

Terrorism and Pillar Two Protection Assistance: The Yazidis on Mount Sinjar

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Abstract

The last decade has seen an overall increase in mass atrocity crimes being committed by non-state actors, including terrorist groups. A key strength of R2P Pillar Two Protection Assistance lies in its potential for addressing imminent threats of mass atrocity posed by such groups. This article discusses the scope and legitimacy of R2P Pillar Two, its application to non-state actors, and the conditions that enabled limited protection assistance action to be effectively rendered in response to the impending genocide of 40,000 Yazidis trapped on Mount Sinjar in northern Iraq in 2014.

Keywords

terrorism – R2P – mass atrocity – Pillar Two – protection assistance – Yazidi

1 Context¹

In 2015 Adrian Gallagher wrote that ‘Pillar II remains the most overlooked and under-researched of the three pillars’ and that there is ‘a striking disconnect

1 This piece started its life as my Master’s thesis at the Coral Bell School of the Australian National University under the supervision of Dr Cecilia Jacob. Without her unwavering encouragement and support I would not be in academia today. Heartfelt thanks also go to my current supervisors at the University of Queensland, Professors Christian Reus-Smit and Alex Bellamy, both of whom read earlier versions of this piece. I am very grateful, too, for the sharp and insightful comments of the anonymous reviewers.

between the importance of Pillar II on the one hand, and the lack of research into it on the other'.² Seven years on, this remains the case.³ This is despite the fact that Pillar Two has particular relevance in cases involving non-state actors, including terrorist groups,⁴ who pose a growing threat worldwide. This article seeks to illuminate the capacity of R2P Pillar Two 'Protection Assistance' action to be taken to assist states in their efforts to prevent atrocities being perpetrated by such groups, and to discuss the scope and legitimacy of this type of action.

It will examine the 2014 Protection Assistance action led by the United States (US) in response to a call from the Iraqi government to assist it in fulfilling its responsibility to protect populations at imminent risk of genocide, in this case at the hands of the Islamic State in Iraq and the Levant (ISIL), a United Nations (UN) designated terrorist group.⁵ In doing so, it will seek to establish that, although the response did not prevent all genocidal acts by ISIL, the Protection Assistance actions, when examined in isolation, did nevertheless prevent the likely genocide of approximately 40,000 Yazidis trapped on Mount Sinjar in northern Iraq. It will show that the military and humanitarian assistance provided at Iraq's request helped reduce casualties and allowed local forces to evacuate the trapped members of the Yazidi ethno-religious minority group into Syria and away from the imminent risk posed. It will argue that the US' actions should therefore be viewed as an example of Pillar Two Protection Assistance effectively rendered. Further, through an analysis of the case, the conditions that enabled the US' limited response to be effective will be discussed, and claims against its effectiveness weighed.

2 Adrian Gallagher, 'The Promise of Pillar II: Analysing International Assistance under the Responsibility to Protect', *International Affairs*, 91(6) 1259–1275 (2015), pp. 1260, 1274, doi:10.1111/1468-2346.12459.

3 The author notes the importance of the in-process research project 'Explaining Non-State Perpetration of Mass Atrocity Crimes' being led by Adrian Gallagher and Kaisa Hinkkainen. This project should usefully identify what drives non-state armed groups to perpetrate mass atrocities, and will go some way to addressing the identified 'lacuna'. Smaller scale research into the link between terrorism and mass atrocities is also underway or has been completed. However, the mechanisms with which, and circumstances under which, such threats might be effectively responded to is an area that still warrants further attention.

4 Ban Ki-moon, *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect*, A/68/947-S/2014/449, 11 July 2014, para. 76; Ban Ki-moon, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009, paras. 29 and 40; Ramesh Thakur, 'The Responsibility to Protect at 15', *International Affairs*, 92(2) 415–434 (2016), p. 424.

5 United Nations, 'Security Council Al-Qaida Sanctions Committee Amends Entry of One Entity on Its Sanctions List', Press Release, SC/11019, 30 May 2013.

1.1 *Protection Assistance and Terrorist Threats*

The last decade has seen a ‘dramatic resurgence’ in violent conflict involving non-state actors,⁶ including terrorist groups, who ‘represent a powerful new threat to established international norms.’⁷ A key strength of R2P Pillar Two lies in its potential for addressing the rising threat of mass atrocities posed within the context of such conflict.⁸ Indeed, as UN Secretary-General (UNSG) Ban Ki-moon observed in his 2014 Report on R2P, ‘Pillar II emphasizes assistance to States [which] is particularly relevant in cases where a non-state actor is preying upon the civilian population.’⁹ Pillar Two, as Gallagher puts it, allows us to re-conceptualise how we think about responses to mass atrocities, since it implies ‘quite simply [that] the state does not hold a monopoly over the perpetration of mass violence’.¹⁰

Under R2P Pillar Two, there are three main types of assistance that states can provide to help other states uphold their Pillar One responsibilities: Encouragement, Capacity Building, and Protection Assistance.¹¹ Each type of assistance is intended to reinforce, rather than undermine, state sovereignty.¹² In this way, Pillar Two action can be distinguished from Pillar Three action in that it is not appropriate in situations where national authorities are manifestly failing to protect at-risk populations, or are engaging in the commission of atrocity crimes themselves.¹³ Rather, it is intended to be provided when the state in question requires help to implement efforts to uphold its own responsibility to protect.

Within the literature, the potential of Pillar Two to combat violence by non-state actors remains largely unexplored.¹⁴ This is despite the fact that in the inaugural UNSG report on R2P, in which Ban Ki-moon first articulated the three pillars, he noted that Pillar Two Protection Assistance action may be suitable

6 UN and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (Washington DC: World Bank, 2018); Stanley Foundation, ‘Violent Nonstate Actors as Perpetrators and Enablers of Atrocity Crimes’, *Policy Dialogue Brief*, 56th Annual Strategy for Peace Conference, October 2015, Warrenton Virginia, p. 5.

7 A/69/981-S/2015/500, 13 July 2015, para. 46.

8 Gallagher, ‘The Promise of Pillar II’, p. 1269. See also: Ki-moon, *Implementing the Responsibility to Protect*, paras. 29 and 40.

9 A/68/947-S/2014/449, 11 July 2014, para. 76.

10 Gallagher, ‘The Promise of Pillar II’, p. 1272.

11 Ki-moon, *Fulfilling Our Collective Responsibility*, para. 70; Ki-moon, *Implementing the Responsibility to Protect*, para. 28.

12 Ki-moon, *Fulfilling Our Collective Responsibility*, para. 12; Ki-moon, *Implementing the Responsibility to Protect*, para. 40.

13 *ibid.*, paras. 11 and 29.

14 Gallagher, ‘The Promise of Pillar II’, p. 1260; Thakur, ‘The Responsibility to Protect at 15’, p. 424.

where ‘with the host Government’s consent ... military units [are] employed ... to counter armed groups’.¹⁵

When the application of R2P to non-state actors has been discussed in the literature, the focus tends to have been on whether a collective responsibility to protect includes them, or whether they possess Pillar One responsibilities.¹⁶ As the Yazidi case and the rapid rise of groups like ISIL and Boko Haram show, however, host governments often require assistance to combat threats from non-state actors. It is in just such situations, provided the host government has requested assistance to prevent ‘egregious crimes relating to the responsibility to protect’, that the ‘targeted and restrained use of international military assets and armed forces’ under R2P Pillar Two seems appropriate.¹⁷ Pillar Two Protection Assistance offers a clear mechanism through which the rising mass atrocity threat posed by non-state actors, including terrorist groups, can be combated.

