



KEYNOTE PAPER

Responsibility to protect

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Abstract

In 2005, UN Secretary-General Kofi Annan declared that world leaders at the United Nations World Summit had unanimously pledged, “to act if another Rwanda looms.” Specifically, they agreed that states have a responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity. They also concluded that if a state is manifestly failing to protect its population, the international community has a responsibility to protect, including through the use of force should peaceful means prove ineffective. Their adoption of the responsibility to protect (R2P) offered a vision of a new international norm premised on state responsibility and non-indifference towards populations at risk of mass atrocities. This July, the General Assembly debated R2P for the first time since 2005. Member states signaled their enduring commitment to the goal, as well as some of the political and practical challenges that lie ahead. The successful debate marked another milestone in making this vision a reality even if R2P in many ways remains an emerging norm. The task ahead is to consolidate the achievements to date and instantiate the norm, thereby filling gaps in capacity, will and imagination and moving from rhetoric to saving lives. This paper examines the political evolution of R2P, and recommends strategies to ensure that practices and policies are put in place that will prevent and halt mass atrocity crimes.

The Global Politics of the Development and Evolution of the Responsibility to Protect

In 2005, at the United Nations World Summit, world leaders unanimously agreed that states have a responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Their historic adoption of the responsibility to protect (R2P) in the World Summit Outcome Document offered a vision of a new international norm premised on state responsibility and non-indifference towards populations at risk of mass atrocities. This July, the General Assembly debated R2P for the first time since 2005. Member states signalled their enduring commitment to preventing mass atrocities, as well as some of the political and practical challenges that lie ahead. The successful debate marked another milestone in making this vision a reality, even if R2P in many ways remains an emerging norm.¹ The task ahead is to consolidate the achievements to date and instantiate the norm, filling gaps in capacity, will and imagination, and move from rhetoric to saving lives. This paper examines the political evolution of R2P, and recommends strategies to ensure that policies and practices are put in place that will prevent and halt mass atrocity crimes.

What is R2P?

R2P is the unanimous political commitment to, as Kofi Annan stated, “act if another Rwanda looms.”² It aims to galvanize political will and chart a course of action for protecting populations at risk of mass atrocities. The norm, set out in paragraphs 138 and 139 of the World Summit Outcome Document, makes a number of stipulations. First, states have an obligation to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing. Second, the international community should assist them in upholding this responsibility. And third, the international community has a responsibility to use the appropriate diplomatic, humanitarian or peaceful means to protect populations. If states are manifestly failing - that is if they are unable or unwilling - to protect their populations from these crimes, and if peaceful means are inadequate, the norm requires that the international community be prepared to take collective action in a timely and decisive manner through the Security Council to protect them.³

¹ The status of R2P is contested with the terms concept, principle, emerging norm regularly used. Emerging norm is hereafter referred to a “norm” in this paper.

² Kofi Annan, Opening Address, 14 September 2005, available at: www.un.org/summit2005/.

³ General Assembly, “World Summit Outcome,” October 24, 2005 (A/RES/60/1), 138, 139.

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security

R2P was not created to address all of the world's problems. Rather paragraphs 138 and 139 of the Summit Outcome explicitly limited its application to the most serious of gross human rights violations. Contrary to attempts by French Foreign Minister Bernard Kouchner to apply R2P to natural disasters in the wake of Cyclone Nargis, R2P does not apply to natural disasters per se or to a great many human security threats facing populations, including climate change, HIV/AIDS, coups d'état or individual human rights violations. Rather, it applies to a narrow subset of crimes that the international community has recognized as particularly egregious.⁴

R2P is broadly about the protection of civilians, drawing from international humanitarian, human rights, and refugee law for its legal foundation. While it shares this origin with the protection of civilians in conflict (POC) mandate, and has contributed to the normative framework of POC, R2P is not synonymous with POC.⁵ R2P applies beyond conflict situations and is concerned with protecting populations from widespread and systematic mass atrocities, making it both broader and narrower than POC's protection mandate. Thus the two agendas intersect.⁶

Contrary to efforts to portray R2P as solely a means to authorize military intervention, R2P's focus is on the prevention of mass atrocities before they occur. Early warning and the development of capacities that allow states to respond in a timely and decisive manner are thus key components. This includes providing international assistance and capacity building to states to strengthen their domestic protection capabilities. In addition, the international community can use consensual measures, including preventive diplomacy, mediation, fact-finding commissions and peacekeeping, to protect populations abroad. Only when these consensual measures are inadequate will coercive measures be considered to affect the norm's goals. Those measures include targeted economic sanctions, arms embargoes and threats of international criminal justice, with military intervention as the option of last resort.

What Problem Was R2P Created to Solve?

Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those that are under stress before crises and conflicts break out.

⁴ Tom Weiss, Kenya and R2P. A Major Boost for the UN, A Collection of Essays on the Occasion of The Departure of Frank Majoor from New York. Netherlands Mission to the United Nations. New York, August, 2009. Pg. 107.

