://clg.portalxm.com/library/keytext.cfm?keytext_id=200.

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crimes against humanity. Both convictions included convictions for rape carried out by forces under his control. Bemba Gombo's conviction marks the first conviction in a case by the ICC that included rape or sexual violence.³⁵

In 2010, ICC members passed a resolution that declared that the ICC can also try individuals for crimes of aggression. This issue had been disputed since 2002, when the ICC was created, because of a turf war between the ICC and the Security Council. According to Chapter VII of the UN Charter, the Security Council has authority over state crimes of aggression. The ICC resolution resolved the issue by granting the ICC the right to try individuals for aggression from states that are not party to the ICC for crimes of aggression only if the case is referred by the Security Council.³⁶ Thus the ICC remains a long way from neutral, legal enforcement.

The Responsibility to Protect (R2P)

Even if IHL were more robust, there would still be the question of what to do to protect civilians in the midst of conflict. In particular, should states force states and individuals who are carrying out war crimes to stop the violence? Doing so is often referred to as humanitarian intervention. At the extreme, humanitarian intervention involves "one nation (or a group) unilaterally invad[ing] another country in order to alleviate or stop human rights abuses by that government."³⁷ Intervention could occur through other means, such as diplomatic pressure or economic sanctions. But these measures have rarely been effective in themselves in ending conflict before significant human rights abuses have occurred.

Whether humanitarian intervention is necessary, possible, or desirable is even more contentious than the issues discussed thus far. That is because it clearly violates state sovereignty. The idea of R2P is that state sovereignty implies responsibilities on the part of a state to protect its citizens from mass atrocities such as genocide, war crimes, crimes against humanity, and ethnic cleansing. Responsibility for protection belongs first and foremost to the sovereign state within which war crimes are occurring. However, when mass atrocities are occurring or are imminent and "the state in question is unwilling or unable to halt or avert it, the principle of nonintervention yields to the international responsibility to protect."³⁸

According to the International Commission on Intervention and State Sovereignty (ICISS), R2P is composed of three equal responsibilities: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. The responsibility to prevent entails a responsibility—again by the state in question first and then the international community if the state is unable or unwilling—to address both the root and indirect causes of a humanitarian crisis. The responsibility to react entails the responsibility to intervene in a crisis to the extent necessary to resolve the situation. When the government in question fails to react, other governments can do so, using both diplomatic measures and coercive measures such as sanctions, international prosecutions, and even military intervention. The responsibility to rebuild entails a responsibility (especially acute in cases of civil wars and military interventions) to assist in the recovery, reconstruction, and reconciliation with the purpose of addressing the causes of the crisis and preventing a recurring cycle of violence.³⁹

Previous Committee Work on This Topic

Most Security Council resolutions relate to specific international security situations involving particular countries. They rarely declare or enforce overarching principles or rules. This is not because such principles do not exist. For example, the Genocide Convention (1948) established both a definition of genocide and a process for

³⁵International Criminal Court, "Bemba Case," <https://www.icc-cpi.int/car/bemba>, accessed 27 September 2017.

³⁶ Tod Lindberg, "Aggression in the Court: The International Criminal Court's Newest Authority," *Foreign Affairs*, 22 August 2010; available at <http://www.foreignaffairs.com/articles/66579/tod-lindberg/aggression-in-the-court>.

³⁷ Bederman, *International Law Frameworks*, p. 113.

³⁸ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, 2001, p. xi, available at <http://www.responsibilitytoprotect.org/index.php/about-rtop/core-rtop-documents>.

³⁹ ICISS, *The Responsibility to Protect*, p. xi

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responding to it. Specifically, cases of genocide can be referred either to the Security Council under Article 8 or to the ICJ under Article 9. Yet just one case has ever been referred to the ICJ, and the Security Council has been unable to act on at least three cases referred to it: the “killing fields” in Cambodia under Pol Pot, the Tutsi massacres in Rwanda, and ethnic cleansing in the former Yugoslavia.⁴⁰

In 2002, the African Union became the first international organization to officially embrace R2P. In 2005, at the UN’s 60th Anniversary World Summit (a special meeting of the General Assembly), 150 heads of state embraced the R2P norm by including it in the final summit Outcome Document.⁴¹

To date, the Security Council has often been reluctant to institute and act on this emerging international norm when international security is not threatened. For example, in 2007, a UN Security Council effort to address a severe crackdown by the Myanmar government on civilian protestors was vetoed by China and Russia.⁴² The reasoning provided by both countries was that the situation in Myanmar constituted a response to domestic instability and did not adversely affect the security of the nations around it. Furthermore, they argued that any efforts taken against the will of the Myanmar government could disturb the stability of the region, and would exceed the mandate of the Security Council. This position was strengthened by the fact that none of Myanmar’s five neighboring countries identified the situation in Myanmar as a threat to their security.⁴³

