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NEVER AGAIN? THE ROLE OF THE GLOBAL NETWORK OF R2P FOCAL POINTS IN PREVENTING ATROCITY CRIMES

MARTIN MENNECKE*

Abstract

The Nuremberg judgement famously held that crimes against international law are committed by men, not by abstract entities – but who, then, is to prevent these crimes? In 2005, all UN Member States agreed that it was their responsibility to protect populations against atrocity crimes (short R2P). In 2010, the idea was born to appoint senior government officials to act as individual R2P Focal Points to help implement this historic pledge. This article critically examines the focal point idea and its practice, focusing on the experience of the Danish R2P Focal Point as well as the role of the Global Network of R2P Focal Point which today has members from 61 UN member states. The article highlights the significant potential of the R2P Focal Points but also a series of pre-conditions that need to be met if the appointment of a R2P Focal Point is not to remain a mere gesture.

Keywords

Responsibility to protect (R2P), atrocity crimes, Focal Point, network, Denmark

1. INTRODUCTION

In September 2005, world leaders agreed on the sixtieth anniversary of the UN on lessons to be drawn from the genocides in Rwanda and Srebrenica. Going forward, States and the international community had a responsibility to protect populations from war crimes, crimes against humanity, ethnic cleansing and genocide.¹ This new norm, also referred to

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¹ UN General Assembly, ‘World Summit Outcome’ (24 October 2005) A/RES/60/1, paras 138-139.

as R2P, was to replace the long-standing rhetorical pledge of ‘never again’ with commitment and action. Today, it is evident that R2P did not end mass atrocities. Syria, Myanmar and South Sudan, to name but a few, have each become the site of mass killings, widespread sexual violence and other massive human rights violations. Some commentators have argued that R2P died in those new iterations of mass violence, while others have described this as the early stages of a ‘long and unsteady life’ as a new norm.² Why is R2P so difficult to realise and how it could be done?

In 2010, a number of States, led by Denmark and Ghana, together with the Global Centre for R2P, a key civil society organisation, agreed that the R2P norm needed a new, special mechanism to advance its implementation: individual, senior officials that would act as governmental Focal Points for R2P. This step was not enshrined in a new, legally binding instrument, but presented to interested governments who then included the Focal Point idea into an informal summary of their meeting.³ As of November 2020, 61 States and two regional organisations, the European Union (EU) and the Organisation of American States (OAS), have appointed an official to act as R2P Focal Point, making this mechanism the most prominent and popular vehicle in the field of atrocity prevention.⁴ The Focal Points and their global network, to which the Global Centre for R2P acts as secretariat, are the only implementation mechanism that were explicitly mentioned in a recent UN resolution marking the fifteenth anniversary of R2P.⁵ The UN Secretary General has called on governments to appoint a R2P Focal Point, as members of the network regularly encourage other States to join the initiative.⁶ No other domestic,

² See respectively David Rieff, ‘R2P, R.I.P.’ (*The New York Times*, 7 November 2011) <<https://www.nytimes.com/2011/11/08/opinion/r2p-rip.html>> accessed 21 April 2021; and Jennifer Welsh, ‘Norm Robustness and the Responsibility to Protect’ (2019) 4 *Journal of Global Security Studies* 53, 69.

³ Global Centre for R2P, ‘Fulfilling the Responsibility to Protect, 3rd Annual Ministerial Meeting on R2P, summary’ (24 September 2010) 2-3 <https://reliefweb.int/sites/reliefweb.int/files/resources/2CDC86ABF92F4CFB492577CA000EE0FF-Full_Report.pdf> accessed 15 November 2020.

⁴ See Global Centre for R2P, ‘Members of the Global Network of R2P Focal Points’ <www.globalr2p.org/resources/members-of-the-global-network-of-r2p-focal-points/> accessed 15 November 2020.

⁵ UN Human Rights Council, ‘Fifteenth anniversary of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, as enshrined in the 2005 World Summit Outcome’ (24 July 2020) A/HRC/44/L.14, para 2.

⁶ In fact, the UN Secretary General already spoke positively about the Focal Point initiative immediately after its inception: ‘The role of regional and subregional arrangements in implementing the responsibility to protect. Report of the Secretary-General’ (28 June 2011) A/65/877-S/2011/393, para 28; and

specialised body focused on preventing atrocity crimes has gained a similar standing internationally.

The fast, cross-regional growth and recognition of the network of R2P Focal Points makes the idea an impressive success story. Indeed, out of the numerous other recommendations on atrocity prevention the Secretary General has made every year since his first report in 2009, the one to appoint a R2P Focal Point has proven to be one of the most popular ones among States. What is the explanation for this success? And what can be said about the practice and impact of the R2P Focal Points and their global network? Both in the context of atrocity prevention and for the present Special Issue, these are key questions to investigate. The more so as this development has not been reflected yet in the academic literature on atrocity prevention. Specialised journals such as *Genocide Studies Prevention* and *Global Responsibility to Protect* have not yet carried any in-depth analysis of R2P Focal Points and their work as an implementation mechanism.⁷ This gap is surprising, as the literature is increasingly turning towards issues of implementation.⁸ For now, research articles only call R2P Focal Points a ‘key example’ and ‘critical’⁹ for atrocity prevention ‘becoming more institutionalized.’¹⁰ In light of the general rise of R2P Focal Points, it seems imperative to assess their actual potential and performance.

The present Special Issue offers a welcome opportunity and conceptual framework for such an inquiry. Its introduction identifies six core dimensions for a discussion of focal points which will be employed as an analytical grid. This article examines the idea and practice of the Global Network of R2P Focal Points as it has developed over the past decade. This includes a case-study of the experience of the Danish Focal Point for R2P, as Denmark is a founding member of the Focal Points initiative and very active

subsequently ‘Responsibility to protect: State responsibility and prevention’ (9 July 2013) A/67/929-S/2013/399, para 71. For states calling on others to appoint a Focal Point, see UN General Assembly Official Records (27 June 2019) A/73/PV.93, 12 (Costa Rica), 14 (Slovenia); and UN General Assembly Official Records (27 June 2019) A/73/PV.94, 19 (Ghana).

⁷ The landmark publication Alex J. Bellamy and Tim Dunne (eds), *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) has more than 1100 pages and 53 chapters, but none is devoted to the R2P Focal Points.

⁸ Cf Cecilia Jacob and Martin Mennecke (eds), *Implementing the Responsibility to Protect. A Future Agenda* (Routledge 2020).

⁹ Welsh (n 2) 62.

¹⁰ Nicole Deitelhoff, ‘Is the R2P Failing? The Controversy about Norm Justification and Norm Application of the Responsibility to Protect’ (2019) 11 *Global Responsibility to Protect* 149, 168.

internationally regarding the implementation of R2P.¹¹ The article builds on the author's long-term, first-hand observations of the work done by the Danish R2P Focal Point as well as interviews with the Danish Focal Point and the Global Centre for R2P.¹²

First, the historical background, mandate and current status of R2P Focal Points in the field of atrocity prevention will be described. The following section focuses on the role and experience of the Danish Focal Point as an example of practice. The final section assesses the potential and record of R2P Focal Points as implementers of the promise of 'never again' with reference to the conceptual framework of government human rights focal points developed earlier in this Special Issue.¹³ The article shows that the R2P Focal Points together with their global network indeed can be key in helping a country to work with R2P at the domestic and the international level – but the analysis highlights a series of pre-conditions that need to be met if the appointment of a R2P Focal Point is not to remain a mere gesture.

2. THE HISTORY, IDEA AND CURRENT STATUS OF R2P FOCAL POINTS AND THEIR NETWORK

This section will set out the background of the R2P Focal Point initiative and situate it in the greater context of institutionalised atrocity prevention.

2.1 THE HISTORY AND IDEA BEHIND RESPONSIBILITY TO PROTECT AND THE R2P FOCAL POINTS

When the R2P norm was agreed upon in 2005, it was seen as a milestone for the fight against genocide and other mass atrocities.¹⁴ The norm seemed to represent a new consensus among all UN Member States that sovereignty could no longer serve as excuse

¹¹ Martin Mennecke, 'Denmark and the Implementation of R2P', in Jacob and Mennecke (eds) (n 8) 38-40.

¹² As leading Danish academic expert, the author has since 2012 regularly discussed R2P matters with the Danish Focal Point and through him gained access to the Focal Point meetings. The current Danish Focal Point is Ulf Melgaard, Director of the Department for International Law at the Ministry of Foreign Affairs. The other interviewee is Savita Pawnday, Deputy Executive Director at the Global Centre for R2P.

