

**THE RESPONSIBILITY TO PROTECT:**

**A BACKGROUND BRIEFING**

**WHAT IS THE RESPONSIBILITY TO**  community, pitting those who denounced the

**PROTECT AND WHY DO WE NEED IT?**

The Responsibility to Protect (R2P) has many sources:

the rise of international humanitarian law starting with

the Geneva Conventions in the late nineteenth century

and accelerating in the period after World War II; and

the profound sense of revulsion at the failure of the

international community to act effectively in Rwanda

and Bosnia. The need for a broadly accepted new norm

to guide the international response to mass atrocity

crimes became increasingly apparent.

The United Nations (UN) was established in 1945 to

prevent conflicts between states. But with the end of the

Cold War, inter-state aggression largely gave way to war

and violence inside states. When, during the 1990s,

horrific violence broke out inside the borders of such

countries as Somalia, Rwanda, and the former

Yugoslavia, the world was ill-prepared to act and was

paralyzed by disagreement over the limits of national

sovereignty.

Throughout the 1990s, the UN was deeply divided

between those who insisted on a "right of humanitarian

intervention" and those who viewed such a doctrine as

an indefensible infringement upon state sovereignty. At

the time Secretary-General Kofi Annan warned that the

UN risked discrediting itself if it failed to respond to

catastrophes such as Rwanda, and he challenged

member states to agree on a legal and political

framework for action.

In 1999 the failure of the UN Security Council to

authorize action to halt "ethnic cleansing" in Kosovo

provoked NATO to initiate an aerial bombardment on

its own. This deeply divided the international

intervention as illegal against others who argued that

legality mattered less than the moral imperative to save

lives. This deadlock implied a pair of unpalatable

choices: either states could passively stand by and let

mass killing happen in order to preserve the strict letter

of international law, or they could circumvent the UN

Charter and unilaterally carry out an act of war on

humanitarian grounds.

The 2001 report of the International Commission on

Intervention and State Sovereignty (ICISS) formulated

the alternative principle of "the responsibility to

protect," focusing not on the legal or moral "right" of

outsiders to intervene but on the responsibility of all

states to protect people at risk. In 2005 the General

Assembly for the UN World Summit unanimously

accepted their "responsibility to protect populations

from genocide, war crimes, ethnic cleansing and crimes

against humanity."

The Responsibility to Protect concept sought to confront

both the Rwanda tragedy and the Kosovo dilemma by

stipulating that states have an obligation to protect their

citizens from mass atrocity crimes; that the

international community will assist them in doing so;

and that, should the state be "manifestly failing" in its

obligations, the international community is obliged to

act.

R2P, as it is commonly abbreviated, seeks to ensure that

the international community never again fails to act in

the face of genocide, ethnic cleansing, war crimes, and

crimes against humanity. By accepting a collective

responsibility to protect, the international community

has issued a solemn pledge that it cannot lightly ignore.

**WHAT FORMS OF HUMAN RIGHTS**  against humanity when they are widespread and

**ABUSE DOES THE RESPONSIBILITY TO**

**PROTECT SEEK TO ADDRESS?**

The UN's 2005 World Summit Outcome Document

explicitly limits the application of the R2P norm to four

types of mass atrocity crimes: genocide, ethnic

cleansing, war crimes and crimes against humanity.

These terms have been clearly defined in a range of

documents, including in the founding statute of the

International Criminal Court (ICC).

R2P does not apply to other grave threats to human

security, whether from climate change, disease or from

many harmful and ruinous state policies, such as the

suspension of civil liberties, endemic poverty, mass

corruption or coups d'état. Other human rights

instruments, legal frameworks and institutions are

better suited to address these pressing issues.

**WHAT IS A MASS ATROCITY CRIME?**

The four types of extreme human rights abuse

enumerated in the 2005 UN World Summit Outcome

Document are captured by the shorthand, "mass

atrocity" or "mass atrocity crime." These crimes are

defined with varying degrees of precision in

international law.

Genocide is the subject of the 1948 *Convention on*

*Prevention and Punishment of the Crime of Genocide*,

which outlaws actions taken "with intent to destroy, in

whole or in part, a national, ethnical, racial or religious

group."