⁵ *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, (Security Council document S/2007/643), 28 October 2007, para 11.

⁶ *The Relationship Between the Responsibility to Protect and the Protection of Civilians in Armed Conflict*, Global Centre for the Responsibility to Protect, January 2009.

R2P has from its conception been shaped by global politics. Its creation resulted from the need to find a way forward out of the impasse existing in the international community in the 1990s and from the United Nations' need to regain its credibility in the wake of its failure to save lives in Somalia, Rwanda and Srebrenica. The conflict between the moral imperative to protect populations from mass atrocities on the one hand, and, on the other, the principle of non-intervention in the domestic affairs of the state, paralyzed the international community.

The Westphalian, state-centric system of international relations had long privileged non-intervention. Inspired by the horrors of World War II, the UN Charter enshrined the equality of state sovereignty in Article 2(1) and the principle of non-intervention in Article 2(7) as means to protect states from external aggression. While these norms helped to ensure stability, they were also used to defend reprehensible behaviour, as a Chinese Professor aptly noted: "China has used tanks to kill people on Tiananmen Square. It is Myanmar's sovereign right to kill their own people, too."⁷ By the end of the 20th century, international tolerance for such an outlook was waning.

From the glaring failures of the early 1990s developed the rhetoric of humanitarian intervention and the right to intervene. Neither won much support from states - many of them in the south - who held firmly to the principle of non-intervention and saw humanitarian intervention as a license for strong countries to intervene in the domestic affairs of weaker states. Humanitarians also objected to the fusion of humanitarianism and military intervention because, they argued, it compromised their neutrality and ability to work with vulnerable populations. The Kosovo crisis was in many ways the catalyst for initiating an international period of self-reflection on these issues because of the failure of the NATO-led intervention to receive Security Council approval due to veto threats by Russia and China.⁸

Faced with a seemingly insurmountable obstacle to saving lives, in 1999 former United Nations Secretary-General, Kofi Annan issued a challenge to the international community. "If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that offend every precept of our common humanity?"⁹ The response to Annan's question was the creation of R2P. Its conception was and continues to be shaped by the desire for consensus, and thus is at the mercy of shifting global politics.

Crafting a Solution

⁷ Professor Shen Dingli, Shanghai, USA Today, October 2, 2007.

⁸ The need for self-reflection was illustrated by the subsequent conclusion of an international commission that, while illegal, the intervention was legitimate. Independent International Commission on Kosovo, Kosovo Report, Oxford: Oxford University Press, 2000.

⁹ Kofi Annan, Millennium Report of the Secretary-General of the United Nations, We the Peoples, 2000. Available at: <https://www.un.org.millennium/sg/report>.

In 2001, responding to Annan's challenge, the Canadian government established the International Commission on Intervention and State Sovereignty (ICISS). The commissioners, led by Gareth Evans and Mohammed Sahnoun, included academics from the north and south and former politicians such as a former Prime Minister of China who partook in ten regional consultations.¹⁰

That “no idea has moved faster in the international normative arena than the ‘responsibility to protect,’” is in large part the result of the approach taken by ICISS to embrace disparate opinions and, where possible, to seek consensus.¹¹ The ICISS report recognized that the rhetoric of a “right of humanitarian intervention” was viewed as too overt an attack on sovereignty. As a result, the ICISS commissioners sought to retain the centrality of sovereignty tempered by an awareness that its status had eroded under the weight of membership in international institutions, and notably, the ascendance of human rights norms such as international criminal prosecution and the loss of immunity for heads of states. The emerging recognition among states that sovereignty was conditional and contingent on the protection of fundamental human rights created a context favourable for R2P's development.

The groundbreaking work of Francis Deng and Roberta Cohen, who devised the concept of “sovereignty as responsibility” to urge states to protect their internally displaced populations, served as inspiration for the norm and eased its acceptance. By acknowledging a state's sovereignty at the outset of their discussions with a government, Deng and Cohen stressed that “sovereignty these days is not just protection from outside interference – rather it's a matter of states having positive responsibilities for their own citizens' welfare”. Deng and Cohen were thus able to raise human rights concerns while supporting state sovereignty, thereby seeking common ground for advancing protection efforts.¹² The implication of this was the further rendering of sovereignty as conditional. In using “sovereignty as responsibility,” a concept that had been created as a means of engaging with strong adherents of sovereignty and non-intervention in Africa and Latin America, the genesis of the R2P “registered and dramatized a norm shift already underway and found language to make it more palatable to nay-sayers.”¹³

The ICISS report refined sovereignty as responsibility to argue that states had a responsibility to protect populations from genocide, crimes against humanity and ethnic cleansing. If a state was unable or unwilling to exercise its responsibility, the international community had a responsibility to use consensual and, if need be, coercive measures in a timely and decisive manner to protect populations at risk. Prevention and not reaction was the primary goal with the emphasis not on the right of any state to intervene, but the responsibility of every state to protect. Resort to military intervention could only occur

¹⁰ Report of the International Commission on Intervention and State Sovereignty. “The Responsibility to Protect” (International Development and Research Center, 2001) see, <http://www.iciss.ca>.

