



Right to Protection: Whose Responsibility and How?

Caritas Australia, in collaboration with the Centre for Peace and Conflict Studies (CPACS) at the University of Sydney and Global Action to Prevent War, New York, hosted a one day workshop on Thursday, 4th September, 2008 called the **Right to Protection: Whose Responsibility and How?**

Deliberations centred on the international community's failures to move quickly to prevent gross human rights violations and the political, legal, ethical and practical responses to this shortcoming. The one day conference brought together academics, humanitarian aid/development practitioners and military officers who discussed the conundrums surrounding conflict intervention for human protection purposes.

The Responsibility to Protect (R2P) populations from genocide, ethnic cleansing, war crimes and crimes against humanity is an international commitment by governments to prevent and react to grave crises wherever they occur. In 2005, world leaders agreed that states have a primary responsibility to protect their own populations and that the international community has a responsibility to act when these governments fail to protect the most vulnerable. R2P, however, has not been operationalised and remains politically contentious among many nations.

One possible means of translating R2P from words into deeds is the UN Emergency Peace Service (UNEPS) proposal. UNEPS is urgently needed because of UN's inability to provide rapid response troop deployment. According to a recent report from Global Action to Prevent War, the UN takes over 46 days to begin deploying peacekeepers. UNEPS was conceived by activists, academics, former UN officials and peacekeepers from around the world and currently enjoys support among groups in South Africa, Japan, Indonesia, the United States and elsewhere. UNEPS would be a standing permanent capacity to complement existing peace operations with 'first-in, first out' capabilities, available to deploy within 48-72 hours of authorisation. It would be based in a UN designated site with mobile field headquarters and comprise 15,000 to 18,000 individually and independently recruited, gender integrated and professionally trained and equipped personnel. UNEPS members would include civilian police, military officers, humanitarian relief professionals and judicial experts among others. With its rapid-reaction capabilities, such a permanent service could have prevented atrocities in Rwanda, the former Yugoslavia, East Timor and elsewhere.

The following discussion summarises the workshop's proceedings with a view to: exploring the tensions embedded within the R2P doctrine; testing the feasibility of creating UNEPS; and considering how one influences the other. This report is divided into three sections reflecting the themes on which the workshop was based: **sovereignty, protection and prevention**. Given that the issues discussed are interconnected, they are not bound by the categories to which they have been assigned.

Time	Topic	Presenter
9:00am – 10:30 am	Philosophical and legal issues surrounding humanitarian responses and the protection of the vulnerable	Hilary Charlesworth , Professor of Int. Law & Human Rights, ANU, ARC Federation Fellow & Director, Centre for International Governance and Justice, ANU Phoebe Wynn-Pope , humanitarian specialist who is finalizing a doctoral thesis on R2P at the University of Melbourne
Chair/Rapporteur: Associate Professor Jake Lynch, Director, Centre for Peace & Conflict Studies, University of Sydney		
10:30am – 11:00am	Morning Tea	
11:00am – 12:30 am	Practitioners' perspective Perspectives shared from INGOs and Australian Military in their experience of trying to protect vulnerable communities and individuals during international interventions or humanitarian crises. Speakers will share recent experience including from East Timor and the Solomon Islands.	Kate Sutton , Humanitarian Protection Coordinator, Oxfam Australia Major Dick Stanworth , Army Reserve Officer, ADF Kate Berry , Protection Specialist – Manual Development, Austcare
Chair/Rapporteur: Jamie Isbister, International Programs Manager, Caritas Australia		
12:30pm – 1:30pm	Lunch	
1:30pm – 3:00pm	United Nations Emergency Peace Service: challenges and possibilities	John Langmore , Professorial Fellow in Political Science, Sociology and Criminology, University of Melbourne and National President UN Association of Australia. Kavitha Suthanthiraraj , International Coordinator, Global Action to Prevent War, New York Annie Herro , Principal Researcher, the UNEPS Project, Centre for Peace & Conflict Studies, Univ. of Sydney
Chair/Rapporteur: Alistair Gee, Director, Christian World Service		
3:00pm – 3:30pm	Afternoon Tea	
3:30pm – 4:30pm	What have we learned? Where do we go from here?	Co Chairs and Rapporteurs: Emeritus Professor Stuart Rees , Director, Sydney Peace Foundation; Professor Alex Bellamy , Executive Director, the Asia Pacific Centre for the Responsibility to Protect, University of Queensland
4.30pm	Close	

