

Responsibility to Protect (R2P)

The **Responsibility to Protect** – known as R2P – is an international norm that seeks to ensure that the international community never again fails to halt the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. The concept emerged in response to the failure of the international community to adequately respond to mass atrocities committed in Rwanda and the former Yugoslavia during the 1990s. It seeks to narrow the gap between Member States' pre-existing obligations under international humanitarian and human rights law and the reality faced by populations at risk of genocide, war crimes, ethnic cleansing and crimes against humanity.

In September 1999, while presenting his annual report to the UN General Assembly, Kofi Annan reflected upon “**the prospects for human security and intervention in the next century**” and challenged the Member States to “**find common ground in upholding the principles of the Charter, and acting in defense of common humanity**”. He repeated the challenge in his 2000 Millennium Report, saying that: “**if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?**”

In response, the **International Commission on Intervention and State Sovereignty (ICISS)** published in 2001 its seminal report entitled *The Responsibility to Protect*. It aims to find some new common ground on issues of humanitarian intervention. The report states that while the responsibility to protect resides first and foremost with the state whose people are directly affected, a ‘**residual responsibility**’ lies with the broader community of states, and that this residual responsibility is ‘**activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities.**’

Essential Aspects

- It has ‘significantly changed the grammar of political discourse with regard to the prevention and reaction to human rights violations’ shifting political discourse away from justifying interventions to stop atrocities, to questioning why there has been no intervention.
- It gives legitimacy to intervention for humanitarian purposes through the UN and makes it harder for UNSC members to justify veto use.

- It has experienced a rapid growth, moving from mere 'passionate prose' in the ICISS report in 2001 to quickly becoming a 'mainstay of international public policy debates'.
- It provides a satisfying response to Annan's challenge to reconcile sovereignty and the need for action to prevent atrocities.
- It expresses a responsibility to protect populations from atrocities as an inherent part of state sovereignty.
- It is to be achieved through primarily non-military means, such as developing a better 'early warning capacity', using 'appropriate diplomatic, humanitarian and other peaceful means' to protect populations with a focus on vulnerable states 'which are under stress' to prevent crises from breaking out and to help them 'build capacity to protect their populations'. This approach is more effective than military methods; they are 'easier to initiate and sustain' and avoid the huge risks, costs, and destruction which military action brings. This effectiveness was demonstrated in the response to post-election violence in Kenya.

Hobbes' Angle in Responsibility to Protect

Bellamy draws on Hobbes to show that this conception of sovereignty is not novel; Hobbes asserted that if the state could no longer perform the function it was given power to do, then it does not qualify as sovereign and is not owed obedience. This is remarkably similar to the idea that failure to protect a population is a failure in the exercise of sovereignty. Furthermore this conception of limited sovereignty is seen throughout international law. In the Island of Palmas case it was noted that 'territorial sovereignty... has a corollary duty' which was to respect the sovereignty of other states. Even the largely permissive 'Lotus Principle' makes it clear that sovereignty is not absolute; states have the right to only do anything which is not prohibited by international law.

Sovereignty's duties were extended towards the protection of populations in the UN Charter with Articles 1(3) and 55 including important statements regarding human rights protections, which Annan argues shows that the Charter was not 'a license for governments to trample on human rights and human dignity'. Moreover, R2P as expressed at the World Summit applies to genocide, ethnic cleansing, war crimes and crimes against humanity, all of which are prohibited by international law and are *ius cogens* norms from which no derogation is permitted. Therefore it is possible to say that states have the existing duty and responsibility to respect them, regardless of R2P.

Prohibition of Use of Force & UNSC

The use of force is prohibited in international law by Article 2(4) of the UN Charter and is referred to as being of 'fundamental or cardinal importance' and at the 'cornerstone' of the UN Charter. There are two exceptions to this prohibition in the Charter. Article 51 permits force used in self-defense under certain conditions, and most significantly for R2P, Chapter VII allows the UNSC to authorize force in response to a threat to the peace. This is where R2P fits in; it was made clear at the World Summit that under R2P authorisation for the use of force will be made 'through the Security Council, in accordance with the Charter, including Chapter VII'.

