

## 理解和运用“保护的责任”原则： 走向一致<sup>①</sup>

保罗·埃文斯\*

“保护的责任”(Responsibility to Protect,简称 R2P)是一个概念、一种规范、一项原则、一个政策框架,也是一种学说。这一概念自 2001 年在干预和国家主权国际委员会的报告中初步形成以来,就一直吸引着人们的关注。“保护的责任”之所以重要,是因为它致力于解决现实世界中不断发生的恐怖问题——事先阻止非政府武装集团和当事国政府针对平民的大规模暴行。此外,“保护的责任”这一原则还给主权、干涉、国际社会的责任等概念提出了复杂的问题,这些问题体现在规范层面,法律层面,以及政治层面。

在过去的 13 年里,学术界、非政府组织、各国政府、区域组织,特别是联合国对“保护的责任”不断修改、提炼和运用,但这一概念仍然存在争议,无法实施。大国在利比亚危机和叙利亚危机中的僵局导致它们在对“保护的责任”的定义和应用上出现严重的问题。无论是在批评者还是在支持者中,这种僵局可能都会侵蚀人们对“保护的责任”的支持。在繁忙的全球日程中,“保护的责任”可能会被弃之一旁,因为还有领域能够提供更加成熟的解决办法,或者至少缓解上述恐怖问题。“保护的责任”的未来不仅取决于其本身的价值,它还预示着在这个乱糟糟的多中心世界秩序中、在全球权力转移的过程中什么样的规则和标准能够继续留存、发展。

本文旨在简要回顾“保护的责任”(R2P)的历史,概述目前僵局的本质,并

<sup>①</sup> 感谢布赖恩·乔布和阿纳斯塔西娅·什斯特里林娜的评论,以及让我参考了他们两位即将出版的两篇论文。这篇论文还参考了我在《人类安全手册》(玛丽·马丁和泰勒·欧文主编,伦敦:Routledge 出版社 2014 年版)一书中所写的“人类安全与东亚”一章。

\* 加拿大不列颠哥伦比亚大学教授。

就如何开展建设性对话提出一些建议。这一问题所牵涉的参与者和议题虽然早已超过了中美两国,但很难设想在没有中美两国的参与下,能找到一个具有创造性和现实意义的解决办法方案。

### 起源与发展

“保护的责任”源于“人的安全”这一理念。后者产生于 20 世纪中期,在关于谁的安全、威胁来自哪里和如何实现安全的长久争论中,它将个体作为关注对象。2001 年 10 月,干预与国家主权国际委员会(ICISS)在其报告中首次提出:“保护的责任”关注在武装冲突和其他形式的有组织暴力活动中对个体和社会团体的保护。<sup>①</sup> 当各国就是否应在索马里、塞拉利昂、卢旺达、波斯尼亚和东帝汶实行人道主义干预的问题上争论不休时,安南秘书长呼吁国际社会应该就必要情况下动用武力保护受难民众的原则和程序达成一致。在这一背景下,干预与国家主权国际委员会出台了这一报告,并有意突破了联合国的框架。

干预与国家主权国际委员会(ICISS)的报告明确回避了“人道主义干预”和“干预的权利”这样的词汇,转而关注受助者的需求,通过“保护的责任”来建构那些有关主权和国内干涉的问题。这份报告确认了一系列核心原则,这些原则事关国家主权、《联合国宪章》下的义务、现存的国际法义务以及主权国家、区域组织和联合国安理会的发展等。它扩展了“保护的责任”的范围,包括在需要人道保护的国家,该国政府无力或不愿履行责任的情况时,实施预防、应对和重建的责任。此外,报告还对正当干预的条件、预防原则、正当权威、操作原则给出了明确定义,以便考虑在极端情况下允许未经该国政府同意进行干涉的可能性。

在非洲和联合国内部,各国对“保护的责任”反应不一,争论热烈。安南的“威胁、挑战和变化高级别小组”宣布“保护是一项共同的国际责任”,并称“保护的责任”是一种正在“形成中的准则”。2005 年,安南在他的“追求更多自由”报告中,将“保护的责任”进一步提升为共同发展和共同治理的联合行动的组成部分,而不是一种全球和平和安全的战略。

将“保护的责任”制度化的努力在 2005 年联合国峰会上达到了顶峰。特别在《峰会成果文件》(A/Res/60/1, 2005, 后文简称为“WSOD”)的第 138 和 139 段中提到:各国政府对向自己的公民提供保护负有最主要的责任。而国际社会的责任则仅限于协助该国政府履行这一责任。如果一国政府“明显没有”

<sup>①</sup> 该篇报告及其补充内容 *Research, Bibliography, and Background* 可以参见 <http://responsibilityto-protect.org/ICISS%20Report.pdf>。报告内容已翻译成中文、法文、泰文和其他几种文字。



