The Responsibility to Protect

Six Years After

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At the 2005 World Summit at United Nations (UN) headquarters in New York, the assembled leaders of most of the nations of the world gave their unanimous approval to an "outcome document" that, among its many provisions, contained three paragraphs affirming a "responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[1] The summary provided by the UN Department of Public Information declared that this signified "clear and unambiguous acceptance by all governments of the collective international responsibility to protect."[2] UN Secretary-General Kofi Annan hailed this as a "most precious" accomplishment.[3] A year after the World Summit, Gareth Evans (former Australian foreign minister and one of the most vocal proponents of a "responsibility to protect" [R2P]) remarked that "on any view, the evolution in just five years of the responsibility to protect concept . . . to what now has the pedigree to be described as a broadly accepted international norm (and one with the potential to evolve into a rule of customary international law) is an extremely encouraging story."[4] Even as Evans proclaimed the establishment of R2P as a new norm, he noted that in the case of Darfur, the norm had yet to produce much international action. In addition to Darfur, since the proclamation made at the conclusion of the 2005 World Summit, cases of violence or large-scale loss of life in the Democratic Republic of Congo, Somalia, Myanmar, Zimbabwe, and Kenya have raised questions about what difference this new norm made in saving lives.

In retrospect, the rapid acceptance of R2P by the international community in 2005 may have been too good to be true. After all, the new norm

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was intended to place an important limit on one of the most enduring and widely accepted international norms: the sovereign rights of states—particularly the norm of noninterference/nonintervention in the internal affairs of those states. Yet, the assembled leaders of the world accepted it with little public debate. The fact that important details from the original R2P proposal were stripped from the document in last-minute backroom negotiations might indicate that the supposedly "clear and unambiguous" support for the new norm was actually less robust than its advocates claimed.[5] The location of the R2P discussion in the World Summit document (buried on page 30 of the 38-page document in paragraphs 138–40 of its 178 paragraphs and wedged between boilerplate language on support for democracy and a discussion of children's rights) might offer another hint that the member states may not have seen R2P as the central achievement of the summit in the same way that the norm's supporters did.

This failure of R2P to live up to its promoters' expectations is partially due to "buyer's remorse" or suppressed reservations on the part of some of the states that did not object to the World Summit Declaration. However, the ineffectiveness of R2P to date also reflects the manner of the norm's promotion and adoption, as well as its content. To examine this assertion, this article discusses the process by which R2P was adopted and the substance of the norm that resulted, followed by an analysis of the major difficulties that currently weaken the application of R2P in practice and the policy implications of that weakness.

The Responsibility to Protect: Emergence and Apparent Acceptance

In recent years, several accounts have discussed the story of how the concept of R2P emerged as an international norm.[6] In reaction to the brutal atrocities and mass slaughter in Somalia, Rwanda, and Bosnia in the early 1990s, political scientists and legal theorists began to discuss "humanitarian intervention" as a necessity in the face of violence within states. At the UN, Secretary-General Boutros Boutros-Ghali questioned whether existing rules concerning sovereignty were adequate to the challenges of the post–Cold War world. His subordinate Francis Deng discussed the concept of "sovereignty as responsibility," adding that perspective to the growing discussion in the late 1990s.[7]

It fell to Annan, Boutros-Ghali's successor, to lead the push for a re-definition of the norms surrounding intervention. In June 1998, Annan questioned whether the "old orthodoxy" of sovereignty barred the international community from considering intervention in severe internal conflicts: "The Charter protects the sovereignty of peoples. It was never meant as a license for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power."[8]

The following year brought crisis, war, and intervention in Kosovo and East Timor. These events and the confused, tentative reactions to them from all facets of the international community prompted Annan to return to the need for a new international norm. With the opening of the General Assembly due in mid-September 1999, Annan decided that such a high-profile forum would be his venue for a major address on the topic. According to a close adviser, he planned to use "the bully pulpit of the Secretary-General to change the climate within the Security Council."[9]

In his address, Annan openly raised fundamental questions concerning the existing norms based on sovereignty and nonintervention. He observed that "state sovereignty, in its most basic sense, is being redefined by the forces of globalization and international cooperation. . . . The State is now widely understood to be the servant of its people, not vice versa." Referring to the precedents of Rwanda, Kosovo, and East Timor, Annan stated that each had demonstrated either "the consequences of inaction in the face of mass murder" or "the consequences of action in the absence of complete unity on the part of the international community." In response to this situation, Annan proposed a "developing international norm in favor of intervention to protect civilians from wholesale slaughter."[10] A year later, at the UN Millennium Summit in September 2000, Annan once more challenged the membership of the UN to take up the intervention issue.