1.2 *The Scope of Protection Assistance*

In Ban Ki-moon’s 2014 report on R2P, he reiterated that the scope of support rendered under Pillar Two should be “‘narrow but deep’”: narrow because it is restricted to the protection of populations from atrocity crimes, but deep given the array of measures required for its implementation’.¹⁸ Protection Assistance rendered in response to an imminent threat is the last line of defence in this ‘deep array of measures’. Unlike most Encouragement or Capacity Building efforts, it generally has a short-term operational focus, rather than a long-term root cause one; that is, it is generally ‘targeted and restrained’.¹⁹

In this sense, the scope of Pillar Two responses tends to align with most R2P informed protection approaches that have historically taken place. That is, they are intended to de-escalate an imminent mass atrocity risk, rather than to implement more ‘genuinely preventative commitments’.²⁰ It is worth noting that one criticism of such short-term approaches is that while they may help to address the immediate threat, they do not address the risk factors behind

15 Ki-moon, *Implementing the Responsibility to Protect*, para. 40.

16 Shannon Zimmerman, ‘Strange Bedfellows: Terrorism/Counter-terrorism and the Responsibility to Protect’ in Charles T. Hunt and Phil Orchard (eds.), *Contestation and Consolidation* (London: Routledge, 2020), p.11; Stanley Foundation, ‘Violent Nonstate Actors as Perpetrators and Enablers of Atrocity Crimes’, p. 2.

17 Ki-moon, *Implementing the Responsibility to Protect*, para. 40.

18 A/68/947-S/2014/449, 13 August 2014, para. 79.

19 Ki-moon, *Implementing the Responsibility to Protect*, para. 40.

20 Alexandra Bohm and Garrett Wallace Brown, ‘R2P and Prevention: The International Community and Its Role in the Determinants of Mass Atrocity’, *Global Responsibility to Protect*, 13(1) 60–95 (2020), p. 71.

that threat. In the words of Bohm and Brown, such responses remain a ‘necessary but insufficient’²¹ means to combat mass atrocities, and do not address the ‘externally driven systemic determinates’ of atrocity crime.²² It is beyond the scope of this article to engage at length with this criticism. Suffice to say, however, that Protection Assistance will rarely be sufficient on its own where a conflict or tensions pose an ongoing mass atrocity risk. Complex causes simply cannot be addressed by short-term operational measures. This does not in itself entail that such responses ought not be taken to protect populations at risk, or that such actions fall outside the scope of legitimate R2P action. In the case of the assistance rendered to Iraq in 2014, although it did not prevent all acts of genocide involved in ISIL’s spread through northern Iraq and Syria, this does not mean that it was pointless, that it was not a case of Pillar Two Protection Assistance effectively rendered, or that it is not a case worthy of further examination within the context of R2P.

1.3 *The Legitimacy of Protection Assistance*

Despite the UN’s repeated insistence to the contrary,²³ sceptics of the doctrine of R2P have raised concerns that, like the doctrine of Humanitarian Intervention before it, it could be used as a neo-colonial ‘Trojan horse’;²⁴ an illegitimate rhetorical vehicle for increased self-interested actions by powerful international actors.

If such concerns turned out to be true, there would be little point in furthering the research agenda in regard to Pillar Two. Nonetheless, it is true that since Protection Assistance action necessarily involves weighing and balancing the responsibility to protect populations at risk against the potential for success and other more practical political and economic imperatives, it will often result in what either is – or appears to be – selective implementation. As Gareth Evans puts it, R2P is a doctrine for ‘pragmatists not purists’, and any state that pursues R2P Protection Assistance faces ‘myriad and complicated’ impediments to acting,²⁵ especially in an environment characterised by imperfect information. The existence of a pragmatic dimension to the decision

21 *ibid.*, p. 75.

22 *ibid.*, p. 94.

23 A/RES/60/1, 6 September 2005, para. 5; Ki-moon, *Implementing the Responsibility to Protect*, para. 10; Ki-moon, *Fulfilling Our Collective Responsibility*, para. 12.

24 Alex J. Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, *Ethics & International Affairs*, 19(2) 31–54 (2005).

25 Gareth Evans, ‘R2P: The Next Ten Years’ in Alex J. Bellamy and Tim Dunne (eds.), *The Oxford Handbook of the Responsibility to Protect*, vol. 1 (Oxford: Oxford University Press, 2016), p. 913.

to render assistance does not, in itself, undermine the legitimacy of the assistance provided in situations where these impediments have been able to be successfully navigated.

For the US, as with other major powers, finding the point of balance between fulfilling their responsibilities while avoiding accusations of purely self-interested implementation²⁶ is still difficult, however. R2P situations can put pressure on the ‘culture of neutrality’ that has generally guided the UN’s approach to conflict prevention and resolution since its inception.²⁷ Gallagher confronts this view with the claim that ‘clearly Pillar II is about assisting a preferred actor and does not set out to be impartial’.²⁸ Nonetheless, making the choice to support a side in any given conflict, even one that involves a designated terrorist organisation like ISIL, is a practical and moral minefield, and can cause unforeseen consequences or an exacerbation of conflict. Perhaps more than blanket scepticism of R2P, it is these practical and moral concerns that require addressing before any claimed case of Protection Assistance can be considered legitimate rather than purely self-interested.

The threshold for what constitutes a mass atrocity – or a risk thereof – and, therefore, for when R2P Pillar Two Protection Assistance ought to be able to be rendered, is not defined anywhere.²⁹ This presents the first practical concern for states considering assistance. If the threshold is interpreted too expansively, states risk accusations of meddling in sovereignty by assisting, particularly if that assistance involves military action. An over-expansive interpretation additionally runs the risk of recreating the problem that faced humanitarian intervention throughout the 1990s; that is, the ‘moral hazard’ dilemma.³⁰ Conversely, if the threshold for action is too restrictive, it is arguably not going to be robust enough to protect those most at risk. Shifting this threshold too far

26 Ben Brumfield and Jim Sciutto, ‘Why U.S. Intervenes in Iraq but not Syria?’, *CNN World*, 14 August 2014; Adam Taylor, ‘Why U.S. Bombs Are Falling on Iraq and not Syria’, *Washington Post*, 8 August 2014.

27 Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (New York: Routledge, 2011), p. 8; Ruben Reike, ‘Conflict Prevention and R2P’ in Alex J. Bellamy and Tim Dunne (eds.), *The Oxford Handbook of the Responsibility to Protect*, vol. 1 (Oxford: Oxford University Press, 2016).

28 Gallagher, ‘The Promise of Pillar II’, p. 1262.

29 Anna Khalfaoui, ‘Mass Atrocities: Definition and Relationship with Development’ in Walter Leal Filho, Anabela Marisa Azul, Luciana Brandli, Pinar Gökcin Özuyar, and Tony Wall. (eds.), *Peace, Justice and Strong Institutions* (Cham: Springer Nature, 2021), pp. 539–540.

30 Alex J. Bellamy and Paul D. Williams, ‘On the Limits of Moral Hazard: The “Responsibility to Protect”, Armed Conflict and Mass Atrocities’, *European Journal of International Relations*, 18(3) 539–571 (2012).

in either direction could allow real or perceived cases of selective implementation based on self-interested motivations, and could thus undermine the legitimacy, or perceived legitimacy, of Protection Assistance action.

The decision to render Protection Assistance is also inevitably made within the context of multiple competing situations of ongoing or potential atrocities, and a lack of clear principles or frameworks at hand with which to prioritise who ought to be assisted and to what extent. As Alex Bellamy puts it, there are simply too many cases to commit to, while the resources that can be committed are finite.³¹ This 'prioritisation dilemma' poses an additional practical concern for states considering Protection Assistance. Since not all atrocity threats can be responded to, any response that is made will necessarily be selective, but the criteria used to determine when to act need not be arbitrary or purely self-interested. Glanville and Pattison usefully break down the legitimate criteria a state may consider into 'atrocity-specific' and 'response specific'.³² According to this dichotomy, response specific criteria would concern, for example, the likely effectiveness of the action, the risk of civilian harm, and the risk of damaging the R2P norm, while atrocity specific criteria would concern the likely severity of the action, the imminency of the threat, the degree to which the response risks exacerbating harms, and the wider consequences of action or inaction.³³ Many of these areas of concern echo those canvassed in the International Commission on Intervention and State Sovereignty's 2001 report (the ICISS Report) on R2P, which invoked the just war principles of proportionality and reasonable prospects for success as relevant determinants of when to act.³⁴

Another criterion not considered in the ICISS Report, but worthy of consideration from a moral point of view, is whether the assisting state owes a reparative duty to the host state.³⁵ In the context of the 2014 Mount Sinjar case, the relevant question would be whether the US' actions during the 2003 invasion of Iraq and their subsequent military campaign contributed to the

31 Alex Bellamy, *The Responsibility to Protect: A Defence* (Oxford: Oxford University Press, 2015), p. 138.

32 Luke Glanville and James Pattison, 'Where to Protect? Prioritization and the Responsibility to Protect', *Ethics & International Affairs*, 35(2) 213–225 (2021), pp. 219–220.

