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## The Dilemma of Responsibility to Protect in the Great Lakes Region

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## **Introduction**

This paper examines the underlying complexities that constitute a dilemma for the responsibility to protect in Africa most specifically the Great Lakes Region. I argue that clarifying the meaning and intention of the doctrine in any given context is predicated on understanding the distinct and complex environment in which the doctrine is invoked. These complexities and their differentiation on a case by case basis construe the doctrine as progressive; with political, legal and moral significance making it fit for its purpose. On the other hand, the variation of prevention and protection amounts to the denunciation of it as being selective, complicit, inconsistent and even imperialistic.

Proponents of R2P confront a major gap between the ideals propounded by the doctrine and realities that have continued to more often than not negate those ideals making them utopic. A comprehensive contextualization should be the basis of determining the prospect, relevance and success of R2P in the great lakes where the need to protect humanity is at crossroad with the complex environment in which the doctrine applies. The analysis focus on the dilemma hinged on a multi-layered security environment creating a predicament for great lakes region, the history and politics of intervention which shapes perspectives and actions and finally effects of global and regional power imbalance.

### **History and Synopsis of War and Genocide in the Great Lakes Region.**

Great Lakes Region consists of countries in East and Central Africa (Rwanda, Burundi, Democratic Republic of Congo, and Uganda), forming a complex network of political and economic interactions with implications on peace, security and governance. At least every generation in these countries has lived either war or genocide which is estimated to have caused approximately 2.5 -4 million deaths. Others have continued to experience the indirect effects of war and genocide reinforcing perception of state fragility and instability.

The conflicts in the region are interlinked, complex and involve a multiplicity of interlocking state, non-state, regional and international actors. These conflicts have tended to expand geographically from one country to another; and with a dual character.

Though current conflicts have a distinct local and/or national anchorage, they are at the same time linked to the political history, global power influence and underlying security dynamics resulting from identity crises, lack of state legitimacy, arms proliferation, regime types, natural resources inter group difference and governance issues. In this region, the question of genocide and prevention is very provocative. i.e. What is genocide? Who are the potential *genocidaires*, who are the victims, how does it differ from other wars and counter insurgencies? What is the role played by governments? And what preventive options are there if any?

### **Conceptualising Responsibility to Protect (R2P)**

The 21<sup>st</sup> century doctrine ‘Responsibility to Protect’ (R2P) is an antithesis of idealism and reality, reflecting the theory and practice of international politics. It seeks to pursue universal peace by preventing and protecting vulnerable groups from mass atrocities including genocides, crimes against humanity, war crimes and ethnic cleansing.<sup>1</sup> Its interpretation at normative, institutional and implementation continues to trigger debates across the divide.

R2P proponents, like Gareth Evans, term it as an emerging norm for collective security in intra state conflicts, Ann Orford describes it as a pre-existing and tacit norm resulting from the executive role of the UN;<sup>2</sup> the victims of mass atrocities, embodies R2p as progressive and with suasive value in international politics, law and morality establishing a duty of care, not only to the sovereign state but the international community.<sup>3</sup> For global, regional and sub-regional organizations and national governments, R2P marks different things. To the powerful and developed European and Western states, it is a responsibility and duty that arises from their economic and military privilege.<sup>4</sup> For the Association of South East Asian Nations (ASEAN) countries, R2P denotes community security where internal mechanisms are resorted to prevent and manage crisis situations as opposed to external involvement.<sup>5</sup>

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<sup>1</sup> ICISS Report (2001)

<sup>2</sup> Orford (2011), pp. 3, 11

<sup>3</sup> Arbour (2010), pp. 445-458

<sup>4</sup> UN Charter (1945), Art. 23

<sup>5</sup> Morada (2012), p. 137

In Africa, the doctrine reinforces existing conflict prevention and mitigation mechanisms created in the 1990s by Economic Community of West African States (ECOWAS) and later adopted by the Africa Union under Article 4 of its Constitutive Act which makes it responsive on prevention of mass atrocities within the African Peace and Security Architecture (APSA).<sup>6</sup>

The concept of responsibility denotes;