The category of war crimes is the broadest. The founding

statute of the ICC lists fifty such acts, including torture,

hostage-taking, mistreating prisoners of war, targeting

civilians, pillage, rape and sexual slavery, and the

intentional use of starvation. R2P applies to such crimes

even when they are committed in the course of a civil

war or other internal conflict. While it may not be

possible to specify an exact threshold, it is clear that the

commission of war crimes entailing large-scale killing

and mass suffering would give rise to a responsibility to

protect.

Crimes against humanity include, according to the ICC

statute, extermination, enslavement, deportation,

torture, rape, extreme forms of discrimination and

"other inhumane acts of a similar character intentionally

causing great suffering, or serious injury to body or to

mental or physical health." Such acts constitute crimes

systematic, and committed as conscious acts of policy.

The term "ethnic cleansing" has recently come into

general usage and is the least clearly defined of the four

legal categories. It is understood to describe forced

removal or displacement of populations, whether by

physical expulsion, or by intimidation through killing,

acts of terror, rape and the like.

**HOW DOES THE RESPONSIBILITY TO**

**PROTECT WORK?**

At the heart of the R2P norm is the principle that states,

with the aid of the international community, must act to

prevent mass atrocity crimes. Central is the idea that

concerned outsiders should help states prevent these

gross abuses through what the UN document

characterizes as "diplomatic, humanitarian and other

peaceful means." This includes strengthening state

capacity through economic assistance, rule-of-law

reform, the building of inclusive political institutions;

or, when violence seems imminent, through direct

mediation. The intense diplomatic engagement

following the disputed election in Kenya (2007), or the

work of neighbors and the UN to support the

government of Burundi as it addressed ethnic conflict

(1995-2005), demonstrate cooperative efforts to prevent

atrocities.

Only when such means have been unsuccessful should

the international community, acting through the UN

Security Council, turn to coercive measures. These could

include such measures as sanctions, arms embargoes, or

the threat to refer perpetrators to the ICC. Should

peaceful means be inadequate and the state be

manifestly failing to protect its population, then-and

only then-would the Security Council consider the use of

military force.

**WHEN IS MILITARY FORCE JUSTIFIED?**

A timely intervention could have halted, if not

prevented, the genocidal horror in Rwanda and perhaps

also in Cambodia and elsewhere. The ICISS report and

the UN Secretary-General's *In Larger Freedom*

document proposed five "precautionary principles" or

"criteria of legitimacy" to help guide possible military

action.

1. The violence in question must include large-scale

actual or threatened loss of life or ethnic cleansing;

2. The purpose of the intervention must be to prevent

or halt suffering;

3. Military force must be the last resort;

4. The means must be commensurate with the ends

sought;

5. And the intervention must have a reasonable

prospect of success.

No formal principles presently exist to guide UN

Security Council decision-making on the use of force.

These standards can and should, however, continue to

inform public debate and deliberations among

governments.

**HOW DOES THE RESPONSIBILITY TO**

**PROTECT**  **AFFECT THE IDEA OF**

**SOVEREIGNTY?**

States have long accepted limits on their conduct,

whether towards their own citizens or others. The UN’s

*Universal Declaration of Human Rights* requires that

states protect individual and social rights; the Geneva

Conventions and various treaties and covenants

prohibiting torture, trafficking in persons, or nuclear

proliferation similarly restrict state behavior.

At the same time, there has been a shift in the

understanding of sovereignty, spurred both by a growing

sensitivity to human rights and by a reaction to mass

atrocity crimes perpetrated upon citizens by their own

leaders. Sovereignty is increasingly defined, not as a

license to control those within one's borders, but rather

as a set of obligations towards citizens.

Francis Deng, the former UN Special Adviser on the

Prevention of Genocide and the former representative of

the Secretary-General on internally displaced persons,

developed the concept of "sovereignty as responsibility."

Chief among those responsibilities, Deng and others

have argued, is the responsibility to protect citizens from

genocide, war crimes, ethnic cleansing and crimes

against humanity.

**IS THE RESPONSIBILITY TO PROTECT A**

**TOOL OF THE POWERFUL AGAINST THE**

**WEAK?**

Critics of R2P insist that it will never be applied to major

powers, and thus it is undermined by inconsistency.

However, R2P imposes obligations on all United

Nations member states to prevent mass atrocity crimes.

R2P covers crimes occurring anywhere in the world,

regardless of the status or prestige of the perpetrator.

Given that the more powerful states have a far greater

capacity to extend assistance - and far greater economic,

diplomatic, logistical, and military capacity - their

responsibility to respond and react to mass atrocity

crimes is arguably greater. R2P is fundamentally about

protecting the weak (those subjected to mass atrocity

crimes) from unconscionable abuse of power.