33 *ibid.*, pp. 219 and 221.

34 International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the ICISS* (Ottawa: International Development Research Centre, 2001), p. 47.

35 Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), pp. 181 and 189–191; Garrett Wallace Brown and Alexandra Bohm, 'Introducing *Jus ante Bellum* as a Cosmopolitan Approach to Humanitarian Intervention', *European Journal of International Relations*, 22(4) 897–919 (2016); Glanville and Pattison, 'Where to Protect?', p. 219.

risk of atrocity in the region, and whether, as a consequence, they should have prioritised ‘responding to atrocities ... in that region rather than in others.’³⁶ Where such a reparative duty exists, it may be one of the few factors that leads to an increase, rather than a decrease, in the perceived legitimacy of Protection Assistance. On the other hand, assisting states must be mindful of the risk of exacerbating the underlying problem, particularly where the assistance rendered involves military action. As President Obama observed in his speech authorising airstrikes in Sinjar, there may be ‘no military solution to the larger crisis’³⁷ that underpins a situation of imminent risk. In this context, it seems an important precondition of legitimacy that military assistance measures under Pillar Two be reserved for ‘support to States facing imminent or ongoing atrocity crimes’,³⁸ though it has also been suggested that some UN Peacekeeping actions of a more long-term nature might also be counted as legitimate Pillar Two Protection Assistance.³⁹

In a context where Protection Assistance rendered under R2P Pillar Two does involve a military dimension, it attracts a further challenge to its legitimacy in the form of conforming with the established traditions governing state-sanctioned uses of force. In an attempt to clarify when and how such force may be used ethically, Michael Walzer draws a distinction between *jus ad vim* (the rightfulness of force short of war) and *jus ad bellum* (the rightfulness of war).⁴⁰ Walzer lists possible measures of rightful force in response to a threat of violence as including strategies such as the implementation of no-fly zones, conducting pinpoint air/missile strikes, and conducting small-scale foreign-operative missions.⁴¹ Acts such as ground invasions and large-scale bombing campaigns are not justified under *jus ad vim*.⁴² The rise in non-state actors like ISIL, and advancements in precision weapons technologies such as drones, may have made the shift from *jus ad bellum* to *jus ad vim* seem unremarkable. Nonetheless, Walzer’s distinction remains a contentious one, and even evokes

³⁶ *ibid.*

³⁷ Barack Obama, ‘Statement by the President’, Obama White House Office of the Press Secretary, Press Release, 7 August 2014.

³⁸ Ki-moon, *Fulfilling Our Collective Responsibility*, para. 11.

³⁹ Gallagher, ‘The Promise of Pillar 11’, p. 1262; Global Centre for the Responsibility to Protect, ‘The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict’, Policy Brief, 9 May 2011.

⁴⁰ Michael Walzer, ‘Preface to the Fourth Edition’ in *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2006).

⁴¹ *ibid.*

⁴² Daniel Brunstetter and Megan Braun, ‘From *Jus ad Bellum* to *Jus ad Vim*: Recalibrating Our Understanding of the Moral Use of Force’, *Ethics & International Affairs*, 27(1) 87–106 (2013).

outright hostility from some scholars.⁴³ While it is beyond the scope of this article to engage with the debate surrounding this distinction, it is important to note that Walzer's work marked a shift in the traditional state-centric thinking surrounding the use of force, towards a recognition of the more complicated nature of modern warfare, including the need to respond to threats posed by non-state actors such as terrorist groups. In the context of R2P Pillar Two, *jus ad vim* allows for greater moral clarity about when and how Protection Assistance might be legitimately rendered.

With or without the additional legitimacy that *jus ad vim* lends to small-scale uses of force that seek to prevent mass atrocities, it remains an established norm that any use of force must be consented to – either by the international community or the state being assisted – in order to be considered legitimate.⁴⁴ The alignment of Protection Assistance with this norm, in that it requires the consent of the host government and, therefore, does not undermine state sovereignty, is a key factor adding to the legitimacy of assistance rendered in accordance with Pillar Two.⁴⁵

2 Case Study: The Yazidis on Mount Sinjar

In August 2014, approximately 40,000 Yazidis faced an impending mass atrocity at the hands of ISIL, who had surrounded them as they sought refuge on Mount Sinjar in northern Iraq. In response to their imminent genocide, and at the request of the Iraqi government, the US conducted a drone attack and airstrikes on key ISIL targets, provided much needed humanitarian assistance to the trapped civilians, and resupplied the local forces who created a path for the Yazidis to escape. This Protection Assistance action helped to avert the immediate risk of genocide faced by the ethno-religious minority group.⁴⁶

A closer study of the details of the case will provide further insight into the potential of Pillar Two Protection Assistance to be effectively rendered in the context of mass atrocity threats posed by terrorist groups such as ISIL. It will

43 C. A. J. Coady, *Morality and Political Violence* (New York: Cambridge University Press, 2008).

44 Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2007), p. 3; Adrian M. Gallagher, 'A System, Society, and Community Perspective on Genocide', *Genocide Studies and Prevention*, 7(2/3) 166–183 (2012), p. 174; Gallagher, 'The Promise of Pillar II', p. 1265.

45 *ibid.*, p. 1264.

46 UN Assistance Mission for Iraq (UNAMI), *Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July – 10 September 2014*, 26 September 2014, p. 3.

begin by outlining the events that preceded the Protection Assistance action on Mount Sinjar, as well as the initial response to the atrocity threat. It will then examine four conditions that enabled Protection Assistance to be effectively rendered in this case: the clarity and imminence of the threat; the existing operational relationship between the assisting state and host government; the alignment of the Protection Assistance action with the assisting state's domestic and foreign policy agenda, and; the broad support for the Protection Assistance action provided by the international community. Finally, criticism of the effectiveness of the Protection Assistance action will be considered and responded to.

2.1 *Events Preceding the Protection Assistance Action and Initial Response*

ISIL advanced through the Nineveh region of northern Iraq during the 'Nineveh Offensive' beginning June 2014.⁴⁷ On 10 June 2014, ISIL successfully captured the region's capital, Mosul, amid mass surrenders and desertions by Iraqi Security Forces (ISF).⁴⁸ The ISF collapse left the defence of Nineveh to local Kurdish forces, including the Peshmerga, who had anticipated an ISIL expansion into Nineveh.⁴⁹ After taking control of Mosul, ISIL made multiple small-scale attacks on Yazidis in Nineveh.⁵⁰ It was clear that the Yazidi population who occupied the small towns and villages within the Sinjar District of Nineveh were being intentionally targeted by ISIL on the basis of their religion.⁵¹

Sinjar Town, the capital of the Sinjar District, lies approximately five kilometres to the south of the 100-kilometre-long Mount Sinjar, along what was in 2014 a major ISIL east–west supply route connecting Mosul (in Iraq) and Raqqa (in Syria), both of which ISIL considered strategically important outposts.⁵² Fifty-three days after taking Mosul, on the night of 3 August 2014, ISIL conducted a coordinated attack on five small villages to the south of Sinjar Town, before eventually taking the town itself.⁵³ They encountered little resistance

47 Rick Burns, 'Battle for Sinjar, Iraq', Threat Action Report, US Army, 25 April 2016.

48 Kenneth Katzman, Carla E. Humud, Christopher M. Blanchard, Rhoda Margesson, and Alex Tiersky, *Iraq Crisis and U.S. Policy*, R43612 (Washington DC: United States Congressional Research Service, 2014), p. 19.

