

**The Responsibility to Protect Indigenous Peoples?  
An Analysis of R2P's Potential Application in  
the Chittagong Hill Tracts of Bangladesh**

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**I. Introduction**

“The atrocity crimes that stain humanity’s conscience make it imperative that leaders transform R2P (Responsibility to Protect) from a vital principle into visible practice.”<sup>1</sup>

United Nations Secretary-General Ban Ki-moon made this statement in an informal dialogue on the Responsibility to Protect—frequently abbreviated to R2P or RtoP—on the occasion of the principle’s tenth anniversary in September of 2015. According to its supporters, this concept has achieved major, tangible successes since it was adopted in paragraphs 138–140 of the World Summit Outcome Document in 2005.<sup>2</sup> However, the norm’s applications and its sheer existence have not been devoid of controversies.

Gareth Evans, in *The Responsibility to Protect: Ending Mass Atrocities Once and For All*, stated that R2P must be invoked at the earliest possible point to protect vulnerable populations facing mass atrocities.<sup>3</sup> Indigenous peoples the world over are marginalized and made vulnerable to targeted violence due to structural and systemic inequalities, outright discrimination, and the legacies of colonial oppression. Yet an R2P intervention has never been invoked in the instance of a mass atrocity committed against Indigenous peoples, despite evidence of targeted violence in many countries that would fall

1. United Nations, “Secretary-General’s Remarks to General Assembly Informal Interactive Dialogue on ‘A Vital and Enduring Commitment: Implementing the Responsibility to Protect’ [As Delivered]” (New York: United Nations Headquarters, September 8, 2015), <http://www.un.org/sg/statements/index.asp?nid=8950>.
2. A/RES/60/1, para. 139–141.
3. Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocities Once and For All* (Washington, D.C.: Brookings Institution Press, 2008), 79.

under one or more of the four crimes that invoke R2P: crimes against humanity, war crimes, genocide and ethnic cleansing.<sup>4</sup>

Today in Bangladesh, for example, there is a clear case of systemic violence against Indigenous Peoples that is underreported and still actively occurring. In the Chittagong Hill Tracts (CHT) in south-eastern Bangladesh, the Indigenous Peoples of the area have been socially, economically and politically marginalized for decades,<sup>5,6</sup> while violence has steadily been perpetrated against them with impunity.<sup>7,8</sup> There was a Peace Accord signed to protect Indigenous lands and foster self-governing institutions in the CHT in 1997,<sup>9</sup> but it has not been effectively implemented.<sup>10,11</sup> Under the premise of land disputes, the Bangladesh government has ordered this entire area of the country militarized and there are substantiated reports of targeted rapes, looting, arson of religious sites and murders of Indigenous Peoples in this region.<sup>12, 13</sup> Why has R2P not yet even been mentioned within official United Nations documents on this conflict? Is it an appropriate mechanism for intervention in this instance?

To test whether R2P could be applicable in situations of violence against Indigenous Peoples, this contribution will first outline the

4. A/RES/60/1, para. 139.
5. Salahuddin Aminuzzaman, "Bangladesh: A Critical Review of the Chittagong Hill Tract (CHT) Peace Accord," Working Paper (Bangkok: United Nations Development Programme, Regional Centre Serving Asia and Pacific, 2005), 22.
6. "Bangladesh: Human Rights in the Chittagong Hill Tracts" (London, Amnesty International, July 31, 1991), 8–14.
7. Ishtiaq Jamil and Pranab Kumar Panday, "The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People," *Commonwealth & Comparative Politics* 46, no. 4 (November 1, 2008): 465.
8. Mark Levene, "The Chittagong Hill Tracts: A Case Study in the Political Economy of 'Creeping' Genocide," *Third World Quarterly* 20, no. 2 (April 1999): 359.
9. "Chittagong Hill Tracts Peace Accord (CHT)," *Peace Accords Matrix*, Kroc Institute for International Peace Studies, University of Notre Dame, <https://peaceaccords.nd.edu/accord/chittagong-hill-tracts-peace-accord-cht>.
10. E/C.19/2011/6, para. 2.
11. A/55/280/Add.2, para. 71.
12. Jamil and Panday, *supra* note 7.
13. Bhumitra Chakma, "The Post-Colonial State and Minorities: Ethnocide in the Chittagong Hill Tracts, Bangladesh," *Commonwealth & Comparative Politics* 48, no. 3 (July 1, 2010): 281.

history of the development of R2P and will discuss the literature around its normative elements. This chapter will use the United Nations Declaration on the Rights of Indigenous Peoples as a normative framework through which I will assess the Indigenous right to self-determination as it pertains to mass atrocity prevention and intervention in Indigenous communities. Using the case study of the Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh, I will then analyze whether R2P could be an appropriate international humanitarian intervention mechanism in conflicts victimizing Indigenous Peoples. I will conclude with an assessment of how R2P could be better shaped to address situations of mass atrocities involving Indigenous Peoples, and how this paradigm shift may affect future iterations of the Responsibility to Protect as an evolving norm.

It is important to note that the Indigenous leaders interviewed for this piece do not speak for all Indigenous Peoples who live in this area of Bangladesh and the reader must keep in mind that not all Indigenous voices can or should be essentialized through interviews with a handful of Indigenous representatives. Finally, an analysis of such a sensitive topic requires that the reader be aware that the author does not identify as an Indigenous person and therefore writes with the many privileges associated with speaking from outside of the persecuted group discussed in this paper.

## **II. What is the Responsibility to Protect?**

### **a. History and Content of the norm**

In March 2000, then-Secretary-General Kofi Annan released a report entitled “We The Peoples: The Role of the UN in the 21<sup>st</sup> Century.” In what has now come to be known simply as the “Millennium Report,” Annan grappled with many pressing issues facing the world at the time, including how to respond to mass atrocities without violating the sovereignty of states. In the report, Annan plaintively asks the following:

“If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to

gross and systematic violations of human rights that offend every precept of our common humanity?”<sup>14</sup>

In 2001, the Canadian government gathered a panel of international experts to create the International Commission on Intervention and State Sovereignty (ICISS) in response to Kofi Annan’s call for a new global solution to such gross violations of human rights. The Commission released a report later that same year that outlined a three-pillared approach entitled the Responsibility to Protect.<sup>15</sup> This report envisioned a shift in the concept of sovereignty from complete and total control over the people living within a state’s territory to “sovereignty as responsibility,”<sup>16</sup> meaning a dual responsibility to both recognize other states’ sovereignty and to “respect the dignity and basic rights”<sup>17</sup> of all those living within the state.

In 2003, Annan appointed a High Level Panel of Experts on Threats, Challenges and Change to assess the United Nations’ ability to respond to the most imminent dangers to the international community. The report this Panel produced, in December 2004, endorsed the emerging norm of the Responsibility to Protect and even acknowledged the occasional necessary use of international military intervention to stop a government from committing mass atrocities against its own peoples.<sup>18</sup> Finally, R2P was officially adopted by all Member States in three paragraphs of the 2005 World Summit Outcome Document,<sup>19</sup> which was a major turning point in the international acceptance and formalization of the concept.

14. Kofi Annan, “We the Peoples: The Role of the United Nations in the 21st Century” (New York, United States of America: United Nations Department of Public Information, March 2000), 48.

15. “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty” (Ottawa, Canada: International Development Research Centre, December 2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

16. *Ibid.*, 13.

17. *Ibid.*, 8.

