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Why do we need the responsibility to protect?

The world has failed again and again to protect the victims of mass atrocities. This norm has emerged to spell out what the states, and the international community, should and must do to prevent that from happening again.

Many international institutions, and above all the United Nations, were established to prevent or adjudicate conflict between states. But with the end of the Cold War, inter-state aggression largely gave way to war and violence inside states. And when, in the 1990s, horrific violence broke out inside the borders of such countries as Somalia, Rwanda, and Bosnia, the world was ill-prepared to act, and paralyzed by disagreement over the limits of sovereignty.

In yet another case, Kosovo, the failure of the Security Council to authorize action to halt ethnic cleansing provoked NATO, a regional

organization, to initiate an aerial bombardment on its own. This deeply divided the international community, pitting those who denounced the 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 would stand by passively and let mass killing happen in order to preserve the strict letter of international law, or they would circumvent the UN Charter and carry out an act of war on their own.

The responsibility to protect norm adopted by the UN General Assembly in 2005, sought to confront both the Rwanda tragedy and the Kosovo dilemma by stipulating that states have an obligation to protect their citizens from mass atrocities; that the international community will assist them in doing so; and that, should the state be manifestly failing in its obligations, the larger community is obliged to act. Of course, no statement of intent to uphold an obligation

can supply the political will to do so where it is lacking. Nor can it compel brutal states to protect their own citizens. But by accepting a collective responsibility to protect and an obligation to act, the international community has issued a solemn pledge that it cannot lightly ignore.

Who has the responsibility to protect?

The responsibility originates with each state itself and then broadens to the international community of states. The essence of this norm, commonly abbreviated as “R2P,” is that sovereignty is itself built on a state’s obligation to protect its own people from gross abuse—specifically, genocide, ethnic cleansing, crimes against humanity and war crimes. The *2005 World Summit Outcome Document*—reflecting the unanimous decision of the world’s heads of state and government, sitting as the UN General Assembly—included the collective commitment to “encourage and help States to exercise” this responsibility. And when states prove to be “manifestly failing” to protect their citizens from genocide, ethnic cleansing, war crimes or crimes against humanity, the international community accepts the obligation to act. Failure does not, of course, absolve the state of its own responsibility to protect its people; rather, it provokes a concurrent responsibility of all states, acting as necessary through the UN.

In the *World Summit Outcome Document*, UN member states establish roles for a number of UN organs in fulfilling the responsibility to protect. Member states commit to acting through the Security Council for enforcement action; the Secretary General has the authority, as laid out in Article 99 in the UN Charter, to bring to the Counsel’s attention all matters touching on international peace and security. The Secretariat is tasked with helping to develop an early warning capability. The General Assembly commits itself to promoting capacity building. The *World Summit Outcome Document* also stipulates that the Security

Council will work through regional organizations as appropriate when the UN is obliged to take collective action to end atrocities. Regional organizations will also play a key role in early warning, capacity building, and the adoption and execution of preventive measures.

Is R2P really new?

No. The core underlying idea that states have an obligation to protect men and women from the worst atrocities is well established. Basic human rights principles were adopted in the UN Charter and the Universal Declaration of Human Rights, and there is a substantial body of international human rights law. The United Nations adopted the Convention on Genocide in 1948. And the protection of civilians during armed conflict is well established in international humanitarian law. But with the advent of R2P, the international community accepted for the first time the collective responsibility to act should states fail to protect citizens from genocide, ethnic cleansing, war crimes, or crimes against humanity. R2P thus imposes two obligations—the first upon each state individually, the second on the international community of states collectively. With the embrace of the responsibility to protect, a long and unresolved debate over *whether* to act became, instead, a discussion about *how* and *when* to act.

Isn’t R2P just a new name for “humanitarian intervention”?

