The United Nations and the Responsibility to Protect

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Kofi Annan, former UN secretary-general, on his successful January-February 2008 effort to mediate the postelection crisis in Kenya:

> I saw the crisis in the R2P [Responsibility to Protect] prism with a Kenyan government unable to contain the situation or protect its people. I knew that if the international community did not intervene, things would go hopelessly wrong. The problem is when we say "intervention," people think military, when in fact that's a last resort. Kenya is a successful example of R2P at work.[1]

- At the 2005 World Summit, the assembled heads of state and government agreed that R2P rests on three pillars: 1) the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity, and from their incitement; 2) the commitment of the international community to assist states in meeting these obligations; and 3) the responsibility of the member states to respond in a timely and decisive manner when a state is manifestly failing to provide such protection.

- Today, the UN member states are united in their support for the goals of R2P but less so on how to achieve them.

- UN Secretary-General Ban Ki-moon has pledged to "operationalize" R2P and to submit to the General Assembly proposals to do so by the end of 2008. In a speech in Berlin on July 15, 2008, he began to articulate his vision for R2P.

- The secretary-general's approach is "narrow but deep," resisting appeals to broaden the scope beyond the four crimes and violations agreed at the 2005 Summit, while proposing that a variety of policy tools under Chapters VI, VII, and VIII of the UN Charter be utilized to prevent, deter, and respond to serious violations.

- The secretary-general has called for renewed emphasis on the first two pillars, given the lack of serious attention to preventive measures and to ways of helping states to meet their core R2P responsibilities. At the same time, he has pointed to a range of noncoercive, as well as coercive, measures that could be taken under the third, or response, pillar. What is needed, in his view, is "an early and flexible response, tailored to the specific needs of each situation." To that end, he envisions an integrated strategy that draws elements from each of the three pillars.

Introduction

In what was widely hailed as a historic breakthrough, the 2005 World Summit unanimously affirmed the primary and continuing legal obligations of states to protect their populations—whether citizens or not—from genocide, war crimes, ethnic cleansing, and crimes against humanity, and from their incitement.[2] The world leaders flatly declared that "we accept that responsibility and will act in accordance with it." While this first pillar on which R2P rests is firmly anchored in existing obligations under international law, its second and third pillars are more innovative and have farther-reaching implications.

The second, too often neglected, pillar is a commitment by the international community to assist states in meeting these obligations. The United Nations and its partners, in other words, should seek to help states succeed, not just to react once they have failed to meet their prevention and protection obligations. The third, and much discussed, pillar is acceptance by member states of their responsibility to respond "in a timely and decisive manner," in accordance with the UN Charter, to help protect populations from the four listed crimes and violations when a state is "manifestly failing" to do so. As paragraphs 138 and 139 of the Outcome Document make abundantly clear, the response could involve the whole range of UN tools, including pacific measures under Chapter VI, coercive ones under Chapter VII, and collaboration with regional and subregional arrangements under Chapter VIII of the Charter. "The key," underscores UN Secretary-General Ban Ki-moon, "lies in an early and flexible response, tailored to the specific needs of each situation."[3]

Conceptual Evolution

The failure of the international community to respond in a timely and effective manner to the horrific genocides in Rwanda in 1994 and in Cambodia two decades earlier, as well as to the mass murder in Srebrenica in 1995—the latter two under the watch of UN peacekeepers—had raised disturbing questions both about political will and about UN capacity. This growing public and official uneasiness came to a head in divisive debates within the Security Council at the end of the century on what to do about mounting violence and possible ethnic cleansing in Kosovo. In 1998 and 1999, then UN Secretary-General Kofi Annan posed, in a series of eloquent speeches, the stark choice between standing by when mass atrocities were unfolding or intervening militarily even if Security Council authorization was blocked.[4] For many member states, however, this was seen as an unacceptable choice between two unpalatable options. In essence, they found the debate over humanitarian intervention to be ultimately unsatisfying and unproductive in terms of advancing UN policy or doctrine.[5]

Meanwhile, with much less fanfare, Francis Deng and his colleagues at The Brookings Institution had been developing the concept of "sovereignty as responsibility."[6] Sovereignty, they posited, imposed abiding obligations toward one's people, as well as certain privileges internationally. By meeting these obligations and respecting fundamental human rights, the state would have less reason to worry about coercive intervention from abroad. These conclusions reflected evolving notions of sovereignty that had long historical antecedents in both Western and non-Western political thought and doctrine.[7] In 1992, for example, the first UN secretary-general from Africa or the Arab world, Boutros Boutros-Ghali, commented that "respect for its [the state's] fundamental sovereignty and integrity are [sic] crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality."[8] In 2000, five years before the Summit declaration, the Constitutive Act of the African Union (Article 4 (h)) asserted "the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity."[9] Though some critics have claimed that the notion of R2P is an invention of the North and West that has been imposed on the developing countries of the South, this early endorsement of a similar, and less caveated, version of R2P suggests otherwise. Indeed, the debate over R2P at the United Nations these days is South-South and North-North as much as North-South.