履行自己的责任,那么国际社会有义务通过和平的方式保护该国公民免于指定的危险;国际社会可以“因地制宜并与相关区域组织合作”采取和平方式;如果和平的方式仍不能奏效,甚至可以考虑军事行动。当然军事行动必须得到安理会授权,并且仅限于以下四种情况:大屠杀、战争罪、种族清洗、反人类罪。联合国秘书长随后发表的三篇报告对“保护的责任”进行了修订和完善,2012年巴西倡议的“责任与保护并重”对此则做了进一步补充。<sup>①</sup>

“保护的责任”的支持者们试图将国家主权、平等和互不干涉原则与人权保护、对受胁迫公民给予保护的原则协调起来。前者是《联合国宪章》的核心,后者同样是《联合国宪章》《联合国发展报告》和国际人道主义和刑法的核心原则。“保护的责任”对于使用武力的规定已在科特迪瓦和利比亚得到成功应用,尽管在利比亚的实施效果存有争议,但在肯尼亚、达尔富尔、苏丹和叙利亚危机中则造成了包括安理会在内的国家间的巨大分歧。

### 目前的僵局

联合国安理会中,关于是否在叙利亚问题上适用“保护的责任”所形成的僵局是以下几个因素共同作用的结果:(1)对“保护的责任”的定义和运用范围的不同理解;(2)各国在利比亚问题上是否实施“保护的原则”及其运用所造成的影响的分歧尚未解决;(3)国家利益的冲突。

中国对于“保护的责任”的看法有个演变过程,主要经历了三个阶段,这对于了解目前局势非常重要。第一阶段,中国官员批评干预与国家主权国际委员会(ICISS)最初的报告,但开始和多国学术界讨论“保护的责任”的特点和可能带来的影响,包括参与加拿大主办的研讨会和会议。第二阶段,中国最终支持2005年联合国《峰会成果文件》(WSOD)中提出的更有限制性的“保护的责任”,那就是,强调联合国安理会是唯一可以进行法律授权的机构,强调区域组织的重要性,并且把可能导致军事干预的范围定义得非常狭窄。第三阶段,中国非常活跃地参与讨论“保护的责任”的制度和实施问题,正如乔布和什斯特里林娜所称,中国是以“规则制定者”,而不是“规则接受者”的身份出现的,目的是要“以符合自身视角和利益的方式对‘保护的责任’加以塑造和重新定位”。<sup>②</sup>

<sup>①</sup> 联合国秘书长的五篇报告可以参见 <http://responsibilitytoprotect.org/index.php/publications>。

<sup>②</sup> Brian Job and Anastasia Shesterinina, “China as a Global Norm-Shaper: Institutionalization and Implementation of the Responsibility to Protect”, forthcoming in Alexander Betts and Phil Orchard, eds., *Implementation and World Politics: How Norms Change Practice*, Oxford University Press, forthcoming 2014.

目前,中国对“保护的责任”的立场是既不完全支持也不完全拒绝。这种立场被描述为谨慎内敛、灵活实用,反映了两种不同信念之间的张力:一种信念是对威斯特伐利亚体系的硬核——主权和互不干涉原则的坚持,另一种是对于赞同和加入各种形式的国际参与坚持更加灵活的立场。中国官员并不把“保护的责任”塑造成一种需要承担义务的规则,也不是国际法里有约束力的原则,而是把它塑造成在具体个案中可用或可不用的一种概念。与已被接受的主权原则不同,“保护的责任”在应用之前需要经过反复的讨论并且达成共识。尽管中国采取了一些积极措施来保护海外的本国公民,但对于何种情况下应进行对外干预仍然坚持有节制的观点,中国非常重视《联合国宪章》第七章对于和平和安全的规定。与此同时,中国还鼓励并向当事国政府施压,要求其解决国内危机或是取得它们对于国际干预的同意,比如在苏丹就是这样。在出现失败国家的情势下,中国积极参与了联合国授权的维和行动和支持非盟等区域组织的行动。<sup>①</sup>

2011年,在将“保护的责任”应用于利比亚问题的争论中,中国和俄罗斯一样,起初在授权采取军事干预的安理会1973号决议表决时弃权,而后又猛烈批评军事干预的范围扩大进而导致了卡扎菲政府下台。<sup>②</sup>与此同时,在中国海军(PLAN)的积极支持下,中国政府组织了一场在利比亚的中国公民大撤离。至于叙利亚,2月4日中俄联手否决了安理会关于授权军事干预的决议草案。相反的是,它向叙利亚提供了人道主义援助并积极展开斡旋,向大马士革和叙利亚邻国派遣特使,以寻求和平解决叙利亚问题。3月4日,中国对阿盟为叙利亚危机寻求政治解决的努力表示支持。