¹³ See Introduction of this Special Issue.

¹⁴ Alex J. Bellamy, *Global Politics and the Responsibility to Protect. From Words to Deeds* (Routledge 2011) 24.

for committing mass atrocities as part of domestic affairs. Instead, as the Secretary General put it in a report in 2009, sovereignty was redefined by three pillars of responsibility.¹⁵ According to the first pillar of R2P, the State has a responsibility to protect its population against war crimes, crimes against humanity, ethnic cleansing and genocide. The second pillar of R2P is that States share a responsibility to assist each other in this regard through encouragement and assistance, for example by means of capacity building. But if the State in question manifestly fails to protect its population, the international community has a responsibility to step in to protect the population. This third pillar of R2P encompasses measures such as sanctions, a referral of the situation to the International Criminal Court and could ultimately also include military intervention if authorised by the UN Security Council.

It is important to note that responsibility to protect has strong inherent relations to existing human rights law.¹⁶ At its core lies the prevention of the most serious violations human rights such as genocide which protects core human rights such as the right to life and minority groups. Similarly, the UN's Framework of Analysis for the Prevention of Atrocity Crimes lists human rights violations as an important early warning sign.¹⁷ The UN Secretary General has emphasised this relation and, together with other R2P proponents, led attention to the human rights system as key venue for the implementation of R2P.¹⁸ Especially at the Human Rights Council (HRC), States have a range of options to work with R2P. This includes the Universal Periodic Review (UPR), special sessions of the HRC, Special Rapporteurs, Commissions of Inquiry and other accountability

¹⁵ On the three pillars see UN Secretary General, 'Implementing the responsibility to protect. Report of the Secretary-General' (12 January 2009) A/63/677.

¹⁶ *ibid* paras 16-22; UN Secretary General, 'Responsibility to protect' (n 6), paras 49-55.

¹⁷ UN Office for the Prevention of Genocide and the Responsibility to Protect, 'UN Framework of Analysis for Atrocity Crimes' (2014) 11 and 18-21.

¹⁸ See UN Secretary General, 'A vital and enduring commitment: implementing the responsibility to protect' (13 July 2015) A/69/981-S/2015/500, paras 30 and 73. In 2015, the Global Centre for R2P established a small office in Geneva to advance the implementation of R2P at the UN Human Rights Council, cf. Global Centre for R2P, 'Geneva and the Human Rights Council' <www.globalr2p.org/creating-a-hub-for-r2p-in-geneva/> accessed 15 November 2020. Also the Focal Points identified Geneva as key venue, cf. Global Centre for R2P, 'Summary of the Third Meeting of the Global Network of R2P Focal Points, Accra, Ghana, 2013' (13 October 2013) 5, <www.globalr2p.org/wp-content/uploads/2020/01/3rd-r2p-focal-points-meeting-summary.pdf> accessed 15 November 2020.

mechanisms.¹⁹ States established a Group of Friends of R2P at the HRC in 2015,²⁰ and in July 2020, the first thematic stand-alone resolution on R2P was adopted by that Council.²¹

Initially there was hope that States would exercise their newly defined responsibility to protect both internally and vis-à-vis each other. But at the same time widespread atrocities such as in Darfur, Sudan, raised the question of who would ensure that governments indeed lived up to the promise behind R2P. The 2005 World Summit Outcome did not address this question and referred generically to ‘states’ and ‘the international community’.²² As time passed, concerns arose that the R2P norm would unravel before long unless concerted efforts were made to further anchor R2P and its implementation in the international and the domestic system.²³ In response, the UN Secretary General appointed in 2008 a special adviser on R2P to advance both the conceptualisation and the operationalisation of the new norm.²⁴ This new post was joined to the UN Office for the Prevention of Genocide.²⁵ A year later, in 2009, the UN General Assembly passed a resolution agreeing to continue the dialogue on R2P in order to avoid it disappearing from the international agenda.²⁶

The question remained, though, how States would take R2P to an operational level, beyond discussions at the UN. In this situation the Global Centre for R2P, an advocacy group based in New York, developed the notion of a R2P Focal Point. Interested States,

¹⁹ On the relation between the UN Human Rights Council and the responsibility to protect, see, for example, Ekkehard Strauss, ‘UN Human Rights Council and High Commissioner for Human Rights’ in Bellamy and Dunne (eds) (n 7) 315 ff.

²⁰ As of November 2020, the Group of Friends of R2P in Geneva has over 50 members from all the UN’s regional groupings: Global Centre for R2P, ‘Group of Friends of the Responsibility to Protect’ <www.globalr2p.org/group-of-friends-of-the-responsibility-to-protect/> accessed 15 November 2020.

²¹ UN Human Rights Council (n 5).

²² See UN General Assembly, ‘World Summit Outcome’ (n 1) paras 138-139.

²³ Bellamy (n 14) 28-31.

²⁴ UN Security Council, ‘Letter Dated 31 August 2007 from the Secretary-General Addressed to the President of the Security Council’ (7 December 2007) S/2007/721.

²⁵ On the work of the Joint Office and the Special Adviser see Edward C. Luck, ‘Getting There, Being There: The Dual Roles of the Special Adviser’ in Bellamy and Dunne (eds) (n 7) 288 ff. The Office supports the two Special Advisers by collecting information, conducting country assessments and providing technical assistance, including training, to enhance the capacity of the United Nations, regional organizations, States and other actors.

²⁶ UN General Assembly, ‘The responsibility to protect’ (7 October 2009) A/RES/63/308.

including Denmark, were then approached to test and refine the concept. The idea was to ‘personalise’ R2P in order to create a contact point for external and internal stakeholders and to ensure that governments would engage with R2P also outside the context of the UN General Assembly in New York.

The mandate of the Focal Point was seen to encompass a domestic and an external dimension. At home, the Focal Point would help to develop and implement a national R2P plan, monitor and gather information about relevant situations and coordinate national preventive and protection measures. Internationally, the Focal Point would promote R2P as a norm, utilize the new Focal Point network and coordinate international preventive and protection measures.²⁷ In lack of a formally agreed definition, the network shaped an understanding through the informal summaries of the annual network meetings: a national R2P Focal Point was seen as ‘a senior level official who is responsible for promoting R2P domestically and supporting international cooperation on the issue through participating in a global network’.²⁸

From the outset it seemed unrealistic to assign the implementation of the various R2P activities to one government official.²⁹ Instead the idea was that this official, due to senior rank and placement in capital, could help to initiate and catalyse internal conversations with other officials and agencies on how to implement R2P. The Focal Point would be facilitator rather than implementer. It was agreed that each country had to shape and place the Focal Point in light of its own circumstances and capacities.³⁰

²⁷ Global Centre for R2P, ‘Summary of the First Meeting of the Global Network of R2P Focal Points, New York, USA, 2011’ (13 June 2011) 2-4, <www.globalr2p.org/wp-content/uploads/2020/01/2011-R2P-Focal-Points-Meeting.pdf>; ‘National R2P Focal Point Recommendations’ (26 June 2012) 2-3, <www.globalr2p.org/wp-content/uploads/2020/01/recommendations_r2p-focal-points.pdf>, both accessed 15 November 2020.

²⁸ Global Centre for R2P, ‘Summary of the Second Meeting of the Global Network of R2P Focal Points, New York, USA, 2012’ (29 September 2012) 1, <www.globalr2p.org/wp-content/uploads/2020/01/2012-R2P-Focal-Points-Summary.pdf> accessed 15 November 2020.

²⁹ Global Centre for R2P, ‘Summary of the First Meeting’ (n 27) 2.

³⁰ See only Global Centre for R2P, ‘Policy Memo, Preparatory Workshop for the Second Meeting of the R2P Focal Points Network’ (12 March 2012) 2, <www.globalr2p.org/wp-content/uploads/2020/01/2012-R2P-Focal-Points-Policy-Memo.pdf> accessed 15 November 2020; ‘Summary of the Second Meeting’ (n 28) 2.

