



# The Responsibility to Protect – True consensus, false controversy

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While critics have claimed that the Responsibility to Protect (R2P) is a North–South polarising issue and is therefore controversial, this is a deliberate misrepresentation in a rhetorical war led by a small minority of UN member states. This chapter in a first section briefly reviews the evolution of this emerging norm from its inception in the 2001 report by the International Commission on State Sovereignty and Intervention (ICISS), to its endorsement in 2005 by more than 150 heads of states in the 2005 World Summit Outcome Document, to its more recent configuration in a three-pillar structure. The next part seeks to identify the main criticisms that have been levelled at R2P. It touches on some of the myths and allegations that have long accompanied R2P, as well as on the chief legitimate concerns underlying the shift towards implementation. The third and concluding section critically assesses the implications of a normative strategy that has put a premium on unanimity and unqualified consensus.

## *A norm is born: the genealogy of R2P*

Although R2P has not yet achieved the status of a legally binding norm, it has emerged as a key feature of today's ambitious normative international landscape. As with other successful normative enterprises, a number of factors help explain the way in which R2P has managed to travel a long journey in a comparatively short time. At least three come to mind:

- (1) an emerging norm with the power to inspire sympathy and capture the imagination of people around the world;
- (2) the determined commitment of a significant number of states and the no less important contribution of prominent moral entrepreneurs;
- (3) the articulation and mobilisation of an effective advocacy network, involving complex transnational civil society and trans-governmental sets of connections, actively engaged in regular exchanges of services and information.<sup>1</sup>

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<sup>1</sup> These ingredients have been critical in a number of normative ventures, ranging from the drug control regime, to nuclear non-proliferation, to the building of human rights regimes. The literature on these regimes is vast. See among others Nadelmann (1990), Martin and Sikkink (1993), Keck and Sikkink (1998), Finnemore and Sikkink (1998), Serrano (1992 and 2003).

R2P was first conceived by the ICISS as a formula to reconcile sovereignty and human rights (International Commission on Intervention and State Sovereignty 2001; see also Weiss and Hubert 2001, Evans 2008). Through the 1990s there had been signs of a groundswell of opinion moving in the direction of rebalancing sovereignty and human rights, but it was only with the articulation of R2P that the decisive impetus was given to a consensual doctrine.<sup>2</sup> Indeed, an important motivation underlying the work of the commissioners was the need to overcome the impasse reached in ongoing debates on humanitarian intervention – as exemplified by the verdict of the Independent International Commission on Kosovo (2000). In the opinion of this commission, NATO's intervention had been illegal, but still legitimate.<sup>3</sup>

As such, R2P epitomised the response to the challenge posed by former UN General Secretary Kofi Annan in the aftermath of the genocide in Rwanda and NATO's hotly contested intervention in Kosovo in 1999. In an impassioned address to UN member states, the then Secretary-General put in a nutshell the thorny dilemma confronting the UN and the international community of member states:

...the inability of the international community in Kosovo to reconcile these two equally compelling interests – universal legitimacy and effectiveness in defence of human rights – can only be viewed as a tragedy.

It has revealed the core challenge to the Security Council and to the United Nations as a whole in the next century to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand. (Annan 1999: 39)

Although it has become commonplace to associate R2P with the ICISS's early efforts to forge consensus behind the principle that massive and systematic violations of human rights should not be allowed, observers have rightly identified the 2005 agreement on the

2 In 1991 in a speech delivered at the University of Bordeaux Javier Perez de Cuellar, then UN Secretary-General, referred to what appeared to be an 'irresistible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents'. Also in 1991, Thomas Pickering, then US Ambassador to the UN, mentioned the 'shift in world opinion toward a re-balancing of the claims of sovereignty and those of extreme humanitarian need' (both quoted in Roberts 1993: 437).

