

## **2008 PARLIAMENTARY HEARING AT THE UNITED NATIONS New York, 20-21 November**

### **Background document: Session I**

#### **ABOUT THE RESPONSIBILITY TO PROTECT<sup>1</sup>**

##### **Why do we need the responsibility to protect?**

The responsibility to protect is a principle which seeks to ensure that the international community never again fails to act in the face of genocide and other gross forms of human rights abuse. “R2P,” as it is commonly abbreviated, was adopted by heads of state and government at the World Summit in 2005 sitting as the United Nations General Assembly. The principle stipulates, first, that states have an obligation to protect their citizens from mass atrocities; second, that the international community should assist them in doing so; and, third, that, if the state in question fails to act appropriately, the responsibility to do so falls to that larger community of states. R2P should be understood as a solemn promise made by leaders of every country to all men and women endangered by mass atrocities.

##### **What forms of abuse does R2P seek to address?**

The UN’s *2005 World Summit Outcome Document* explicitly limits the application of the norm to four types of mass atrocities: genocide, ethnic cleansing, war crimes and crimes against humanity. Save for ethnic cleansing, an abuse only recently understood as an atrocity crime, these terms have been clearly and comprehensively defined in a range of documents, including the founding statute of the International Criminal Court. R2P does not apply to many grave threats to human security, whether from climate change or disease, or from many harmful or even ruinous state policies, such as the suspension of civil liberties, mass corruption, or coups d’état. Other human rights instruments, legal frameworks and institutions are better suited to address these pressing issues.

##### **How will R2P work?**

At the very heart of this new norm is the principle that states, with the aid of the international community, must act to prevent mass atrocities. Equally central is the idea that concerned outsiders should help states prevent these gross abuses through what the UN document characterizes as “diplomatic, humanitarian and other peaceful means.” This could include strengthening state capacity through economic assistance, rule-of-law reform, the building of political institutions, and the like; or, when violence has begun or seems imminent, through direct acts of mediation. The intense diplomatic engagement following the disputed election in Kenya, or the work of neighbors and of the UN to support the government of Burundi, both demonstrate the imperative of cooperative efforts to prevent atrocities.

Only when such means have been unsuccessful should the international community, acting through the Security Council, turn to more coercive measures. These could include such non-consensual measures as economic sanctions or the threat of sanctions, arms embargoes, or the

---

<sup>1</sup> Background note prepared by the Global Centre for the Responsibility to Protect

threat to refer perpetrators to international criminal prosecution. Should peaceful means be inadequate and the state is manifestly failing to protect its population, then—and only then—would the Security Council consider the use of military force.

### **How did R2P come about?**

This new principle has many sources: the rise of international humanitarian law starting with the Geneva Conventions in the late nineteenth century and accelerating in the period after World War II; the growing willingness of the UN Security Council, since the end of the Cold War, to authorize forceful and sometimes coercive actions inside refractory or weak states; and the profound sense of revulsion at the failure of the international community to act effectively in Somalia, Rwanda, and Bosnia. The need for a broadly accepted new norm to guide the international response to atrocities became manifest in 1999 with the NATO bombing to end ethnic cleansing in Kosovo, which began after the issue had been deadlocked in the Security Council: even many who considered the intervention morally legitimate were troubled by its illegality under international law.

Throughout the 1990s, the United Nations was deeply divided between those who insisted on a “right of humanitarian intervention” and those who viewed such a doctrine as an indefensible infringement of state sovereignty. At the time, Secretary-General Kofi Annan warned that the UN risked discrediting itself if it failed to respond to catastrophes such as Rwanda and Srebrenica, and he challenged member states to agree on a framework for action. The 2001 report of the International Commission on Intervention and State Sovereignty formulated the alternative principle of “the responsibility to protect,” focusing not on the “right” of outsiders to intervene but on the responsibility of all states to protect people at risk. The High-level Panel on Threats, Challenges and Change endorsed the concept as did the Secretary-General, and then heads of state and government gathered in the General Assembly for the UN’s sixtieth anniversary voted unanimously to accept a “responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” in the *World Summit Outcome Document*.

### **How does R2P affect the idea of sovereignty?**

States have long accepted limits on their conduct, whether towards their own citizens or others. The UN Universal Declaration of Human Rights requires that states protect individual and social rights; the Geneva Conventions and various treaties and covenants prohibiting torture, trafficking in persons, or nuclear proliferation similarly restrict the right of states to behave as they wish. At the same time, there has been a shift in the understanding of sovereignty, spurred both by a growing sensitivity to human rights and by a reaction to atrocities perpetrated upon citizens by their own leaders. Sovereignty is increasingly defined, not as a license to control those within one’s borders, but rather as a set of obligations towards citizens. Kofi Annan spoke of the sovereignty of the individual as well as of the state. Francis Deng, the Special Adviser on the Prevention of Genocide and the former representative of the Secretary-General on internally displaced persons, developed the concept of “sovereignty as responsibility.” And chief among those responsibilities, he and others argued, is the responsibility to protect citizens from the most atrocious forms of abuse. Simply put, people come first.

### **When should military force be considered?**

A timely intervention could have stopped, if not prevented, the genocidal horror in Rwanda, and perhaps also in Cambodia and elsewhere. But in many other cases where the level of abuse reaches the R2P threshold, the most effective response is far less clear. The ICISS report and the Secretary-General’s *In Larger Freedom* proposed five “precautionary principles” or “criteria of

legitimacy” to help guide such decisions: the violence in question must include large-scale actual or threatened loss of life or ethnic cleansing; the purpose of the intervention must be to prevent or halt suffering; military force must be the last resort; the means must be commensurate with the ends sought; and the intervention must have a reasonable prospect of success. Governments did not agree to include precautionary principles in the *World Summit Outcome Document*. Thus, no formally accepted principles—not even voluntary ones— presently exist to guide Security Council decision making. These standards can and should, however, continue to inform public debate and deliberations among governments.

### **Where do we go from here?**

There are three major challenges in moving R2P from theory to practice. The first is conceptual – to ensure that the scope, and limits, of the norm as it has evolved are well understood in all parts of the world, so that misunderstandings (for example that R2P is only about military intervention) do not persist, and that as new situations arise requiring preventive or reactive action by the international community, there will be broad consensus about what to do.

The second is institutional, to ensure that governments and intergovernmental organizations have available all the diplomatic, civilian and, as necessary, military capability needed to ensure effective early warning and early action, to provide essential assistance to those countries who need and want it—and most importantly, to people desperately in need of protection.

The third, as always, is political: to ensure that when mass atrocities next occur, the necessary commitment will be there from the decision-makers that matter. This means having arrangements in place for effective mobilization by both governments and civil society.

Crises threatening large-scale loss of life are bound to continue to arise, and with them debates over issues such as the most appropriate response to the killing of civilians in Darfur, Cyclone Nargis in Myanmar, and to the violence surrounding the elections in Zimbabwe. The international community of states will encounter extremely difficult and painful questions about the applicability of R2P, which only demonstrates the need for clarity over the reach and limits of this new principle. The attempt to forge political consensus in any given case will depend in part on reaching agreement over exactly what it was that the states agreed to do when they adopted R2P in 2005. But it will depend as well on an evolution of public sentiment. Leaders will take real risks only if citizens demand it; and publics have only recently begun to demand that their leaders confront the issue of human rights violations abroad. As the clamor grows, so will the likelihood of action.