In September 2009, then UN Secretary-General Ban Ki-Moon congratulated the GA for adopting its first resolution on the responsibility to protect. The resolution was a general statement of support for the concept. This action followed a July 2009 statement opposing R2P by the outgoing President of the General Assembly, Miguel D’Escoto, a former Nicaraguan foreign minister. According to the UN News Centre, D’Escoto

warned that the concept could pose a threat to national sovereignty. He told the Assembly that the legacy of colonialism gave “developing countries strong reasons to fear that laudable motives can end up being misused, once more, to justify arbitrary and selective interventions against the weakest States.”

Citing the case of Iraq as an example of the lack of accountability for “those who might abuse the right that R2P would give nation States to resort to the use of force against other States,” he also questioned whether adoption of R2P in the practice of collective security would undermine respect for international law.

The principle is “applied selectively, in cases where public opinion in P5 States [the five permanent members of the Security Council: China, France, Russia, the United Kingdom and the United States] supports intervention, as in Darfur, and not where it is opposed, as in Gaza,” he said, referring respectively to the conflict between the Government and rebels in Sudan and Israel’s campaign against Hamas in Gaza last December and January.⁴⁴

In August 2009, the Security Council passed Resolution 1882 regarding the protection of children in armed conflict.⁴⁵ In November 2009, the Council passed Resolution 1894 addressing the protection of civilians more generally. The passage of the latter resolution marked the tenth anniversary of the Security Council’s “progressive

⁴⁰ Bederman, *International Law Frameworks*, p. 108.

⁴¹ Garth Evans, *The Responsibility to Protect* (Washington, D.C.: Brookings Institute Press, 2008).

⁴² United Nations Security Council, “Security Council Fails to Adopt Draft Resolution on Myanmar, Owing to Negative Votes by China, Russian Federation,” UN Department of Public Information, 12 January 2007, <http://www.un.org/News/Press/docs/2007/sc8939.doc.htm>.

⁴³ David I. Steinberg, “The United States and its allies: the problem of Burma/Myanmar policy,” *Contemporary Southeast Asia*, vol. 29, no. 2 (2007).

⁴⁴ “General Assembly agrees to hold more talks on responsibility to protect.”

⁴⁵ UNSecurity Council Resolution 1882 (2009), available at <http://unscr.com/en/resolutions/1882>.

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consideration” of civilians in armed conflict and the 60th anniversary of the Geneva Conventions. In this resolution, the Security Council

*Notes that the deliberate targeting of civilians as such and other protected persons, and the commission of systematic, flagrant and widespread violations of applicable international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and reaffirms in this regard its readiness to consider such situations and, where necessary to adopt appropriate steps...*⁴⁶

It is important to note the weakness of this resolution. It simply says that human right violations may constitute a threat to international peace and indicates that it will respond on a case-by-case basis when they do. It also implies that it will take no action to protect civilians in armed conflict unless it is human rights violations occur along with threats to international peace and security. In other words, it places international security above human security.

In recent years, the Security Council has debated and passed additional resolutions focused on the protection of journalists, humanitarian workers, wounded and sick individuals, and healthcare workers specifically. Most recently, in 2016, the Security council passed Resolution 2286, which condemned attacks on the wounded and sick, as well as medical personnel and facilities. It also demanded that states involved in armed conflicts “facilitate safe and unimpeded passage for medical personnel and humanitarian personnel exclusively engaged in medical duties, their equipment, transport and supplies, including surgical items, to all people in need, consistent with international humanitarian law.”⁴⁷

In March 2011, the Security Council authorized “all necessary means” to protect civilians in Libya. After that, several members of the North Atlantic Treaty Organization (NATO) assisted Libyan rebels in their fight to depose President Moammar Kadafi. In doing so, they exceeded the Security Council mandate to protect civilians. Since then, the international consensus behind R2P has weakened,⁴⁸ as is evident in the UN’s limited responses to the civil war in Syria. Although the GA condemned the violence in December 2011,⁴⁹ several years passed before the Security Council agreed upon measures to provide basic protection for UN aid-workers and geographically limited safety to evacuating Syrian civilians.⁵⁰ Even today, civilians still do not have adequate protections from attacks by either government forces or rebels in the country.⁵¹

Former UN Secretary-General Ban Ki-moon responded to the inaction in Syria by remarking that

⁴⁶ United Nations Security Council Resolution 1894 (2009), <https://www.un.org/ruleoflaw/blog/document/security-council-resolution-1894-2009-on-protection-of-civilians-in-armed-conflict/>.