*'The primary responsibility for protection of a population against serious suffering resulting from internal wars, insurgency, and repression lies with the state.<sup>7</sup> If the state in question is unwilling and or unable to avert the situation, the principle of non intervention yields to the international responsibility to protect.'<sup>8</sup>*

### **Obligations inherent in the concept of sovereignty**

#### **Sovereignty defined**

R2P prescribes sovereignty as responsibility. This from the onset creates a problem of misconception that is further engendered by the term 'absolute sovereignty' which rhetorically in the GLR is often interpreted as undermining sovereignty. This is especially evidenced when non military measures such as economic sanctions, judicial approach through the ICC and or military interventions are under consideration. These rhetorics however are often contradictory depending on the anticipated end result; ie, in pursuit of opponents/insurgent groups, such measures are resorted to 'in perceived aid to a weak regime the same is rejected and considered where the source of problem is alleged to be with the regime of the day.

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<sup>6</sup> Abass (2012),

<sup>7</sup> ICISS Report (2001)

<sup>8</sup> ib

### **Security predicament in Africa**

The security predicament in Africa specifically the GLR is understood from a historical and comparative analysis of the state, security, and interactions therein.<sup>16</sup> It includes how the concept of security as applied in Africa, differs from its traditional use in the international relations literature; the factors inherent in these states that can help explain this difference; how the interaction of GLR states with the international system affect the security of the former; and the relationship between the security and development concerns of GLR states and most third world states.<sup>17</sup> The overarching aspect is how these interactions affect levels of legitimacy and social coherence in what Deng terms as a problem of divided nations and cultures whose end result is identity crisis and conflicts.<sup>18</sup>

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<sup>9</sup> Loughlin (2003), p. 73

<sup>10</sup> Mongenthau (1948), p. 243

<sup>11</sup> Krasner (2001), p. 24

<sup>12</sup> Ibid

<sup>13</sup> Ibid p. 26

<sup>14</sup> Ibid p. 27

<sup>15</sup> UN Charter (1945), Art 1-4

<sup>16</sup> Ayoob (1997), p. 90

<sup>17</sup> Buzan et al (1998), p. 25

<sup>18</sup> Deng (2011), p. 2

The problem therefore is multi layered, at domestic, regional and international level. With interactions going through a series whose timeline is traceable from the historical formation of the African state and flows through arbitral boundary demarcation, colonial legacy of divide and rule; the cold war politics of containment and post-cold war conflicts hence the crisis of legitimacy and lack of social coherence.<sup>19</sup> While traditionally security threats were perceived as emanating from external quarters, post-independence and cold war conflicts in GLR, emerged from internal sources either, the state, opposition and civilians; triggered by internal vulnerabilities characterized by ethnicity, marginalization, identity politics which upon transmutation results to violence and crimes against humanity and acts of genocidal magnitude.<sup>20</sup> Coupled with corruption, bad governance and divisive politics, the GLR characterizes antagonistic relations between the elitist regimes and sections of the populations.<sup>21</sup> Making it a 'quasi state', meaning it depends upon international norms to preserve its' sovereign status and not the popular will of its subjects.<sup>22</sup> This 'caricature' state lacks legitimacy and coherence that comes with sovereignty and citizenship envisaged in the Westphalia system. When the material component- that is the popular will is fragmented, it automatically creates a fragile composition which conceptually does not affect sovereignty but in practice undermines its very essence. States within the Great lakes region depicts a lack of popular will, which may be interpreted to mean no responsibility to the greater masses, save for the section of the society that it enjoys that legitimacy or coherence and identifiable through ethnicity, culture, religion and in the modern day, class.<sup>23</sup> This is the first dilemma that R2P as a protective norm has to contend with. How can responsibility be reinforced by a state whose legitimacy is time and again contested by sections of its population. Essentially it calls for the sovereign to institute that legitimacy and coherence that is plausible through a state-making process.

Today, regimes in GLR are still struggling to reconcile the duty of state-making alongside human and political rights. Competing pull and push factors associated with the two amounts to internal conflicts that pave way for either indiscriminate repression or state failure.