¹¹ Thakur, Ramesh, and Weiss, Thomas, “R2P: From Idea to Norm – And Action? *Global Responsibility to Protect* 1(2009) 23.

¹² Gareth Evans, *The Responsibility to Protect, Ending Mass Atrocity Crimes Once and For All*, Brookings Institution Press, Washington DC, 2008 at 36.

¹³ Supra note 11 at 26.

where there was an actual or apprehended large-scale loss of life or ethnic cleansing, it reflected the right intention, was a last resort, used proportional means, and had reasonable prospects for success.¹⁴

The launch of the ICISS report was quickly overshadowed by the events of September 11, 2001 and the war on terror.¹⁵ That R2P survived is testament to the commitment of norm champions, including Secretary-General Kofi Annan. For example, in 2004 the UN High-Level Panel on Threats, Challenge and Change endorsed “the emerging norm that there is a collective international responsibility to protect,”¹⁶ while recommendations included in Kofi Annan’s March 2005 proposals for UN reform, ‘In Larger Freedom,’ provided the impetus for addressing R2P at the 2005 World Summit.

The Watershed Moment

The Summit was a watershed moment for R2P.¹⁷ Getting to that point had been no easy feat. A small camp of dissenters, including Algeria, Belarus, China, Cuba, Egypt, India, Iran, Jamaica, Libya, Pakistan, Russia and Venezuela, led opposition to R2P in the negotiations of the World Summit Outcome Document (WSOD). Russia, India and Jamaica opposed outright the inclusion of R2P in the WSOD.¹⁸ At a late stage in the negotiations, the US brought hundreds of amendments to the table regarding the document more broadly and expressed reservations about restricting military intervention in the face of atrocities to situations authorized by the Security Council.¹⁹ Instead, it insisted that action be taken on a case-by-case basis, a view reflected in the WSOD’s final language.

However, divisions among Non-Aligned Movement members undermined efforts that could have significantly watered down the document’s language on R2P or excluded discussion of the norm outright. In addition, stalwarts such as the United States shifted their positions so as to not be seen as the lone voice opposing protection from mass atrocities. Hence, as a result of efforts led by Canada and supported by a diverse group of European, Latin American, and Sub-Saharan African states, R2P survived and consensus was found, ensuring unanimous endorsement of the norm. Certain concessions, however, had to be made. Paragraphs 138 and 139 of the WSOD narrowed the ICISS report by limiting R2P’s scope to four crimes as opposed to ICISS’s criteria of “serious harm.” Also omitted were the criteria for the use of force and references to the responsibility to

¹⁴ Ibid at XII.

¹⁵ Supra note 11 at 36.

¹⁶ United Nations High Level Panel on International Threats, Challenges and Change, 2003 A/59/565 at para 65-66.

¹⁷ Monica Serrano, Implementing the Responsibility to Protect: The Power of R2P Talk, *Global Responsibility to Protect*, Forthcoming at 1.

¹⁸ Ekkehard, Strauss, “The Emperor’s New Clothes? The United Nations and the Implementation of the Responsibility to Protect” (Nomos, 2009) at 15 and 16.

¹⁹ Ibid at 14 and 15.

rebuild.²⁰

Some have argued that in removing the use of force criteria and placing a strong emphasis on state responsibility and international assistance in paragraph 138 of the WSOD, what emerged from 2005 was 'R2P lite.'²¹ This paints an unfair picture of the astounding conclusion to the 2005 World Summit. The acceptance of R2P expressly challenged the primary norm of sovereignty that had guided international relations for over three hundred years. Nonetheless, the absence of use of force criteria did expose one of the ongoing sources of anxiety and preoccupation for some states – the potential abuse of the norm by powerful states through unilateral or regional intervention. This remains an ongoing challenge reflected in the current parameters of R2P, which, in an effort to limit unilateral action, stress the norm's grounding in the UN Charter and the principle of non-intervention outside of Security Council authorization.

The World Summit's adoption of R2P in part followed the path already blazed by African states. The African Union entrenched a policy of non-indifference through article 4(h) of the 2000 Constitutive Act. Five years before the 2005 World Summit, African states had agreed that it was “the right of the Union to intervene in a member state ... in respect of grave circumstances, namely war crimes, genocide and crimes against humanity,” through diplomatic and peaceful measures and as a last resort, the use of force.²² Article 4(h) led the African Union to argue immediately after the 2005 debate that regional organizations should be allowed, when necessary, to intervene militarily and later receive Security Council authorization.²³

Moving Toward Implementation

Moving R2P from words to deeds and ensuring its normative entrenchment is a long-term process. The WSOD was adopted in September 2005. Since then, the Security Council has referred to R2P in two resolutions: 1674 on the protection of civilians in armed conflict, and 1706 on Darfur.²⁴ These resolutions, references to R2P by Foreign Ministers, and action taken to respond to actual situations where mass atrocities threaten to occur help move R2P from rhetoric to reality. Some have argued that expectations for R2P have far exceeded what is realistic and that many have asked R2P to run before it can

²⁰ Report of the International Commission on Intervention and State Sovereignty. “The Responsibility to Protect” (International Development and Research Center, 2001).

