

Preventing Future Genocides: An International Responsibility to Protect

Introduction

The Charter of the United Nations begins with a goal of saving "succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."¹ The inability of the United Nations to live up to this goal and to prevent deadly conflict has contributed to the loss of millions of lives, the displacement of millions more, and untold economic devastation.

During the first four decades of the UN's history, the world understood that the Cold War was responsible for the UN's inability to prevent wars and protect the most at-risk civilians. During that time only those conflicts and crises that did not concern the direct strategic interests of either the United States or the Soviet Union could be addressed within the UN.

The end of the Cold War restored hope that the UN would become the institution through which collective international action could be taken to respond to global security threats and to protect those in greatest need. Since that time, however, millions of civilians have been the targets of deadly conflict in Bosnia, the Democratic Republic of Congo, Kosovo, Liberia, Rwanda, Sudan, and Uganda, among others.

The UN and collective security should be synonymous. Instead, the principles of sovereignty and noninterference continue to prevent collective responses that

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1. Charter of the United Nations, 1945, Preamble.

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would avert massive human-rights abuses, genocide, ethnic cleansing, and crimes against humanity. In Kosovo, the Security Council was not able to take action against the atrocities being committed by Serbian forces because China and Russia sought to uphold the sovereignty of the Federal Republic of Yugoslavia and objected to Security Council involvement in the internal affairs of that state. The concern over respecting the sovereign rights of Sudan—notwithstanding the evidence of the government’s role in committing atrocities—severely limited actions to protect the populations in the Darfur region.

Despite the many human-rights and humanitarian commitments that states have accepted, a substantial number of governments continue to believe that sovereignty entitles them to block international scrutiny, even in the face of massive human-rights violations and acts of genocide. Governments have hidden behind the principles of sovereignty and noninterference while allowing or themselves conducting

atrocities against their own populations.

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Because governments have long resisted intrusion into their internal affairs, the international community has not invested in col-

lective mechanisms that would prevent conflict and has not made protecting civilians (particularly in the poorest countries) a political priority. The major powers have consistently failed to take early action in cases where large numbers of civilian lives are in jeopardy. The most horrifying example of this failure during the past decade was the genocide in Rwanda. Despite clear warning of the oncoming attacks against civilian populations, the Security Council did not act to protect the people of Rwanda. Instead, as the genocide erupted, the Security Council reduced the UN presence, leaving only 270 peacekeepers to protect the hundreds of thousands of Tutsi and moderate Hutu victims.²

The tension between national sovereignty and a lack of international will to protect vulnerable populations is one of the major dilemmas that UN member states are facing at this time, the United Nations’ sixtieth anniversary. UN member states are currently attempting to confront many of the shortcomings of the UN’s capacity to respond to the most urgent threats to global security. Under the auspices of the General Assembly, governments agreed in April 2005 to negotiate a reform agenda spanning a wide range of proposals intended to provide security for all people. “Security” in this context was broadly defined to include protection from genocide, freedom from poverty, safety from environmental degradation and disease, and freedom from the threats of weapons of mass destruction and terrorism. It was expected that commitments to strengthen the UN’s capacity to respond to such threats would be finalized in September 2005 at a High-level Plenary Meeting, a summit of world leaders at the UN.

2. See United Nations, Security Council, *Resolution 912*, 1994.

Despite lengthy negotiations at the UN and in capitals around the world, the 2005 Summit did not realize many of the goals included in the ambitious agenda. Member states did not agree on a definition of terrorism or on measures to strengthen the international commitments regarding nonproliferation and disarmament. Supporters of reforms for environment and development struggled to preserve the status quo rather than to make advancements. Member states did reach a general agreement about establishing a new UN human-rights council and a UN Peacebuilding Commission. But they failed to agree on the specifics for the two institutions, and negotiations on the details are continuing.³ The bar was set high for the reform process, and many critics lamented the missed opportunities.⁴ Governments did, however, make an unprecedented commitment to act earlier and more effectively to prevent genocide and other massive violations of human rights. Specifically, governments agreed that there is a national and international “responsibility to protect” populations from genocide, war crimes, crimes against humanity, and ethnic cleansing.⁵

The significance of the commitment to the responsibility to protect (also referred to as R2P) is that (1) it reconciles the needs and rights of the individual with the duties of the international community and the rights of the sovereign state, reinforcing the belief that human security lies at the heart of national security; (2) it establishes a basis for accountability not only for the state’s failures but also for those of the international community; and (3) it codifies the responsibility of the international community to prevent as well as to react to massive violations of human rights.

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Introduction of the Norm of the Responsibility to Protect

The International Commission on Intervention and State Sovereignty (ICISS) introduced the term “responsibility to protect” in its report *The Responsibility to Protect*, published in December 2001.⁶ The ICISS was established by the Canadian

3. Negotiations for the Peacebuilding Commission were completed in December 2005, whereas negotiations on the Human Rights Council are expected to continue through January 2006.

