

Conflict in Gaza: Balancing History and the Responsibility to Protect

Written by Cecilia Jacob

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If there is anything that the current humanitarian tragedy in Gaza teaches us about the Responsibility to Protect (R2P), it is that history is perhaps one of the most obstinate challenges to the fulfillment of the international R2P agenda. While International Relations scholarship often tends to portray power politics and selectivity among the world's most powerful states as the impediment to pushing forward systematic and effective humanitarian protection to populations beyond our borders, this portrayal may gloss over the significance of history as a guide to states committing atrocities against civilians. It also underplays the extent to which civilian protection has come to the fore in international diplomacy and the preoccupations of the UNSC, and the extent to which Pillar One responsibilities of states to prevent and protect populations needs to pick up much more slack in this debate.

The death toll from the escalating crisis between Israel and Palestine has already passed 760 and is rising at the time of writing, with a disproportionately high civilian death toll among the Palestinian population. The UN Human Rights Council has already embarked on an investigation into potential war crimes committed by the state of Israel against Palestinian civilians, as the Israel Defense Force (IDF) continues to bombard civilian infrastructure. The IDF responded to Hamas rocket attacks that started three weeks ago through a ground offensive and air-strikes that have killed many more Palestinians than Israelis, despite the indiscriminate nature of continued Hamas firing. International diplomatic efforts, including a personal visit by US Secretary of State John Kerry, and Egyptian attempts to broker a ceasefire are still flailing. So with the state of play still open, one of the pertinent questions for R2P observers at this point of time is to consider the relevance that R2P has for the open hostilities in Gaza.

In a recent contribution to E-IR, Alex Bellamy quite rightly emphasises that R2P is 'universal and enduring', so the question of whether R2P 'applies' in Gaza is redundant when understood correctly. Nonetheless, there is a logical line of reasoning that warrants attention to the question 'does R2P apply' to Gaza, due to the historically contingent nature of the conflict between Israel and Palestine. In other words, the connection between R2P and Gaza is not intuitive to a non-R2P specialist. This is because the historically informed interpretation of the violence by the Israeli and Palestinian authorities and domestic constituencies bequeaths a specific significance to the current violence. The cyclical violence between Israel and Palestine predates R2P by over half a century, so our expectation of sporadic surges in violence in the region inhibits us from reading the most recent Gaza conflict as an extraordinary 'R2P case' that warrants exceptional international protection efforts. Rather we tend to filter it as a continuation of the norm where such assistance from the international community has not been forthcoming. The creation of a new R2P 'norm' in 2001 still lacks salience in the strategic thinking of the IDF and Hamas militants, and has yet to challenge our pre-conceptions of the significance of protracted conflicts to which R2P has never historically been employed.

So it is here that we find that the crucial question is not 'does R2P apply' to Gaza, in light of the recent atrocities committed against civilians in the past three weeks; we know that it does. Rather, the difficult question is, how do we get potential belligerent parties to interpret violent provocations through a new lens, a lens where the prevention and protection of civilians foregrounds the perceived strategic gains to be won through open hostilities. R2P in this sense necessitates an element of ahistoricism in the way that states deal with historically contentious and seemingly insurmountable conflicts. The prospect of this does, of course, seem very unlikely and this raises the question of the limitations of operationalising R2P in the security practices of states engaged in volatile conflicts. It would also

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probably not be too far off the mark to suggest that deeply entrenched pride has a lot to do with the perceived 'failure' of states to exercise their Pillar One duties on the prevention and protection of civilians when a much larger overarching political contest is in full-swing.

As I see it, there are three important aspects that are raised by the current events in Gaza that contribute to our understanding of the possibilities and limits of R2P for responding to civilian protection crises during the escalation phase of conflict. The first is the interpretation of R2P by the conflicting parties themselves – is it a concept that is salient to their own strategic and political concerns? The second relates to the difficulty of identifying the threshold for mobilising an intervention during the escalation phase. And the third relates to the novelty of R2P as a norm for guiding the conduct of states balanced against deeply entrenched historical patterns, understandings, and conduct of warfare that is played out on the battlefield.