18. A/59/565, para. 201.

19. A/RES/60/1, paras. 138–140.

However, through the process of consultations with governments, civil society and academia, some of the core language of R2P was adjusted significantly from 2001 to 2005. The 2001 ICISS report deemed the threshold for international intervention to be the point at which the state involved was “unable or unwilling”<sup>20</sup> to protect its own citizens; the 2005 iteration of R2P raised the bar for international intervention to the point at which a state was “manifestly failing to protect their populations,”<sup>21</sup> despite there being no clear guideline as to what that would mean in practical terms. In a major adjustment from 2001, the 2005 iteration of R2P clearly delineated four crimes that would invoke R2P: genocide, crimes against humanity, war crimes, and ethnic cleansing.<sup>22</sup>

Genocide has been an internationally recognized and defined crime since the Convention on the Prevention and Punishment for the Crime of Genocide entered into force in 1951. This Convention establishes genocide as a set of five specific acts committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”<sup>23</sup> Crimes against humanity were defined much later, in 1998, with the Rome Statute treaty that established the International Criminal Court. While the actions that constitute crimes against humanity are too numerous to list here, their defining feature is that they are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>24</sup> These crimes include rape, torture and enforced disappearances.<sup>25</sup> War crimes are also defined in the Rome Statute, which came into force in 2002. These include any violations of the Geneva Conventions of 1949, including Common Article 3 relating to persons not taking active part in hostilities, or “other serious violations of the laws and customs

20. “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty,” *supra* note 15, at 29.

21. A/RES/60/1, para. 139.

22. A/RES/60/1, para. 138.

23. “Convention on the Prevention and Punishment of the Crimes of Genocide” (United Nations General Assembly, December 9, 1948), para. 2.

24. “Rome Statute of the International Criminal Court” (United Nations General Assembly, July 17, 1998), Article 7.

25. *Ibid.*

applicable in international armed conflict, within the established framework of international law.”<sup>26</sup>

Ethnic cleansing, however, is not defined in any of the aforementioned treaties. According to the Final Report of the Commission of Experts that was established by the United Nations to investigate violations of international humanitarian law in the former Yugoslavia, “‘ethnic cleansing’ means rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area.”<sup>27</sup> This definition was further clarified in 1994 to mean “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas”;<sup>28</sup> this is typically “carried out in the name of misguided nationalism”<sup>29</sup> and its “purpose appears to be the occupation of territory to the exclusion of the purged group or groups.”<sup>30</sup> However, despite naming the four crimes that would invoke R2P, there is no clarification in the 2005 World Outcome Document as to which of these actions, or at what threshold, would invoke which or any kind of international response—political, economic, diplomatic, or military.

Unfortunately, the version of R2P agreed upon at the 2005 World Summit denied practically any other way for states to intervene aside from Security Council approval unless the General Assembly converged under the “Uniting for Peace” process as per UN Resolution 377; however, this process has never been used to invoke R2P.<sup>31</sup> The Responsibility to Protect as it was adopted in 2005 sticks to a rigid reading of the UN Charter, stating that “collective action”<sup>32</sup> against war crimes, crimes against humanity, genocide or ethnic cleansing

26. *Ibid.*, Article 8.

27. S/25274, para. 55.

28. S/1994/674, para. 130.

29. *Ibid.*

30. *Ibid.*

31. “Security Council Deadlocks and Uniting for Peace: An Abridged History” (Security Council Report, October 2013), [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Security\\_Council\\_Deadlocks\\_and\\_Uniting\\_for\\_Peace.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Security_Council_Deadlocks_and_Uniting_for_Peace.pdf).

32. A/RES/60/1, para. 139.

has to go “through the Security Council”<sup>33</sup> for approval. The 2005 iteration of the norm made R2P more difficult to invoke, as any of the Permanent Members of the Security Council could simply veto intervention and the action would be blocked from proceeding, no matter how many lives were being lost. Disagreement among the Security Council members has proven to be “particularly damaging in the early stages of a crisis when space for dialogue is wider.”<sup>34</sup>

Yet R2P continued to gain traction within the United Nations and in Member State capitals; it was first mentioned in the Security Council in April 2006, in a resolution regarding the protection of civilians in armed conflict.<sup>35</sup> In January 2009, Secretary-General Ban Ki-moon released his report “Implementing the Responsibility to Protect,” which was essential for the progression of R2P as it addressed the practical application of the norm in country-specific situations.<sup>36</sup>

A wide-ranging debate on the subject—the longest General Assembly debate of the year, lasting three days—ensued in July 2009.<sup>37</sup> Since then, Secretary-General Ban Ki-moon has released a report every year on various components of R2P and has even appointed a Special Adviser on the Responsibility to Protect, thereby strongly expressing his support for the norm and its proliferation within the UN system. Additionally, the Security Council has invoked the Responsibility to Protect in various resolutions as they have addressed crises ranging from South Sudan in 2011<sup>38</sup> to the Central African Republic in 2013.<sup>39</sup> In April 2014, the Security Council adopted Resolution 2150, which reaffirmed the importance of the Secretary-General’s Special Advisers on the Prevention of Genocide and the Responsibility to Protect.<sup>40</sup> As of 2016, the protection of civilians’ component of R2P has been

33. *Ibid.*

34. A/70/999-S/2016/620, "Mobilizing Collective Action: The Next Decade of the Responsibility to Protect, Report of the Secretary-General" (New York, United Nations General Assembly, July 22, 2016), para. 15.

35. S/RES/1674.

36. A/63/677, para. 51.

37. A/63/PV.98; A/63/PV.99; A/63/PV.100; A/63/PV.101.

38. S/RES/1996.

39. S/RES/2121.

40. S/RES/2150.

incorporated in or guided ten Human Rights Council Resolutions and 40 Security Council Resolutions.<sup>41</sup>

The Responsibility to Protect has changed since its initial conception, but the principle has also made significant progress in terms of its acceptance. Despite the extent to which the principle has been internalized among some Member States and within parts of the UN system, however, R2P is still an emerging norm that continues to be contentious among states, civil society and academics.

## II. What is the Responsibility to Protect?

### b. Literature Review on the Normative Aspects of R2P

For the purposes of this essay, I will focus on the literature analyzing the agency of subjects of R2P interventions and concerns around the principle's roots in imperialist values. The subject of any R2P intervention is framed as a "population"<sup>42</sup> as per Francis Deng's initial conceptualization of "sovereignty as responsibility,"<sup>43</sup> created during his tenure as the UN Special Rapporteur on the Human Rights of Internally Displaced Persons. However, the term "populations" refers to, as Bridget Conley-Zilkic describes, "objects of concern that can be studied, abstracted, queried, and deemed someone's responsibility, but they are not primarily subjects"<sup>44</sup> and this term serves to lump together oftentimes disparate communities who happen to share a geographic locality. The logic behind who is chosen to be the subject of an R2P intervention is also unclear. Anne Orford asks who decides who will be the subject of intervention and, likewise, who decides what level of intervention is necessary in any given situation.<sup>45</sup> Even though R2P condemns leaving power in the hands of those who commit

41. A/70/999-S/2016/620, para. 7.

42. Francis Deng et al., *Sovereignty as Responsibility* (Washington, D.C.: Brookings Institution Press), 221, <http://www.brookings.edu/research/books/1996/sovrnty>.

43. *Ibid.*

44. Bridget Conley-Zilkic, "Who Is the Subject of Atrocities Prevention?," *Global Responsibility to Protect* 6, no. 4 (November 27, 2014): 442.

45. Anne Orford, "From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept," *Global Responsibility to Protect* 3, no. 4 (December 1, 2011): 422.



abuses, the principle does not propose passing this same power to those who have been victimized. Rather, the power of determining the kind of protection necessary in any R2P conflict is passed to the broader “international community”<sup>46</sup> which then decides the type of intervention necessary. This also removes agency from the subjects of these interventions.<sup>47</sup>

Furthermore, the Responsibility to Protect principle continues to be plagued by accusations of thinly cloaked Western imperialism.<sup>48</sup> Linked innately to the suspicions of many former colonies that R2P will be used inappropriately in their states, some scholars have portrayed this principle as yet another projection of the interests of the world’s most powerful nations onto those with valuable resources and limited international influence. Particularly when the subject of the intervention is a state that was previously colonized, such as is the case for much of Africa and Asia, these countries are typically wary “of attempts to revise the rules of sovereignty”<sup>49</sup> as some envision R2P to do. Many non-Western states were concerned that they had only recently achieved statehood and the rights that come with it<sup>50</sup> and so the concept of sovereignty as responsibility, not only as a right to govern one’s peoples the way one’s government chooses, was met with strong opposition by many formerly colonized nations amid concern R2P may be abused by Western powers.<sup>51</sup> Even Edward Luck, former UN Special Adviser on the Responsibility to Protect to Secretary-General Ban Ki-moon, acknowledged concerns about potential misuse of the

46. *Ibid.*, 423.