⁴⁷ Security Council Report, “Protection of Civilians,” available at <http://www.securitycouncilreport.org/protection-of-civilians/>; UN Security Council Resolution 2286 (2016), available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2286.pdf.

⁴⁸ Philippe Boloipon, “After Libya, the question: To protect or depose?,” *Los Angeles Times*, 25 August 2011, <http://articles.latimes.com/2011/aug/25/opinion/la-oe-boloipon-libya-responsibility-t20110825>. For a list of resolutions see Security Council, “Security Council Resolutions,” available at <http://www.un.org/en/sc/documents/resolutions/>.

⁴⁹ UN General Assembly, “General Assembly Adopts More Than 60 Resolutions Recommended by Third Committee, Including Text Condemning Grave, Systematic Human Rights Violations in Syria,” press release GA/11198, 19 December 2011, <http://www.un.org/press/en/2011/ga11198.doc.htm>.

⁵⁰ Security Council Report, “Syria,” <http://www.securitycouncilreport.org/syria/>.

⁵¹ Somini Sengupta, “Russia and U.S. Clash Over Syria in Security Council Vote,” *The New York Times*, 28 February 2017, <https://www.nytimes.com/2017/02/28/world/middleeast/united-nations-security-council-syria-sanctions-russia-trump.html>.

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we face an urgent test here and now. Words must become deeds. Promise must become practice. You have all seen the horrible images and reports coming out of Syria: aerial bombardments of civilians; mothers weeping, clutching their dead children in their arms. Inaction cannot be an option for our community of nations. We cannot stand by while populations fall victim to these grave crimes and violations. We must uphold the core responsibilities of the United Nations.⁵²

The Syrian government is also suspected of using chemical weapons on civilians on numerous occasions.⁵³ Following a sarin attack in 2013, Russia and the US struck a deal to dismantle Syria's stockpile of chemical weapons, and to force Syrian President Bashar Al-Assad to sign the Chemical Weapons Convention. Afterward, however, the UN panel established to monitor the agreement declared that Syria had violated the agreement. Both China and Russia have vetoed additional Security Council resolutions on chemical weapons since then, citing concerns over potential violations of Syria's sovereignty.⁵⁴

In the first nine months of 2017, the Security Council passed 20 resolutions related to specific conflicts, including those in Mali, Sudan, South Sudan, Somalia, Lebanon, the Central African Republic, the Democratic Republic of the Congo, Afghanistan, Yemen, Syria, and Iraq. Most mentioned the importance of keeping the peace and protecting civilians. None invoked the idea of the responsibility to protect.⁵⁵

If the Security Council decided to again recognize the responsibility to protect civilians in armed conflict, it would still need to confront three questions. The first question is whether states should be subject to R2P even if they have not signed human rights treaties. According to R2P advocates, that is the whole idea. But how could R2P be asserted, if not in a treaty? At present, the only conceivable way is via a Security Council resolution, as was the case in Libya. Since Security Council resolutions are binding on UN Member States, R2P can be implemented immediately without the need for drafting and ratifying a new treaty, but would R2P ever apply to the permanent five members of the Security Council, since they can veto any resolution?

The second question pertains to the process through which R2P violations should be identified and addressed. Those who approve of the ICC might argue that that court should hear R2P cases and that all R2P interventions should be authorized by it. By contrast, those who like the idea of R2P but disagree about the ICC might argue that individual states should be able to decide for themselves when civilians are being harmed and what is necessary to do to protect them. A third option is for the Security Council to decide which cases merit intervention. Here again, we are quite far away from the idea that all civilians everywhere deserve immediate and effective protection from armed conflict. Yet that was the idea endorsed by heads of state at the 2005 World Summit, which first endorsed R2P. The language of the Outcome Document explicitly states that the Security Council must have an active role in the future of R2P. It calls for

Clear and unambiguous acceptance of all governments of the collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity [as well as w]illingness to take timely and decisive collective action for this purpose, through the Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to do it.⁵⁶

⁵² UN Department of Public Information, "Responsibility to Protect Faces Urgent Test 'Here and Now', Secretary-General Tells General Assembly, Stressing Immense Human Cost of Failure in Syria," press release SG/SM/14490 GA/11271, 5 September 2012, <http://www.un.org/press/en/2012/sgsm14490.doc.htm>.

⁵³ *BBC News*, "Syria Chemical 'attack': What We Know," 26 April 2017, <http://www.bbc.com/news/world-middle-east-39500947>

⁵⁴ Sengupta, "Russia and U.S. Clash Over Syria in Security Council Vote,"

⁵⁵ UN Security Council, "Resolutions: 2017," <http://www.un.org/en/sc/documents/resolutions/2017.shtml>.

