COMPLEX NORMS AND TECHNOLOGICAL TRANSITION: REFLECTIONS ON THE RESPONSIBILITY TO PROTECT AND NORMS GOVERNING PRIVATE MILITARY AND SECURITY COMPANIES

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─────── ABSTRACT ───────

The theme of Globalization and International Conflict is highly relevant in a context of enduring wars and global changes. Increased violent conflict around the world is raising human and economic costs, the refugee population is at its highest numbers since World War II. This article reflects on these themes by commenting on recent work by Jennifer Welsh on individualization and the Responsibility to Protect (RtoP). The discussion includes findings from my own research as well as my recent contribution on technologies for peace and conflict prevention to the United Nations and World Bank report "Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict". Such technologies include social media evidence submitted by individuals, which allows for observation and reporting of atrocities, such as the use of sarin gas in Syria. Although the use of social media poses a threat to authoritarian governments, state actors have become adept at countering their influence and may be able to stem the apparent decline in the role of the state. Although private military and security companies (PMSCs) are often understood as challenges to the state, it is the states themselves that hire the organizations and that engage in shaping the norms that seek to govern them. The article includes a comparison between the evolution of norms governing RtoP and PMSCs.

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conflict around the world is raising human and economic costs, the refugee population is at its highest numbers since World War II. This article reflects on these themes by commenting on recent work by Jennifer Welsh on the Responsibility to Protect (RtoP), an emerging "international security and human rights norm to address the international community's failure to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity" (International Coalition for the Responsibility to Protect 2019). The discussion includes findings from my own research as well as my recent contribution on technologies for peace and conflict prevention to the United Nations and World Bank report "Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict" (United Nations and World Bank 2018).

Global Context

As technological change is reshaping the relations between the individual and the state, and individuals have seemingly endless capabilities to do good or harm, a trend of disintegrating multilateralism affects several aspects of the international security architecture – from the undermining of nuclear deterrence norms, to international alliances such as NATO or the foundations of global trade.

At the same time, conflict and post-conflict situations are increasingly hard to resolve, with several countries suffering from open and on-going conflict. Syria in particular exhibited a high intensity and long duration of conflict – with multiple types of violence (including the use of sarin gas, indiscriminate violence and mass atrocities) and types of conflict (internal conflict, civil war, partly an interstate or proxy war).

Scholarly context and debate on Responsibility to Protect

Jennifer Welsh's study of the RtoP originates from a broader interest in the contemporary challenges to the primacy of states both from new technology and from individuals. Her study of norm robustness and the Responsibility to Protect – and the case selection of Syria, as well as Burundi – cannot be more germane to the overall research question on the challenges to the primacy of states. On the one hand, the selection the RtoP speaks to the constructivist research agenda in International Relations theory and beyond. On the other hand, Syria is not only the largest humanitarian disaster in the world today but is quite exemplary for new technologies for at least two reasons. First, the relative inaccessibil-

ity of Syria left little opportunity for external verification of news and triggered innovation, from the use satellite imagery to social media. For example, a site of mass atrocities, such as the one revealed in Saydnaya Military Prison, was revealed by use of several satellite images that helped researchers uncover tortures occurring from 2013 to 2016. Second, Syria became a hotbed for radicalization and for the attraction of foreign fighters, for which social media provided visibility and encryption technology provided invisibility.

There are other cases of ineffectual international response, including South Sudan and the Central African Republic, and more importantly, the NATO-led and UN-authorized RtoP intervention in Libya in 2011. Ramesh Thakur writes that in the post-RtoP era, Libya and Syria since 2011 are exemplary of situations where "despite large numbers of civilian deaths and the confirmed use of chemical weapons, the United Nations has failed to take any robust and effective action" (Thakur 2016). The Responsibility to Protect is well described by Thakur's article written on the fifteenth anniversary of the publication of the report by the International Commission on Intervention and State Sovereignty that first introduced the RtoP. At the heart of RtoP is the notion that the states comprising the international community should understand that they have not merely a discretionary right to collectively protect populations but also a responsibility to do so.