No. “Humanitarian intervention” is about the “right” of states to act coercively against others to stop atrocities; R2P is about the responsibility of states to act to protect their own people, and to assist other states to do so, with coercive action only permissible in the most extreme and exceptional circumstances. The emphasis is completely different. R2P evolved from the debate on humanitarian intervention, but is a much broader concept, and approaches the issue of state sovereignty in

a very different way. The idea that states have the right to intervene to stop atrocities stretches back to the nineteenth century; but the international community's shameful failure to stem atrocities in Africa and in the Balkans, and growing public outrage over those failures, put humanitarian intervention at the top of the international agenda in the 1990s. In early 1999, Secretary-General Kofi Annan declared in a speech that "State frontiers should no longer be seen as a watertight protection for war criminals or mass murderers." But his proposal for a new doctrine provoked angry opposition in parts of the global South, where it was seen as an assault on sovereignty and on the norm of non-interference in the domestic affairs of states. In 2000, Annan called upon the General Assembly to develop a framework to ensure that the UN would never again fail to act in such circumstances.

The responsibility to protect offered a way of breaking this deadlock. The concept was formulated in the 2001 report of the International Commission on Intervention and State Sovereignty. The authors noted that, by signing the UN Charter and other binding international compacts, states had already accepted restrictions on their actions, including towards their own citizens. "There is no transfer or dilution of state sovereignty," they noted, but rather a shift from "*sovereignty as control to sovereignty as responsibility*." The new doctrine is thus based not on the right of outsiders to intervene but rather on the responsibility of states to protect citizens. And this is no mere semantic change, since the acceptance of this responsibility implies a corresponding obligation on the part of the international community to help states protect their citizens. This new formulation helped to allay many, if not all, concerns and suspicions that had been provoked by the doctrine of humanitarian intervention.

Does R2P replace existing concepts like "human security"?

No. It is one application of that broad concept, but not synonymous with it. "Human security" encapsulates the sweeping idea that what should be central to international relations is not only the security of states and their borders but also the security of their peoples. This broad principle focuses attention on the security of the individual against threats from the state and elsewhere. Protection against mass atrocities is, of course, one dimension of human security, but so, too, are protection against environmental hazards, economic deprivation or political repression. The concept of human security is the foundation of R2P, as it is for other emerging norms and doctrines. R2P joins them without superseding them.

What kinds of abuses does the R2P seek to address?

The *2005 World Summit Outcome Document* limits the application of the responsibility to protect to four kinds of gross human rights abuse: genocide, ethnic cleansing, war crimes and crimes against humanity. Some have interpreted the responsibility to protect as a generalizable principle that could be used to justify outside intervention to stop a wide range of state abuses. R2P, however, is *not* intended to address every form of abuse but only the most acute acts of violence against populations. It must be narrowly construed, within the confines accepted by the international community, if it is to be effectively implemented. The fact that R2P itself is sharply limited in its scope and focus does not detract from or undermine other obligations under international human rights or humanitarian law, or replace initiatives to improve governance, end corruption, or address climate change or disease.

What is a mass atrocity?

The four types of human rights abuse enumerated in the *2005 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 International Criminal Court lists fifty such acts, including torture, hostage-taking, mistreating prisoners of war, targeting civilians, pillaging, rape and sexual slavery, and the intentional use of starvation. The doctrine applies to such crimes when they are committed in the course of civil war or other internal conflict. Many of these crimes have become endemic to modern warfare, and no single incident would necessarily warrant or lead to action on the basis of R2P; but 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 the responsibility to protect.

Crimes against humanity include, according to the ICC statute (which essentially codifies customary international law), 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 are frequently committed in wars and under repressive regimes; they constitute crimes against humanity when they are widespread and systematic, and committed as conscious acts of policy.

The term “ethnic cleansing” has more recently come into general usage and is the least clearly defined of the four 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: it is essentially one particular class of crimes against humanity.

Who supports the concept of R2P?

