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The Responsibility to Protect Indigenous Peoples: A Study of R2P's Potential  
Application in the Chittagong Hill Tracts of Bangladesh

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## ABSTRACT

The Responsibility to Protect Indigenous Peoples: A Study of R2P's Potential

Application in the Chittagong Hill Tracts of Bangladesh

Shayna Halliwell

This thesis analyzes the potential application of the United Nations principle of the Responsibility to Protect (R2P) in situations of mass atrocities committed against Indigenous peoples. R2P has never been applied in a situation of a mass atrocity committed against Indigenous peoples anywhere in the world and this thesis will question why that is, with reference to and analysis of the case study of the Chittagong Hill Tracts (CHT) region of Bangladesh. The author argues that the conflict in the CHT is a clear case of ethnic cleansing of the area's Indigenous peoples at the behest of the Bangladeshi government, making this an appropriate opportunity for the application of R2P. This thesis uses the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a normative framework through which the author assesses the Indigenous right to self-determination as it pertains to mass atrocity prevention and intervention in Indigenous communities. The author evaluates 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.

Keywords: Responsibility to Protect, Indigenous, genocide, ethnic cleansing, mass atrocity, humanitarian intervention, human rights, protection of civilians.

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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

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<sup>1</sup> 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 States of America: United Nations, September 8, 2015) <http://www.un.org/sg/statements/index.asp?nid=8950>.

<sup>2</sup> A/RES/60/1, “2005 World Summit Outcome. Resolution Adopted by the United Nations General Assembly” (New York, United States of America: United Nations, October 24, 2005), <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>.

<sup>3</sup> Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocities Once and For All* (Washington, D.C., United States of America: Brookings Institution Press, 2008), 79, <http://www.brookings.edu/research/books/2008/responsibilitytoprotect>.

fall 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 local Indigenous peoples 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, burning of houses as well as 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?

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<sup>4</sup> A/RES/60/1. para. 139.

<sup>5</sup> Dr. Salahuddin Aminuzzaman, "Bangladesh: A Critical Review of the Chittagong Hill Tract (CHT) Peace Accord," Working Paper (Bangkok, Thailand: United Nations Development Programme, Regional Centre Serving Asia and Pacific, 2005), 22.

<sup>6</sup> "Bangladesh: Human Rights in the Chittagong Hill Tracts" (London, United Kingdom: Amnesty International, July 31, 1991), 8–14.

<sup>7</sup> Dr 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.

<sup>8</sup> 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.

<sup>9</sup> "Chittagong Hill Tracts Peace Accord (CHT)," *Peace Accords Matrix*, Kroc Institute for International Peace Studies, University of Notre Dame, accessed August 5, 2016, <https://peaceaccords.nd.edu/accord/chittagong-hill-tracts-peace-accord-cht>.

<sup>10</sup> E/C.19/2011/6, para. 2.

<sup>11</sup> A/55/280/Add.2, para. 71.

<sup>12</sup> Jamil and Panday, "The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People," 465.

<sup>13</sup> 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.

To test whether R2P could be applicable in situations of violence against Indigenous peoples, this paper will first outline the history of the development of R2P and will discuss the literature around its normative and operational elements. This paper will use the United Nations Declaration on the Rights of Indigenous Peoples as a normative framework through which the author 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, this paper then looks to understand if R2P could be an appropriate international humanitarian intervention mechanism in conflicts victimizing Indigenous peoples. This paper 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.

## **II. Methodology**

This thesis will rely on a mixed methods approach, although one heavily focused on qualitative methods. In terms of quantitative methods, the author relies on data collected on human rights violations of Indigenous peoples by the military and violent attacks by Bengali settlers on Indigenous peoples supported by the Bangladeshi military.<sup>14·15·16</sup> In terms of qualitative methods, the author conducted illustrative expert interviews and also relies on primary source documents from the United Nations.

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<sup>14</sup> “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).

The author interviewed three Indigenous leaders from the Chittagong Hill Tracts of Bangladesh when they were in New York City for the May 2016 United Nations Permanent Forum on Indigenous Issues. They are Raja Devashish Roy, Chakma Circle Chief of the Chittagong Hill Tracts and member of the UN Permanent Forum on Indigenous Issues; Sanjeeb Drong, Secretary-General of the Bangladesh Indigenous Peoples Forum; and Krishna Chakma, Managing Director of the Chittagong Hill Tracts Foundation. These three sources provide relevant information as to the daily experiences of violence of Indigenous peoples in this region, which is not readily available via academic sources since this area is so heavily controlled by the military. Due to this heavy militarization, the author could not travel to this region and safely conduct interviews of larger groups of people; therefore, this research must rely on fewer, more in-depth interviews to illustrate some opinions on this conflict. It is important to recognize that there are differing views within the CHT Indigenous peoples themselves on whether or not international intervention is necessary or whether they believe this crisis can be resolved internally. Therefore, it is important to note that these interviewees 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 from this area can or should be essentialized by interviewing a handful of Indigenous representatives.

The author also interviewed Dr. Tone Bleie, professor at the University of the Arctic in Tromsø, Norway and member of the International Commission on the

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<sup>15</sup> "Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts" (London, United Kingdom: Amnesty International, 2013).

<sup>16</sup> Mong Shanoo Chowdhury and Pallab Chakma, eds., *Human Rights Report 2014: On Indigenous Peoples in Bangladesh* (Kapaeeng Foundation, supported by OXFAM and European Union, 2015).



Chittagong Hill Tracts. Finally, the author interviewed Dr. Edward Luck, former Special Adviser on the Responsibility to Protect to Secretary-General Ban Ki-moon.

Unfortunately, the Bangladesh Permanent Mission to the United Nations in New York only responded to the author's queries for an interview with a referral to the Ministry of Chittagong Hill Tracts Affairs in Bangladesh. The author attempted several times to contact members of this Ministry, to no response. The Bangladesh Mission to the United Nations in New York has not replied to any further requests for interviews.

As for other primary sources, this thesis relies on various UN texts that trace the evolution of R2P back to its inception in 2000. These include the International Commission on Intervention and State Sovereignty (ICISS)'s 2001 report entitled "The Responsibility to Protect" which highlighted the original three-pillared approach of this norm;<sup>17</sup> the 2005 World Summit Outcome Document;<sup>18</sup> the 2009 report by Secretary General Ban Ki-moon entitled "Implementing the Responsibility to Protect";<sup>19</sup> the Report of the Secretary-General's Internal Review Panel on UN Actions in Sri Lanka written in 2012;<sup>20</sup> the 2009 General Assembly debate on the Responsibility to Protect country

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<sup>17</sup> "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>.

<sup>18</sup> A/RES/60/1.

<sup>19</sup> A/63/677.

<sup>20</sup> "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka" (New York, United States of America: United Nations, November 2012), [http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf). This report can be found online but it was never published officially as a UN document, therefore it lacks a UN document number.

statements;<sup>21</sup> and statements made at the 2016 United Nations High-Level Thematic Panel Discussion on the Responsibility to Protect.<sup>22</sup>

Additionally, this thesis assesses Bangladesh's international obligations as per the human rights treaties the government has ratified, acknowledging any reservations they made to these.<sup>23</sup> Bangladesh underwent the Universal Periodic Review of the United Nations Human Rights Council in 2009<sup>24</sup> and 2013.<sup>25</sup> All three parts of the UPR reports—the sections written by the stakeholders, by the UN agencies on the ground in Bangladesh, and by the government itself—have subchapters that specifically address the situation of Indigenous peoples and minority groups, and thus are particularly informative on the various sides of this conflict. In 2011, the United Nations Permanent Forum on Indigenous Issues produced a useful study on the status of implementation of the Chittagong Hill Tracts Accord of 1997, which included important recommendations for remedying the atrocities being committed in this CHT.<sup>26</sup> In 2013, the UN published the Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences as part of a special Mission to Bangladesh.<sup>27</sup> This document speaks of violent sexual assaults and other crimes faced specifically by Indigenous women at the hands of the state and Bengali settlers in the CHT area.<sup>28</sup> Most recently, in 2015, the UN

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<sup>21</sup> A/63/PV.97; A/63/PV.98; A/63/PV.99; A/63/PV.100; A/63/PV.101.

<sup>22</sup> "From Commitment to Implementation: Ten Years of the Responsibility to Protect - General Assembly, Thematic Panel Discussion," *Global Centre for the Responsibility to Protect*, February 26, 2016.

<sup>23</sup> "Conventions and Treaties Ratified by Bangladesh" (UNICEF, n.d.).

<sup>24</sup> "Universal Periodic Review - Bangladesh," *United Nations Office of the High Commissioner for Human Rights*, February 3, 2009.

<sup>25</sup> "Universal Periodic Review 2nd Cycle - Bangladesh," *United Nations Office of the High Commissioner for Human Rights*, April 29, 2013.

<sup>26</sup> E/C.19/2011/6, para. 52.

<sup>27</sup> A/HRC/26/38/Add.2.

<sup>28</sup> *Ibid.*, para. 13.

published the Preliminary Findings of the Country Visit to Bangladesh by the Special Rapporteur on Freedom of Religion or Belief, which speaks to the cultural oppression of the Jumma<sup>29</sup> and other Indigenous peoples of the Chittagong Hill Tracts region.<sup>30</sup> These materials directly contribute to the debate proposed in this paper as to whether R2P would be effective in the current conflict in Bangladesh, and whether the violence experienced by the Indigenous peoples of this region falls under one of the four crimes that invoke the Responsibility to Protect.

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.

### **III. 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 nation-states. In the report, Annan plaintively asks the following:

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<sup>29</sup> “Jumma” is a term sometimes used to refer to the Indigenous peoples of the CHT; the term comes from the shifting cultivation (“jumma”) traditionally practiced by the Indigenous peoples of the CHT.

<sup>30</sup> “Preliminary Findings of Country Visit to Bangladesh by Heiner Bielefeldt, Special Rapporteur on Freedom of Religion or Belief,” *United Nations Office of the High Commissioner for Human Rights*, September 9, 2015, sec. IV(1), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16399&LangID=E>.

“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>31</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 called the Responsibility to Protect.<sup>32</sup> This report envisaged a shift in the concept of sovereignty from complete and total control over the people living within a government’s territory to “sovereignty as responsibility,”<sup>33</sup> meaning a dual responsibility to both recognize other states’ sovereignty and to “respect the dignity and basic rights”<sup>34</sup> of all those living within one’s own state. After extensive international consultation, ICISS established the three pillars of R2P: the Responsibility to Protect, the Responsibility to React, and the Responsibility to Rebuild.<sup>35</sup>

In 2003, Kofi 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

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<sup>31</sup> 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.