²¹ See for example Alex Bellamy, “Whither the Responsibility to Protect?” *Ethics and International Affairs* vol. 20, no. 2 (2006) pg. 143-169.

²² The Constitutive Act, African Union, Togo, 11 July, 2000, Article 4(h). 4. The Union shall function in accordance with the following principles: (h) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity; available at: http://www.africaunion.org/root/au/AboutAu/Constitutive_Act_en.htm.

²³ The Common African Position on The Proposed Reform of the United Nations: “Ezulwini Consensus,” 7-8 March, 2005. Ext/EX.CL/2(VII).

²⁴ Security Council, Protection of Civilians in Armed Conflict, S/RES/174 (2006) and Security Council, Reports of the Secretary-General of the Sudan, S/RES/1706 (2006).

walk.²⁵ Yet signs suggest that R2P has begun to shift from having rhetorical to substantive weight.

For example, following mediation efforts that helped halt mass atrocities in Kenya in 2007, Kofi Annan, who led the mediation, stated that the swift international response showed that “effective external response proves that the responsibility to protect can work.”²⁶ While the Secretary-General and the Special Adviser on the Prevention of Genocide, Francis Deng, referred to R2P in the early days of the violence that claimed 1,333 lives, mediators were careful not to use the language during negotiations.²⁷ They argued that as long as action in keeping with R2P is taken, eloquent silence is permissible so as to not complicate protection efforts with political wrangling about the merits of referring to R2P.²⁸ While the situation in Kenya remains tenuous, external mediation - one instrument in the R2P prevention toolbox - is credited with reducing the occurrence and further threat of mass atrocities. Early engagement by the AU, UN, EU, United States and civil society, including the Elders, a group of eminent world leaders created by Nelson Mandela, showed that the international community was prepared and able to successfully engage in proximate protection and prevention using consensual tools. It also provided an alternative vision of R2P to the negative image generated at the time by Tony Blair’s ex post facto reference to the norm as a basis for intervening in Iraq.

Kenya and Iraq were real world examples that had substantial impact on the understanding of R2P held by member states, academics, civil society and the general public. Kenya helped trigger a renewed interest in the norm, allowed Kofi Annan to re-emerge briefly in his old role as the norm’s champion - thus garnering media and public attention about it - and showed that R2P’s emphasis on action short of military intervention was genuine, since consensual measures had been effective in halting mass atrocities.

Preparing The Secretary-General’s Report

In February 2008, Secretary-General Ban Ki-moon appointed Professor Edward Luck as a special adviser and tasked him with conceptual development and consensus building on the R2P. One of the implicit objectives of this work was to produce a report for debate in the General Assembly that would convince member states to grant the Secretariat more resources from the regular budget so that it could better perform its role in fulfilling the reforms found in the 2005 agreement. The process by which the Special Adviser was

²⁵ Edward C Luck, “The UN and the Responsibility to Protect”, *Policy Analysis Brief*, Muscatine Iowa, Stanley Foundation, 2008, pg. 8.

²⁶ Kofi Annan--Opening Remarks to the Opening Plenary Session--Kenya National Dialogue: One Year Later, 30 March 2009, available at: www.responsibilitytoprotect.org/index.php/component/content/article/129-africa/2259-kofi-annanopening-remarks-to-the-opening-plenary-sessionkenya-national-dialogue-one-year-later.

²⁷ Elisabeth Lindenmayer and Josie Lianna Kaye, “A Choice for Peace? The Story of 41 Days of Mediation in Kenya.” International Peace Institute, Forthcoming at 4.

²⁸ Susan Rice, the United States Ambassador to the UN, has made similar arguments.

appointed had attracted criticism from some member states and added to the controversy surrounding the WSOD. As a result, many advocates of the emerging norm – including the Global Centre – referred to R2P as “toxic” and understood that a major effort was required to shift attention from the voices of the sceptics who were dominating the arena to regaining the consensus and momentum present in 2005.

Luck’s report, ‘Implementing the Responsibility to Protect,’ proved to be a key element of this effort by adding “normative momentum to the consolidation of the Responsibility to Protect as a means to halt mass atrocity crimes.”²⁹ Its intention was to find common ground to support the norm amongst a fragmented UN membership by clarifying the nature of R2P, which had been misapplied in 2008 to Burma and to Russia’s assault on Georgia.