R2P was adopted unanimously by all UN member states, sitting as the General Assembly at the 2005 World Summit. It reflects the work of scholars, diplomats, and policy-makers from South and North. Indeed, the Constitutive Act of the African Union contains language that is stronger than the *2005 World Summit Outcome Document*, specifying “the right 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.” The concept has widespread support among victim and survivor populations, civil society in countries experiencing conflict or repression, and among human rights and development organizations in developing countries—as well as among publics who want their governments to act responsibly and effectively to save lives.

Isn't the intent of R2P to legitimize military intervention?

No; *prevention*, not intervention, lies at the heart of the doctrine. R2P creates a basis for cooperative action to forestall atrocities. Force is to be considered only when it is clear that prevention efforts will not succeed, and only applied as an absolute last resort. R2P emphasizes direct and immediate prevention when violence has begun or seems imminent, for example through mediation—such as occurred early in 2008 in Kenya. Other preventive measures include consensual military or police deployment, humanitarian relief, and initiatives toward reconciliation, such as encouragement of inter-communal talks. R2P also acknowledges the importance of structural or longer-term efforts to strengthen state capacity, such as economic assistance, rule-of-law reform, and the building of effective political institutions. As recognized in Security Council resolution 1325, women must be effectively represented in prevention and stabilization processes.

Only when peaceful means have proved to be “inadequate,” according to the *2005 World Summit Outcome Document*, and the risk of large-scale loss of life or mass suffering remains imminent, will the international community, acting through the Security Council, turn to more robust measures. Such steps would be tailored to each individual situation, and could include sanctions or the threat of sanctions, arms embargoes, or the threat to refer perpetrators to international criminal jurisdiction. And should these measures fail to stem the threat or actual occurrence of mass atrocities and the state is manifestly failing to protect its populations, then—and only then—would the Security Council consider the coercive use of force.

Under what circumstances would military action be considered?

Military action offers both a threat to deter actors and, ultimately, a means to prevent or stop atrocities, but even then the failure of non-military measures would not automatically trigger a military response. There are a number of criteria that have to be satisfied, quite apart from the issue of legal authority, before such intervention could be considered legitimate.

The ICISS report proposed five “precautionary principles,” drawn from centuries of theory and practice in many different cultural contexts, to help guide such decisions. The first is paramount: the violence in question must be of such a serious nature, encompassing large-scale actual or threatened loss of life or ethnic cleansing, that the grave risks associated with any use of force should be contemplated. Second, the primary purpose of the intervention must be to prevent or halt such suffering. Third, military force must be the last resort. Fourth, the means must be proportional to the ends sought. Lastly, the intervention must have a reasonable prospect of success, with the consequences of the action not being worse than the consequences of inaction. Kofi

Annan’s 2005 reform proposal, *In Larger Freedom*, suggested similar language.

Such principles are important in guiding the use of force as well as when it would be ineffective or improperly used. But it was impossible to reach consensus on them at the World Summit, and debate continues. While the responsibility to protect contemplates the possibility of coercive military intervention only in the most extreme cases, no formally accepted principles—not even voluntary ones—exist to guide Security Council decision making. These standards can, however, continue to inform public debate and deliberations among governments.

Doesn’t R2P undermine or restrict state sovereignty?

No. R2P does not detract from the overall attributes of state sovereignty at the core of UN Charter Article 2(7), but instead R2P adds an essential dimension to it: respect for human rights as specified in the obligation to avoid mass atrocities. In the period since the end of World War II, states have accepted many curbs on untrammelled action; the signing of the UN Charter, with its prohibition on state aggression save for purposes of self-defense, constituted one such limit on sovereign action. Others include the many human rights compacts that states have signed to restrict their powers over their own citizens; and the establishment of tribunals like the International Criminal Court means that nationals can be tried in an international forum. The responsibility to protect falls squarely within this growing acceptance of doctrines that place the state at the service of the individual—“sovereignty as responsibility,” in the term coined by scholars and practitioners Francis Deng and Roberta Cohen. Indeed, R2P rests on a fundamental reformulation of sovereignty as a form of obligation rather than merely of power. And if sovereignty is understood as responsibility, then R2P, which requires the international community to help states at risk of mass

atrocities, bolsters sovereignty by bolstering state capacity.