在学术界和二轨外交的讨论中,中国学者经常对“保护的责任”中的人道主义目的表示支持,与此同时,他们也批评西方和其他政府将“保护的责任”作为一种工具,打着保护平民的幌子,其目的旨在颠覆当事国政权,导致当事国长期动荡,促使当事国承诺采取所谓民主的解决办法,但这些办法却不符合当地实际情况。

与其他很多国家一样,美国倡导“保护的责任”,但却一直采取不同的立场。2012年,美国政府根据第10号总统安全指令,成立了暴行预防委员会,将防止大规模暴行和种族灭绝作为“核心的国家安全利益和道德责任”。2013年7月,玛德琳·奥尔布赖特和理查德·威廉姆森领导的特别小组发布的报告,

<sup>①</sup> Sarah Teitt, “The Responsibility to Protect and China’s Peacekeeping Policy”, *International Peacekeeping*, April 2011.

<sup>②</sup> Anastasia Shesterinina, “Evolving Norms of Protection: China, Libya, and the Problems of Civilians in Armed Conflict”, paper presented at the Canadian Political Science Association, June 2013.



进一步阐述了类似的想法。针对美国以及全球听众,这份报告主要有四个要点:<sup>①</sup>

第一,将“保护的责任”视为一种规范和信条,他们宣称“世界上的所有国家都意识到他们有责任保护本国公民免于大屠杀、战争罪、反人类罪和种族清洗,至少从理论上来说,负有采取相应措施的责任”(第七段)。当一国政府明显不能保护其公民或事实上这种暴行就是针对该国公民的情况下,“保护的责任”应包括各国具有保护的义务、国际社会应承担援助的义务,并且根据联合国宪章准备采取“矫正行动”。

第二,基于下列认识,即“随着时间的推移,‘保护的责任’成功与否取决于多数国家的态度和行动,而在这中间,美国的领导意愿至关重要”。他们指出,尽管“保护的责任”反映了美国的“最高利益和传统”,但美国民众常常误解它,在国会中也没有引起足够的重视,它还没有成为公众良知的一部分。美国的官员和各公民社会行为体不应该回避“保护的责任”,而是应该弄清楚:

这个概念旨在巩固,而不是破坏国家主权。它重点强调了政府保护自己公民的义务,通过补充性地关注,帮助这些政府提升它们履行这一义务的能力。只有当政府不能或不愿承担起主权所附加的责任时,它才会面临外来干预的风险。即使是在这种情况下,“保护的责任”也应根据《联合国宪章》来履行,也就意味着安理会拥有核心决策权,包括由此带来的一切好的结果和坏的结果。尽管“保护的责任”是基于长期国际法的传统,但并没有给政府带来新的法律义务。国家没有义务介入军事干预。“保护的责任”最重要的目标是鼓励,并在需要的时候,帮助当事国政府保护自己的公民。当事国没有尽到自己的义务时,首先采取的一般是外交、经济或者其他手段。通过集体军事行动来履行“保护的责任”少之又少。(第10页)

第三,“保护的责任”提出了一系列冲突前的预防和监督手段,包括:无人机提供的新型预警机制、卫星成像、来自本国草根阶层和邻近国家的报告;来自援助机构更多的资金支持,以用于危机预防和维稳措施以及促进民主化的目标;对国际刑事法院和联合国维和行动给予更多的支持;支持区域组织的应急响应部队;增强国会的重视和参与。

第四,在分析“保护的责任”的应用时,该报告称赞了在肯尼亚、科特迪瓦和利比亚已取得成功的几个案例。利比亚之所以被视为一个成功的范例,是从

<sup>①</sup> Madeleine Albright and Richard Williamson, *The United States and R2P: From Words to Action*, Washington: United States Institute of Peace, July 2013. Available at: <http://www.usip.org/publications/the-united-states-and-r2p-words-action>.

拯救生命的角度而言的。卡扎菲的垮台是必然的,绝非北约有意为之,北约(NATO)只是延伸了其使命但并未越界。利比亚的行动为在叙利亚应用“保护的责任”提供了先例,从长期来看,在苏丹、南苏丹、刚果民主共和国和斯里兰卡也应该应用“保护的责任”。

中国国际问题研究所(直属中国外交部)副所长阮宗泽最近的一篇文章中,将“负责任的保护”作为对奥尔布赖特和威廉姆森报告中所提倡的“保护的责任”这一更宽泛定义的一种补充和代替。