4. See Nicholas D. Kristof, “A Wimp on Genocide,” *New York Times* Sept. 18, 2005; Mary Robinson, “A New Way of Doing the World’s Business,” *International Herald Tribune* Sept. 25, 2005; Nancy Soderberg, “The United Nations’ Missed Opportunity,” *Financial Times* Sept. 13, 2005; Emma-Kate Symons, “UN Reform a Disaster: Evans,” *Australian* Oct. 19, 2005; Ramesh Thakur, “U.N.’s ‘Einstein’ Moment,” *Japan Times* Oct. 3, 2005; Nick Wadhams, “U.N. General Assembly Agrees on Watered-Down Document for World Leaders to Approve,” *Associated Press* Sept. 14, 2005.

5. United Nations, General Assembly, *2005 World Summit Outcome*, Sept. 15, 2005, par. 138, http://www.unfpa.org/icpd/docs/2005summit_final_outcome.pdf.

6. See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Dec. 2001, <http://www.iciss.ca/pdf.Commission-Report.pdf>.

Government in September 2000 during the UN Millennium Summit in response to UN Secretary-General Kofi Annan's challenge to member states to address dilemmas posed by humanitarian crises where intervention to protect human lives and the sanctity of state sovereignty are in conflict.

The concepts put forward in *The Responsibility to Protect* bring clarity to the issues of when the UN must refrain from acting out of respect for state sovereignty and when it must take action to protect human rights. While the UN Charter affirms a principle of noninterference in the domestic affairs of a sovereign state, it also

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sets forth, as one of its main purposes, the achievement of international cooperation in promoting human rights.⁷ But the Charter offers no guidance

about when sovereignty (a fundamental principle of international law) must yield to protection against the most egregious violations against humanity and international law—genocide, ethnic cleansing, and massive human-rights abuses.

Earlier governmental and academic discussions frequently addressed the dilemma between national sovereignty and human rights within the framework of humanitarian intervention, which considers whether there is a right for one state or group of states to intervene in another state's affairs.⁸ But the authors of the ICISS report rejected the humanitarian-intervention construct that emphasized the perspectives of states. They also rejected a debate arguing for or against a "right to intervene," a concept that they called "outdated and unhelpful"; instead, the ICISS report emphasized the needs of the people and the responsibilities of states for the "functions of protecting the safety and lives of citizens and promotion of their welfare."⁹ The responsibility to protect, according to the ICISS report, lies "first and foremost with the state" whose populations are at risk, an assertion intended to reflect existing international law as well as the "practical realities of who is best placed to make a positive difference."¹⁰

The concept of state responsibility that is articulated in the ICISS report builds on earlier works of influential academics and international policy makers. For example, Francis Deng, the Secretary-General's special representative on internally displaced persons, articulated the concept of sovereignty as a responsibility in a book

7. See Charter of the United Nations, art. 2.7, Preamble.

8. See, for example, Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford UP, 2001), and the Danish Institute of International Affairs (DUPI), *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen: Danish Institute of International Affairs, 1999).

9. International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, par. 2.4, 2.15.

10. International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, par. 2.30.

on the protection of internally displaced persons.¹¹ In a 1999 article the Secretary-General commented on the emerging understanding of the state's responsibilities to its populations:

States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the Charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights. When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.¹²

The ICISS report supports the concept of sovereignty as a responsibility and adds that the state's duty to the individual is so important that it must also be borne by the international community. That is, when a state fails its responsibility by permitting or conducting widespread killing or massive human-rights violations on its own populations, the international community has the responsibility to protect those individuals.

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That the international community has duties, rather than mere interests, in the protection of individuals has underpinnings in many legal and political undertakings. These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva conventions and additional protocols, and the Rome Statute of the International Criminal Court.¹³ Collectively, these international obligations are fostering a "transition from a culture of sovereign impunity to a culture of national and international accountability."¹⁴

The international responsibility to protect is also an extension of the human-security paradigm that is gaining acceptance within governments. The idea of this

11. See Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community* (Washington, D.C.: Brookings Institution P, 1993) 14–20; see also Francis M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: Brookings Institution P, 1996).

12. Kofi Annan, "Two Concepts of Sovereignty," *Economist*, Sept. 18, 1999.

13. See United Nations, General Assembly, Universal Declaration of Human Rights, Dec. 10, 1948; United Nations, General Assembly, Resolution 2200A (XXI), International Covenant on Civil and Political Rights, Dec. 16, 1966; United Nations, General Assembly, Resolution 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966; United Nations, General Assembly, Resolution 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948; Geneva Conventions I, II, III, IV, Switzerland: 1849–1949, and additional protocols (Protocol I, II), Switzerland, 1977; and United Nations, Rome Statute of the International Criminal Court, July 1, 2002.