47. Conley-Zilkic, *supra* note 44, at 444. See also Anne Orford, *International Authority*, *supra* 45, at 139–188.

48. Siddharth Mallavarapu, “Colonialism and the Responsibility to Protect,” in *Theorising the Responsibility to Protect*, Ramesh Thakur and William Maley eds. (Cambridge: Cambridge University Press, 2015), 307, <http://ebooks.cambridge.org/ref/id/CBO9781139644518>.

49. Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2013), 176.

50. *Ibid.*, 180.

51. Ian Williams, “Dueling Principles: National Sovereignty Vs. Responsibility to Protect,” *The Washington Report on Middle East Affairs* 32, no. 7 (September 2013): 29.

norm and issues of selectivity in his assessment of R2P's first decade in 2011.<sup>52</sup>

Siddarth Mallavarapu describes the entrenched nature of North-South power imbalances that are now simply being resubmitted under the guise of the Responsibility to Protect.<sup>53</sup> Mallavarapu invokes Makau Mutua's "fiction of neutrality" in which the human rights regime itself is based on a paradigm of "savages-victims-saviors."<sup>54</sup> Mutua describes human rights, as framed by the Universal Declaration of Human Rights, as falling within the spectrum of the "Eurocentric colonial project"<sup>55</sup> and Mallavarapu, along with other scholars,<sup>56</sup> fears that R2P is yet another iteration of humanitarian intervention in which one group is cast as saviors and the rest as outsiders or saved "others."<sup>57</sup>

It is at this nexus of debate around the agency of the subjects of R2P, concerns around sovereignty, and fears of Western imperialism that this paper situates the potential application of R2P in situations involving Indigenous peoples. There exists an extremely limited set of scholarly submissions on this topic. Federico Lenzerini's chapter "R2P and the 'Protection' of Indigenous Peoples" touches upon the paternalistic relationship between the "protector"<sup>58</sup> and the "protected"<sup>59</sup> wherein the former are inherently powerful and have the means and will to do the protecting and the latter are vulnerable and cannot save themselves. However, his chapter focuses mainly on the responsibility of each state—what Lenzerini deems a "State

52. Edward C. Luck, "The Responsibility to Protect: The First Decade," *Global Responsibility to Protect* 3, no. 4 (December 1, 2011): 396.

53. Mallavarapu, *supra* note 48, at 306.

54. Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal* 42, no. 1 (n.d.): 201.

55. *Ibid.*, 204.

56. Frédéric Mégret, "Beyond the 'Salvation' Paradigm: Responsibility To Protect (Others) vs the Power of Protecting Oneself," *Security Dialogue* 40, no. 6 (December 1, 2009): 579.

57. Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge, United Kingdom: Cambridge University Press, 2003), 33.

58. Federico Lenzerini, "R2P and the 'Protection' of Indigenous Peoples," in *The Responsibility to Protect (R2P)*, Peter Hilpold ed., (Leiden: Brill, 2014), 329–347.

59. *Ibid.*

R2P”<sup>60</sup>—towards the Indigenous Peoples who reside within the state’s territory to acknowledge their rights as per the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Lenzerini speaks to the importance of any form of so-called protection being implemented with the utmost cultural sensitivity, yet does not acknowledge the broader colonial, imperialist history that would complicate any attempt to apply the Responsibility to Protect by the international community to situations where Indigenous Peoples are involved.<sup>61</sup>

There are, however, scholarly works on the Responsibility to Protect and minorities. The rights of minorities and the ways in which they are violated by the state are similar to those of Indigenous Peoples in that minorities are often vulnerable to multiple forms of exploitation<sup>62</sup> and they are frequently marginalized and cannot easily seek retribution for the atrocities of which they are the victims.<sup>63</sup> However, minorities research diverges from the literature on Indigenous Peoples in that the international minority rights regime is relatively under-developed in comparison to the international Indigenous rights regime and there have existed recognized differences between these two groupings since the adoption of International Labor Organization Convention No. 107 in 1957<sup>64,65</sup> and the United Nations Declaration on the Rights of Indigenous Peoples in 2007. Finally, the Responsibility to Protect has, in fact, been invoked in cases of violence among ethnic minorities,

60. *Ibid.*

61. *Ibid.*

62. Dan Kuwali and Gudmundur Alfredsson, “The Responsibility to Protect Minorities: The Question of Protection by Kin-States,” *Europa Ethnica* 71, no. 3/4 (2014): 68.

63. Nicholas Turner and Nanako Otsuki, “The Responsibility to Protect Minorities and the Problem of the Kin-State,” UNU-ISP Policy Briefs (United Nations University, February 27, 2010), 1, <http://collections.unu.edu/view/UNU:2936>.

64. Hurst Hannum, “New Developments in Indigenous Rights,” *Virginia Journal of International Law* 28, no. 3 (1988): 652.

65. Elsa Stamatopoulou, “Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic,” *Human Rights Quarterly* 16, no. 1 (February 1994): 65.

for example in Côte D'Ivoire, Kenya, and Guinea.<sup>66</sup> Yet, R2P has never been invoked in a situation in which specifically an Indigenous peoples are the victims of one of the four R2P crimes by their state or by a third party.

For the purposes of this chapter, it is key to understand the importance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in boldly changing the paradigm around the Indigenous right to self-determination and the right to full and effective participation in matters that involve Indigenous Peoples.<sup>67</sup> The UNDRIP represents, like all human rights instruments, a set of “minimum standards,”<sup>68</sup> but one that has established an entire normative framework for accessing justice for Indigenous Peoples. These rights must be understood in the historical context in which they were created—namely, one in which Indigenous Peoples have been oppressed, marginalized and persecuted for centuries—and they must be read comprehensively, as they are “inter-related, inter-dependent, indivisible, and inter-connected.”<sup>69</sup> Additionally, the creation of UNDRIP represents a watershed moment in the development of the international human rights regime in that it enshrines the rights of Indigenous Peoples to both conserve their own practices of conflict resolution and societal organization but also to “participate equally in the global normative arena.”<sup>70</sup> The hard-fought establishment of this set of rights—and its recognition by most governments the world over—demonstrates that Indigenous Peoples are not simply the passive recipients of Western interventions but rather have the right to be active participants in the creation of their futures and the futures of their societies.

66. “International Responsibility to Protect: Crises,” *International Coalition for the Responsibility to Protect*, <http://responsibilitytoprotect.org/index.php/crises>.

67. A/RES/61/295, “United Nations Declaration on the Rights of Indigenous Peoples” (New York, United Nations, September 13, 2007).

68. Dalee Sambo Dorough, “Indigenous Peoples’ Right to Self-Determination and Other Rights Related to Access to Justice: Normative Framework,” in *Indigenous Peoples’ Access To Justice, Including Truth And Reconciliation Processes* (New York: Institute for the Study of Human Rights, Columbia University, 2014), 5.

69. *Ibid.*

70. Genevieve Souillac and Douglas P. Fry, “Indigenous Lessons for Conflict Resolution,” in *The Handbook of Conflict Resolution : Theory and Practice*, 3<sup>rd</sup> ed. (San Francisco: Jossey-Bass, 2014), 608.