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<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Group for Legal and Political Studies Research Committee (2010)

<sup>23</sup> Mamdani (2011), p. 126

Relatively, the former clashes with international norms and may amount to a systematic segregation of population through political, social and economic strategies. In the short term, this breeds stability with a higher probability of outburst which tends to undo all the gains made and eventually may lead to state collapse. From this, streams systematic threats of political, social and economic nature with potential to explode to genocidal level owing to their grievous implications on the population as employed by regimes. For Mamdani, (whether these actions are termed as genocide, war crime, counter insurgency or war against terror they inflict suffering and pain to humanity but the politics of naming that applies on Africa and other developing countries based on power determines what amounts to a threat or mass atrocity and what action can be taken.<sup>24</sup>

On the contrary, a systematic repression over a long period of time can consolidate legitimacy foster development and posterity of a nation. This, however, is unacceptable in the 21<sup>st</sup> century and so depending on the limits of a society, each continues to struggle to get the right strategy of consolidating its legitimacy. Thus, the measures of prevention and protection prescribed by R2P while seeking to address these challenges remain elusive because such reconstruction has not been defined to address these underlying divisions and incoherence in states.

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<sup>24</sup> Ibid p. 131

***Deadline and labeling of African states***

Tied to the reconstruction of African states is the increasing pressure generated by international norms such as R2P and domestic elites to translate juridical statehood into effective and functional statehood- akin to that in developed societies.<sup>25</sup> Charles Tilly chronology of European state-making notes that statehood takes time and requires a relatively free hand to persuade and coerce populations under its rule to accept legitimacy of the state, its institutions, its right to extract and use resources from them and let the state regulate aspects of their lives.<sup>26</sup> In the modern age of globalization and mass politics, neither option is available for Africa-GLR. The continent is prompted to compete with the developed states to raise hopes and dispel fears, which in the long run increase a burden of political systems to a degree of insecurity that manifest in different ways-political, social, economic, environment and military.<sup>27</sup> Adam Branch observes this struggle in lieu of global power dynamics that set a stage for African states to be labeled as effective human right supporters, legitimately sovereign, and deserving recipients of foreign assistance to build their capacity.<sup>28</sup> Conversely another platform is set to denounce states as human right violators, undeserving in foreign support and vulnerable to intervention by the international community.<sup>29</sup> Underlining these are two concerns; the first being which states shall fall on the first or second cluster. Secondly, while these states may harbor transparency and precision of international norms and the enforcement institutions the same faith does not extend to powers mandated to execute these rights. This amounts to suspicion and a lack of formalization which in the case of R2P allows a multitude of interpretations, claiming moral conviction without the possibility of addressing the underlying predicaments founded on statehood.<sup>30</sup>

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<sup>25</sup> Robert (1990), p

<sup>26</sup> Tilly (1975), p. 15

<sup>27</sup> Ibid

<sup>28</sup> Branch (2011), p. 110

<sup>29</sup> Ibid

<sup>30</sup> Douzinas (2007), p. 189



The ‘responsible African state in the phase of state making under R2P witness an expansive interventionist regime-from state fragility to state building evolving under the Liberal Peace Thesis which, according to Chandler, is a pointer of liberalism.<sup>31</sup> Annan, on these interventions, explains that a multidimensional failure and predicament in African states requires multidimensional and equally extensive measures that open up the political, social and economic space for intervention, giving the UN the mantle to respond.<sup>32</sup> At the time of R2P inception in 2001, it recorded more than 91 policy tools for responding to African security threats and building peace.<sup>33</sup> Whether these interventions have been applied in context, and proved effective is another issue altogether. Interventions by the international community in liaison with other organizations have had mixed traces of success and failure.<sup>34</sup> These interventions have been seen as choking the state- making process making it inculpable of building legitimacy and coherence which is at the core of any functioning society. (The so called ‘project’ of building state capacity and moral justification in the language of human rights results to a lack of accountability and refusal by the African state and international community to be subject to criticism on what precisely to intervene in, the extent of the intervention and consequences of it.<sup>35</sup> In the long run there is no guarantee that this ‘new state’ will protect its population but continue to contain its issues. Such processes rather than creating responsible governments, amounts to irresponsibility, and fragility and the cycle goes on and on.