The collaboration between the Global Centre for R2P and interested States resulted in a short briefing note outlining the role of an R2P Focal Point.³¹ This document never gained any official status and was at no time formally endorsed by governments. Instead, it served and continues to serve as informal terms of reference for what is a R2P Focal Point. Denmark, Ghana and the Global Centre for R2P decided to institutionalize the idea and co-launched the R2P Focal Point initiative in September 2010. In May 2011, Denmark, Costa Rica and Ghana co-hosted the inaugural meeting of the new network where members discussed the role of the Focal Point and network.³² In July 2011, Costa Rica, Denmark and Ghana introduced the new initiative to the UN General Assembly.³³

2.2 THE CURRENT ROLE AND STATUS OF THE R2P FOCAL POINTS AND THEIR GLOBAL NETWORK

Ten years later, the number of personalised R2P assignments has grown from a handful of States at its inception to almost a third of the UN membership. Who are these 63 Focal Points and what is their impact on the implementation of R2P? What role do they play in the international architecture of atrocity prevention?

In light of the absence of any formal criteria, countries have chosen a number of different approaches to how to fill the position of the R2P Focal Point. Almost all current R2P Focal Points are based in their country's capital rather than with the respective UN Mission in New York. This enables them to interact with the domestic system, which is key for the implementation of R2P pillar one. The large majority of the Focal Points, however, works for the country's Ministry of Foreign Affairs which points to a focus on R2P's pillars two and three. Indeed, this suggests that many countries, despite of frequent proclamations to do the opposite, consider R2P primarily to be a matter of international,

³¹ Global Centre for R2P, 'National R2P Focal Point Recommendations' (n 27).

³² Global Centre for R2P, 'Summary of the First Meeting' (n 27) 2-8.

³³ See *ibid.*; and 'Statement by Denmark on behalf of Costa Rica and Ghana at the 2011 UN General Assembly Informal Interactive Dialogue on the Responsibility to Protect' (12 July 2011) para 7, <www.globalr2p.org/wp-content/uploads/2020/06/2011-IID-Costa-Rica.pdf> accessed 15 November 2020.

not domestic, relevance.³⁴ Regarding the level of seniority, many countries have placed the task at the ambassadorial level.³⁵

The R2P Focal Points together make up the Global Network of R2P Focal Points. This informal network has since 2013 met annually in the capital of a Member State to discuss the role of the focal points and exchange good practices.³⁶ In the beginning, the meetings focused on the links between R2P and other strands of work, for example R2P and capacity building or R2P, human rights and the business sector.³⁷ Gradually the meeting agendas evolved from these generic, thematic discussions to reflect a greater emphasis on the actual work of the R2P Focal Points. This included sharing examples on how Focal Points could work with security actors on R2P trainings and how they could cooperate internationally to address specific country situations or implement R2P in UN organs.³⁸ From the very beginning of the network, the underlying idea included the notion that the network would gradually grow, including through active outreach and recruiting.³⁹ On

³⁴ See for example the different Focal Points introduced in Global Centre for R2P, ‘Summary of the Second Meeting’ (n 28) 2-4.

³⁵ Cf Global Centre for R2P, ‘Summary of the First Meeting’ (n 27), 3.

³⁶ The initial two meetings of the R2P Focal Point initiative, in 2011 and 2012, were held in New York. For an overview of the meetings of the Global Network, see Global Centre for R2P, ‘Global Network of R2P Focal Points’ <www.globalr2p.org/the-global-network-of-r2p-focal-points/> accessed 15 November 2020.

³⁷ See Global Centre for R2P, ‘Summary of the Third Meeting’ (n 18), 4-5; ‘Summary of the Fourth Meeting of the Global Network of R2P Focal Points, Gaborone, Botswana, 2014’ (17 June 2014) 1-3, <www.globalr2p.org/wp-content/uploads/2020/01/2014-r2p-focal-points-meeting-summary.pdf> accessed 15 November 2020.

³⁸ For example, Global Centre for R2P, ‘Summary of the Sixth Meeting of the Global Network of R2P Focal Points, Seoul, Republic of Korea, 2016’ (10 September 2016), 4-5, <www.globalr2p.org/wp-content/uploads/2020/01/2016-summary-of-the-sixth-annual-r2p-focal-points-meeting.pdf>; ‘Summary of the Seventh Meeting of the Global Network of R2P Focal Points, Doha, Qatar, 2017’ (10 August 2017), 1-2, <www.globalr2p.org/wp-content/uploads/2020/01/2017-summary-of-the-seventh-annual-r2p-focal-points-meeting.pdf>; ‘Summary of the Eighth Meeting of the Global Network of R2P Focal Points, Helsinki, Finland, 2018’ (28 September 2018), 3, <www.globalr2p.org/wp-content/uploads/2018/09/2018-summary-of-the-r2p-focal-points-meeting.pdf> all accessed 15 November 2020.

³⁹ Cf recommendation 3 (‘States should reach out to those who are not yet part of the Global Network [...] and encourage them to appoint an R2P Focal Point’) in Global Centre for R2P, ‘Summary of the Ninth Meeting of the Global Network of R2P Focal Points, Brussels, Belgium, 2019’ (26 July 2019), 5, <www.globalr2p.org/wp-content/uploads/2019/07/2019-9th-annual-r2p-focal-points-summary.pdf> accessed 15 November 2020.

substantive R2P issues, Focal Points could reach out to peers in their region and cooperate globally.⁴⁰ Active participation in the network is seen as part of what a Focal Point does.⁴¹

In practice, the network and its annual meetings provide a unique forum for Focal Points to meet peers and increase their capacity to advance the implementation of R2P.⁴² This includes the sharing of new ideas or of how challenges were overcome. To facilitate the building of a community and allow for frank exchanges, the network meetings are since 2017 only open for members.⁴³ In that sense, the Global Network reflects R2P's pillar 2, as Focal Points can assist each other, in particular newly appointed Focal Points, in building capacity to protect their populations. The annual network meetings are well attended, and, in some regions, Focal Points also meet regularly outside the network gatherings to focus on regional issues.⁴⁴

Only recently, the members of the Global Network of R2P Focal Points have started to view their group as a collective that can produce joint outcomes. On the initiative of a new steering group currently composed of the focal points from Australia, Denmark, Ghana, Lithuania, Luxemburg and Slovenia, over 50 members of the Network in May 2019 wrote a letter to the UN Secretary General, asking how the UN Secretariat sought to integrate an R2P lens into its prevention work.⁴⁵ The following year, in May 2020, members of the Network published a statement on the occasion of the 75th anniversary of the Second World War to highlight new atrocity risks arising in the context of the pandemic Covid-19.⁴⁶

⁴⁰ See 'Statement by Denmark on behalf of Costa Rica and Ghana' (n 33) para 7; Global Centre for R2P, 'Summary of the Ninth Meeting' (n 39) 5.

⁴¹ See, for example, 'Statement by Denmark at the 2012 UN General Assembly informal interactive dialogue on the Responsibility to Protect' (5 September 2012) 2, <www.globalr2p.org/wp-content/uploads/2020/07/2012-IID-Denmark.pdf> accessed 15 November 2020; Global Centre for R2P, 'Summary of the Second Meeting' (n 27) 1.

⁴² Interview with the Danish Focal Point, November 2020. See also UN Secretary General, 'A vital and enduring commitment' (n 18) paras 24 and 69, Global Centre for R2P, 'National R2P Focal Point Recommendations' (n 27) 2, and UN General Assembly Official Records (n 6) 10 (Australia), 13 (Guatemala), 18 (Hungary).

⁴³ Cf Global Centre for R2P, 'Summary of the Seventh Meeting' (n 38) 1.

⁴⁴ Slovenia has since 2013 biennially hosted meetings of the European R2P Focal Points.

⁴⁵ On file with the author.

⁴⁶ 'Marking the 75th anniversary of the defeat of Nazi Germany and our Responsibility to prevent atrocities' (8 May 2020) <www.globalr2p.org/resources/marking-the-75th-anniversary-of-the-defeat-of-nazi-germany-and-our-responsibility-to-prevent-atrocities/> accessed 15 November 2020.

In the international institutional architecture of atrocity prevention, the R2P Focal Points and their network continue to hold a special place, as there is no alternative means of implementation that has attracted similar support. Some governments have opted to appoint a national mechanism rather than a single official to oversee atrocity prevention efforts. The underlying idea of these national mechanisms, however, is the same – to strengthen the focus on atrocity prevention in capitals.⁴⁷ In addition, States have created further fora in international settings to advance R2P’s operationalisation, in particular the Groups of Friends of R2P at the UN in respectively New York and Geneva. These groups discuss regularly how to apply R2P in the UN context, deliver statements on R2P at the UN Security Council, the UN General Assembly and the UN HRC and receive briefings by relevant UN officials, including from the UN’s Joint Office on the Responsibility to Protect and the Prevention of Genocide.⁴⁸ Both groups have each more than 50 Member States whose R2P experts and Ambassadors attend their meetings. In general, however, the work of the Groups of Friends does not touch on R2P’s domestic implementation. Neither is there participation from capitals, but only from UN Missions (which steers the groups’ focus towards the international aspects of R2P), and only occasionally the Groups of Friends meet at the ambassadorial level, while the position of the R2P Focal Point is defined as being held by a senior level official. Most notably, the membership in the Group of Friends of R2P is by country and not individualised – which means there is no personal mandate to advance the implementation of R2P.