In relation to R2P, Liss argues that the right to self-determination, such as is outlined in UNDRIP Article 3, in fact provides a foundation in which R2P's rhetoric might be grounded, while R2P provides a possible framework and a minimum standard of operationalization for the right to self-determination.<sup>71</sup> In this way, the right to self-determination and the Responsibility to Protect actually work to reinforce and ground one another. Additionally, Souillac and Fry outline how the concept of responsibility, such as that inherent to R2P, is aligned with conflict resolution methods intrinsic to many Indigenous peoples' "existence and survival."<sup>72</sup> Unlike the United Nations' previously typical response of reacting to crises that are already unfolding, R2P encourages prevention as one of its core building blocks. R2P acknowledges the interconnected nature of the world as it exists today; therefore, it could be argued that R2P might align with traditional Indigenous methods of conflict resolution that see the conflict resolution process as more than simply "a means to an end"<sup>73</sup> but rather as part of a "consistent ethical approach to human and cultural survival."<sup>74</sup> In this realm of atrocity prevention and conflict resolution, Indigenous Peoples have much wisdom to impart on living cohesively not only with one's immediate neighbors but also with the land, as there is no life without a healthy earth. By viewing R2P through the lens of UNDRIP, it becomes clear that a symbiotic relationship could exist between the two to strengthen one another's impact and levels of acceptance and internalization at both the community and state levels.

### **III. Situation in the Chittagong Hill Tracts, Bangladesh**

#### **a. History of Conflict**

The Chittagong Hill Tracts region of Bangladesh is home to 11 or 12 Indigenous Peoples, depending on the source one consults, which

71. Ryan Liss, "Responsibility Determined: Assessing the Relationship between the Doctrine of the Responsibility to Protect and the Right of Self-Determination," *UCL Human Rights Review* 4 (2011): 61.

72. Souillac and Fry, *supra* note 70, at 614.

73. *Ibid.*

74. *Ibid.*

amounts to roughly 500,000 people.<sup>75</sup> Before it came under colonial British rule, this area was self-governed and its peoples—who were almost exclusively Indigenous—were relatively independent.<sup>76</sup> Even under the reign of British India, the CHT had the status of an autonomously administered district that was protected by the CHT Regulation of 1900, which banned the sale or transfer of any part of these lands to non-Indigenous people and limited immigration of non-Indigenous peoples into the area.<sup>77</sup> However, this special status was eliminated via a constitutional amendment in 1963 while the area was still under the control of the Pakistani government, and the restoration of regional autonomy was rejected again during the creation of Bangladesh’s first constitution in 1972.<sup>78</sup> So began the long process of creating “a homogenous Bengali nationalism”<sup>79</sup> codified in the constitution, with “no recognition of a separate status or identity for the Indigenous People.”<sup>80</sup>

Within a year, the CHT Indigenous political party Parbatya Chattagram Jana Samhati Samiti (PCJSS) formed an armed wing called the Shanti Bahini.<sup>81</sup> The Shanti Bahini started a “low-intensity guerilla war”<sup>82</sup> with the government of Bangladesh, although the fighting intensified following the assassination of the founding prime minister during a coup in 1975 when the military took control of the country.<sup>83</sup> The military regime decided to deploy nearly a third of the Bangladesh Armed Forces in the CHT to control the surge of civil disobedience and outbreaks of violence;<sup>84</sup> the army then started to bring into the CHT 400,000

75. E/C.19/2011/6, “Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997/ Submitted by the Special Rapporteur,” para. 1.

76. Amena Mohsin, *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*, International Peace Academy Occasional Paper Series, (Lynne Rienner Publishers, 2003), 16–17.

77. E/C.19/2011/6, para. 5.

78. “Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts,” (London, United Kingdom: Amnesty International, 2013), 15.

79. Jamil and Panday, *supra* note 7, at 468.

80. *Ibid.*

81. E/C.19/2011/6, para. 6.

82. *Ibid.*

83. Aminuzzaman, “Bangladesh,” *supra* 5, 7.

84. Jamil and Panday, *supra* note 7, at 469.

Bengali settlers over only five years (between 1979–1984) through its “transmigration programme.”<sup>85</sup> This influx of Bengalis occurred without any warning, discussion, or consent of the inhabitants of the region,<sup>86</sup> which violates the Bangladesh-ratified ILO Convention 107 in that the Indigenous Peoples of this area have the rights to their traditional lands and to effective participation in decision-making over what happens on those lands.<sup>87</sup> It also violates the United Nations Declaration on the Rights of Indigenous Peoples in that Indigenous Peoples have the rights to “traditional lands, redress, effective participation and free, prior and informed consent”<sup>88</sup> regarding what happens on their traditional territory. In fact, the Bangladeshi government at the time denied there was any intentional program of Bengali settlement in the CHT when questioned by the UN Working Group on Indigenous Populations, although the government later admitted the process had been entirely deliberate.<sup>89</sup> This intentional migration process changed the demographics of the Chittagong Hill Tracts in a drastic way, with the percentage of Bengalis rising from 9% in 1951 to 26% in 1974 to 41% in 1981.<sup>90</sup> The Indigenous Peoples were largely relocated to “model villages”<sup>91</sup> while Bengalis were settled in the original homes of those who had fled the increasing violence or those who were forcibly displaced, or beside military encampments in so-called “cluster villages.”<sup>92</sup> This same five-year period of time also saw the establishment of approximately 500 military camps in the region.<sup>93</sup>

85. E/C.19/2011/6, para. 6.

86. “Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts,” *supra* note 78, at 27.

87. *Ibid.*

88. *Ibid.*

89. “‘Life Is Not Ours’: Land and Human Rights in the Chittagong Hill Tracts,” (Amsterdam and Copenhagen: Chittagong Hill Tracts Commission, May 1991), 15.

90. E/C.19/2011/6, para. 7.

91. *Ibid.*

92. *Ibid.*

93. “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” (Bangladesh: International Work Group on Indigenous Affairs, Organising Committee CHT Campaign, Shimin Gaikou Centre, 2012), 10, [http://www.iwgia.org/iwgia\\_files\\_publications\\_files/0577\\_Igia\\_report\\_14\\_optimized.pdf](http://www.iwgia.org/iwgia_files_publications_files/0577_Igia_report_14_optimized.pdf).

Finally, in October 1996, then-Prime Minister Sheikh Hasina set up the National Committee on CHT.<sup>94</sup> After over a year of meetings between the National Committee and the PCJSS, the two groups agreed to a peace treaty that was signed on December 2, 1997.<sup>95</sup> The signing of the Accord created hope on both sides of the conflict, although it is worth noting that the provisions of the Accord were not mandated by any particular time frame and there was “no independent body overseeing its implementation.”<sup>96</sup> Additionally, the Accord was not and is still today not protected by the Bangladesh Constitution; this means that any incoming government that does not agree to devolve power over the CHT to the tribal authorities could potentially enact legislature to eliminate the accord or reduce its power.<sup>97</sup>

However, almost all external sources point to the fact that the Accord has not been meaningfully implemented in the 19 years since its establishment. In 2000, the UN Special Rapporteur on Religious Intolerance said that the failure up until that point to implement the Chittagong Hill Tracts Peace Accord “threatened the survival of the cultural and religious identity of Indigenous populations”<sup>98</sup> in this region. In 2001, the Committee on the Elimination of Racial Discrimination (CERD) expressed its concern over the “slow progress in implementing”<sup>99</sup> the accord and urged the Bangladesh government to “intensify its efforts in this regard.”<sup>100</sup> The Compilation of UN Information Report and the Stakeholder Submissions Report submitted to the Working Group for the 2009 Universal Periodic Review cycle contained criticisms of the government for its continued marginalization and targeted violence of Indigenous Peoples in this region,<sup>101,102</sup> despite the fact that by 2009, Bangladesh had already formally agreed

94. Jamil and Panday, *supra* note 7, at 471.

95. Aminuzzaman, *supra* note 5, at 14.

96. E/C.19/2011/6, para. 19.

97. *Ibid.*

98. A/55/280/Add.2, para. 73.

99. CERD/C/304/Add.118, para. 10.

100. *Ibid.*

101. A/HRC/WG.6/4/BGD/2, para. 39.

102. A/HRC/WG.6/4/BGD/3, paras. 46, 47, 49.



to many core human rights treaties.<sup>103</sup> While Bangladesh ratified the International Labour Organization's Convention No. 107 entitled "Indigenous and Tribal Populations Convention" in 1972, they had not and still have not signed or ratified the updated Indigenous and Tribal Peoples Convention, ILO Convention No. 169.<sup>104</sup> Similarly, Bangladesh abstained from the vote on the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

