1   Selling R2P: Time for Action

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Introduction

The Responsibility to Protect, also referred to as RtoP or R2P, is an emerging norm in international relations coined in 2001, which states that when sovereign states are unable or unwilling to fulfill their responsibility to protect their own populations from genocide and other mass atrocities, the international community has the responsibility to do so. The R2P principle, as endorsed by the 150 heads of state and government at the 2005 World Summit, has a "narrow but deep" approach – it is confined to situations of four specific crimes (genocide, war crimes, crimes against humanity, and ethnic cleansing) but calls upon multiple actors to exercise collective responsibility in protecting people in peril (United Nations 2005). At its core, R2P marks a fundamental shift in our Westphalian understanding of state sovereignty into sovereignty as a responsibility.

In addition to the political commitment by the heads of state and government in 2005, various actors, including the United Nations system, academics, and civil societies around the world, have helped to solidify the R2P principle in the past decade. The UN Secretary-General Ban Ki-moon, in particular, has been one of the key champions in promoting R2P and can be seen as one of the norm entrepreneurs for R2P.[1] In his speech on "Responsible Sovereignty: International Cooperation for a Changed World" in Berlin in 2008, Ban made his personal commitment to turn R2P from a concept to a policy (Ban 2008). The Secretary-General's annual reports on R2P have served as important guiding posts in clarifying the conceptual bases of R2P, while also continuing the dialogue across all regions.[2] There has been growing support for Ban's special advisers

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[1] For a detailed discussion on the term "norm entrepreneur," please see Martha Finnemore and Kathryn Sikkink, "International norm dynamics and political change," *International Organization*, 52 (4), Autumn 1998.

[2] Since 2009, Ban's annual reports have developed a three-pillar approach for implementing R2P (A/63/677/2009), analyzed early warning and assessment capacity (A/64/864/2010), explored the role of regional and sub-regional organizations (A/65/877/-S/2011/

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on the Prevention of Genocide and R2P, who have worked closely with national and regional governments and civil society organizations to promote political implementation. Since the 2005 World Summit, the UN Security Council has adopted thirty resolutions and six presidential statements that refer to the responsibility to protect, while also repeatedly emphasizing the need to support national authorities in implementing R2P in resolutions authorizing UN peace operations. The UN Human Rights Council has adopted thirteen resolutions that have reference to R2P, including three on the prevention of genocide and nine on country-specific situations. At the time of writing, six annual UN General Assembly's informal interactive dialogs on R2P have taken place, with a steady increase in consensus and support for R2P from the Member States every year (United Nations 2015). The 2014 annual UNGA dialog followed the release of the UN Secretary-General's sixth report on R2P entitled *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect*, which focussed on the responsibility of the international community in upholding protection responsibilities. Sixty-seven states spoke at this dialogue emphasizing that R2P reinforces state sovereignty and underscoring crucial roles of national, regional, and sub-regional organizations for the second pillar of R2P (United Nations 2014).

Concurrently, there have been important milestones in the political implementation of R2P across all regions. In 2013, the Inter-Parliamentary Union Assembly, which brought together more than 600 parliamentarians from around the world, unanimously adopted a resolution entitled "Enforcing the Responsibility to Protect: the Role of Parliamentarians," in Quito, Ecuador, in consultation with Dr. Edward C. Luck, then UN Secretary-General's Special Adviser on R2P, and the Canadian Centre for the Responsibility to Protect (IPU 2013). The African Commission on Human and Peoples' Rights has adopted a resolution on strengthening the responsibility to protect in Africa, and the European Parliament has recommended the European Union for the full implementation of R2P (United Nations 2015). As of July 2016, fifty-five governments and the European Union appointed a National Focal Point on R2P to help facilitate information sharing and strengthen protection capacity on mass atrocity prevention and response (Global Centre for R2P 2016).

393), investigated timely and decisive response (A/66/874-S/2012/578), and identified state responsibilities for prevention (A/67/929/S/2013/399). The 2014 report (A/68/947-S/2014/449) focussed on the second pillar of R2P on international assistance, and the most recent report in 2015 (A/69/981–S/2015/500), entitled "A Vital and Enduring Commitment: Implementing the Responsibility to Protect," focusses on seizing the momentum for political implementation.

As the Honorable Lloyd Axworthy, former Canadian Minister of Foreign Affairs, once observed, "The debate over R2P today is not some abstract, academic exercise of hypothetical simulations. This is real, because the issue of intervention – of how, when and who goes in to influence the affairs of another state – is probably the most critical and difficult conundrum in this new century of ours" (Axworthy 2005). Over the span of merely a decade since the 2005 World Summit Outcome (WSO), discussions on R2P have shifted from the acceptance of R2P as a viable concept in international relations to the issue of political implementation at national, regional, and international levels. There have been some clear R2P successes in Kenya, Kyrgyzstan, and Côte d'Ivoire, where careful national and international efforts helped to avert crises from escalating (United Nations 2015). Yet, serious concerns remain in situations like North Korea, where Justice Michael Kirby's Commission of Inquiry found that "systematic, widespread and gross violations of human rights" constituting crimes against humanity are being committed (Kirby 2014). There are serious ongoing challenges in Iraq and Syria, with the on-going terror attacks by the Islamic State in Iraq and the Levant (ISIL), as well as conflicts in Yemen and on the Gaza Strip (United Nations 2015).