49 Ned Parker, Peter Graff, and Reuters Staff, 'Kurds Realize Dream as Baghdad Loses Grip on North Iraq', *Reuters*, 13 June 2014.

50 UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar with English Subtitles', video, 14 May 2021.

51 A/HRC/28/18, 27 March 2015, para. 5.

52 Burns, 'Battle for Sinjar'.

53 UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar'.

from the Peshmerga, who had reportedly withdrawn prior to the attacks.⁵⁴ The Peshmerga's decision was not effectively communicated to locals, and no evacuation orders were issued.⁵⁵ Many Yazidis were captured by ISIL, and the remaining population was left defenceless.⁵⁶

ISIL took control of the main roads and strategic junctions outside Sinjar Town, blocking the easiest path of escape.⁵⁷ Those who fled the town and its surrounds early enough took refuge on the upper plateau of Mount Sinjar, with UN reports indicating that approximately 40,000 civilians became trapped there, in the middle of what was, by then, ISIL-controlled territory.⁵⁸ For the trapped Yazidis, the situation was dire. In a report filed on 7 August, Deputy Special Representative of the UNSG for Iraq Gyorgy Busztin stated: The United Nations is deeply worried by the humanitarian situation of civilians in areas under [ISIL] control. Many are in locations that are inaccessible, including those who have been trapped for over 5 days on Jabal Sinjar Mountain ... Without the delivery of urgent life-saving items ... the lives of thousands of these civilians is now at serious risk.⁵⁹

Besieged on the mountain, the tens of thousands of Yazidis could not access adequate water, food, or medical care.⁶⁰ The situation intensified as temperatures reached up to 50 degrees Celsius, without any available shelter.⁶¹ US, Iraqi, British and Australian forces were involved in airdropping aid to the trapped Yazidis, but ISIL fighters actively shot at their planes, and at helicopters attempting to evacuate the most vulnerable civilians.⁶² Hundreds of Yazidis – primarily infants and young children – died during the Mount Sinjar siege.⁶³

54 A/HRC/32/CRP.2, 15 June 2016, para. 24; Tracey Shelton, 'If It Wasn't for the Kurdish Fighters, We Would Have Died Up There', *The World*, 29 August 2014; Vicken Cheterian, 'ISIS Genocide against the Yazidis and Mass Violence in the Middle East', *British Journal of Middle Eastern Studies*, 48(4) 629–641 (2021), p. 632.

55 Burns, 'Battle for Sinjar', p. 3; Naomi Kikoler, '“Our Generation Is Gone”: The Islamic State's Targeting of Iraqi Minorities in Ninewa', *Bearing Witness Trip Report*, November 2015, United States Holocaust Memorial Museum, pp. 13–14.

56 A/HRC/32/CRP.2, 15 June 2016, paras. 23–25.

57 *ibid.*, para. 26.

58 UNAMI, *Report on the Protection of Civilians in Armed Conflict in Iraq*.

59 UNAMI, 'UN Gravely Concerned about Situation in Northern Iraq; Calls for Urgent Response', UNAMI Public Information Office, Press Release, 7 August 2014.

60 UNAMI, *Report on the Protection of Civilians in Armed Conflict in Iraq*, p. 4; ABC, 'US Aircraft Strike Islamic State Positions in Iraq; Pentagon', *ABC News*, 11 August 2014.

61 A/HRC/32/CRP.2, 15 June 2016, paras. 27–28.

62 *ibid.*

63 *ibid.*; Valeria Cetorelli and Sareta Ashraph, 'A Demographic Documentation of ISIS's Attack on the Yazidi Village of Kocho', LSE Middle East Centre Report, June 2019, p. 9.

2.2 *Clarity and Imminence of the Threat*

In early 2014, UN officials warned that minorities in Iraq faced a grave risk of mass atrocity.⁶⁴ All warning signs indicated that if ISIL expanded into Northern Iraq, it would continue its pattern of perpetrating mass atrocities against minority communities, including the Yazidis, in an effort to 'suppress, expel or eliminate' them.⁶⁵ On 25 June 2014, following the fall of Mosul to ISIL, Iraq sent a letter to the UN Security Council requesting international assistance.⁶⁶ In this letter, the scale of the atrocities faced was made clear, with ISIL described as 'terrorising civilians, carrying out mass executions, persecuting minorities and women, and destroying religious buildings'.⁶⁷ Intelligence further suggested that the Sinjar District would be targeted next by ISIL in order to create a strategic passageway between Mosul and Raqqa.⁶⁸

Despite the accuracy of this intelligence, ISIL's actions in Sinjar were not motivated solely by geostrategic aims. It was clear from their statements and the strategies they employed that ISIL was intentionally targeting the Yazidi population for religious reasons.⁶⁹ In ISIL's own English-language publication and 'official mouth piece', *Dabiq*, the Yazidis were not only marked out as infidels (along with Christians and Jews), but also as pagans whose existence could not be tolerated within the 'caliphate'.⁷⁰ ISIL proclaimed that the killing or forced conversion of Yazidis fulfilled a deliberate policy in accordance with its extremist ideology.⁷¹ They specifically noted that captured Yazidis should not be offered the same options that 'people of the book' – such as Jews or Christians – were.⁷² Unlike these groups, the Yazidis were not to be given the option to pay a tax (*jizya*) to avoid death or forced conversion.⁷³ ISIL's stance on these matters, as well as its destruction of sacred religious sites and monuments,⁷⁴ demonstrates that its actions in Sinjar were calculated with the intent of annihilating Yazidism and its followers.⁷⁵ Critically, ISIL's views on

64 Kikoler, "Our Generation Is Gone", p. 12.

65 *ibid.*

66 S/2014/440, 25 June 2014.

67 *ibid.*

68 Kikoler, "Our Generation Is Gone", p. 12.

69 UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar'.

70 ISIL, 'The Revival of Slavery before the Hour', *Dabiq*, 4(12) 14–16 (2014), p. 15; Cetorelli and Ashraph, 'A Demographic Documentation', p. 8; Cheterian, 'ISIS Genocide against the Yazidis', p. 635.

71 Kikoler, "Our Generation Is Gone", p. 21.

72 ISIL, 'The Revival of Slavery before the Hour', p. 15.

73 *ibid.*

74 UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar'.

75 Kikoler, "Our Generation Is Gone", p. 21; Cheterian, 'ISIS Genocide against the Yazidis', p. 632.

the Yazidis were known prior to the Protection Assistance action taken in Sinjar.⁷⁶ It has been argued that ISIL's position on the Yazidis shows their pre-meditated genocidal intent; that they 'came to destroy'⁷⁷ the Yazidi population on account of their religion.⁷⁸

That the Yazidis trapped on Mount Sinjar faced a clear threat of genocide is further substantiated by the atrocities committed in the wider Sinjar District on those Yazidis who failed to escape the initial attacks. A recent demographic documentation of violations committed in the village of Kocho, for example, shows that ISIL's attack was directed against the village's entire population, not just its military aged males.⁷⁹ While at least 17 mass graves holding the remains of men and boys aged 12 and above have been discovered there,⁸⁰ reports also indicate that those Yazidis captured during ISIL's initial advance into the Sinjar District were separated during their captivity in Kocho into two other distinct groups, after which they were systematically subjected to violations that appeared designed to destroy their Yazidism.⁸¹ Apart from men and boys aged 12 and above, the other two groups targeted by ISIL were boys aged 7–12, and women and children.⁸²

Reports of violence in villages other than Kocho indicate that ISIL summarily executed men and boys throughout the Sinjar District who refused to convert to Islam.⁸³ Up to 35 mass graves⁸⁴ containing men and boys from the Sinjar District (estimated to be at least 5,000)⁸⁵ have been reported, with efforts to identify the victims ongoing.⁸⁶ Further to these executions, boys aged 7–12 were separated from their mothers, and sent to training centres where they were re-educated, given new Islamic names, and treated as ISIL recruits.⁸⁷

76 George Packer, 'A Friend Flees the Horror of ISIS', *The New Yorker*, 6 August 2014; UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar'; Human Rights Watch (HRW), 'Iraq: ISIS Abducting, Killing, Expelling Minorities', HRW, Press Release, 19 July 2014; HRW, 'On Vulnerable Ground: Violence against Minority Communities in Nineveh Province's Disputed Territories' (New York: HRW, 2009), p. 41.