The Secretary-General’s report rested on a “three-pillar approach” to R2P that the Secretary-General first espoused in a July 2008 speech confirming his personal commitment to turning R2P into policy.³⁰ The pillars were: 1) the enduring responsibility of the state; 2) the responsibility of the international community to assist states to fulfill their national obligations; and 3) the commitment to timely and decisive collective action consistent with the UN Charter. In the consultations leading to the final report, the Special Adviser’s strong emphasis on prevention and international assistance raised concerns that R2P had become a plurality of upstream prevention measures without sufficient focus on securing support for the controversial need for coercive action when all else fails. Nonetheless, the report forcefully argued that R2P is an “ally of sovereignty, not an adversary,” recognizing, as Deng and Cohen did, that states are more receptive to protection arguments aimed at helping them fulfil their responsibilities rather than “just react[ing] when they fail.”³¹ Framed this way, pillars one and two reflected the majority of states’ own conception of sovereignty and many a state’s desire for increased international assistance and capacity building to ward off threats of mass atrocity.

The Secretary-General’s report presented a view of R2P that was narrow in its breadth but deep in its response: narrow in that it applies to the four crimes, deep in that the spectrum of measures and opportunities for engagement to confront these crimes is substantial.³² The Secretary-General stressed that the pillars are of “equal size [and] strength,” with no sequence for implementation.³³ As a result, the report, like the ICISS report before it, reflected the reality that commitment to R2P is “in argument and as such relies on dialogue and persuasion.”³⁴

²⁹ Monica Serrano, *Implementing the Responsibility to Protect: The Power of R2P Talk*, *Global Responsibility to Protect*, Forthcoming at 1.

³⁰ Secretary-General Defends, Clarifies ‘Responsibility to Protect’ at Berlin Event 15 July, 2008, <http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm>

³¹ Andrew Hurrell, “Norms and Ethics in International Relations” in Walter Carlsnaes, Thomas Risse and Beth A Simmons eds., *Handbook in International Relations*, London, Sage, 2002, p 143 as cited in Serrano.

³² *Implementing the Responsibility to Protect*, Report of the Secretary-General, A/63/677, para 10 at 8.

³³ *Ibid.* at 2.

³⁴ Monica Serrano, *Implementing the Responsibility to Protect: The Power of R2P Talk*, *Global Responsibility to Protect*, Forthcoming at 5.

The General Assembly Debate on R2P

The six-month period between the release of the Secretary-General's report earlier this year and the General Assembly debate in July were filled with uncertainty about the likelihood of a debate and its outcomes. Advocates of R2P were faced with strong resistance from General Assembly President Miguel D'Escoto Brockman and the prospect of a handful of skeptical states, including Venezuela, Sudan, Cuba, Egypt, Nicaragua, Syria and Pakistan, mobilizing dissent among the membership on the status and nature of R2P. However, as a result of sustained advocacy in the months prior to the debate that focused on mobilizing previously supportive member states from the global south, the debate proved to be a strong public display in favour of R2P from Latin American, African, and Asian states.³⁵ Out of ninety-four speakers, representing one hundred and eighty countries and two observers, only four – Venezuela, Cuba, Sudan and Nicaragua – explicitly sought to roll back R2P.

Importantly, R2P appears to have emerged from the debate with its position strengthened by a shift in the positions of a number of key 2005 opponents, including key regional players like India, Brazil, South African and Japan, and a marked decrease in the number of outright sceptics. India voiced strong support for the norm, challenging assertions by dissenters that R2P had no legal basis by arguing that R2P was in keeping with the evolution of human rights, which was re-defining sovereignty. Similarly Indonesia, Brazil, the Philippines, Algeria and Vietnam revealed a shift in their positions in favour of R2P. Indonesia made a dramatic reversal of its 2005 position by highlighting the importance of pillar three, including its endorsement of military intervention as a last resort. China, Russia and Burma were also surprisingly constructive in their comments and did not attempt to re-negotiate the norm.³⁶

Countries from Asia, the only region in the world lacking a regional inter-governmental human rights body, signalled an increasing acceptance of R2P, perhaps a reflection of the growing influence that human rights discourse is having in the region. New supportive Asian voices, notably from India, Vietnam, Indonesia, and the Philippines suggested possible new partners for advancing R2P's implementation in the region. The coalescing of Asian positions on R2P, in favour, at least tacitly if not wholeheartedly, by Japan, Indonesia, Korea, the Philippines, Vietnam, Bangladesh, and India, may help over the long-term to corral more cautious states including China into maintaining a flexible and constructive approach to R2P.³⁷

The states of sub-Saharan Africa once again emerged as champions of R2P. There was concern that recent debates about the International Criminal Court (ICC) and universal jurisdiction would engender negative feelings towards R2P – a line of argument that

³⁵ This was foreshadowed to a degree by a July 2009 NAM statement on R2P that showed continued support of R2P, although a preference for pillar one and two. XV Summit of Heads of State and Government of the Non-Aligned Movement, Sharm el Sheikh, Egypt, 11th to 16th July, 2009, NAM2009/FD/Doc.1.

³⁶ "Implementing the Responsibility to Protect The 2009 General Assembly Debate: An Assessment," *GCR2P Report*, August 2009, Global Centre for The Responsibility to Protect.