A key actor regarding the work of the Global Network and of individual R2P Focal Points is the aforementioned Global Centre for R2P. The Global Centre has ever since the R2P Focal Point initiative’s start been instrumental to its success – as its secretariat, by advocating states to appoint a R2P Focal Point, informing R2P Focal Points about relevant developments or co-organising the annual gatherings of R2P Focal Points. This role has been crucial for two reasons: first, as a specialised civil society group, the Global Centre has provided continuity and accumulated experience whereas R2P Focal Points have been replaced on a regular basis, as especially foreign ministries follow a system of staff rotation. Second, the Global Centre has been essential in highlighting the specificity

⁴⁷ For an overview, see Samantha Capicotto and Rob Scharf, ‘National Mechanisms for the Prevention of Atrocity Crimes’ (2018) 11 *Genocide Studies and Prevention* 6.

⁴⁸ The Global Centre for R2P functions as secretariat for both groups of friends of R2P and has compiled some of their R2P statements: Global Centre for R2P, ‘Group of Friends of the Responsibility to Protect’ (n 20).

of atrocity prevention compared to other agendas. While there is overlap between R2P and protecting human rights, advancing the women, peace and security agenda or working on stabilisation, R2P requires a specific focus on preventing atrocity crimes.⁴⁹ The focus is on identifying vulnerable groups that could become the victims of the most egregious human rights violations and the potential perpetrators of such atrocities. This is different from monitoring the general state of human rights in a country. It also leads to a discussion of mitigation and response measures that reflect this specific priority and distinguish between, rather than equate, victims and perpetrators.

The Global Centre focuses exclusively on R2P and could thus develop a special, in-depth expertise in this particular field which only very few governments can match. The special status of the Global Centre vis-à-vis the Global Network of R2P Focal Points further manifested itself in the production of a manual for R2P Focal Points which provides new Focal Points with an introduction to their role. This handbook builds on input by individual R2P Focal Points and consultations with the Global Network but was conceptualised and written by the staff of the Global Centre.⁵⁰

3. A CASE-STUDY: THE DANISH FOCAL POINT FOR THE RESPONSIBILITY TO PROTECT

Having looked at the R2P Focal Point as a mechanism, the article now turns to a case-study to learn more about the practice of the R2P Focal Points and the challenges they encounter. It is important to reiterate from the outset that the set-up and practice of different R2P Focal Points may differ considerably – also among neighbouring countries.⁵¹ The following is thus not meant to be a representative account of the work of a R2P Focal Point, but rather a case-study of what is possible and relevant to consider when assessing the potential and performance of R2P Focal Points.

3.1 THE CONTEXT: DENMARK AS A CHAMPION OF THE RESPONSIBILITY TO PROTECT

⁴⁹ On the specificity of R2P compared to related agendas see Luck (n 25) 297-299; and Mennecke (n 11) 41-42 and 46-47.

⁵⁰ Global Centre for R2P, *Manual for R2P Focal Points*, 2019. See for the manual's history Global Centre for R2P, 'Summary of the Sixth Meeting' (n 38) 6; 'Summary of the Seventh Meeting' (n 38) 4; 'Summary of the Eighth Meeting' (n 38) 4.

⁵¹ Interview with Global Centre for R2P, November 2020.

Denmark can for a number of reasons serve as an interesting case. First, acting in a small State, within a small foreign ministry, the Danish R2P Focal Point can serve as an example of what opportunities and challenges exist in a small system.⁵² Second, Denmark can exemplify how a R2P Focal Point can act in a country that does not face immediate atrocity risks and where the focus of attention automatically leans towards the foreign policy dimensions of R2P.

Denmark has since the beginning been among the core supporters of R2P.⁵³ It has joined all relevant international networks and shown leadership in advancing R2P as a norm and regarding its operationalisation. As mentioned, Denmark was among the co-founders of the Global Network of R2P Focal Points and is currently represented in the network's steering group. Denmark has also joined both groups of friends of R2P in New York and Geneva and acts since 2019 as the co-chair of the group in New York. In addition, Denmark was in 2013 among the initiators of another informal atrocity prevention network, namely the Global Action Against Mass Atrocity Crimes (GAAMAC) and continues to serve on its steering group. Finally, Denmark is an active member of the International Atrocity Prevention Working Group (IAPWG) which is small forum of like-minded governments that seeks to focus on applying R2P in practice. There have so far been five Danish R2P Focal Points, and they have all been senior officials in the legal service of the Ministry of Foreign Affairs. The current Danish Focal Point is the head of international law department and supported part-time by one working level official and an external academic adviser.

3.2 THE DANISH R2P FOCAL POINT AND RESPONSIBILITY TO PROTECT AS A DISTINCT NORM

The impact and durability of a new norm depends on how after its inception its supporters defend its integrity and apply it in practice. R2P faced from early on a number of serious challenges. First, in spite of the consensual adoption of R2P as part of the World Summit

⁵² In the existing literature on implementing R2P, the focus is on the US Atrocity Prevention Board which draws on the staff and resources of several government agencies, providing it with a very different capacity than that of an individual Focal Point. See only Stephen Pomper, 'Atrocity Prevention under the Obama Administration', in Jacob and Mennecke (eds) (n 8) 63-65.

⁵³ Interview with Global Centre for R2P, November 2020. See also Mennecke (n 11) 38-40.

Outcome in 2005, some Member States questioned first efforts to move towards the implementation of the new norm, as it constituted a challenge to a traditional understanding of sovereignty.⁵⁴ Second, with reference to R2P being adopted through a non-binding UN General Assembly resolution, there was the question of the practical value of the new norm, beyond the rhetorical commitment to do better when facing the next genocide. Finally, there was the challenge to explain the added value of R2P as a new norm, as its content could seem covered by the work done under other headings including conflict prevention.⁵⁵

In this context, it turned out to be very valuable that the Danish R2P Focal Point was placed inside the international law department. The subtleties and sensitivities of R2P's definition, including its four atrocity crimes, its relation to existing human rights norms and general international law and the need to stay precise when applying R2P were understood by the Danish R2P Focal Point, as they made sense from a legal perspective.⁵⁶ There was no inclination to merge R2P with the related but separate fields of conflict prevention, stabilization or development cooperation.

As part of the Focal Point's work inside Denmark, the Danish R2P Focal Point in meetings with other foreign ministry officials, for example from the development cooperation agency or from geographical units focusing on partner countries, routinely made the effort to clarify R2P's distinct meaning, scope and its focus on four specific atrocity crimes. It proved particularly important to highlight the differences between ongoing Danish efforts and what these would look like once an atrocity prevention lens was added.⁵⁷ From an international law perspective, it was easy to see that there were important differences between preventing atrocity crimes and regular human rights violations or conflicts, as the notion of international criminal law and the argument for international criminal courts is based on this distinction. Gradually, it became also obvious, however, that any ad hoc outreach by the Danish R2P Focal Point would not be sufficient to make the conceptual questions surrounding R2P go away. A more systematic

⁵⁴ See, for example, the remarks during the first R2P debate at the UN General Assembly by several states: UN General Assembly Official Records (23 July 2009) A/63/PV.97, 5-6 (Egypt) and 13 (Brazil); (24 July 2009) A/63/PV.98, 23 (China).

⁵⁵ This was already early on the experience of various Focal Points: Global Centre for R2P, 'Policy Memo, Preparatory Workshop' (n 30) 3.

⁵⁶ Interview with the Danish Focal Point, November 2020.