77 A/HRC/32/CRP.2, 15 June 2016.

78 Cheterian, 'ISIS Genocide against the Yazidis', p. 635.

79 Cetorelli and Ashraph, 'A Demographic Documentation', p. 21.

80 UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar'.

81 A/HRC/32/CRP.2, 15 June 2016, paras. 31–97.

82 *ibid.*

83 UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar'; Burns, 'Battle for Sinjar', p. 4.

84 Matthew Barber, *Mass Graves of Yazidis Killed by the Islamic State Organisation or Local Affiliates on or After August 3, 2014* (Erbil: Yazda, 2016), pp. 7–20; HRW, 'Iraq: Protect Mass Graves', HRW, Press Release, 30 January 2016.

85 Burns, 'Battle for Sinjar', p. 3.

86 UNITAD Iraq, 'The Crimes of ISIL against the Yazidi Community in Sinjar'.

87 A/HRC/32/CRP.2, 15 June 2016, para. 94.

Captured Yazidi women and children (including girls as young as nine) were systematically sold to ISIL fighters, and often forced into sexual slavery and domestic servitude.⁸⁸ As early as 12 August 2014, the UN Special Rapporteur on Violence Against Women, Rashida Manjoo, stated that the UN had ‘reports that strongly suggest that hundreds of women and children have been kidnapped – many of the teenagers have been sexually assaulted, and women have been assigned or sold to [ISIL] fighters as “malak yamiin” or slaves.’⁸⁹ The Human Rights Council report on crimes against the Yazidis states that the enforced sexual slavery of Yazidi women constituted a crime against humanity, as defined by Article 7(1)(g) of the Rome Statute.⁹⁰

To establish that the Yazidis trapped on Mount Sinjar faced a clear mass atrocity threat, it must be shown that ISIL intended to commit one or more of the prohibited acts listed in Article 2 of the Genocide Convention,⁹¹ or related articles of the Rome Statute.⁹² This means, in regard to a claim of genocide, that their intent to destroy the Yazidis as an ethnic or religious group, in whole or in part, needed to be established,⁹³ or, in regard to a claim of crimes against humanity, that they were genuinely contemplating ‘widespread and systematic attacks’ against Yazidi civilians. Importantly, in the context of the aforementioned forced conversions, rapes, sexual violence, enslavement and transferring of children into ISIL training camps, these acts could constitute genocide if they could be shown to have been carried out with genocidal intent.⁹⁴ ISIL’s own words repeatedly made it explicit that they intended to ‘kill or convert’ any infidels, including Yazidis. Indeed, ISIL’s public statements on the matter provide ‘an invaluable resource directly demonstrative of its intent.’⁹⁵ Since, if it had been able to fulfil its intent completely, ISIL would effectively have destroyed the Yazidis as a religious group, and given that they did destroy them in part, it seems beyond doubt that a clear threat of genocide was posed.

Although much of the hard evidence of mass graves and systematic sexual slavery against the Yazidis did not appear until after the siege on Mount Sinjar,⁹⁶

88 *ibid.*, paras. 54 and 72.

89 Office of the United Nations High Commissioner for Human Rights (OHCHR), “Iraq: Immediate Action Needed to Protect Human Rights of Yazidis in Grave Danger” – UN Experts’, OHCHR, Press Release, 12 August 2014.

90 A/HRC/32/CRP.2, 15 June 2016, para. 116; A/CONF.183/9, 17 July 1998.

91 A/RES/260(iii), 9 December 1948.

92 A/CONF.183/9, 17 July 1998, articles. 5–7.

93 A/RES/260(iii), 9 December 1948.

94 *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-A, 1 June 2001.

95 A/HRC/32/CRP.2, 15 June 2016, para. 151.

96 S/2021/419, 1 May 2021.

it was still abundantly clear at the time that ISIL held a genocidal intent, and would have committed genocidal acts upon the Yazidis trapped on Mount Sinjar had they not escaped.⁹⁷ It was also clear early on during the siege that the UN and the international community was aware that atrocities were being committed against the Yazidis who had failed to escape Sinjar Town and its surrounding villages. In a press release on 7 August 2014, the Deputy Special Representative of the UNSG for Iraq stated that he thought ISIL's actions appeared to fulfil 'a widespread and systematic policy aimed at cleansing non-Sunni ethnic and religious communities from areas under its control'.⁹⁸

Not only was the threat of genocide posed by ISIL against the Yazidis on Mount Sinjar clear, so too was the imminence of the threat. On 6 August 2014, Vian Dakhil, the only Yazidi member of the Iraqi parliament, made an impassioned plea for urgent international assistance.⁹⁹ She accused ISIL of genocide and claimed that 'there is a collective attempt to exterminate the Yazidi people'.¹⁰⁰ The following day, the UNSG issued a statement condemning ISIL's attacks and their impact on vulnerable minority groups,¹⁰¹ and the Security Council issued a statement calling on the international community to assist the Iraqi government.¹⁰² The Security Council statement condemned the attacks against the Yazidis, who it said were in immediate need of humanitarian assistance.¹⁰³ Further, it warned that any systematic attacks against Yazidi civilians on the basis of their religion may constitute an atrocity crime.¹⁰⁴ The *Wall Street Journal* also reported on that day that US officials had received a formal request for assistance from the Iraqi government.¹⁰⁵ The US decision to assist was announced that night, at 9:30 pm Washington time.¹⁰⁶

97 ISIL, 'The Revival of Slavery before the Hour'; HRW, 'Iraq: ISIS Abducting, Killing, Expelling Minorities'; UNAMI, *Report on the Protection of Civilians in Armed Conflict in Iraq*; Packer, 'A Friend Flees the Horror of ISIS'.

98 UNAMI, 'UN Gravely Concerned about Situation in Northern Iraq'.

99 Laura Smith-Spark, 'Iraqi Yazidi Lawmaker: "Hundreds of My People Are Being Slaughtered"', *CNN World*, 6 August 2014.

100 *ibid.*

101 Stéphane Dujarric, 'Statement Attributable to the Spokesman for the Secretary-General on Attacks on Yezidis and Other Minority Groups in Iraq', United Nations Department of Public Information, Press Release, 7 August 2014.

102 SC/11515-1K/683, 7 August 2014.

103 *ibid.*

104 *ibid.*

105 Julian E. Barnes, Jeffrey Sparshott, and Nour Malas, 'Barack Obama Approves Airstrikes on Iraq, Airdrops Aid', *Wall Street Journal*, 8 August 2014.

106 Obama, 'Statement by the President'.

In the days that followed, despite the efforts of the US and local forces, the atrocity threat did not subside. On 12 August 2014, just one day prior to the US airstrikes that assisted to evacuate the majority of the remaining trapped civilians¹⁰⁷ and to, in the words of the Pentagon ‘end the siege’ on Mount Sinjar,¹⁰⁸ six UN Special Rapporteurs issued a joint statement calling for immediate action to protect the Yazidis.¹⁰⁹ The UN Special Rapporteur on the Rights of Minorities, Rita Izsák, stated that ‘all possible measures must be taken urgently to avoid a mass atrocity and potential genocide within days or hours.’¹¹⁰ She further cautioned that ‘the responsibility to protect populations at risk of atrocity crimes falls both on the Iraqi government and the international community.’¹¹¹ The UN Special Rapporteur on Summary Executions, Christof Heyns, stated that the UN had received verified reports that ISIL was systematically targeting minority groups, and that ‘International actors must do all in their power to support those on the ground with the capacity to protect lives.’¹¹²

The threat of genocide posed by ISIL to the Yazidis trapped on Mount Sinjar was clear, as was the imminency of the threat. Information emerging on the ground from multiple credible sources allowed this to be substantiated prior to the decision to assist being made, and then again prior to the final assistance action being rendered. This was a crucial enabling condition for Protection Assistance to be effectively provided in this case.