The first point relates to domestic interpretations of R2P and its perceived salience to their own conflicts. What kinds of actions and domestic commitments did states sign up to when they endorsed R2P at the 2005 UN World Summit? At its first inception in 2001, R2P was conceptualised as a way to reframe the debate over the right of the international community to intervene in situations of dire humanitarian crises – shifting the terms of the debate from 'right to intervene' to 'responsibility to protect' in situations of mass atrocity. Over 150 heads of state signed the outcome document from the 2005 UN World Summit in which the Three Pillars of R2P were articulated and the principle endorsed. This widespread endorsement of R2P by states spearheaded it into mainstream international discourse; R2P language has become a regular feature of UN dialogues and resolutions, and in inter-governmental frameworks for atrocity prevention.

It needs to be remembered that this widespread endorsement came at a time when R2P was still largely discussed in terms of finding consensus on an effective framework for international responses to mass atrocities within other states. The broadening of the R2P agenda pushed forward by the UN Secretary General Ban Ki-moon to promote prevention, early warning, and state responsibility to prevent and protect commenced in 2009, and has started to pick up pace in recent years. So it is fair to assume that while states endorsed the primacy of the state for responsibility towards their populations, the content and implications of this commitment has only started to be fleshed out in recent years.

Pillar One of R2P emphasises the responsibility of states to prevent and protect their populations from atrocities. This Pillar has been read by some states as somewhat of a guarantee for state sovereignty, as opposed to a call for proactive efforts to transform domestic security and governance institutions at home. A number of states wary of international probing into their internal affairs, such as India, Iran, and Pakistan, for example, have continued to emphasise the priority of Pillar One in their contributions to the Annual Interactive Dialogue on the Responsibility to Protect at the UN General Assembly. These endorsements of Pillar One are largely in the context of re-affirming state sovereignty and the undesirability of interference in domestic affairs. On the presumption that mass atrocities – including genocide, ethnic cleansing, war-crimes, and crimes against humanity – are rare events (repeated reference to the Holocaust, Cambodia, Rwanda, and Bosnia-Herzegovina entrenches this view) that bear little relevance to domestic political violence and simmering internal conflicts, many states arguably signed up because it was the civilised and respectable to thing to do.

Evidence that states with a poor track record of protecting civilians from internal political and inter-communal violence are committed to a series of significant domestic reforms on Pillar One responsibilities still needs to be forthcoming, however. A genuine commitment by states to not just the Pillar Three responsibilities of international intervention, but to Pillar One responsibilities to prevent and protect civilians, means that states must ensure that robust protection mechanisms are in place to deal with escalating violent crises to mitigate the possibility that one of the four atrocity crimes will be committed during periods of armed violence. This is particularly important given the time it takes for the international community to mobilise consensus and intervention into situations of open hostility where the civilian death toll is already severe.

Given that Israel has regularly endorsed R2P at the UN General Assembly Informal Interactive Dialogues (2009, 2011, 2012), the conflict in Gaza makes us consider what the spaces are between official endorsements of R2P with

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adherence to international humanitarian laws relating to civilian protection by states in the conduct of warfare. In the context of Israel today, we find that the conflict in Gaza is strategically justified on the basis of self-defence, and politically viable due to popular support for the ground offensives that has united what has been an increasingly divided Israeli constituency in recent years. So the domestic drivers and national security calculations of the conflict have written R2P out of the picture: it may be a salient concept for Israel to raise at the UN in relation to the crisis in Syria, for example, but it clearly does not resonate with the pragmatic concerns of the state in relation to the historical conflict with the Palestinians. Hamas is no less culpable here, but their status enables them to circumvent the charges of hypocrisy that come with being an official endorser of R2P.