³⁷ China has also shown itself to be influenced by the positions of the United States and African States.

Sudan actively promoted. In their debate statements, however, African states embraced strongly the narrative of Africa as the birthplace of R2P. They cited article 4(h) of the Constitutive Act and continent-wide and regional efforts to develop a comprehensive strategy to prevent mass atrocities and protect populations. They also praised African leadership in references to the creation of institutions that would promote R2P's goals such as an African Union Peace and Security Council, a continental early warning system, the Council of the Wise to aid in mediation and draw attention to crisis situations, and the forthcoming African Court of Justice and Human Rights.

Similarly, Latin America continued to provide some of the most articulate and consistent support for R2P. Member states from the region, such as Chile and Costa Rica, played a key role in marshalling supporters to be vocal during the debate. As a region whose history of unwanted external interventions contributed to a strong privileging of non-intervention, supportive Latin American states also lent credibility to rebutting arguments that the global south is unanimously opposed to pillar three and R2P.

Notwithstanding this generally supportive attitude, states did raise concerns and criticisms of R2P. The Security Council's past failure to act was criticized with over thirty-five states calling for the Council's Permanent Five members to refrain from using their veto in situations of mass atrocities. A few states went so far as to argue that R2P's implementation was contingent on Security Council reform, though others argued strongly that R2P's implementation could not be delayed. While pillar one and pillar two received unanimous support, some states, echoing earlier concerns about intervention, rejected, or raised reservations about, the use of force under pillar three. Others, including states with experiences of atrocities, such as East Timor and Sierra Leone, forcefully argued that while coercive measures were an absolute last resort, they were an essential component of R2P. Traditional concerns about unilateral action and the debate over which venue was most apt for addressing R2P, the General Assembly or the Security Council, continued to be raised. Yet the majority of states acknowledged that the careful wording of paragraphs 138 and 139 of the WSOD clearly ruled out unilateral action. Many argued that continued consideration of the norm should take place in the General Assembly while charging the Security Council with responsibility for decisions on coercive action.³⁸

More telling for the implementation of R2P were the areas of broad consensus. A substantial majority of states were clear that R2P was not open for re-negotiation. The pillar approach was well received, with states reiterating their support of a norm of sovereignty that included the responsibility to prevent mass atrocities. In terms of capacities, statement after statement emphasized the need for enhanced early warning. Supporters also called for a number of other measures: strengthened international and regional standby-forces; an agreement on criteria for the use of force; a strengthened peacebuilding commission; the accelerated national ratification of human rights treaties and the ICC; the development of national implementation strategies; and increased assistance in developing state capacity to prevent and protect.

³⁸ Debate participants also recognized that the General Assembly, through the Uniting for Peace resolution, had a potential role to play in such situations.

The debate concluded with the adoption by consensus of a resolution recalling paragraphs 138 and 139 and calling for continued consideration of R2P. While the resolution was procedural, it did not, as many advocates had feared, roll back 2005. The group of co-sponsors was geographically varied and included regional hegemony like India and the United States, as well as states that did not speak during the debate yet who wished to register their support for the overall tenor of the debate and for further progress on R2P. The significance of this outcome is not only that consensus was again carefully pursued and sought, suggesting that R2P can continue to move forward in this careful manner; but the resolution also suggested the tacit recognition by the most hardened of opponents, as well the cautious middle ground, that the momentum had again swung in favor of R2P and its supporters.

Since public statements of member states are vulnerable to critics who dismiss them as mere rhetorical exercises, it is difficult to gauge the extent to which the supportive tenor of the debate will translate into concrete action in the future. However, there is a “logic of discursive entrapment and enmeshment that is so characteristic of human rights talk... [hence] by signing up to such rhetorical choices not only have member states stopped questioning the fact that mass atrocities can be a legitimate international concern, but governments have effectively reduced and possibly even constrained the type of counter-arguments that they can advance in the future.”³⁹ The debate allowed for dialogue that aids in refining R2P, builds state supporters, sensitizes UN officials to the language and culture of R2P and implicitly suggests that states recognize that they are bound by previous public commitments endorsing the norm. As a result, the debate’s outcome should be viewed as a major contribution to the consolidation of R2P as a norm and a positive step toward its future implementation.

Next Steps

While the debate was positive, concerns about R2P persist. Supporters neither attempted to seek a far-reaching resolution that would provide a framework for implementation, nor expect to get consensus in support of one in the near future. While some advocates suggest that there is a need to break from the consensus-driven model for future implementation of R2P, a failed vote on an explicitly R2P resolution may be construed as eroding the normative weight of the 2005 World Summit agreement. Similarly, seeking an agreement within the General Assembly or the Security Council on next steps on R2P implementation may result in a lowest common denominator outcome that does little to provide concrete guidance on next steps. Yet implementation cannot be delayed, and many would argue that it does not need a green light from the General Assembly or Security Council to progress. The range of actions that can already be taken by governments, the UN, regional and sub-regional organizations is vast. States must begin to use these measures to develop state practice in responding to mass atrocity situations,