3 The literature on humanitarian intervention is extensive. See among others Roberts (1993 and 2000), Ayooob (2001), MacFarlane (2002), Weiss (2007), Barnett and Weiss (2008), Thakur (2006), Bellamy (2009).

responsibility to protect as the turning point for norm crystallisation. In September 2005 at the World Summit, more than 150 heads of state endorsed, by consensus, the principle of the responsibility to protect.<sup>4</sup> The 2005 agreement on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity was the first milestone after years of advocacy by public figures, moral entrepreneurs, scholars and civil society. The actors converged to encourage not just a change in terms of both the domestic and international responses of member states, but also a deeper reconfiguration of the institutional responses. Underlying these efforts was the attempt to achieve a major shift in age-long understandings of sovereignty.<sup>5</sup>

The adoption of the principle of R2P in paragraphs 138 and 139 of the Outcome Summit Document was a watershed in terms of the normative evolution of this principle. The individual and collective responsibilities embodied in these paragraphs carried with them the regulatory elements and vectors for action (structural sequences) for protecting populations at risk of mass atrocities.<sup>6</sup> In other words, these obligations provided the foundations for a new international norm premised on two basic principles: state responsibility and non-indifference. As important as this was the conceptual and definitional shift that lay at the heart of paragraphs 138 and 139. By linking the scope of prevention and protection to four crimes, the 2005 agreement significantly redefined R2P. In marked contrast to the ICISS broad framework of humanitarian protection, it introduced a harder focus on preventing and halting mass atrocity crimes – genocide, major war crimes, crimes against humanity and ethnic cleansing.

4 Although in its voyage to the World Summit R2P faced both the challenge of a coalition of recalcitrant states and the obstinate position of the US delegation, the wholehearted support provided by a number of actors, most notably Canada and the UN Secretary-General, Kofi Annan, paved the way to its adoption in the Outcome Summit Document. See among others Evans (2008), Thakur and Weiss (2009) and Strauss (2009).

5 The worldwide legal and political recognition granted to human rights has long reinforced the view that a government's treatment of its citizens can be a matter of legitimate concern. It has also conveyed the message that the protection of internationally recognised human rights is a precondition of international legitimacy. The literature on the way in which human rights have conditioned sovereignty is again extensive. See among others Donnelly (2007), Hurrell (2007), Roberts (2004) and Luck (2009).

6 The structural sequence for action was outlined as follows: 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; third, the international community has a responsibility to use the appropriate diplomatic, humanitarian or peaceful means to protect populations. And if states are manifestly failing – that is, if they are unable or unwilling to protect their populations from these crimes, and if peaceful means prove to be inadequate – the R2P requires that the international community be prepared to take collective action in a timely and decisive manner through the Security Council (General Assembly, World Summit Outcome, 24 October 2005 (A/RES/60/1), paragraphs 138 & 139, p.30).

In the years that followed, many continued to puzzle over the direction in which this would take R2P. Some grumbled about the perceived watering down of the normative enterprise. However, to the extent that paragraphs 138 and 139 drew up the boundaries of R2P around these four crimes, there is no doubt that the World Summit Outcome Document contributed to bolstering the internal consistency of the norm. Thus, in terms of its formulation, by confining the norm to the most heinous crimes, the 2005 agreement had clearly added to the norm's clarity and specificity.

In terms of its substance, there was no question that R2P continued to aim to provide an answer to gross and systematic violations of human rights deeply offensive to any sense of common humanity and human dignity. As such R2P – like human rights more generally – sought to travel across cultural boundaries and ultimately aspired to universality.

Like other norms, the emergence and evolution of the R2P cannot be divorced from its surrounding historical circumstances and the dilemmas faced in world politics. Three years after the 2005 agreement, the effects of 9/11 and the war on Iraq still loomed ominously on the horizon. Yet, as the General Assembly (GA) engaged in this and subsequent normative discussions, the intensity and frequency of ethnic and internal conflict in many quarters of the world continued to confront the UN with inexorable challenges. The shattering evidence accompanying real conflicts added to the validity of the arguments of those seeking to alter the practices of international institutions. Not surprisingly, a number of glaring failures faced by the UN on the ground prompted the Security Council to issue three resolutions – S/RES/1674 (2006) and S/RES/1894 (2009) on the protection of civilians in armed conflict, and S/RES/1706 (2006) expanding the mandate of the UN mission in Sudan to include Darfur. Not only did these resolutions reaffirm the normative tenet of the R2P, they also contributed to redefining the terms of international engagement in international emergencies.<sup>7</sup>

Notwithstanding this, by 2007, when Secretary-General Ban Ki-moon decided to put his personal prestige behind this normative trans-

