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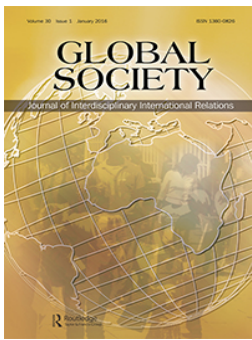
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## Testing Boundaries: Cyclone Nargis in Myanmar and the Scope of R2P

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# Testing Boundaries: Cyclone Nargis in Myanmar and the Scope of R2P

JULIAN JUNK

*On 3 May 2008, Cyclone Nargis hit the shores of Myanmar. The government of Myanmar refused to grant international humanitarian relief efforts access to the devastated regions. This triggered an impactful debate on whether aid should be delivered coercively, and whether this was a case in which the principle of the Responsibility to Protect (R2P) applied. This article traces the evolution of these disputes, as well as their impact on the testing and delineation of the boundaries of R2P. The main impact of the Myanmar debate was a return of R2P to its roots by re-centring the emerging norm on the original four core crimes, excluding the consequences of natural disasters and the delivery of humanitarian aid. Furthermore, in the Myanmar debate, the effectiveness of the R2P frame in international coalition building was brought to its limits, with some actors highlighting the potentially incendiary nature of using this frame. Hence, this article argues that Myanmar proved to be the first test case for demarcating the core of R2P.*

## Introduction

The evolution of international norms is not necessarily a linear process. Rather, their development depends on their acceptance by coalitions of international actors.<sup>1</sup> This acceptance can vary greatly on a case-by-case basis, from widely shared consensus on, to fierce contestation of, the application of a norm.<sup>2</sup> Both consensual application—be it in actual behavioural policy practice or discursive deliberation—and contestation may make a decisive contribution to delineating the boundaries of a norm.<sup>3</sup> While a consensus about application has been the subject of much research, norm contestation has received noticeably less scholarly attention.

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1. See the introduction to this special issue. See also Philipp Rotmann, Gerrit Kurtz and Sarah Brockmeier, “Major Powers and the Contested Evolution of a ‘Responsibility to Protect’”, *Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 355–377.

2. For norm contestation and resistance to norms, see, for instance, Antje Wiener, “Contested Meanings of Norms: A Research Framework”, *Comparative European Politics*, Vol. 5, No. 1 (2007), pp. 1–17.

3. Nicole Deitelhoff, “Scheitert die Norm der Schutzverantwortung? Der Streit um Normbegründung und Normanwendung der R2P”, *Die Friedens-Warte: A Journal of International Peace and Organization*, Vol. 88, Nos. 1–2 (2013), pp. 17–39. In the literature on international norms, scholars tend to focus on notions of disappearing or eroding norms when they look at phenomena of non-application. As such, they do not discuss the potential positive impact that might arise from non-application for the future trajectory of a norm. Diana Panke and Ulrich Petersohn, “Why International Norms Disappear Sometimes”,

This article investigates a case in which contestation prevailed and helped to shape the trajectory of the evolution of a norm: the invocation of the “Responsibility to Protect” (R2P) during the humanitarian crisis that unfolded in Myanmar<sup>4</sup> after a tropical storm hit its shores in 2008 and after the ruling military authorities declined access to international humanitarian aid. This article systematises the arguments of both the supporters and opponents of R2P and traces the dispute’s impact on the future development of the concept.

Two primary disputes stand out in the Myanmar case. First, there was a debate about the scope of the norm, which relates, in essence, to the question of whether the consequences of natural disasters fall under R2P, and to the point at which the withholding of humanitarian aid passes the threshold of a manifest failure of the Myanmar government to protect its own population. Second, arguments pointing at the counterproductiveness of the R2P frame in political debates posed the question of whether the reference to R2P in disputed cases leads to hardened political fronts and serves as a political incendiary, consequently hurting the cause of those advocating R2P. Interestingly, these arguments also served those sceptical of pressuring the regime in Myanmar: by highlighting the incendiary nature of the R2P discourse and by focusing the debate on the contested reading of R2P as including responses to natural disasters (instead of highlighting the military junta’s response to the cyclone as a crime against humanity), the junta could delay the delivery of humanitarian aid and influence the conditions under which this occurred.

The case of Myanmar impacted the debate on R2P in two ways, thus contributing to the understanding of critical junctures of norms of protection investigated in this special issue. First, the case refocused R2P on its original core (i.e., the four core crimes).<sup>5</sup> Second, the case revealed the counterproductiveness of using R2P as a discursive frame to build support for a humanitarian cause.<sup>6</sup> Consequently, in the aftermath of the crisis, the reference to Myanmar was used by those advocating a narrow reading of R2P.

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*European Journal of International Relations*, Vol. 18, No. 4 (2012), pp. 719–742; Elvira Rosert and Sonja Schirmbeck, “Zur Erosion internationaler Normen: Folterverbot und nukleares Tabu in der Diskussion”, *Zeitschrift für Internationale Beziehungen*, Vol. 14, No. 2 (2007), pp. 253–287.

4. The military junta renamed Burma only in 1989. Even though many still use “Burma” (or “Birma”), “Myanmar” has been the name officially recognised by the United Nations since 1989. For clarity, this study refers only to Myanmar.

5. These four core crimes are genocide, war crimes, ethnic cleansing and crimes against humanity. See paragraph 139 of the 2005 World Summit Outcome Document: A/Res/60/1, “World Summit Outcome” (New York: United Nations, 24 October 2005). See also the careful analysis of the World Summit negotiations by Murthy and Kurtz in this issue.

6. Similar arguments have been made by Badescu and Weiss and by Haacke: Cristina G. Badescu and Thomas G. Weiss, “Misrepresenting R2P and Advancing Norms: An Alternative Spiral?”, *International Studies Perspectives*, Vol. 11, No. 4 (2010), pp. 354–374; Jürgen Haacke, “Myanmar, the Responsibility to Protect, and the Need for Practical Assistance”, *Global Responsibility to Protect*, Vol. 1, No. 2 (2009), pp. 156–184. This article contributes to these findings a more fine-grained analysis of the arguments exchanged in the international dispute and describes the impact with greater hindsight. Furthermore, this article is part of a special issue that compares all critical junctures in the evolution of R2P. In addition, this article does not share the characterisation of R2P as “misused”, “misapplied” or “misrepresented” in the case of Myanmar, as Badescu and Weiss claim. Rather, it analyses the arguments of both supporting and contesting actors and views the dispute as formative for advancing an understanding of R2P without attaching normative labels.