<sup>32</sup> “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty.” (Ottawa, Canada: International Development Research Centre, December 2001.)

<sup>33</sup> *Ibid.*, 13.

<sup>34</sup> *Ibid.*, 8.

<sup>35</sup> *Ibid.*, XI.

committing mass atrocities against its own peoples.<sup>36</sup> Finally, R2P was officially adopted by all Member States in three paragraphs of the 2005 World Summit Outcome Document,<sup>37</sup> which was a major turning point in the international acceptance and formalization of the concept. The formative concepts of the norm had notably already been internalized by governments in many parts of the world, such as in 2000 when the African Union endorsed the principles of R2P in its Constitutive Act. Article 4(h) of the Constitutive Act even goes so far as to say that the Union has the right “to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”<sup>38</sup>

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>39</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>40</sup> from one of the listed four crimes, despite there being no clear guideline as to what that would mean in practical terms. In 2005, the original third pillar of rebuilding was implied but not named explicitly as it was in the ICISS report;<sup>41</sup> additionally, the threshold and motivation for intervention

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<sup>36</sup> A/59/565, para. 201.

<sup>37</sup> A/RES/60/1, paras. 138–140.

<sup>38</sup> “Constitutive Act of the African Union,” Article 4(h), July 11, 2000, [http://www.au.int/en/sites/default/files/ConstitutiveAct\\_EN.pdf](http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf).

<sup>39</sup> “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty,” 29.

<sup>40</sup> A/RES/60/1, para. 139.

<sup>41</sup> A/RES/60/1, paras. 138–140.

had been adjusted and so had the emphasis on rules of use of force.<sup>42</sup> The ICISS report highlighted the following for justifying military intervention where the government was not protecting its population: a “large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation or large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”<sup>43</sup> 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>44</sup>

Genocide has been a clearly defined crime since the 1948 Convention on the Prevention and Punishment for the Crime of Genocide entered into force in 1951. This Convention establishes genocide as any of the following acts, as long as they are committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”:

- “(a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”<sup>45</sup>

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<sup>42</sup> Ibid.

<sup>43</sup> “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty,” 32.

<sup>44</sup> A/RES/60/1, para. 138.

<sup>45</sup> “Convention on the Prevention and Punishment of the Crimes of Genocide” (United Nations General Assembly, December 9, 1948), para. 2.

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>46</sup> These crimes include rape, torture and enforced disappearances.<sup>47</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 applicable in international armed conflict, within the established framework of international law.”<sup>48</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>49</sup> This definition was further clarified 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”; this is typically “carried out in the name of misguided nationalism”<sup>50</sup> and its “purpose appears to be the occupation of

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<sup>46</sup> “Rome Statute of the International Criminal Court” (United Nations General Assembly, July 17, 1998), Article 7.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, Article 8.

<sup>49</sup> S/25274 (New York, United States of America: United Nations Security Council, February 10, 1993), para. 55.

<sup>50</sup> S/1994/674 (New York, United States of America: United Nations Security Council, May 27, 1994), para. 130.

territory to the exclusion of the purged group or groups.”<sup>51</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.

Some criticized the 2005 adopted norm as “R2P Lite.”<sup>52</sup> This version of R2P did not retain such a strong focus on the responsibility or obligation of the international community—and particularly the Security Council—to step in when gross violations of human rights were being committed, but rather stated that the Security Council must be “standing ready”<sup>53</sup> to help when necessary. Additionally, 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,<sup>54</sup> unless the General Assembly converged under the “Uniting for Peace” process as per UN Resolution 377, which has never been used to invoke R2P.<sup>55</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>56</sup> against war crimes, crimes against humanity, genocide or ethnic cleansing have to go “through the Security Council”<sup>57</sup> for approval. Yet the 2001 predecessor to this document conceded that: “The Security Council should take into account ... that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may

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<sup>51</sup> Ibid.

<sup>52</sup> Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, 2nd ed. (Cambridge, United Kingdom: Polity, 2012), 127.

<sup>53</sup> Alex J. Bellamy, “The Responsibility to Protect and the Problem of Military Intervention,” *International Affairs (Royal Institute of International Affairs 1944-)* 84, no. 4 (2008): 127.

<sup>54</sup> Ibid.

<sup>55</sup> “Security Council Deadlocks and Uniting for Peace: An Abridged History” (Security Council Report, October 2013), [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Security\\_Council\\_Deadlocks\\_and\\_Uniting\\_for\\_Peace.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Security_Council_Deadlocks_and_Uniting_for_Peace.pdf).

<sup>56</sup> A/RES/60/1, para. 139.

<sup>57</sup> Ibid.



not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.”<sup>58</sup> 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, even if countless 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>59</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>60</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>61</sup> In that report, the Secretary-General outlined his strategy around the three pillars of the norm.

A wide-ranging debate on the subject—the longest General Assembly debate of the year, lasting three days—ensued in July 2009.<sup>62</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

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<sup>58</sup> “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty,” XIII.

<sup>59</sup> 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 States of America: United Nations General Assembly, July 22, 2016), para. 15.

<sup>60</sup> S/RES/1674 (New York, United States of America: United Nations Security Council, April 28, 2006), <http://www.refworld.org/docid/4459bed60.html>.

<sup>61</sup> A/63/677, para. 51.

<sup>62</sup> A/63/PV.98; A/63/PV.99; A/63/PV.100; A/63/PV.101.

Security Council has invoked the Responsibility to Protect in various resolutions as they have addressed crises ranging from South Sudan in 2011<sup>63</sup> to the Central African Republic in 2013.<sup>64</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>65</sup> As of 2016, the protection of civilians component of R2P has been incorporated in or guided ten Human Rights Council Resolutions and 40 Security Council Resolutions.<sup>66</sup>

While the Responsibility to Protect has changed since its initial conception, the norm has also made significant progress in terms of its acceptance within the United Nations system since Kofi Annan's first call for a genocide prevention mechanism in 2001 to combat atrocities like those that occurred in Srebrenica and Rwanda. 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.

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

#### **b. Debates on the Responsibility to Protect: Literature Review on the Normative Aspects**

The academic literature on the Responsibility to Protect can be divided into two categories: debates on its normative elements and assessments of its operationalization

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<sup>63</sup> S/RES/1996 (New York, United States of America: United Nations Security Council, July 8, 2011), [http://www.un.org/en/peacekeeping/missions/past/unmis/documents/sres1996\\_2011.pdf](http://www.un.org/en/peacekeeping/missions/past/unmis/documents/sres1996_2011.pdf).

<sup>64</sup> S/RES/2121 (New York, United States of America: United Nations Security Council, October 10, 2013), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2121\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2121(2013)).

<sup>65</sup> S/RES/2150 (New York, United States of America: United Nations Security Council, April 16, 2014), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2150\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2150(2014)).

<sup>66</sup> A/70/999-S/2016/620, para. 7.

and why and how it has been applied. This section will address the former, while the latter will be addressed in the following subchapter. The Responsibility to Protect has been a contentious norm since its inception and there are many scholarly debates pertaining to the norm. For the purposes of this research, the author will focus on the literature analyzing three components of R2P: who are the subjects of R2P interventions, the debates around sovereignty as it pertains to R2P, and the principle's roots in imperialist values.

The subject of any R2P intervention is framed as a “population”<sup>67</sup> as per Francis Deng’s initial conceptualization of “sovereignty as responsibility,”<sup>68</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>69</sup> and this term serves to lump together oftentimes disparate communities who happen to share a geographic locality. This also removes agency from the subjects of these interventions.<sup>70</sup> 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>71</sup> Even though R2P does condemn

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<sup>67</sup> Francis Deng et al., *Sovereignty as Responsibility* (Washington, D.C., United States of America: Brookings Institution Press), 221, accessed June 26, 2016, <http://www.brookings.edu/research/books/1996/sovrnty>.

<sup>68</sup> Deng et al., *Sovereignty as Responsibility*.

<sup>69</sup> Bridget Conley-Zilkic, “Who Is the Subject of Atrocities Prevention?,” *Global Responsibility to Protect* 6, no. 4 (November 27, 2014): 442, doi:10.1163/1875984X-00604005.

<sup>70</sup> Ibid., 444. See also Anne Orford, *International Authority*, 139-188.

<sup>71</sup> 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, doi:10.1163/187598411X602008.

leaving power in the hands of those who commit abuses, the principle does not propose passing this same power to those who have been victimized so that they, in turn, can determine the kind of protection they feel they need.<sup>72</sup> Rather, the power of determining the kind of protection necessary in any R2P conflict is passed to the broader “international community”<sup>73</sup> which then decides the type of intervention necessary. Other authors concern themselves with the thresholds necessary to induce an R2P intervention, given the absence of general criteria within the wording of the principle for when an R2P intervention of any kind is invoked<sup>74</sup> and the apparent inconsistent selectivity in addressing certain crises over others.<sup>75</sup>

Much of the literature on sovereignty and R2P revolves around the reconceptualization of state sovereignty implicit in the Responsibility to Protect principle. The original 2001 ICISS report that envisaged the Responsibility to Protect stated that the shifting nature of the international community required a “re-characterization ... from ‘sovereignty as control to sovereignty as responsibility.’”<sup>76</sup> When states “manifestly fail to protect their populations,”<sup>77</sup> the concepts of human rights and state sovereignty clash.<sup>78</sup> Alex Bellamy points out this inherent contradiction in the United Nations Charter, which affirms the commitment to all humans’ rights and fundamental rights in Article 1(3) and

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid., 423.

<sup>74</sup> Mallavarapu, Siddharth, “Colonialism and the Responsibility to Protect,” in *Theorising the Responsibility to Protect*, ed. Ramesh Thakur and William Maley (Cambridge, United Kingdom: Cambridge University Press, 2015), 315, <http://ebooks.cambridge.org/ref/id/CBO9781139644518>.

<sup>75</sup> Aidan Hehir, “The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect,” *International Security* 38, no. 1 (July 1, 2013): 158, doi:10.1162/ISEC\_a\_00125.

<sup>76</sup> “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty,” 13.

<sup>77</sup> A/RES/60/1, para. 139.

<sup>78</sup> Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (New York, United States of America: Routledge, 2010), 2.

yet permits war for the purpose of individual or collective self-defense when arms are taken up against a Member State in Article 51, and confirms the principle of non-interference in states' affairs in Article 2(7).<sup>79</sup> 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>80</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>81</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 on suspicions it may be abused by Western powers.<sup>82</sup> Even Dr. Edward Luck, former Special Adviser on the Prevention of Genocide to former Secretary-General Kofi Annan and later Special Adviser on the Responsibility to Protect to Secretary-General Ban Ki-moon, acknowledged concerns about potential misuse of the norm and issues of selectivity in his assessment of R2P's first decade in 2011.<sup>83</sup>

The Responsibility to Protect principle also continues to be plagued by accusations of thinly cloaked Western imperialism.<sup>84</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.