阮宗泽的出发点是中国应该在这个问题上起建设性的领导作用。

中国需要适应在聚光灯下的新环境;同样,国际社会也要熟悉中国的新角色。中国必须有勇气发表自己的意见,向世界贡献自己的思想,即使这意味着中国在应对和处理复杂和多样化的国际事务时将面临更多的困难和更复杂的选择。提出“负责任的保护”的概念是中国积极参与解决国际热点问题、建立公正合理的国际政治新秩序而做出的努力。

他引用了2005年联合国《峰会成果文件》(WSOD)中“保护的责任”的四个要素,并对此表示认同。但是,他尖锐地批评了美国和西方国家试图将“保护的责任”应用于利比亚和叙利亚的行为。他的“负责任的保护”概念有六个关键要素。第一,保护的主体必须是无辜的民众,而不是特定的政党或武装力量。第二,只有安理会才拥有充当保护者的合法性。第三,保护的手段必须强调外交和政治对话。军事手段将导致大量平民伤亡,损毁基础设施和破坏经济,从而“加剧人道主义灾难,把‘保护’的目标变成了旷日持久和痛苦的后危机重建”。第四,保护的主体必须严格控制在人道主义的范围内。“绝对禁止因实施保护而造成更严重的人道主义灾难,更不用说把它作为颠覆一国政权的手段了”。第五,那些援助国有义务参与受援国的重建。第六,联合国应该监督、评估所采取的行动,并为此负责。<sup>①</sup>

除了中国,其他发展中国家也支持对“保护的责任”的目的和范围给出限制性的定义。对于如果要“保护的责任”应用于叙利亚,应该如何应用的问题,亚洲太平洋保护责任中心各联合主任最近发表的一篇文章区分了三种冲突性的立场:(1)没有联合国安理会决议授权的行动将违背“保护的责任”;(2)军事行动违背“保护的责任”,但如果联合国大会能一致通过一个促进和平的决

<sup>①</sup> Ruan Zongze, “Responsible Protection: Building a Safer World”, *China International Studies*, Vol. 34, May-June 2013, reproduced by the China Institute of International Studies, 15 June 2012. [Http://www.ciiis.org.cn/english/2012-06/15/content\\_5090912.htm](http://www.ciiis.org.cn/english/2012-06/15/content_5090912.htm).



议,该行动也具有国际合法性;(3)西方大国出于安全的考虑可能强制干预,基于一种“出于人道主义需要的建设性的违约行为”。他们得出的微妙结论是:对“保护的责任”进行严格定义,对于这一准则的长远健康发展是正确选择,部分原因在于:在一场像叙利亚那样复杂的冲突中应用它的关键原则——“结果平衡”是非常困难的。军事行动的直接代价太大,也可能导致更大的人道主义灾难。<sup>①</sup>

### 建立合作的共同基础

中美两国都不是“保护的责任”最大的支持者,也都没有签署加入国际刑事法庭的条约。两国都认为国家保护责任没有给各国政府强加任何新的法律义务,而是当“保护的责任”与它们的最高利益相冲突的时候,为它们是否应用这项原则的权利保留了空间。两国都认为《联合国宪章》是最基本的行为原则,安理会是授权采取行动的最恰当机构。并且,中美两国在保护自己在冲突地区的海外公民方面都有巨大的利益。不论现在有怎样的分歧,中国、美国以及国际社会的其他成员在过去十年间的联系愈加密切,而不是疏远了。阮宗泽“负责任的保护”的六个要素和 ICISS 在其最初的那份报告中陈述的观点实际上是并行不悖的。

如果“保护的责任”要成为一个具有影响力的全球性概念、规范或原则——更不用说它是否经联合国安理会授权方能加以应用——除了西方和其他有类似想法的国家,它还需要更多的支持者。得到中国和俄罗斯以及其他许多发展中国家(包括印度和巴西)的同意和支持不仅十分有价值,而且是至关重要。

中国的角色是至关重要的。或许现在是与中国官方和学者就“保护的责任”问题进行深入对话最具建设性的时刻,双方应该以 2005 年联合国《峰会成果文件》(WSOD)为基础,围绕“保护的责任”的合法性、适用范围和定义等问题如何加强共识进行对话。

这场对话应关注至少四个方面的问题。

第一,关于授权问题,联合国安理会是首选或唯一的授权机构吗?在安理会内部出现僵局的时候,其他多边机构是否具有合法性,授权采取“保护的责任”的行动?

<sup>①</sup> 有关内容的详细概述可以参见 Tim Dunne and Alex Bellamy in “Syria”, *Asia Pacific Centre for the Responsibility to Protect Brief*, Vol. 3, No. 5, 16 September 2013. <http://www.r2pasiapacific.org/docs/R2P%20Ideas%20in%20Brief/AP%20R2P%20Syria%20Final%20Copy%2017%20Sept%202013.pdf>.