In response to the indeterminate debate over humanitarian intervention and the Security Council's split over how to address the crisis in Kosovo, the Canadian government decided to launch an independent International Commission on Intervention and State Sovereignty in 2000. As cochairs Gareth Evans and Mohammed Sahnoun commented, "external military intervention for humanitarian protection purposes has been controversial both when it has happened—as in Somalia, Bosnia and Kosovo—and when it has failed to happen, as in Rwanda."[10] Over the course of their deliberations, however, the geographically diverse blue-ribbon commissioners came to see protection from a much broader perspective than as simply a contest between state and individual sovereignty. Coining the phrase "Responsibility to Protect," their conclusions addressed a responsibility to prevent, a responsibility to react, and a responsibility to rebuild, seeing a continuum of graduated policy instruments across this spectrum. Though concerned about proper authority and rules for the use of force, much of their report stressed the advantages of

prevention and of encouraging states to meet their core protection responsibilities. Some of the commission's key recommendations were picked up by Kofi Annan's High-level Panel on Threats, Challenges and Change (2004) and his subsequent "In Larger Freedom" report (2005). These, in turn, provided material for consideration by the September 2005 Summit that adopted this historic R2P language.

The deliberations at the Summit regarding R2P were intense, prolonged, and contentious, literally concluding in the final hour. Neither did consensus come easily nor can delegations now credibly claim that paragraphs 138 and 139 were just slipped into the final draft of the Outcome Document without due reflection and consideration. Some proponents, espousing a more open-ended and expansive conception of human security, were disappointed at the number of caveats that were attached to paragraph 139, which elaborates the third pillar on conditions for an international response. Critics from this perspective caricatured the results as "R2P-lite." Those concerned about the appearance of giving the major military powers a license to intervene under a humanitarian pretext, on the other hand, insisted on limiting the scope to the four listed crimes and violations of genocide, war crimes, ethnic cleansing, and crimes against humanity. In paragraph 139, the member states do assert that "we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII," but only "on a case-by-case basis . . . should peaceful means be inadequate and national authorities are manifestly failing to protect their populations" from the four crimes and violations. Skeptics saw this as a basis for inaction, as much as for action. To underline that R2P was not just to be a matter for the Security Council, in paragraph 139 the member states note that "we stress the need for the General Assembly to continue consideration of the responsibility to protect."[11]

Given these caveats and the fact that R2P is largely based on existing obligations under international law, why was the declaration so widely greeted as a major step forward in the protection of fundamental human rights?

• One, it gained political force as the product of the largest gathering of heads of state and gov-ernment in history. The seriousness of the commitment, it was widely believed, was reinforced both by the high level and by the near-universal scope of those undertaking it, including a number of countries that had not been states parties to the relevant human rights, humanitarian, and refugee conventions.

• Two, the articulation of R2P related the prevention of ethnic cleansing, war crimes, and crimes against humanity with the prevention of genocide. Though no set sequence was posed, it was understood that in some cases the commission of the lesser atrocities could trigger the ultimate one. Prevention and protection efforts, therefore, should encompass the whole range of R2P crimes and violations. The linkage was underscored by the inclusion of paragraph 140, reaffirming support for the ongoing work of the Special Adviser for the Prevention of Genocide, under the Responsibility to Protect section of the Outcome Document. These two closely related mandates are being pursued in tandem at the United Nations.

• Three, for all of the conditional language of paragraphs 138 and 139, they begin to point to the kinds of tools, actors, and procedures that could form the basis for operationalizing R2P principles. They indicate a path for advancing Secretary-General Bank Ki-moon's goal of narrowing the gap between promise and practice in this sensitive and consequential area of policy.

• Four, the very process of seeking agreement on R2P wording at the Summit brought a long-simmering, but poorly defined, debate to a head, compelling national policymakers at the highest level to come to grips with the evolving nature of sovereignty and the need to prevent atrocity crimes. The R2P paragraphs survived when other important and controversial issues—such as disarmament and the proliferation of weapons of mass destruction—did not. The historic significance of embracing the notion of R2P was widely recognized by both sides of the debate.

The words of the Outcome Document, ultimately, matter because they do not stand alone; they are both the product of and will be sustained by larger political and historic circumstances, some of which are noted above.

