The Responsibility to Protect and Counter-terrorism

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Abstract

The Responsibility to Protect (R2P) and counter-terrorism are two concepts that came of age in the new millennium. They have routinely been cast as contradictory, a dichotomy where actors must make a choice between prioritizing individual human rights or the security of the state. The evolution of these two concepts over the past 20 years, however, has shown that there are as many congruences between R2P and counter-terrorism as there are areas of conflict. This introduction briefly details the genesis of the R2P and counter-terrorism and highlights their shared basis in state sovereignty and protection of human rights. It then introduces the articles in this special issue, each of which looks at different areas of congruence or conflict between R2P and counter-terrorism.

Keywords

R2P – counter-terrorism – norms – global counter-terrorism strategy (GCTS)

1 Introduction

At first glance, R2P and counter-terrorism are rather strange bedfellows; the former emphasising human rights while the latter devoted to state preservation. Their relationship, however, has become far more complicated and intertwined over the past 20 years. R2P has continually emphasised the important role of the state and state sovereignty in the protection of people from atrocity crimes. At the same time, counter-terrorism has come to acknowledge the vital importance of human rights in effective counter-terrorism initiatives. With
their shared emphasis on the role of the state and the importance of human rights, counter-terror and R2P efforts now significantly overlap. So much, in fact, that the UN Security Council now often considers efforts to counter-terrorism and prevent atrocities concurrently.

This introduction briefly details the genesis of the Responsibility to Protect and counter-terrorism, including how these two concepts have evolved alongside each other and have come to overlap in important and problematic ways. With the stage set, it will introduce the articles in this special issue, each of which looks at different areas of congruence or conflict between R2P and counter-terrorism.

2 The Responsibility to Protect and Counter-terrorism Emerge on the Global Stage

Both R2P and counter-terrorism ‘came of age’ at the turn of the millennium. The responsibility to protect was first articulated as a principle in 2001 but was precipitated by several crises in the 1990s. Specifically, the massacres of civilians in Bosnia, the war and famine in Somalia, and the 1994 genocide in Rwanda.\(^1\) In each of these events, the international community was present on the ground but unwilling, unable, or unprepared to act to stop atrocities. Confronted with their failure to act, UN Secretary-General Kofi Annan called for an investigation into the responsibilities of states. Canada responded by setting up the International Commission on Intervention and State Sovereignty (ICISS). This commission concluded that it was a state’s responsibility to protect its population. If the state struggled or failed to do this, the international community had a responsibility to support state efforts at protection, or even intervene to stop atrocities.\(^2\) Thus, the responsibility to protect was born.

Just weeks before the ICISS report was released, the world was shaken by the terrorist attacks of 11 September 2001, killing 2,977 people. The very next day the UN Security Council declared ‘international terrorism as a threat to international peace and security’.\(^3\) A few weeks later they unanimously passed

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Resolution 1373, a ‘super-legislative’ resolution with the first binding requirement that states criminalise and respond to terrorist activities.4

The upswelling of support for the global ‘war on terror’ left ‘the impression that human rights protection is a secondary consideration in the campaign against terrorism, instead of an essential component of any counterterrorism strategy’.5 The prevailing state-led approaches to counter-terror flaunted international legal norms by prioritising enforcement and using torture, arbitrary detention, and excessive force which, at times, verged on atrocity crimes.6 Such was the negative impact of counter-terrorism efforts on human rights that, by 2003, UN Special Rapporteurs and independent experts expressed ‘profound concern at the multiplication of policies, laws and practices increasingly being adopted by many countries in the struggle against terrorism which in their view were negatively affecting the enjoyment of virtually all human rights – civil, cultural, economic, political and social’.7

The 2005 World Summit called for more clarity on both R2P and counter-terrorism. Adopted by over 150 heads of state, the World Summit Outcome Document codified R2P as we know it today, with three core pillars and four specific atrocity crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity.8 This document also laid the groundwork for a global approach to counter-terrorism by requesting that the UN Secretary-General strengthen the UN’s role in counter-terrorism.9 His subsequent report, Uniting

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8 ‘2005 World Summit Outcome’, UNGA Res. 60/1, 24 October 2005, paras. 138–140.
9 ibid., paras. 81–91.
against Terrorism: Recommendations for Global Counterterrorism Strategy,\textsuperscript{10} became the basis for the 2006 Global Counter-Terrorism Strategy (GCTS).\textsuperscript{11} This strategy also consisted of pillars, four this time. The first pillar focused on broadly addressing the conditions conducive to the spread of terrorism. The second pillar emphasised general measures to prevent and combat terrorism, while the third pillar focused on capacity building for states and strengthening the role of the UN in that regard. The fourth pillar covered measures to ensure respect for human rights and the rule of law as the basis for counter-terrorism.