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<sup>30</sup> Douzinas (2007), p. 189

<sup>31</sup> Chandler (2004), p. 76

<sup>32</sup> Annan (

<sup>33</sup> Lund (2001), p. 16

<sup>34</sup> Paris (2009), p. 98

<sup>35</sup> Chandler (2011), p. 23

The irresponsible states remain subject to internal threats and coercive intervention by the international community. They are a point of reference on sanctions, prosecutorial measures and military interventions. Ultimately, these do not comprehensively address the security threats and impending atrocities but breeds auxiliary discordance amongst the population. This is because preventive and protective measures of R2P tend to assume some form of uniformity which should not be the case if the doctrine is to function objectively and successfully. While it is preferable for the norm to be consistent and uniformly applied, the realities of African states cannot accord this opportunity because on one hand this uniformity will defeat the purpose of prevention and protection, and on the other hand it may end up distorting the notion of peace, justice and democracy-whose meaning is distinct from one society to another. For these reasons R2P measures in Africa crisis is labeled as too much, too little and too late. The DRC Crisis of 2003-2011, Kenya post-election violence of 2007/08, Somalia collapse from 1992-2012, Sudan wars 2003-2011, and Cote d'Ivoire election crisis 2010-2012 are samples of security challenges and R2P situations that denote different meaning in their respective contexts. From these cases idealists observe a deficit of interventions while skeptics see too much intervention. In reality, R2P interventions in these cases should be determined on their own merit.

### **History and politics of intervention**

Discussions on the history and politics of intervention (specifically humanitarian intervention) have been controversial with considerable impact on African perspectives and actions undertaken. This has dominated the discussions along Global North and South pre- and post-R2P adoption in 2005. Humanitarian intervention refers to 'coercive action by one or more states involving the use of force in another state without the consent of the authorities to prevent widespread human suffering.'<sup>36</sup>(force brigade, individual deployment-2003 wars in DRC, M23) In political terms the alleged 'right to intervene' or 'duty to protect', has been interpreted as a language of power and of resistance to some power or authority. Thus a right to protect becomes an antithesis for a duty or responsibility where practically it is the powerful states that assume the right and responsibility over the weak states.

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<sup>36</sup>Weiss (2004)

As to whether this justifies such interventions' as being legitimate was ruled by the ICJ on *Corfu Channels Case* which upheld that:

*'an alleged right to intervene is a manifestation of a policy that in the past has given rise to heinous abuses and such as defects maybe in the international organization cannot find a place in international law from the very fact that interventions for any purpose would be a reserve for the most powerful and may pervert if not undermine justice.'*<sup>37</sup>

Although R2P clarifies the issue of legitimacy through the inclusion of regional organizations and multilateralism, the doctrine is ostensibly predicated on political will of the powerful and power relations within the international system. Since this system is made of unequal states, R2P is therefore viewed as an instrument of power invoked in congruence of interest as witnessed in Libya.

In addition, interventions in history have been undertaken for protection of the vulnerable populations. R2P, (in moralizing and legitimizing intervention on grounds of protection, is arguably not new but dates as far as 1629 during the foundation of the United States.<sup>38</sup> The Massachusetts Bay Colony was granted its Charter by King Charles 1 stating that the principal end of the plantation is to save the natives from paganism.<sup>39</sup> The great seal of the colony shows an American Indian calling '*Come over and Help Us*'. This help is discharged via a responsibility to protect by extirpation<sup>40</sup> and extermination of the natives for their own good.<sup>41</sup> In developing countries, discussions of R2P in the words of Chomsky are disturbed by the skeleton in the closet from history to the present time.<sup>42</sup>

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<sup>37</sup> ICJ Report (1949), p. 35

<sup>38</sup> Ushistory.org(2012)

<sup>39</sup> [ibid](#)