2.3 *Operational Relationship between the Assisting State and Host Government*

On 7 August 2014, President Obama announced US’ Protection Assistance ‘to help Iraqis push back against ISIL.’¹¹³ From 7 to 12 August 2014, the US conducted at least 15 targeted airstrikes which ‘helped check the advances of ISIL

107 It should be noted that although the US-led Protection Assistance efforts were rendered at the request of the Iraqi government and involved coordination with Iraqi forces, soldiers from the Kurdish People’s Protection Unit and Kurdish Workers’ Party based in Syria were responsible for opening the corridor off the mountain and into Syria that allowed the Yazidis to escape. See: UNAMI and OHCHR, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, Human Rights Report, 12 August 2016, p. 8.

108 Helene Cooper and Michael D. Shear, “‘Militants’” Siege on Mountain in Iraq Is Over, Pentagon Says’, *The New York Times*, 13 August 2014.

109 OHCHR, ‘Iraq: “Immediate Action Needed”’.

110 *ibid.*

111 *ibid.*

112 *ibid.*

113 Obama, ‘Statement by the President’.

forces' in Northern Iraq.¹¹⁴ They also provided five airdrops of aid to Yazidis stranded on Mount Sinjar.¹¹⁵ On 13 August they launched a drone strike on an ISIL mortar position that was attacking local forces, followed by a resupply of those forces and 'airstrikes in and around Mount Sinjar' that 'absolutely had an impact on ISIL's ability to place direct fire on those on Mount Sinjar'.¹¹⁶ The Obama administration's response to the situation unfolding on Mount Sinjar was decisive. Not only did this decisiveness reflect the clear prioritisation of mass atrocity prevention by the administration, and their belief that there was a clear cause for action, but also that there were pre-existing operational conditions that made such decisive action possible. In this case, a major element of those conditions was the ability of the US and host government forces to coordinate and communicate effectively based on years of experience working together.

One Pentagon official, speaking on the condition of anonymity, revealed that US forces were in constant communication with Iraqi officials from 'day one' about how they could 'help co-ordinate additional relief, enhance [Iraqi] efforts, and provide direct assistance wherever possible'.¹¹⁷ In addition to its airstrikes and airdrops of aid, the US conducted 50–60 'Intelligence, Surveillance and Reconnaissance' flights over the Nineveh region per day throughout the siege, providing vital strategic information to local ground forces who lacked these unique capabilities.¹¹⁸ The local forces in turn fed information back to the US that allowed them to precisely target airstrikes.¹¹⁹ On 13 August 2014, the Pentagon announced that the siege on Mount Sinjar was broken. The Pentagon Press Secretary, John Kirby, credited US airstrikes and humanitarian airdrops, as well as the efforts of the local forces on the ground, for 'allowing thousands of Yazidis to evacuate from the mountain each night over the last several days'.¹²⁰ Without the level of coordination between the assisting state and host

114 Claudette Roulo, 'Humanitarian Assistance Continues in Iraq', *DoD News*, 11 August 2014.

115 *ibid.*; US Central Command, 'U.S. Continues Humanitarian Airdrops in Northern Iraq', *DoD News*, 12 August 2014.

116 US Central Command, 'U.S. Provides Aid to Yazidis, Strikes ISIL Mortar Position', *DoD News*, 13 August 2014; Tyrone C. Marshall Jr, 'Speed Necessary for Iraq Assessments, DoD Spokesman Says', *DoD News*, 13 August 2014.

117 Spencer Ackerman, Martin Chulov, and Julian Borger, 'US Carries Out Air Drops to Help Iraqis Trapped on Mountain by ISIS', *The Guardian*, 7 August 2014.

118 Gordon Lubold and Kate Brannen, 'Sinjar Surprise: How the U.S. May Have Misjudged the Refugee Situation in Iraq', *Foreign Policy*, 15 August 2014; Roulo, 'Humanitarian Assistance Continues in Iraq'.

119 Helene Cooper and Michael D. Shear, "'Militants' Siege on Mountain in Iraq Is Over, Pentagon Says', *The New York Times*, 13 August 2014.

120 *ibid.*

government that this Protection Assistance action clearly demonstrated, it seems unlikely that the local ground forces would have been able to help as many civilians escape from Mount Sinjar as they did.

The fact that the assisting state and host government forces had such a close relationship, based on years of experience working together, allowed for a clarity of communication and degree of coordination that was crucial to the timeliness and effectiveness of the Protection Assistance action.

2.4 *Alignment with Assisting State's Domestic Political and Foreign Policy Agenda*

The language in President Obama's statement authorising airstrikes on 7 August was consistent with R2P Pillar Two, which indicates the degree to which atrocity prevention had, by that time, been effectively mainstreamed into US foreign policy.

I've said before, the United States cannot and should not intervene every time there's a crisis in the world. So let me be clear about why we must act, and act now. When we face a situation like we do on that mountain – with innocent people facing the prospect of violence on a horrific scale, when we have a mandate to help – in this case, a request from the Iraqi government – and when we have the unique capabilities to help avert a massacre, then I believe the United States of America cannot turn a blind eye. We can act, carefully and responsibly, to prevent a potential act of genocide. That's what we're doing on that mountain.¹²¹

The components of this justification – strategic responsibility, a legitimate mandate for action, the unique capabilities of the US to prevent an imminent genocide, and the responsibility of the US to act in such a situation – are significant in the context of this study. Obama also claimed in this speech that it was the US' responsibility to act to prevent a potential genocide,¹²² which directly reflects the language and spirit of R2P.

In terms of the decisiveness of their action, President Obama explained the situation on Mount Sinjar in great detail and made a clear case for the urgency of action based on the imminency of the threat. He stated that ISIL's actions towards religious minorities were 'particularly barbaric' and informed his audience that ISIL had 'called for the systematic destruction of the entire Yazidi people, which would constitute genocide'.¹²³

121 Obama, 'Statement by the President'.

122 *ibid.*

123 *ibid.*

In a press call on 8 August 2014, following Obama's speech, senior administration officials echoed his position, and spelled out how the actions of the US would be consistent with international law, since they were at the request of the Iraqi government.¹²⁴ This was a key enabling condition for their assistance to be effectively rendered in line with Pillar Two. It reflected an alignment with the US' foreign policy agenda, and a willingness to comply with the R2P doctrine.¹²⁵

Equally noteworthy, President Obama's statement that the US 'can't and won't intervene in every crisis' appeared designed to differentiate the actions taken to prevent genocide on Mount Sinjar from the previous 'pre-emptive' actions taken by the US in Iraq.¹²⁶ Obama referenced working to 'assist', 'empower' and 'help' Iraqis push back against ISIL, and made clear that no combat troops would be deployed as part of the limited mission.¹²⁷ This provided an important degree of reassurance to US voters.¹²⁸ It aligned the action taken with the administration's previously articulated domestic political agenda of 'welcoming troops home' and not being 'dragged into another war'.¹²⁹ This alignment was an important condition that enabled the US to take Protection Assistance action in this case.