This article proceeds in three steps. First, it provides a brief overview of the events of May 2008, when Cyclone Nargis hit the shores of Myanmar. Second, the article describes and systematises the two main disputes related to R2P in this case. Finally, the article analyses the impact of those disputes on the future debates on R2P.

### Cyclone Nargis and the Question of Coercive Aid Delivery

Since the military coup d'état that ended democratic rule in Myanmar in 1962, there have been frequent reports of grave human rights violations against ethnic minorities—like the Karen, Chin and Rohingya peoples—and political dissidents. These include the internal displacement of about a million persons, extrajudicial killings and torture, forced labour, the use of child soldiers and systematic sexual violence.<sup>7</sup> These incidents did not receive sustained international attention until the violent crackdown on peacefully demonstrating Buddhist monks and civilian actors during the Saffron Revolution of 2007.

It was not until the military junta refused to grant international humanitarian aid access to those regions whose shores were devastated by Cyclone Nargis on 3 May 2008 that some international actors began invoking R2P.<sup>8</sup> With that, Myanmar became the first country in Southeast Asia subject to a debate on R2P.<sup>9</sup> The debate on Nargis is the focus of this article. It does not discuss the discrimination and persecution of the Rohingya and Karen, which have attracted greater attention in the last three years and have been targeted by measures of the new mass atrocity prevention agenda of the current United States administration.<sup>10</sup>

In Myanmar, the Irrawaddy delta region was hit hardest by Nargis. The death toll was about 140,000, and the cyclone left 1.5 to 2 million people severely affected.<sup>11</sup> The military authorities, who spoke through a body called the State Peace and Development Council, were neither able nor willing to cope with the unfolding humanitarian crisis. The regime was completely isolated from the outside world and preparing for an important referendum.<sup>12</sup> The latter contributed to an atmosphere of fear—of internal opposition as well as of external pressure, particularly from Western NGOs and international organisations present in the

7. For an overview of the history of repressions by the military junta, see International Coalition for the Responsibility to Protect (ICRtoP), "The Crisis in Burma—Update Report", 2014, available: <<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma>> (accessed 20 March 2014).

8. There were some minor exceptions: some non-governmental organisations (NGOs) like the Fédération Internationale des Droits de l'Homme referred to R2P with regards to the violent crackdown on the Saffron Revolution. But this did not provoke a notable, sustainable international debate.

9. Haacke, *op. cit.*, p. 157.

10. Julian Junk, "The Two-Level Politics of Support: The United States and the Responsibility to Protect", *Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 535–564; Sarah Brockmeier, Gerrit Kurtz and Philipp Rotmann, *Schutz und Verantwortung: Über die US-Außenpolitik zur Verhinderung von Gräueltaten* (Berlin: Heinrich-Böll-Stiftung, 2013).

11. John Holmes, *The Politics of Humanity: The Reality of Relief Aid* (London: Head of Zeus, 2013), p. 189.

12. The referendum should ostensibly pave the way for a transition to democracy, but from the outset it was clear that those democratic aspirations remained a façade with military authorities still in the driver's seat, though in civilian clothing. For an analysis of those political reform processes in Myanmar, see Marco Bünte, "Burma's Transition to Quasi-military Rule: From Rulers to Guardians?", *Armed Forces & Society*, Vol. 40, No. 4 (2014), pp. 742–764. At the time, the regime was heavily criticised for pressing ahead with the referendum despite the fact that those affected by Nargis would be unable to participate (Holmes, *op. cit.*, p. 193).

country. It was only when the authorities realised the scale of the unfolding humanitarian disaster, three days later, that they reluctantly asked for international assistance.<sup>13</sup> But even then, they refused to grant visas to international staff and allow the entrance of foreign humanitarian aid. They seized two air deliveries sent by the World Food Programme and deported a Qatari search-and-rescue team,<sup>14</sup> willing to grant limited access only to organisations from neighbouring states and other Southeast Asian institutions.<sup>15</sup>

International actors, who were already critical of the military junta, increasingly called for immediate access to affected areas.<sup>16</sup> The humanitarian crisis absorbed the attention of the United Nations leadership for about two months, and it resulted in the discussion of four fundamental questions that reverberated well beyond the Myanmar case. First, how can one deal with an isolationist government? Second, what routines can be established to improve coordination between the UN and regional organisations—in this case, the Association of South-east Asian Nations (ASEAN)? Third, can R2P be applied in the aftermath of natural disasters? Fourth, is it possible for R2P to produce the desired results in a region where some view it as a vehicle of Western dominance?<sup>17</sup> This article focuses on debates that relate to the latter two aspects; it traces the disputes that took place over the two months in question and asks how these disputes affected the trajectory of R2P.

The debate on whether Myanmar constituted a case for R2P began early, when then French Foreign Minister Bernard Kouchner stated on 7 May 2008, “We are seeing at the United Nations whether we can’t implement the responsibility to protect, given that food, boats and relief teams are there, and obtain a United Nations’ resolution which authorises the delivery [of aid] and imposes this on the Burmese government”.<sup>18</sup> Kouchner argued that the international community had a responsibility to impose humanitarian relief because the rising death toll was a sign, in R2P language, of the Myanmar authorities’ manifest failure to protect their citizens.<sup>19</sup>

Thus, it was the behaviour of the military junta, rather than the natural disaster per se, that was at the heart of Kouchner’s reasoning. Nevertheless, the debate on

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13. Miki Honda, “Natural Disaster and Humanitarian Assistance in Asia: The Case of Myanmar”, *GIARI Working Paper 2009-E-4* (Tokyo: Global Institute for Asian Regional Integration/Waseda University, 2009), p. 2.

14. Graeme Jenkins and Sebastien Berger, “UN Launches Appeal as Burma Refuses Aid”, *The Telegraph*, 9 May 2008, available: <<http://www.telegraph.co.uk/news/worldnews/asia/burmayanmar/1942422/Myanmar-cyclone-UN-launches-appeal-as-Burma-refuses-aid.html>> (accessed 10 April 2014).