⁵⁷ *ibid.*

approach seemed required, and first steps in this regard were taken when R2P was integrated into the pre-deployment training of Danish diplomats on human rights.⁵⁸

Also at the international level, the Danish R2P Focal Point undertook efforts to preserve the integrity of R2P as a distinct norm. An important forum in this regard is the UN General Assembly which since 2009 has annually hosted a discussion on the state of affairs regarding R2P. Under the leadership of the Danish Focal Point, Denmark has actively participated in all these debates and on several occasions pushed back on misinterpretations of the norm.⁵⁹ Thus in July 2011, in the context of first criticisms of NATO's intervention in Libya, the General Assembly discussion focused on the third pillar of R2P. Denmark remarked that 'there should not be misgivings or worries' about R2P, but underscored that 'the international community's commitment to timely and decisive response' only becomes relevant 'when a State cannot or does not want to tackle and prevent the commission of such despicable crimes'.⁶⁰

In 2018, the Danish R2P Focal Point oversaw a further step to highlight the distinct nature of R2P. Following the example set by Australia, Denmark in 2018, 2019 and 2020 successfully spearheaded an initiative in the UN General Assembly to make the annual exchange on R2P part of the Assembly's formal agenda.⁶¹ This may seem to be a procedural matter of little significance, but at the UN this request and the subsequent votes carried an important symbolic meaning. The respective decisions clarified that Denmark and other states viewed R2P as an important and distinct issue which necessitated a formal discussion in the UN General Assembly, and in turn sent a signal to the UN Secretariat about the significance member states attributed to R2P.⁶² The efforts of the Danish R2P Focal Point to support the joint UN Office on the Prevention of Genocide and Responsibility to Protect provide another example. As co-chair of the Group of Friends of R2P in New York, Denmark regularly invites the UN Special Adviser on R2P to brief member states about the specific needs and challenges to implement R2P.

⁵⁸ *ibid.*

⁵⁹ The different Danish statements, and a summary of the R2P debate in the UN General Assembly can be found as respectively 'government statements' and 'event summary' through Global Centre for R2P, 'Resources' <www.globalr2p.org/resources/> accessed 15 November 2020.

⁶⁰ 'Statement by Denmark on behalf of Costa Rica and Ghana' (n 33) paras 2-3.

⁶¹ See, for example, the record of the most recent debate: UN General Assembly Official Records (4 September 2020) A/74/PV.63, 11-19.

⁶² Interview with Global Centre for R2P, November 2020.

Moreover, in 2019, Denmark provided the Office for a three-year period with an additional staff person to specifically assist the UN Special Adviser on R2P in her work.⁶³

3.3 THE DANISH R2P FOCAL POINT AND RESPONSIBILITY TO PROTECT AS A DISTINCT PRACTICE

In addition, the Danish R2P Focal Point put emphasis on advancing its application in practice, as the acceptance for R2P as a distinct norm is expected to grow if its added value can be shown in practice.⁶⁴ The following takes a closer look at the Focal Point's efforts regarding R2P's application in international organisations and in specific country situations.

3.3.1. The Danish R2P Focal Point and R2P in International Organisations

As member of the EU, Denmark sought from early on opportunities to apply R2P through the EU as regional organisation that has additional capacities, for example regarding early warning and assistance to countries facing atrocity risks. Together with like-minded partners, in particular the R2P Focal Point of the Netherlands, the Danish R2P Focal Point pursued a two-pronged approach.⁶⁵ First was a push to get the EU to appoint its own R2P Focal Point to advance R2P as an operational norm within the organisation. The EU finally named its first R2P Focal Point in 2016, the first such Focal Point to be appointed by a regional organisation, with the OAS following in 2019. Second, the Danish R2P Focal Point together with partners entered into discussions with the External Action Service (EEAS) of the European Union on how the EU could integrate R2P as a practical matter into its work. This dialogue, over time, resulted into a number of concrete outcomes. For example, the EEAS team working on conflict prevention and early warning integrated specific atrocity risk factors into its work.⁶⁶ Furthermore, the EU Council Working Group on UN affairs (CONUN) has made R2P a regular item on its agenda. This means that the EU and its Member States routinely engage with R2P as a UN topic

⁶³ Denmark has also provided financial support to the Joint Office. Interview with the Danish Focal Point, November 2020.

⁶⁴ This need to identify R2P's added value has also been experienced by other R2P Focal Points. See for example Global Centre for R2P, 'Summary of the Sixth Meeting' (n 38) 2.

⁶⁵ Interview with the Danish Focal Point, November 2020.

⁶⁶ Cf UN Secretary General, 'Responsibility to protect: from early warning to early action. Report of the Secretary-General' (1 June 2018) A/72/884-S/2018/525, para 13.

which includes preparing statements on R2P for relevant UN meetings and discussing the annual R2P report by the UN Secretary General. In addition, the Danish and Dutch R2P Focal Points initiated annual meetings of the R2P experts based in capitals of EU Member States to facilitate the exchange of best practices and policy discussions on how to further operationalize R2P in EU Member States and through the EU. As a reflection of their growing understanding of R2P as an operational principle, the EEAS and EU Member States each year produce an informal working document which lists the activities they respectively intend to undertake to advance R2P's implementation.⁶⁷ This document refers to all three pillars of R2P and puts special emphasis on applying R2P in practice.

The Danish R2P Focal Point has also put made it a priority to advance the application of R2P at the UN HRC in Geneva. This approach sought to emphasise the preventive nature of the R2P norm by drawing on the relationship between R2P and human rights violations as early warning sign for future atrocity crimes. At the outset, this proved to be difficult because a number of Member States viewed R2P as a 'New York topic', referring in particular to the UN Security Council.⁶⁸ In concert with like-minded partners, in particular other members of the IAPWG, Denmark contributed to paving the ground for the establishment of a Geneva-based Group of Friends of R2P in 2015.

A new opportunity to advance the implementation of R2P in Geneva arrived with the Danish membership in the UN Human Rights Council from 2019 to 2021. The Danish Focal Point oversaw a number of efforts in this regard, including the application of an atrocity prevention lens to Danish statements and actions in the HRC regarding Myanmar. In this context, Denmark put a special emphasis on the need to hold accountable those responsible for atrocity crimes and contributed in 2018 to the Council's decision to establish the Independent Investigative Mechanism for Myanmar.⁶⁹ The Danish R2P Focal Point also led Danish efforts in June 2020 to adopt together with like-minded countries the first thematic R2P resolution at the Human Rights Council that would focus on how the Council, in line with its prevention mandate, could strengthen its contribution

⁶⁷ Interview with the Danish Focal Point, November 2020.

⁶⁸ *ibid.* On the need to work with R2P at the UN Human Rights Council, cf. UN Secretary General, 'Implementing the responsibility to protect' (n 15) para 16.

⁶⁹ Interview with the Danish Focal Point, November 2020.

to the prevention of atrocity crimes.⁷⁰ Similarly, in the fall session of 2020, Denmark tried to strengthen a thematic HRC Resolution on the prevention of human rights violations by suggesting specific additional measures that would reflect an atrocity prevention perspective such as the introduction of regular horizontal early warning briefings by the Office of the High Commissioner on Human Rights to the Human Rights Council.⁷¹

3.3.2. The Danish R2P Focal Point and R2P in Specific Country Situations

As head of the international law department, the Danish R2P Focal Point does not have any immediate role in deciding how the Danish Foreign Ministry responds to a specific country situation unless there is a clear international law angle. This reflection of internal competencies within the ministry indicates certain challenges for the work of the Focal Point and will be discussed further in the next section. At this point, this article highlights a few instances where the Danish Focal Point despite of his position outside the regional departments was able to facilitate the implementation of R2P regarding specific countries.

The first example of the Danish Focal Point playing a key role is the Danish R2P engagement in Ghana. In 2013, the annual meeting of the Global Network of R2P Focal Points was co-hosted by Denmark and Ghana and held in Accra, Ghana.⁷² Importantly, this meeting represented the first international discussion on R2P among governments outside New York. The collaboration between the co-hosts worked well and became the starting point for Danish R2P engagement in Ghana.⁷³ Thus, the Danish R2P Focal Point decided to partner with the Kofi Annan International Peacekeeping Training Centre (KAIPTC) in Accra and the Global Centre for R2P to develop a training on atrocity prevention for peacekeepers, which since annually has been taught at KAIPTC.⁷⁴ In addition, the Danish Focal Point through personal outreach helped to develop a strong interest for the R2P at the Danish embassy in Accra. This led, for example, to the Danish embassy funding a Ghanaian civil society project which examined the capacity of

⁷⁰ UN Human Rights Council (n 5). The adopted text made is a landmark as the Human Rights Council's first thematic statement on the responsibility to protect but does not provide much operational direction on how to work with R2P at the Council.

⁷¹ Cf UN Human Rights Council resolution, 'The contribution of the Human Rights Council to the prevention of human rights violations' (14 October 2020) A/HRC/RES/45/31.