R2P does 'not entail revolutionary changes within the existing legal framework' of international law. This is seen by some as R2P's major flaw. Being part of the existing international legal framework means that any authorisation of coercive military and non-military measures under Chapter VII of the UN Charter, and so the most drastic tools in the R2P armory, are subject to the veto power of the permanent five UNSC members.

Scholar Views

Jay Crush stated that Responsibility to protect is an attempt to ensure that the international community never again fails to prevent an atrocity as was the case in Rwanda. Initial indications are promising; R2P has great potential as shown by its rapid growth in support and influence. R2P's strength comes from its status as a political concept, not a legal one. Once this is accepted and made clear the focus can and should be on developing R2P to increase its support and effectiveness through its political influence in order to generate a stronger 'compliance pull'. This is especially important following the controversies of R2P's role in the Libya intervention, and the lack of Syrian intervention. R2P needs to react and learn from the failures of these situations to ensure that it realizes its potential, not by stretching international law to provide the ability to use force outside of the UNSC framework, but by incorporating threshold criteria for the use of force to help guide UNSC decision making.

Edward Luck - Doctrine can 'make a difference', including by 'spurring a timely and decisive response when national authorities are manifestly failing to protect their populations across the range of crimes specified' in the 2005 agreement on R2P. Proponents of R2P thus face a dilemma: On one hand, the doctrine must be useful and must not rule out the possibility of military action if it is to be credible. On the other hand, military action in one emergency may also serve to highlight the *absence* of an

equally robust international response in other crises, and create expectations for military assistance that will go unmet in many, if not most, other cases.

Ban Ki Moon - Three Pillars of Responsibility to Protect

- The first pillar is the responsibility of every state to protect its own population from 'genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement'. Under this pillar, the secretary-general urged countries to take steps to promote human protection within their own borders, such as adopting human rights monitoring mechanisms.
- The second pillar encompasses different forms of international assistance – technical, financial and military – to help countries meet these obligations. This pillar may also include international diplomatic efforts to avert a looming crisis, such as those undertaken in early 2008 to avoid further bloodshed after a disputed election in Kenya.
- Only the third pillar of R2P involves coercive measures by outsiders, ranging from economic sanctions to direct military action. Nevertheless, this pillar looms over the others: armed intervention is the last-resort emergency option to prevent mass atrocities if all non-military measures fail. In this light, the dearth of strategic thinking about the coercive tools of R2P is even more striking. At the core of the doctrine is a policy instrument of critical significance whose practical applications and operational assumptions are still poorly understood.

Gareth Evans - Rebuilding Consensus

1. Clarifying the criteria for authorizing coercive military force
2. Devoting greater attention to non-military methods of averting atrocities, such as diplomatic initiatives and targeted sanctions.
3. Emphasizing longer-term preventive strategies to address the underlying sources of conflict and threats to civilians.
4. Developing the institutional capacities of international and regional organizations and national governments for emergency response.
5. Reframing discussions of 'national interests' so that they recognize the importance of international cooperation to address the problem of mass atrocities.

Cons

R2P is facing two significant problems at present which affect both skeptical and enthusiastic supporters, hampering its continued support and development. Important emerging states are concerned that R2P, even if authorized through the UNSC, will be used for ulterior purposes. At the same time, due to the UNSC's failure to act in Syria R2P could be viewed as having no practical utility, leading to the paradoxical situation where R2P is simultaneously attacked for going both too far and not far enough.

Even though R2P is not to blame for NATO's abuse of the resolution, R2P needs to develop in light of these criticisms in order to continue its growing political influence. R2P should incorporate threshold criteria to guide the use of force as in the ICISS and High Level Panel Reports; seriousness of threat, proper purpose, last resort, proportionality and balance of consequences. While R2P's primary focus should be on preventative and capacity building mechanisms, not using military force, it must respond to the international community's concerns which revolve around the use of force.