The notion of R2P reflects public determination to avoid the kinds of mass atrocities that shocked popular sensitivities in the 1990s. Though hard to measure, there is ample reason to believe both that these concerns are more acute today than even two or three decades ago and that they transcend national boundaries and the North-South divide. There have been substantial local deliberations and organizing around R2P themes in Asia, Latin America, and Africa, as well as in Europe and North America. In February 2008 an Asia-Pacific Centre for the Responsibility to Protect—a collaboration among research centers in Australia, Indonesia, and Thailand—was launched in Bangkok. Among its early products will be the first international journal on R2P, *Global Responsibility to Protect*.[12] That same month, an ambitious Global Centre for the Responsibility to Protect opened at the Ralph Bunche Institute for International Studies at the Graduate Center of the City University of New York. To raise public awareness and understanding, the Global Centre published a brief R2P primer and a response to fifteen frequently asked questions in mid-2008.[13] Meanwhile, the Responsibility to Protect—Engaging Civil Society Project of the World Federalist Movement—Institute for Global Policy is spearheading an effort to organize a global network of regional and subregional R2P groups and organizations, particularly in the developing world. A number of prominent human rights and humanitarian nongovernmental organizations (NGOs) have been active in the effort to build a truly global public constituency for R2P.

Undoubtedly the most dramatic testimony to the mass appeal of R2P principles came in the April 2008 address of Pope Benedict XVI to the General Assembly. His Holiness emphasized the centuries-old roots, as well as the moral imperative, of R2P. According to the Pope, the R2P concept was "already present implicitly at the origins of the United Nations, and is now increasingly characteristic of its activity." In his view, R2P constitutes, "an aspect of natural reason shared by all nations, and the result of an international order whose task it was to regulate relations between peoples."[14]

As noted above, Kofi Annan deserves credit for putting R2P on the global political map. But it has been his successor, Secretary-General Ban Ki-moon, who has spoken repeatedly of his determination to "operationalize" R2P and to translate it "from words to deeds."[15] Referring to his "deep and enduring" personal commitment to R2P, the secretary-general has announced his intention to report to the General Assembly on his proposals for giving institutional and doctrinal form to R2P by the end of 2008.[16] As the following sections elaborate, this will not be a simple task

Analysis

Legal Issues[17]

The first pillar of R2P—state responsibility—is firmly based on existing international law. Treaty-based and customary international legal obligations require states to prevent and punish genocide, war crimes, and crimes against humanity. These obligations are most clearly defined in relation to genocide and war crimes, which have a long-standing treaty basis,[18] although their scope continues to evolve.[19] While crimes against humanity remain largely uncodified, there is now a substantial and growing body of case law from the various international courts and tribunals elaborating their nature and content. Ethnic cleansing, the fourth category of acts coming under the R2P umbrella in the Outcome Document, is not currently a crime in its own right under international law. However, since the term has been used to describe conduct that may constitute genocide, war crimes, or crimes against humanity, in practice acts of ethnic cleansing are likely to constitute at least one of these well-established international crimes.

The legal understanding of genocide, war crimes, and crimes against humanity that has developed over three generations since the Nuremberg Tribunal is largely reflected in the provisions of the Rome Statute of the International Criminal Court (ICC), which entered into force in 2002.[20] The Rome Statute also strengthens existing obligations on states (directly in the case of the 106 States Parties to the Statute) to effectively punish perpetrators of these international crimes.[21] By ending impunity, the ICC and regional tribunals serve to further R2P principles. R2P, in turn, acts politically to amplify demands for accountability in such cases, whether through criminal prosecutions or other appropriate forms of redress.

Though focused on genocide, war crimes, ethnic cleansing, and crimes against humanity, R2P is not intended to detract from the much broader

range of obligations existing under international humanitarian and human rights law, refugee law, and international criminal law. Together, they provide the essential normative framework for R2P.[22] In particular, R2P should serve to bolster efforts to provide greater protection to women, children, minorities, internally displaced persons, and refugees from the listed crimes and violations.

As noted above, much attention has focused on the third pillar, response, of R2P. Generally, under international law when a state violates its international obligations, it is expected to cease the violation (if it is continuing), offer appropriate assurances of nonrepetition, and make full reparation for any injury caused. However, the prohibitions on genocide and a number of specific acts that may constitute war crimes or crimes against humanity are considered peremptory norms of international law.[23] There are some indications that, when a state commits a serious breach of a peremptory norm, the international community should cooperate to bring the breach to an end using lawful means. The clearest statement of this is found in Article 41 of the International Law Commission's (ILC) carefully elaborated Articles on Responsibility of States for Internationally Wrongful Acts.[24] However, as the ILC itself acknowledges in its commentary on the draft Articles, it is "open to question" whether a positive duty of cooperation currently exists, and Article 41 "in that respect may reflect the progressive development of international law."[25] While the third pillar of R2P does not, of itself, impose new legal obligations on the international community in cases of genocide, war crimes, ethnic cleansing, or crimes against humanity, it is consistent with evolving state practice, at least since the 1990s, toward enhanced cooperation in such situations.