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<sup>79</sup> Ibid., 3.

<sup>80</sup> Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago, United States of America: University of Chicago Press, 2013), 176.

<sup>81</sup> Ibid., 180.

<sup>82</sup> Ian Williams, "Dueling Principles: National Sovereignty Vs. Responsibility to Protect," *The Washington Report on Middle East Affairs* 32, no. 7 (September 2013): 29.

<sup>83</sup> Edward C. Luck, "The Responsibility to Protect: The First Decade," *Global Responsibility to Protect* 3, no. 4 (December 1, 2011): 396, doi:10.1163/187598411X603025.

<sup>84</sup> Mallavarapu, Siddharth, "Colonialism and the Responsibility to Protect," 307.

Mallavarapu describes the entrenched nature of North-South power imbalances as extending to global governance as well as “old frames of colonial rule”<sup>85</sup> which are now simply being resubmitted under the guise of the Responsibility to Protect. 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>86</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>87</sup> and Mallavarapu, along with other scholars,<sup>88</sup> fear 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>89</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, with only one academic chapter in the entire R2P literature devoted distinctly to R2P and Indigenous peoples. Federico Lenzerini’s chapter “R2P and the ‘Protection’ of Indigenous Peoples” touches upon the paternalistic relationship between the “protector”<sup>90</sup> and the “protected”<sup>91</sup> wherein the

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<sup>85</sup> Ibid., 306.

<sup>86</sup> Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” *Harvard International Law Journal* 42, no. 1 (n.d.): 201.

<sup>87</sup> Ibid., 204.

<sup>88</sup> 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, doi:10.1177/0967010609350632.

<sup>89</sup> Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge, United Kingdom: Cambridge University Press, 2003), 33, <http://search.proquest.com.ezproxy.cul.columbia.edu/docview/37687968/citation/AC8F76C461684DDCPQ/1>.

<sup>90</sup> Federico Lenzerini, “R2P and the ‘Protection’ of Indigenous Peoples,” in *The Responsibility to Protect (R2P)*, ed. Peter Hilpold (Brill, 2014), 329–47, <http://booksandjournals.brillonline.com/content/books/b9789004230002s016>.

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 R2P”<sup>92</sup>—towards the Indigenous peoples who reside within the state’s territory to acknowledge their rights as per treaties such as ICCPR and ICESCR, or even non-binding instruments such as the United Nations Declaration on the Rights of Indigenous Peoples. The author 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>93</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>94</sup> and they are frequently marginalized and cannot easily seek retribution for the atrocities of which they are the victims.<sup>95</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.

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> 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.

<sup>95</sup> 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>.

107 in 1957<sup>96,97</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, for example in Côte D'Ivoire, Kenya, and Guinea.<sup>98</sup> Yet, R2P has never been invoked in a situation in which specifically an Indigenous group of peoples are the victims of one of the four R2P crimes by their state or by a third party.

For the purposes of this research paper, 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>99</sup> The UNDRIP represents, like all human rights instruments, a set of “minimum standards,”<sup>100</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>101</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

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<sup>96</sup> Hurst Hannum, “New Developments in Indigenous Rights,” *Virginia Journal of International Law* 28, no. 3 (1988): 652.

<sup>97</sup> Elsa Stamatopoulou, “Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic,” *Human Rights Quarterly* 16, no. 1 (February 1994): 65.

<sup>98</sup> “International Responsibility to Protect: Crises,” *International Coalition for the Responsibility to Protect*, accessed June 27, 2016, <http://responsibilitytoprotect.org/index.php/crises>.

<sup>99</sup> A/RES/61/295, “United Nations Declaration on the Rights of Indigenous Peoples” (New York, United States of America: United Nations, October 2, 2007).

<sup>100</sup> 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, United States of America: Institute for the Study of Human Rights, Columbia University, 2014), 5.

<sup>101</sup> *Ibid.*



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>102</sup> The hard-fought establishment of this set of rights—and its recognition by most governments the world over—demonstrate 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. 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>103</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>104</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>105</sup> but rather as part of a “consistent ethical approach to human and

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<sup>102</sup> Genevieve Souillac and Douglas P. Fry, “Indigenous Lessons for Conflict Resolution,” in *The Handbook of Conflict Resolution : Theory and Practice*, 3rd ed. (San Francisco, United States of America: Jossey-Bass, 2014), 608.

<sup>103</sup> 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.

<sup>104</sup> Souillac and Fry, “Indigenous Lessons for Conflict Resolution,” 614.

<sup>105</sup> *Ibid.*

cultural survival.”<sup>106</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. What is the Responsibility to Protect?**

#### **c. Debates on the Responsibility to Protect: Literature Review on the Operationalization of the Norm**

The Responsibility to Protect encompasses several potential methods of intervention in scenarios in which populations are experiencing mass atrocities—anything from diplomatic engagement to military involvement “should peaceful means be inadequate,”<sup>107</sup> could be deemed an application of the principle. This leads to one of the first issues identified in the literature on the Responsibility to Protect: misunderstandings about exactly what R2P means.<sup>108</sup> According to the Report of the Secretary-General’s Internal Review Panel on UN Actions in Sri Lanka<sup>109</sup> and repeated in Luck and Luck’s “The Individual Responsibility to Protect,” the concept of R2P was mentioned in discussions at the United Nations during the end of the Sri Lankan conflict in 2009 but variations in understandings of the principle’s meanings and uses among Member States

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<sup>106</sup> Ibid.

<sup>107</sup> A/RES/60/1, para. 139.

<sup>108</sup> O’Hagan, Jacinta, “The Responsibility to Protect: A Western Idea?,” in *Theorising the Responsibility to Protect*, ed. Ramesh Thakur and William Maley (Cambridge, United Kingdom: Cambridge University Press, 2015), 285, <http://ebooks.cambridge.org/ref/id/CBO9781139644518>.

<sup>109</sup> “Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka.”

and the Secretariat had become so wrought with tension as to practically invalidate its application.<sup>110</sup> It is worth noting that this occurred before the large 2009 debate on the Responsibility to Protect in the General Assembly and before Secretary-General Ban Ki-moon released his 2009 report on its implementation; however, in 2005, all Member States had already signed the World Outcome Summit Document that remains the guiding wording for the principle so R2P had certainly been discussed by this point among state representatives. Part of the issue with its operationalization in Sri Lanka, continues Luck and Luck, was the propensity among both world leaders and international institutions to see R2P solely as a “short-term emergency response doctrine”<sup>111</sup> rather than as a potentially long-term project of response and peace building, as it was envisioned originally.

However even recently, at the February 2016 thematic panel discussion on the Responsibility to Protect held at the United Nations in New York, it became painfully obvious as soon as the Member States began to contribute to the discussion that this principle is far from widely accepted. The mission representative of Kyrgyzstan, for example, took the floor in this debate to unequivocally denounce the assertion that their country is an example of R2P’s successful implementation during ethnic conflicts that broke out in 2010<sup>112</sup> immediately after Gareth Evans named this conflict as one of the

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<sup>110</sup> Edward C. Luck and Dana Zaret Luck, “The Individual Responsibility to Protect,” in *Reconstructing Atrocity Prevention*, 2015, 240.

<sup>111</sup> *Ibid.*, 237.

<sup>112</sup> “Statement by Kyrgyzstan at the UN General Assembly Thematic Panel Discussion, 26 February 2016,” *Global Centre for the Responsibility to Protect*, February 26, 2016, <http://www.globalr2p.org/resources/938>.

principle's best applications during his panel speech.<sup>113</sup> If even the countries named as successes of the norm's operationalization refute the idea that R2P was ever applied in their conflict, this serves to reinforce the idea put forth by many scholars that all Member States do not unanimously understand the R2P concept in the same way.<sup>114-115</sup>

Another major issue with the operationalization of R2P is Security Council inaction. As per Article 24(1) of the United Nations Charter, the Security Council bears "primary responsibility for the maintenance of international peace and security"<sup>116</sup> and yet, thanks to a broad and complex agenda as well as multiple demands upon its resources, the Security Council is often only capable of focusing on immediate crisis situations.<sup>117</sup> Even UN Secretary-General Ban Ki-moon acknowledged in his 2009 report "Implementing the R2P: Report of the Secretary General" that the United Nations as a whole, and its Member States individually, are "underprepared"<sup>118</sup> to meet even their most "fundamental prevention and protection responsibilities"<sup>119</sup> as delineated by R2P doctrine. In his final annual report on R2P as UN Secretary-General, Ban Ki-moon disparaged the political divisions within the Security Council which "are exacerbating the

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<sup>113</sup> "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>.

<sup>114</sup> Cristina G. Badescu, "Evolution of International Responsibility: From Responsibility to Protect the Responsibility While Protecting, The," *International Studies Journal (ISJ)* 11 (Summer 2014): 58.

<sup>115</sup> Yang Razali Kassim, "ASEAN and R2P," in *The Geopolitics of Intervention*, SpringerBriefs in Political Science (Springer Singapore, 2014), 69, [http://link.springer.com/chapter/10.1007/978-981-4585-48-4\\_5](http://link.springer.com/chapter/10.1007/978-981-4585-48-4_5).

<sup>116</sup> "Charter of the United Nations | United Nations," accessed June 26, 2016, <http://www.un.org/en/charter-united-nations/>.

<sup>117</sup> Deborah Mayersen, "Current and Potential Capacity for the Prevention of Genocide and Mass Atrocities within the United Nations System," *Global Responsibility to Protect* 3, no. 2 (June 1, 2011): 206, doi:10.1163/187598411X575667.

<sup>118</sup> "A/63/677," para. 6.

<sup>119</sup> *Ibid.*

move away from decisive action – whether for prevention or for response.”<sup>120</sup> As argued by Cannizzaro, the United Nations Charter rules of procedure do not allow for a timely response to situations of crisis even if the political will is present, thereby denying the UN its ability to fulfill its mandate to protect human rights.<sup>121</sup> Cannizzaro argues that the United Nations is not prepared to undertake the responsibilities entrusted to it by R2P to both identify mass atrocities and to undertake decisive action to stop them, given its hulking bureaucracy and other limitations intrinsic to the UN system.<sup>122</sup> Yet other authors argue it is a lack of political will, rather than constraints on capacity, that limit Security Council involvement in emerging or active situations of mass atrocities.<sup>123</sup>

Finally, debates continue to rage around the third pillar of R2P, labeled “Timely and Decisive Response”<sup>124</sup> but referring, among other things, to military intervention under Chapter VII of the UN Charter. O’Hagan describes the recurring debates around misappropriation of the military component of R2P for regime change, rather than protection of civilians.<sup>125</sup> This is best illustrated in R2P’s application in Libya in 2011, in which Chandler describes how R2P’s military intervention component was applied “without the promise of ... ‘Western responsibility’ for its outcomes.”<sup>126</sup> The application

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<sup>120</sup> “A/70/999-S/2016/620,” para. 15.