What happens if the Security Council fails to act?

The goal of R2P is to make the kind of unilateral action which occurred in Kosovo unnecessary by ensuring that the United Nations itself will be able to effectively respond. The objective is not to create alternatives to the Security Council but to make it work better. By gaining consent to the principle of collective responsibility, and then by providing a set of responses leading up to the use of force, R2P may make the Security Council more willing to act.

And if not?

The World Summit Outcome consensus on R2P was silent on this question. As a matter of international law, even in a situation where peaceful means are inadequate and the precautionary principles are satisfied, it would be illegal for states to take military action absent a Security Council resolution (or a General Assembly resolution under “Uniting for Peace”). Yet, in those very exceptional circumstances, the question of how to protect the lives of those at risk will still need to be answered. As Kofi Annan said in 1999, “If the collective conscience of humanity. . . cannot find in the United Nations its greatest tribunal, there is a grave danger it will look elsewhere.”

Isn't R2P a tool of the powerful against the weak?

No. Critics of the concept often insist that it will never be applied to major powers, and thus it is fatally undermined by inconsistency, but R2P imposes obligations on all UN member states. It is certainly true that none of the world's most powerful countries, and certainly not the Security Council's permanent members, will face the prospect of coercive military intervention under R2P. But neither will many

smaller and weaker countries. Military intervention is the most extreme action envisioned by the doctrine. And while the international community can not directly coerce any of the major powers in the way that they can the lesser, it is hardly powerless to affect the behavior even of the permanent members of the Security Council. Peer group pressure does have a significant impact.

Moreover, R2P creates an obligation for all states to prevent atrocities wherever they occur. Not only does this responsibility fall to the powerful and to the less powerful, but the more powerful states have a far greater capacity to extend assistance in cases of threatened atrocities, and far greater stores of economic, diplomatic, logistical, and military resources. These may be required in a crisis. More, therefore, will be expected of the powerful.

Because we cannot act everywhere, it is unacceptable to argue that we should act nowhere. Consistency should be a goal and not a snare with which to entrap the imperfect.

Doesn't the Iraq war show that R2P is really about regime change?

No, but there can be little question that the 2003 invasion of Iraq has done real harm to the proposition that military force can be used, in extreme cases, for humanitarian ends. Neither the George W. Bush administration nor its allies sought to justify the war, and the overthrow of Saddam Hussein, chiefly as a humanitarian response to the regime's tyranny. But because some advocates of the invasion did make this claim, and others—and especially British Prime Minister Tony Blair—offered it as a retrospective rationalization, the war has at times been viewed as a kind of demonstration project of the responsibility to protect. Indeed, skeptics of R2P have been able to cite the Iraq war as “proof” that the powerful will cynically deploy the new norm to justify acts of aggression in pursuit of national interest, and in the process will cause worse violations of

human rights than those they allegedly seek to remedy.

The Iraq war should have no bearing on the merits of R2P. Saddam Hussein brutally violated the human rights of his people; but by 2003, he was no longer engaging in the grossest acts of ethnic cleansing, or of mass murder, that he had a decade earlier, and military action would not have satisfied either the imminence or last resort precautionary guidelines. In the run-up to the war, the United States and the United Kingdom sought to persuade the Security Council that Iraq had violated UN resolutions about weapons of mass destruction, not that it had committed atrocities against its own people.

What is the standing of R2P 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 is a standard of behavior; 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 World Summit Outcome Document. Once a norm has gained not only formal acceptance but widespread usage, it can become part of what is known as “customary international law.” While R2P has moved rapidly within the international arena, it has only recently begun to be invoked in specific situations and does not have the degree of acceptance that would justify its description as “law.” R2P continues to evolve and will look very different in a decade from now.