

## **The Responsibility to Protect and the International Criminal Court: Complementary or Conflicting?**

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The first years of the new millennium witnessed two global normative and institutional developments in efforts to prevent and stop mass atrocities. These are the responsibility to protect (R2P) norm and the International Criminal Court. Both address mass atrocities in different ways. R2P provides a normative framework for preventing and stopping mass atrocity situations, such as genocide and crimes against humanity, in particular through the United Nations. The ICC goes beyond the normative to provide a global, if not universal, institution designed to punish perpetrators and, hopefully, deter future atrocities. They are both tied into the 20th century global human rights project, as well as the highest reaches of global geopolitics. Both have featured in recent conflicts, yet recent experience has demonstrated that there is an uneasy relationship between the two which can make conflict management more difficult. This policy brief will examine this relationship. It will begin by briefly outlining the development of R2P and the ICC. It will then discuss the potential positive and negative interactions between the two, using recent cases to illustrate key points. It concludes with some recommendations on how the international community should support the use of R2P and the ICC together, including considering the implications of referring an ongoing conflict to the ICC, making clear that all parties to a conflict are subject to potential ICC investigations, and providing normative and practical support for the ICC by, for example, facilitating the arrest of ICC suspects by UN peacekeeping forces.

### Responsibility to Protect

The responsibility to protect has its roots in the global failures to adequately address a number of genocidal and other mass atrocity situations in the 1990s. After the end of the Cold War, there was significant hope that the United Nations would be better positioned to address conflict situations, including those where very significant human rights abuses were occurring, and

indeed for a few years, UN peacekeeping efforts expanded significantly as the UN became involved in a variety of conflict situations. However, a series of failures on the part of the UN - including in Rwanda and the former Yugoslavia - raised significant questions about the ability of the UN to harness increased cooperation to stop genocide and other related situations. These failures led directly to a report in 2001 by the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS), entitled The Responsibility to Protect.

It argued that claims to sovereignty entailed responsibility towards individuals in the state and that the international community had a responsibility to step in to address the most extreme situations of human rights abuses when a state failed stop them or, indeed, was responsible for the abuses. This responsibility is three-fold: a responsibility to prevent atrocities, a responsibility to react when mass atrocities occur, and a responsibility to rebuild after such situations have ended. The World Summit endorsed a somewhat watered down version of the original R2P concept. This document made clear that R2P only applied to four international crimes - genocide, crimes against humanity, war crimes and ethnic cleansing - that are commonly referred to as mass atrocity crimes. It, and the subsequent report by the Secretary-General in 2009, identified three pillars of R2P: 1) states have the primary responsibility to protect their people from mass atrocities, 2) the international community has a responsibility to assist states in this regard, and 3) the international community has a responsibility to use a variety of means - diplomatic, humanitarian, and military - to protect people when the state fails to carry out its responsibilities. However, the most important element of the World Summit recognition of R2P - both normatively and practically - was the fact that the UN committed itself, on a case-by-case basis, and when all other efforts had failed, to use, or authorise the use of, force against the wishes of a state to stop mass atrocities. This use of force is what had previously been called humanitarian intervention. This terminology was avoided, at least partly because of its disfavour in many developing countries, in particular, who saw it as a cover for neo-imperialist intervention. Further, the World Summit Outcome Document made clear that such interventions could only be authorised by the UN Security Council. This briefing is concerned with the 'hard edge' of pillar 3 - the use of military force to protect people from mass atrocities.

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