⁷² Global Centre for R2P, 'Summary of the Third Meeting' (n 18).

⁷³ Interview with the Danish Focal Point, November 2020.

⁷⁴ For further information on the most recent course, see Kofi Annan International Peacekeeping Training Centre, 'Call for Applications: Responsibility to Protect Course (R2P)' <www.kaiptc.org/r2p19/> accessed 15 November 2020.

Ghana's domestic institutions to engage with and implement R2P in Ghana.⁷⁵ As a result of this initial collaboration, there have regularly been meetings between the Danish and Ghanaian Focal Points and their staff.

Another example concerns Myanmar, one of Denmark's development partner countries in South East Asia. Prior to the genocidal violence against the Rohingya in August 2017, the Danish R2P Focal Point had not been directly involved in Danish policies vis-à-vis Myanmar. The massive human rights violations that forced hundreds of thousands of Rohingya to flee into Bangladesh changed this, as the question of accountability became a central feature of the international and the Danish response.⁷⁶ The Danish R2P Focal Point could now engage in discussions on potential responses with other Focal Points and in particular partners in the International Atrocity Prevention Working Group, as accountability formed a key theme of the Danish membership in the UN HRC. This work contributed to the decision of the UN HRC to establish the Independent Investigative Mechanism for Myanmar.⁷⁷ In parallel, the Danish Focal Point participated actively in discussions on the conduct of the UN regarding Myanmar and its seeming failure to act in accordance with the 'Human Rights up Front' initiative which had sought to make atrocity prevention a priority for the UN Secretariat. This concern led first to an internal report examining and criticizing the role of the UN in Myanmar and since to a discussion on how the UN can improve its response in similar situations in the future.⁷⁸

In addition to facilitating Danish atrocity prevention efforts in specific countries, the Danish Focal Point has also made more systematic efforts to integrate atrocity prevention into Denmark's country engagements. Supported by other departments of the Ministry, the Focal Point initiated two international training workshops that sought to connect R2P with development cooperation in Danish partner countries. In 2016 and 2017, in respectively Kampala, Uganda, and Phnom Penh, Cambodia, the Focal Point together

⁷⁵ West Africa Network for Peacebuilding (WANEP), 'Institutional Capacities for the Implementation of R2P in West Africa – a Case Study of Ghana' (February 2016).

⁷⁶ Interview with the Danish Focal Point, November 2020.

⁷⁷ UN Human Rights Council, 'Resolution adopted by the Human Rights Council on 27 September 2018' (3 October 2018) A/HRC/RES/39/2.

⁷⁸ See Gert Rosenthal, 'A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018' (29 May 2019) <www.un.org/sg/sites/www.un.org/files/atoms/files/Myanmar%20Report%20-%20May%202019.pdf> accessed 15 November 2020 .

with colleagues from USAID convened Danish and other development practitioners to discuss the applicability and significance of atrocity prevention in development practice.⁷⁹ This meant, for example, that the UN Framework of Analysis for the Prevention of Atrocity Crimes was applied as an early warning tool to the concrete country situations participants were based in. Potential mitigation measures were discussed with a view to identify the added value of applying an atrocity prevention ‘lens’. For the Danish Focal Point, these two workshops meant that staff from a number of Danish embassies received a basic, but context-specific atrocity prevention training.

4. R2P FOCAL POINTS AS GOVERNMENTAL HUMAN RIGHTS FOCAL POINTS

Having reviewed the practice of the Danish Focal Point, it is now time to take a step back and to critically reflect on the potential and practical impact of an R2P Focal Point. This part draws on the conceptual framework presented in the introduction of in this Special Issue where a governmental human rights focal point is defined by a number of characteristics which are now examined in greater detail for the R2P Focal Points.⁸⁰

4.1 FOCAL POINTS AS GOVERNMENT STRUCTURES

Lorion and Lagoutte posit that governmental human rights focal points are part of the formal government structure and essentially different from other, independent actors in human rights protection such as National Human Rights Institutions in line with the Paris Principles.⁸¹ The Danish R2P Focal Point corresponds to this description, as he is a government official based inside the Ministry of Foreign Affairs. The nearly universal placing of the R2P Focal Points inside government is also in line with the informal definition used in the documentation of the Global Network of R2P Focal Points.⁸²

⁷⁹ Cf Mennecke (n 11) 48-52.

⁸⁰ Introduction to this Special Issue.

⁸¹ See the ‘Paris Principles’ adopted by the UN General Assembly, ‘National institutions for the promotion and protection of human rights’ (20 December 1993) A/RES/48/134.

⁸² Cf Global Centre for R2P, ‘Summary of the First Meeting’ (n 27) 3; ‘Summary of the Second Meeting’ (n 28) 1.

In practice, the governmental nature of the R2P Focal Point reflects a necessity notwithstanding certain issues. It is a necessity because the key function of an R2P Focal Point is to facilitate a government's work on atrocity prevention.⁸³ This requires amongst others access to government meetings and files, intimate knowledge of governmental processes and trust of other government agents to engage them in the process. Ideally, as stated in the original definition of the R2P Focal Point, the Focal Point is a senior level government official to be able to unfold a certain 'pull' factor which obliges other government agents to engage with attempts to practice a country's responsibility to protect.

While the governmental nature of the R2P Focal Point is inherent to the mandate, it also entails issues for the implementation of the mandate. As R2P originally was adopted at the UN and is annually discussed in the UN General Assembly, many governments – especially in the Global North – have decided to situate the R2P Focal Point in their foreign ministry.⁸⁴ There are a number of significant challenges flowing from this. First, the Focal Point will naturally be inclined to view R2P as a UN matter, which inevitably takes the attention from R2P's first pillar that focuses on the country's responsibility to protect its own population against atrocity crimes. Second, if an R2P Focal Point with base in the foreign ministry does seek to engage with pillar 1 issues, he will soon encounter questions of competency, as other line ministries and domestic government agencies may push back on the foreign ministry raising issues concerning the protection of the population at home. Third, with the R2P Focal Point being part of the government, it may be difficult to scrutinise domestic developments in a critical light. An R2P Focal Point inside government will not be in a position to play a political role but be limited to carrying out policies that reflect the political views of those in power. If the R2P Focal Point instead was independent of the regular government structure, a holistic, self-critical approach to R2P and all of its three pillars, including its meaning inside the country, might be more realistic – even if its implementation would raise new issues.

4.2 FOCAL POINTS WITH AN EXPLICIT MANDATE ON HUMAN RIGHTS

⁸³ See on this already Global Centre for R2P, 'Summary of the First Meeting' (n 27) 4.

⁸⁴ Interview with Global Centre for R2P, November 2020.

The introduction's second criteria refers to human rights as thematic focus of the focal point and the question of their relationship to other, related actors in the field. The R2P Focal Points in the Global Network indeed have a clear focus on human rights matters. At the core of a State's responsibility to protect lies the prevention of and response to atrocity crimes which often will consist of massive human rights violations. A former UN High Commissioner for Human Rights remarked in this regard that R2P cannot be another agenda item, but must guide the work on human rights.⁸⁵ This relation has also been reflected at the annual meetings of the Global Network of R2P Focal Points, where there repeatedly have been discussions on human rights issues as a part of implementing R2P. For example, in 2013, the Focal Points discussed the links between atrocity prevention, the UN HRC and the UPR.⁸⁶ In 2014, they examined the relation between business, human rights and atrocity crimes.⁸⁷

In the Danish context, the R2P Focal Point has a direct and explicit mandate on human rights, as he is in the legal service who advises the foreign ministry on all international law issues including human rights. Thus, the Danish R2P Focal Point oversees Denmark's interactions with the treaty bodies of the core human rights instruments as well as with the UN HRC, its special rapporteurs and the UPR, which in turn provides him regularly with opportunities to apply R2P in practice.⁸⁸ The same applies to human rights commitments Denmark has entered into under regional frameworks such as the European Convention on Human Rights. Another example is the organizing of annual, bilateral human rights dialogues between Denmark and partner countries. There are thus a number of human rights engagements, the Danish R2P Focal Point is responsible for and can utilize to advance Danish efforts in the field of atrocity prevention.

Regarding the relation of the R2P Focal Point to other, related actors, there is no specific guidance in the original documents outlining the Focal Point's mandate. It is stated, though, that the Focal Point is encouraged to reach out to other parts of government to

⁸⁵ 'High Commissioner's statement to High-Level Event on implementing R2P in the Geneva Context' (19 November 2015) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16776&LangID=E> accessed 15 November 2020.