The government of Canada responded to the secretary-general's challenge by forming an International Commission on Intervention and State Sovereignty (ICISS) to prepare recommendations that would address the dilemma of protecting civilians from slaughter in a system of sovereign states. Led by Gareth Evans and Mohamed Sahnoun, the ICISS produced a report a year later that attempted to change the dynamics of the debate by reframing the issue not as a right to intervene but as the "responsibility to protect" people at risk.[11] The ICISS outlined the legal and ethical basis for R2P,

locating the primary responsibility with each state. Responsibility devolves upon the international community only when a state cannot or will not protect its citizens. The commission identified three components of R2P: prevention, reaction, and rebuilding. It defined the responsibility to react—the most controversial component, which, in extreme cases, would involve the use of force without the consent of the target state—and limited it by "threshold criteria" and "precautionary principles." These were intended both to prevent misuse of the R2P principle for self-interested intervention by states and to serve as a "trigger" to begin the process of reaction when the threshold was breached. While investing primary authority for invoking R2P with the Security Council, the ICISS left open the possibility that if the council were unwilling or unable to act, regional organizations or coalitions of willing states might provide protection to threatened populations.

By an accident of history, the ICISS report appeared shortly after the attacks of 11 September 2001, the consequences of which completely overshadowed the report and its conclusions. However, the resuscitation of the R2P norm came again from Annan, who in late 2003 formed a High-Level Panel on Threats, Challenges, and Change. Evans was appointed to the panel, and the report that it delivered in December 2004 imported the ICISS language and recommendations concerning response to mass-atrocity violence.[12] Annan then used the recommendations of this panel to reaffirm the importance of adopting the new norm of R2P in his report *In Larger Freedom*, issued in March 2005 as a framework document for the World Summit to be held in September.[13]

This intricate duet between Annan and the "outside" panels established a strong entrepreneurial push for the adoption of R2P, and they were rewarded by the inclusion of three paragraphs endorsing the new norm in the Summit Outcome document. That acceptance did not come without significant modification of the ICISS proposals, however. The document included no threshold criteria, did not discuss precautionary principles, and omitted proposed reform of the Security Council to allow it to respond more effectively to humanitarian crises. Nevertheless, proponents of R2P celebrated the adoption of the outcome document as a turning point, one that filled a "crucial normative gap." "Norm displacement has taken place from the entrenched norm of non-intervention to the new norm of the responsibility to protect."[14]

Responsibility to Protect: Uncertain Consolidation

Despite the high hopes expressed immediately after the adoption of the R2P language in 2005, most observers have noted that relatively little has changed in terms of state practice. Conflicts in the Darfur region of Sudan and the eastern Democratic Republic of Congo continue to smolder with no new sense of urgency or purpose resulting from the R2P document. Few states express interest in plunging into the continuing hell that is Somalia. Internal repression in Zimbabwe, obstinacy by the government of Myanmar in the face of a humanitarian disaster resulting from Cyclone Nargis, and intense political violence in Kenya were all met with heartfelt denunciation but very little action. In explaining this business-as-usual response by the international community, many supporters of R2P decry the lack of political will on the part of the states that approved the World Summit declaration in 2005.

Although issues of contradictory state interest and flagging political will are undoubtedly part of the explanation for the meager results, the problems facing R2P as a new norm need further specification and clarification. More precisely, three types of problems demand examination: (1) likely creation of a false appearance of consensus around R2P at the 2005 World Summit, (2) the forms of norm resistance employed by states opposed to or skeptical of the new norm, and (3) the postadoption "battle over meaning," which, ironically, has occurred primarily among supporters of the norm.