The Discussion

1. Sovereignty: “a few gold medals and lots of memorials to the dead”?

Emeritus Professor **Stuart Rees**, Chief Investigator of the UNEPS research project and Director of the Sydney Peace Foundation, offered this radical interpretation of sovereignty to challenge the Westphalian tradition that favours the security of the state over that of human beings. Professor Rees’ claim prompted a discussion about the political and ethical value of the recent adaptation of this centuries-old definition to ensure that privileges a sovereign inherits are contingent upon their ability and willingness to protect their populations from gross human rights violations.

Hilary Charlesworth, Professor of International Law and Human Rights at ANU and ARC Federation Fellow and Director of the Centre for International Governance and Justice, argued that R2P is legally flawed as it is based on the doctrine of humanitarian intervention which has always been controversial and open to abuse. The idea of conditional sovereignty at the heart of R2P —“abuse it and lose it”— is ineffective in preventing potential abuses, she maintained. As a principled legal framework for intervention that saves lives, such a reformulation is likely to be used by powerful states against the less powerful ones, running the risks of self-serving conflict assessments masquerading as humanitarian. Professor Charlesworth claimed that protection against gross human rights violations is therefore not a matter of how sovereignty is legally conceived but of political will. Her analysis implied that the challenge of protecting vulnerable populations can be found somewhere in between the precepts of international law and political will.

Professor Charlesworth referred to the three pillars that UN Secretary General Ban Ki Moon identified in July 2008 to clarify the R2P doctrine: the responsibility of governments to protect their populations from R2P crimes (genocide, war crimes, ethnic cleansing and crimes against humanity); the responsibility of the international community to assist states in meeting these obligations; and the responsibility of the international community to help protect populations from R2P crimes. She argued that a productive way forward would be to focus on the first and second pillars, rather than the third.

Professor **Alex Bellamy**, Executive Director of the Asia-Pacific Centre for R2P, and **John Langmore**, National President of the United Nations Association of Australia and Professorial Fellow at Melbourne University, challenged this viewpoint arguing that it was overly pessimistic. Bellamy and Langmore advocated that, rather than focusing on the potential for R2P to be misused, there is greater value in working toward promoting its true purpose and principles, for example stressing that the doctrine does not provide legal and moral cover for politically-motivated unilateral interventions. Further concerns about the cultural and political feasibility of the proposal peppered the day’s deliberations.

The three pillars: R2P’s elitist edifice

Professor Rees, who stressed the need to avoid the perception that “we have all the answers” about interventions for protection purposes, argued that the acronyms and jargon cushioning R2P may not always be the best means to communicate the concept to members of the public, especially potential subjects of R2P interventions. An extension of this language discussion was cultivated during the coffee breaks when some participants expressed concerns that R2P was a “boy’s club” or an exclusive community of distinguished international civil servants and academics. Dr. **Wendy Lambourne**, academic coordinator at CPACS, expressed concern that much of the discussion surrounding R2P takes place at the level of senior officials rather than with those who would be affected by intervention, including grassroots communities and victims of human rights violations.

On a related note, **Annie Herro**, CPACS researcher, presented the preliminary findings of a research project that explores what would hinder and facilitate the creation of UNEPS based on the attitude of leaders in the Southeast Asia-South Pacific region. She argued that interviewees' attitudes towards global and regional power imbalances were a major consideration affecting their attitudes towards UNEPS. Those who appeared to be sensitive to this power dynamic tended to emphasise language that is in a spirit of collaboration and partnership. Those who were less sensitive recommended using the language of *realpolitik* to convey a sense of decisiveness and resolve to wealthy nations that could potentially support UNEPS. Stressing the importance of carefully selecting the language used to describe R2P and UNEPS, Professor Rees pointed out that while words like "force" and "service" are often used synonymously, they represent different philosophies about the benefits of violence and nonviolence.