<sup>121</sup> Enzo Cannizzaro, “Responsibility to Protect and the Competence of the UN Organs,” in *The Responsibility to Protect (R2P)*, ed. Peter Hilpold (Brill, 2014), 212, <http://booksandjournals.brillonline.com/content/books/b9789004230002s009>.

<sup>122</sup> *Ibid.*, 218.

<sup>123</sup> Nicholas J. Wheeler and Frazer Egerton, “Responsibility to Protect: Precious Commitment or a Promise Unfulfilled, The,” *Global Responsibility to Protect* 1 (2009): 128.

<sup>124</sup> A/63/677, para. 11(c). See also Garwood-Gowers, Andrew. “The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?” *University of New South Wales Law Journal* 36, no. 2 (2013) 594.

<sup>125</sup> O’Hagan, Jacinta, “The Responsibility to Protect: A Western Idea?,” 299.

<sup>126</sup> David Chandler, “The R2P Is Dead, Long Live the R2P: The Successful Separation of Military Intervention from the Responsibility to Protect,” *International Peacekeeping* 22, no. 1 (January 1, 2015): 2, doi:10.1080/13533312.2014.992572.

of the Responsibility to Protect in this instance was, however, heralded as a success at the time by many of its norm entrepreneurs. Gareth Evans described it as “a textbook case of the R2P norm working exactly as it was supposed to”<sup>127</sup> and UN Secretary-General Ban Ki-moon remarked, “By now it should be clear to all that the Responsibility to Protect has arrived.”<sup>128</sup> While it is not unanimously agreed that R2P was the driving factor behind this operation, it certainly is acknowledged as a major factor in the Security Council’s decisions and actions in Libya.<sup>129</sup> This was a coup for the emerging norm<sup>130</sup> but five years later, this intervention is now recognized as a disaster even by those originally touting it as a phenomenal success. In a speech given at the UN in February 2016, Gareth Evans described the “horrible aftermath of the initially-successful R2P-based military intervention in Libya.”<sup>131</sup> This confusion over the meaning of the R2P doctrine, concerns over the United Nations’ ability to apply the norm, and its questionable efficacy, all contribute to debates on R2P’s operationalization.

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

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

The People’s Republic of Bangladesh is one of the most densely populated countries in the world, with approximately 163 million people total population and

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<sup>127</sup> Gareth Evans, “Interview: The R2P Balance Sheet After Libya,” in *The Responsibility to Protect: Challenges and Opportunities in Light of the Libyan Intervention* (e-International Relations, 2011), 40.

<sup>128</sup> United Nations Web Services, “Secretary-General’s Remarks at Breakfast Roundtable with Foreign Ministers on “The Responsibility to Protect: Responding to Imminent Threats of Mass Atrocities,”” *United Nations*, September 23, 2011, <http://www.un.org/sg/STATEMENTS/index.asp?nid=5567>.

<sup>129</sup> Hehir, “The Permanence of Inconsistency,” 146.

<sup>130</sup> Andrew Garwood-Gowers, “Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm, The,” *University of New South Wales Law Journal* 36, no. 2 (2013): 605.

<sup>131</sup> “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.”

approximately 1200 people per square kilometer.<sup>132</sup> The Chittagong Hill Tracts region of Bangladesh is located in the country's southeast and is home to 11 or 12 Indigenous groups, depending on the source one consults, which amounts to roughly 500,000 people.<sup>133</sup> This population assessment is contested,<sup>134</sup> however, and according to Jamil and Panday, there is a widespread belief that the government keeps the figure of Indigenous people "intentionally low in order to demonstrate the marginality of the Indigenous people"<sup>135</sup> in comparison with the wider Bengali population. The Indigenous peoples of Bangladesh differ dramatically from the majority ethnic Bengali population in "language, culture, physical appearance, religion, dress, eating habits, architecture and farming methods."<sup>136</sup> While there are Indigenous peoples living outside of the Chittagong Hill Tracts in the plain lands of Bangladesh,<sup>137</sup> this paper will focus primarily on those living within the heavily militarized CHT region. The CHT amounts to approximately 10% of the country's land mass and is vitally important to the government due to its location—bordered on the north and east by India, and on the south and east by Myanmar—and the abundance of natural resources found there, particularly gas, coal and copper deposits.<sup>138</sup>

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<sup>132</sup> "Country Profile: Bangladesh," *UN Data*, accessed August 5, 2016, <http://data.un.org/CountryProfile.aspx?crName=Bangladesh>.

<sup>133</sup> 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.

<sup>134</sup> Chowdhury and Chakma, *Human Rights Report 2014: On Indigenous Peoples in Bangladesh*, 27.

<sup>135</sup> Jamil and Panday, "The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People," 467.

<sup>136</sup> E/C.19/2011/6, para. 1.

<sup>137</sup> Jamil and Panday, "The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People," 467.

<sup>138</sup> Aminuzzaman, "Bangladesh," 4.

Before it came under colonial British rule, this area was self-governed and its peoples—who were almost exclusively Indigenous—were relatively independent.<sup>139</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>140</sup> Chiefs representing the three dominant Indigenous groups in the CHT collected taxes both for themselves and for the British and were recognized as kings.<sup>141</sup> This special autonomously controlled status remained recognized through the next sixty years through the Government of India Acts of 1919 and 1935, and the Constitutions of Pakistan of 1956 and 1962.<sup>142</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>143</sup> Prior to the signing of the constitution, a delegation of CHT Indigenous peoples approached then-Prime Minister of Bangladesh Sheikh Mujibur Rahman and requested the maintenance of autonomy in the region through an Indigenous legislature, the continuation of the offices of the three tribal chiefs or kings, and the re-institutionalization of the agreement of 1900 including limitations on immigration into

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<sup>139</sup> 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.

<sup>140</sup> E/C.19/2011/6, para. 5.

<sup>141</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 468.

<sup>142</sup> E/C.19/2011/6, para. 5.

<sup>143</sup> “Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts,” (London, United Kingdom) 15.



the area of non-Indigenous peoples.<sup>144</sup> However, Rahman refused these requests and advised the delegation to be on board with the project of national identity building, even going so far as to threaten to “effectively marginalize the Hill people by sending Bengalis into the region.”<sup>145</sup> So began the long process of creating “a homogenous Bengali nationalism”<sup>146</sup> codified in the constitution, with “no recognition of a separate status or identity for the Indigenous people.”<sup>147</sup>

Within a year, the CHT Indigenous political party Parbatya Chattagram Jana Samhati Samiti (PCJSS) formed an armed wing called the Shanti Bahini.<sup>148</sup> The Shanti Bahini started a “low-intensity guerilla war”<sup>149</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>150</sup> The military regime decided to deploy nearly a third of the Bangladeshi army in the CHT to control the recent surge of civil disobedience and outbreaks of violence;<sup>151</sup> the army then started to bring into the CHT 400,000 Bengali settlers over only five years (between 1979-1984) through its “transmigration programme.”<sup>152</sup> This influx of Bengalis occurred without any warning, discussion, or consent of the inhabitants of the region,<sup>153</sup> which violates the Bangladesh-ratified ILO Convention 107 in that the Indigenous peoples of

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<sup>144</sup> Ibid.

<sup>145</sup> Aminuzzaman, “Bangladesh,” 6.

<sup>146</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 468.

<sup>147</sup> Ibid.

<sup>148</sup> E/C.19/2011/6, para. 6.

<sup>149</sup> Ibid.

<sup>150</sup> Aminuzzaman, “Bangladesh,” 7.

<sup>151</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 469.

<sup>152</sup> E/C.19/2011/6, para. 6.

<sup>153</sup> “Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts,” 27.

this area have the rights to their traditional lands and effective participation in decision-making.<sup>154</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>155</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 deliberate after all.<sup>156</sup> The CHT already had limited arable land because of the construction of the Kaptai lake when the area was under Pakistani rule, which flooded 40% of this territory and displaced 100,000 Indigenous people.<sup>157·158</sup> The 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>159</sup> The Indigenous peoples were largely relocated to “model villages”<sup>160</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>161</sup> This same five-year period of time also saw the establishment of approximately 500 military camps in the region.<sup>162</sup>

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<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> “‘Life Is Not Ours’: Land and Human Rights in the Chittagong Hill Tracts” (Amsterdam, The Netherlands and Copenhagen, Denmark: Chittagong Hill Tracts Commission, May 1991), 15.

<sup>157</sup> Ibid., 13.

<sup>158</sup> Chakma, “The Post-Colonial State and Minorities,” 285.

<sup>159</sup> E/C.19/2011/6, para. 7.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” 10.

The violence that followed included arbitrary arrests, disappearances, murders, looting and burning of Indigenous people's homes and belongings by Bengali settlers and armed forces.<sup>163·164·165</sup> There are also many reports of other “widespread and systemic violations of human rights of the Indigenous inhabitants ... mainly perpetrated by Bangladesh security forces, including unlawful killings, detention without trial, torture, rape, destruction of houses and property and forcible occupation of [Indigenous] ancestral lands.”<sup>166</sup> By the late 1970s, the Indian government began to help the Indigenous fighters train and arm themselves to attack the Bangladesh forces and Bengali settlers in the CHT.<sup>167</sup> In the neighboring Indian province of Tripura, the armed Shanti Bahini group even formed a base supported by the Indian army.<sup>168·169</sup> From this base, the Indigenous fighters were able to conduct offensives against Bengali settlers and soldiers that also included kidnappings, arson and murders.<sup>170</sup> The military retaliated with several massacres, including the more publicized Kalampati massacre in March 1980.<sup>171</sup> In this instance, approximately 300 Indigenous people died when the military began to fire on a group that had met to discuss the rebuilding of a destroyed Buddhist temple.<sup>172</sup> Within the year, the Bangladeshi government passed the Disturbed Area Act, which provided the military with the opportunity to continue attacking Indigenous peoples and essentially

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<sup>163</sup> “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” 10.

<sup>164</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 469.

<sup>165</sup> Chowdhury and Chakma, *Human Rights Report 2014: On Indigenous Peoples in Bangladesh*, 70.

<sup>166</sup> E/C.19/2011/6, para. 9.

<sup>167</sup> Aminuzzaman, “Bangladesh,” 7.