第二,如何定义行动的对象,即“无辜的民众”?叛乱者制造的大规模屠杀是否也属于联合国《峰会成果文件》(WSOD)列举的四项罪行之一?

第三,当一国政府对本国民众实施大屠杀时,应该采取怎样的行动?外部军事干预能否以政党和政权为合法目标?在何种情况下,颠覆当事国的政权是一个合法的目标?

第四,在叙利亚问题和其他国内冲突上,如何根据当地的实际情形达成协议?危机可能要恶化的预警信号是什么?如何衡量外部干预能否取得成功,不会造成规模更大、时间更久的暴力?奥尔布赖特和威廉姆森在报告中所列出的新的通讯技术能否解决部分问题?

其中的一些讨论需要在政府层面、双边层面以及联合国和区域组织的层面来进行,辅之以二轨外交。通过二轨外交,就预防性外交、在危机中保护海外公民的措施和礼节,以及对国际危机组织这样的非政府机构的具体研究等广泛问题进行深入分析。

如何使中国和其他国家的学者更深入地参与到这一问题中来呢?现在不是逃避争论的时候,而是在讨论中增进了解的关键时刻。



## Interpreting and Applying the Responsibility to Protect: Paths to Common Ground<sup>①</sup>

Paul Evans\*

Presented variously as a concept, norm, principle, policy framework, and doctrine, the Responsibility to Protect (R2P) has attracted sustained attention since its initial formulation in the report of the International Commission on Intervention and State Sovereignty in 2001. R2P is important because it addresses the horrifying and recurring real world problem of forestalling mass atrocities against civilians by non-state armed groups and by their own governments. And it raises complicated normative, legal and political problems related to evolving conceptions of sovereignty, intervention, and the obligations of the international community.

After 13 years and a huge investment by academics, NGOs, individual governments, regional organizations and, above all, the United Nations to refine, shape and apply it, R2P remains controversial and excruciatingly difficult to implement. The current standoff among great powers in the wake of the Libyan and Syrian crises raises hard problems about its meaning and application. The standoff may be eroding support for R2P among its critics and supporters alike. In a crowded global agenda, it potentially may be relegated to a back burner as other areas more ripe for solution or at least mitigation are addressed. The future of R2P is important in its own right

<sup>①</sup> I thank Brian Job and Anastasia Shesterinina for their comments and access to two forthcoming essays. It also draws on my chapter "Human Security and East Asia", in Mary C. Martin and Taylor Owen, eds., *The Human Security Handbook* (London: Routledge, 2014).

\* Professor, University of British Columbia, Canada.

but also a bellwether of what kinds of rules and norms will survive and thrive amidst a global power shift in a messy multi-centric world order.

My aim here is to provide a brief history of the Responsibility to Protect, to outline the nature of the current impasse, and to offer suggestions about how to generate a constructive dialogue. While the players and issues extend far beyond the United States and China, it is difficult to imagine a creative and realistic solution that does not involve them both.

### Origins and Development

R2P had its well spring in ideas about human security that took root in the mid-1990s and focused on the individual as a key referent in the eternal debate about security for whom, from what threats and by what means. Focusing on protection of individuals and communities in situations of armed conflict and other forms of organized violence, its seminal expression was the October 2001 report of the International Commission on Intervention and State Sovereignty (ICISS). <sup>①</sup> Against the background of contested humanitarian interventions (and non-interventions) in Somalia, Sierra Leone, Rwanda, Bosnia, and East Timor, the report responded to the request by Kofi Annan for the international community to forge a consensus on the principles and processes for using, if necessary, coercive action to protect people at risk. It deliberately opened the issue outside the UN context.

The ICISS report explicitly eschewed the vocabulary of "humanitarian intervention" and "the right to intervene" and instead focused on the needs of people requiring assistance by framing the issues of sovereignty and intervention in terms of the responsibility to protect. It identified a series of core principles that connected state sovereignty, obligations under the UN Charter, existing legal obligations under international law, and the developing practice of states, regional organizations, and the Security Council. It extended the responsibility to protect to include the responsibility to prevent, to react, and to rebuild when faced with human protection claims in states that are either unable or unwilling to discharge their responsibility. And it provided a precise definition of the just cause threshold as well as precautionary princi-

<sup>①</sup> The report and the supplementary volume, *Research, Bibliography, and Background*, are available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>. Translations into Chinese, French, Thai and several other languages are also available.



ples, right authority, and operational principles, allowing for interventions without consent in extreme cases.