**WHAT IS THE STANDING OF THE**

**RESPONSIBILITY TO PROTECT IN**

**INTERNATIONAL LAW?**

R2P is not yet a rule of customary international law, but

it can certainly be described as an international "norm."

A norm of international conduct is one that has gained

wide acceptance among states-and there could be no

better demonstration of that acceptance in the case of

R2P than the unanimously adopted language of the

2005 World Summit Outcome Document. Once a norm

has gained not only formal acceptance but widespread

usage, it can become part of "customary international

law."

While R2P has moved rapidly within the international

arena, it does not have the degree of acceptance that

would justify its description as "law." R2P continues to

evolve both politically and legally. It has been formally

invoked by the UN Human Rights Council and the

Security Council, including through resolutions

regarding situations in Côte d’Ivoire, Libya, Mali, South

Sudan and Yemen.

**WHAT IS THE STANDING OF THE**

**RESPONSIBILITY TO PROTECT IN THE**

**UN?**

Since the 2005 World Summit the UN and its member

states have aided in the evolution of R2P through

actions that encourage wider acceptance of the norm

and facilitate its implementation.

The UN General Assembly has held four informal

interactive dialogues on R2P between 2009 and 2012.

The UN Secretary-General released a report on R2P in

advance of each of the interactive dialogues. The

Secretary-General's 2009 report, entitled *Implementing*

*the responsibility to protect*, introduced a three pillar

strategy for R2P implementation. The three succinctly

stated pillars are:

Pillar 1: The primary protective responsibilities of a

state

Pillar 2: International assistance and capacity building

Pillar 3: Timely and decisive response

The three pillars have since served as a frame for

discussing the different facets of implementation and

response in R2P risk situations and have been

frequently invoked by member states when addressing

R2P.

The Secretary-General's 2010, 2011 and 2012 reports

encouraged states to think more extensively about R2P

implementation. The 2010 report, entitled *Early*

*warning, assessment and the responsibility to protect*,

focused on UN institutions and their capacity to monitor

and respond to early warning signals. The 2011 report,

entitled *The role of regional and sub-regional*

*arrangements in implementing the responsibility to*

*protect*, addressed the capacities regional organizations

possess for mass atrocity prevention and the

mechanisms through which states can achieve effective

collaboration. The 2012 report, entitled *Timely and*

*decisive response,* focused on the need to clarify

coercive dimensions of Pillar 3.

Member states have directly engaged with the R2P

dialogue in many ways. Since 2009, 108 states and 5

regional organizations have participated in the

interactive dialogues on R2P. In addition, during their

statements at the annual opening of the UN General

Assembly, 49 states have referred to R2P. States also

discuss R2P in other human rights forums, including in

debates on the protection of civilians.

As stated by the UN Secretary-General in a 2011 speech

on R2P, "this is a critical moment in the life of the

responsibility to protect. In the six short years since its

endorsement by the World Summit this doctrine has

gone from crawling to walking to running....By now it

should be clear to all that the responsibility to protect

has arrived."

**WHERE DO WE GO FROME HERE?**

There are three major challenges as we continue to move

R2P from theory to practice. The first is conceptual - to

ensure that the scope, and limits, of the norm as it has

evolved are well understood in all parts of the world, so

that misunderstandings (for example that R2P is only

about military intervention) do not persist. As new R2P

risk situations arise, there needs to be broad

international consensus about how to respond.

The second challenge is institutional. There is a need to

ensure that governments and intergovernmental

organizations have available all the diplomatic, civilian

and, as a last resort, military capability needed to ensure

effective early warning and timely action. We need

international institutions with a capacity to provide

essential assistance to those countries who need it and

to people desperately in need of protection.

The third, as always, is political. We need to ensure that

when and wherever mass atrocity crimes next occur, the

necessary commitment will be there from international

decision-makers. This means having consensual

international arrangements in place for effective

mobilization by both governments and civil society. It

also requires that there is consistency in the application

of R2P.

Crises threatening human security continue to arise, and

with them debates over the most appropriate response.

The international community of states will continue to

encounter difficult questions about the applicability of

R2P. But R2P remains the best hope for those who

aspire for a world free from genocide, war crimes, ethnic

cleansing and crimes against humanity. R2P represents

an end to impunity, injustice and inaction.