

The Responsibility to Protect

Origins

The Responsibility to Protect (R2P) is a principle born from a desire to protect the world's most vulnerable communities and populations from the most heinous international crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. Debate concerning the right to humanitarian intervention in the 1990s had been controversial with widespread disagreement about when an intervention could be justified morally, politically or under international law. In 2001, the International Commission on Intervention and State Sovereignty (ICISS) handed down its seminal report entitled 'A Responsibility to Protect'. This report built on the African Union's efforts to move from "non-interference" into "non-indifference" and turned the debate on its head by discussing, not the right of powerful states to intervene in other states, but the right of vulnerable communities to be protected from international crimes. The Commission focused on the responsibility of States to protect their own populations, and noted that when States were either unable or unwilling to protect their own people then the international community had not a right, but a responsibility to do so.

R2P gained support in the coming years and in 2004 was endorsed by the High Level Panel on Threats, Challenges and Change in their report entitled "A More Secure World". It was also supported by then Secretary General Kofi Annan in his "In Larger Freedom" report, which was the precursor to the World Summit in 2005 where he urged the international community to embrace the principle of R2P as a basis for 'collective action against genocide, ethnic cleansing, and crimes against humanity'.¹

At the World Summit in 2005, the largest gathering of Heads of State and Government in history, the General Assembly adopted the principle of R2P in paragraphs 139-140 of the World Summit Outcome Document.

Responsibility to Protect populations from genocide, war crimes,, ethnic cleansing ad crimes against humanity.

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 to 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 Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing 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 which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

This formulation was not a complete reflection of the ICISS report, but provided for the essential elements of the principle to continue to be developed into the future.

¹ *In Larger Freedom* UN Doc A/59/2005 para 7b, 132, 135

Implementing the Responsibility to Protect – Report of the Secretary General

In February 2009, Secretary-General Ban Ki-moon handed down his report on the Implementation of R2P, which was presented to the General Assembly for debate in July 2009. In that report the Secretary General made three general statements about R2P and identified three equally important and parallel ‘pillars’ that represent R2P and critical to its success.

First, the Secretary General stressed that R2P is “an ally of sovereignty, not an adversary” and that encouraging States to fulfill their ‘*Responsibility to Protect*’ is seeking to strengthen their sovereignty, not weaken it.

Second, the Secretary General reaffirmed that R2P should remain narrow in the sense that it applies *only* to the four crimes specified in the World Summit Outcome document: genocide, crimes against humanity, war crimes and ethnic cleansing.

Third, the scope of R2P should be kept narrow while the response should be deep. The narrowness refers to the crimes applicable to R2P and the depth refers to the myriad of ways that States and the international community can fulfill their responsibility to protect. The Secretary General noted that “[a]ppropriate diplomatic, humanitarian and peaceful means” under Chapters VI and VIII of the Charter and ‘collective action’ under Chapter VII are all available.²

The **three pillars of R2P** developed by the Secretary General have become common parlance and are a useful means to refer to different aspects of the principle.

Pillar 1 refers to the responsibility of States to protect their own populations from genocide, crimes against humanity, ethnic cleansing and war crimes. It refers to the World Summit Document where States agreed that “we accept that responsibility and will act in accordance with it”³

Pillar 2 refers to the commitment States have made to assist other States to protect their populations. The Secretary General notes that this responsibility could be fulfilled in four ways:

- a) encouraging States to meet their responsibilities under pillar one;
- b) helping them to exercise this responsibility;
- c) helping them to build their capacity to protect; and
- d) assisting States ‘under stress before crises and conflicts break out’.⁴

The third pillar of R2P is to ensure Member States respond collectively and in a timely manner when a State is ‘manifestly failing’ to provide protection. The Secretary General notes that Kofi Annan’s timely intervention in Kenya following the breakout of ethnic violence in that country after elections in 2008 is a good example of a Pillar 3 R2P intervention. However, this pillar is often understood narrowly with many focusing on the possibility and ramifications of military intervention. The Secretary General notes that while collective military action in accordance with the UN Charter is an option it is only a last resort.

There is often discussion about what may ‘trigger’ an R2P intervention or situation, however the Secretary General rejects the notion of arbitrary triggers and suggests that the international community should focus on saving lives.