15. Naim Kapucu, “Collaborative Governance in International Disasters: Nargis Cyclone in Myanmar and Sichuan Earthquake in China Cases”, *International Journal of Emergency Management*, Vol. 8, No. 1 (2011), pp. 12–15.

16. Whether there were legal obligations for Myanmar to grant this access is contested among scholars of international law. See, for instance, Craig Allan and Thérèse O’Donnell, “A Call to Alms? Natural Disasters, R2P, Duties of Cooperation and Uncharted Consequences”, *Journal of Conflict & Security Law*, Vol. 17, No. 3 (2012), pp. 337–371.

17. See also Holmes, *op. cit.*, p. 190.

18. Seth Mydans, “Myanmar Faces Pressure to Allow Major Aid Effort”, *The New York Times*, 8 May 2008, available: <<http://www.nytimes.com/2008/05/08/world/asia/08myanmar.html>> (accessed 10 April 2014).

19. Tyra R. Saechao and Sujeet B. Rao, “Aid for Myanmar—Op-Ed”, *The Washington Times*, 30 May 2008, available: <<http://www.washingtontimes.com/news/2008/may/30/aid-for-myanmar/>> (accessed 10 April 2014).

R2P in the Myanmar case increasingly focused on whether natural disasters are part of R2P's triggers for coercive international action. It was, however, highly unspecific regarding operational details and focused instead on the broader scope of R2P as well as on the political consequences of using the R2P frame in a disputed case. The next section analyses these disputed issues, the arguments and the actor coalitions.<sup>20</sup> The two disputes will be analysed by systematising their arguments and proponents and assessing their impact on the evolution of R2P. Sources used for the analysis are official documents, secondary literature and expert interviews.<sup>21</sup>

### The Dispute on the Scope of R2P

Three main arguments about scope can be identified. First, a humanitarian crisis resulting from a natural disaster constitutes a direct case of R2P, if the affected government passes the threshold of manifest failure. Second, the humanitarian consequences of natural disasters should be confronted with determined international political pressure to end the humanitarian crisis, and not with the procedures enshrined in R2P, nor with related rhetoric. Third, the consequences of natural disasters are never a case of R2P because they do not constitute a threat to international peace and security and do not fall under any of the four core crimes; they can be dealt with at the regional level.

#### *Argument 1: Natural Disaster as a Case of R2P*

Proponents of the first argument state that a government withholding aid to parts of its population following a natural disaster manifestly fails in its responsibility to protect its citizens.<sup>22</sup> As such, the subsidiary responsibility of the international community should be invoked, and coercive means are justified.

Thus went the reasoning of Bernard Kouchner in his 7 May 2008 statement. But Kouchner was unspecific about what the invocation of R2P would mean, beyond a United Nations Security Council resolution demanding cooperation from Myanmar.<sup>23</sup> His initially implicit call for forceful intervention was made explicit in an article for *Le Monde* on 19 May,<sup>24</sup> and by statements from Jean-Maurice Ripert, the French ambassador to the UN, who claimed that France "could send

20. For the common framework and terminology of this special issue, see the introduction by Kurtz and Rotmann.

21. The interviews were conducted with diplomats and scholars from May to July 2013 in Washington, DC, Paris and New York, and by phone or Skype. The expert interviews were semi-structured. Most interviewees spoke only on the condition of anonymity. Therefore, there are only a few direct references to these interviews in this article. To assess the impact of the Myanmar case on the evolution of R2P, this article analyses the two sessions of the General Assembly that followed the events in Myanmar (i.e., the 63rd and 64th sessions) to check whether and to what extent the link between Myanmar and R2P was made and how this link was interpreted.

22. On the exact compromise language of the World Summit Outcome Document, see Murthy and Kurtz in this issue.

23. Doug Bandow, "Rangoon's Renaissance: Commentary", Cato Institute, 7 May 2009, available: <<http://www.cato.org/publications/commentary/rangoons-renaissance>> (accessed 10 April 2014).

24. Bernard Kouchner, "Birmanie: morale de l'extrême urgence", *Le Monde*, 19 May 2008, available: <[http://www.lemonde.fr/asia-pacifique/article/2008/05/19/birmanie-morale-de-l-extreme-urgence-par-bernard-kouchner\\_1046630\\_3216.html](http://www.lemonde.fr/asia-pacifique/article/2008/05/19/birmanie-morale-de-l-extreme-urgence-par-bernard-kouchner_1046630_3216.html)> (accessed 10 April 2014).

men" to Myanmar, as the French navy was soon to be present off of its coast, and that France historically knew when to apply R2P.<sup>25</sup> This reference relates to the French narrative that the country's aid workers and philosophers set the groundwork for R2P with the term *droit d'ingérence humanitaire*, loosely translated into "humanitarian interventions". Kouchner is credited as one of the founding fathers of this concept in the French discourse, in which a forceful response to a humanitarian crisis seems to be a given once the concept is invoked.<sup>26</sup>

Accordingly, Kouchner and Ripert stood their ground when demanding a forceful international response, even if the coalition in support of this argument remained quite limited in number; even French President Nicolas Sarkozy did not publicly back it.<sup>27</sup> Given these circumstances of realpolitik, the French ended up asking only that John Holmes, then UN under-secretary-general for humanitarian affairs and emergency relief coordinator, brief the Security Council and proposed a presidential statement calling on Myanmar to allow unhindered humanitarian access. The former request was granted; the presidential statement was rejected.<sup>28</sup>

While this weak French follow-up to Kouchner and Ripert's demands is indicative of their arguments' lack of international traction, there were some voices that backed the forceful proposal. For instance, Lloyd Axworthy, the former Canadian foreign minister, said in response to Kouchner that "there is no moral difference between an innocent person being killed by machete or AK-47, or starving to death, or dying in a cholera pandemic that could be avoided by proper international responses".<sup>29</sup> Thus, according to his reading, the global community should exercise its responsibility to protect. Ramesh Thakur, a former member of the International Commission on Intervention and State Sovereignty (ICISS), which wrote the report that coined the term "responsibility to protect", similarly added that the ICISS report included "overwhelming natural or environmental catastrophes" as one of the triggers of R2P, should a state rebuff aid or prove unwilling or unable to cope with the disaster.<sup>30</sup> Hence, according to this reading, the whole story of how R2P came to be, and not just the outcome document, should be considered in arguing for the inclusion of natural disasters.