Crossing the sovereign line: regional interventions

As participants explored political, practical and cultural feasibilities of developing a UNEPS, they considered the following question: to what extent and in what areas of cooperation are states willing to rethink the boundaries of their sovereignty? This prompted a discussion about the value of regional responses to conflict. **Phoebe Wynn-Pope**, a humanitarian specialist who is finalizing a doctoral thesis on R2P at the University of Melbourne, pointed out that while there are often calls for the intervention of regional organisations or other collectives under Chapter VIII of the UN Charter, there is no indication in the Charter that military force was envisioned without prior Security Council authorization. This suggests that if a regional UNEPS were formed, it would still need to intervene with the consent of the host state or else rely on the UN for authorization if it were to use force.

Despite such legal challenges, Ms. Herro supported the creation of a regional service or a regional-based coalition of the willing as a variation on the UNEPS proposal. Reasons for their support included the argument that such a service may be received with less suspicion if it were carried forward by countries from the region given their often heightened religio-cultural and political awareness of neighbouring states. **Kavitha Suthanthiraraj**, International Coordinator of Global Action to Prevent War, New York, who is responsible for advocating UNEPS in its current form (a UN-based proposal) also acknowledged the value of creating regional emergency peace services. Other participants suggested looking at regional initiatives such as the European Battlegroup, which was effective in stopping violence in the DRC, for useful models on which to base a UNEPS. LT COL **Sam Pickering** from the Australian Defence Force's Peacekeeping Centre argued that interveners need to understand the local culture of the country in which they are working. This, he believes, would reveal the attitude of the intervened towards sovereignty, especially whether it includes respect for the dignity and basic rights of the population.

Ms. Suthanthiraraj updated the audience on the progress of the global UNEPS campaign. This included the recent inclusion of UNEPS into Japan's vision for a new Okinawa, a US House of Representatives resolution supporting UNEPS, regional conferences in Australia, Costa Rica and South Africa and advocacy work with many UN and regional partners. Professor Langmore, who spent several years working for the UN Secretariat, argued that if an emergency service is pursued through the UN, the architects will need to work incrementally, including designing a less ambitious proposal in terms of size and funding. Ms. Herro argued that to increase governments' commitment to an emergency peace service with an accepted mandate to prevent mass human rights violations, consideration should be given to the creation of a regional service that responds to natural disasters. This, she suggested, may be gateway to broader regional and international cooperation, especially on sensitive issues such as genocide prevention.

2. The who's and how's of protection

Workshop participants from different professions highlighted the elasticity of the protection concept and need for the different intervening groups—the military, peacekeepers, humanitarian aid workers—to continue to refine their own doctrines on protection and understand where they converge and conflict with one another. Further complicating the issue is the recent surge in private security companies in conflict zones which have, in some cases, made it difficult to distinguish between the motives and roles of each intervening group. Offering a humanitarian practitioner's perspective, **Kate Sutton**, Humanitarian Protection Coordinator at Oxfam, highlighted the importance of having clarity on the mandate of an organization, the capacity of its staff to intervene and the context into which they are intervening.

Ms. Wynn-Pope raised the dilemma surrounding where R2P sits on the protection spectrum. On the one hand, R2P is just a subset of protection—a last resort through military intervention to prevent mass killings (as in Victoria Hold's oft-cited *Impossible Mandate?*). On the other hand, R2P can be seen to encompass all humanitarian activities as some argue that issues such as poverty alleviation can contribute to averting violent conflict. However, R2P was never intended to be a panacea for every humanitarian activity and risks being seriously undermined by those who have broadened its scope. A middle road for R2P is to include the continuum of prevention, reaction and rebuilding specifically focusing on R2P crimes but without the distraction of other humanitarian and human rights issues.