Conceptual and Political Challenges

The nature, scope, tools, and emerging practice of R2P are still debated in civil society and among the member states. As UN Secretary-General Ban Ki-moon has stressed, distinctions need to be drawn about what R2P is and is not.[26] It needs to be distinguished, in particular, from the related but distinct notions of humanitarian intervention and human security. In terms of tools, R2P is much broader than the former. In terms of scope, it is much narrower than the latter. As noted above, the concept of humanitarian intervention, which was widely discussed in the late 1980s and

the 1990s, lacked the critical second pillar—international assistance in helping the state meet its core protection responsibilities—that is so essential to the principle of R2P. R2P envisions a much wider spectrum of tools or instruments, including for prevention, protection, capacity-building, and rebuilding, that do not entail coercive action.

Human security posits that public concern and policy choices should encompass the security of individuals, not just of states, across the whole range of possible threats. Rather than being restricted to a relatively narrow list of atrocities, as in the Summit's definition of R2P, human security encompasses phenomena as diverse as HIV/AIDS, climate change, poverty, and water, food, and energy scarcity. Human security offers an important nontraditional way of thinking about security, but it does not attempt to offer the kinds of specific policy choices and instruments that R2P does. The latter represents the application of human security perspectives to a specific area of public policy that has long vexed publics and policymakers alike.

Some R2P enthusiasts seek to apply it to a much wider spectrum of calamities than those agreed by the assembled heads of state and government at the 2005 Summit. For instance, a number of commentators called the May 2008 cyclone in Myanmar/Burma a test case for R2P, questioning the utility of the concept if it could not be employed in such a pressing case of human need and government intransigence.[27] As this author has argued, however, there are strong political, legal, and pragmatic reasons not to take that path.[28] Politically, many member states are understandably wary of possible efforts to stretch R2P into aspects of national policy far from the four proscribed crimes and violations. If the scope is not kept narrow, they warn, then the concept could become a rationale for interference in essentially domestic affairs and for the strong to infringe on the sovereignty and territorial integrity of the weak. An open-ended conception of R2P, moreover, would be impossible to operationalize or institutionalize. It would become one more case of the United Nations stretching a relatively discrete and well-defined concept until it loses its shape, clarity, and meaning.

Unlike humanitarian intervention, R2P puts relatively little weight on military or coercive responses. As paragraph 139 of the Outcome

Document underscores, Chapter VII enforcement measures could be undertaken in serious cases of manifest failure to protect, should peaceful means be inadequate and the Security Council so authorizes. But, as noted earlier, a raft of less coercive measures are given priority attention. The emphasis on these less intrusive policy tools, generally to be employed at earlier points, has led some observers to call this approach "upstream R2P." The United Nations, for example, has applied an R2P perspective to its efforts to address post-election violence in Kenya in early 2008 but not to the continuing large-scale violence in Darfur. Part of the explanation for this distinction is that the fighting broke out in Darfur some three years before the World Summit adopted R2P, making this an inappropriate test case for a doctrine that did not yet exist. Both UN Secretary-General Ban Ki-moon and his predecessor, Kofi Annan, who was the chief mediator in Kenya, have called that crisis the first application of R2P. Nevertheless, skeptics and public observers alike may well question the utility of R2P principles if they are applied only to the easier cases. Ultimately, the value of any new doctrine or concept will be determined in practice rather than theory. That is why, of course, Secretary-General Ban Ki-moon has put such emphasis on operationalizing R2P.

The transition of R2P from promise to practice faces another conceptual and operational hurdle: proving that it brings added value to the myriad UN programs on related themes. As the following section relates, the UN System has wide-ranging and well-established programs for advancing human rights and humanitarian norms; for early warning and conflict prevention; for the protection of civilians in armed conflict, including from sexual violence; for peacekeeping and peace-building; for strengthening the rule of law; and for capacity-building across the board. As one might expect, there has been bureaucratic resistance to adding new R2P capacity or perspectives to existing entities and efforts, as well as calls for clearer conceptual distinctions. R2P advocates, on the other hand, have argued: 1) that existing capacities are often weak, underdeveloped, and resource-starved; 2) that they have not proven effective in preventing and/or protecting populations from R2P crimes and violations in a number of cases; 3) that some of the worst genocides in history have not been causally linked to armed conflict; 4) that UN units with similar mandates are in too many cases scattered, poorly coordinated, and do not share relevant information, analysis, and assessments in a timely manner; 5) that they are not linked directly to the secretary-general, Security Council, General Assembly, and other principal organs; and 6) that adding R2P criteria and perspectives to the ongoing work of existing entities would enhance their ability to prevent and deal with this distinct set of crimes and violations.

