Subsidiarity or Sites of Illegitimacy? Regional organisations and the Responsibility to Protect

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Abstract:

Over the past decade, the Responsibility to Protect (R2P) has framed debates around civilian protection in Syria, Libya, Myanmar, Sri Lanka, the Democratic Republic of Congo, and South Sudan to name some of the most prominent. In some cases, this met with UN Security Council Resolutions including the R2P in Darfur and Libya; in others like Myanmar, Syria and Zimbabwe the UN Security Council did not endorse a resolution. Importantly, in Syria, the League of Arab States introduced its own peace plan, sent its own observers, and recognised the Syrian National Council as the legitimate government of Syria alongside the Gulf Cooperation Council. More broadly, there is increased interest in regional governance as an avenue for international engagement from the AU to ASEAN – invoking Chapter VIII of the UN Charter – as and when they are ‘appropriate’ for regional action and ‘consistent with the Purposes and Principles of the UN’. Are regional organisations becoming sites of legitimacy in the absence of UN Security Council agreement? More importantly, under what conditions and who determines regional organizations as ‘appropriate’ for regional action? This paper analyses the challenges and prospects for regional organisations with important implications for civilian protection and human security.

Introduction

A significant challenge to the Responsibility to Protect is the legitimacy garnered each time the principle is invoked. This is particularly salient as the principle has been invoked incorrectly in the US and UK invasion of Iraq, the Russian invasion of South Ossetia, and in the aftermath of Cyclone Nargis in Myanmar (Badescu and Weiss,
Indeed, the invocation in these instances were either unilateral or outside of the United Nations system by a coalition of states. At present there is a shift in where legitimacy for invoking the Responsibility to Protect is being nurtured and devolved. From its inception, the legitimacy of the Responsibility to Protect principle rested with the United Nations Security Council, and to a lesser extent in the United Nations General Assembly through using the ‘Uniting for Peace’ resolution, UNGA Resolution 377A. The reference ‘to a lesser extent’ refers more to the use and likelihood of the avenue rather than to the amount of legitimacy carried by a GA resolution. Rather, the General Assembly is a more democratic avenue with one state, one vote, than the Security Council which rests upon the decision of the veto-wielding five permanent members.

While challenges remain about the nature of these two mechanisms for international decision-making, the recent shift towards regional organisations taking a larger or lead role in addition to the United Nations provides further cause for investigation. The basic principles of the United Nations Charter, and stipulated in Article 24, is that the primary responsibility for international peace and security rests with the Security Council. Article 52 outlines the prevalence of the United Nations Security Council over regional organisations, and that these organisations need to be consistent with this principle. However, since the Arab Spring began in December 2010 there has been an increasing tendency to exert pressure on UNSC member states to vote in line with the decisions of a regional organization such as the League of Arab States in the case of Syria, or in another case, two regional organisations, the Arab League and the African Union in the case of Libya. We have seen UNSC member states refer to the positions of regional organisations to convince other veto-wielding states to toe the line or at least abstain in a given UNSC Resolution. These endorsements by regional organisations, and the use of these endorsements to influence outcomes at the Security Council on the Responsibility to Protect raise important questions about how and why legitimacy is gained to invoke the Responsibility to Protect and what this represents for the Responsibility to Protect principle.

Over the past twenty five years there have been several entities that have emerged as significant players in the post-Cold War world. The most notable player being the United Nations as an institution providing 'good offices' to promote international peace.
and security. Concurrently regional organisations have also come to the fore in an emerging multipolar world as avenues for cooperation. There are also contentious moves to reimagine different regions through greater institutionalization. While these regional organisations were initially seen as a mechanism to further consolidate a democratic peace, several challenges have presented themselves during the past twenty years. These challenges are illustrated from questioning the legitimacy of the organisations to practical institutional failures. This in turn also calls into question the motivations behind the shift towards greater authority and cooperation of international institutions and regional organisations. There are several approaches to the evolution of international institutions that have a wide-readership and endorse incremental changes to global governance. While this cooperation may be perceived as realistic in a public policy and bureaucratic sense, there remain fundamental questions to the representative nature of regional organizations and their ability to not only decide for whom, and on the behalf of whom but also their ability to carry out these decisions.