14. International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, par. 2.18.

paradigm is “for people to be secure, not just for territories within borders to be secure against external aggression.”¹⁵ The ICISS report describes human security as “the security of people—their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms.”¹⁶ The concept that security requires

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solidarity with humans that transcends state borders is at the foundation of the principle of the responsibility to protect.

One of the most important contributions of the ICISS report to the debate on sovereignty and human protection is its assertion that the international community’s responsibility is *not simply a question of whether military intervention* should take place. Instead, the international community should take responsibility for a continuum of actions to avert or to halt a crisis. The ICISS report describes this responsibility as one of preventing, reacting, and rebuilding. The international community must employ a range of tools to prevent latent threats from becoming imminent and to prevent imminent threats from becoming reality.

At the same time, the responsibility-to-protect concept places limitations on when the international community can and should act to prevent states from taking measures in pursuance of their own national interests while characterizing the measures as human protection. Specifically, the ICISS report proposes precautionary principles that must be considered if preventive efforts fail and if military force is needed to avert or halt the large-scale loss of life or large-scale ethnic cleansing. The recommended precautionary principles are:

- seriousness of threat
- right intention (averting or halting human suffering)
- last resort
- proportional means
- reasonable prospects of success

The five criteria are designed to serve as indicators guiding when the Security Council should intervene and helping to determine when justifications for the responsibility to protect are disguising other motives. Meeting the criteria would encourage action where political will is otherwise lacking or is obstructed by one country’s strategic interests. Not meeting the criteria would attest to possibly improper motives on the part of the would-be intervener or would indicate that not all nonmilitary measures have been exhausted. Moreover, the criteria would set a

15. Commission on Human Security, *Human Security Now*, 2003, 6, <http://www.humansecurity-chs.org/finalreport/English/chapter1.pdf>.

16. International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, par. 2.21.

standard by which Security Council actions and inactions could be judged, thus improving accountability and deterring unilateral and illegitimate preemptive wars.

Finally, the ICISS report discusses what should be done if the majority of the international community seeks action, but the Security Council fails to act. The goal of the responsibility to protect is to get the Security Council to work better, but the ICISS believes that, if the Security Council fails,

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alternative sources of authority must be explored. They propose that the General Assembly or regional or subregional organizations are possible alternative sources of authority. The ICISS report establishes a threshold indicating when such action would warrant that step and insists on the application of the precautionary principles.

Early Reactions to the Responsibility to Protect

The timing of the December 2001 release of *The Responsibility to Protect* was devastating to its initial reception. After the September 11, 2001, terrorist attacks in the United States, the international debate shifted away from consideration of measures to prevent another Rwanda or Srebrenica and toward measures for preventing and preempting terrorist activities and the proliferation of weapons of mass destruction. The 2003 invasion of Iraq, based in part on an argument of human protection, was even more devastating to the responsibility-to-protect agenda. The invasion increased concern that the responsibility to protect would be used to further erode the sovereignty of smaller developing countries. One of the authors of the ICISS report, Gareth Evans, wrote that the argument that the invasion of Iraq was based on protecting Iraqis against the tyranny of Saddam Hussein “almost choked at birth” the emerging norm of the responsibility to protect.¹⁷

In the political climate of the first years of the twenty-first century, civil-society organizations, particularly those dedicated to human rights and the protection of civilians, also began considering the responsibility-to-protect principles. The World Federalist Movement-Institute for Global Policy (WFM-IGP) engaged in initial consultations about the ICISS report to determine whether its principles could be useful to civil society and whether they should be the subject of advocacy campaigns. The WFM-IGP convened roundtables with humanitarian organizations, such as CARE International, Oxfam International, and World Vision; human-rights organizations, such as Amnesty International and Human Rights Watch; and faith-based organizations, including Quakers, Mennonites, and Unitarians. The consultations reflected widespread support among nongovernmental organizations (NGOs) for the expansion of the notion of sovereignty to include protection and for the interna-

17. Gareth Evans, “When Is It Right to Fight?” *Survival* 46.3 (2004): 59–82.

tional community to commit to a continuum of protective measures that emphasize prevention and treat force as a last resort. However, the NGOs consulted showed little interest in advocating a doctrine aimed at justifying military interventions, particularly those that occur without Security Council or multilateral approval.¹⁸

Although support for the responsibility to protect was limited in the initial period after the release of the ICISS report, the crisis that began in early 2003 in the Darfur region of Sudan again highlighted the need to improve the international community's

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response to emerging humanitarian crises. By the spring of 2004 the fact that crimes against humanity, if not genocide, had been taking place for well over a year without the international community's comprehensive effort to bring

them to an end prompted calls for strengthened norms of the responsibility to protect and the capacity to do so. Many advocates, such as Human Rights Watch, the International Crisis Group, and the Aegis Trust, turned to the responsibility-to-protect framework as a basis to call for further international action on Darfur.¹⁹ The UN Secretary-General is one of many public figures who has embraced the responsibility to protect as a way for the international community to respond to a future Darfur.