⁸⁶ Global Centre for R2P, 'Summary of the Third Meeting' (n 18), 5.

⁸⁷ Global Centre for R2P, 'Summary of the Fourth Meeting' (n 37) 1-3.

⁸⁸ Interview with the Danish Focal Point, November 2020.

ensure an effective, holistic approach to atrocity prevention.⁸⁹ This suggestion reflects the clear limitations of the capacity of a single government official, even when equipped with the title of a Focal Point, to advance a country's work on atrocity prevention. In the practice of the Danish R2P Focal Point, this has from the beginning led to outreach efforts both inside and, to a lesser extent, outside the foreign ministry.⁹⁰ Inside the ministry, the Danish R2P Focal Point has built an informal network of key officials who support the Danish work on implementing R2P at their specific posts. This includes the human rights experts in the Danish Missions to the United Nations in Geneva and New York, but also staff at Danish embassies in countries with elevated atrocity risks. Outside the foreign ministry, the Danish R2P Focal Point has on an ad hoc basis, on specific R2P issues such as antisemitism or peacekeeping, worked together with for example the Ministry of Justice or the Ministry of Defense. A more elaborate model has been adopted by the US. Here, the relations between different government agencies working in different areas of atrocity prevention have been institutionalized in the Atrocity Early Warning Task Force. The US Congress also has passed special legislation, the Elie Wiesel Genocide and Atrocities Prevention Act of 2018, that calls for inter-agency work in this field and guides it.⁹¹

4.3 FOCAL POINTS AS CATALYSTS (NOT IMPLEMENTERS)

The third attribute of governmental human rights focal points is that their main role is to coordinate or mainstream a certain policy – not to implement it. This approach is in line with the understanding used by the Global Network for R2P Focal Points where their role is described as that of an enabler, convener and catalyst rather than that of an implementer.⁹² While R2P is narrow in scope, as it focuses on the prevention of four specific atrocity crimes, it applies to various policy areas at both the domestic and the international level. By way of illustration, the US Atrocity Early Warning Task Force

⁸⁹ Global Centre for R2P, *Manual* (n 50) 24. See also Global Centre for R2P, 'Summary of the Third Meeting' (n 18) 2.

⁹⁰ The following is based on Interview with the Danish Focal Point, November 2020.

⁹¹ The US State Department publishes an annual activity report for the Atrocity Early Warning Task Force. See U.S. Department of State, *2020 Report to Congress Pursuant to Section 5 of the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 (P.L. 115-441)* (7 August 2020), sec VI.a. <www.state.gov/2020-Report-to-Congress-Pursuant-to-Section-5-of-the-Elie-Wiesel-Genocide-and-Atrocities-Prevention-Act-of-2018> accessed 15 November 2020.

⁹² See only Global Centre for R2P, 'National R2P Focal Point Recommendations' (n 27) 2-3.

draws on contributions from the National Security Council, the Departments of State, Defense, Homeland Security, Justice, Treasury, the intelligence community and USAID.⁹³ This illustrates why a single R2P Focal Point cannot by himself be mandated to implement R2P.

The question is whether the R2P Focal Point is in a position to act as ‘catalyst’ and effectively advance the coordination and mainstreaming of R2P. In practice, there are a number of challenges. In most instances, national R2P Focal Points do not have a formalized mandate that empowers them to be a catalyst within the government system.⁹⁴ Instead, depending on their seniority and clout, their reach is limited even within their own agency. Only a high-ranking Focal Point can request participation from other units, but also in that scenario the impact will depend on the willingness - and resources - of the other units to contribute unless there exists a mandate applicable to the ministry as a whole. Outside the Focal Point’s own ministry, he cannot ask other agencies to coordinate or mainstream unless there is a formal mandate for the Focal Point to do so. In fact, especially for R2P Focal Points based in a foreign ministry, this will pose a problem, as actors that could be relevant for domestic atrocity prevention such as a ministry of justice or the police might push back against the foreign ministry interfering with domestic matters. Any such suggestion may remain just that, even if it identifies an obvious opportunity to address a R2P concern.

In addition to generic questions of hierarchy and inter-ministerial coordination, implementation entails challenges that are specific to R2P. As a legacy of NATO’s intervention in Libya in 2011, there is a popular misconception of R2P being a new Western justification for carrying out military interventions in the Global South.⁹⁵ This misconception may result in reluctance or even opposition to attempts by the Focal Point to coordinate or mainstream R2P matters. Other officials may push back against R2P

⁹³ See U.S. Department of State (n 91) Section 1.

⁹⁴ There are only few examples of an outright legislative mandate for the executive to work on atrocity prevention and to establish a dedicated body for that purpose. See for the US the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 (Public Law 115-441), 14 January 2019. In Denmark, there is no such formal basis. See on this also Capicotto and Scharf (n 47) 17.

⁹⁵ For a discussion of the academic literature see Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford University Press 2014) 112-132. For a government view, see only ‘Statement by Cuba at the 2013 UN General Assembly informal interactive dialogue on the Responsibility to Protect’ (11 September 2013) <www.globalr2p.org/wp-content/uploads/2020/01/2013-IID-Cuba.pdf> accessed 15 November 2020. The prevalence of this view among regular government officials is evident from the author’s own observations.

initiatives, as they may fear these could backfire because of what R2P – incorrectly – is associated with. Another R2P-specific challenge for the Focal Point is that especially in countries in the Global North, potential stakeholders may oppose efforts to implement R2P at the domestic level. While it internationally has become a commonplace for R2P advocates to claim that no country is immune against developing atrocity risks, domestic officials may dismiss this as irrelevant for their own country. Finally, it needs to be highlighted that there is no official blueprint for what it means to mainstream R2P, a point returned to in the following section.

Lorion also raises the question of whether focal points beyond coordination and mainstreaming themselves have a role in implementation and how this might impact the focal point's effort to move other actors towards implementation.⁹⁶ For most members of the Global Network of R2P Focal Points, there will always be a specific area where they can directly implement R2P as part of their own portfolio as senior government official. In the case of Denmark, the Focal Point as senior legal adviser in the foreign ministry is tasked with a number of matters where he can implement R2P. For example, the Danish Focal Point is as senior legal adviser a central actor in the preparation of Denmark's contribution to the UPR process under the UN HRC.⁹⁷ In practice this means that the Danish Focal Point with regard to Denmark's national report can choose to integrate R2P language or address certain Danish policies as measures that help to prevent the development of atrocity risk factors.⁹⁸ Similarly, the Danish R2P Focal Point can raise R2P issues and propose questions or suggestions to address concerns in the process of other countries. In the ideal scenario, this R2P-informed input to the wider process may help other government actors to realize why and how R2P could play a useful role in their own approach. The R2P Focal Point can thus lead by example and help to socialize the norm. In both instances, however, the Focal Point may also meet reluctance from other actors to actually adopt an R2P-based approach to the process. This will often relate back to the aforementioned misconceptions about R2P or to misgivings to publicly speak of R2P outside the context of the UN General Assembly. In practice, this could materialize

⁹⁶ Sébastien Lorion, *Defining Governmental Human Rights Focal Points: Practice, Guidance and Concept* (The Danish Institute for Human Rights 2021).

⁹⁷ The relation between the UPR and R2P has been highlighted by the UN Secretary General, 'Implementing the responsibility to protect: accountability for prevention. Report of the Secretary General' (10 August 2017) A/71/1016-S/2017/556, paras 34-35; similarly, the Global Network of the R2P Focal Points in Global Centre for R2P, 'Summary of the Sixth Meeting' (n 38) 3-4; and Mennecke (n 11) 42-46.

⁹⁸ Interview with the Danish Focal Point, November 2020.

as pushback by, for example, the Ministry of Justice or the Danish embassy in the state undergoing the UPR process. In such scenario, the R2P Focal Point may yet again experience the limitations of his catalytic role.

4.4 FOCAL POINTS AND SPECIALISED KNOWLEDGE ON HUMAN RIGHTS

The fourth attribute of governmental human rights focal points is that they act as interpreters who translate specialized knowledge on human rights to relevant stakeholders outside their own specialist community. This element can easily be applied to the work of a R2P Focal Point, as he frequently will meet questions as to how R2P is different from what already is being done under headings such as ‘development cooperation’, ‘human rights’ or ‘conflict prevention’.⁹⁹ In the academic literature on atrocity prevention, this process of translating R2P into concrete activities is often referred to as ‘applying an atrocity prevention lens’,¹⁰⁰ but it is the individual R2P Focal Point that has to understand what this means and translate it for his audience. This requires specialized knowledge that also the Focal Point first has to acquire. Moreover, this type of technical knowledge about what R2P means in practice is difficult to obtain, as the R2P commitment unlike some human rights obligations is not spelled out in great detail in a lengthy convention. Neither is there a specialized treaty body that since its inception has examined and interpreted the scope and practical meaning of R2P.