Institutional Issues[29]

For the United Nations, the implementation of R2P's core prevention and protection goals has four main programmatic dimensions: 1) capacity-building and rebuilding; 2) early warning and assessment; 3) timely and decisive response; and 4) collaboration with regional and subregional arrangements. In each, R2P should strengthen existing efforts while helping to identify gaps in how the United Nations and its partners go about preventing, anticipating, and responding to the four listed crimes and violations.

Capacity-Building and Rebuilding. For R2P purposes, "capacity-building" means strengthening the ability of individuals, institutions, and societies to prevent or diminish the threat of the four crimes and violations and/or to respond when such atrocities do occur and to rebuild afterwards. Viewing the wide-ranging capacity-building work underway by the UN System through an R2P lens may help identify potential synergies among existing projects, departments, programs, and agencies. Ongoing efforts to encourage interagency cooperation on key cross-sectoral issues, such as conflict prevention, rule of law assistance, security sector reform, human rights promotion, and gender equality, could serve R2P goals. More broadly, the wide-ranging efforts to build, rebuild, or bolster institutional capacity in fragile states being undertaken by the UN peace-building and development entities, as well as by bilateral donors and international financial institutions, could also help by strengthening good governance and effective public administration where it is most needed. In this regard, the activities of the Peacebuilding Commission could also advance R2P's preventive and rebuilding goals. For instance, much of the work underway in Burundi and Sierra Leone is intended to reduce the risk of a recurrence of violence, while boosting the resilience of the state in the face of future crises.

Capacity-building is needed within the United Nations itself. Efforts to operationalize R2P principles would necessitate closer collaboration between headquarters and the field and between the United Nations and its various partners, as has happened in humanitarian affairs. There, the humanitarian cluster approach adopted by the Inter-Agency Standing Committee (IASC) brings together relevant UN agencies, NGOs, and other international organizations involved in the provision of humanitarian assistance and expertise. Likewise, the linkages between R2P and the development assistance approaches of donor countries, regional mechanisms, and the UN System deserve further exploration.

Early Warning and Assessment. In paragraph 138 of the 2005 Summit Outcome Document, the member states pledged to "support the United Nations in establishing an early warning capability." For the world body, however, the challenge has had less to do with the collection of information than with its assessment and analysis (not to mention with the frequent lack of effective policy follow-up). Among the existing early warning frameworks that are directly relevant to R2P are those addressing conflict prevention (through the Interagency Framework for Coordination on Preventive Action); humanitarian developments (through the IASC's "Early Warning—Early Action Report");[30] political developments (through individual divisions of the Department of Political Affairs and the Executive Committee on Peace and Security); human rights developments (through a range of Charter and treaty-based mechanisms, as well as the work of the Office of the High Commissioner for Human Rights); and the protection of children (through the UN Children's Fund's early warning system and the Monitoring and Reporting Mechanism overseen by the Special Representative of the Secretary-General for Children and Armed Conflict).[31]

Several of these mechanisms draw substantially on external sources in developing their assessments. Some are relatively informal or have informal elements, given the sensitivities involved in monitoring specific country situations;[32] others are deliberately restricted in their scope.[33] Many of them face ongoing challenges relating to the quality of the information received, its timeliness, uneven reporting levels from the field, the incorporation of a gender perspective, maintaining confidentiality, and ensuring that the information received feeds into and informs actual decision making. In June 2008 the Security Council, noting "that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide," called on the secretary-general to develop procedures for monitoring sexual violence in armed conflict.[34]

An R2P lens could help the United Nations anticipate situations involving the four crimes and violations by enhancing its ability to identify precursors, recognize patterns, and share, assess, and act on relevant information. In particular, R2P should strengthen and complement the closely related work of the Special Adviser on the Prevention of Genocide. Plans are under way to pursue these mutually-reinforcing mandates through a single joint UN office.

In addition, an R2P perspective could help to ensure a common policy and operational strategy by providing an integrated framework for relating the various components of a response and for gauging their cumulative progress. R2P considerations might usefully be incorporated, as well, into existing early warning, monitoring, and reporting mechanisms within the UN System, while helping to facilitate cumulative learning about the system's ability to anticipate and respond to such extreme situations.