7 S/RES/1674 of 28 April 2006 reaffirmed the provisions of paragraphs 138 and 139, while S/RES/1706 of 31 August 2006 indirectly referred to the R2P by explicitly quoting resolution 1674. At the open debate on 11 November 2009, the Council marked the 10th anniversary of the Council's involvement in this issue by adopting resolution 1894, the first thematic resolution on protection of civilians since resolution 1674 of 2006. Although the explicit or indirect reference to R2P has been welcomed by some advocates, experts have also pointed to the problematic relationship between the agendas for the protection of civilians and the broader remit of the R2P (see Strauss 2009: 305-307).

formation, doubts about the prominence and transnational resonance of the R2P norm still floated in the air. As the Secretary-General appointed Francis Deng as his Special Adviser for the Prevention of Genocide and Edward C. Luck as Special Adviser for the conceptual, political and institutional development of the responsibility to protect, many still feared the risk of ‘buyers’ remorse.’<sup>8</sup> Although there was far greater readiness to canvass criticism and to acknowledge difficulties, the publication of the Secretary-General’s report, *Implementing the Responsibility to Protect*, in January 2009 marked a change in the tide.

For some years, debates around the responsibility to protect appeared to be no more than an academic sideshow. However, both the decision of the Secretary-General to include R2P among his top priorities and the invocation of the norm in a number of crises reanimated political dynamics around R2P. Indeed, occluded references to R2P in the successful mediation effort in preventing mass atrocities in Kenya in early 2008 were soon followed by the flawed invocation of R2P by France in the context of cyclone Nargis in Burma in May 2008, and by Russia in its assault in South Ossetia in August of that year. Whether rightly applied as in Kenya, or misused as in Burma and Georgia, these cases demonstrated the practical relevance of the R2P norm in real time world politics (see Badescu and Weiss 2010, Serrano 2010 and Bellamy 2010).

As the circulation of the Secretary-General’s report paved the way to the first General Assembly debate since the adoption of the World Summit Outcome Document, the political and strategic questions about the future of R2P again came to the fore. While R2P continued to enjoy considerable appeal, the challenge to build and deepen the consensus around it seemed formidable. Many doubted that the conditions were ripe to buttress R2P’s normative foundations. Some of these arguments were justified partly because of the uncertainty surrounding the level of support for the norm, and the alleged greater danger that political polarisation could pose to the 2005 consensus. But before critics realised, the reactivation of R2P was well in train, exemplified by the interest that the Secretary-General’s report sparked both among R2P supporters and opponents.

8 These decisions, as the intention to institutionalise the collaboration between the two Special Advisers, were communicated to the Security Council in late August 2007. The decisions were justified on three bases: the agreements embodied in paragraphs 138 and 139 of the 2005 World Summit Outcome Document; the obvious link between large-scale atrocities and threats to peace and security; and the recommendations of the advisory committee for the prevention of genocide. In this letter the Secretary-General underscored that due to the ‘complementarity of the prevention of genocide and mass atrocities and the responsibility to protect’ and for reasons both of ‘efficiency and of the complementarity of their responsibilities, they [the two Special Advisers] will share an office and support staff’. S/2007/721.

Not only did the Secretary-General’s carefully drafted report reaffirm the understanding of R2P as confined to the four crimes; it significantly contributed to the substantial narrative of R2P. The report unpacks the commitments set forth in paragraphs 138 and 139 of the World Summit Outcome Document and proceeds to reframe them in a three-pillar institutional architecture:

- Pillar 1, the enduring responsibility of the state;
- Pillar 2, the responsibility of the international community to assist states to fulfil their national obligations;
- Pillar 3, the commitment to timely and decisive collective action, in ways that are consistent with the UN Charter

The publication of the Secretary-General’s report and the active engagement of the two Special Advisers, assisted by two key civil society organisations, unleashed a vigorous process of R2P socialisation.<sup>9</sup> Indeed, the circulation of the report, the efforts of the Special Advisers to explain and promote the proper understanding of R2P and above all the expectation of a debate in the General Assembly set off a wave of R2P talk in New York and in some capitals around the world (Serrano 2010: 8–10).