<sup>168</sup> *Ibid.*

<sup>169</sup> Mohsin, *The Chittagong Hill Tracts, Bangladesh*, 13.

<sup>170</sup> Aminuzzaman, “Bangladesh,” 7.

<sup>171</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 470.

<sup>172</sup> *Ibid.*

“gave legal sanction to military carnage in the CHT.”<sup>173</sup> It is important to note here that even official statistics on violence experienced by Indigenous peoples in the CHT may not be accurate, given the difficulties experienced by victims attempting to access the justice system. Devashish Roy, a Chakma traditional chief in the CHT and one of the vice-chairs of the United Nations Permanent Forum on Indigenous Issues, identified one of the issues in proving the scope of crimes committed against Indigenous peoples in this region as an inability to collect evidence and a lack of judicial options for victims.<sup>174</sup> Roy used the example of sexual violence at the hands of Bangladeshi soldiers stationed in the CHT to explain how little confidence many Indigenous peoples have in the legal system in the region.<sup>175</sup> He said the judicial procedures are often so complex and the military are historically so difficult to prosecute that many rapes simply go unreported.<sup>176</sup>

However, peace negotiations finally began to gain some traction in the 1980s between the government of Bangladesh and the PCJSS.<sup>177</sup> While the Bangladeshi government originally treated the Shanti Bahini as an insurgent, secessionist movement, they came to realize they were straining their international credibility by not at least negotiating with the group.<sup>178</sup> In 1982, the Bangladesh government established a special economic zone in the CHT and later offered amnesty to members of the PCJSS and the Shanti Bahini in 1983 and again in 1985.<sup>179</sup> However, despite discussions with

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<sup>173</sup> Ibid.

<sup>174</sup> Devashish Roy, in-person interview, May 19, 2016.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Mohsin, *The Chittagong Hill Tracts, Bangladesh*, 13.

<sup>178</sup> Aminuzzaman, “Bangladesh,” 8.

<sup>179</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 470.

successive governments, there were few breaks in the fighting and limited progress in terms of finding a mutually beneficial agreement to this conflict until the mid-1990s.<sup>180</sup>

It is important to also note that, while the Indigenous peoples of the CHT region have undoubtedly been violently targeted by the Bangladeshi state and settlers as early as the 1970s, they fought back through the Shanti Bahini armed group and committed crimes of their own against those they felt were encroaching on their lands and their lives.<sup>181</sup> To say that populations are vulnerable does not mean that they are entirely innocent, which of course further complicates this already protracted conflict.

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

##### **b. 1997 Peace Accord**

This “partly civil, partly military conflict”<sup>182</sup> had ruined so many lives that finally, in the mid-1990s, both sides of the conflict began to take the peace process seriously. Meetings that occurred under the Ershad government had resulted in the creation of three Hill District Councils (HDCs) in 1989 that were composed of a two-thirds majority of Indigenous representatives and an Indigenous chairperson.<sup>183</sup> However, due to the very restricted autonomy permitted to these councils, they failed to gain the confidence of most Indigenous peoples in the CHT and the fighting continued unabated.<sup>184</sup> These councils did not have the authority or resources to address major issues such as land grabbing of Indigenous territory or the many internally displaced

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<sup>180</sup> Ibid., 471.

<sup>181</sup> “Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts,” 16.

<sup>182</sup> E/C.19/2011/6, para. 10.

<sup>183</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 470.

<sup>184</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 470.

Indigenous peoples who now had no homes to which they could return.<sup>185</sup> Further rounds of talks occurred among the PCJSS, the Bangladesh National Party (BNP), the Awami League and Jamaat-e-Islami in 1992 and these did lead to the Indigenous political party agreeing to a “one-sided ceasefire”<sup>186</sup> in which the PCJSS put down their arms;<sup>187</sup> this cease-fire was renewed every three months from August 1, 1992 until December 1997.<sup>188</sup>

Finally, in October 1996, then-Prime Minister Sheikh Hasina set up the National Committee on CHT.<sup>189</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>190</sup> This was considered a success for both the government and the Indigenous representatives from the CHT, since concessions were made that both sides considered victories.<sup>191</sup>

The text of the peace agreement, from which the following information is drawn, is split into four categories. Part A, entitled “General,” recognizes the CHT as a Tribal Populated Region and agrees to the creation of an Implementation Committee to oversee the enactment of the peace accord.<sup>192</sup> The Committee would be made up of three people: an individual nominated by the Prime Minister, a Chairman of the Task Force formed as part of the accord, and the President of the PCJSS.<sup>193</sup> Part B, entitled “Chittagong Hill

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<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Aminuzzaman, “Bangladesh,” 13.

<sup>189</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 471.

<sup>190</sup> Aminuzzaman, “Bangladesh,” 14.

<sup>191</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 471.

<sup>192</sup> “Chittagong Hill Tracts Peace Accord (CHT),” *Peace Accords Matrix, Kroc Institute for International Peace Studies, University of Notre Dame*, sec. A(3).

<sup>193</sup> Ibid.

Tracts Local Government Council/Hill District Council,” sets out that every non-Indigenous resident who owns land “legally”<sup>194</sup> in the CHT will now be labeled as a “non-tribal permanent resident”;<sup>195</sup> additionally, the Hill District Councils would have expanded authority to include jurisdiction over land management, local police, “tribal law and social justice,”<sup>196</sup> and “environmental preservation and development,”<sup>197</sup> among others. Part C, entitled “Chittagong Hill Tracts Regional Council,” outlined the development of a regional authority that would reserve two-thirds of the seats and the chairperson role for an Indigenous person from the area.<sup>198</sup> Finally, Part D entitled “Rehabilitation, General Amnesty and Other Matters” included many important components for the CHT’s Indigenous peoples, including the provision by the government of “two acres of land to each landless family”;<sup>199</sup> the creation of a Commission made up of majority Indigenous members who have the authority—with no right to appeal—of cancelling the ownership of lands that have been so far illegally occupied;<sup>200</sup> the granting of scholarships to Indigenous youth by the government so that they can partake equally in the national educational system;<sup>201</sup> the maintenance of the separate cultures and traditions of the CHT Indigenous peoples;<sup>202</sup> guaranteed amnesty for those PCJSS members who would give up their arms within the following 45 days;<sup>203</sup>

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<sup>194</sup> Ibid., sec. B(3).

<sup>195</sup> “Chittagong Hill Tracts Peace Accord (CHT),” sec. B(3), accessed July 18, 2016, <https://peaceaccords.nd.edu/accord/chittagong-hill-tracts-peace-accord-cht>.

<sup>196</sup> Ibid., sec. B(34).

<sup>197</sup> Ibid.

<sup>198</sup> Ibid., sec. C(3).

<sup>199</sup> Ibid., sec. D(3).

<sup>200</sup> Ibid., sec. D(4).

<sup>201</sup> “Chittagong Hill Tracts Peace Accord (CHT),” sec. D(10).

<sup>202</sup> Ibid., sec. D(11).

<sup>203</sup> Ibid., sec. D(14).

and finally, the withdrawal of the military from the CHT aside from a few designated permanent military outposts.<sup>204</sup> The Chittagong Hill Tracts Peace Accord was signed in the Bengali language in Dhaka, Bangladesh on December 2, 1997, by Jyotirindra Bodhipriya Larma, the President of the PCJSS, and by Abul Hasanat Abdullah, on behalf of the Bangladesh government.<sup>205</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>206</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>207</sup>

The Awami League, which was in power during the signing of the accord in 1997, continued to lead the government for another four years during which time some initiatives were taken to honor the agreed-upon provisions of the accord.<sup>208</sup> The international image of the Bangladesh government had greatly benefited from its commitment to the peace accord, and Prime Minister Sheikh Hasina even won the UNESCO Peace Prize in 1999 for her role in the negotiations.<sup>209</sup> But when the BNP took power again in 2001 through 2006, documented human rights violations in the CHT once

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<sup>204</sup> Ibid., sec. D(17).

<sup>205</sup> “Chittagong Hill Tracts Peace Accord (CHT).”

<sup>206</sup> E/C.19/2011/6, para. 19.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid., para. 20.

<sup>209</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 471.



again began to rise.<sup>210</sup> Kidnappings and extortion by local gangs exacerbated tensions, as these crimes were committed on both sides of the conflict.<sup>211</sup> In 2007 through 2008, a state of emergency was declared due to increasing political tensions;<sup>212</sup> Secretary-General Ban Ki-moon finally sent a high-level panel to report on whether the upcoming elections were in fact free and fair.<sup>213</sup> Finally, the Grand Alliance government was voted into power, led by the Awami League, in late 2008.<sup>214</sup> Their manifesto included the following: “The 1997 Chittagong Hill Tracts Peace Accord will be fully implemented. More efforts will be directed toward the development of underdeveloped tribal areas, and special programmes on priority basis will be taken to secure their rights and to preserve their language, literature culture and unique lifestyles.”<sup>215</sup>

However, almost all external sources point to the fact that this has not yet occurred, despite campaign promises. 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>216</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>217</sup> the accord and urged the Bangladesh government to “intensify its

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<sup>210</sup> E/C.19/2011/6, para. 20.

<sup>211</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 472.

<sup>212</sup> E/C.19/2011/6, para. 20.

<sup>213</sup> “UN News - Ban Welcomes Lifting of Bangladesh’s State of Emergency ahead of Polls,” *UN News Centre*, December 17, 2008, <http://www.un.org/apps/news/story.asp?NewsID=29340#.V6ULn9ArLVo>.

<sup>214</sup> E/C.19/2011/6, para. 21.

<sup>215</sup> E/C.19/2011/6, para. 21.

<sup>216</sup> A/55/280/Add.2, para. 73.

<sup>217</sup> CERD/C/304/Add.118 (Geneva, Switzerland: United Nations Committee on the Elimination of Racial Discrimination, April 27, 2001), para. 10.

efforts in this regard.”<sup>218</sup> While the Bangladesh National Report submitted to the United Nations Human Rights Council Working Group on the Universal Periodic Review in 2009 acknowledged tribal groups only to the extent that they “enjoy special quota in government recruitment”<sup>219</sup> and in universities, and that there are specialized ministries working on issues related to the CHT, both the Compilation of UN Information Report and the Stakeholder Submissions Report submitted to the Working Group for the same UPR cycle had criticisms of the government for its continued marginalization and targeted violence of Indigenous peoples in this region.<sup>220,221</sup> In reference to the implementation of the 1997 peace accord provisions, the Compilation of UN Information Report cited the Committee on the Rights of the Child as being “deeply concerned about the situation of children of the Chittagong Hill Tracts ... and the lack of respect for their rights, including the rights to food, health care, education, survival and development, and to enjoy their own culture.”<sup>222</sup> These concerns echoed those made in the 2006 UNICEF report “Excluded and Invisible: The State of the World’s Children” about the denial of basic rights under the Convention on the Rights of the Child to Indigenous children in Bangladesh.<sup>223</sup> The CERD noted in this same Compilation Report as part of the 2009 Universal Periodic Review that there were substantiated reports of ongoing human rights violations by the Bangladesh military against the CHT Indigenous population, including

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<sup>218</sup> Ibid.