RESEARCH PROBLEM

Welsh's article "Norm Robustness and the Responsibility to Protect" begins with the definition of the RtoP, a "policy coordination tool in the face of mass killing", characterized as a 'complex norm' deliberately institutionalized as political, directive, and aspirational (Welsh 2019). One of the creators of RtoP, Gareth Evans, mentioned in a recent speech that RtoP-driven strategies have had a number of preventive successes, notably in stopping the recurrence of strife in Kenya after 2008; in West African cases of Sierra Leone, Liberia, Guinea, in Cote d'Ivoire over the last decade; in Kyrgyzstan after 2010, and in Burundi. Yet, the challenges faced by the RtoP are many, including a tarnished reputation associated with the intervention in Libya and a declining recognition in key advocacy documents on prevention.[1] Further, conflict advocacy organizations like the International

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[1] The United Nations and World Bank (2018) study, "Pathways to Peace", for example, only mentions RtoP in passing, in the chapter on "the International Architecture for Prevention": "In 2004, following this instruction, the UN secretary-general appointed the first special

Crisis Group, once a champion of the issue, have not devoted any space to the RtoP in several years. What is then the remaining relevance of the RtoP?

Jennifer Welsh develops her research in the backdrop of the literature on norms, greatly shaped by Finnemore and Sikkink's definition of "standards of appropriate behavior on the basis of given identities". Norms regulate interpersonal relationships by solving problems of collective action. At the same time, norms also reflect normatively desirable behavior: "it is precisely the prescriptive quality of 'oughtness' that sets norms apart from other kinds of rules" (Finnemore and Sikkink 1998: 891). Thus, and here is the crux of the research on norms contestation, norms often become visible to us when they are violated or contested.

Deitelhoff and Zimmermann (2013) offer useful illustrations:

If the U.S. are breaking the international torture ban, it might even strengthen the norm if they justify this break as a valid exemption and / or if other states condemn this behavior […] At the same time, however, constant non-compliance will destroy the validity of norms over time, since addressees would lose their trust in the inter-subjective obligation at the core of the norms [...] Thus, both a focus on only non-compliance or on only discursive claims cannot give a full picture of a norm's stability.

Welsh proposes a research strategy that emphasizes discourse as an empirical basis. The use of discursive logic has significant and important precedents (cf. Schmidt 2008 for some examples). A useful analogy is found in Krahmann, for example, who investigates public discourses to establish whether private actors have challenged or accepted the norm on the monopoly on violence.[2]

Welsh sees in "the decreasing use of its specific language in particular situations a sign of potential decay" and yet she also offers a basis for optimism. While the Security Council adopted more than 50 resolutions that refer to the responsibility to protect, two of which have authorized peacekeeping missions that have explicitly called for support to national authori-

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adviser on the prevention of genocide, followed in 2008 by appointment of the first special adviser on the responsibility to protect. In 2014, the Office of Genocide Prevention and the Responsibility to Protect released the first United Nations Framework of Analysis for Atrocity Crimes" (UN 2014): 236.

    [2] She concludes "a positive effect has been that global security firms can contribute to ending conflicts, protecting humanitarian aid operations and securing international business investments. Negative consequences have included the proliferation of small arms and light weapons, the exacerbation of conflicts and the undermining of public security. The most important challenge, however, has been to the laws of war, which have largely been based on the presumption of the state monopoly on armed force" (KRAHMANN 2008).

ties, the style and discourse has changed. Welsh considers whether that it may be a signal of a deeper normative shift.

It may be noted that researchers have to wrestle with the trade-off between imperative of the humanitarian protection and quality and *timing* of discursive data. As Welsh (2019) notes, "regarding temporality, how should we judge the dynamics of (relatively) new norms?" There is an intrinsic difficulty: at which phase, for example, can robust independent evidence be found, such that it can form the basis for determining responsibility for the chemical weapons attacks in Syria? In this sense, Aistrope *et al.* note that advocacy for intervention based on the Responsibility to Protect "arose in a broader geopolitical context that had the potential to influence information about the chemical weapons attacks […]; the evidence of attribution available in the crisis moment, as the momentum for intervention gained pace, was potentially problematic" (Aistrope, Gifkins and Taylor 2018).