Thakur's quote is more specific about the threshold at which withholding aid constitutes a case of R2P. Some argued that Myanmar passed this threshold. ICISS Co-Chair Gareth Evans, for instance, said, "When a government default is

25. Haacke, *op. cit.*, p. 164.

26. Interview with Daniel Vosgien, French Foreign Ministry, French Focal Point for R2P, 28 June 2013, Paris. See also Mely Caballero-Anthony and Belinda Chng, "Cyclones and Humanitarian Crises: Pushing the Limits of R2P in Southeast Asia", *Global Responsibility to Protect*, Vol. 1, No. 2 (2009), p. 140; Sarah Brockmeier, Gerrit Kurtz and Julian Junk, "Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect", *Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 429–460.

27. Jean-Marc Châtaigner from the French Foreign Ministry pointed this out during an interview in Paris on 28 June 2013, and he added that this was a Kouchner cause without broader backing from the French political elite, the Quai d'Orsay and the French public.

28. Caballero-Anthony and Chng, *op. cit.*, p. 141.

29. Lloyd Axworthy, "International Community Has a Responsibility to Protect Myanmar", *The Edmonton Journal*, 13 May 2008, available: <<http://www.canada.com/story.html?id=6056af9d-43eb-4575-81b3-9235750e3214>> (accessed 10 April 2014).

30. Ramesh Thakur, "Crisis and Response", *Yale Global Online*, 19 May 2008, available: <<http://yaleglobal.yale.edu/content/crisis-and-response-%E2%80%93-part-i>> (accessed 10 April 2014). Also quoted in W. Andy Knight and Vasselin Popovski, "Putting People Ahead of Protocol", *The Edmonton Journal*, 4 June 2008, available: <<http://www.canada.com/edmontonjournal/news/ideas/story.html?id=0f041843-446d-4fce-b650-b3c904487a93>> (accessed 10 April 2014).



as grave as the course on which the Burmese generals now seem to be set, there is at least a prima facie case to answer for their intransigence being a crime against humanity—of a kind which would attract the responsibility to protect principle”.<sup>31</sup> But the academic debate about the validity of this threshold argument remained controversial. While some argued that the government of Myanmar fell short of the threshold,<sup>32</sup> others concluded that even though the threshold might have been passed, a chronological sequencing of the instruments of R2P from diplomatic to military means, itself a controversial assumption,<sup>33</sup> was not followed.<sup>34</sup>

### *Argument 2: Non-Application of R2P, But Forceful International Action*

After the initial attention received by the first argument, the international debate soon focused on arguments that avoided using R2P language but are nevertheless relevant to the broader debate on the scope of norms of protection that is outlined in the introduction to this special issue. The second argument went like this: a government that withholds aid to parts of its population in the aftermath of a natural disaster might not meet its responsibility to protect its own citizens, but the subsidiary responsibility of the international community cannot be invoked because the aftermath of natural disasters goes beyond the four core crimes covered by R2P. Nevertheless, the humanitarian disaster should be an international concern that demands determined international pressure to allow the delivery of humanitarian aid to those in need.

The legal reasoning behind these arguments was as follows: any decision within the UN system to act coercively needs to be based on a formal Security Council resolution. As will be described later in this article, even a narrow reading of R2P often hits a contested path in the Security Council, but a wider reading would complement the need for protecting those at risk with the wider theme of whether there is a threat to regional and/or international peace and security.<sup>35</sup> This is not without precedent. In the case of Rwanda in 1994, the Security Council based its decision to deploy a temporary multinational force on the reasoning that the “magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region”.<sup>36</sup> In its 2000 resolution, in which the Security Council affirmed its commitment to the protection of civilians in armed conflict, the council specifically emphasises that one of the threats to international security is the hindrance of humanitarian personnel’s access to civilians.<sup>37</sup>

31. Gareth Evans, “Facing Up to Our Responsibilities”, *The Guardian*, 12 May 2008, available: <<http://www.theguardian.com/commentisfree/2008/may/12/facinguptoourresponsibilities>> (accessed 10 April 2014). For similar quotes from other actors, see Knight and Popcski, *op. cit.*

32. Rebecca Barber, “The Responsibility to Protect the Survivors of Natural Disaster: Cyclone Nargis, a Case Study”, *Journal of Conflict & Security Law*, Vol. 14, No. 1 (2009), p. 3.

33. See Tourinho, Stuenkel and Brockmeier in this issue.

34. Ashley McLachlan-Bent and John Langmore, “A Crime against Humanity? Implications and Prospects of the Responsibility to Protect in the Wake of Cyclone Nargis”, *Global Responsibility to Protect*, Vol. 3, No. 1 (2011), p. 37.

35. See, for instance, Luis Peral, “Humanitarian Crisis as a Fresh Justification for International Action in Syria”, ISS—European Union Institute for Security Studies, 20 February 2012, available: <<http://www.iss.europa.eu/de/publikationen/detail/article/humanitarian-crisis-as-a-fresh-justification-for-international-action-in-syria/>> (accessed 10 August 2015).

36. S/Res/929 (New York: United Nations, 22 June 1994).

37. S/Res/1296 (New York: United Nations, 19 April 2000). For more examples, see Peral, *op. cit.*

Most European governments implicitly alluded to those precedents when they made their case for forceful international action. For instance, the British government, through its UN ambassador at the time, John Sawers, stated clearly that R2P did not apply to natural disasters.<sup>38</sup> Then British Foreign Minister David Miliband added, however, that “all instruments of the UN should be available”, including military force,<sup>39</sup> but that diplomatic pressure was the preferred strategy.<sup>40</sup>

The German government, in line with other members and institutions of the European Union,<sup>41</sup> highlighted the need for sustained diplomatic pressure. Although Heidemarie Wieczorek-Zeul, the German minister of development at the time, invoked R2P in the case of Nargis, she appears to be an isolated voice in the German government.<sup>42</sup> German Chancellor Angela Merkel and German Foreign Minister Frank-Walter Steinmeier called for decisive action by the UN, but they did not include references to R2P<sup>43</sup> and remained reluctant to involve Germany any further in Myanmar.<sup>44</sup> In the aftermath of the debate on Nargis, the EU, driven by the Swedish government, called for the criminal persecution of members of the junta—but without any direct reference to R2P.<sup>45</sup>