<sup>219</sup> A/HRC/WG.6/4/BGD/1, Universal Periodic Review (Geneva, Switzerland: United Nations Human Rights Council, Office of the High Commissioner for Human Rights, November 19, 2008), para. 31.

<sup>220</sup> A/HRC/WG.6/4/BGD/2, Universal Periodic Review (Geneva, Switzerland: United Nations Human Rights Council, Office of the High Commissioner for Human Rights, December 12, 2008), para. 39.

<sup>221</sup> A/HRC/WG.6/4/BGD/3, Universal Periodic Review (Geneva, Switzerland: United Nations Human Rights Council, Office of the High Commissioner for Human Rights, November 24, 2008), paras. 46, 47, 49.

<sup>222</sup> A/HRC/WG.6/4/BGD/2, para. 12.

<sup>223</sup> “Excluded and Invisible: The State of the World’s Children 2006” (New York, United States of America: United Nations Children’s Fund, 2005), 25.

“arrests and attacks against Indigenous activists, political leaders, and communities by the security forces ... or attacks against these communities by settlers with the acquiescence of security forces.”<sup>224</sup> All of these human rights abuses violate the terms of the accord as agreed twelve years prior.

By 2009, Bangladesh had already formally agreed to many core human rights treaties that its armed forces were also violating through the aforementioned acts, including accession to the Convention on the Elimination of All Forms of Racial Discrimination in 1979; accession to the Convention on the Elimination of all Forms of Discrimination Against Women in 1984; ratification of the Convention on the Rights of the Child in 1990; accession to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 1998; accession to the International Covenant on Economic, Social and Culture Rights in 1998; and accession to the International Covenant on Civil and Political Rights in 2000.<sup>225</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>226</sup> Similarly, Bangladesh abstained from the vote on the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

In 2009, the Permanent Forum on Indigenous Issues appointed Mr. Lars-Anders Baer as its Special Rapporteur on the situation in the CHT. In 2011, he published a Study

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<sup>224</sup> “A/HRC/WG.6/4/BGD/2,” para. 17.

<sup>225</sup> “Conventions and Treaties Ratified by Bangladesh,” *United Nations Children’s Fund*, accessed August 5, 2016, <http://www.refworld.org/docid/49465a0c0.html>.

<sup>226</sup> “Ratifications of ILO Conventions: Ratifications for Bangladesh,” *International Labour Organization*, accessed August 5, 2016, [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).

on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997.<sup>227</sup> Baer met with the Bangladesh Minister of Foreign Affairs and the State Minister of the Ministry of Chittagong Hill Tracts Affairs to help inform his report, which found that “thirteen years after the signing of the Accord, it is clear that many critical clauses remain unimplemented or only partially addressed”<sup>228</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>229</sup> While the Special Rapporteur acknowledged the hope that had been raised in 2009 with the Grand Alliance’s manifesto upon taking office, he felt that the reasons for the non-implementation went beyond political disinterest to forthright impunity for military leaders who have not been held accountable for their actions against the CHT’s Indigenous peoples, even at the level of the Bangladesh Supreme Court.<sup>230</sup> The Special Rapporteur found that the Awami League had “little incentive to push for the Accord’s implementation”<sup>231</sup> and the human rights violations experienced by the CHT’s Indigenous peoples in the 1970s and 1980s have continued through to today.<sup>232</sup> At the time of the writing of the report, “military officials attest to the fact that one third of the army is deployed in the region”<sup>233</sup> despite one of the clauses of the 1997 Accord being the withdrawal of all but permanent military outposts in the region and despite the fact that the CHT makes up only one tenth of the total land mass of the country. The Special Rapporteur additionally noted an incident in which the

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<sup>227</sup> E/C.19/2011/6, "Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997 / Submitted by the Special Rapporteur."

<sup>228</sup> Ibid., para. 45.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid., para. 46.

<sup>231</sup> Ibid., para. 47.

<sup>232</sup> Ibid., para. 49.

<sup>233</sup> Ibid., para. 50.

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>234</sup> Despite the fact that the use of the term “upajati” is mandated as per the 1997 peace agreement,<sup>235</sup> this still caused an uproar because “adivasi” is the Bengali equivalent of the term “Indigenous peoples” while “upajati” translates to “sub-nation or sub-ethnic group.”<sup>236-237</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>238</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 people 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

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<sup>234</sup> Ibid., para. 44.

<sup>235</sup> “Chittagong Hill Tracts Peace Accord (CHT),” sec. B(1).

<sup>236</sup> “ Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” 41.

<sup>237</sup> Sanjeeb Drong, In-person, May 13, 2016.

<sup>238</sup> “ Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” 41.

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>239</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 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>240</sup> and “recommended that Bangladesh adopt specific measures to combat discrimination and inequity”<sup>241</sup> against these children. The CRC similarly urged the government to ensure Indigenous children in the CHT are not victims of continued discrimination in their enjoyment of their basic rights.<sup>242</sup> While the Bangladesh government, in their National Report for the 2013 UPR cycle, claimed that 48 of the 72 clauses of the Peace Accord had been fully implemented and the rest are in the process of

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<sup>239</sup> Mangal Kumar Chakma, ed., “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 10th Session on the Said Study* (Dhaka, Bangladesh: Kapaeeng Foundation, 2011).

<sup>240</sup> “A/HRC/WG.6/16/BGD/2,” Universal Periodic Review (Geneva, Switzerland: United Nations Human Rights Council, Office of the High Commissioner for Human Rights, February 8, 2013), para. 70.

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*

being implemented,<sup>243</sup> the Stakeholder’s Report of the same UPR notes that violence perpetrated against the Indigenous peoples of the CHT escalated steadily in 2011/2012.<sup>244</sup> 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>245</sup> Large-scale attacks against Indigenous villages in the CHT were “often fuelled by extremist propaganda and hate speeches”<sup>246</sup> and politicians and police were frequently implicated in their incitement;<sup>247</sup> additionally, there were substantiated stakeholder reports that Indigenous peoples were continuing to lose their lands to Bengali settlers “with law enforcement agencies protecting the settlers.”<sup>248</sup> When the author interviewed the Managing Director of the Chittagong Hill Tracts Foundation, Krishna Chakma, he called the CHT an “open prison”<sup>249</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>250</sup> Chakma describes Bangladesh as “one country, two policies”: the “Chittagong Hill Tracts is, since

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<sup>243</sup> “A/HRC/WG.6/16/BGD/1,” Universal Periodic Review (Geneva, Switzerland: United Nations Human Rights Council, Office of the High Commissioner for Human Rights, February 7, 2013), para. 110.

<sup>244</sup> “A/HRC/WG.6/16/BGD/3,” Universal Periodic Review (Geneva, Switzerland: United Nations Human Rights Council, Office of the High Commissioner for Human Rights, January 29, 2013), para. 66.

<sup>245</sup> *Ibid.*, para. 64.

<sup>246</sup> *Ibid.*, para. 65.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*, para. 66.

<sup>249</sup> Krishna Chakma, Interview, In-person, June 6, 2016.

<sup>250</sup> *Ibid.*

independence, under military rule” and the rest of the country exists under a “so-called democracy.”<sup>251</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>252</sup> Simply put, the Bangladeshi government is still attempting to distinguish itself from the nations that once ruled this territory by establishing the Bengali identity: one ethnic group, homogenously Muslim.<sup>253</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>254</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>255</sup> This alludes to the movement towards institutionalizing Islam as the state religion, as was done with the Eighth Constitutional Amendment under the military

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<sup>251</sup> Ibid.

<sup>252</sup> Chakma, “The Post-Colonial State and Minorities,” July 1, 2010, 282.

<sup>253</sup> Ibid., 289.

<sup>254</sup> Ibid., 287.

<sup>255</sup> Sultana Kamal, Eric Aveybury, and Elsa Stamatopoulou, “Concern Regarding the 15th 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).



ruler General Hossain Mohammad Ershad in 1988, and which was retained during the Fifteenth Constitutional Amendment.<sup>256</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>257</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>258</sup> This furthers jeopardizes Indigenous peoples’ legal status and threatens their roles 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>259</sup> and, in this case, the minorities in question will be subjected to discrimination and violence. At one point, there was even a large visual display depicting Indigenous women carrying flowers in the Hazrat Shahjalal International Airport in Dhaka, with the people in the image identified as Indigenous or “adivasi”;<sup>260</sup> however, this image was removed as of 2011 in alignment with the government’s assertion that there are no “adivasi” in the country.<sup>261</sup>

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<sup>256</sup> Ibid.

<sup>257</sup> “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).

<sup>258</sup> Ibid., Article 23(A).

<sup>259</sup> Kuwoli and Alfredsson, “The Responsibility to Protect Minorities,” 68.

<sup>260</sup> Chakma, interview.

<sup>261</sup> Ibid.

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 newly formed country. Indigenous peoples ascribing to Buddhism, Christianity or traditional religious beliefs simply do not fit into the mold of the Bengali national identity,<sup>262</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 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, aside from within Indigenous activism forums such as the United Nations Permanent Forum on Indigenous Issues<sup>263</sup> and within some United Nations human rights mechanisms. The CHT Commission continues to issue press releases condemning human rights abuses such as murders and the impunity with which Bangladeshi military and settlers commit these crimes, but there simply has not been much traction on this issue beyond a relatively small dedicated group of people.<sup>264</sup> This lack of international attention allows the Bangladeshi government to insist they are implementing the Accord as they simultaneously work to undermine it.

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<sup>262</sup> "Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts," 15.

<sup>263</sup> "Forum Should Consider What Role It Can Play in Support of Indigenous Communities Trying to Resolve Land, Rights Conflicts, Says Chair, Opening Day-Long Debate," *United Nations Meetings Coverage and Press Releases*, May 25, 2011

<sup>264</sup> "The International Chittagong Hill Tracts Commission Expresses Shock at the Death of Five Indigenous Men at the Hands of the Military," Press Release (Dhaka, Bangladesh: Chittagong Hill Tracts Commission, September 12, 2015).

As mentioned earlier, India's support of PCJSS fighters did cause tension between the two governments and it is acknowledged that their involvement played a role in getting the accord eventually signed.<sup>265</sup> This indicates that, even without being formally involved in negotiations, "third countries used as safe havens by insurgents can play an important role just by their action and non-action."<sup>266</sup> In the past, international donor governments and human rights agencies brought pressure to bear on the Bangladeshi government to finally establish the Accord, but this same level of pressure has not been applied in relation to the implementation of the Accord.