The growing support for the responsibility to protect led to its consideration within the context of the Secretary-General's agenda for reforming the UN so that it could better advance development, security, and the protection of human rights.

Responsibility to Protect in the UN Reform Agenda

The UN General Assembly convened a high-level Summit in September 2005 to (1) review progress on the Millennium Declaration (an agenda of global cooperation on security, development, the environment, and other pressing global issues to which the majority of UN members had agreed in 2000) and (2) follow up on the outcomes of the major UN economic and social conferences and summits. The agenda for the September Summit was expanded significantly beyond a review of progress on political commitments made in recent years. The Summit became an opportunity

18. See World Federalist Movement-Institute for Global Policy, "Civil Society Perspectives on the Responsibility to Protect," Apr. 2003, <http://www.responsibilitytoprotect.org/>, which contains the list of NGOs consulted at the roundtable discussions.

19. See Michael Clough, "Darfur: Whose Responsibility to Protect?" *Human Rights Watch*, Jan. 2005, <http://hrw.org/wr2k5/darfur/index.htm>; "The AU's Mission in Darfur: Bridging the Gaps," Africa Briefing N°28, *International Crisis Group*, Jul. 6, 2005, <http://www.globalpolicy.org/security/issues/Sudan/2005/0706bridgegap.pdf>; and James M. Smith and Ben Walker, "Darfur: Blueprint for Genocide," Aegis Trust, Nov. 2004, <http://www.aegistrust.org/images/stories/Aegis%20Darfur%20Report%202004.pdf>. For these and other analyses of the crisis in Darfur as it relates to the responsibility to protect, see <http://www.responsibilitytoprotect.org/>.

to reaffirm the fundamental goals of the UN and to commit to strengthening the UN to meet these goals.

The Secretary-General was integrally involved in setting the reform agenda. In September 2003, six months after the United States began the invasion of Iraq without Security Council authorization and only one month after the bombing of the UN Headquarters in Iraq, Kofi Annan issued a challenge to the members of the UN. The United Nations had come to a “fork in the road”;²⁰ it must adapt itself to global political realities, or it would be marginalized. He convened the High-level Panel on Threats, Challenges and Change, a panel of sixteen eminent persons, to identify the most urgent global security threats and issue recommendations on needed changes. One of the issues that the Secretary-General asked the group to address was the failure of the international community to prevent genocide and other massive violations of human rights.

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In December 2004 the High-level Panel released its report entitled *A More Secure World: Our Shared Responsibility*.²¹ The premise of the report is that collective security will require addressing the security concerns of all states, including fighting poverty and AIDS, preventing and resolving wars between and within states, countering terrorism, and addressing environmental degradation and organized crime.

Included among the report’s 101 recommendations on strengthening the international security framework is an endorsement of the international responsibility to protect populations from grave threats. The High-level Panel recognized that the concept of state sovereignty “clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community” and that, in circumstances where the state is not able or willing to fulfill this responsibility, the “principles of collective security mean that some portion of those responsibilities should be taken up by the international community.”²² The report also

- Affirms that with state sovereignty comes the “obligation of a State to protect the welfare of its own peoples”;
- Declares that the international community has a responsibility to protect peoples when states are “unable or unwilling to do so”;
- Defines responsibility as “spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies”;

20. Secretary-General, Address to the General Assembly, New York, Sept. 23, 2003, <http://www.un.org/webcast/ga/58/statements/sg2eng030923>.

21. See United Nations, Secretary-General’s High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, Dec. 2, 2004, <http://www.un.org/secureworld/>.

22. United Nations, Secretary-General’s High-level Panel on Threats, Challenges and Change, *More Secure World*, par. 29.

- Affirms that the responsibility is “exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide or other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.”²³

The High-level Panel report informed the work of the Secretary-General, who was asked to submit to the General Assembly his recommendations for the agenda of the 2005 Summit. The Secretary-General endorsed the broad security perspective of the High-level Panel and supported many of its recommendations. After consultations with governments and UN officials and with input from many civil-society organizations, the Secretary-General published, on March 21, 2005, his report entitled *In Larger Freedom: Towards Development, Security and Human Rights for All*.²⁴

In Larger Freedom poses a far-reaching challenge to governments: “We must aim . . . ‘to perfect the triangle of development, freedom and peace.’”²⁵ Similar to the High-level Panel, the Secretary-General emphasizes the need for governments to take action against threats of massive human-rights violations and other large-scale acts of violence against civilians. The report includes