This paper will focus on the shift towards the emerging role of regional organisations to illustrate that while there is a general movement towards greater regionalization there are significant questions to answer on the legitimacy and capacity of these organizations and processes. This is of fundamental importance when considering the Responsibility to Protect because it is ultimately a framing action to prevent mass atrocities based on international law. Indeed, it is also important to assess whether these avenues are even appropriate mechanisms to legitimize responses to prevent mass atrocities. As such, it is important to focus on one regional organisation and associated processes to establish the legitimacy and capacity to act. Indeed, as Coleman (2011) has argued, venue is a crucial, if underappreciated, variable in norm diplomacy (Capie 2012). Ultimately this paper focuses on two central questions; firstly, why are regional organizations legitimacy-generating avenues for the R2P? Secondly, what lessons can be learnt from the recent experience of the League of Arab States and the debate at the UN Security Council on resolutions regarding R2P in Libya and Syria?
Norm dissemination and global governance

When a global agreement on a norm like R2P is reached, the general challenge that occurs is the normative drift as it traverses the channels of communication between government officials in international settings and those based at home. When a norm drifts, it makes it difficult to understand the traction it holds at the sub-national, national and regional levels and ultimately how it will be implemented on the ground. The flashpoint of the drift tends to be where global considerations meet local realities surrounding implementation, which has increasingly been played out at the regional level. At this point, the effectiveness of the translation from the international to the national level determines whether a norm sinks or swims, and in turn determines (1) policies in the field; (2) agendas at ministerial meetings; and (3) motivations for UN Security Council resolutions and the debate that surrounds them.

This type of implementation-feedback mechanism makes it easy for a new norm to be manipulated, as was demonstrated by the invasion of Iraq by the US and UK and the Russian invasion of South Ossetia (Badescu and Weiss, 2010). Thus, to advance a norm after it has global endorsement – and to ensure that the parties responsible for putting the norm into practice are aware of the new mandates given to them through the UN – appropriate institutions and champions, as well as checks and balances, need to be identified. However, it does follow that the responsibility to generate legitimacy can also draw on other levels of governance below the United Nations forum as was seen in UNSCR 1973 by the call from the League of Arab States to implement no-fly zones over Libya.

The RtoP references in, for example, the 2005 World Summit Outcome document, define what is expected of the international community writ large, and provide the UN with the necessary information on how to act in cases of mass atrocity crimes. As a result – and through the necessary relationships built within the UN system and at the regional, national and sub-national levels, but more importantly across and between these – words can be turned into deeds. Yet as the experience with the debates around Security Council resolutions on Libya and Syria demonstrated achieving this remains a work-in-progress. While states are not the only stakeholders in international
affairs, they certainly remain the most important. Whether states are democratic, semi-authoritarian or authoritarian, they remain the main decision-makers at the regional and international level.

That said, non-state actors such as businesses, trades unions, influential individuals and non-governmental organisations (NGOs) play an important role in framing debates and raising awareness in order to influence individual and collective decision-makers whether at the national, regional or global level. However, while the position of responsibility to carry out R2P action can be enforced by a coalition of states at a regional level, there remain too few checks and balances within these regional organisations and can pose a legitimacy deficit. As general institutional development of regional organisations remains patchy there is therefore no systematic basis to generate legitimacy and authority to endorse a UNSC resolution on a regional level. Regional organisations like the League of Arab States in the cases of Libya and Syria will demonstrate they remain only as strong as the sum of their parts. In the absence of universal endorsement by the member states of regional organisations their ability to frame and sway decisions at the United Nations Security Council will remain inconsistent.

**Balancing responsibilities: A brief overview of the evolution of R2P**

In the wake of the 1994 genocide in Rwanda, and the failure of the international community to adequately respond to or prevent it, UN Secretary-General Kofi Annan asked this question: if humanitarian intervention is unacceptable, then how does the international community respond to a Rwanda or a Srebrenica? In response to this, the Canadian government established the International Commission on Intervention and State Sovereignty (ICISS) in September 2000. The ICISS released a report titled The Responsibility to Protect in 2001, in which it proposed that individual governments were the primary actors in ensuring the protection of populations. The ICISS, through its report, effectively argued for the notion of sovereignty as responsibility. It essentially focused on three components: the responsibility to prevent, the responsibility to rebuild and the responsibility to react.
In posing the question, the UN Secretary-General aimed to move the debate beyond humanitarian intervention and towards the ways in which the international community is able and willing to prevent another mass atrocity. The ICISS report identifies the individual as the referent object rather than the state, while still recognising the state as the primary actor. Although the norm shares with humanitarian intervention the same premise, namely, that sovereignty is no longer absolute, it de-emphasises the ‘right to intervene’ and takes a more comprehensive view of state responsibility in line with the concept of human security (Arbour, 2008:448). Indeed, it could be argued that the norm reflects the more globalist language of the UN Charter. As Annan pointed out in 1998, the Charter was issued in the name of the ‘peoples’, not the ‘governments’ of the world (Lyon, 2009:44). One criticism that has been levelled against the RtoP doctrine is that it is used as a key normative justification for more informal intervention associated with state-building where Western responsibility is much more limited and indirect, in contrast to humanitarian intervention where it is more open and direct (Chandler, 2010:164). Nevertheless, in dealing with, or preventing, mass atrocities, the RtoP approach does offer a more comprehensive and accepted notion of sovereignty. That said, when considering the critique of R2P and applying it to the current shift towards greater responsibility at the regional level, a potential venue for greater legitimacy – the same holds true.