² *Implementing the Responsibility to Protect* Report of the Secretary General UN Doc A/63/677 (2009)

³ World Outcome Document para 138

⁴ *Implementing the Responsibility to Protect* Report of the Secretary General UN Doc A/63/677 (2009) p. 15

Debate in the General Assembly – 23,24 and 28 July 2009

In July 2009, the General Assembly debated the merits of R2P and the report of the Secretary General. The debate opened with the President of the General Assembly introducing R2P in a skeptical manner,⁵ however, it was encouraging to note that there was a clear commitment from the vast majority of states to the prevention of atrocity crimes. Only four countries tried to roll back the R2P principle from the agreement already reached.⁶ The Global Centre for R2P has undertaken a general assessment of the debate with analysis of the 94 statements made in the General Assembly.⁷ At least two thirds of the respondents supported the Secretary General's report and more than 40 explicitly welcomed it. Over 50 states endorsed his formulation of a three pillar strategy and agreed most firmly with the first two pillars which provide for the fundamental obligation to prevent mass atrocity crimes.

There was general agreement that the scope of R2P should be limited to the four crimes enumerated in the World Outcome document: genocide, war crimes, crimes against humanity and ethnic cleansing, and that such crimes committed within a State's borders can be considered a threat to international peace and security.

Concerns

There were some areas of concern. Several members noted that R2P should not be implemented selectively or with double standards and over 35 members called for the Security Council to refrain from using the veto in decisions related to R2P crimes as the threat of a veto had resulted in inaction by the Security Council in the past. There were some calls for reform of the Security Council and others who argued that the coercive use of force was unacceptable in any circumstance. Some States supported pillars one and two without supporting pillar three of the Secretary General's formulation as they saw Pillar 3 as allowing for violation of sovereignty and the prohibition on the use of force which are fundamental principles of the UN Charter.

There was concern among several States that R2P was open to misuse and they asked under what circumstances and who would decide when R2P would apply. Most members agreed that the General Assembly was the venue for dialogue on R2P although they could not agree on whether the GA could guide the SC on when to use Chapter VII.

Specific Measures for Implementation

Interestingly, there were many statements that suggested specific measures to help stop atrocity crimes. These included ratification of human rights treaties; adoption of accountability measures; education; public awareness; strengthening UN and Regional Organisation early warning mechanisms, stand by abilities and mediation capacities; and ensuring the Peace-Building Commission fulfills its role of effective post-conflict reconstruction and stabilization.

On 14 September 2009 the General Assembly adopted by consensus its first resolution on R2P and agreed to hold further discussions on the international understanding to intervene to stop atrocities from taking place. The resolution noted "with appreciation" Secretary General Ban Ki-moon's report and called for speedy action "to turn the promise of the responsibility to protect into

⁵ The President of the General Assembly raised concerns regarding the potential abuse of R2P citing Iraq as an example, whether R2P will be applied equally to all nations, whether it really will prevent another Rwanda and whether it will ensure respect for international law. "I wonder whether we are ready for R2P?" he asked.

⁶ Venezuela, Cuba, Sudan and Nicaragua

⁷ GCR2P Report, August 2009 at

http://globalr2p.org/media/pdf/GCR2P_General_Assembly_Debate_Assessment.pdf

practice.” The Responsibility to Protect is a new principle supported by both the Security Council and the General Assembly. As mentioned in the General Assembly resolution the most important thing now is to turn the principle in reality so vulnerable populations can live free from fear.

On 14 July 2010 the Secretary General submitted a new report to the General Assembly on ‘Early Warning, assessment and the responsibility to protect’.⁸ In it he noted that there are three gaps in UN early warning systems. First, there is insufficient sharing and analysis among the streams of information already available. Second, existing mechanisms don’t view the information they obtain through the lens of R2P, and third, there is a need for assessment tools and capacity to ensure both efficiency and system-wide coherence in both policy-making and the development of early and flexible responses tailored to the evolving needs of the situation.

For the future the Secretary General encouraged ‘continuing conversation among the Member States, the UN system and civil society organisations’. He noted that there could be a dialogue on the role of regional and sub-regional organisation in implementing R2P at the Assembly next year and that it was necessary to consider ways in which collaboration could be institutionalized between the roles of the Special Advisor on the Prevention of Genocide, and the Special Advisor on the Responsibility to Protect. Finally the Secretary General commented on the need to get the right assessment of the situation on the ground, and of the policy options to respond. In doing this there is a need to establish new internal procedures to expedite and regularize the process by which the UN considers its response and recommendations to the appropriate intergovernmental body.

⁸ *Report of the Secretary General ‘Early warning, assessment and the responsibility to protect’*, UN Doc A/64/864, UN GAOR 64th sess, Agenda items 48 and 114 (14 July 2010)