The formal but lively R2P debate in 2009 in the General Assembly and the negotiation of the first GA resolution on the responsibility to protect were followed a year later – in August 2010 – by an enthusiastically constructive informal interactive dialogue. As in 2009, the informal dialogue in 2010 was based on a second report by the Secretary-General.<sup>10</sup>

### *The Responsibility to Protect and its critics*

Despite expectations to the contrary, the engaged and constructive debate in the General Assembly in the summer of 2009, as the subsequent informal interactive dialogue in August 2010, appeared to give extra substance to the significance of the 2005 commitment. Indeed, the debate, the adoption by consensus of the first resolution on R2P by the General Assembly on 14 September 2009, together with the animated interactive dialogue in August 2010, all offered

<sup>9</sup> These organisations are the Global Centre for the Responsibility to Protect and the International Coalition for the Responsibility to Protect; see Luck (2010 and forthcoming).

<sup>10</sup> *Early Warning, Assessment, and the Responsibility to Protect*, Report of the Secretary-General, UN document A/64/864, 14 July 2010.

clear signs of the degree of sympathy enjoyed by R2P among the UN membership.<sup>11</sup>

Perhaps the best way to highlight the importance of both the 2009 debate and the 2010 interactive dialogue is by referring to the way in which these deliberations have helped dispel some of the myths that have long dogged R2P. First and foremost, in both sessions the legend that this is a North-driven agenda was eloquently opposed by numerous voices from different regions and latitudes. These included countries like Argentina, Armenia, Bosnia Herzegovina, Chile, Croatia, East Timor, El Salvador, Guatemala, Israel, Nepal, Peru, Rwanda, Sierra Leone, the Solomon Islands and Uruguay among others that had gone through the tragedy of experiencing egregious mass violations of human rights.

Secondly, both sessions have made clear a greater degree of convergence around R2P than many had imagined, bringing to the fore a shared understanding of the norm that sets it apart from humanitarian intervention. This general understanding confirmed the 2005 agreement around four crimes, together with the three-pillar architecture outlined in the Secretary-General's report.

Thirdly, both the 2009 debate and the 2010 interactive dialogue also made clear a considerable degree of recognition of R2P as an ally of sovereignty; in other words, as a bolsterer of states' capacities to exercise their sovereignty responsibly. Echoing the normative underpinnings and the principle of 'complementarity' associated with the International Criminal Court, a significant number of member states endorsed R2P's legal anchorage in existing international legal obligations and standards. Along these lines, the debate also made manifest a growing understanding of mass atrocities as threats to international peace and security.

Fourth, taken together, these deliberations in the General Assembly suggest that the consensus on R2P within the membership has broadened and that perceptions about its legitimacy have also evolved. A careful reading of all the statements delivered in both debates reveals a complex and changing universe. While it would be risky to over-read the statements delivered by India and Egypt – two countries that had

11 For full assessment of the July 2009 debate see the Global Centre on the Responsibility to Protect, *Implementing the Responsibility to Protect. The 2009 General Assembly Debate: An Assessment*. August 2009. A full account of the informal 2010 interactive dialogue can be found in Global Centre for the Responsibility to Protect, 'Early Warning, Assessment, and the Responsibility to protect: Informal Interactive Dialogue of the General Assembly held on 9 August 2010, September 2010.



been previously identified as sceptics – their constructive interventions in the 2010 informal interactive dialogue appear to suggest that consensus around R2P continues to widen and deepen

Setting this interpretation involves difficult judgements, but if there is one clear message that emerged from the debates, and in particular from the 2010 interactive dialogue, it is the readiness of the great majority of those participating to move on to questions of implementation and – as the representative from Guatemala put it – to codify the uses of the three pillars.

None of these positive interpretations should blind us to the unsettled issues and the lingering legitimate concerns voiced by numerous delegations in both the 2009 formal debate and the 2010 interactive dialogue. Many of these anxieties concern the risks of implementation and have been addressed on numerous occasions by the Special Advisers, scholars and R2P supporters. However, the respective roles of the General Assembly and the Security Council, and the risk of selectivity and misuse continue to generate disquiet among the member states.

It is thus tempting to paint a post-GA debate picture in which there is a constant expansion of the consensus around R2P. However, the debate, the intense negotiations leading to the adoption of resolution A/RES/63/308, and the deliberations accompanying the 2010 informal dialogue, have also shed light on some of the main obstacles that can hamper the consolidation of R2P as a global norm. Indeed, while the public sessions in the GA and the negotiation of the resolution have helped set the R2P record straight, these processes also brought to the fore the presence of a small and vocal minority determined to hijack the consensus around R2P.