- A call to governments to “embrace the ‘responsibility to protect’ as a basis for collective action against genocide, ethnic cleansing and crimes against humanity”;
- An assertion that the responsibility to protect “lies first and foremost with each individual State”;
- A recognition that, if individual states are “unwilling or unable to protect their citizens, then the responsibility” to protect “shifts to the international community”;
- A description of the international community’s responsibility to protect that includes the use of “diplomatic, humanitarian and other methods to help protect civilian populations”;
- A recognition that, if these measures are “insufficient,” the Security Council has the right to “take action under the Charter [of the United Nations], including enforcement action, if so required.”²⁶

As a result of the Secretary-General’s recommendation, for the first time the “‘emerging norm’” of the responsibility to protect was openly debated by the General Assembly.²⁷

23. United Nations, Secretary-General’s High-level Panel on Threats, Challenges and Change, *More Secure World*, par. 29, 201, 203.

24. See United Nations, Secretary-General, *In Larger Freedom: Towards Security, Development and Human Rights for All*, Mar. 21, 2005, <http://www.un.org/largerfreedom/>.

25. United Nations, Secretary-General, *In Larger Freedom*, par. 12.

26. United Nations, Secretary-General, *In Larger Freedom*, Annex, III.7.(b).

27. See United Nations, Secretary-General, *In Larger Freedom*, par. 135. Government statements from the debates leading to and through the 2005 Summit are available at www.reformtheun.org. The fact that the responsibility to protect was adopted at the highest level of governments is due in large part to the political commitment of the Government of Canada (which established the ICISS in 2000) and the financial support of the John D. and Catherine T. MacArthur Foundation. Most funders are willing

Intergovernmental Negotiations: The Evolution in the Understanding of the Responsibility to Protect

With regard to the responsibility to protect, the Secretary-General's report departed in one substantial way from the recommendations of the High-level Panel, a departure that has had a significant impact on governmental acceptance of this agenda. The High-level Panel considered the responsibility to protect a subset of its discussion of "Collective Security and the Use of Force," describing the subject as "Using Force: Rules and Guidelines."²⁸ As a result of being placed in the context of "Using Force," many governments viewed the High-level Panel's recommendations about the responsibility to protect as recharacterizing the humanitarian-intervention concept, a concept that many governments had rejected as unlawful interference in the internal affairs of another state.²⁹ In contrast, the Secretary-General's report separated the normative aspects of the responsibility (the assertion of the responsibility to protect as a basis for collective action) from the discussion of the use of force.³⁰ The Secretary-General made clear that the issue was not merely about the use of force; it was also about a *normative and moral undertaking* requiring a state to protect its own civilians. If a state fails to do so, the international community must apply a range of peaceful diplomatic and humanitarian measures, with force to be employed only as a last resort.

Following the recharacterization of the responsibility to protect, the General Assembly debates demonstrated growing support for its normative aspects by governments and civil society in all regions. Argentina, Canada, Chile, Guatemala, Mexico, Rwanda, South Africa, and the United Kingdom were some of the influential governments insisting on a meaningful commitment to the responsibility to protect. However, a few vocal opponents resisted the endorsement of the responsibility to protect because they feared that it would codify humanitarian intervention. Belarus, Cuba, India, Pakistan, Russia, and Venezuela were some of the governments who resisted inclusion of various elements of the responsibility to protect. Some gov-

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to support the costs of a blue-ribbon commission for producing a related report, but they rarely fund the follow-up. The Government of Canada and the John D. and Catherine T. MacArthur Foundation, principal supporters of the production of the ICISS report, have also contributed significant resources for implementing and following up on the ICISS report's key recommendations. Their work has led directly to the increasing acceptance of the norm of the responsibility to protect.

28. See United Nations, Secretary-General's High-level Panel on Threats, Challenges and Change, *More Secure World*, par. 183–209.

29. For a summary of how the concept of humanitarian intervention has generally been perceived by governments, see Thomas G. Weiss and Don Hubert, *The Responsibility to Protect: Research, Bibliography, Background, Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty* (Ottawa: IDRC Publications, 2001) 23, http://www.idrc.ca/en/ev-9439-201-1-DO_TOPIC.html.

30. See United Nations Secretary-General, *In Larger Freedom*, par. 122–26, 135.

ernments went so far as to seek removal of all references to the concept of the responsibility to protect. Others quietly expressed skepticism about the utility of the responsibility to protect, saying that the proponents of the doctrine are fond of putting words on paper but have not done enough in practice.