The US government avoided references to R2P, but was more open to coercive aid delivery.<sup>46</sup> Zalmay Khalilzad, then the US permanent representative to the UN, came close to mentioning R2P when he stated that “a government has responsibility to protect its own people ... since it’s not able to, you would expect the government to welcome assistance from others ... It should be a no-brainer to accept the offer made by the international community, by states, by organizations, by international organizations”.<sup>47</sup> From the perspective of Myanmar authorities, who were wary of any, but in particular Western, foreign influence, it was certainly not a no-brainer, but a rational move. In order to achieve the aim of delivering humanitarian aid, Washington subsequently avoided language that could be

38. Quoted in Thakur, “Crisis and Response”, *op. cit.* See also Brockmeier, Kurtz and Junk, *op. cit.*

39. See Bandow, *op. cit.*

40. Jonathan Marcus, “World Wrestles with Burma Aid Issue”, BBC News, 9 May 2008, available: <<http://news.bbc.co.uk/2/hi/asia-pacific/7392662.stm>> (accessed 10 April 2014). See also Brockmeier, Kurtz and Junk, *op. cit.*

41. High Representative for the Common Foreign and Security Policy Javier Solana, for instance, declared that the international community “should use all possible means to get aid through to victims of Myanmar’s cyclone”, as quoted in Security Council Report (SCR), “Update Report No. 4: Myanmar”, 14 May 2008, available: <<http://www.securitycouncilreport.org/update-report/lookup-c-glKWLMTIsG-b-4130257.php>> (accessed 10 April 2014).

42. *Süddeutsche Zeitung*, “Wieczorek-Zeuk: UN sollen Hilfe koordinieren”, 13 May 2008; *Süddeutsche Zeitung*, “Birmas Junta brüskiert Vereinte Nationen”, 10 May 2008.

43. *Süddeutsche Zeitung*, “Birmas Junta brüskiert Vereinte Nationen”, *op. cit.*

44. As the former German ambassador to the UN highlighted in an interview, Germany was rather focused on its immediate backyard, like the situation in the Balkans. Interview with Thomas Matussek, Berlin, 22 March 2013.

45. See Honda, *op. cit.*, p. 4.

46. Julian Borger and Ian MacKinnon, “Bypass Junta’s Permission for Aid, US and France Urge”, *The Guardian*, 9 May 2008, available: <<http://www.theguardian.com/world/2008/may/09/cyclonenargis.burma>> (accessed 10 April 2014). In general, the US appears to be open to coercive aid delivery in the aftermath of natural disasters, but only if those vulnerabilities are created or strengthened by the government in the affected country. Interview with Gideon Maltz, National Security Staff, Washington, DC, 21 May 2013.

47. Quoted in Haacke, *op. cit.*, p. 164.

perceived as taking advantage of the situation in order to induce regime change in Myanmar.<sup>48</sup>

However, some US officials continued the tactic of rhetorically criminalising Myanmar's behaviour without specifying the legal basis for this criminalisation. Former US Defence Secretary Robert Gates, for instance, condemned Myanmar's behaviour as "criminal neglect".<sup>49</sup> Similar to the US government's response was that of Australia: "Forget politics", said then Prime Minister Kevin Rudd, "forget the military dictatorship. Let's just get aid and assistance through to people who are suffering and dying as we speak, through a lack of support on the ground".<sup>50</sup> Again, no reference to R2P was made; instead, a call to forceful international action.

One central reason for the avoidance of R2P language in these cases was fear of its counterproductive consequences. This will be described in greater detail in the next section, for it sparked a separate debate. However, the main argument underlying this counterproductiveness argument is that, as outlined above, Myanmar is not an R2P case, a position that has been widely taken by influential scholars and advocates.<sup>51</sup>

### *Argument 3: Non-Application of R2P, But a Regional Concern*

While most Western governments argued for international pressure but not for the invocation of R2P, Asian voices were more sceptical of involving international bodies like the UN Security Council and argued for a regional response instead. According to this logic, there is a local and regional responsibility to act, and there is no room for Western-dominated, sabre-rattling responses. R2P references were directly rejected. The ASEAN, for instance, voiced scepticism about Western aid delivery and emphasised regional responsibility (not to protect, but to discuss access for humanitarian help).<sup>52</sup> Myanmar seemed receptive to accepting aid workers from ASEAN nations.<sup>53</sup>

Similarly, China, Russia and South Africa claimed that Myanmar did not pose a threat to international peace and security. Therefore, it was not a concern of the Security Council, but a regional matter.<sup>54</sup> These countries rejected Kouchner's

48. *Ibid.*, p. 169. Comments by former First Lady Laura Bush initially gave the impression of an ongoing regime change agenda, as Haacke points out.

49. Allan and O'Donnell, *op. cit.*, p. 370.

50. Quoted in Haacke, *op. cit.*, p. 164.

51. Marcus, *op. cit.*; UQ News, "New UQ Centre Gives Key Advice on Burmese and International Response to Cyclone—UQ News", The University of Queensland, 23 May 2008, available: <<http://www.uq.edu.au/news/article/2008/05/new-uq-centre-gives-key-advice-burmese-and-international-response-cyclone>> (accessed 20 March 2014).

52. For an institutional analysis of the ASEAN response, see Julia Santiago Amador III, "Community Building at the Time of Nargis: The ASEAN Response", *Journal of Current Southeast Asian Affairs*, Vol. 28, No. 4 (2009), pp. 3–22.

53. Michael Moran, "Two Tragedies, Two Responses: Inhumane Reaction by Regime in Myanmar", The Council on Foreign Relations, 25 May 2008, available: <<http://www.cfr.org/burmyanmar/two-tragedies-two-responses-inhumane-reaction-regime-myanmar/p16340>> (accessed 10 April 2014). See also Caballero-Anthony and Chng, *op. cit.*; Kapucu, *op. cit.*, pp. 12–15.