International reactions to R2P were varied and heated, with the main theatres of action being in Africa and in the United Nations. Kofi Annan's *High Level Panel on Threats, Challenges, and Change* declared "a collective international responsibility to protect" and characterized the R2P as "an emerging norm." His own report (*In Larger Freedom*, 2005) advanced the R2P as a component of collective action for shared development and governance, rather than as a global peace and security strategy.

The effort to institutionalize the norm culminated at the UN World Summit of 2005. The Summit Outcome Document (A/Res/60/1, 2005, hereafter WSOD), notably paragraphs 138 and 139, stated that it was the state that had the primary responsibility for providing for and protecting its own citizens. The international community's responsibilities, on the other hand, were limited to assisting states to meet their responsibilities to protect citizens. Should a state "manifestly fail" in its responsibilities, the international community has an obligation to use peaceful means to protect populations from designated perils on a "case by case basis and in cooperation with relevant regional organizations," and further to *consider* [italics added] military action should peaceful means be inadequate. This could only occur with the approval of the United Nations Security Council and be restricted to four kinds of transgressions: genocide, war crimes, ethnic cleansing and gross crimes against humanity. The approach has been refined and elaborated in three further reports by the Secretary General and supplemented by a 2012 Brazilian initiative on "Responsibility While Protecting."<sup>①</sup>

R2P's champions have attempted to reconcile the conflicting principles and norms of state sovereignty, equality, and non-interference, centred in the UN Charter, with the protection of human rights, and protection of civilians under duress, also centred in the Charter as well as the UN Declaration on Human Rights, UN Development Reports, and international humanitarian and criminal law. Its provision regarding the use of force has been applied successfully in instances including the Cote d'Ivoire and with disputed results in Libya. It has provoked major disagreements, including in the UNSC, in the contexts of Kenya, Darfur, Sudan and Syria.

<sup>①</sup> All five reports by the Secretary General are available at <http://responsibilitytoprotect.org/index.php/publications>.

## The Current Impasse

The deadlock in the UNSC about applying R2P in Syria has been based on a combination of differing understandings of its meaning and reach, unresolved disagreements about its application and implications in Libya, and conflicting national interests.

The evolution of Chinese thinking about R2P through three distinct phases is important to understanding the current situation. Chinese officials criticized the initial ICISS report but in collaboration with academics from several countries including Canada hosted seminars and meetings to debate its main elements and implications. They eventually endorsed its more restrictive formulation as outlined in the WSOD in 2005, emphasizing the role of the UNSC as the only legitimate authorization, the importance of regional organizations, and a narrow definition of the acts that could trigger military intervention. Subsequently they have engaged actively in the debate about its institutionalization and implementation and emerged as what Job and Shesterinina call a "norm shaper" rather than "norm taker," aiming to "shape and reorient R2P in a manner consistent with their perspectives and interests."<sup>①</sup>

The Chinese position now neither fully supports nor rejects R2P. It has been described as cautious and contained, flexible and pragmatic, reflecting a tension between dual commitments to hard-shelled Westphalian conceptions of sovereignty and non-interference and, simultaneously, a more flexible position on the kinds of involvements that it will permit or engage. Chinese officials have framed it not as a *norm* entailing obligations, or as a *principle* with binding implications in international law. Rather, they have presented it as a *concept* that might or might not be useful in individual situations. Different from an accepted principle like sovereignty, it requires repeated debate and consensus before application. While the Chinese government has taken vigorous measures to protect its own citizens abroad, it has taken a restrictive view of what should trigger outside involvement, focusing heavily on Chapter VII aspects of peace and security. Meantime, it has been active in encouraging and pressuring governments to solve their internal crises or secure their consent

<sup>①</sup> Brian Job and Anastasia Shesterinina, "China as a Global Norm-Shaper: Institutionalization and Implementation of the Responsibility to Protect", forthcoming in Alexander Betts and Phil Orchard, eds., *Implementation and World Politics: How Norms Change Practice* (Oxford University Press, forthcoming 2014).



to outside involvement as in the case of Sudan. China has played increasingly large roles in UN-sanctioned peacekeeping operations and support for regional organizations including the African Union in situations of failed states.<sup>①</sup>

In the debate about applying R2P to Libya in 2011, China, like Russia, initially abstained from UNSC Resolution 1973 authorizing the military intervention. Later it harshly criticized the extension of the mission that resulted in the overthrow of the Gaddafi government.<sup>②</sup> Meantime, Chinese officials organized a major evacuation of its citizens from Libya, with the PLAN in active support. With respect to Syria, on February 4<sup>th</sup>, along with Russia, China vetoed a draft resolution in the UNSC to authorize military force. Instead it offered humanitarian assistance and good offices, sending special envoys to Damascus and neighboring capitals in search of a peaceful solution. On March 4<sup>th</sup> China added support for the efforts of the Arab League in seeking a political solution to the crisis.