2.5 *Support from the International Community*

There was widespread endorsement of the US' Protection Assistance action in 2014 from the international advocacy community, leading R2P scholars, and states. The International Coalition for the Responsibility to Protect reported that 'many hailed the move as a necessary measure to prevent the imminent genocide of the Yazidi population, and as a clear example of upholding the Second Pillar of R2P'.¹³⁰ Prominent R2P scholars reiterated the appropriateness of the response. For example, Gareth Evans wrote that it was 'completely consistent with the principles' of R2P, touched 'on all the necessary bases of

124 Barack Obama, 'Background Briefing by Senior Administration Officials on Iraq', The American Presidency Project, 7 August 2014.

125 Further evidence of the degree to which the Obama administration had mainstreamed atrocity prevention into their foreign policy by 2014 can be found in their 2011 Presidential Study Directive on Mass Atrocities, which established an interagency 'Atrocity Prevention Board', as well as in their 2012 Defence Strategic Guidance and their development and adoption of a Mass Atrocity Response Operations handbook for military personnel.

126 Barnes, Sparshott, and Malas, 'Barack Obama Approves Airstrikes on Iraq, Airdrops Aid'.

127 Obama, 'Statement by the President'.

128 Katzman, et al., *Iraq Crisis and U.S. Policy*, pp. 6–7.

129 Obama, 'Statement by the President'.

130 The International Coalition for the Responsibility to Protect, "Convert, Pay, Flee, or Be Killed" Iraq's Minorities Under Threat', 15 August 2014.

legality, legitimacy and likely effectiveness', and deserved 'unconditional support' from the international community.¹³¹ In turn Alex Bellamy clarified that the US' actions aligned with R2P Pillar Two since they were 'in response to a specific request for assistance from a member state', which helped 'fulfil its R2P' by assisting Iraq while it was 'under stress', satisfying paragraphs 138 and 139 of the World Summit Outcome Document on R2P.¹³² Support for the need to act in ways compatible with the US' Protection Assistance efforts was also provided by a diverse range of international leaders. The United Kingdom (UK) Prime Minister, David Cameron, said, 'I welcome president Obama's decision ... to conduct targeted US airstrikes'.¹³³ UNSG Ban Ki-moon welcomed the US' 'decisive and firm commitment' and stated that he thought the 'air strike and military operation, which was done at the request of the Government of Iraq, was able to help ... save a lot of human lives'.¹³⁴ The Security Council, following its Resolution 2170, 'urging all parties to protect the civilian population ... affected by the violent activities of ISIL', called on the international community to assist 'in association with local and regional authorities, to combat the terrorist threat facing all Iraqis ... notably Yazidis'.¹³⁵ Rwandan Minister for Foreign Affairs Louise Mushikiwabo said that 'ISIL ... has committed mass and gross atrocities' and that while 'the effort against that organization should be nationally led and owned ... we acknowledge the active role played by the United States'.¹³⁶ Spanish Foreign Affairs Minister José Manuel García Margallo offered even stronger support, saying that 'we cannot remain impassive before the systematic elimination of entire communities and religious minorities ... resolution 2170 ... makes unequivocally clear the will to act [and] provides legitimacy beyond any question'.¹³⁷ The Gulf Cooperation Council, through the *Jeddah Communiqué*, resolved to support 'all Iraqis in combating ISIL' and confirmed their 'commitment to implement UN Security Council Resolution 2170'.¹³⁸ Perhaps the most representative endorsement of the style of action taken by the US came from the landmark Paris Conference on Peace and

131 Gareth Evans, 'The Right Iraqi Invasion', *The Sydney Morning Herald*, 12 August 2014; Gareth Evans, 'A Legitimate, Humane Mission in Iraq to Halt Islamic State Extremism', *The Australian*, 2 September 2014.

132 Alex Bellamy, 'Aiding Iraqis Meets Responsibility to Protect and Could Lead to Common Ground on Syria', *IPI Global Observatory*, 11 August 2014.

133 Georgia Graham, 'David Cameron Condemns "Barbaric" Islamic State Attacks but Will Not Match US Promise of Airstrikes', *The Telegraph*, 8 August 2014.

134 SG/SM/16150, 16 September 2014.

135 *ibid.*; S/RES/2170, 15 August 2014.

136 S/PV.7271, 19 September 2014.

137 *ibid.*

138 US Department of State (USDOS), *Jeddah Communiqué*, 11 September 2014.

Security. The conference was held in September 2014, and involved representatives from over 29 countries, including Russia, China, and multiple countries from the Arab League. All participants at the conference, many of whom might normally have been expected to oppose any US military action on foreign soil, agreed that they were 'committed to supporting the new Iraqi government in its fight against [ISIL] by any means necessary, including appropriate military assistance'.¹³⁹ It is clear that the Protection Assistance actions undertaken by the US enjoyed widespread support from the international community.

In addition to rhetorical support, many states supported the US-led assistance efforts in Sinjar by offering support in the form of humanitarian aid or 'providing arms, equipment, training, or advi[ce]'.¹⁴⁰ For example, the Netherlands sent a C-130 Hercules transport aircraft 'fully loaded' with humanitarian aid to Mount Sinjar.¹⁴¹ The UK supplied financial and non-lethal military support to the Peshmerga forces defending the Yazidis, while Czechoslovakia provided arms, and Germany supplied logistical support.¹⁴² Australia, the UK, and Canada all assisted, at first by supporting the aid drops on Mount Sinjar, and eventually by joining the military coalition.¹⁴³ By the end of 2014, six Western governments had joined the US in conducting air strikes against ISIL.¹⁴⁴ Though a significant proportion of this support was only offered after Protection Assistance action had already been taken on Mount Sinjar, it reflects the widespread support from the international community that the US had as an assisting state. This support was a key condition enabling Protection Assistance to be effectively rendered.

2.6 *Criticisms of the Effectiveness of the Protection Assistance Rendered*

Criticisms of the effectiveness of the Protection Assistance provided by the US in this case generally fall into one of four categories: the inappropriateness of

139 France Diplomatie, 'International Conference on Peace and Security in Iraq', Press Release, 15 September 2014.

140 David Villars and Laurence Norman, 'EU Prepares to Scale Up Iraq Involvement', *Wall Street Journal*, 15 August 2014; US Department of State (USDOS), 'Building International Support to Counter ISIL', Press Release, 19 September 2014.

141 USDOS, 'International Efforts to Counter ISIL', Press Release, 23 September 2014.

142 Lawrence Norman and David Villars, 'EU Prepares to Scale Up Iraq Involvement', *Wall Street Journal*, 13 August 2014.

143 Global Centre for R2P, 'R2P Monitor', Issue 24, 15 November 2015, p. 4; Katharine Murphy, 'Australian Troops Complete First Humanitarian Mission in Northern Iraq', *The Guardian*, 14 August 2014; Ian M. Phedran and Paul Toohey, 'Bullets Delivered to Kurdish Fighters', *Daily Telegraph*, 5 September 2014.

144 Jason Ralph and James Souter, 'A Special Responsibility to Protect: The UK, Australia and the Rise of Islamic State', *International Affairs*, 91(4) 709–723 (2015), p. 709.

the response, the inauthenticity of the response, the inability of the response to absolve the US of its culpability for the conditions that gave rise to the threat, and the inadequacy of the response. Each of these categories of criticism will be considered in turn, before the overall effectiveness of the Protection Assistance action is weighed.

In her opening address to the 69th session of the UN General Assembly, the Brazilian President Dilma Rousseff reiterated the statements she had made minutes earlier to the press outside the UN that 'bombing ISIL' could not lead to peace.¹⁴⁵ As she put it in her more formal address, 'it is impossible to eliminate the underlying causes of conflict through the use of force. That has been made clear by the ... tragic national fragmentation of Iraq'.¹⁴⁶ She further explained her views on the inappropriateness of military action as a response to an atrocity threat by claiming that 'instead of leading to peace, every military intervention has worsened ... conflicts'.¹⁴⁷ Brazil's Foreign Minister, Luiz Alberto Figueiredo, also criticised the appropriateness of the US' actions, stating that there is 'no military solution to ISIL', and that 'the best way to peace will always be dialogue and diplomacy'.¹⁴⁸

China's position on the US' Protection Assistance was officially 'neutral'.¹⁴⁹ It took 'an open attitude towards actions that facilitate ensuring security and stability', so long as there was 'respect in place for Iraq's sovereignty'.¹⁵⁰ Chinese state media outlets were less tactful than this, dismissing the US' humanitarian protection claims as an inauthentic guise to garner domestic support and international approval for an intervention that was ultimately economically motivated.¹⁵¹ Many states have echoed China's concerns about the authenticity of the use of R2P's military dimensions more broadly,¹⁵² as canvassed in the legitimacy section of this article.