Protection's different faces

Kate Berry, Protection Specialist at Austcare, highlighted the tension between her organisation's mandate to protect civilians and the need to speak out against perpetrators of atrocities, including raising sensitive issues with political leaders. Based on a recent trip to the Palestinian Occupied Territories, Ms. Berry, who presented an account of the Israeli/Palestinian conflict using an example of a particular village, said that the politicization of aid is an issue that her organization, along with many other UN agencies, must negotiate on a daily basis. Professor Rees argued that long-term protection of vulnerable groups would always be elusive if the major injustices and power imbalances at the political, social and economic levels are left unaddressed. He also invited participants to draw links between legal and cultural conundrums surrounding protection on a local level (e.g. to responses to domestic violence) and those on an international level.

From the military perspective, ADF Army Reserve Officer, Major **Richard Stanworth** pointed out that the military operates as one actor among many in a peace operation and reminded the group that the military is neither independent, impartial nor neutral because it is part of the government. His review of Civil-Military Cooperation (CIMIC) highlighted the need for integrated multi-agency mission planning and coordination, especially in the light of increased civil actor involvement in peacekeeping and humanitarian operations. Professor Rees mentioned that submissions to the Australian Defence White Paper indicated the desire of reservists such as engineers and doctors for their skills to be taken more seriously by the full-time military contributors to peace operations.

Professor Langmore raised the issue of military opposition to a permanent peacekeeping force. From a practical perspective, Major Stanworth pointed out that reservists require 180 days notice for deployment, so a rapid-reaction force would need to be deployed from the regular army. And yet, in response to a question from the floor, Major Stanworth expressed the military's reluctance to support the idea of training ADF officers specifically for peacekeeping (and downplaying the emphasis on war-fighting) because it would be difficult to "scale up" to war-fighting capacity when the need arises, thereby exposing Australia to security threats.

Carole Shaw, Senior Overseas Program Manager at the International Women's Development Agency, who had previously worked with NATO, raised the challenging question of how to penetrate the "military mind" and entrench the concept of protection into the institutions. Some humanitarian practitioners acknowledged the ambiguity in the field surrounding this question and the need to work towards a common understanding of protection across professional specialisations. For example, while some Australian NGOs have developed a common manual on "Minimum Agency Standards for Incorporation Protection into Humanitarian Response", there appears to be a lack of military doctrine on protection.

Patricia Garcia, International Programs Director at Act for Peace, who spent several years working for humanitarian aid agencies in Sudan, Afghanistan and elsewhere, pointed out that many conflict zones are fraught with different international players trying to define the humanitarian space according to their organizational mandate. She highlighted the need for interveners to understand the role the community plays in protecting its members rather than imposing external models that often are incongruous with local practices.

Yours, mine or ours: whose responsibility is it?

While Ms. Berry argued that protection is a moral responsibility of the international community, several participants highlighted the ambiguity surrounding responsibility and R2P. Ms. Wynn-Pope mentioned that the international community is collectively responsible to prevent R2P crimes. But she pointed out that the complexity that arises when this collectivity is dependent on the Security Council, which is always affected by superpower politics, to act. She also raised the question about whether it would be possible to hold states or the Security Council responsible when they fail to protect and what level of protection would ultimately satisfy the 'responsibility in terms of fulfilling a state's legal obligation to protect? There was an agreement that once the descent into violence has begun, the international community has already failed in their responsibility to protect. In other words, responsibility exists all the time.

Lost in (legal) translation: merging international law and politics

Professor Charlesworth pointed out that as R2P gained traction within the UN, the wording of the original doctrine was watered down. The eventual weakness of the language allowed some of its most bitter opponents to support it. Professor Langmore continued that R2P's conceptual weakness has led to the perception among some countries that the doctrine possesses neo-colonial undertones.

While it was argued that the issue of humanitarian responses and the protection of the vulnerable is primarily an ethical and political issue—not a legal one—there was a shared concern among participants such as Professors Bellamy, Charlesworth, Langmore about the legal ambiguity of key terms in the doctrine. Professor Charlesworth highlighted the difficulty ensconcing pillar three into international law because of its sensitive political nature. But she stressed that this was nevertheless essential in order to force states to articulate their intentions when considering intervention which can then be debated and judged by the appropriate international bodies. Thus to prevent politically motivated interventions couched in R2P language and increase the political feasibility of R2P, terms like "genocide", "crimes against humanity" and "prevention" must be refined.