A False Consensus?

Many of the proponents of R2P start from the premise that the 2005 World Summit Outcome document represented a true consensus among the UN member states and that the task now involves getting those states to implement their beliefs. Donald Steinberg called on supporters of R2P to "advance and consolidate the World Summit consensus" by building capacity and further institutionalizing the norm.[15] In a January 2009 report to the General Assembly on the implementation of R2P, Secretary-General Ban Ki-Moon argued that "the task ahead is not to reinterpret or renegotiate the conclusions of the World Summit but to find ways of implementing its decisions in a fully faithful and consistent manner."[16]

However, it is appropriate to ask whether the 2005 World Summit Outcome document and subsequent UN discussions are accurately portrayed as

an overwhelming and deep consensus on R2P. As stated earlier, the three brief paragraphs on R2P were hardly featured prominently in the document, which was also the equivalent of an "omnibus" piece of legislation. That is, it contained a great many provisions and commitments, ranging from the fight against terrorism (11 paragraphs), to the need for a Peacebuilding Commission (nine paragraphs), to support for human rights (13 paragraphs). Some leaders may have agreed to the document because they concurred with many of the provisions—but not necessarily with the R2P paragraphs. If they did examine the R2P language, they might also have noted that it was vague enough not to commit them to any specific course of action, thereby making agreement essentially cost-free. There seemed little reason to openly reject the R2P language (after all, who wasn't against genocide, war crimes, and ethnic cleansing?), but approving the Summit Outcome document did not necessarily indicate a deep commitment either to the norm or its implementation—or even a clear understanding of what the norm implied. Indeed, one may construe the removal of specific commitments from the language of the document as an indication of failure to reach true consensus.

Since the 2005 summit, supporters of the norm mention the incorporation of R2P language into UN resolutions as additional evidence that a broad consensus exists in support of R2P. Several observers have pointed to the inclusion of a reference to R2P in Security Council Resolution 1674 (28 April 2006) on the protection of civilians in areas of armed combat. In September 2009, Secretary-General Ban congratulated the General Assembly for adopting "its first resolution on the responsibility to protect" by consensus.[17]

However, supporters of R2P are stretching to find evidence of a broad consensus in these documents. The General Assembly resolution that Secretary-General Ban praised in September 2009 had only two paragraphs—the first noting Ban's report on R2P, as well as "the productive debate" on that document during a special plenary session in July, and the second stating that the General Assembly "decides to continue its consideration of the responsibility to protect."[18] The Security Council resolution was slightly more substantial, "reaffirming" the Summit Outcome language in one brief operative clause among 28. In neither case was any action predicated on the invocation of the R2P doctrine.

The norm entrepreneurs who engineered the emergence of R2P were quite skilled in changing the terms of debate concerning intervention and

in inserting the R2P language into an increasing number of UN documents. Notably, however, the governments of the major powers at the United Nations—especially the United States, China, and Russia—demonstrated little active interest in or sponsorship of the norm's emergence. The fact that some of these states had significant reservations about the norm became evident in the resistance they initiated.

Forms of Norm Resistance

Resistance to R2P has often been indirect, for the same reason that no leader publicly objected to the Summit Outcome document: no state wishes to be portrayed as unconcerned with mass-atrocity crimes. However, that has not prevented actions designed to weaken the original formulation of the norm and the terms of its application. One form of resistance entails objecting to the establishment of criteria that would trigger an R2P reaction. The United States, China, India, and Russia opposed such criteria, and the World Summit Outcome document made no mention of such standards.[19] Similarly, the United States opposed any language requiring UN members to respond to atrocities. John Bolton, US ambassador to the UN, wrote that "we do not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law."[20] Certainly, officials of the Bush administration (and Bolton in particular) had no enthusiasm for ceding American freedom of action to the UN, but the advent of the Obama administration does not appear to have changed this aspect of the US position. In an address to the International Peace Institute in Vienna in June 2009, Susan E. Rice, the new US permanent representative to the United Nations, spoke in very supportive terms of R2P. However, although she offered several suggestions for improving the international community's ability to implement the norm, Rice made no mention of setting threshold criteria, providing US forces to support UN action, or reforming the Security Council to promote surer and more consistent reaction.[21]