54. Charles E. Ziegler, "Contesting the Responsibility to Protect", *International Studies Perspectives* (2014), doi: 10.1111/insp.12085, p. 9. See also Donald Steinberg, "Responsibility to Protect: Coming of Age?", *Global Responsibility to Protect*, Vol. 1 (2009), p. 437.

reference to R2P<sup>55</sup> and viewed it as an attempt to expand the scope of the norm.<sup>56</sup> In addition, there was deep scepticism about Western countries' selective use of R2P and, in particular, of its coercive means. Indonesia, on the council at the time and generally supportive of R2P, was deeply sceptical of invoking R2P in the Myanmar case and was in favour of a regional response.<sup>57</sup> Similar were the positions of Thailand, Singapore,<sup>58</sup> Vietnam<sup>59</sup> and South Africa.<sup>60</sup> India provided help early on but deliberately took a low-key approach to it.<sup>61</sup>

For China, Myanmar represented an important shift—not with regard to R2P, but because China publicly criticised Myanmar for the first time<sup>62</sup> and even facilitated international diplomatic good offices. This shift had already started during the Saffron Revolution but intensified with the events following Nargis.<sup>63</sup> China was deeply critical of what it perceived as French belligerence in the case of Nargis—exemplified when the Chinese representative to the Security Council drew comparisons between Myanmar's reaction to Nargis and the French government's response to the 2003 heatwave that, by some estimates, killed 11,000 French citizens, more than any previous heatwave.<sup>64</sup> In general, China preferred a regional, diplomatic approach. It was strictly against neither an international diplomatic interference in Myanmar,<sup>65</sup> nor R2P—but it was strictly against the notion that R2P applies in the case of failed responses to natural disasters.<sup>66</sup> China emphasised that the UN and regional organisations have other processes and means for coordinating the delivery of humanitarian aid.<sup>67</sup>

In sum, the analysis of this first dispute has revealed the dominance of those arguing that the Myanmar case does not fall within the scope of R2P. The

55. Roberta Cohen, "The Burma Cyclone and the Responsibility to Protect", Speech at Congressional Briefing on Security for a New Century, Brookings, 21 July 2008, available: <<http://www.brookings.edu/research/speeches/2008/07/21-myanmar-cohen>> (accessed 10 April 2014).

56. SCR, *op. cit.*

57. *Ibid.*, p. 3; Alex J. Bellamy and Sara E. Davies, "The Responsibility to Protect in the Asia-Pacific Region", *Security Dialogue*, Vol. 40, No. 6 (2009), pp. 559–560.

58. Bellamy and Davies, *op. cit.*, p. 564.

59. Honda, *op. cit.*, p. 6.

60. Festus Aboagye, "South Africa and R2P: More State Sovereignty and Regime Security than Human Security?", in HSF, ISS, KAS and SAIIA, *The Responsibility to Protect: From Evasive to Reluctant Action? The Role of Global Middle Powers* (Johannesburg: Hanns Seidel Foundation [HSS], Institute for Security Studies [ISS], Konrad-Adenauer-Stiftung [KAS], South African Institute of International Affairs [SAIIA], 2012), p. 33.

61. Madhan Mohan Jaganathan and Gerrit Kurtz, "Singing the Tune of Sovereignty? India and the Responsibility to Protect", *Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 461–487. For a discussion of Indian and Chinese policies towards Myanmar and how different perceptions of R2P contributed to this, see Alain Guilloux, "Myanmar: Analyzing Problems of Transition and Intervention", *Contemporary Politics*, Vol. 16, No. 4 (2010), pp. 383–401.

62. Tiewa Liu, Haibin Zhang, Ricardo Soares de Oliveira and Yi Zhang, "Debates in China about the Responsibility to Protect as a Developing International Norm: A General Assessment", *Journal of Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 403–427.

63. Sarah Teitt, "Assessing Polemics, Principles and Practices: China and the Responsibility to Protect", *Global Responsibility to Protect*, Vol. 1, No. 2 (2009), pp. 208–236.

64. Caballero-Anthony and Chng, *op. cit.*, p. 141.

65. Bellamy and Davies, *op. cit.*, p. 557.

66. R2RAsiaPacific, "Cyclone Nargis and the Responsibility to Protect: Myanmar/Burma Briefing No. 2", Asia-Pacific Centre for the Responsibility to Protect, 16 May 2008, available: <<http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=539>> (accessed 10 April 2014).

67. *Ibid.*, p. 9.

reasons for their stance were twofold: first, a rather normative objection based on a different legal reading of R2P; and second, a more interest-based objection based on a preference for either non-involvement or for leaving the issue to regional actors. These two reasons were sometimes interwoven (e.g., the statements of the Chinese officials), and shifting the debate from “crimes against humanity” towards “natural disaster response” was certainly helpful in that framing contest.<sup>68</sup> A similar pattern emerges when investigating the second dispute. But first, we will analyse the impact of the dispute on scope.

### Impact of the Dispute on Scope

The impact assessment reveals that once the link between R2P and Myanmar was made, it was used to highlight the affirmed focus on the four core crimes as stated in the 2005 World Summit Outcome Document. Representative<sup>69</sup> of this focus are two quotes from UN General Assembly-level records. As a summary of debates in the International Law Commission shows, most states accepted that R2P, to the extent that it justified intervention, did not extend to intervention “in the event of disasters”, for the idea of intervention could be abused by powerful states “for their own purposes ... Mention had been made of Myanmar as a model to be avoided”.<sup>70</sup> According to further statements, R2P should not be invoked “if a government fails to meet its obligation to protect its people in the event of a natural disaster”, as in the Myanmar case, where “there were other requirements under international humanitarian law that imposed the duty on the Government to care for its people, and there had been agreement to put pressure on the Government to do so”.<sup>71</sup> Hence, Cyclone Nargis was used primarily as a frame that highlighted the incorrect invocation of R2P.

This interpretation of the case seemed to be set in stone, until recently, when the issue of coercive delivery of humanitarian aid was discussed again with regards to Syria,<sup>72</sup> even with reference to Myanmar.<sup>73</sup> Although the nature of the humanitarian tragedy differs markedly between the two cases (the case of Syria involves armed conflict with “starvation of civilians as a method of combat”,<sup>74</sup> not a natural disaster), political repression plays a crucial role in both

68. Thanks to one anonymous reviewer for suggesting that this point be highlighted.

69. For other similar quotes, see Official Record of Sixty-third Session of the General Assembly, 99th Plenary Meeting on 24 July 2009 (document: A/63/PV.99); Summary Record of the 21st Meeting of the Sixth Committee of the General Assembly on 22 December 2009 (document: A/C.6/64/SR.21); Tenth Session of the Human Rights Council with the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, 5 March 2009 (document: A/HRC/10/13/Add.1).