Professor Bellamy pointed out that Ban Ki Moon referred to the third pillar as being already entrenched in Chapters VI-VIII of the UN Charter. Thus given the legal and political tensions embedded in R2P, Associate Professor **Jake Lynch**, Director of CPACS, considered the value of divorcing discussions about conflict intervention for human protection purposes from R2P and replanting it within the discourse of international peace and security. He suggested that a pivotal document such as the UN Charter may provide a more politically acceptable legal framework for this contentious issue.

3. Prevention

There were conflicting views about whether it is realistic to expect that there will ever be genuine political commitment to conflict prevention. **Eyal Mayroz**, a PhD student at CPACS who is researching the role of the media in genocide prevention, argued that prevention will always remain in the domain of NGOs—not governments. He argued that since the public only pays attention to violent political situations when the media reports on them—which mostly occur when conflicts spiral out of control—UNEPS would never be used as a preventative mechanism but rather only as a peace enforcement tool. **Jaroslav Petrik**, a visiting scholar at CPACS who is researching terrorism prevention, claimed that the concept of preventative intervention is negatively loaded; unless the crisis breaks out, the population is likely to perceive it as illegitimate occupation. On the other hand, Professor Langmore highlighted the significant number of times the UN Secretary-General has used his Good Offices to prevent a crisis. Corroborating his statement, he pointed out that the Human Security Centre in Vancouver released a report in 2005 showing a dramatic reduction in the number of serious violent conflicts over the last 15 years. Professor Langmore also pointed out that Kofi Annan's low key and non-militaristic preventive work in Kenya earlier this year was, in essence, R2P in action though it is rarely framed as such in political and media discourses.

Prevention was considered also in terms of peacebuilding and strengthening civil society as a mechanism to respond non-violently to conflicts. Professor Charlesworth warned against “ritualizing” or merely paying lip service to international promises of protection and peacebuilding. Given the political sensitivity surrounding conflict intervention, especially military intervention, several participants supported the creation of a peace service that would find a home within the Peacebuilding Commission (PBC) and would focus on robust pre-conflict peacebuilding. The peacebuilding efforts of the international community could be strengthened by fulfilling the PBC's potential as a vehicle of conflict prevention as it was originally envisaged. Professor Bellamy argued that if a PBC with a prevention mandate had been applied to Rwanda when some of the atrocities had occurred before the 1994 genocide (e.g. in 1990 and 1992) the R2P crimes could have been prevented. Others, however, noted that the current restriction of the PBC's mandate to post-conflict peacebuilding raised questions as to its viability as a vehicle for R2P in relation to prevention, although it could play a significant role in relation to the responsibility to rebuild.

Early warnings

Ms. Berry highlighted the difficulty in ascertaining when a fragile situation is likely to turn into an R2P case and in galvanizing international attention to respond before it spirals out of control. Professor Langmore suggested strengthening the existing UN intelligence framework within which preventative action can take place. Specifically, he recommended that UN agencies responsible for reporting on various countries should share this information with the UN Department of Political Affairs. Similarly, Professor Bellamy suggested that given the sensitivity surrounding official state monitoring, evaluation and reporting, rather than developing a specific intelligence mechanism, there should be improved interdepartmental coordination ensuring existing reports are systematically shared.

Ms. Wynn-Pope suggested that a small, coordinating unit at the heart of the United Nations (a Global Protection Unit) should be created that would focus on the immediate protection needs of communities either at risk of, or suffering from, R2P crimes. Such a unit would not be an implementing organisation but a highly skilled group of analysts and advocates, monitoring high risk situations, and coordinating and mobilizing existing international infrastructure for appropriate prevention activities. Dr. **Danielle Celermajer**, Director of Global Studies and Human Rights programs at the University of Sydney,

stressed that any such structural preventive work must engage agencies like the IMF and the World Bank and would need to address the underlying economic factors affecting conflicts. Ms. Wynn-Pope emphasised the need for a multidisciplinary preventative peacebuilding approach addressing all underlying causes. Associate Professor Lynch floated the idea that perhaps the PBC may evolve to play a role in the creation of such a unit.