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

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

As outlined earlier in this paper, 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 *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>267</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

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<sup>265</sup> Mohsin, *The Chittagong Hill Tracts, Bangladesh*, 115.

<sup>266</sup> Ibid.

<sup>267</sup> 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 University Press, 2016), 24–25.

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>268</sup> In 2008, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people sent a communication to the Bangladeshi 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>269</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>270,271</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 seek asylum abroad.

Other authors argue that the violence experienced by the Indigenous peoples of the CHT rather constitutes a "creeping genocide"<sup>272</sup> or a "slow-motion process of

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<sup>268</sup> Ibid., 25.

<sup>269</sup> "A/HRC/12/34/Add.1" (Geneva, Switzerland: United Nations Human Rights Council, September 18, 2009), para. 9, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-34-Add1.pdf>.

<sup>270</sup> Devashish Roy, Interview, In-Person, May 19, 2016.

<sup>271</sup> Sanjeeb Drong, Interview, In-Person, May 13, 2016.

<sup>272</sup> Levene, "The Chittagong Hill Tracts," 339.

ethnocide.”<sup>273</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>274</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>275</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>276</sup> although not necessarily in that order. While the rapes, looting, murders and even destruction of entire villages never occurred simultaneously in large numbers, they have occurred with enough frequency and over enough time to amount to mass atrocities against this specific population. 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, issued a report entitled *Life is Not Ours*, which stated that “a genocidal process ... threatens the hill people of the Chittagong Hill Tracts.”<sup>277</sup> Their report found that this genocidal process is ultimately the

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<sup>273</sup> Chakma, “The Post-Colonial State and Minorities,” July 1, 2010, 281.

<sup>274</sup> Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, United States of America: Carnegie Endowment for International Peace, Division of International Law, 1944), 79

<sup>275</sup> Ibid.

<sup>276</sup> Levene, “The Chittagong Hill Tracts,” 342.

<sup>277</sup> “‘Life Is Not Ours’: Land and Human Rights in the Chittagong Hill Tracts,” 47.

result of actions taken by the Bangladeshi military, who are agents of the state.<sup>278</sup>

Dr. Tone Bleie, member of the International CHT Commission, stated in an interview with this author that the situation in the CHT could also be considered to “meet the criterias under the Rome Statute of the International Criminal Court ... under Article 7,”<sup>279</sup> which indicates crimes against humanity. The violence currently happening in the CHT then certainly account for one, if not two or three, crimes that would appropriately invoke the Responsibility to Protect.

At the outset of the conflict in the 1970s, the Bangladesh government initially tried to deal with what was an “inherently political and ethnic problem”<sup>280</sup> by militarizing the entire area and by creating economic development programs through the CHT Development Board, established in 1976. However, the economic development programs were still run by the military and only served to concentrate power into the hands of those who already held it, which thereby “amplified prejudice, alienated the CHT people and increased their penury.”<sup>281</sup> Dr. Tone Bleie points out that the human rights agendas of Scandinavian-backed development programming in the CHT have “become substantially less important”<sup>282</sup> over the past ten years. Bleie argues instead that these agendas have been “substituted with a focus informed by a neoliberal agenda, in which economic

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<sup>278</sup> Ibid.

<sup>279</sup> Tone Bleie, Interview, Skype (Internet Video Calling), June 13, 2016.

<sup>280</sup> E/C.19/2011/6, para. 8.

<sup>281</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 469.

<sup>282</sup> Bleie, interview.

development based on private enterprise and public-private partnership is all-important.”<sup>283</sup>

Various United Nations agencies are also currently involved in small-scale alleviations to the conflict, such as the UNDP Local Trust Builder’s Network initiative.<sup>284</sup> This project supports almost 150 local volunteers to promote conflict conciliation by training them in mediation techniques.<sup>285</sup> The Local Trust Builder’s Network was created and is supported by the CHT Development Facility, which was implemented by UNDP with resources provided by the European Union, Sweden, Denmark and Japan.<sup>286</sup> However, this initiative is occurring on an incredibly small scale given the enormity and intricacy of this conflict. Additionally, these trained volunteers are supposed to immediately approach local authorities with any simmering conflicts they detect at the village level;<sup>287</sup> however, this system is predicated on the idea that the Indigenous peoples trust their local authorities and are not being simultaneously oppressed or even violently attacked by them.

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, since the government leaders

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<sup>283</sup> Ibid.

<sup>284</sup> “Empowering People for Peace in the Chittagong Hill Tracts,” *United Nations Development Programme*, accessed August 8, 2016.

<sup>285</sup> Ibid.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

cannot fall back on the excuse that it was a different leader who signed the accord. However, according to interviews with some Indigenous leaders from the CHT, Indigenous peoples are still “fairly marginal actors”<sup>288</sup> to the Bangladeshi political process and that would have to change dramatically in order to implement the accord in any meaningful way and achieve peace through this process.<sup>289</sup>

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 actions 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>290</sup> so the international community

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<sup>288</sup> Roy, interview.

<sup>289</sup> Ibid.

<sup>290</sup> “A/HRC/WG.6/16/BGD/1,” para. 109.



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>291</sup> or simply to monitor the implementation of the Accord,<sup>292</sup> which could fall within the R2P toolkit of diplomatic intervention. The Bangladesh 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>293</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, Managing Director of the Chittagong Hill Tracts Foundation, including the clause of the Accord that mandates de-militarization.<sup>294</sup> Some still believe that sanctions or economic pressure of some kind applied by the World Bank, the Asian Development Bank, UNDP, and foreign governments, would greatly influence the Bangladeshi state to take action on the Accord.<sup>295</sup> However, sanctions against the Bangladeshi government may not currently work effectively as a tactic to force implementation since the government “has a new confidence in dealing even with the most influential donors,”<sup>296</sup> a confidence they did not

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<sup>291</sup> Drong, interview.

<sup>292</sup> Ibid.

<sup>293</sup> Ibid.

<sup>294</sup> Chakma, interview.

<sup>295</sup> Ibid.

<sup>296</sup> Bleie, interview.

possess even a decade ago, and this may make the state less susceptible to economic influence to change their policies.

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.

## **V. 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, this author argues 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 to step in; and a state-controlled narrative that minimizes the violence taking place.

The United Nations Security Council, the only UN body with the power to truly invoke R2P and force other states to intervene,<sup>297</sup> 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 intervene meaningfully or to commit to help 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>298</sup> and any pressure applied from other states may push them to withdraw their much-needed soldiers. Krishna Chakma, Managing Director of the Chittagong Hill Tracts Foundation, suggests this may be due to a lack of natural resources in the region that would make it attractive to international investors in the extractive resource industry.<sup>299</sup> Dr. Tone Bleie 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>300</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>301</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—would there be a chance to seize international attention, since this

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<sup>297</sup> “A/RES/60/1,” para. 139.

<sup>298</sup> “Troop and Police Contributors: Contributions by Country,” *United Nations Peacekeeping*, accessed September 7, 2016, <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>.

<sup>299</sup> Chakma, interview.

<sup>300</sup> Bleie, interview.

<sup>301</sup> *Ibid.*

would indicate that “the political system and development in Bangladesh is something which threatens security and development”<sup>302</sup> internationally.

In an interview between this author and Dr. Edward Luck, former Special Advisor on the Responsibility to Protect to United Nations Secretary-General Ban Ki-moon, Dr. Luck explained that international attention from the press, from NGOs, and from other governments, is more likely to be garnered in a conflict when it is clear that “one side ... seems to be getting beat up by the others and has no recourse other than some sort of assistance.”<sup>303</sup> As mentioned earlier, the Shanti Bahini has fought back against Bengali settlers and the military, even committing some of its own crimes.<sup>304</sup> Certainly, they were in retaliation for what was being done to them by the Bangladeshi government, but Luck argues that these types of situations are “more difficult to resolve if the government perceives, and some of its supporters perceive, that it’s facing an armed rebellion because then the sympathies just are a little different.”<sup>305</sup> Dr. Luck continues by saying that a completely different diplomatic toolkit—and a completely different set of experts—become involved when the conflict is publicized more as a civil war and less as a bipolar situation of “aggressors and victims, perpetrators and the vulnerable.”<sup>306</sup> Unfortunately, the Shanti Bahini has committed its own offensives against Bengali settlers and the military. Even though these occurred out of defensive necessity, and mostly in the past, it is more difficult to frame the conflict as a one-sided atrocity crime when “one portion of

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<sup>302</sup> Ibid.

<sup>303</sup> Edward Luck, Interview, In-person, June 8, 2016.

<sup>304</sup> Jamil and Panday, “The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People,” 469.

<sup>305</sup> Luck, interview.

<sup>306</sup> Ibid.

the population has taken up arms against the government.”<sup>307</sup> 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 oppressive nation-state, victims are quickly re-framed as perpetrators even if they feel 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. For example, one of the only international interventions in the CHT has taken the form of economic development programs funded through international governments and agencies to alleviate poverty in this region. However, these programs entirely ignore the range of civil, political, social and cultural rights being denied the Indigenous peoples of the CHT in order to focus on economic development outcomes. For example, the Chittagong Hill Tracts Development Facility is organized by UNDP with funds primarily from the European Union, Denmark, and USAID. Their activities are executed “in partnership with the Government of Bangladesh.”<sup>308</sup> Since 2003, this Facility has been involved in a variety of activities including improving infrastructure and

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<sup>307</sup> Ibid.

<sup>308</sup> “Factsheet: Promotion of Development and Confidence Building in the Chittagong Hill Tracts” (Chittagong Hill Tracts Development Facility, 2014), 1.

access to health and educational services.<sup>309</sup> However, their main focus remains economic development.<sup>310</sup> Even in response to a recent outbreak of Indigenous-targeted violence, the CHT Development Facility’s rapid response plan involved “livelihood-focused early recovery assistance,”<sup>311</sup> with over 150 households affected by this spate of violence provided with “direct financial support to establish profitable activities and businesses.”<sup>312</sup> These activities—while helping the Bangladeshi government to fulfill the economic rights of the Indigenous peoples of the CHT, such as their right to work<sup>313</sup> and their right to gain an adequate standard of living<sup>314</sup>—are still little more than a partial solution to a deep-rooted political and ethnic conflict that sees a whole range of other rights completely disregarded.