70. See the debate on the protection of persons in the event of disasters at the 62nd session of the International Law Commission on 1 July 2010, in which the rapporteur, Stephen Vasciannie from Jamaica, summarised parts of the debate (document: A/CN.4/SR.3057, p. 7).

71. See the Parliamentary Hearing at the United Nations on 20–21 November 2008 as quoted as a summary of the debate in the General Assembly document A/63/729 of 20 February 2009, p. 6.

72. Danny Postel and Nader Hashemi, “Use Force to Save Starving Syrians”, *The New York Times*, 11 February 2014, p. A27. Interviews in New York at the UN also revealed that those arguments exist, though not yet with high-level public support and operational planning.

73. Xing Qu, “The UN Charter, the Responsibility to Protect, and the Syria Issue”, *China International Studies*, Vol. 33 (March/April 2012).

74. S/Res/2139 (New York: United Nations, 22 February 2014). See also Aron Lund, “The Failure to Stop Starvation Tactics in Syria”, Carnegie Endowment for International Peace, 31 March 2014, available: <<http://carnegieendowment.org/syriaincrisis/?fa=55172>> (accessed 17 August 2015).

instances, and the legal arguments for coercive delivery of aid and for the counter-productive effects of the R2P frame are remarkably similar. Peral, for instance, argues that the direct invocation of R2P might politicise the debate to an extent that it impedes any international agreement on pressuring the Syrian government. Nevertheless, the population under threat should be subject to norms of protection. Therefore, he advocates “the customary principle of providing basic needs to deprived populations, whatever the causes of such deprivation”, and by doing so, one would “avoid invoking crimes for which the regime might be held responsible”, which should then be subject to future investigations.<sup>75</sup> Thus, the debate on the scope of the norms of protection, even if only partially related to R2P, continues.

An analysis of the UN documents on the organisation’s public debates in the aftermath of Myanmar, however, reveals no quotes that followed up on the arguments defending the invocation of R2P in this particular case and, more generally, in the case of natural disasters. A reason for this might be that the battle to define the lowest global common denominator of the scope of R2P had been fought before. As referenced in the aforementioned Thakur quote,<sup>76</sup> the original ICISS report included the direct consequences of natural or environmental catastrophes as one of the triggers of R2P, but subsequent documents—the World Summit Outcome Document in particular—no longer made this reference. This was a conscious decision, as revealed by Murthy and Kurtz’s careful assessment of the World Summit deliberations in this issue. Obviously, most of the actors cited in this article as being sceptical of extending the scope had similar reservations before.<sup>77</sup> References to Myanmar gave them the chance to reiterate this perspective and to make sure that the 2005 compromise on the scope of R2P, with its focus on conflict-related core crimes, remains the dominant reading of R2P.

### **The Dispute on the Expediency of the R2P Frame**

The dispute on the scope of R2P dominated the debate and, as shown, was itself dominated by those who were sceptical of invoking R2P in the Myanmar case. There was a related dispute on the politicising effects of R2P. This dispute can be divided into two camps: the first is mindful of the negative political consequences of invoking R2P; the second highlights its positive effects. The following analysis reveals that the former dominated the dispute.

#### *Argument 1: Counterproductiveness of the R2P Frame*

Those who believe the R2P frame is counterproductive in the given political circumstances reason that by invoking R2P, debates on aid delivery become politicised and overshadowed by ongoing, highly principled disputes about military interventions and sovereignty. This would hurt not only the aim of helping those in need, but also the international acceptance of R2P.

John Holmes said he was sceptical that an invasion “would be helpful to the people we are actually trying to help”.<sup>78</sup> He viewed the R2P discussion and

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75. Peral, *op. cit.*

76. Thakur, “Crisis and Response”, *op. cit.*

77. Interview with an anonymous source close to the UN.

78. Bandow, *op. cit.*

coercive measures for delivering seemingly apolitical humanitarian aid as unnecessarily confrontational and as potentially undermining the UN's main argument in negotiations with the military regime.<sup>79</sup> Similarly, British and German diplomats involved in negotiations in New York pointed out the non-coercive, neutral nature of humanitarian aid.<sup>80</sup> Douglas Alexander, then British cabinet minister for international development, rejected any public debate about R2P in this context as incendiary.<sup>81</sup> In addition, then German ambassador to the UN Thomas Matussek emphasised that the German government viewed the French rhetorical escalation as deeply counterproductive to the aim of helping civilians: "This delayed the delivery of humanitarian aid by several weeks".<sup>82</sup>

Because the United States was already overstretched militarily in Afghanistan and Iraq, government officials tried to focus on the delivery of humanitarian aid by diplomatic pressure and not by coercive means.<sup>83</sup> Like the British, the US did not invoke R2P to avoid a political escalation. "It is not a matter of politics," said then US Secretary of State Condoleezza Rice. "This is a humanitarian crisis."<sup>84</sup>

In general, as the Security Council Report stated, "France's attempt to invoke [R2P] to put pressure on the Myanmar government seems to have strengthened opposition to the Council acting in this way".<sup>85</sup> For instance, Liu Zhenmin, then Chinese ambassador to the UN, demanded the creation of "favorable conditions for the humanitarian relief in Myanmar without politicizing this issue".<sup>86</sup> Indonesia shared the view that invoking R2P would not help those in need and would undermine the delivery of humanitarian aid.<sup>87</sup> Thakur and Evans made similar arguments and warned that invoking R2P in this case could dramatically undercut the international consensus on its use<sup>88</sup>—a consensus that was fragile even before the Myanmar crisis.<sup>89</sup>

### *Argument 2: Expediency of the R2P Frame*

The aforementioned argument is countered by a more positive view of R2P framing. According to this counterargument, the invocation of R2P and the accompanying possibility of a Western-led military intervention politicised debates on aid delivery to such an extent that the military regime felt pressured to allow access to international aid. But this reading of the expediency of the R2P frame for the cause of those who advocate the delivery of international humanitarian aid and, ultimately, for those in need of this aid appears to be an academic debate at the margins. Haacke, for instance, claimed that invoking R2P "played an important part in addressing the crisis more effectively, namely as a rhetorical device. From

79. Thakur, "Crisis and Response", *op. cit.*

80. Brockmeier, Kurtz and Junk, *op. cit.*

81. Thakur, "Crisis and Response", *op. cit.*

82. Interview with Thomas Matussek, Berlin, 22 March 2013.

83. Thakur, "Crisis and Response", *op. cit.*

84. Mydans, *op. cit.*

85. SCR, *op. cit.*

86. Zhenmin Liu, "Remarks at the Meeting on the Launching of the UN Flash Appeal in the Wake of the Cyclone Nargis in Myanmar by OCHA", 9 May 2008, available: <<http://www.china-un.org/eng/hyyfy/t451098.htm>> (accessed 14 October 2015).