145 Eduardo Simões, 'Dilma critica ação contra Estado Islâmico e diz que bombardeios não levam à paz', *Reuters*, 25 September 2014.

146 A/69/PV.6, 24 September 2014, p. 8.

147 *ibid.*

148 Rafael Moraes, 'Dilma quer diálogo com comunidade internacional, não com terroristas, diz ministro – Política', *Estadão*, 25 September 2014.

149 Shannon Tiezzi, 'US Airstrikes in Iraq: A Win-Win Situation for China', *The Diplomat*, 8 August 2014.

150 Zhang Yunubi, 'China Responds to US Airstrikes in Iraq', *China Daily*, 8 August 2014.

151 Mu Dong and Liang Youchang, 'Why Did the U.S. Finally Start in Iraq?', *Xinhua*, 8 August 2014.

152 Bellamy, 'Responsibility to Protect or Trojan Horse?'; Edward Luck, 'Sovereignty, Choice, and the Responsibility to Protect', *Global Responsibility to Protect*, 1(1) 10–21 (2009), pp. 12–20; Noam Chomsky, 'Statement to the United Nations General Assembly Thematic Dialogue on the Responsibility to Protect', United Nations, 2009, pp. 20–26; Thomas G. Weiss, 'Military Humanitarianism: Syria Hasn't Killed It', *The Washington Quarterly*, 37(1) 7–20 (2014), p.8.

Argentina noted the culpability of the US for the atrocity threat being responded to when it added to Security Council debates with the observation that 'ISIL ... finds its origins in the turbulent years that followed the invasion suffered by the country in 2003'. It added that ISIL 'must not be the pretext for unilateral actions, which have shown that they generate more problems than they solve'.¹⁵³ A different line of argument regarding culpability was made in the UK parliament when it was contemplating participation in the US-led operation. Opposition leader, Edward Miliband, argued that 'while some would say our [2003] intervention in Iraq means we should not intervene in this case, I think there is a heightened responsibility for us precisely because we did'.¹⁵⁴ Whether of the view that any further military action would do more harm than good, or that a special 'reparative' duty to protect existed, critics of the US' Protection Assistance efforts in 2014 on the grounds that they were culpable for the conditions giving rise to the threat appear to agree that their actions were unable to absolve them of this culpability.

Perhaps the most frequently levelled criticism of the US' actions in this case is that they were not adequate to protect the population at risk. As the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) has now established, acts of genocide were committed by ISIL against the Yazidis both before and after the US led Protection Assistance efforts. If the US had intended to save all the Yazidis at risk of mass atrocity in 2014, then it is clear that its Protection Assistance efforts did not come soon enough, or go far enough, to protect the population at risk beyond the confines of Mount Sinjar.

Evaluating the effectiveness of the Protection Assistance rendered in light of these criticisms is no easy task, and whatever the result, further research into the US' actions in this case, including into their effectiveness, is welcomed. Nonetheless, it is the contention of this article that the US' actions did constitute an example of Protection Assistance effectively rendered, so these criticisms will now be briefly weighed.

Regarding the criticism that the Protection Assistance effort – particularly its use of military measures – was inappropriate, the suitability of the use of military measures in situations of impending mass atrocity has repeatedly been agreed to by the international community. Further, it has been reiterated by the UNSG in multiple reports that military measures lie within the scope of

153 S/PV.7271, 19 September 2014, p. 15.

154 Edward Miliband, 'Speech to the House of Commons', 26 September 2014, *Parliamentary Debates*, Vol. 585, Col. 1271.

appropriate responses under R2P Pillar Two, so long as the assistance provided is as the request of the host nation, as it was in this case.

In relation to the criticism that the response reflected an inauthentic invocation of R2P, while there is no denying that the Obama administration framed the action to appeal to a domestic political audience, the fact that action was taken at all is still noteworthy given how unpopular any further involvement in Iraq was with American voters. Moreover, the US did not appear to gain anything strategically or financially from the action outside of its ability to claim good global citizenship, and to potentially fulfil a reparative duty.

In terms of the criticism that the US' reparative duty reflected a culpability for the underlying conditions of risk that it was unable to absolve itself of through its Protection Assistance actions, one wonders if there is anything the US could ever do that would absolve it of such responsibility (if indeed a direct causal connection between its military campaign in Iraq and ISIL's commission of atrocities could be established). While it is true that more genuinely preventative measures ought to enjoy a greater focus for states wishing to fulfil their responsibility to protect, and that the responsibility to rebuild is an often overlooked dimension of R2P that may be of relevance to the US–Iraq relationship, the present article does not seek to contribute to this discussion. Suffice to say that, within the confines of the limited actions that were taken, it appears the US was able to effectively render assistance in response to Iraq's request.

Regarding the claim that the US' response was inadequate, it should be noted that, from a Yazidi perspective, some Protection Assistance must have been infinitely preferable to no Protection Assistance. Further, the US' limited actions did help to avert an impending mass atrocity.¹⁵⁵ As a paper on the Yazidi case published by the Simon-Skjoldt Center for the Prevention of Genocide notes, an 'important takeaway from the Mt. Sinjar case is that in the face of a single mass atrocity event, even the limited use of force can prevent significant loss of life'.¹⁵⁶ Given the dearth of domestic voter support for more extensive US military action at the time,¹⁵⁷ criticisms that the US did not do enough seem to lack a pragmatic dimension.

Despite the various criticisms contemplated, the Protection Assistance provided by the US at the request of Iraq in 2014 helped to prevent the imminent

155 Yazda, 'Yazidis Urge International Community to Raise Yazidi Genocide Issue at International Criminal Court', Press Release, 2 August 2016.

156 Colin Thomas-Jensen, 'Fighting Fire with Fire', Simon-Skjoldt Center for the Prevention of Genocide, Series of Occasional Papers, No. 8, February 2018, p. 12.

157 CBS, 'Poll: Many Americans Wary of U.S. Role in Iraq', *CBS News*, 23 June 2014.

genocide of 40,000 Yazidis. Notwithstanding the limited scope of the action, and its failure to prevent the genocide of all Yazidis at the hands of ISIL in Sinjar, it still stands as an example of Pillar Two Protection Assistance effectively rendered.

3 Conclusion

The US' actions in Iraq in 2014 helped to prevent the genocide of 40,000 Yazidis trapped on Mount Sinjar. It provides a clear example of a state rendering R2P Pillar Two Protection Assistance effectively, in this case in response to an atrocity threat posed by a non-state terrorist group. As UNITAD continues to release its sobering findings into ISIL's mass atrocity crimes 2013–2017, and as terrorist groups continue to pose mass atrocity threats around the world, cases like this deserve increased attention, particularly within the context of the ability of R2P Pillar Two to provide a legitimate means through which to respond to such threats.¹⁵⁸ R2P Pillar Two contemplates a 'narrow but deep' array of measures, of which responses to imminent risks are but a small part. Further research into the applicability of R2P to atrocity threats posed by non-state actors, like the threat posed by ISIL to the Yazidis in 2014, should be considered.

¹⁵⁸ Threats worthy of particular mention in this context include those in Afghanistan and Nigeria, where serious mass atrocity risks are posed by ISIL-affiliated terrorist groups. Although Al-Qaeda also poses a mass atrocity threat in Syria, the manifest failure of national authorities there to protect at-risk populations makes it a case more suitable for consideration under Pillar Three.