One of the main issues with the way this and other development programs have envisioned the situation in the Chittagong Hill Tracts is that the area is considered a “post-conflict zone.”<sup>315</sup> When framed this way, the donors and agencies involved are released from addressing the civil, political 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-

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<sup>309</sup> “Annual Report 2014: Promotion of Development and Confidence Building in the Chittagong Hill Tracts” (Chittagong Hill Tracts Development Facility, 2014), 2.

<sup>310</sup> “Factsheet: Promotion of Development and Confidence Building in the Chittagong Hill Tracts,” 1–2.

<sup>311</sup> “Annual Report 2014: Promotion of Development and Confidence Building in the Chittagong Hill Tracts,” 9.

<sup>312</sup> *Ibid.*

<sup>313</sup> “International Covenant on Economic, Social and Cultural Rights,” Article 6.

<sup>314</sup> *Ibid.*, 11.

<sup>315</sup> “Chittagong Hill Tracts Development Facility,” *UNDP in Bangladesh*, accessed August 15, 2016, [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).

Anders Baer released his damning report of the oppression of the Indigenous peoples of the CHT at the hands of their government<sup>316</sup>—the ADB only acknowledged a “20-year insurgency” in the CHT in the 1980s and 1990s.<sup>317</sup> Similarly, on its current webpage, the Chittagong Hill Tracts Development Facility describes the CHT as a “post-conflict”<sup>318</sup> area. The overwhelming evidence, however, indicates that the area is nowhere close to being beyond conflict as violence is actively ongoing.<sup>319</sup> By framing the situation on the ground in this way, these agencies permit themselves to effectively ignore the rights still being violated and focus on the relatively easy fix of creating employment schemes or instituting micro-finance plans. Even if there is mounting evidence that human rights violations are taking place here, the involved governments and 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>320</sup> As Amartya Sen writes in *Strategies of Economic Development*, “when interests of groups differ and conflict with one another,”<sup>321</sup> development programming will end up reflecting the aspirations of the more powerful of the two groups.<sup>322</sup> In this case, the majority Bengali government is able to frame the development

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<sup>316</sup> E/C.19/2011/6, “Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997 / Submitted by the Special Rapporteur.”

<sup>317</sup> “Bangladesh Project Brief: Chittagong Hill Tracts Rural Development Project” (Asian Development Bank, South Asia Department, October 2011), 1.

<sup>318</sup> “Chittagong Hill Tracts Development Facility.”

<sup>319</sup> “Pushed to the Edge”; E/C.19/2011/6, para. 19; “Militarization in the Chittagong Hill Tracts, Bangladesh”; A/HRC/WG.6/16/BGD/3

<sup>320</sup> “A/70/999-S/2016/620,” para. 29.

<sup>321</sup> Amartya Sen, “Economic Development - Objectives and Obstacles,” in *Strategies of Economic Development: Readings in the Political Economy of Industrialization*, ed. Kurt Martin (Macmillan Academic and Professional, 1991), 87.

<sup>322</sup> Ibid.

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 peoples for who they are—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 were stopped from being committed. In order for this principle to be applied to Indigenous peoples specifically, it must also fall on the international community to acknowledge exactly who the people are who are victims in this instance. The United Nations Declaration on the Rights of Indigenous Peoples recognizes Indigenous peoples’ right to self-determination and their right to have their Indigenous identity respected. The establishment of UNDRIP was such an accomplishment in the realm of Indigenous rights because it functions at the level of international law. The international community must 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. Therefore, 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. If nation-states are the ones victimizing Indigenous peoples for who they are, then the ability to recognize Indigenous peoples for who they are must shift to another entity—namely, the international community. Perhaps this could be incorporated into the R2P doctrine as the operationalization of the principle morphs over time.

One of the major criticisms of R2P identified in the literature review of this thesis is that “R2P cannot be neatly disassociated from the prior modalities of colonial rule.”<sup>323</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>324</sup> This thesis argues that 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>325</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>326</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

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<sup>323</sup> Mallavarapu, Siddharth, “Colonialism and the Responsibility to Protect,” 319.

<sup>324</sup> *Ibid.*, 320.

<sup>325</sup> Mégret, “Beyond the ‘Salvation’ Paradigm,” 576.

<sup>326</sup> Kuwali and Alfredsson, “The Responsibility to Protect Minorities,” 86.

their own political systems in crisis situations.”<sup>327</sup> This last part—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>328</sup> Dr. 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>329</sup> What is happening in the CHT, states Dr. Bleie, is actually “pivoting around a deep-rooted relationship between most of the political and military elites.”<sup>330</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>331</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

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<sup>327</sup> Mallavarapu, Siddharth, “Colonialism and the Responsibility to Protect,” 319.

<sup>328</sup> Ibid.

<sup>329</sup> Bleie, interview.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid.

ethnicity.”<sup>332</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>333</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 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>334</sup>

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

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

In terms of internationally recognized principles, it is important to keep in mind that “R2P is still a relatively new idea.”<sup>335</sup> Unfortunately, the norm has been put into operation at the same time that it is being developed “conceptually and institutionally and politically”<sup>336</sup> so this has caused “some steps backwards and ... some unsettled areas.”<sup>337</sup> Dr. Edward Luck made the comparison between the literature on R2P and the fields of human rights and humanitarian affairs, both of which certainly took more than a decade to develop deep and thorough literatures, academic discourses and adequate mechanisms

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<sup>332</sup> Ibid.

<sup>333</sup> “A/70/999-S/2016/620,” para. 56.

<sup>334</sup> Mégret, “Beyond the ‘Salvation’ Paradigm,” 581.

<sup>335</sup> Luck, interview.

<sup>336</sup> Ibid.

<sup>337</sup> Ibid.

for operationalization.<sup>338</sup> Luck acknowledges that the majority of the development of R2P has occurred in the “meeting halls of the UN,”<sup>339</sup> which is important for internalizing the normative framework of the principle within the UN system and among Member States, but allows for debate only among the very privileged few who happen to be in those spaces. Luck has stated, however, that R2P and its potential application in mass atrocities faced by Indigenous peoples is one of the many “undertreated and under-addressed”<sup>340</sup> areas that are now beginning to be explored by academics, activists, and others.

One of the issues with the application of the Responsibility to Protect in situations involving mass atrocity crimes is that R2P is stuck in a rubric of state sovereignty, which does not easily allow for its application in conflicts that cross national boundaries. Conflicts involving Indigenous peoples challenge this rubric because Indigenous communities are often spread across arbitrary national borders. In a move that further concerned critics of the nation-state focus of R2P, the September 2015 “Report of the Secretary-General on the United Nations and Conflict Prevention: A Collective Recommitment” emphasized the necessity of gaining the consent of the nation-state where this type of targeted violence is taking place, in order for the international community to step in to prevent a mass atrocity from taking place.<sup>341</sup> It makes little sense to ask the governments committing crimes against their citizens or allowing these crimes to occur if they would allow international intervention, because they will certainly

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<sup>338</sup> Ibid.

<sup>339</sup> Ibid.

<sup>340</sup> Ibid.

<sup>341</sup> “S/2015/730” (New York, United States of America: United Nations Security Council, September 25, 2015), para. 2.

decline. Unfortunately, this means that as long as R2P remains shackled to the primacy of the nation-state, the principle itself will not be able to do much for the most vulnerable, those who are not being consulted on whether the international community is needed to step in and provide protection.

However, this is not all to say that the concept of R2P should be tossed aside because its frame is outdated for the way the world is evolving. It has transformed before and it can transform 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 rebuilding 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. The day before the February 2016 UN General Assembly Thematic Panel Discussion on the Responsibility to Protect, a General Assembly resolution entitled “Responsibility to Protect” drafted by a diverse set of states was dispersed for review.<sup>342</sup> This demonstrates that the concept still has the attention of Member States ten years into its existence. While Member States may continue to argue about R2P’s terms of engagement, there’s a broad sense that a multi-lateral response to mass atrocities is not inappropriate in and of itself.<sup>343</sup> As the former Special Adviser to the Secretary-General on the Responsibility to Protect, Jennifer Welsh, said at this same February 2016 panel discussion, R2P sets expectations and provides a framework for action.<sup>344</sup> However, as with every other international principle, it

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<sup>342</sup> “Journal of the United Nations, Programme of Meetings and Agenda: February 25, 2016” (Journal of the United Nations, February 25, 2016), <http://www.un.org/Docs/journal/En/20160225e.pdf>.

<sup>343</sup> “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.”

<sup>344</sup> “Statement by Jennifer Welsh, Special Adviser to the UN Secretary-General on the Responsibility to Protect” (United Nations, February 26, 2016),

cannot compel action in and of itself.<sup>345</sup> As Welsh stated, “We must not shy away from a principle because it is demanding”;<sup>346</sup> in fact, this should encourage the international community to invest in doing better. This includes ensuring that the Responsibility to Protect “extends beyond when the threat to populations is no longer imminent, and includes holding perpetrators accountable, [...] restoring the peace and preventing the recurrence of violence.”<sup>347</sup>

The future of R2P must see the norm “developed alongside a lot of other agendas and a lot of other priorities.”<sup>348</sup> Operationally, R2P has to be invoked as part of “mixed strategies”<sup>349</sup> in order to remain useful and relevant. Situations that may require this more complex approach include instances of atrocity crimes that encompass “chronic human rights violations or situations such as Indigenous people and cultural relationships.”<sup>350</sup> R2P must also 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>351</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>352</sup> by non-state actors in resolving atrocity crimes. The future of R2P is threatened, however, by the “erosion of the credibility of institutions

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<http://www.un.org/en/preventgenocide/adviser/pdf/PGA%20Event%20RtoP%20at%20Ten%20Welsh.pdf>.

<sup>345</sup> Ibid.

<sup>346</sup> Ibid.

<sup>347</sup> Kuwali and Alfredsson, “The Responsibility to Protect Minorities,” 68.

<sup>348</sup> Luck, interview.

<sup>349</sup> Ibid.

<sup>350</sup> Ibid.

<sup>351</sup> “A/70/999-S/2016/620,” para. 50.

<sup>352</sup> Ibid., para. 52.

such as the United Nations”<sup>353</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>354</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.

## **VI. 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 include allowing the international community to acknowledge Indigenous identities and the rights associated therein, and paying 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.

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

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<sup>353</sup> Ibid., para. 5.

<sup>354</sup> Ibid., para. 63.

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 doing it 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 simply is not yet appropriately formed to address the struggles experienced specifically by Indigenous peoples, including the inherent connection between loss of land, loss of culture, and loss of life. Ultimately, the Responsibility to Protect must remain “flexible enough, adaptable enough, and yet purposeful enough that it will continue to make some difference in peoples’ lives”<sup>355</sup> as it contends with changing geopolitical and geostrategic factors and the contextual nuances that make each R2P application different from the last.

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<sup>355</sup> Luck, interview.



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