Timely and Decisive Response. R2P does not alter, indeed it reinforces, the legal obligation of member states to refrain from the use of force except in conformity with the Charter. Decisions about action under Chapters VI and VIII and, where necessary, VII, would benefit from enhanced assessment and greater policy coherence within the UN Secretariat. Without strengthening the relationship between the Secretariat and the Security Council, however, improved assessments would not necessarily lead to improved decision-making.[35] Among the useful steps would be providing more support for the secretary-general's good offices function, clarifying the Secretariat's place in advocating for particular council action, making greater use of existing mechanisms—formal and informal—for bringing issues to the council's attention, and increasing transparency in the council's working methods. The related roles of the General Assembly, the Economic and Social Council, the Peacebuilding Commission, and the Human

Rights Council, particularly in standard-setting and monitoring, also merit further attention.

The operationalization of R2P will clearly require a core competency on the part of the United Nations for timely response, whether of a civilian, military, or mixed nature. Other than the many Chapter VI matters on which the secretary-general can take the lead, the organization's response depends on the ability of the Security Council or other intergovernmental organs to agree in a timely manner on a sensible, clear, and feasible course of action. Even if the member states get the mandate right, finding the material, human, financial, and in extreme cases, military resources to implement it is rarely assured. Too often, mandates are not tailored either politically or materially to the realities on the ground. From an R2P perspective, the lack of coherent doctrine underpinning the growing number of mandates that fall between traditional peacekeeping missions and armed engagement with a specific adversary or adversaries poses a particular challenge.[36] While the United Nations and member governments have been working for over a decade to develop appropriate doctrine and operational capacities for such contingencies, much remains to be done on both dimensions of the protection challenge.

Collaboration with Regional and Subregional Arrangements. Neighbors can play an instrumental role in helping to prevent societies from reaching the stage where R2P crimes and violations become likely, as well as in early warning. R2P thus emphasizes the potentially valuable role to be played by the United Nations' partners, particularly regional and subregional arrangements, in helping states meet their prevention and protection obligations. R2P could usefully reinforce longstanding UN efforts to improve its modes of collaborating with regional and subregional mechanisms, as well as its commitment to building their capacities to anticipate, assess, respond, and rebuild.

Among the United Nations' challenges are improving communication with and inclusion of regional and sub-regional actors in its prevention and protection efforts; providing adequate support for regional efforts; improving capacity at UN headquarters; and in the field, to analyze the regional implications of a given situation and to generate appropriate strategies.[37] The establishment of the UN Office for West Africa in Dakar and the new UN Regional Centre for Preventive Diplomacy for Central Asia may help. Yet the promise of global-regional collaboration is far more developed on paper than in practice, as capacity-building is needed at both the global and regional levels. The Ten-Year AU-UN Capacity-Building Programme, whose implementation has been modest and uneven to date, provides a high-profile test of the limits and prospects for such collaboration.[38]

Conclusions

Two conclusions stand out from the foregoing analysis. One, R2P is a politically potent concept: the latest step in the historic development of human rights and humanitarian norms. It reflects evolving legal conceptions of individual and collective responsibility and of the obligations of sovereignty, as well as the emergence of a transnational political consciousness about the urgency of preventing the reoccurrence of massive atrocities on the scale of Cambodia, Rwanda, or Srebrenica. The consensus product of one of the largest gatherings of heads of state and government ever, R2P is not going to fade away like some passing fad.

Two, for all its potential, the notion of R2P is still in its infancy, vulnerable to misinterpretation and mishandling. How to implement paragraphs 138 and 139 of the Outcome Document still needs further elaboration by the secretary-general and discussion by the General Assembly, as called for in paragraph 139. As Secretary-General Ban Ki-moon has pointed out, the provisions of R2P will only be realized through practice and through its application to situations on the ground. The journey from conceptualization to operationalization can be as difficult in the world body as it is essential.

Like most infants, R2P will need to walk before it can run. Those claiming parentage, kinship, or friendship of the concept should be careful not to raise expectations too high, too soon, and certainly not to expand its reach to situations beyond those agreed at the World Summit. The 2005 consensus was real, but based on a strict and narrow conception of what R2P is and is not. The agreed scope must be respected if the concept is to gain the political traction required for its implementation. Surely one factor in R2P's enduring public appeal is its aspirational quality. But, at least at the United Nations, soaring aspirations cannot flourish on a political base that is too narrow and uncertain to sustain it. At this

point, the R2P project faces more than its share of bureaucratic inertia and political doubts. Both, ironically, attest to prevalent perceptions of its deep public appeal and policy potential.