UNEPS: preventative medicine or bandaid?

A vibrant discussion ensued about the stage of a conflict cycle into which UNEPS would intervene as well the corresponding means of intervention. While Professor Charlesworth warned against constructing an emergency peace service that would respond to a failed responsibility to protect, she supported a service that would be purely humanitarian. This would reduce the likelihood of intervention targeted at terrorism prevention or the promotion of democracy.

Professor Bellamy suggested a more complex model for UNEPS that would operationalise pillar two: responsibility of the international community to support states in protecting their populations from R2P crimes. He suggested that UNEPS should be a civilian service. The aim should be to help states build capacity to prevent crimes occurring in the first place. We know there are three things that need to exist when there is a genocide: economic or political grievances, radical ideology and capability to commit mass murder. UNEPS could play an important role in these areas. First, address the causes of breakdown of governance and economy: assist in rule of law and security sector reform; strengthen national economies to make them crisis proof; develop local conflict resolution capacities; address the question of how to resolve issues around land rights and water usage. Second, prevent radical ideology from evolving through tackling hate media and promoting moderate views. He reminded us of the World Summit Outcome document's reference to states' responsibility to prevent the incitement of R2P crimes. Third, prevent rogue regimes from acquiring capacity for mass killings by supplying early warning information to the Security Council and advocating for arms embargoes.

Tristen Slade, the Peace, Conflict and Development Adviser at AusAID stressed the need for deployable civilian capacity (for example mediators in the justice sector) to be a key element of any emergency peace service. Professor Langmore highlighted the importance of an emergency peace service that would address the causes of a conflict. He recommended UNEPS members to include those with skills in conflict resolution to reduce the likelihood that conflict would reignite. Professor **Helen Ware** from the University of New England suggested that given that humanitarian and civilian actors are mostly in a country before, during and after a conflict, a service comprising purely of the military and police would fill a noticeable gap in security forces and may be a valuable contribution to civilian protection.

Looking Forward

Responsibility to Protect

Responsibility to prevent

There should be greater focus on R2P as a continuum, in particular its preventative phase rather than the mechanics of military intervention. The international community must develop concrete measures that advance its capability to prevent R2P crimes. In particular, the international community should devote greater attention to education and human rights work, developing targeted strategies to protect and fulfil these rights, rather than reacting to outbreaks of violence once they occurs.

Philosophy, practice and language of protection

Humanitarian agencies, peacekeepers and especially the military should continue to refine their conceptions and operationalisation of protection. This should occur through the UN General Assembly. It is also vital that these international actors take into greater consideration the role of local communities in protecting themselves. To avoid the delegitimation and misuse of the R2P doctrine, key terms such as prevention, genocide and war crimes need conceptual and legal clarification.

Multi-track approach to R2P

If R2P is to have global clout, it not only needs to have high-level political support from rich countries but also support and influence from the governments in the “global south”. Attention should be given to generating local and regional perspectives on R2P.

UN Emergency Peace Service

A marathon not a sprint

UNEPS’ architects should consider developing a more modest and incremental proposal as a first step to creating a rapidly deployable service with an accepted mandate to prevent gross human rights abuses. For example, this could be a regional service that responds to natural disasters or a sub-regional service that helps states protect their own populations against R2P crimes.

Civilian and prevention focused

Given the suspicion surrounding military intervention as well as the shortage of rapidly deployable civilian personnel, emphasis should be placed on UNEPS’ civilian component. UNEPS should not be constructed as a response to a failed R2P but rather as a humanitarian exercise. Advocates should divorce UNEPS from R2P or at least should insert it squarely within the first two pillars of R2P. The development of UNEPS should also be considered within the context of the PBC.

The need for culturally and politically sensitive proposal

In the same way that R2P needs universal vetting to generate local and regional ownership so does the UNEPS proposal. Advocates of the proposal, UNEPS personnel and UNEPS interventions must be sensitive to the cultural, political and religious character of the intervened. Understanding how local communities and high-level officials perceive protection in theory and practice is crucial in the development of an emergency peace service.