⁵⁶ United Nations, "2005 World Summit Outcome Factsheet: High-Level Plenary Meeting," 14-16 September 2005, available at <http://www.ipu.org/splz-e/unga05/outcome.pdf>.

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The third question the Security Council would have to answer is how to define a civilian. As Jakob Kellenberger, President of the ICRC, explains, IHL “stipulates that those involved in fighting must make a...distinction between combatants on the one hand, who may lawfully be attacked, and civilians on the other hand, who are protected against attack unless...they directly participate in hostilities.” One of the main dilemmas in applying IHL is “that neither the Geneva Conventions nor their Additional Protocols spell out what precisely constitutes ‘direct participation in hostilities.’” As Kellenberger explains, this difficulty has been compounded by the fact that civilians have become more and more involved in support operations related to combat and are even used by combatants as “human shields.” In addition, “combatants do not always clearly distinguish themselves from civilians, neither wearing uniforms nor openly carrying arms.”⁵⁷

Conclusion

Millions of civilians suffer every day as the result of both unintentional and deliberate use of force against them. According to UN Secretary-General, António Guterres, “civilians continue to bear the brunt of conflict around the world.” Specifically, he noted that civilians, including medical and humanitarian workers, were especially vulnerable in countries such as Syria, South Sudan, and Yemen. According to Guterres, these represent only a handful of the “more than 20” countries where conflicts harmed civilians in 2016.⁵⁸

What can and should the Security Council do to better protect civilians from wartime violence? As you develop your country’s position on this topic, consider the following questions:

- Is your country a party to the Geneva Conventions, the Additional Protocols, the ICC, and/or the ICJ? If not, why not? If so, does it comply with them?
- Has your country or have individuals in your country ever been accused of war crimes?
- What is your country’s record of helping civilians in other states who are experiencing war crimes?
- What is your country’s position on the responsibility to protect?
- Does your country tend to lean more towards national sovereignty or human rights?
- Of the four methods for protecting civilians listed on page 1, which (or what combination) should the Security Council pursue?

Recommended Reading

International Coalition for the Responsibility to Protect. Website. Available at

<http://www.responsibilitytoprotect.org/index.php/crises/37-the-crisis-in-darfur/2148-amnesty-internationalinternational-community-fails-to-protect-darfur>.

This is the website of an alliance of non-governmental organizations founded in January 2009 to promote the idea of the “responsibility to protect.” It provides a good overview of the concept.

Human Rights Watch. World Report 2017. Available at <https://www.hrw.org/world-report/2017>.

Human Rights Watch (HRW) is a non-governmental organization devoted to publicizing human rights abuses and pressuring governments to end them. On this site, you can read HRW’s latest report on the human rights situation in your country.

International Committee of the Red Cross. “Home.” Available at <https://www.icrc.org/en>.

⁵⁷ Jakob Kellenberger, “Sixty years of the Geneva Conventions: learning from the past to better face the future,” ICRC, 12 August 2009, <https://www.icrc.org/eng/resources/documents/statement/geneva-conventions-statement-president-120809.htm>.

⁵⁸ António Guterres, Statement made to the Security Council on the Protections of Civilians, UN Audiovisual Library, 25 May 2017, <http://www.unmultimedia.org/avlibrary/asset/1894/1894532/>

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This site is an excellent place to begin your research. It provides an overview of international humanitarian law, plus links to the text of all of the Geneva Convention treaties and protocols, and lists of member states and their reservations and declarations. The site also has information on current ICRC operations to protect civilians and recent news related to IHL.

International Criminal Court. Website. Available at <http://www.icc-cpi.int/Menus/ICC?lan=en-GB>

This website provides the background, text, and additional reading on the ICC as well as information on the ICC's pending cases and arrest warrants.

Security Council Report. "Protection of Civilians." Available at <http://www.securitycouncilreport.org/protection-of-civilians/>.

Security Council Report is a non-governmental organization that keeps track of what the Council is doing. This website links to resolutions, meeting summaries, and other records related to protecting civilians from armed conflict. You can also view a variety of topic sections regarding the specific situations in countries throughout the world under *Country and Regional Issues* link towards the top of the page.

"Times Topic: War Crimes, Genocide, and Crimes against Humanity." *New York Times*. Available at <https://www.nytimes.com/topic/subject/war-crimes-genocide-and-crimes-against-humanity?mcubz=1>.

This site provides information on UN and other efforts to protect civilians in particular countries around the world. Check it periodically to see what's new.

United Nations Security Council. Website. Available at <http://www.un.org/Docs/sc/>.

This website provides a good starting point to looking into how the Security Council has approached the topic in the past and what resolutions it has passed. This website also provides the latest news on what the Security Council is working on.