Another means of resisting or restraining the R2P concept has involved questioning the legitimacy of the new norm, especially when compared to long-standing norms—an argument stressed by the government of China. Despite the efforts by Annan and others to delegitimize a strict interpretation of the norm of state sovereignty, that norm still has great appeal

to many states, who can use it to restrict and qualify the competing norm of R2P. In the July 2009 plenary session of the General Assembly, a Chinese delegate argued that "the international community can provide assistance but the protection of its citizens ultimately depends on the government of the state. This is in keeping with the principle of state sovereignty. There must not be any wavering of the principles of respecting state sovereignty and non-interference of internal affairs."[22] Rather than R2P's limiting the exercise and prerogatives of sovereignty, the Chinese official clearly portrayed the traditional norm of sovereignty as limiting the application of R2P.

A third method of resisting the new norm may concern an insistence on following existing procedures within the UN system even though those same procedures failed so disastrously in the cases of Rwanda, Bosnia, and Darfur. The prime issue here is the veto power held by the five permanent members of the Security Council (China, France, Russia, United Kingdom, and United States). The ICISS had broached the idea that the P-5 might adopt informal rules limiting the threat or use of the veto in cases of humanitarian emergencies.[23] Unsurprisingly, the permanent members rarely raise this issue in discussions of R2P. Many states also insist that the UN is the only forum with the legitimate authority to invoke and act on R2P, limiting the ability of regional organizations and "coalitions of the willing" to apply it without UN authorization.

The Battle over Meaning

Considerable controversy has emerged over exactly what R2P entails and when it should be applied. In a double irony here, most of this debate occurs among *supporters* of R2P, and the very speed of acceptance celebrated by those advocates worked against the much slower process of building consensus on the meaning and implications of R2P before adoption at the 2005 World Summit.

Proponents of R2P championed a norm to deal with a relatively rare situation—the large-scale murder of citizens by their own state. However, many supporters (especially those in nongovernmental organizations [NGO] and academe) now want to interpret the conditions for invoking R2P more liberally so that the international community can address other significant issues—but this development enjoys almost no support among states whom the norm sought to motivate. Some argue for development of

an "R2P variant" to respond to natural disasters.[24] The Global Centre for the Responsibility to Protect, a research and advocacy organization established in 2007, has advocated that R2P be invoked to protect ethnic and religious minorities in Burma/Myanmar.[25] Others suggest authorizing intervention to overthrow Robert Mugabe's regime in Zimbabwe, while another proposal wishes to use "the essential components of R2P" to challenge states that refuse to implement policies to cope with climate change.[26] In recent years, Gareth Evans may have spent almost as much time arguing against those who would expand the meaning and application of R2P as he has promoting the concept to skeptics.[27]

Other aspects of meaning that have barely seen discussion include the implications and consequences of invoking R2P and undertaking intervention. An R2P intervention may likely involve regime change in the target state. How long can R2P be used to justify an extended occupation that may prove necessary to construct a safe and stable environment? What exit strategy will an R2P intervention use, and should there be explicit criteria similar to those the ICISS proposed to trigger an intervention? Will a moral-hazard issue arise if R2P is invoked too frequently, with groups in many societies tempted to do so to entice international intervention on their behalf? The failure to discuss the messy details of implementation, although very helpful in reducing controversy before adoption, poses a lingering threat to the acceptability of the norm.

Conclusion: What Future for the Responsibility to Protect?