In his 2011 report "Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997," UN Permanent Forum on Indigenous Issues Special Rapporteur Lars-Anders Baer found that "thirteen years after the signing of the Accord, it is clear that many critical clauses remain unimplemented or only partially addressed"<sup>105</sup> such as those relating to providing power to local tribal administration and restoring original lands to the Indigenous Peoples whose homes had been illegally occupied by Bengali settlers.<sup>106</sup> The Special Rapporteur additionally noted an incident in which the Ministry issued a letter to various government officials in the CHT advising them to use the word "upajati" to address the Indigenous or tribal Peoples of the region rather than "adivasi."<sup>107</sup> Despite the fact that the use of the term "upajati" is mandated as per the 1997 peace agreement,<sup>108</sup> this still caused an uproar because "adivasi" is the Bengali equivalent of the term "Indigenous Peoples" while "upajati" translates to "sub-nation

103. Bangladesh acceded to the Convention on the Elimination of All Forms of Racial Discrimination in 1979; acceded to the Convention on the Elimination of all Forms of Discrimination Against Women in 1984; ratified the Convention on the Rights of the Child in 1990; acceded to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 1998; acceded to the International Covenant on Economic, Social and Culture Rights in 1998; and acceded to the International Covenant on Civil and Political Rights in 2000.

104. "Ratifications of ILO Conventions: Ratifications for Bangladesh," *International Labour Organization*, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103500](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103500).

105. E/C.19/2011/6, para. 45.

106. *Ibid.*

107. *Ibid.*, para. 44.

108. "Chittagong Hill Tracts Peace Accord (CHT)," sec. B(1), <https://peaceaccords.nd.edu/accord/chittagong-hill-tracts-peace-accord-cht>.

or sub-ethnic group.”<sup>109,110</sup> The Indigenous Peoples of the CHT are referred to by other names as well, such as “small peoples/nations” or “khudro jatishotta” and “ethnic sects and communities” or “nrigoshthi o shomprodai.”<sup>111</sup> This blatant disregard for the desire of Indigenous Peoples in the CHT to be called their proper names essentially denies these peoples their Indigenous identities at the state level.

It is, in fact, this issue of terminology surrounding the CHT’s tribal peoples that Iqbal Ahmed, First Secretary of the Permanent Mission of the People’s Republic of Bangladesh, first commented upon in his statement following the release of Baer’s report at the tenth session of the Permanent Forum on Indigenous Issues in May 2011. The information in this paragraph comes directly from his statement. Ahmed stated explicitly that “Bangladesh does not have any ‘Indigenous’ population” at all. He went on to say that the “ethnic minorities” living in the CHT experienced “sporadic unrest in that region from... 1975–1996” but that his government, under the leadership of Prime Minister Sheikh Hasina—the same Prime Minister who helped create and signed the 1997 Peace Accord—has “resumed the process of full implementation” of the Accord. The government representative stated that “the Accord has nothing to do with ‘Indigenous issues’” and therefore the Permanent Forum on Indigenous Issues is not the appropriate place to deal with the Accord. Additionally, he called the Rapporteur’s report “lopsided” and reiterated his government’s stance that they do not recognize “the authority of the Forum to discuss the issue of CHT Affairs.”<sup>112</sup>

This consistent denial of the Indigenous identity of those being oppressed in the Chittagong Hill Tracts contributes in a fundamental way to the conflict in this region and that has made the Accord even

109. “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” *supra* note 93, at 41.

110. Sanjeeb Drong, In-person Interview, May 13, 2016.

111. “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” *supra* 93, at 41.

112. “Statement by Bangladesh Delegation,” in *UNPFII’s Study on the Status of Implementation of the CHT Accord of 1997 and Statements Delivered at the UNPFII’s 10<sup>th</sup> Session on the Said Study*, ed. Mangal Kumar Chakma, (Dhaka, Bangladesh: Kapaeeng Foundation, 2011).

more difficult to implement. The 2013 Universal Periodic Review of Bangladesh captured many of the same issues that were present in the 2009 UPR. The Compilation of UN Information report cited UNICEF's assertion that Indigenous children living in the CHT still "often lack access to basic and specialized services"<sup>113</sup> and "recommended that Bangladesh adopt specific measures to combat discrimination and inequity"<sup>114</sup> against these children. Additionally, human rights violations by both state and non-state actors have continued unabated including "rape and sexual assault against women and children, killings, arson, grabbing of lands, unlawful arrest and torture, and structural forms of discrimination based upon ethnicity, religious affiliation and gender."<sup>115</sup> Large-scale attacks against Indigenous villages in the CHT were "often fuelled by extremist propaganda and hate speeches"<sup>116</sup> and politicians and police were frequently implicated in their incitement.<sup>117</sup> When the author interviewed the Managing Director of the Chittagong Hill Tracts Foundation, Krishna Chakma, he called the CHT an "open prison"<sup>118</sup> in which the military controls the lives of the Indigenous Peoples who live there, including by limiting press freedom, freedom of religion, freedom of expression, freedom of movement and freedom of free association.<sup>119</sup>

One may wonder why the government would take such extreme measures to remove or irrevocably damage the Indigenous communities of the CHT. These are targeted and systematic acts of violence, and the motivation for performing them is often cited as being part of the Bangladeshi exercise of national identity building.<sup>120</sup> Simply put, the Bangladeshi government is still attempting to distinguish itself from the nations that once ruled this territory by establishing the Bengali

113. "A/HRC/WG.6/16/BGD/2," para. 70.

114. *Ibid.*

115. "A/HRC/WG.6/16/BGD/3," para. 64.

116. *Ibid.*, para. 65.

117. *Ibid.*

118. Krishna Chakma, In-person Interview, June 6, 2016.

119. *Ibid.*

120. Chakma, *supra* note 13, at 282.

identity: one ethnic group, homogenously Muslim.<sup>121</sup> Article 9 of the original 1972 Bangladesh Constitution focuses on this unique Bengali identity: “The unity and solidarity of the Bengali nation, which deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bengali nationalism.”<sup>122</sup>

The identity of the Indigenous Peoples of Bangladesh, including those living outside of the CHT, was further minoritized with the Fifteenth Constitutional Amendment in 2011. This amendment reinserted the phrase “trust and faith in almighty Allah” to replace the word “secularism,” a change that was originally made in the Fifth Constitutional Amendment in 1979 by military ruler General Ziaur Rahman.<sup>123</sup> This alludes to the movement towards institutionalizing Islam as the state religion, as was done with the Eighth Constitutional Amendment under the military ruler General Hossain Mohammad Ershad in 1988, and which was retained during the Fifteenth Constitutional Amendment.<sup>124</sup> Article 6(2) of the Fifteenth Amendment creates a one-ethnicity state with the following words: “The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis.”<sup>125</sup> This Amendment denies the rights of Indigenous Peoples to identify as such, rather than as Bengalis, under the state. When Indigenous Peoples are identified in this Amendment, they are identified rather as tribes (“upajati”), minor races (“khudro jatishaotta”), or as ethnic sects and communities (“nrigoshthi o shomprodai”).<sup>126</sup> This furthers jeopardizes Indigenous

121. *Ibid.*, 289.

122. *Ibid.*, 287.

123. Sultana Kamal, Eric Avebury, and Elsa Stamatopoulou, “Concern Regarding the 15<sup>th</sup> Amendment of the Constitution,” Letter from the Chittagong Hill Tracts Commission to the Honourable Prime Minister Sheikh Hasina, (July 12, 2011), 1, [http://www.iwgia.org/iwgia\\_files\\_news\\_files/0317\\_CHTCommission\\_LetterToPM\\_Constitution.pdf](http://www.iwgia.org/iwgia_files_news_files/0317_CHTCommission_LetterToPM_Constitution.pdf).