In practice, a R2P Focal Point will have to look for inspiration outside the World Summit Outcome Document. Informal guidance can be gleaned from the annual R2P reports by the UN Secretary General. They help to understand what R2P is and provide examples of its application but are not written as operational guidelines. The aforementioned manual for R2P Focal Points translates R2P into concrete actions a Focal Point could take. Moreover, the annual meetings of the Global Network regularly include sessions where Focal Points share their experiences in applying R2P in practice, allowing members of the network to build specialized knowledge and skills as to how to translate it to their audiences. For example, at the global network meeting in 2018, Focal Points from Australia, Spain and Sweden spoke about their efforts to integrate R2P into their State’s term on the UN Security Council.¹⁰¹

⁹⁹ *ibid.*

¹⁰⁰ On applying an atrocity prevention lens, see Bellamy, *The Responsibility to Protect* (n 95) 165-167.

¹⁰¹ Global Centre for R2P, ‘Summary of the Eighth Meeting’ (n 38) 3-4.

The experience of the Danish R2P Focal Point includes the role of the interpreter. As the Focal Point since the beginning has been placed in the legal service of the foreign ministry, there has always been a specialized knowledge on human rights and the definitional scope of R2P. At the same time, there is no formal requirement for actors in other departments or outside the foreign ministry to cooperate with the Danish Focal Point on implementing R2P. Thus, the Danish Focal Point and his support staff frequently find themselves in a situation where they need to translate R2P so other stakeholders realize its potential added value to their work. A concrete example for this can be found in the aforementioned two workshops the Danish R2P Focal Point co-organized together with the ministry's department for development cooperation on what role R2P could play in the field for Danish embassies.¹⁰²

4.5 FOCAL POINTS AS PERMANENT STRUCTURE WITH ADEQUATE CAPACITIES

The remaining attribute characterizing governmental human rights focal points is that they represent a sustainable, permanent structure that provides them with adequate capacity to fulfil their mandate. The appointment of most R2P Focal Points is an informal act within the respective country's foreign ministry.¹⁰³ There is no legislative act that makes the post as R2P Focal Point permanent and there is no international treaty obligation to establish a national R2P Focal Point. This could suggest that the position of R2P Focal Points is fragile – in practice, however, no country has yet abolished the post.¹⁰⁴

One explanation for this 'permanence' of the post as R2P Focal Point could be that the countries joining the Global Network mostly represent a group of stable supporters of R2P, which makes it unlikely they would do away with the Focal Point post. Another, less positive explanation could be that there is no accountability if a country names a Focal Point who does not carry out his mandate. An inherent challenge to the permanence of R2P Focal Points is that the term of Focal Points serving as foreign ministry officials will be limited to the time before they are rotated out to an embassy posting. This will in practice make it difficult for some Focal Points, depending on the time they are allowed

¹⁰² See text to n 79 and Mennecke (n 11) 48-52.

¹⁰³ Interview with Global Centre for R2P, November 2020.

¹⁰⁴ *ibid.*

to serve, to effectively carry out their mandate. It takes time to become familiar with the specificities of the R2P agenda and to establish the role as a catalyst regarding other relevant actors.

In terms of adequate capacity, many R2P Focal Points do not have designated support staff nor yield over sufficient, earmarked resources that would allow to effectively mainstream R2P across government.¹⁰⁵ Few exceptions exist to this general rule, including the Danish R2P Focal Point, the R2P Focal Point of the EU and the US Atrocity Early Warning Task Force. The Danish Focal Point, for example, is supported by a working level expert and an academic adviser – but also this support staff is not working exclusively on implementing R2P but doing this in addition to other tasks.¹⁰⁶ Indeed, most Focal Points are not only working as R2P Focal Point but carry that hat in addition to their regular portfolio and other add-on functions. In reality, many R2P Focal Points only spend a very limited amount of time on their atrocity prevention mandate. This lack of adequate resources raises serious questions to the individual capacity and impact of the over 60 members of the Global Network of R2P Focal Points.¹⁰⁷

The agenda of the annual meetings of the Global Network seeks to accommodate the frequent turn-over in Focal Points and the lack of capacity by offering different types of sessions to different Focal Points. This includes training modules which illustrate on the one hand the need for specialized knowledge and on the other hand the lack of resources devoted to the post and work of the R2P Focal Points.

5. CONCLUSION

Having reviewed the role and practice of the Danish R2P Focal Point and of the Global Network of R2P Focal Points, it stands clear that the widespread nominations of R2P Focal Points and the growth of their global network are a success story. They reflect a statement of over 60 UN Member States on their commitment to work with R2P. In particular the Global Network has proven to be important, as it has provided governments with space to discuss and develop the concrete meaning of R2P among peers, leading to

¹⁰⁵ *ibid.*

¹⁰⁶ Mennecke (n 11) 54.

¹⁰⁷ See also UN Secretary General, ‘A vital and enduring commitment’ (n 18), paras 25 and 74.

guidance on its implementation.¹⁰⁸ This leads in turn to increased ownership and internalisation of R2P which is key to its consolidation as a norm. The network also creates an international community which makes it less likely to abolish the post domestically. The emerging identity of the Global Network as collective points to another potential, as the R2P Focal Points as community, notwithstanding different viewpoints on specific country situations, could push collectively for an increased implementation of R2P, for example by addressing regional organisations or the UN. Furthermore, the analysis also has highlighted the key role of civil society, as the R2P Focal Point initiative would not exist or continue to grow without the work of the Global Centre for R2P. The indispensable role of civil society highlights the vulnerability of institutionalising human rights protection through focal points. These experiences of the Global Network of R2P Focal Points can offer inspiration to other types of focal points discussed in this Special Issue.

For many governments, the appointment of a R2P Focal Point reflects support to the goal of preventing new atrocity crimes. For others it may simply represent an opportunity to be part of a network that represents the ‘good’ without any requirement to commit resources or to report regularly on the work done. Regardless, the mandate or even mere existence of a governmental R2P Focal Point may remain unknown to the general public, wider civil society but also other parts of the executive.¹⁰⁹ This means that the Focal Point cannot function as ‘reference point’ for evaluating efforts made to achieve progress regarding atrocity prevention as described by Lorion.¹¹⁰ It is this lack of accountability that can raise questions about the impact and significance of having over 60 national and regional R2P Focal Points. Going forward, the Global Network of R2P Focal Points may wish to consider steps such as mandatory annual reports by each focal point to the network; periodic peer reviews by a panel of R2P focal points or a formal application process before membership in the network is granted to new R2P Focal Points.¹¹¹ Such measures could also increase the transparency of the atrocity prevention efforts

¹⁰⁸ Cf. Colin Caughey in this Special Issue on the focal points and the Committee under the Convention on the Rights of Persons with Disabilities.

¹⁰⁹ Interview with Global Centre for R2P, November 2020, and own observations by the author.

¹¹⁰ Lorion (n 96).

¹¹¹ A performance review exists, for example, for the national contact points under the OECD Guidelines for Multinational Enterprises, see OECD, ‘NCP Evaluations Methodology’ <<https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps/ncp-evaluations-methodology/>> accessed 20 April 2021.

undertaken by R2P Focal Points. The process should be accessible both at the national and the international level and could include regular check-ins by peer focal points, national and international civil society and the Joint UN Office for the Prevention of Genocide and the Responsibility to Protect.

Important progress has been made institutionalizing atrocity prevention through the appointment of R2P Focal Points and the building of the global network, but the growing institutionalization does not by itself lead to a growing implementation of R2P. In the next phase, the success of the focal point initiative is to be measured by deeper individual engagement with R2P and a strengthened global network, not further focal points. The most recent R2P report by the UN Secretary General calls on member states to ‘fully utilise’ their R2P Focal Points.¹¹² States will have to do more to exercise their responsibility to protect.

¹¹² UN Secretary General, ‘Prioritizing prevention and strengthening response: women and the responsibility to protect’ (23 July 2020) A/74/964-S/2020/501, para 34 lit c.