<sup>40</sup> Knox (1783-1812), p. 54

<sup>41</sup> Blackmon (2009), p. 163 <sup>42</sup> Chomsky (2011), p. 7

<sup>42</sup> Chomsky (2011), p. 7

Unlike humanitarian intervention, the doctrine of R2P is founded on a logical flow of order in the global system. However, in an imperfect and realism world, the politics of survival based on power and national interest dominate interventions. In the R2P decade, Ramesh Thakur postulates that in some instances the strategic interests of states converge with the values enshrined. But it does not subordinate the latter (protection).<sup>43</sup> This realization, poses skepticism and distrust in GLR. With the shifting power imbalances, recession in Western and European states, Chinese influence, and increasing potential for economic growth following its vast natural resources interventions on humanitarian protection are continuously view from the lens of strategic interest. Thus, international norms are inevitably a preferred gateway to safeguard these interests. So, even in instances of genuine human suffering it remains blurred as to what is the crux of an intervention.

While historically all interventions have been qualified on the basis of protection, the wordings and principles of R2P are seen to apply quite generally, meaning it can be interpreted to mean just anything for the consumer. Its limitation to mass atrocities crimes and limitless measures of prevention and reaction is open to ambiguity, mischief and abuse. This equates the doctrine to three historical principles. One is the maxim of Thucydides where the strong do as they wish while the weak suffer as they must, illustrated by the Melian dialogue.<sup>44</sup> Here, the strong refers to the Security Council, its allies and developed states while the weak refers to the ‘irresponsible’ non allied and alleged rogue states. The end result “hegemonial approach where the voice of the powerful sets precedents.”<sup>45</sup>

The second general principle that pits states against R2P is founded on Adam Smith’s account of policy making in England.<sup>46</sup> The principal architects of policy - that is merchants and manufactures ensured that their own interest are most peculiarly met, however grievous the consequences were on the people of England.<sup>47</sup>

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<sup>43</sup> Thakur (2011), p. 13

<sup>44</sup> Alker (1998), p. 820

<sup>45</sup> Brownlie (1998), p. 17

<sup>46</sup> Smith 1999(1776), p. 247

In the 21<sup>st</sup> century such imperialism, according to former UK foreign advisor Robert Cooper applies in justifiable interventions within international norms.<sup>48</sup> The third principle is use of force where all military interventions in global affairs have been justified in the terms of responsibility to protect. These includes ousting of regimes from power, and suppression of dissenting voices. Key cases between 1928 Kellogg Briand Pact and United Nations 1945 included; the attack on Manchuria by Japan in 1931, the invasion of Ethiopia by Mussolini in 1938 and Hitlers occupation of Czechoslovakia in 1938.<sup>49</sup> All were followed by supercilious rhetorics on the solemn responsibility to protect the suffering population with detailed justification.<sup>50</sup> Post- 1945, like Vietnam invasion of Cambodia of 1977, Ethiopia invasion on Eritrea 1998, were also hugely criticized.

The memories of colonialism and its aftermath on state making and security has left most countries justifiably skeptical on western and regional intervention. Conquest was the norm for civilization and protection of the population from alleged barbarism of hobbesian societies.<sup>51</sup> This to date is unacceptable and even though it is preferable to forget this history and forge ahead, forgetting is not a wise thing to do especially for the weak.<sup>52</sup> This history provides a basis for learning, reason and wisdom towards a rational convergence of purpose and means in any given intervention.<sup>53</sup>

Also the inconsistencies of the international community in responding to humanitarian crisis in the 1990s,<sup>54</sup> i.e inaction in Liberia and Sierra Leone in 1991 leading to war crimes and crimes against humanity, withdrawal and subsequent inaction on Somalia 1992, inaction in Rwanda following the genocide 1994, the Darfur crises, and regime change in Libya and cote d'ivoire Continue to reinforce the politics of power and interests that determine who intervenes where. These politics reign in R2P debates within the UN general assembly.<sup>55</sup> And prior to adoption of the UNWSOD in 2005 the G77 and NAM in reference to R2P alleged that sovereignty had been their last defense against abuse by powerful states.<sup>56</sup>

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<sup>49</sup> Murphy (1996), p. 369

<sup>50</sup> Ibid

<sup>51</sup> Mazower (2006), p. 559

<sup>52</sup> Chomsky (2011), p. 15

<sup>53</sup> Ibid

<sup>54</sup> ICISS Report (2001)

<sup>55</sup> Ibid

<sup>56</sup> Report on Implementing R2P (2009)

Even as they acknowledge the doctrine, states remained wary of the politics of protectionism and interventionism which results to abuse and selectivity. Even with options such as the CPMR within the APSA framework little can be done due to financial constraints, multiplicity of actors and observed leadership crises where the continental body operates on the basis of regime interest and not necessarily the populace overall good.