In other words, RtoP advocates making the case for intervention were confronted with *information available provided by self-interested states and a potentially briefed media, both with a recent history of unreliability around weapons of mass destruction.*

The advent of social media has partly aggravated the difficulty of finding reliable information but also offered a silver lining, as in the example of physicians using videos for an epidemiologic investigation after the 2013 Syrian chemical attack – the first time that social media was used to evaluate clinical data. An organization known as Bellingcat also confirmed the use of chemical weapons by tracking YouTube channels, after previously presenting video evidence on the deployment of cluster bombs (Keefe 2013). Last but not least, the International Criminal Court issued its first ever arrest warrant solely based on social media evidence, for a perpetrator of mass executions in Libya.[3]

Military and security entrepreneurs

I shall now move to other relevant challenges to the primacy of the states: those that originate from individuals who challenge the state's monopoly of violence; then, in the following section, I shall offer elements of comparison between RtoP norms and the governance of Private Military and Security Companies (PMSCs).

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[3] A video prompted the ICC arrest warrant was uploaded on July 23, 2017, by a Facebook user. See https://www.bellingcat.com/news/mena/2017/09/04/geolocating-libyas-social-media-executioner/ (accessed February 1, 2019).

Military and security entrepreneurs have been progressively more capable of driving a wedge in international affairs, as I shall briefly illustrate with the cases of the Czech Republic and the USA. In the first case, the largest Czech private security company created a business-firm-party through a takeover of an existing minor political party and then obtained a representation in parliament and a ministerial post. It is a unique and exceptional example among Western countries of the influence of private security. It offers insights on governance and norms: in fact, it is no coincidence that the Czech Republic has no modern regulation and that it has not endorsed regulation on PMSCs (for a discussion see Boggero 2018).

A second example is that in the current flux of American politics, Erik Prince has gained increasing influence. Prince was able to convene a meeting to help foreign governments and individuals to be involved in the American elections in 2016: both from Russia (Horwitz and Barrett 2018) and the Middle East (Mazzetti, Bergman and Kirkpatrick 2018). Further, Prince's core business moved to China, where it operates at a high level of corporate opacity (Fisher, Shapira and Rauhala 2018). His firm, Frontier, works overseas and tries to sell its services not only to African states, but to countries of the European Union: like Italy and Germany. Thus, at a time when the states retreat, and the US administration shrinks and reshapes the status of its bureaucracy (Osnos 2018), the networks of military entrepreneurs are potentially increasingly influential; with unintended consequences in the longer term, that could include increasing tension and the general possibility of conflict.[4] Unregulated outfits, like Erik Prince's Frontier or Russia's Wagner, are free to establish further areas of individual primacy over states.

Elements of Comparison

At this stage, I sketch a comparison in the evolution of norms in the two issue-areas. The table below indicates some perspectives on regime construction, based on Welsh's and my own work.

While controversies surrounding Libya and Syria have challenged the RtoP; Libya has highlighted the dilemma of a military intervention that overlaps with the aims of regime change. Yet, processes and mechanisms have evolved and partly improved (Welsh 2019).

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[4] On the other hand, PMSCs are not known to pose a nuclear danger, cf. Brown 2010.

Table 1. Comparison of Norms on the Responsibility to Protect and Private Military and Security Companies.

	Official Creation	**Regime Construction Progress (Examples)**
RtoP norms	World Summit, 2005	1. Appointment of focal points within national governments to coordinate policy development on atrocity crime prevention; 2. Growing number of states have also developed, or are in the process of developing, "national mechanisms" for the prevention of genocide and other atrocity crimes
PMSCs norms	Montreux, 2008	1. Determination of services 2. Accountability 3. Procedures of authorization

PMSC governance, on the other hand, has been weakened both by technology and by state choices. In particular, major powers have become increasingly reluctant to commit to Montreux language – from the United States to China. Russia, for example, has never ratified Montreux, the main tool of PMSC governance, and has increasingly intervened through a company known as Wagner – from Crimea and Syria to the CAR.[5]

TECHNOLOGICAL CHANGE AND THE CHALLENGES TO THE PRIMACY OF STATES

Welsh's work reflects at times on the growing investments in "capacity for early warning" for RtoP and her research on the RtoP is focused on the normative developments related to human rights and as she puts it, the "dramatic technological and strategic developments that both empower individuals as military actors and that enable either the targeting or protection of particular individuals" (Welsh 2019).