In both the 2009 and 2010 debates, and during the negotiations on both the resolution and in the more recent budgetary negotiations in the Fifth Committee, a small group of countries led by Cuba, Nicaragua, Iran, Pakistan, Sudan and Venezuela – but also including Algeria, Bolivia, the Democratic Republic of Korea, Libya, Ecuador, and Syria – has made clear its determination to derail progress on R2P. In the 2009 debate, Cuba, Nicaragua, Sudan and Venezuela openly joined the then President of the General Assembly, Miguel D’Escoto, in calling R2P into question, and sought to reverse its progress.

In fact, it was the fear of leaving the official recording of the GA debate in the voice of the concept note and concluding remarks by

Miguel D’Escoto that prompted a group of countries, led by Guatemala, to embark on the negotiation of resolution A/RES/63/308 on the responsibility to protect. In the words of the Guatemalan Ambassador, Gert Rosenthal, the resolution sought to record ‘that we received the report of the Secretary General, that we held a very fruitful debate and that we wish the debate to continue’. Yet, the coordinated efforts by Bolivia, Cuba, Ecuador, Iran, Nicaragua, Sudan, Syria and Venezuela obstructed the securing of more constructive language and succeeded in editing the text to remove the word ‘appreciation’.

It is true that this short three-paragraph resolution, led by Guatemala and co-sponsored by 67 member states from every region of the world, was adopted by consensus on 14 September 2009.<sup>12</sup> On the other hand, a price for consensus had had to be paid.

### *The strategy of consensus*

Overall there is much to learn about a normative strategy that, until recently, has put a premium on unanimity and unqualified consensus. Given the consensual nature of the momentous 2005 agreement, it is easy to see how this became the default strategy pursued by leading R2P actors.

The constructive tone in the 2009 debate and the 2010 interactive dialogue reflects an understandable optimism about their outcome – and the end of uncertainty surrounding R2P. Unfortunately, it should not be read as a signal that unanimity is within sight.

The record of two debates in the General Assembly, as that of the negotiations leading to resolution A/RES/63/308 in 2009 and the more recent budgetary negotiations at the end of 2010, leave constitute some important lessons. Clearly, the emphasis on unanimous agreement permits tiny minorities to win preponderant voices.

The trends observed in all these processes are not necessarily about significant polarisation. They all relate to the very unusual way in which a small minority may take cover behind procedural arguments to block critical dialogue. The minority becomes stronger because the strategy pursued so far has not been one aimed at broadening the consensus, but one of chasing unanimity. Perhaps more importantly,

<sup>12</sup> See UN document A/RES/63/308 14 September 2009 and Global Centre for the Responsibility to Protect, *Summary of Statements on Adoption of Resolution RES/A/63/L80 Rev.1*, September 2009.

because half a dozen countries continue object to R2P, observers go on concluding that R2P is controversial.<sup>13</sup>

The significance of their voices lies not in the numbers, but in the fact that by upholding procedural arguments they claim to represent the staunchest defenders of the UN system. As the recent vote on the negative amendment put forward by Venezuela in the budgetary negotiations for the joint office makes clear, the practical problem of determining who shall count as comprising the consensus and the dissensus is anything but easy to solve.<sup>14</sup> While 17 countries supported the Venezuelan amendment, 51 countries abstained. Indeed, to the extent that the road to implementation will most likely be uneven and paved by uncertainty, unanimity will not be in sight. As political actors move to implementation, this cannot be viewed as a linear process in which setbacks and problems will be merely temporary. More uneasiness and disquiet seem likely in the short term. In the long, the R2P would not be the only norm to have won through sound and fury.

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13 See Charlie Rose, Interview with Susan Rice, US Ambassador to the United Nations, available at <http://www.charlierose.com/view/interview/11420> (accessed 27 January 2011).

14 The Venezuelan amendment received 17 votes in favour, 51 abstentions and 68 votes against. Fifty-six delegations were absent. Along with Algeria, Cuba, Nicaragua and Venezuela, those who voted in favour of the proposed amendment were Bolivia, the Democratic Republic of Korea, Ecuador, Iran, Lao People's Democratic Republic, Libya, Mauritania, Myanmar, Qatar, Solomon Islands, Sudan, Syria and Zimbabwe.

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