³⁹ Monica Serrano, Implementing the Responsibility to Protect: The Power of R2P Talk, *Global Responsibility to Protect*, Forthcoming at 6.

thus helping the salience of R2P as a protection framework, and its normative status, to grow. It is also essential that we begin to fill the gaps in “capacity, will and imagination” that Secretary-General Ban-Ki Moon identified as the challenges ahead to saving lives.⁴⁰ Initial steps include addressing:

Gaps in Capacity

Existing capacities need to be strengthened and new ones developed at the national, sub-regional, regional and UN level to facilitate timely and decisive responses to mass atrocity situations. A key capacity that must be given priority – and that had near unanimous support during the recent debate – is early warning. The Global Centre has urged the Secretary-General to task a high-level group of relevant UN departments and agencies to do an internal review of existing mechanisms and proposals to enhance early warning and response decision-making capacities. The purpose of the review is to agree on a common approach to coordinated early warning and response, and if deemed necessary, move ahead with the Secretary-General’s suggestion for the creation of an inter-agency mechanism to assess early warning information – specifically the Special Adviser’s request for a joint office with the Special Adviser on the Prevention of Genocide with an explicit early warning mandate. The review must also identify how best to coordinate activities with regional institutions, and provide credible analysis to the Security Council, General Assembly and Human Rights Council. This will involve examining how best to use the Secretary-General’s Article 99 powers to bring, “any matter which in his opinion may threaten the maintenance of international peace and security,” to the attention of a reluctant Security Council.⁴¹ The UN’s early warning mechanisms are partly premised on providing the Secretary-General with information and analysis to inform his decision to exercise this power. Yet the recent Sri Lanka crisis, where the Council refused, in the face of threats of mass atrocities, to put the conflict on its formal agenda, revealed that this Secretariat and Secretary-General are reluctant to use Article 99, even as a threat to compel the Council to address an issue.

The Secretary-General has an important role to play post-debate in fostering enhanced collaboration and engagement among key countries and institutions on early warning and developing the capacities needed for early action to prevent and halt mass atrocity crimes. Priority capacities include: strengthening UN, regional and sub-regional institution’s mediation and civilian deployment capabilities; security sector reform measures; levers such as smarter and more effective sanctions and threats of legal accountability; and standby military capacities with robust and informed protection mandates for both consensual and coercive military deployment.

Gaps in Political Will

Developing early warning and response capacities requires political will, as does action to prevent and halt mass atrocities. As Gareth Evans has argued, “none of the resources needed to stop mass atrocity crimes once and for all are inherently beyond reach: if the

⁴⁰ Supra note 32 at 26, para 60.

⁴¹ United Nations Charter, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945. Article 99.

political will is there, the relevant capability will be there.”⁴² The Secretary-General, key state supporters of R2P, including the Group of Friends, and civil society have an important leadership role to play in aligning supporters, pushing for implementation and mobilizing the political will for prevention and protection efforts when mass atrocities are at risk of or are already occurring. They need to engage in knowledge building about R2P within the international community. Examples of successful R2P measures and action need to be publicized, for example the consensual mediation efforts in Kenya in 2007 and preventive deployment in Macedonia in 2001, both of which helped remove the risk of atrocities stemming from ethnic tensions and violence. This helps policymakers understand that saving lives is possible, and that the cost of fulfilling one’s obligation to protect need not be, as many fear, onerous.

Much emphasis will have to be placed on building the political will of Security Council members to respond to the most extreme of cases, such as those where the state is the perpetrator and is intent on committing crimes – cases like the Rwandan genocide. Council members should be encouraged, and where needed pressured, to acknowledge that countries experiencing or at risk of mass atrocity crimes can constitute threats to international peace and security and as a result are legitimate issues for the Council to address.⁴³ That recognition should translate into the Council putting the issue on their formal agenda and taking a range of actions to save lives.⁴⁴ Efforts should also be taken in keeping with the Secretary-General’s report to solicit agreement among the permanent five on withholding the use of veto, and from the Council more broadly on the principles to guide the use of force. This would contribute greatly to building political will in non-Council states by further re-assuring them that the council seeks to apply R2P in a consistent and fair manner, and that the potential for unilateral or illegitimate military action is further restricted.

Establishing national strategies for implementation of R2P and preventing and halting mass atrocities is another way of developing political will. Creating a focal point for R2P activities and mainstreaming R2P in relevant departments can ease the challenges associated with deciding to act and also discourage inaction. National strategies can constrain the ability of actors to say that they did not know what was happening in the country and/or were unaware of action that they could have taken to protect lives. It

⁴² Supra note 12 at 200.