In academic and track-two discussions Chinese academics have often stated support for the humanitarian purpose of R2P but critiqued it as an instrument used by Western and other governments aimed not for civilian protection but as a pretext for overthrowing regimes, for producing long-term instability, and for a driving normative commitment to democratic solutions that often do not suit local circumstances.

American advocates of R2P, like many others, continue to take a different position. The U.S. government in 2012 established the Atrocity Prevention Board on the basis of Presidential Security Directive 10 with the intention to prevent mass atrocities and genocide as both a "core national security interest and core moral responsibility." The extension of similar thinking is reflected in the July 2013 report produced by a task force headed by Madeleine Albright and Richard Williamson. Aimed at an American and international audience, the report makes four main points.<sup>③</sup>

First, treating R2P as both a norm and doctrine, they argue that "Every country in the world has recognized its responsibility to protect citizens from genocide, war crimes, crimes against humanity, and ethnic cleansing, and, at least in theory,

① Sarah Teitt, "The Responsibility to Protect and China's Peacekeeping Policy", *International Peacekeeping*, April 2011.

② Anastasia Shesterina, "Evolving Norms of Protection: China, Libya, and the Problems of Civilians in Armed Conflict", paper presented at the Canadian Political Science Association, June 2013.

③ Madeleine Albright and Richard Williamson, *The United States and R2P: From Words to Action*, (Washington: United States Institute of Peace, July 2013). Available at: <http://www.usip.org/publications/the-united-states-and-r2p-words-action>.

a responsibility to act accordingly" (p. 7). This includes the duty of every state to protect, the commitment of the international community to assist, and preparedness to take "remedial action" under the UN Charter when a state manifestly fails to protect its citizens or in fact targets them.

Second, based on therecognition that the "prospects for success depend on the attitudes and actions of many countries over time, but that the U.S. willingness to lead will be pivotal," they note that R2P is often mis-understood by American audiences, has not attracted sufficient attention in Congress, and has not entered the public consciousness in a meaningful way despite it reflecting America's "best interests and traditions." American officials and civil society actors should not back away from the term and should make clear that

The concept is designed to reinforce, not undermine, national sovereignty. It places primary emphasis on the duty of states to protect their own people and its complementary focus on helping governments improve their capacities to fulfill their commitments. Only when a government fails or refuses to live up to the responsibility of sovereignty does it run the risk of outside intervention. Even then, R2P's implementation is to be done in accordance with the UN Charter, which means that the central decision-making authority is the UN Security Council, with all its attendant strengths and weaknesses. Although R2P is based on a long tradition of international law, it does not impose any new legal obligations on governments. There is no duty to engage in military intervention. R2P's overriding goal is to encourage and, when necessary, help states protect their own people. When that does not happen, the first recourse will ordinarily be to diplomatic, economic, and other measures. Collective military action to enforce R2P will be rare. (p. 10)

Third, it recommends a full range of tools for pre-conflict prevention and monitoring, including new early warning mechanisms provided by drones, satellite imagery, crowd-sourced grassroots reporting, and neighboring countries; more funding, including from aid agencies, for crisis prevention and stabilization measures, and pro-democracy programs; more support for the International Criminal Court and UN peacekeeping; support for emergency response forces of regional organizations; and increased Congressional awareness and involvement.

Fourth, in analyzing the application of R2P in practice it applauds several successful instances including in Kenya, Cote d'Ivoire, and Libya. Treating Libya as a success story in saving lives, with regime change as necessary and possibly inadvertent, the NATO mandate extended but not exceeded. It also makes the case for ap-



plying R2P in Syria and, over the longer term in Sudan, South Sudan, the Democratic Republic of the Congo and Sri Lanka.

A recent essay by Ruan Zongze, the Vice-President of the China Institute of International Studies, a research organization connected to the Ministry of Foreign Affairs, makes the case for "Responsible Protection" (hereafter RP) as both a supplement and alternative to more expansive definitions of R2P of the kind advocated in the Albright and Williamson report.

Ruan makes his argument from the starting point that China should demonstrate constructive leadership on the issue.

China needs to get acclimatized to the new environment of being under the spotlight and likewise the international community has to familiarize with this new actor of China. China must have the courage to speak out and contribute its ideas to the world even though it means China will face with more difficult and complicated options in addressing and handling diverse and complex international affairs. The idea of 'responsible protection' is an endeavor made by China in actively participating in the solution of hotspot issues and in building a just and reasonable new international political order.