The status quo gives way slowly, sometimes painfully slowly, at the United Nations. But it does give way with time and sustained effort. It took human rights and humanitarian norms, for instance, decades to become well established in UN values and practice and even longer to take full institutional form. R2P, building on these accomplishments, will have less distance to travel. Historical trends clearly appear to be in R2P's favor. No doubt the first two pillars—the preventive or upstream end of R2P—will become standard operating procedure for the UN System and its partners well before the third pillar. The first two pillars, with their stress on prevention, capacity-building and rebuilding, early warning, and global-regional collaboration, face relatively little political opposition. Here the challenge is more institutional and intellectual—figuring out what needs to be done, how to do it, and who should do it—than political. The implementation of the third pillar, mounting a "timely and decisive" response when a state is "manifestly failing" to protect its population, will come more slowly and unevenly. The secretary-general and regional and subregional organizations can take, and have taken, a range of helpful noncoercive steps in such situations. But under the Charter, enforcement measures require the authorization of the Security Council, a highly political and unpredictable intergovernmental body. The prominence of R2P, if nothing else, is likely to raise the political costs of blocking R2P action, especially in the face of unfolding genocide. The veto option will remain for the five permanent members of the council, of course, but it will become an increasingly unattractive recourse, as may already be seen in the council's votes on Darfur.

R2P, in other words, is here to stay. The direction of change is clear enough, though its pace and extent will depend on political and bureaucratic decisions in the coming months. Clearly the secretary-general is an enthusiast for R2P, perhaps its strongest advocate within the house. To him, R2P "speaks to the things that are most noble and most enduring in the human condition. We will not always succeed in this cardinal enterprise, and we are taking but the first steps in a long journey. But our first responsibility is

to try."[39] Fair enough, but whether and how his vision will be realized will depend on many others as well: member states, the Secretariat, regional and subregional organizations, and civil society, among others. Progress will require marrying the larger inspiring vision of R2P with the practical and incremental instincts that have always defined the pace of sustainable change within the world body. Though not for the impatient, this is the only sure route to translating the promise of R2P into effective and sustainable practice.

Endnotes

1 Roger Cohen, "How Kofi Annan Rescued Kenya," *The New York Review of Books*, Vol. 55, No. 13, August 14, 2008.

2 UN document A/RES/60/1.

3 Address of the Secretary-General, Berlin, July 15, 2008, UN document SG/SM/11701. Paragraph 139, moreover, underscores that the nature of the response should be determined "on a case-by-case basis."

4 For a handy compilation of his key speeches, see *The Question of Intervention: Statements by the Secretary-General*, United Nations, New York, December 1999. It contains, among others, "Reflections on Intervention," Ditchley Park, United Kingdom, June 26, 1998; and "Two Concepts of Sovereignty," Address to the 54th Session of the UN General Assembly, September 20, 1999.

5 In this regard, the debate in the General Assembly following Kofi Annan's September 20, 1999 speech was telling. See UN documents A/54/PV.8 and A/54/PV.9, September 22, 1999.

6 Francis M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa*, The Brookings Institute, Washington, DC, 1996. Professor Deng now serves as the Secretary-General's Special Adviser on the Prevention of Genocide, with the rank of Under-Secretary-General.

7 Some of these sources are cited in Edward C. Luck, "The Responsible Sovereign and the Responsibility to Protect," in Joachim W. Müller and Karl P. Sauvant, eds., *Annual Review of United Nations Affairs*, Oxford University Press, Oxford, forthcoming 2008.

8 Boutros Boutros-Ghali, *An Agenda for Peace*, A/47/277—S/2411, June 17, 1992, paragraph 17, page 5.

9 *http://www.africa-union.org/root/au/AboutAU /Constitutive_Act_en.htm*.

10 Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, International Development Research Centre, Ottawa, 2001, page vii. An insider account of the work of the Commission and the ideas that shaped it can found in Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity*

Crimes Once and for All, Brookings Institution Press, Washington, DC, September 2008.

[11] Two subsequent resolutions of the Security Council endorsed the R2P language of the Outcome Document. Resolution 1674 on the protection of civilians "reaffirms" the provisions of paragraphs 138 and 139 (S/RES/1674, April 28, 2006, paragraph 4) and Resolution 1706 on the situation in Darfur recalls resolution 1674 in that respect (S/RES/1706, August 31, 2006, preamble).

[12] See the Centre's website at *http://r2pasiapacific .org/documents*.

[13] *http://globalr2p.org/related.html*.

[14] *http://www.vatican.va/holy_father/benedict _xvi/speeches/2008/april/documents/ hf_ben-xvi_spe_20080418_un-visit_en.html*.

[15] See, for example, his speeches to the Center for Strategic and International Studies in Washington, DC, on January 16, 2007, and to the Royal Institute of International Affairs in London on July 11, 2007, as well as his annual address to the General Assembly of September 25, 2007 (UN documents SG/SM/10842, SG/SM/11094, and SG/SM/11182, respectively).