Thus, in a world of *realpolitik*, the greater concern for Africa like other developing countries is how to protect the suffering populations from the state exercising unlawful power against its population and how to protect states from the excesses of the powerful in the international system who acts on the precepts of their strategic interests as opposed to values?

**Constraints emerging from global imbalances and the Security Council.**

Another challenge results from global and regional power imbalances and operations of the Security Council. This system is characterized by developed states, regional hegemony and developing countries all abiding by standardized norms that are predisposed to inconsistent interpretation and application.<sup>57</sup> Developed states are characterized by strong institutions which safeguard the rule of law and protect against breach of international norms within their territories. Also, their economic and military capability gives them leverage over any probable intervention in their domain or their allies on activities hence a right to dictate the how, when and where of interventions. These poses concerns over the ethical/moral consideration and at times legal legitimacy of decisions and actions taken for acts and inactions amounting to fundamental breach. For a region marked by fragility and lack of strong institutions interventions on grievous situations is often unlikely or skewed to safeguard geostrategic /political interests.

These imbalance further reflect at regional and sub-regional organizations where states and organizations are gatekeepers of peace and security under R2P.<sup>58</sup> Their proximity to states and conflicts confer a comparative advantage as legitimate custodians to not only prescribe but take appropriate actions under Chapter VIII of the UN Charter and if military, with the authorization of the Security Council.<sup>59</sup> Underlying this responsibility is whether these organizations based on their practices, architectures, and interactions within the international system are impartial arbiters in determining situations of R2P under Chapter VII?

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<sup>57</sup> Evans (2009)

<sup>58</sup> ICISS Report (2001)

<sup>59</sup> UN Charter (1945)

In most instances, crisis situations have been determined through subjective political processes that protect the status quo and not necessarily the interests of a population. Evidently in the GLR with multiplicity of actors, at disparity, have a variation of weight depending on powers and interests involved. For example, the AU, EAC has been at the forefront, of diplomacy in R2P situations in Burundi, UN, AU, SADC, and individual states have made several attempts in the DRC, both which have resulted to mixed bag of results touching on legitimacy, credibility as defined by would be interveners.

On prosecutorial means the doctrine has been invoked selectively. Militarily, authorization has to be sort from the UNSC wit financial limitations to support the missions. Overdependence on donor agencies whose priorities are increasingly relative are varied and institution/states are swayed to make determinations favorable to its donors and big powers as opposed to the core interest on humanity; where in realism morality of the prince is judged not by his actions to humanity, within the international system but his capacity to pursue national interest and state survival.<sup>60</sup> Thus where mutual relations of states and organization are predicated on mutual benefits interventions are likely to be face saving and not protection of suffering populations. These imbalances create a problem of selectivity and double standards where credibility and legitimacy is subject to continuous scrutiny and contestation.

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<sup>60</sup> Machiavelli (1513), Chapter. VIII

## Conclusion

These three factors characterize the R2P dilemma not only in Africa but internationally. From this expose', one is left to wonder whether it is possible to define, redefine and confine the doctrine to fit into the context of each situation without being seen as inconsistent.<sup>61</sup> While such ideals should be uniform in interpretation and application, a propitious meaning and clarity of the doctrine is only attainable if it meets the purpose which is to protect suffering populations from atrocities thus different contexts necessitate a variation of action. Notably, consistency and uniformity can only arise if states are at parity which is impractical in the near future. States will seek to survive in this complex international system and those with economic and military advantage will remain at the forefront in protection, prevention and rebuilding. Despite the need for reforms in the Security Council, protection of civilian population necessitates more effectiveness and legitimacy as opposed to additional numbers which do not guarantee political and moral resolve for protection.

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<sup>61</sup> Luck (2009)

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