For its part, the United States appeared to oppose a norm that the international community has a responsibility to protect because having such a norm would limit its ability to undertake unilateral action and would impose further obligations on it to act to protect other states' populations even when it might not be in its political interest. At one point during the negotiations, the United States attempted to water down the text by proposing that governments accept that they have a "moral"

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responsibility to protect, which was taken to mean that this was not intended to be a political commitment.³¹

Through intensive negotiations in the days and hours before the September

2005 Summit began, the supporters of the responsibility to protect succeeded in obtaining an endorsement of the concept in the *2005 World Summit Outcome* document. Heads of state and governments agreed to the following:

- "Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity."
- The responsibility to protect entails prevention, including incitement to these crimes.
- The international community should encourage states to exercise the responsibility to protect, including their supporting the creation at the UN of an early-warning capability.
- "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means . . . to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."
- If national authorities manifestly fail to protect their populations, and if peaceful means are inadequate, the international community is "prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the [United Nations] Charter, including Chapter VII."³²

31. See John Bolton, United States Representative to the United Nations, letter to colleagues attaching proposed changes to the text regarding the responsibility to protect, Aug. 30, 2005, www.reformtheun.org/index.php/countries/44?theme=alt1.

32. See United Nations, General Assembly, *2005 World Summit Outcome*, par. 138–39. Chapter VII in the UN Charter confers on the Security Council the authority to take measures to respond to threats to the peace, breaches of the peace, and acts of aggression.

The provisions on the responsibility to protect in the *Outcome* document have been hailed as one of the few true successes of the 2005 Summit. The Secretary-General remarked about the agreement that “Perhaps most precious to me is the clear acceptance by all UN members that there is a collective responsibility to protect civilian populations against genocide, war crimes, ethnic cleansing and crimes against humanity, with a commitment to do so through the Security Council wherever local authorities are manifestly failing.”³³ Referring to the responsibility to protect, Mark Turner, a reporter for the *Financial Times*, observed that, “In coming years, as historians reflect upon what was achieved at this week’s United Nations summit in New York, one decision may stand out.” He described the responsibility to protect as a “profound shift in international law, whereby a growing sense of global responsibility for atrocities is increasingly encroaching upon the formerly sanctified concept of state sovereignty.”³⁴

Yet the language in the *Outcome* document endorsed by world leaders falls short of what had been requested by the Secretary-General, the High-level Panel, and many NGOs.³⁵ For example, it does not affirm that the responsibility to protect is an “emerging norm” that spans a “continuum” of prevention, reaction, and rebuilding, as the report of the High-level Panel had.³⁶ Also, the language does not commit to a *responsibility* to use Chapter VII of the UN Charter (which deals with actions necessitated by threats to the peace, breaches of the peace, and acts of aggression). As a result, some took the language to mean that the commitment to an international responsibility did not exist, only a commitment to a national responsibility. Although the final text of the *Outcome* document was weaker than the text in the reports of the Secretary-General and the High-level Panel as a result of a compromise to obtain the consent of some of the concerned states, the language is sufficiently strong to be considered an endorsement of a new set of principles on national and international responsibility. According to the *Outcome* document, the international community first has the responsibility to work through the Security Council to

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33. Kofi Annan, “The UN Summit: A Glass At Least Half Full,” *Jakarta Post* Sept. 23, 2005.

34. Mark Turner, “UN ‘Must Never again be Found Wanting on Genocide’ The ‘Right to Protect’—Intervention to Stop Mass Murder—May Well Be the Summit’s Lasting Legacy,” *Financial Times* Sept. 16, 2005.

35. See, for example, William Pace, open letter to UN ambassadors, endorsed by almost ninety international networks and NGOs, July 11, 2005, www.responsibilitytoprotect.org/index.php/civil_society_statements/?theme=alt3 (under “all R2PCS—Dear Ambassador Letter on R2P”); and Oxfam International, “The UN World Summit Must Show New Determination to Live Up to the Millennium Declaration,” Response to August 5, 2005, draft outcome document [undated], http://www.oxfam.org.uk/what_we_do/issues/conflict_disasters/un_summit.htm.

36. United Nations, Secretary-General’s High-level Panel on Threats, Challenges and Change, *More Secure World*, par. 203, 201.

protect through peaceful means, and then, “in this context,” should peaceful means fail, the international community is prepared to take collective action.³⁷

Hence the *Outcome* document includes commitments to employ a range of responses at the national, regional, and international levels, both peaceful and, as a last resort, using enforcement measures. The provisions on the responsibility to

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protect contained in the *Outcome* document provide a vital new tool to hold governments and the international community accountable when they are manifestly failing to respond to grave threats to humanity. One newspaper op/ed article described the promise of the

responsibility to protect as follows: “Where formerly there was no recourse for you but to try to flee, now you have a claim on the international community at large.”³⁸

THE ROLE OF THE “USE-OF-FORCE” CRITERIA

One element of the concept of the responsibility to protect proposed in the ICISS report that did not survive the negotiations was the recommendation that governments adopt precautionary principles about the use of force. The Secretary-General and the High-level Panel had asked the Security Council to “adopt a resolution setting out these principles [seriousness of threat, right intention, last resort, proportional means, and likelihood of success] and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force.”³⁹