124. *Ibid.*

125. “Constitution of the People’s Republic of Bangladesh,” Government of the People’s Republic of Bangladesh: Legislative and Parliamentary Affairs Division, *Laws of Bangladesh*, (June 30, 2016), Article 6(2), [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=367](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367).

126. *Ibid.*, Article 23(A).

Peoples' legal status as citizens with equal rights under the Bangladeshi state. As Kuwoli and Alfredsson argue in "The Responsibility to Protect Minorities," if the national rhetoric is constantly "dominated by vague, emotive questions of 'national identity', minority issues will be vulnerable to exploitation"<sup>127</sup> and, in this case, the minorities in question will be subjected to discrimination and violence.

Ultimately, the legalization of discrimination against Indigenous Peoples leaves no space for the Indigenous identities, cultures and languages of the CHT peoples to thrive in this country. Indigenous Peoples ascribing to Buddhism, Christianity or traditional religious beliefs simply do not fit into the mold of the Bengali national identity,<sup>128</sup> and therefore have to be removed from Bangladeshi territory or must be made to be so inconsequential as a percentage of the population that their traditions, cultures and belief systems will eventually disappear. The evidence provided above additionally indicates the Bangladeshi government's intent behind their actions.

Unfortunately, while the 1997 Peace Accord could have been the turning point in Bangladesh, this conflict seems further entrenched now more than ever before. The ongoing militarization and discrimination against the CHT's Indigenous peoples simply has not gained international notoriety the same way other conflicts have. This lack of international attention allows the Bangladeshi government to insist they are implementing the Accord as they simultaneously work to undermine it.

### **III. Situation in the Chittagong Hill Tracts, Bangladesh**

#### **b. Opportunities for International Intervention under R2P**

As outlined earlier, the Responsibility to Protect can only be invoked in situations in which one of four mass atrocity crimes is being committed. This author argues that the evidence provided above indicates that ethnic cleansing is occurring in the Chittagong Hill Tracts and has been ongoing for decades. In Scott Strauss's chapter in

127. Kuwoli and Alfredsson, *supra* note 62, at 68.

128. "Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts," *supra* 78, at 15.

*Reconstructing Atrocity Prevention*, Strauss refers to the lack of a formal definition in international humanitarian law of ethnic cleansing but reiterates that this term is widely understood to mean group-selective “forced migration and mass population displacement.”<sup>129</sup> While both ethnic cleansing and genocide require intent to target a specific group of civilians, the main difference between the two atrocity crimes is that the former refers to the removal of an ethnic group of civilians from a territory and the latter refers to an ethnic group’s destruction.<sup>130</sup> In 2008, the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples sent a communication to the Bangladesh government to express concern that the land-grabbing in Indigenous communities in the CHT was part of a “systematic campaign to support the settlement of non-Indigenous families in the Chittagong Hill Tracts, with the active support of the security forces, with the ultimate aim of displacing the Indigenous community.”<sup>131</sup> The transmigration programme described earlier in this paper was the beginning of this systematic attempt by the Bangladeshi government to change the demographic composition of the CHT, which has continued with the unimpeded land grabbing and terrorization of the Indigenous peoples. Chakma Indigenous Circle Chief Devashish Roy and Secretary-General of the Bangladesh Indigenous Peoples’ Forum Sanjeeb Drong, in interviews with this author, independently called the programme an attempt to minoritize Indigenous peoples in the region.<sup>132,133</sup> The displacement of Indigenous peoples was aided by increasing violence experienced at the hands of settlers and government authorities such as the military, which forced many Indigenous peoples to move across the border into Tripura, India, or to seek asylum abroad.

129. Scott Strauss, “What Is Being Prevented? Genocide, Mass Atrocity, and Conceptual Ambiguity in the Anti-Atrocity Movement,” in *Reconstructing Atrocity Prevention*, ed. Tibi Galis, Alex Zucker, and Sheri P. Rosenberg (Cambridge: Cambridge University Press, 2016), 24–25.

130. *Ibid.*, 25.

131. A/HRC/12/34/Add.1, para. 9.

132. Devashish Roy, In-person Interview, May 19, 2016.

133. Sanjeeb Drong, In-Person Interview, May 13, 2016.

Other authors argue that the violence experienced by the Indigenous peoples of the CHT rather constitutes a “creeping genocide”<sup>134</sup> or a “slow-motion process of ethnocide.”<sup>135</sup> Scholar Mark Levene cites Raphaël Lemkin in his analysis of the situation in the CHT: while Lemkin, deemed by many to be the originator of the term “genocide,” intended the word to indicate a “a coordinated plan of different actions aiming at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves,” he still acknowledged that these actions did not have to include the group’s “immediate destruction” as long as they were part of an overall plan to produce the breakdown of the group’s “political and social institutions.”<sup>136</sup> This could include the “destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”<sup>137</sup> Levene argues that genocide represents “the extreme end of a continuum of repressive state strategies which might include marginalization, forced assimilation...and even massacre.”<sup>138</sup> As early as 1991 the International CHT Commission, an independent group of international activists and scholars who promote respect for human rights in the CHT and also promote the implementation of the CHT Peace Accord, stated that “a genocidal process ... threatens the hill people of the Chittagong Hill Tracts.”<sup>139</sup> Their report found that this genocidal process is ultimately the result of actions taken by the Bangladeshi military, who are agents of the state.<sup>140</sup> The violence currently happening in the CHT then certainly accounts for one, if not two or three, crimes that would appropriately invoke the Responsibility to Protect.

134. Levene, *supra* note 8, at 339.

135. Chakma, *supra* note 13, at 281.

136. Raphaël Lemkin, *Axis Rule in Occupied Europe : Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, D.C.: Carnegie Endowment for International Peace, Division of International Law, 1944), 79.

137. *Ibid.*

138. Levene, *supra* note 8, at 342.

139. “‘Life Is Not Ours’: Land and Human Rights in the Chittagong Hill Tracts,” *supra* note 89, at 47.

140. *Ibid.*

The 1997 Chittagong Hill Tracts Peace Accord still represents hope for many on both sides of the conflict, as it has been the only tangible agreement between the PCJSS, representing many of the Indigenous peoples of the CHT, and the government. Additionally, Prime Minister Sheikh Hasina, who signed the agreement, is once again leading the country; this further encourages both locals and international observers that the government may hold up its end of this arrangement.

The R2P toolkit encompasses many potential avenues for conflict resolution but its first pillar, atrocity prevention typically through early warning mechanisms aimed at deterring violent conflict, is far beyond being useful in this situation. These crimes have been proven to be occurring against Indigenous peoples in the CHT, with the complicity and often active participation of state agents, and with the intent, as evidenced by long-term impunity, legislative and policy measures, to cleanse the area of Indigenous peoples or at least make them so marginal a presence as to render their groups inconsequential. Now what can be done within the R2P toolkit to resolve this situation?

The oppressive militarization of the CHT has been identified as the most important issue to be addressed here, by scholars and activists alike. The removal of military encampments was an important part of the 1997 Peace Accord that has yet to be implemented and this author argues that it is international intervention to have this part of the Accord upheld that would be the most effective application of R2P in the CHT. The Accord was an agreement between the government and the Indigenous peoples of the CHT that the government says it is still committed to,<sup>141</sup> so the international community would not be forcing the implementation of an external agenda in Bangladesh. Still, it is important to question what form this intervention could best take.

There is a movement among some Indigenous peoples of Bangladesh to push for an international mediator to step in to create dialogue between the various high-level actors involved in the Accord<sup>142</sup> or simply to monitor the implementation of the Accord,<sup>143</sup> which could fall within the R2P toolkit of diplomatic intervention. The Bangladesh

141. "A/HRC/WG.6/16/BGD/1," para. 109.