⁴³ While the situation does not compare with the Rwandan genocide, most recently the Council was divided on whether or not the conflict in Sri Lanka constituted a threat to international peace and security. Key states from north and south refused to stray too far from the description of the situation as falling within the war on terror and were thus unwilling to interfere with what was cast as a domestic issue. As a result, informal briefings in the basement of the UN were held as a second-best alternative. The verdict is still out on whether or not this second-track system of briefings can generate sufficient pressure to dissuade actors from committing crimes and stop crimes once they have begun. It is highly problematic that the Council is unable to adopt any formal measures, including creating resolutions, through this basement mechanism. They can however receive briefings from key UN officials and be kept abreast of events in the hopes that they may, at some point, be persuaded to move to more formal proceedings.

⁴⁴ This includes referring to past precedence, cases such as apartheid South Africa that was repeatedly referred to as a threat, and to resolutions such as 1674 where the Council acknowledge that, for example, the targeting of civilians can constitute a threat. Recognizing a situation as a threat then requires that appropriate political will be garnered to actually compel the Council to act. Kosovo was recognized as an international threat yet no action was taken.

raises the costs of inaction by creating another layer of internal accountability, but also of external accountability if the public is aware that the government has made a commitment to protect and has the mechanisms in place and means to do so. “Norms are not static. They must evolve with the society in which they hold moral sway. When the values and priorities of a society change, so too will change the norms that guide that society.”⁴⁵ National strategies contribute to shifting a state’s values and priorities, thus increasing the likelihood that a government will act in accordance with their R2P responsibilities.

Political will and support for R2P also has to be developed within the UN. In the current climate there is a constituency within the UN who regard R2P as competing with already existing agendas. Efforts should be made to address their concerns and fulfil the Secretary-General’s suggestion to mainstream R2P in the areas of human rights, humanitarian affairs, peacekeeping, peacebuilding, political affairs, and development. The recent crisis in Sri Lanka suggests that there is still a long way to go in ensuring that UN agencies and the Secretariat are prepared to respond in a timely and decisive manner to the threat of mass atrocities. Coordinated action was lacking and immediate protection concerns were often displaced by aspirations for UN involvement in a rumoured and uncertain future political reconciliation process. It was disconcerting that those best placed in the Secretariat to put pressure on the Sri Lankan government, and/or change Security Council member’s understanding of the conflict, were not given the appropriate opportunity to have their voices heard.

Gaps in Imagination

It is not hard to imagine a world where the international community is able to mobilize to prevent and protect. Making that dream a reality requires that resources be dedicated to developing greater conceptual clarity about R2P, its scope and limits. Efforts to gain consensus and implement the norm are frustrated by misunderstandings and differences in views about the nature of the norm. Greater conceptual clarity and the promotion of a coherent and consistent description of R2P are essential to its longevity. Developing consensus views on what R2P is allows advocates to strengthen the commitment of supporters, pressure outliers to conform with the consensus view, and create the political space needed for implementation.⁴⁶

Further research needs to be done on addressing the gaps in understanding about the specific protection needs of populations facing mass atrocities. Experts also remain divided about the specific root causes, warning signs and preconditions of each of the four crimes, as well as about what proximate prevention measures can be taken to deter them. Answering these types of questions will aid in capacity building and early-warning, thus facilitating timely and decisive protection and prevention. For example, we already have robust peacekeeping missions with protection of civilian mandates. Yet, as the DRC shows, the MONUC peacekeeping mission is unable to protect populations from mass atrocities in part because there is inadequate knowledge about what type of measures are

⁴⁵ Christopher C Joyner and Anthony Clark Arend, “Anticipatory Humanitarian Intervention: An Emerging Legal Norm?” (2000) 10 USAFA J Leg Stud 27 at 50.

⁴⁶ Claire Applegarth and Andrew Block, *Acting Against Atrocities*, Harvard Belfer Center, 2009, at 37.

needed to protect lives in non-traditional peace-keeping or war- fighting situations.⁴⁷ Lessons learned from past cases need to be extracted to inform future response and develop the R2P measures 'toolbox'.

Conclusion

R2P is a child of the UN. Pursuing implementation through the UN is necessary, but not sufficient. Regional initiatives and the concerted efforts of key states, on their own and in concert with each other, are required to chart a course for the implementation of R2P. In the post-debate context, regional and sub-regional institutions may be the primary drivers of R2P implementation and practice as they are less mired by the politics of seeking consensus than the Security Council, General Assembly or Human Rights Council. Africa's lead in taking concrete steps to make real its commitment to protecting populations from the genocide, war crimes, crimes against humanity and ethnic cleansing, can serve as inspiration. Initial efforts should focus on the areas where there was consensus during the debate: strengthening early warning mechanisms; developing greater conceptual clarity; and creating national implementation strategies.

For over sixty years the rhetoric of "never again" has been cast about while states have clung to the principle of non-intervention. It is high time that states and institutions act in keeping with the principle of non-indifference to the plight of populations facing mass atrocity crimes and develop the policies and practices needed to effectively protect populations at risk and to save lives.

⁴⁷ Supra note 12 at 214.

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The Global Centre for the Responsibility to Protect was established in February 2008 as a catalyst to promote and apply the norm of the “responsibility to protect” populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.