The second aspect that Gaza raises for understanding the possibilities and limits of R2P in response to open hostilities is the ongoing dilemma over the R2P threshold for intervention. The death-toll in Gaza currently sits in the hundreds – not the thousands. Does this constitute a mass atrocity to which the international community should intervene? Or is the escalation of violence an issue that the belligerent parties need to sort out by themselves, as they have done so many times in the past? Viewed in historical perspective, it is very difficult to differentiate between the escalation of violence in a region well known for its tit-for-tat exchanges, and what would constitute a ‘R2P situation’ for political and resource intensive international interventions. This is particularly the case with much larger conflicts raging in Syria and Iraq – perhaps the risk of raising R2P in relation to Gaza is that it will start a snowballing debate about intervention in the Middle East, which is clearly a sleeping giant that we don’t want to disturb.

Credit needs to go to the US for its active shuttle diplomacy, Egyptian efforts to mediate a humanitarian ceasefire, and UN Human Rights Council for investigating claims of war crimes. But given the threshold clause of R2P that is restricted to the four crimes of genocide, ethnic cleansing, war-crimes, and crimes against humanity, determining in which conflicts, and at which point, the international community should step up its efforts to more coercive engagement during the escalation phase is still (and perhaps will always be) a fraught process. Gaza therefore teaches us that determining when and how to deal in the escalation phase of violent armed conflict is perhaps still one of the principal limitations of R2P.

The final aspect that I want to consider here is the recent emergence of the R2P norm in historical perspective. How does an international guiding principle that relates to something so strategically difficult – protecting civilians during open hostilities – even start to enter into the repertoire of state security forces and militant groups that are well-seasoned in destructive modes of combat? The use of rockets, air strikes, and tanks is inherently indiscriminate when employed in dense urban spaces. The technology used to fight battles, such as those in Gaza, annuls any hope that state responsibilities to prevent and protect civilians will be fulfilled to an acceptable degree.

The time it will take for notions of R2P to shift the frame of reference in deeply militarised states to look through an atrocity prevention lens will undoubtedly be much, much longer than to garner signatures in a UN forum on a morally compelling framework. A current limitation – but perhaps the future success – of R2P will be its incorporation into history over time, to undo decades, even centuries, of historical distrust and animosity. This will be particularly challenging in regions where deep religious convictions and polarised political agendas shape the contours of intractable conflict

We are currently witnessing an unprecedented emphasis by the international community on the protection of civilians. Conflicts today are first and foremost portrayed through media, official statements, and even UNSC discussions, by the scale of humanitarian devastation caused through the flagrant use of armed violence. This is a far cry from the international context several decades ago, when it was accepted that the international community had legitimate reasons to ignore the mass killings of civilians in countries such as Bangladesh and Cambodia. We can perhaps be somewhat reassured by the fact that the pace of change at the international level has been remarkably fast.

The overarching challenge for the R2P agenda, therefore, is not just whether the notion of R2P is sufficient to mobilise the international community to intervene to protect civilians in major humanitarian crises, although this is important. The greatest test – and the longest enduring legacy – of R2P will be its capacity to change the terms through which lengthy historical conflicts are interpreted. How can militarised states shift the way that they perceive their own domestic conflicts, internalise Pillar One responsibilities within their own security repertoire, and respond to

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provocations in a way that upholds international principles of civilian protection and human rights.

There are times where the international community will be genuinely hamstrung by complex and historical internal conflicts. Short of non-consensual military interventions to protect civilians, diplomatic and other forms of non-forceful or forceful R2P interventions to protect civilians are contingent on a level of domestic cooperation and shift in thinking towards highly contentious conflicts and deeply personal moral persuasions. For this reason, I would advocate cautious optimism in regards to the possibilities and limits created by R2P in periods of open hostility – agreeing wholeheartedly with Bellamy that ‘so much more needs to be done to marshal the resources at our disposal to the goal of protecting populations from atrocity crimes which shock the conscience of humanity’, yet convinced that the heavy-lifting needed to make R2P a reality ultimately needs to come from states.

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