He refers approvingly to official statements that underwrite the four basic elements of R2P as outlined in the WSOD in 2005. But he is sharply critical of American and Western attempts to apply R2P principles in Libya and Syria. His conception of RP has six key ingredients. First, the object of protection must be innocent people, not specific political parties or armed forces. Second, only the UNSC has the legitimacy to serve as protector. Third, the means of protection should emphasize diplomacy and political dialogue. Military force can cause huge civilian casualties, damage infrastructure, and harm economies "aggravating humanitarian disasters and plunging the object of 'protection' into protracted and distressful post-crisis reconstruction." Fourth, the purpose of protection must be strictly humanitarian. "It is absolutely forbidden to create greater humanitarian disasters because of protection, let alone to use protection as a means to overthrow the government of a given state." Fifth, those providing protection have an obligation to reconstruct the country in which they intervene. Sixth, the UN should supervise, evaluate, and be accountable for operations. ①

① Ruan Zongze, "Responsible Protection: Building a Safer World", *China International Studies*, Vol. 34, May-June 2013 reproduced by the China Institute of International Studies, 15 June 2012. [http://www.ciiis.org.cn/english/2012-06/15/content\\_5090912.htm](http://www.ciiis.org.cn/english/2012-06/15/content_5090912.htm).

It is not only China and other developing countries that favour a restricted definition of the purpose and limits of R2P. A recent essay published by the co-directors of the Asia Pacific Centre for the Responsibility to Protect identifies three conflicting positions about how and if R2P should be applied to Syria: action without a UNSC resolution would contravene R2P; military action would be in breach of R2P but could have international legitimacy especially if the UNGA would pass a Uniting for Peace resolution; and the security concerns of Western powers could compel intervention based as a type of "constructive non-compliance based on humanitarian necessity." Their nuanced conclusion is that a restrictive interpretation of R2P is the right one for the long-term health of the norm, in part because applying its key principle of "balance of consequences" is extremely difficult in a conflict as complex as that in Syria. The direct costs of military action could be horrendous and might in fact lead to greater humanitarian distress. ①

### Building Common Ground

Neither China nor the United States has been the strongest supporter of R2P and neither has signed on to the International Criminal Court. Both recognize that R2P does not impose any new legal obligations and instead reserve the right to apply it in a place, manner or at a time contrary to their own best interests. Both acknowledge the UN Charter as fundamental and the UNSC as the appropriate institution for authorizing action. And both have broad and deep interests in protection of their own foreign nationals abroad in conflict situations. Whatever the current differences, Chinese, Americans and the wider international community have moved closer together rather than further apart over the last decade. Most of the six elements of Ruan's "Responsible Protection" parallel ideas in the initial report of the ICISS.

If R2P is going to be an effective global concept, norm or principle—not to mention if it is ever to be applied with UNSC authorization—it is going to need a wider constituency than Western and like-minded states and individuals. Getting broader consent and support from China and Russia as well as a host of developing countries including India and Brazil is no longer merely valuable but essential.

① These are carefully outlined in Tim Dunne and Alex Bellamy in "Syria", *Asia Pacific Centre for the Responsibility to Protect Brief*, Vol. 3, No. 5, 16 September 2013. <http://www.r2pasiapacific.org/docs/R2P%20Ideas%20in%20Brief/AP%20R2P%20Syria%20Final%20Copy%2017%20Sept%202013.pdf>.



China's role is pivotal and it may be a constructive moment for a deeper dialogue with Chinese officials and academics about how to consolidate a consensus about the legitimate rationale, scope, and meaning of R2P building on the 2005 WSOD as a foundation.

The dialogue will need to concentrate on at least four areas of contention.

First, regarding authorization, is the UNSC the preferred venue or the *only* venue? In the event of deadlock, is an R2P action authorized by other multilateral institutions ever legitimate?

Second, how should the objects of action, "innocent people," be defined? Do mass killings of insurgents count as one of the four crimes outlined in the WSOD?

Third, what to do in situations where it is a government committing large-scale atrocities against its own citizens? Can political parties and regimes be legitimate targets for outside military intervention? Is regime overthrow ever a legitimate objective and if so under what conditions?

Fourth, in the case of Syria and other intra-state conflicts, how can agreement be built on ground-level conditions? What are the warning signals that a crisis is likely to deepen? How to calculate whether external intervention is likely to be successful and not trigger deeper and longer-lasting violence? Do the kinds of new aerial technologies outlined in the Albright and Williamson report offer a partial solution?

Some of this discussion needs to take place at a governmental level, bilaterally and in the context of the United Nations and regional organizations. It must be complemented and informed by track-two processes looking deeply at the broad subjects of preventive diplomacy, measures and protocols for protection of foreign nationals in crisis situations, and the detailed studies of non-governmental institutions like the International Crisis Group. How to deepen the participation of Chinese academics and those from other countries in their operation?

Rather than shy away from the controversy, this is a key moment for informed discussion.