Negotiations on the five criteria, however, did not progress during General Assembly debates. Some permanent members of the Security Council would not accept universally applicable criteria that would limit their actions. Other governments, skeptical about the ways in which the Security Council determines to use force, expressed concern that the criteria would be applied arbitrarily or subjectively. While early drafts of the *Outcome* document called for consideration of principles on the use of force, the final draft made no mention of these principles.⁴⁰

Given the current political climate, formal acceptance of the criteria for using force may require several more years of deliberation. However, the endorsement of the principle of the responsibility to protect is likely to advance the discussion of how force should be used to protect at-risk populations. With the adoption of

37. United Nations, General Assembly, *2005 World Summit Outcome*, par. 139.

38. Tod Lindberg, “Protect the People; United Nations Takes Bold Stance,” *Washington Times* Sept. 27, 2005.

39. United Nations, General Assembly, *In Larger Freedom*, par. 126; see also United Nations, Secretary-General’s High-level Panel on Threats, Challenges and Change, *More Secure World*, par. 207.

40. See, for example, Draft Outcome Document, released June 3, 2005, par. 47, http://www.reformtheun.org/index.php/united_nations/991_.

responsibility-to-protect norms comes the question of how they will be implemented in country-specific situations. Important questions are surfacing such as how governments will avoid misusing the norms in politically motivated interventions and how governments will ensure that measures employed to fulfill them do not cause more harm than they prevent. In the near future the criteria for the use of force may become, in an ad hoc manner, an informal tool used by civil society, by the media, and by governments when the Security Council considers the use of force.

One important issue regarding the use of force that was addressed in the ICISS's *Responsibility to Protect* but that was not carried forward during the UN reform debate is the highly controversial subject of alternative ways to legitimize the use of force if the Security Council fails to act in the face of genocide, war crimes, and crimes against humanity. The ICISS report recommended that, if the Security Council fails to deal with a proposal to protect a population at serious risk of genocide or similar large-scale atrocity, one possible alternative source of authority would be the General Assembly, acting under the "Uniting for Peace" procedure.⁴¹ Another alternative proposed by the ICISS "would be for collective intervention to be pursued by a regional or sub-regional organization acting within its defining boundaries."⁴² The topic was far too controversial

to be taken up in any of the reports of the High-level Panel and the Secretary-General, and it was not considered in the intergovernmental debates leading to the Summit because the

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Summit agenda was focused on improving the UN's system's responses rather than on considering ways of operating outside the UN. The goal was to strengthen the UN system so that member states would be able to react to outbreaking crises more effectively and at earlier stages. Future reforms must now be focused on bolstering the Security Council's ability to respond better to genocide, war crimes, and crimes against humanity and on monitoring its activities more closely.

Related Initiatives to Advance the Responsibility-to-Protect Agenda

PEACEBUILDING COMMISSION

One of the central tasks of the responsibility to protect as originally conceived by the ICISS report is to rebuild post-conflict societies. Although not addressed as an element of the responsibility to protect in the *Summit Outcome* document, the UN member states did recognize a "gaping hole" in the UN system that leaves the UN without the "institutional machinery" to assist properly countries transitioning from

41. See International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, par. 6.29–6.30.

42. International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, par. 6.31.

“war to lasting peace.”⁴³ UN member states, therefore, endorsed the creation of an intergovernmental Peacebuilding Commission.⁴⁴

The Peacebuilding Commission will have a coordinating role for the various stakeholders during post-conflict recovery. Focusing attention on reconstruction and institution-building efforts, the Commission will help countries in need to navigate the many stages of recovery and marshal the necessary resources for sustained peace.

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The Peacebuilding Commission will include members of the Security Council and the Economic and Social Council (ECOSOC), national or transitional authorities from

the subject country, donor governments, and troop contributors. The High-level Panel originally proposed that the Peacebuilding Commission include a preventive and early-warning role. Many governments quickly rejected the proposal because they feared that such a role could open a door to further interventions. Yet it is understood that, because some 50 percent of resolved conflicts slide back into conflict, even without an early-warning role, the Peacebuilding Commission will be engaging in conflict prevention. On December 20, 2005, the General Assembly and the Security Council adopted concurrent resolutions establishing the Commission, including a description of its composition and reporting procedures.⁴⁵

IMPROVING SECURITY COUNCIL PRACTICES TO ADVANCE THE RESPONSIBILITY TO PROTECT

As the UN body with the primary responsibility for maintaining international peace and security, the Security Council has a particular role in fulfilling the responsibility to protect. Yet the past indifference or indecision of the Security Council has led to the loss of millions of civilian lives. The Security Council's inability to fulfill its responsibility is in many ways related to its structure. The permanent, veto-wielding members of the Security Council are able to block action based on their own unrelated national interests. Even placing an issue on the Security Council's agenda is a source of political maneuvering because such a decision is generally taken without a vote—that is, by consensus. This practice means that any country, not only one with the veto, can prevent a situation from being taken up by the Council. As a result, crises of human protection or human rights generally recognized as threats to regional or international security (presently situations in countries such as Nepal, Northern Uganda, Uzbekistan, and Zimbabwe) are not addressed by the Security Council.