142. Drong, *supra* note 133.

143. *Ibid.*



Indigenous Peoples' Forum has invited European ambassadors and United Nations representatives to meetings they hold in Dhaka to sensitize them to the situation, however the Forum has also faced push-back from the federal government for involving foreigners in what is perceived at the state level to be a domestic issue.<sup>144</sup> External pressure through an international mediator could, for example, be used to establish a road map for implementation of the Peace Accord, as suggests Krishna Chakma, including the clause of the Accord that mandates de-militarization.<sup>145</sup>

The final potential application of R2P would be military intervention by a foreign force or a United Nations peacekeeping operation. However, this option was rejected unanimously by all those consulted for this thesis who actually live in Bangladesh and it has not been suggested by any of the literature accessed for this research. The consensus among all sources consulted is that more violence is not the solution to decades of violence; rather, an inclusive political solution appears to be the best option as long as it acknowledges the legitimacy of the Indigenous peoples of the CHT and their rights to their culture and languages, lands, modes of governance and self-determination.

#### **IV. Policy choices re: Protecting Indigenous peoples**

##### **a. Is R2P an appropriate method of intervention to protect Indigenous Peoples?**

In determining whether or not R2P is an appropriate model for intervention to protect Indigenous peoples from either state or third party violence, it is important to first question why Indigenous Peoples have been neglected from R2P interventions thus far. Using the Chittagong Hill Tracts to illustrate, I argue the reasons for the international community turning a blind eye to the many situations around the world in which Indigenous Peoples are the victims of violent conflict is a lack of strategic interest and political will; limited advocacy and international attention to pressure international actors

144. *Ibid.*

145. Chakma, *supra* note 118.

to step in; and a state-controlled narrative that minimizes the violence taking place.

The United Nations Security Council has an extensive mandate and limited resources. As of right now, the situation in the CHT has not gained significant international media attention to force other governments to interfere in any meaningful way or to commit to get the implementation of the Peace Accord back on track. This inaction on behalf of the international community may in fact be entirely willful, since Bangladesh is one of the largest troop contributing countries to United Nations peacekeeping operations in the world<sup>146</sup> and pressure applied from other states could push them to withdraw their much-needed soldiers.

Tone Bleie, member of the International CHT Commission, argues that “Bangladesh isn’t important enough for the kind of international key actors which one could expect could propose in a persuasive way and have sufficient clout”<sup>147</sup> to force an intervention of some kind. Bleie believes that “as long as there isn’t anything happening towards citizens from other countries on a grand scale,”<sup>148</sup> the chances of international intervention are slim due to a sheer lack of political will. The CHT expert argues that only if this violence were affecting citizens from other nations—more than simply along Bangladesh’s borders with India and Myanmar—could there be a chance to seize international attention, since this would indicate that “the political system and development in Bangladesh is something which threatens security and development”<sup>149</sup> internationally.

Additionally, the international community may not want to be seen as promoting non-state actors in their resistance efforts, as the principle of R2P itself is premised on the primacy of the nation-state. When perceived as victims, those being terrorized fit more easily into the frame of civilian protection; but when they rebel against an

146. “Troop and Police Contributors: Contributions by Country,” *United Nations Peacekeeping*, <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>.

147. Tone Bleie, Skype Interview (Internet Video Calling), June 13, 2016.

148. *Ibid.*

149. *Ibid.*

oppressive nation-state, victims are quickly re-framed as perpetrators even if they have acted under the impression that violence is their only option for recourse. Indigenous Peoples in other parts of the world have also had to take up arms in order to retain even a small part of the independence, territory or self-determination they once had. Unfortunately, this makes justifying an R2P intervention in a situation such as this even more difficult, despite the fact that in many cases the choices were limited to engaging in the conflict or Indigenous Peoples losing their homes or lives.

The issue of narrative framing is another reason why R2P has perhaps not been invoked where it has been needed in situations of mass atrocities committed against Indigenous Peoples. One of the main issues with the way many development programs have envisioned the situation in the Chittagong Hill Tracts is that the area is considered a “post-conflict zone.”<sup>150</sup> When framed this way, the donors and agencies involved are released from addressing the civil, political, economic, social and cultural rights that are still being violated in this region and can instead focus exclusively on economic development programming. For example, despite the fact that the Asian Development Bank report on their 2000–2009 CHT project was released in 2011—the same year that UN Special Rapporteur Lars-Anders Baer released his damning report of the oppression of the Indigenous Peoples of the CHT at the hands of their government<sup>151</sup>—the ADB only acknowledged a “20-year insurgency” in the CHT in the 1980s and 1990s.<sup>152</sup> The overwhelming evidence, however, indicates that the area is nowhere close to being beyond conflict as violence is actively ongoing.<sup>153</sup> Even if there is mounting evidence that human rights violations are taking place here, the involved governments and

150. “Chittagong Hill Tracts Development Facility,” *UNDP in Bangladesh*, [http://www.bd.undp.org/content/bangladesh/en/home/operations/projects/crisis\\_prevention\\_and\\_recovery/chittagong-hill-tracts-development-facility.html](http://www.bd.undp.org/content/bangladesh/en/home/operations/projects/crisis_prevention_and_recovery/chittagong-hill-tracts-development-facility.html).

151. E/C.19/2011/6, “Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997 / Submitted by the Special Rapporteur.”

152. “Bangladesh Project Brief: Chittagong Hill Tracts Rural Development Project” (Asian Development Bank, South Asia Department, October 2011), 1.

153. “Pushed to the Edge,” *supra* note 78; E/C.19/2011/6, para. 19; “Militarization in the Chittagong Hill Tracts, Bangladesh,” *supra* note 93; A/HRC/WG.6/16/BGD/3.

agencies may not want to acknowledge this: sometimes in instances of mass atrocities, United Nations “Member States and international agencies supporting countries under stress are not sufficiently open to messages that might challenge their view that these societies are moving in the right direction.”<sup>154</sup> As Amartya Sen writes in *Strategies of Economic Development*, “when interests of groups differ and conflict with one another,”<sup>155</sup> development programming will end up reflecting the aspirations of the more powerful of the two groups.<sup>156</sup> In this case, the majority Bengali government is able to frame the development programming—and the discourse around the conflict in the CHT—to suit their agenda, to the detriment of the CHT’s Indigenous population.

Now that the potential reasons for the neglect of Indigenous-targeted conflicts has been laid out, the question still remains of whether R2P is an appropriate intervention mechanism for Indigenous Peoples or if there is a better alternative. Is there a way to apply R2P without further entrenching inequalities, some of which are rooted in colonialism?

Ultimately, for R2P to be applied in a situation in which Indigenous Peoples are the victims of mass atrocities, these Indigenous Peoples need to be acknowledged in the first place. If the state is the perpetrator of the crimes and does not acknowledge the Indigenous identities of those being victimized—perhaps to escape the obligation to respect, protect, and fulfill the rights that come with that identity—then under the R2P doctrine, it would fall to the international community to step in and ensure these crimes are prevented or stopped. In order for this principle to be applied to Indigenous Peoples specifically, it must also fall on the international community to acknowledge the Indigenous identity and the specific rights ascribed to this identity. The United Nations Declaration on the Rights of Indigenous Peoples recognizes Indigenous Peoples’ rights to self-determination and their rights to have their Indigenous identities respected. The establishment of UNDRIP was such an accomplishment in the realm of Indigenous rights

154. A/70/999-S/2016/620, para. 29.

155. Amartya Sen, “Economic Development - Objectives and Obstacles,” in *Strategies of Economic Development: Readings in the Political Economy of Industrialization*, Kurt Martin ed. (London: Macmillan Academic and Professional, 1991), 87.

156. *Ibid.*

because it functions at the level of international law; the international community must, therefore, accept Indigenous Peoples' assertions about their identities as Indigenous peoples. This has been put into practice by the United Nations Permanent Forum on Indigenous Issues and its predecessor, the Working Group on Indigenous Populations. In instances of mass atrocities being committed against Indigenous Peoples, the international community could take the opportunity set by precedent to acknowledge the rights of Indigenous Peoples even if the state within whose territory the Indigenous Peoples reside does not acknowledge this same identity and set of rights. Perhaps this requirement on behalf of the international community could be incorporated into the R2P doctrine as the operationalization of the principle morphs over time.