87. Bellamy and Davies, *op. cit.*, p. 560.

88. Thakur, "Crisis and Response", *op. cit.*; Evans, *op. cit.*

89. Ramesh Thakur, "Operationalising the 'Responsibility to Protect'", *The Hindu*, 15 February 2008.

a Western perspective, reference to [R2P] increased the political pressure on [the military junta] to become more responsive to international concerns” and “proved crucial in propelling ASEAN into assuming the role of facilitative”.<sup>90</sup> By and large, however, the counterproductiveness argument dominated the discourse.

### Impact of the Counterproductiveness Dispute

Analysing the General Assembly documents reveals no clear evidence that the failed attempt to invoke R2P in the Myanmar case led to a more cautious use in subsequent cases (see the other case studies in this special issue, e.g., the Russian–Georgian war, the crises in Sri Lanka and Libya). Hence, a long-lasting impact of the second dispute (i.e., R2P as an incendiary frame) seems to be non-existent. However, as demonstrated by the case of Kenya in another study in this issue, the similar concern that the emotionalisation of a situation by raising the R2P flag can have negative consequences is frequently voiced.<sup>91</sup> In addition, interviews with American<sup>92</sup> and European<sup>93</sup> diplomats reveal that the events in Myanmar and Kenya in 2008 contributed to bringing the strategic dimension of using the R2P frame into the limelight. Thomas Matussek, the former German UN ambassador, put it most pointedly: “We Germans learned from the events in Myanmar: if we want to prevent those humanitarian atrocities, we should, under certain circumstances, avoid the label R2P ... Each time, when the US argued in the direction of R2P, the usual R2P sceptics of G77, China, India and Russia lined up”.<sup>94</sup>

Indeed, some Chinese scholars still refer to the Myanmar case to highlight that threatening with R2P and coercive measures is unhelpful and should be avoided in similar instances, like in Syria.<sup>95</sup> Although there were hardly any direct statements made during UN debates that reiterated the counterproductiveness argument, there is evidence for a more careful use of the R2P frame after the events in Myanmar. This is not to say there have been no instances of the R2P flag being prominently raised (see Libya). But Western diplomats in particular seem more cautious about invoking R2P since then.

### Concluding Remarks

The analysis of the main disputed issues in the case of Myanmar illustrates that two arguments were dominant, in the sense that they were backed by a large and powerful coalition of actors. According to these arguments, the invocation of R2P in the Myanmar case was neither justified (natural disasters do not fall

90. Haacke, *op. cit.*, pp. 169–174. For details on the media pressure, in particular of images of devastation, on Western governments, see Gabi Schlag, “A Buddha to Protect: Nargis and the Visual Politics of Security”, in Monica Juneja and Gerrit Jasper Schenk (eds.), *Disaster as Image: Iconographies and Media Strategies across Europe and Asia* (Regensburg: Schnell + Steiner, 2014), pp. 137–146.

91. Susan E. Rice, “Remarks on the UN Security Council and the Responsibility to Protect—International Peace Institute Vienna Seminar, 15 June 2009”, United States Mission to the United Nations, 2009, available: <<http://usun.state.gov/remarks/4347>> (accessed 14 October 2015).

92. See also Junk, *op. cit.*

93. See also Brockmeier, Kurtz and Junk, *op. cit.*

94. Interview with Thomas Matussek, Berlin, 22 March 2013.

95. For more on the Chinese debate, see Qu, *op. cit.*



under its scope) nor politically helpful for delivering humanitarian aid (it politicised the topic and made face-saving compromises more difficult as critical time passed for those most severely affected by the storm and the regime's inaction). These objections to invoking R2P had two roots: first, different interpretations of the norm, which argues that only the four core crimes can serve as triggers for R2P-based interventions, particularly in coercive form; second, the hesitation of actors to be drawn into an intervention or their geopolitical concerns regarding Western dominance in R2P matters.

These arguments influenced future debates on R2P in two ways. First, they served as a reference point for those arguing in favour of excluding natural disasters from the scope of R2P, even though at least the coercive delivery of aid seemed to be on the table again, during the case of Syria. Second, an unsuccessful invocation of R2P and its broad contestation did not make the norm fail or weaken it, but sharpened its contours. Thus, a deeper understanding of the events unfolding after Cyclone Nargis helps to explain why the debate on R2P solely focused on the four core crimes in the years afterwards and why there was greater reluctance to invoke R2P when it could potentially be counterproductive for the cause of protecting those threatened by atrocities.

The events in 2008 had additional consequences. They triggered institutional reforms within ASEAN, which increased its capacities to set up relief operations after natural disasters more effectively.<sup>96</sup> Furthermore, the events contributed to ending the isolationism of Myanmar by forcing the regime to recognise its limits in confronting humanitarian catastrophes like Cyclone Nargis—thereby making it apprehensive of losing legitimacy—and by enabling national and international NGOs to move more freely, which served as the first crack in the wall of control held by state authorities.<sup>97</sup>

However, it did not prevent Myanmar from becoming again the focus of a debate on an international responsibility to protect a minority at risk. The fate of the Rohingya and other marginalised ethnic groups will reveal whether Myanmar authorities and international actors have learned their lesson on the opportunities and challenges of invoking R2P.

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96. Haacke, *op. cit.*, p. 176.

97. These arguments have been made by Bünthe and Holmes: Bünthe, *op. cit.*; Holmes, *op. cit.*

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