[16] Berlin Address, July 15, 2008, op. cit. This author, as Special Adviser to the Secretary-General, has been asked to take the lead in developing the conceptual, institutional, and political dimensions of R2P.

[17] Rachel A. Davis, then serving as an Associate at the International Peace Institute, prepared the initial draft of this subsection.

[18] The Convention on the Prevention and Punishment of the Crime of Genocide, January 12, 1951, 78 UNTS 277, requires States Parties to prevent and punish genocide (Article 1), as well as conspiracy, incitement, attempt to commit, and complicity in genocide (Article 3). The prohibition against genocide is also part of customary international law: *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide,* Advisory Opinion, International Court of Justice Reports 1951, page 93; *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, International Court of Justice, February 26, 2007, paragraph 161. With respect to war crimes, all states are now parties to the four Geneva Conventions of 1949 and their provisions are binding as both treaty law and customary international law, see *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, International Court of Justice, July 8, 1996, paragraphs 79 and 82.

[19] See, for example, the recent judgment of the International Court of Justice on the implications of the Genocide Convention for states: *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, International Court of

Justice, February 26, 2007.

[20] Rome Statute of the International Criminal Court, July 1, 2002, 2187 UNTS 3. While the Rome Statute is concerned with individual criminal liability rather than state responsibility, its provisions (and their elaboration in the Elements of Crimes provided for under Article 9) are generally seen as reflecting the current state of international law.

[21] While only states parties to the Rome Statute are bound to cooperate with the ICC, all states are bound to cooperate with the two specialized tribunals for the former Yugoslavia and for Rwanda established by Security Council resolutions.

[22] Any potential responsibility of the United Nations itself under the evolving concept of R2P is beyond the scope of this paper.

[23] Meaning that they are accepted by the international community as a whole and can only be changed through the evolution of a contradictory norm of equal strength.

[24] On the commission's recommendation, the UN General Assembly took note of the Draft Articles, commended them to governments, and annexed them in Resolution 56/83 of December 12, 2001. In Resolution 59/35 of December 2, 2004, the General Assembly again noted and commended the Draft Articles, and in a third resolution on December 6, 2007, Resolution 62/61, the General Assembly decided to examine the development of a convention or other appropriate action on the basis of the Draft Articles.

[25] James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge University Press, Cambridge, 2002, page 249.

[26] Berlin Address, July 15, 2008.

[27] Allan Rock and Lloyd Axworthy, "Responsibility to Protect? Yes," *The Globe and Mail*, May 9, 2008; Ivo Daalder and Paul Stares, "The UN Can Save Burma," *The Boston Globe*, May 13, 2008; and "The UN and Humanitarian Intervention to Protect Sovereignty, or to Protect Lives?" *The Economist*, May 15, 2008.

[28] Edward C. Luck, briefing on "International Disaster Assistance: Policy Options," Subcommittee on International Development, Foreign Assistance, Economic Affairs and International Environmental Protection, Committee on Foreign Relations, United States Senate, June 17, 2008.

[29] The first draft of this subsection was prepared by Rachel A. Davis when she served as an Associate at the International Peace Institute.

[30] The report is compiled quarterly by the IASC Sub-Working Group on Preparedness and Contingency Planning. It draws attention to situations where a change in the level or nature of humanitarian assistance is likely over the next 3-4 months, whether because of an emerging humanitarian crisis or a deteriorating one.

[31] The Monitoring and Reporting Mechanism was established by Security Council Resolution 1612, UN Doc. S/RES/1612 (2005), July 26, 2005.

[32] For example, the Framework Team relies on requests from line departments and from individual UN country teams (or [Resident Coordinator] RCs/HCs [Humanitarian Coordinator] where relevant), rather than systematic country assessments.

[33] The Monitoring and Reviewing Mechanism, for instance, deals only with countries identified in the two Annexes to the Secretary-General's annual report to the Security Council on children in armed conflict.

[34] UN Doc. S/RES/1820 (2008), June 19, 2008.

[35] The following discussion draws on *Prevention of Genocide and Mass Atrocities and the Responsibility to Protect: Challenges for the UN and the International Community in the 21st Century*, Report of a Policy Roundtable, Stellenbosch, South Africa, December 13-15, 2007, International Peace Institute, New York, June 2008.

[36] See Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations*, Henry L. Stimson Center, Washington, DC, September 2006.

[37] See Stellenbosch Policy Roundtable report, op. cit.

[38] UN Doc. A/61/630, Annex. See also *Meeting Note: The AU-UN Ten-Year Capacity Building Programme: Towards a Broader Understanding of AU-UN Cooperation*, International Peace Institute, New York, forthcoming 2008.

[39] Berlin Address, July 15, 2008, op. cit.

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