After six years, the record of R2P as a new norm is mixed at best. The concept now has high public visibility, and the UN Secretariat is committed to developing and implementing the norm. A new Peacebuilding Commission and Peacebuilding Fund have been established at the UN, and member states have discussed enhancing the early warning/prevention capabilities of the organization. Some have pointed to the Kenyan mediation effort led by former secretary-general Annan as "an ideal R2P reaction" that did not require the deployment of military force, although US Ambassador Rice noted that the R2P "was explicitly not part of the debate in the Council" during discussion of the Kenyan crisis.[28]

A simple critical mass of states may be capable of implementing the prevention, diplomatic reaction, and rebuilding aspects of the R2P norm, in

that international organizations, middle and small states, and even NGOs can provide many of the financial and institutional resources necessary to increase prevention capacity or conduct diplomatic mediation. To a lesser extent, those actors may be able to offer sufficient resources to assist with rebuilding. But regarding the central issue of reacting to mass-casualty violence, it is less clear that the R2P entrepreneurs can implement that pillar of the norm without cooperation of the major powers, for two reasons. The first is related to the issue of structural power—the material capacity to implement the R2P agenda. Without the active cooperation of the United States in particular, other states may find it very difficult or impossible to mount a rapid or effective response to ongoing atrocities. Second, to be considered legitimate, a response to ongoing atrocities would have to be sanctioned by the Security Council. With three (and possibly all five) of the permanent members of the Security Council skeptical about the desirability of the norm or the best means of applying it, R2P may become a hollow doctrine. The inability thus far of the R2P norm entrepreneurs to persuade one or more major powers to join them in playing an entrepreneurial role on this issue continues to stand as a substantial hurdle to the prospects of norm consolidation.

Given this situation, what might strengthen R2P as a viable norm in the international system? Any recommendations must be modest since the primary issue of building a more solid and meaningful consensus among states about the meaning and application of R2P will take time. However, two steps can move that process forward:

1. *Strengthening conflict-prevention and peace-building capabilities.* These are the least controversial aspects of R2P (in theory and practice), and solid foundations already exist within the UN and in other intergovernmental organizations on which to build expanded capabilities. Some governments that have not been enthusiastic about the use of military force in the context of R2P (such as the United States) have recognized the importance of prevention and rebuilding in their own policies and therefore might be persuaded to increase their assistance to multilateral efforts that complement those national policies. Civil society organizations such as the International Crisis Group and the Global Centre for the Responsibility to Protect can also make meaningful contributions in these areas. Additional resources (both finan-

cial and political) devoted to these capabilities not only would pay dividends directly but also might reduce the likelihood of using military intervention, the more controversial and costly option.

2. *Promoting continuing discussion among governments of the purpose of R2P.* Understandably, many governments in the Global South are concerned that R2P might be used as justification for intervention in their states by self-interested states of the Global North (or even by their neighbors in the South). Such suspicions will be difficult to overcome, but a continuing dialogue about the types of situations in which R2P would apply, mechanisms for making decisions about invoking R2P, and limitations on the use of the concept—exactly those topics stripped from the R2P idea before its adoption in the UN—may help to build confidence that under certain circumstances the international community can broadly agree to invoke R2P. Such a dialogue may also reassure states of the North that R2P will not be used to justify unending demands on their economic and military resources. This discussion must involve the relationship between the norm of sovereignty/noninterference and the concept of R2P, an issue glossed over in the UN process but remaining at the heart of much resistance to the new norm. Similarly, expansive interpretations of the types of problems that R2P can address must be dismissed as irrelevant to the norm in order to build confidence in, and consensus behind, a more specific and limited purpose. Within the UN, the secretary-general could sponsor such a dialogue (perhaps by establishing a new forum for that purpose), as could interested "middle powers" such as Canada, outside the UN framework.

Proponents of R2P were overly optimistic to believe that an international norm as entrenched as sovereignty would be limited so easily by the states that so often benefit from that norm. It takes time for a majority of states to accept any new norm—especially one that so directly challenges the status quo. Furthermore, given the diverse interests and values of the many states in the international system, R2P may never live up to the broadest hopes of its sponsors. However, with patient discussion, a willingness to understand the concerns of the various participants in that discussion, and the devotion of more resources to prevention and rebuilding, R2P

may help promote a more effective and unified international response to humanitarian catastrophes in the future.

Notes

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16. Ban Ki-Moon, *Implementing the Responsibility to Protect*, A/63/677 (New York: UN General Assembly, 12 January 2009), 4, http://globalr2p.org/pdf/SGR2PEng.pdf.

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20. Cited in ibid.

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