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[5] Borrowing from Finnemore and Sikkink (1998) three categories for norm diffusion, PMSCs norms would still be in the first stage of emergence – the second one being the *norm cascade* which occurs when at least one-third of the states share the same assessment on the emerging norm. Entire regions have neither signed up to Montreux, nor shown interest in the U.N. initiative, nor started a process of domestic reform, thus making the universality of PMSCs norms aspirational.

The changes are indeed dramatic and there is a sense of instability around behavioral expectations, of individuals and states first, and of markets second. Lupia and Sin (2003: 316) wrote that "for almost all of human history, physical impediments such as mountains, walls and long distances limited real-time monitoring of others. Cognitive constraints imposed other limits". These impediments are no more and yet, there is a lack of recognized and uniform expectations.

In this direction, it is worth discussing some of the macro-level challenges that have emerged and that potentially affect the unit of analysis of the state. I shall briefly mention issues that I have encountered in my own research around political stability and mobilization strategies.

Individuals empowered by information and communication technology are seemingly able to challenge the state. Yet, as Luttwak writes, in his updated practical handbook *Coup d'Etat*, coup plotters cannot expect much from seizing the radio station anymore; they need a lot more (Luttwak 2016). At the same time, autocrats have improved their capacity to filter and block online activism, the real platform of mobilization and political change. Authoritarian governments have thus adapted to use social media to their advantage. States are able to control, filter and restrict access to social media (Morozov 2012). In this direction, Gary King and his colleagues carried out the first systematic empirical study to verify the suspicion that the Chinese government hired as many as 2,000,000 people to surreptitiously insert deceptive writings into the stream of real social media posts.[6]

Thus, some evidence point to conclusion that the state is actually getting stronger and political stability is on the rise. Alex de Waal identifies a trend for the *decrease* in coups that also reflects the change in social media capabilities. The spontaneous protest in Sudan in 2013 could not "outlast and out-think the government". The government strategy, he writes, was based on two countermeasures: first, the threat that the likely outcome could be chaos like in Libya or Syria. The second was "singling out individual organizers and intimidating or co-opting them […] The looting and burning of shops – some of it surely carried out by agents provocateurs – reinforced the message" (De Waal 2015)".

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[6] They estimated that the government fabricates and posts about 448 million social media comments a year. They also infer that the goal of this massive secretive operation is instead to distract the public and change the subject, as most of the these posts involve cheerleading for China, the revolutionary history of the Communist Party, or other symbols of the regime (KING, PAN and ROBERTS 2016).

Concluding thoughts

Jennifer Welsh's selection of the Responsibility to Protect is a highly relevant topic of research. As individuals are empowered and increasingly able to challenge the state, two things may follow.

The first is that the concept and practice of humanitarian intervention are put into question, including in the cases of the most violent atrocities that RtoP is meant to prevent. The RtoP is an advanced collective instrument to prevent and counteract that choice, *assuming* expectations of state behavior and individual behavior. Geographic and cognitive constraints used to shape expectations, but these impediments are no longer a factor; nevertheless in many areas there is a lack of recognized and uniform expectations.

Second, while individuals have enhanced visibility in world affairs, states are refashioning their capabilities and getting stronger as well. Data on coup trends, for example, suggest African states are more and more stable. European states are regaining control of their prerogatives with a variety of strategies, including the reintroduction of the military service in three European countries (2015-2018), namely Lithuania, Sweden and France; the gradual and increased criminalization of immigration-related solidarity (Flandrin 2017), and the delegation of authority to private actors in immigration control and detention, to release states from obligations once owed. From Denmark to Greece, trends have shown that companies have successfully bid for immigration services (Boggero 2018).

One final point is that RtoP is a tool, embedded in the "broader normative structure of human rights, humanitarian law, and civilian protection", as Welsh (2019) writes, but it also depends on the initiative of individuals. Individuals have played an important role in establishing international regimes in the past – most notably the role of Henry Dunant and his colleagues in promoting the Geneva Convention starting in the 1860s. Clara Barton, the founder of the American Red Cross, was also the key campaigner for the adoption of the Geneva Convention in the United States in 1882 – at a time when the country adhered to a strict interpretation of the Monroe doctrine and recoiled from any "entanglements" with foreign organizations (Jones 2012). There is no better example to recall the power of individuals especially in the current era or rising isolationism of the United States and at a time when human rights and humanitarian intervention are questioned elsewhere as well.

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