These continuing challenges in the political implementation of R2P provide compelling reasons for the relevance of R2P in our world today. Although R2P was traditionally considered from the UN-centric perspective, there has been growing interest in working with a more diverse set of actors with different capacities for timely and decisive action. This brief chapter is aimed at providing a historical and conceptual overview of the R2P principle in the field of international relations. It also seeks to highlight the relevance and importance of the role of the private sector in implementing R2P. Ultimately, it will argue that in light of the growing momentum of the R2P principle, it is important to move beyond the UN-centric approach on R2P and carefully examine the ways in which other actors, such as the private sector, could usefully engage in the implementation of R2P.

Origins of R2P

To fully appreciate the remarkable speed at which R2P has traveled in the realm of international relations, it is useful to first consider the historical context that gave birth to the R2P principle. With the end of the Cold War and the outbreak of new conflicts in the 1990s, "humanitarian intervention" became the new buzzword for the international community.[3] The

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[3] The most prominent cases include Liberia (1990–1992), Northern Iraq (1991), Bosnia and Herzegovina (1992–1995), Somalia (1992–1993), Rwanda (1994), Haiti (1994),

clash of competing imperatives about human rights and intervention, coupled with the removal of some superpower constraints, led to more confusion and chaos than ever before (Evans 2008, 25). While they were few in number, the 1990s saw a number of cases in which military action by foreign powers were explicitly supported by humanitarian rationale (Welsh 2004). Nevertheless, humanitarian intervention was controversial both when it took place (Somalia, Bosnia, and Kosovo) and when it failed to take place (Rwanda). The delayed and half-hearted actions of the international community in Rwanda, and the deaths of 800,000 civilians over the course of 100 days in 1994, prompted a serious questioning of our Westphalian notion of state sovereignty (ICISS 2001). In cases when intervention did take place, such as the 1999 NATO bombing of Serbia without UN Security Council authorization, compelling questions arose about the use of military force and selective application of humanitarian intervention (Welsh 2009, 2).

The conscience-shocking crises in the 1990s proved that neither humanitarian intervention nor traditional UN peacekeeping provided sufficient mechanisms for protecting people in peril. At the same time, these crises also prompted the UN to reassess its own intervention framework. Of special importance is the notion of "protection of civilians" (POC), introduced by UN Secretary-General Kofi Annan in 1998 as a humanitarian imperative (Banda 2007, 7–8). By 1999, the UN Security Council had issued a *Presidential Statement on the Protection of Civilians in Armed Conflicts* and subsequently approved two resolutions on POC. The *UN Security Council Resolution 1265* (1999) and *Security Council Resolution 1296* (2000) made an important turning point in how the UN system approached the issue of POC. These resolutions recognized that targeting civilians or denying humanitarian access may constitute a threat to international peace and security, thereby enabling the possibility of coercive action under Chapter VII of the UN Charter.

In the fall of 1999, amidst continued controversies and debates about the Kosovo intervention, then UN Secretary-General Kofi Annan urged the UN Member States to "find a common ground in upholding the principles of the Charter and acting in defence of our common humanity" (Annan 2005). Responding to Annan's call to build a new consensus for state sovereignty, the Canadian government sponsored the

Albania (1997), Kosovo (1998–1999), and Iraq (2003). From Welsh, Jennifer. 2004. "Authorizing humanitarian intervention." In *The United Nations and Global Security*, edited by Richard M. Price and Mark W. Zacher. Basingstoke: Palgrave Macmillan, 177–192.

establishment of an international commission called the International Commission on Intervention and State Sovereignty (Tomlin *et al*. 2008, 214–215). The Commission was tasked to investigate "a whole range of questions – legal, moral, operational and political" and to produce a report that could help reconceptualize our notion of sovereignty as responsibility. The core tenet arising from the ICISS report is the principle that sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself (ICISS 2001). In accordance with this paradigm, the ICISS sought to achieve three main things: change the conceptual language from humanitarian intervention to responsibility to protect, pin the responsibility on state authorities at the national and at the international level, and ensure that international interventions are carried out in a proper manner. The ICISS report also provided a set of six criteria before military intervention can take place for humanitarian purposes: right authority, just cause, right intention, last resort, proportional means, and reasonable prospects for success. Marking a departure from political paralysis prevalent with humanitarian interventions, the ICISS report refocused attention on protection of people at risk, using the United Nations as the main channel (ICISS 2001).