With this shift we can see a lessening of responsibility on Western states in favour of decentralizing responsibility and having regional organisations taking or generating legitimacy for R2P action. This shift leads to decisions at the UN Security Council looking to the endorsement of regional organisations to inform votes on UNSC resolutions on R2P. While the decision to include the two paragraphs in the 2005 World Summit Outcome document has been praised by RtoP proponents, there are no institutional obligations flowing from it other than those that existed prior to the declaration, as no vote was held on the document (Chandler, 2009:31). Rather the R2P has emerged as a powerful frame in which to advocate for UN Security Council resolutions on civilian protection.

However, the end product as agreed in 2005 World Summit Outcome Document saw that between the 2001 ICISS report and the inclusion of the two RtoP paragraphs, a noticeable separation of the RtoP from the use of coercive force occurred – there was
a shift from a focus on the responsibility of the Western states to intervene, to an emphasis on the responsibilities of the ‘failing’ state (Chandler, 2009:30). Indeed, this shift not only emphasizes the responsibilities of the ‘failing’ state but also the responsibilities of the region in which the ‘failure’ has occurred. The central concern here is that regional organisations are increasingly deemed more ‘appropriate’ avenues to legitimize R2P action because they form a ‘middle ground’ between global and local norms and are sensitized to local conditions. However, while this prevailing sense of justification conforms to a ‘tidier’ version of world affairs, the regional organisations in question vary widely in capacity both to carry out R2P action and to provide representation of people within the region, to enable a more informed understanding of local conditions.

It is indeed worth recollecting that the International Commission on Intervention and State Sovereignty (ICISS) report cautioned against an over-reliance on the UN Security Council as the proper authority for R2P because its decisions are politicised. Thus, while it privileged UN Security Council authorization under Chapter VII, it set alternative routes if the UN Security Council was paralyzed (Welsh, 2011). The three procedures included the path that if the veto is used on R2P resolutions, recourse can be made to the General Assembly under the ‘uniting for peace’ resolution or to regional bodies (ICISS, 2001).

However, as was seen in the vote on UNSC 1973 on Libya, Chinese and Russian concerns were assuaged and both abstained in part because of the League of Arab States call to action as well as support for the resolution from Nigeria, Gabon and South Africa (Welsh, 2011), the Organisation of Islamic Conference (OIC) and the Gulf Cooperation Council (GCC) so there is an emerging role nonetheless for regional organisations. The convergence of regional interests around UNSCR 1973 proved to be a ‘diplomatic game-changer’ either as a result of their opposition to the Qaddafi regime, humanitarian solidarity as a result of an ‘al Jazeera effect’ or that some less cooperative member states were not present when they voted on the resolution (Bellamy, 2011). However, as Thomas Weiss (2011) argues the main challenge for R2P today is how to act rather than how to build normative consensus. As was seen in the Libya case, the support of the League of Arab States and African Union for external intervention is ‘noteworthy and perhaps a harbinger’ (Weiss, 2011). Yet what
the Libyan case illustrated was the support and non-vocal opposition of the membership of regional organisations. As the subsequent debate on the draft UNSC resolution on Syria demonstrated, the endorsement of a position by the League of Arab States was itself insufficient as seen with the notable opposition of Lebanon both within the regional organisation and as a non-permanent member of the UN Security Council.

As proponents of “good” global governance articulate it does ‘not imply exclusive policy jurisdiction by any one site, but rather an optimal partnership between state, regional, and global levels of governance and between state, intergovernmental, and non-governmental categories of actors’ which can build a bridge between unilateral state action and multilateral global action (Thakur & Van Langenhove, 2006). No matter how logical the argument, it is important to remember the players, and a regional organisation in one part of the world is vastly different to another elsewhere, which has significant implications over the weight given to those organisations with the problems they seek to address, or to sway permanent members of the Security Council.