As mentioned earlier, one of the major criticisms of R2P is that "R2P cannot be neatly disassociated from the prior modalities of colonial rule."<sup>157</sup> In "Colonialism and the Responsibility to Protect," Mallavarapu argues that R2P "needs to be treated as part of an older and much wider global history of interventionism."<sup>158</sup> Only by attributing more agency to local populations will R2P overcome this inherent weakness of the principle. If the self-determination of "local 'non-state actors,' civil society, social movements, indeed victims themselves"<sup>159</sup> is better recognized by the international community and better incorporated into the R2P doctrine, atrocity crimes could not only be addressed more quickly but also perhaps prevented more widely. The only hope for international efforts to be mobilized more quickly is if there is accurate risk assessment and early warning, especially for minority-related conflict.<sup>160</sup> Agency of non-state actors means not only the right to have a seat at the table when international intervention is being contemplated, but also means crediting all kinds of non-state actors with the "intelligence to figure out what might work best for their own political systems in crisis situations."<sup>161</sup> This

157. Mallavarapu, *supra* note 48, at 319.

158. *Ibid.*, at 320.

159. Mégret, *supra* note 56, at 576.

160. Kuwali and Alfredsson, *supra* note 62, at 86.

161. Mallavarapu, *supra* note 48, at 319.

last component—engaging local people from all sides to provide an internal analysis of their specific cultural, economic, social and political context—is key because “Western intervention or doctrines like R2P cannot serve as a panacea to deeper structural problems which an unequal international order itself has in various ways perpetuated.”<sup>162</sup> Tone Bleie makes the case that, in Bangladesh for example, the conflict in the CHT is actually symptomatic of a “core structural issue of a neo patrimonial state, where the military is one of the well functioning pillars.”<sup>163</sup> What is happening in the CHT, states Bleie, is actually “pivoting around a deep-rooted relationship between most of the political and military elites.”<sup>164</sup> Bleie argues that in order to understand the oppression and victimization of Indigenous Peoples of the CHT, one has to first recognize the role the neo patrimonial state plays in avoiding the implementation of the Peace Accord and, in particular, in refusing to “downsize the bloated army and put it to other kinds of civilian uses.”<sup>165</sup>

This context-specific understanding of the situation on the ground only occurs when many actors—especially non-state actors—are included in framing the history and wider background to the conflict. Part of resolving the situation in the CHT may include, beyond ending the violence and withdrawing the military, actually “nurturing a new less fractured, collective memory, which is much less racial and hierarchical in terms of ethnicity.”<sup>166</sup> Unfortunately, the painful memory of atrocity crimes typically “contributes to the existence of deep distrust between communities as well as towards government institutions.”<sup>167</sup> In Bangladesh, a resolution to the conflict would likely also include an appreciation for the ways in which the Indigenous Peoples of the CHT have attempted to protect themselves without labelling them terrorists or secessionists, in order for Bangladeshi society to move forward as a whole. An alternative understanding of

162. *Ibid.*

163. Bleie, *supra* note 147.

164. *Ibid.*

165. *Ibid.*

166. *Ibid.*

167. “A/70/999-S/2016/620,” para. 56.

R2P in relation to Indigenous Peoples has the opportunity to take hold while the principle is still young, an understanding that is “rooted not in the international community’s ability to act but in the will of victims and civil society more generally to resist persecutions.”<sup>168</sup>

#### IV. Policy choices re: Protecting Indigenous Peoples

##### b. What does this mean for the future of R2P as a norm?

The aforementioned criticisms of R2P are not meant to imply that the concept of R2P should be tossed aside because its frame is outdated for the way the world is evolving. This principle has been transformed before and it can be transformed again. As long as the incoming Secretary-General retains a focus on R2P as Ban Ki-moon and Kofi Annan did, this emerging norm has a viable chance of re-building consensus on how to handle the toughest security, human rights and humanitarian situations and of institutionalizing a system-wide approach to atrocity prevention within the United Nations. While Member States may continue to argue about R2P’s terms of engagement, there is a broad sense that a multi-lateral response to mass atrocities is not inappropriate in and of itself.<sup>169</sup> As the former Special Adviser to the Secretary-General on the Responsibility to Protect, Jennifer Welsh, has said, R2P sets expectations and provides a framework for action.<sup>170</sup> However, as with every other international principle, it cannot compel action in and of itself.<sup>171</sup> As Welsh stated, “We must not shy away from a principle because it is demanding”,<sup>172</sup> in fact, this should encourage the international community to invest in doing better.

168. Mégret, *supra* note 56, at 581.

169. “Statement by Professor the Hon Gareth Evans at the UN General Assembly Thematic Panel Discussion, 26 February 2016: Global Centre for the Responsibility to Protect,” *Global Centre for the Responsibility to Protect*, February 26, 2016, <http://www.globalr2p.org/publications/415>.

170. “Statement by Jennifer Welsh, Special Adviser to the UN Secretary-General on the Responsibility to Protect” (United Nations, February 26, 2016), <http://www.un.org/en/preventgenocide/adviser/pdf/PGA%20Event%20RtoP%20at%20Ten%20Welsh.pdf>.

171. *Ibid.*

172. *Ibid.*

The future of R2P must see the norm be invoked in consultation with all relevant stakeholders because “international responses to atrocity crimes tend to be most effective when the UN and regional and sub-regional arrangements work closely together.”<sup>173</sup> In his 2016 report entitled “Mobilizing Collective Action: The Next Decade of the Responsibility to Protect,” Secretary-General Ban Ki-moon emphasized the need to “encourage and support creative and bold innovations”<sup>174</sup> by non-state actors in resolving atrocity crimes. The future of R2P is threatened, however, by the “erosion of the credibility of institutions such as the United Nations”<sup>175</sup> based on the discrepancy between UN promises and actions in recent years. While the 2016 Secretary-General R2P report “calls upon every member of the international community to speak out whenever and wherever atrocity crimes are being committed,”<sup>176</sup> it is the responsibility of governments and the UN system to actually listen when those calls are being made—as they have been in Bangladesh for decades—and respond both appropriately and swiftly.

## V. Conclusion

The Responsibility to Protect is a norm with immense potential to prevent and help resolve situations of mass atrocities involving Indigenous peoples. However, the norm’s current iteration simply does not hold any space for the self-determination of those being victimized to make it a useful tool for Indigenous Peoples and the struggles in which they are engaged. If R2P were to undergo a paradigm shift—part of which would require the international community to acknowledge Indigenous identities and the rights associated therein, and to pay attention to conflicts that challenge the dominant state-centric international order—then R2P could become a tool in the arsenal of Indigenous struggles the world over.

173. “A/70/999-S/2016/620,” para. 50.

174. *Ibid.*, para. 52.

175. *Ibid.*, para. 5.

176. *Ibid.*, para. 63.



When looking specifically at the Chittagong Hill Tracts in Bangladesh, the first step towards resolving this entrenched conflict is for the government to acknowledge there are Indigenous Peoples within its borders. Not only does the government have the obligation to acknowledge the Indigenous identity of the “adibashi” of the CHT, but they must also create a timeline by which they will implement the clauses agreed upon in the 1997 Peace Accord. The international community needs to better supervise this implementation; it is not enough for the Bangladesh government to simply say they are committed to implementation while their military continue to act with impunity and third party observers act as silent witnesses to the ongoing violence.

More research needs to be conducted on the potential for the successful application of R2P among Indigenous Peoples, including further case studies. This author suggests focusing on the ways in which R2P and Indigenous self-determination could further reinforce rather than oppose one another. R2P has not been invoked in a situation of mass atrocities against Indigenous Peoples for many reasons, but primarily because R2P is not yet appropriately formed to address the struggles experienced specifically by Indigenous peoples. These include the inherent connection between loss of land, loss of culture, and loss of life. Ultimately, the Responsibility to Protect must be flexible and adaptable as it contends with changing geopolitical and geostrategic factors and the contextual nuances that make each R2P application different from the last.