That Security-Council members' narrow national interests have resulted in a failure to protect at-risk populations goes against the intent of the UN Charter, in

43. United Nations, General Assembly, *In Larger Freedom*, par. 114.

44. See United Nations, General Assembly, *2005 World Summit Outcome*, par. 97–105.

45. See United Nations, General Assembly, Resolution A/60/L.40 (December 20, 2005), and United Nations, Security Council, Resolution 1645 (December 20, 2005).

which, according to article 24, the Security Council agrees to act on behalf of all members of the UN. Several reforms have been suggested to make the Council more accountable to the other nations of the UN.

The ICISS report and the High-level Panel recommended that the Security Council adopt a code of conduct whereby permanent members of the Security Council pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human-rights abuses. The ICISS report considers it “unconscionable that one veto can override the rest of humanity on matters of grave humanitarian concern.”⁴⁶ Governments did not agree to this recommendation, as it had little support among the permanent members of the Security Council.

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The High-level Panel and several governments also proposed that a system of indicative voting be adopted to clarify member states’ positions on a proposed action and to prevent members from obstructing the Security Council’s deliberations on the responsibility to protect. Indicative voting is a preliminary *public* round of voting, described by the High-level Panel as follows: “members of the Security Council could call for a public indication of positions on a proposed action. . . . ‘no’ votes would not have a veto effect, nor would the final tally of the vote have any legal force.”⁴⁷ Measures set out in Security Council resolutions can range from toothless statements of condemnation to strict punitive measures. A mechanism for indicative voting would increase transparency by clarifying which members support the various measures proposed in a draft resolution.

In the short term, member states are unlikely to agree to measures that will restrain the use of the veto and change the voting methods of the Security Council. Yet a serious commitment to the responsibility to protect will require actions beyond adopting the principles and related initiatives for implementing it as set forth in the *Summit Outcome* document. It will require measures that will ensure transparency and accountability of those governments with the authority to take action for the protection of at-risk populations.

Conclusion

The affirmation of the concept of the responsibility to protect by world leaders brings the potential for a change in the way the international community responds to the threats faced by vulnerable populations.

46. International Commission on Intervention and State Sovereignty, *Responsibility to Protect*, par. 6.20. The World Federalist Movement-Institute for Global Policy believes that progressive governments and civil society need to challenge the existence of the veto in all circumstances, not only in situations that involve genocide and large-scale human-rights abuses.

47. United Nations, Secretary-General’s High-level Panel on Threats, Challenges and Change, *More Secure World*, par. 257. See also Switzerland, *Non-Paper to the General Assembly*, Apr. 27, 2005.

Now that a commitment has been made in the *2005 World Summit Outcome* document, governments should be judged by whether and how they implement their commitments. This will be an even greater challenge than securing agreement on the new principles. Will the responsibility-to-protect principles, in combination with numerous other commitments made in recent resolutions and treaties, become a collective force to pressure the UN Security Council to finally improve dramatically its working methods and practices? As the Security Council enters its seventh decade,

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is it too much to hope that it will one day take decisions to *prevent* conflicts, to *react* to early warnings, to *intervene* and stop genocide? Will the UN and regional organizations identify indicators

that will trigger sanctions and humanitarian responses, including, as a last resort, using force to ensure peace? Will the governments agree in coming years to principles on the use of force as suggested by the ICISS, the High-level Panel, and the Secretary-General? The answer to these questions will be the answer to a larger one. Will the twenty-first century repeat the twentieth century and be a continuation of the most violent period in all of recorded history?

Affirming the principle of the responsibility to protect and establishing a Peacebuilding Commission are not panaceas. But the new commitments, together with the establishment of the International Criminal Court in 2002, the adoption in 2000 of Resolution 1325 on Women, Peace and Security, and an array of other decisions to improve peacekeeping and peace enforcement can, together, greatly enhance the ability of the UN and the international community to prevent and react to deadly conflict, to secure peace, and to transform and rebuild nations when conflict cannot be prevented.

The extraordinary globalization of trade, economic interdependence, and finance are only one side of the story. The globalization of democracy, human rights, justice, and the rule of law since the end of World War II is an extraordinary development in human history. Democracy must be established federatively, at the local, provincial, national, regional, and global levels. And one person at a time. The normative values of the responsibility to protect reflect not only important political principles but universal human and moral values shared by all great religious traditions. We all have moral and political responsibilities, including the responsibility to protect each other.