It is a cautionary reminder against over-indulgence in regionalisation as a means to an end when it can influence decisions to act or prolong, rather than prevent, situations conducive to mass atrocities. Indeed, proponents recognise that regional governance cannot substitute for the UN, which was highlighted at the 2004 High-Level Panel on reform (Thakur & Van Langenhove, 2006). However, the High-Level Panel also encouraged the development of regional organisations particularly in areas where security arrangements currently do not exist (HLP, 2004). Indeed, the United Nations established the Economic and Social Council for Asia and the Pacific (ESCAP) alongside councils for other regions, which seek to encourage regional integration. This was a proactive approach by the UN to mobilise chapter VIII of the UN Charter and offers one potential avenue to revisit regional security regimes (Thakur & Van Langenhove, 2006). These avenues would offer one way to build a more comprehensive approach to peace and security drawing on their development mandate in an effort to strengthen preventive measures and offer an alternative or complement to regional organisations.
As Simon Chesterman has argued that the significance of R2P is ‘not to create new rights or obligations to do the “right thing”; rather it is making it harder to do the wrong thing or nothing at all’ (Chesterman, 2011). Indeed, the same can be said of UNSCR 1973 and the use of regional organisations. In particular, it was the League of Arab States’ own resolution unanimously calling for a no-fly zone that China and Russia refrained from blocking the resolution as neither state wanted to offend the regional states because of various important interests (Murphy, 2012). It was therefore much more difficult for China and Russia to abstain when faced with overwhelming support from regional organisations. However, there are two concerns over the implications of regional organisation endorsement. Firstly, was a precedent set for future UN Security Council Resolutions on R2P? Secondly, is a similar situation likely to reoccur with converging interests and therefore worthy of concern? The subsequent discussions at the UN Security Council on Syria illustrated the earlier concerns over the UN Security Council Resolution 1973. Both China and Russia vetoed the resolution with another four abstentions from non-permanent members (Brazil, India, Lebanon, and South Africa).

Even with the suspension of Syria’s membership from the League of Arab States and the recognition of the Syrian National Council as the legitimate government of Syria did not sway China or Russia in vetoing the resolution. Partially the reason for this is that only those that vote for a resolution in the League are bound to it, and as Lebanon voted against it in the League and abstained in the Security Council it illustrated that there was no unanimous position of the regional organisation on the Syrian civil war. However, there was unanimous support from the Gulf Cooperation Council for the Syrian National Council as the legitimate government of Syria. This is where the difficulty lays where there are multiple interests and the de facto interests of Egypt, and GCC members for example in the transformation of Syria undermines the role of regional organisations in endorsing the R2P at the Security Council, in raising the barrier so that it is harder to do the wrong thing or nothing at all. In fact the evolution of the Syrian civil war has pronounced the multiple interests that lay behind regional organisations endorsement.

However, when considering the rationale behind the Russian and Chinese vetoes it is important to recognise their relative interests in Syria. It is a large export market for
Russia’s military equipment and Russia remains concerned about the stability of its southern border if the conflict were to spread into Central Asia. However, China’s interest in using its veto over the Syrian civil war was less motivated by economic interests as China-Syria trade was only US$2.48 billion, or 0.08% of China’s overall foreign trade, rather China’s interest rested on precedent and a sense that the resolution sought regime change in addition to civilian protection (Xing, 2012). However, as was demonstrated in the Libya case, the support of regional organisations carries weight in framing an issue. The division within the League of Arab States was clearer on the Syrian civil war and so the regional organisation’s influence was limited.

The Libyan case demonstrated that the role of the League of Arab States in terms of supporting responsive military action to protect civilians through a Security Council resolution was anchored on its unanimous decision to call for the resolution. This contrasts to the clear division around the Syrian case for a Security Council resolution even though on the face of it the League of Arab States supported the resolution. This was a result of its decision-making process which allows the organisation to support a position but only for those member states that endorse it. Those states that do not are not bound or represented by it. The decision of the League of Arab States to call for a no-fly zone in Libya undoubtedly shaped the debate at the Security Council and illustrates the increasing role that regional organisations can play in raising the barrier to opposition yet this role remains context specific. The internal decision-making processes of regional organisations remain in view and demonstrate that only unanimous decisions at the regional level offer the only signpost the permanent Security Council members read.

The debates surrounding the two UN Security Council resolutions on Libya and Syria illustrated that regional organisations have the potential to play an important framing role. However, the structure of decision-making in the League of Arab States ensures that the positions it articulates are not necessarily representative of its membership, which limited its effectiveness in framing the debate around R2P in Syria. The case of the UN Security Council resolution on Libya illustrated the potential that the League of Arab States can wield, and the growing relevance of regional organisations as an important signpost for debates in the Security Council. It also demonstrated that this
power of influence remains constrained by its own ability to reach consensus within the organisation to realise this potential.

References