The GCTS specifically notes that states must take ‘[m]easures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism’.\textsuperscript{12} At the same time, states must address ‘the conditions conducive to the spread of terrorism’.\textsuperscript{13} While not explicitly stated as a definition, terrorism is understood as a threat ‘aimed at the destruction of human rights, fundamental freedoms and democracy...’; therefore, combating it would entail protection of these rights and freedoms.\textsuperscript{14} With the GCTS, the UN Secretary-General made it clear that ‘[e]ffective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing ones’.\textsuperscript{15}

When placed alongside each other (Table 1), the R2P framework and GCTS have several areas of congruence. Both have a deep basis in international and customary law and emphasise the role and rights of the state.\textsuperscript{16} At the same time, they continue to have points of contention – most importantly, whether the state or the individual should be prioritised as the referent for security. It is these points of concord and discord that the following articles in this special issue engage.

\begin{itemize}
\item \textsuperscript{10} UN Secretary-General, \textit{Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy}, A/60/825, 27 April 2006.
\item \textsuperscript{12} ibid., p. 9.
\item \textsuperscript{13} ibid., p. 4.
\item \textsuperscript{14} ibid., p. 2.
\item \textsuperscript{15} UN Secretary-General, \textit{Uniting against Terrorism}, A/60/825, 27 April 2006, para. 5.
\end{itemize}
Summary of Articles

This special issue is devoted to exploring the complex relationship between counter-terrorism and R2P. It does this in three ways: first, by providing possible theoretical frameworks for understanding the overlaps between R2P and counter-terror; second, by exploring the intersections of counter-terror, R2P, and the closely related but much broader concept of protection of civilians; and third, by delving into the conditions necessary to trigger R2P in response to atrocity crimes by non-state actors labelled as terrorists.

The first two articles approach R2P and counter-terrorism from different theoretical perspectives. Shannon Zimmerman explores how R2P and counter-terrorism can act as subsidiary norms within the broader ‘norm regime’ of sovereignty. As part of this norm regime, R2P and counter-terrorism are interpreted through the diverse lenses of individual states and state self-interests. The result can be norm modification to the extent that the norm’s original intent is lost, and even violated, as shown through her case studies of China and the Uyghurs and the Sri Lankan government’s battle against the Tamil Tigers.

Using ethics as a starting point, Isaac Taylor’s article explores whether the ethical imperatives that support humanitarian and R2P-driven interventions

### Table 1

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<th>R2P framework</th>
<th>Global counter-terrorism strategy</th>
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<td>1. The state’s responsibility to protect its own population from the crimes</td>
<td>1. Addressing the conditions conducive to the spread of terrorism</td>
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<td>of genocide, war crimes, ethnic cleansing, and crimes against humanity</td>
<td>2. Measures to prevent and combat terrorism</td>
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<td>2. The role and responsibilities of the international community to assist the</td>
<td>3. Measures to build states’ capacity to prevent and combat terrorism</td>
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<td>state in fulfilling its responsibilities</td>
<td>and to strengthen the role of the United Nations system in that regard</td>
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<td>3. The role of the international community to act when protection by the</td>
<td>4. Measures to ensure respect for human rights for all and the rule of</td>
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<td>state is manifestly failing.</td>
<td>law as the fundamental basis for the fight against terrorism.</td>
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could also support counter-terrorism interventions. He finds that restrictive interpretations of just war theory do not extend to counter-terrorism but broader collectivist interpretations could encompass counter-terrorism. However, ethically based or not, such interventions create options for abuse by self-interested actors. Taylor argues for caution when using a norm to legitimate foreign interventions for counter-terrorism.

The next two articles look at the inevitable intersectionality of R2P and counter-terrorism, and include the closely related but much broader concept of protection of civilians. Sascha Nanlohy’s article explores the misuse of counter-terrorism discourse to perpetuate atrocities. Analysing comparative cases, Nanlohy investigates R2P ‘success’ in Kenya (2007–2008) and R2P ‘failure’ in Sri Lanka (2009), and demonstrates the challenges facing R2P operationalisation in cases with complex counter-terrorism dynamics.

Also investigating the dynamics between R2P, protection of civilians, and counter-terrorism, Adrian Gallagher, Blake Lawrinson, and Charles Hunt apply the concept of ‘norm clusters’ to the UN peacekeeping mission in Mali. They find that the shared characteristics of these norms have resulted in a ‘human protection norm cluster’. However, while all norms embody the value of human protection, the norms themselves are given different respective values and are not mutually reinforcing. Additionally, counter-terrorism, despite its more peripheral role, has had a detrimental impact on protection of civilians.

The final article engages in the grey area of R2P application against non-state terrorist groups. Josie Hornung examines the successful intervention by US and Iraqi forces in preventing the genocide of the Yazidis on Mount Sinjar by the Islamic State in Iraq and the Levant (ISIL). Hornung uses this case to illustrate the unique circumstances that made this application of Pillar Two protection assistance so successful in preventing possible atrocity crimes by a terrorist group.

4 Conclusion

R2P and counter-terrorism have undergone constant evolution over the past 20 years, defining and redefining themselves as concepts caught in the struggle to balance national security imperatives with human rights. In this process they have been understood and implemented in a vast array of configurations. In some instances, R2P and counter-terrorism operate in tandem, often focusing on prevention. In the majority of instances, however, R2P and counter-terrorism are placed in opposition, where compromises must be made between
protecting human rights and military-centric responses to terrorism. As these two concepts continue to evolve, opportunities arise to leverage the emerging synergies between them to more effectively address both atrocity crimes and terrorism.