RESPONSIBILITIES TO PROTECT

Accountability and responsiveness in protecting populations from atrocity crimes

by

ERNA BURAI

submitted to

CEU

In partial fulfilment of a Degree of Doctor of Philosophy in Political Science at the Doctoral School of Political Science, Public Policy and International Relations at Central European University, Budapest.

2020

Supervisor: Professor Alexander Astrov

ABSTRACT

Protecting civilians in armed conflict is a central and controversial question of international politics. The practice of protection remains inconsistent even if, in terms of the Responsibility to Protect (RtoP), protecting populations from war crimes, crimes against humanity, genocide and ethnic cleansing has become an international "responsibility." Some argue that the inconsistent implementation of RtoP is the outcome of power politics. Others say that the inconsistency follows from judging every conflict situation on its own terms. Both approaches fail to take into account, however, that the inconsistency of implementing RtoP is, in fact, consistent. There are two coherent narratives about who is responsible for protecting what and on what basis. The first narrative privileges state-based structures as the guarantee of protection, and therefore can be called *indirect* protection. The second privileges protecting human beings directly from harm, and can therefore be called *direct* protection. While both are legitimate, however, in practice they suggest incommensurable templates for protective action. International protective action ends up oscillating between the two, ultimately accounting for RtoP's consistent inconsistency.

This dissertation asks, first, why there are two narratives, and second, why they are so persistent. It offers in response a historical and a conceptual argument. Historically, it traces both indirect and direct protection to their original context. Indirect protection stems from African post-Cold War security debates, and the dilemma of reconciling African sovereignty and intervention through the concept of "sovereignty as responsibility." Direct protection is rooted in the ethics of medical humanitarianism with its distinctive notion of rescue, which would become the right to assistance and eventually, the right to intervene. Conceptually, the dissertation shows

that not only do these models respond to context-specific normative dilemmas; they also constitute them as one of a particular kind of responsibility. Indirect protection rests on responsibility as accountability between states for the consequences of good or bad governance. Direct protection, in turn, harnesses responsibility as responsiveness to the fact of human suffering, a responsibility that is universal, implicating everyone to avert harm. Given their constitutive nature in creating different objects of protection as well as different relationships of responsibility, the two models resist a synthesis and account for RtoP's consistent inconsistency.

INTRODUCTION: RESPONSIBILITIES TO PROTECT?

When, in February 2011, Muammar Gadhafi's response to the Libyan uprising turned violent, members of the international community, states, regional organizations and non-governmental actors shared an understanding that the situation was one that warranted "protection." By "protection", most of these actors meant that the Libyan population should be protected from generalized violence, in which war crimes, crimes against humanity, genocide and ethnic cleansing are an immediate threat. The goal of "protection" was nearly universally shared. However, members of the international community proposed two incompatible ways of achieving it. Some, such as the African Union (AU), alongside many African states, argued that protection must be achieved by safeguarding state structures. In practice, this meant advocating a peaceful power transfer, a negotiated, compromise political solution between the Gadhafi regime and the National Transitional Council that came to represent the opposition. The AU furthermore claimed a leading role as the relevant regional organization to facilitate such a solution, on the basis that its member states would bear the brunt of the consequences of whatever was to happen in Libya. Members of the North Atlantic Treaty Organization (NATO), on the other hand, advocated for international intervention in the shape of a preventive military move to block Gadhafi from inflicting violence on the Libyan people. Supporters of this latter argument placed the emphasis on addressing individual suffering resulting from Gadhafi's attempt to restore his power. These actors argued that, by using force against the civilian population, Gadhafi had lost the legitimacy to rule. Any international action would be legitimate that prevented him from realizing his threats, they argued.

The arguments on how to "protect" the Libyan population show two different models of protection. The first prioritizes strong state structures as the guarantee of social order and thus of physical safety, and may therefore be called *indirect* protection. The primary object of protection in this narrative is, therefore, such structures. The value of any action in this model is assessed in terms of its potential or real consequences. Here, the "responsibility to protect" is accountability-based: the value of every action is judged from its possible and empirical consequences, and the best control over consequences is achieved by liability within established relations of accountability. The second model might be called *direct* protection, because it focuses on the imperative created by potential and factual human suffering, i.e. the experience of violence on the individual level. Here, protective action is one that responds to the future or present fact of suffering by doing everything possible to avert the risk of such suffering. Responsibility in this model therefore corresponds with responsiveness rather than with accountability. The two protection models not only envisage different objects of protection (state structure vs. individuals), but also mobilize different notions of responsibility (accountability vs. responsiveness).

The appeal of the two models fluctuates over time. Before taking any action, the costs of inaction weigh in heavily, potentially tilting the balance towards direct protection and responsibility as responsiveness. As actors learn more about the consequences of their actions, indirect protection and accountability-based responsibility gain in legitimacy. From the perspective of direct protection, the prudence of indirect protection appears as playing into the hands of perpetrators. From the perspective of indirect protection, however, the priority of immediate action over consequences often appears catastrophic. The main argument of this

thesis is that any debate on "protection" is trapped in the logic of these two, equally legitimate but incompatible models of protection and responsibility. It asks why we have two models in place, and how this particular pattern impairs the collective effort to protect populations from war crimes, crimes against humanity, genocide and ethnic cleansing, the four crimes defined under the Responsibility to Protect (RtoP) framework.

<div align="center">*</div>

The dissertation presents this argument in the following order. First, in three consecutive chapters I present the three cases of normative change that re-defined the notion of protection as physical security and reconciled this normative goal with the practice of intervention. I discuss the move towards protection as physical security in Chapter 1, placing sovereignty within external accountability structures through the concept of "sovereignty as responsibility" in Chapter 2, and establishing the "right to assistance" beyond the state in Chapter 3. I then proceed, in Chapter 4, to present the conceptual argument for the constitutive function of these historical contexts through embedded norm entrepreneurship. I describe the two different notions of responsibility on which the two models rest, and the templates of action they legitimize for intervening in conflict situations. Chapter 5 returns to the case of Libya and discusses it in detail, illustrating the incompatibility of the two models in this prominent RtoP case. In Chapter 6, I look at how states learn from the outcomes of this incompatibility through an overview of the General Assembly debates on RtoP ever since the Libya intervention. Whereas the Libya case is a snapshot of conflict resolution and the clash of the two models in solving a conflict at hand, the discussion in Chapter 6 takes a longitudinal perspective. It shows how the two models resurface in the annual debates, but also how participants assess the implications of the models in light of their implementation

in practice. The Conclusion summarizes the findings and contributions of the project, and points

to avenues for future research.