According to the ICISS report, R2P embodied three main aspects – the responsibility to *react* to protect populations from grievous harm, to *prevent* such situations, and to *rebuild* in their aftermath. Signaling a key turning point from the Westphalian notion of state sovereignty, R2P announced that it was no longer a matter of the external state's right to intervene but the responsibility of *all states* to protect their own people and help others in such endeavor (Evans 2008a). Accordingly, the ICISS report sought to change the language from a "right of intervention" which focussed on the coercive prerogatives of interveners to a "responsibility to protect" which focuses on the state's duty to protect its own people (Welsh 2009). At the normative level, R2P embodied both sovereignty as responsibility and the collective international responsibility to protect victims within a sovereign state if necessary, with right authority and through military intervention if necessary. The Commission also stressed the importance of responsibility to prevent, through means such as building state capacity, remedying grievances, and ensuring the rule of law. Whatever the measures chosen to fulfill our responsibilities – political, legal, economic, and others – the less coercive measure was to be prioritized. On the controversial issue of military intervention, the ICISS proposed a number of criteria on legality and legitimacy, which would provide a set of benchmarks before any military intervention would be undertaken (Evans 2008, 43).

The R2P report produced by the ICISS was then adopted in the 2004 report from the UN Secretary-General's High-level Panel on Threats, Challenges and Change entitled *A More Secure World*, which was convened to "recommend clear and practical measures for ensuring effective collective action, based upon a rigorous analysis of future threats to peace and security." The Panel's report, *A More Secure World: Our Shared Responsibility*, was far wider in scope than the ICISS report, encompassing poverty, disease, and environmental degradation as well as the notion of human security. On R2P, the Panel noted that it "endorses the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing, or serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent" (Evans 2008, 44–45).

While revolutionary in the encompassing of international responsibility for protection, the core beliefs of R2P have historical roots in "sovereignty as a responsibility" first expressed by Roberta Cohen of the Refugee Policy Group in 1991: "Sovereignty carries with it a responsibility on the part of governments to protect their citizens" (Cohen 1991). Francis Deng, who served as the UN Secretary-General's Special Representative on Internally Displaced Persons, further developed "sovereignty as a responsibility" through open dialogues on IDP-related issues (Deng *et al.* 1996). Erin Mooney, Senior Adviser at the UN on IDP issues, drew an important parallel between R2P and the *Guiding Principles* on IDPs: "National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction" (Mooney 2011).

Unfortunately, the publication of the ICISS report on R2P took place in the same year as the 9/11 terrorist attack in the United States, when the "War on Terror" seized the front page of international politics. The British prime minister Tony Blair's use of R2P as a justification for the American invasion of Iraq to topple Saddam Hussein generated legitimate suspicions in the developing world about the motive behind R2P (Thakur and Weiss 2009, 36). Despite vigorous arguments from R2P's architects that the Iraq invasion did not constitute an R2P situation, this misuse nevertheless affected how the concept was perceived by the public and governments, especially those in the Global South. In that vein Thomas Weiss outlined the implications of the War on Terror on R2P's discourse. First, the decision made by Washington and London to go to war against Iraq in March 2003 without Security Council approval has distorted the legitimacy of UN-approved military action. Second, the rhetoric used by Tony Blair and George W. Bush to justify the invasion of Iraq on "humanitarian"

grounds elicited hostile reactions from the Global South, who came to equate the R2P as another tool of an "imperial" North. Lastly, global preoccupation with the counter-terrorist invasions have shifted attention from the R2P. Weiss concluded: "Military overstretch and the prioritiza-tion of strategic concerns to the virtual exclusion of humanitarian ones is the sad reality of a post-9/11 world" (Weiss 2006, 749–750).

With the global attention on the War on Terror, it was not until the 2005 UN World Summit that R2P regained attention in the international arena. After much debate and consultation, the heads of state and gov-ernment from 150 countries unanimously endorsed the R2P principle expressed through paras. 138 and 139, pledging that when a sovereign state fails to protect its own people from genocide, war crimes, ethnic cleansing, and crimes against humanity, the responsibility will fall upon the international community to take whatever action is appropriate, including the use of force (United Nations 2005). The full text of two R2P paragraphs in the WSO are worth examining in detail for both the clarity and brevity it offers on R2P's normative development:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This respon-sibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encour-age and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help pro-tect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, 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, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inad-equate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsi-bility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as neces-sary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

Paras. 138 and 139 were extremely significant for breaking through a political *impasse*, specifically on the basic questions of when, how, and under whose authority international intervention should occur. The

inclusion of R2P paragraphs marked a major turning point for the normative trajectory of R2P, because it was the first time the principle was endorsed universally after some intense cross-regional dialogues, debates, and lobbying efforts. These two paragraphs explicitly make links to recognized international crimes under international law, marking a step forward from the 2001 ICISS report (Badescu 2011, 107). The 2005 WSO document also urged the General Assembly to continue consideration of R2P, which prompted the beginning of the UN Secretary-General's annual report on R2P and the UN General Assembly's annual informal debates on R2P.

Following the 2005 World Summit, the Security Council adopted a thematic resolution (Resolution 1674) of the protection of civilians in armed conflict in April 2006, reaffirming the R2P principle, and passed in August 2006 Resolution 1706, which specifically reiterated the key R2P provisions (para. 138 and 139) of the World Summit Outcome. To this date, the UN Office of Special Adviser on the Responsibility to Protect has maintained that it is important to promote a "strict and narrow definition" of the 2005 consensus on R2P and resist the temptation to broaden the scope beyond the four agreed principles. Furthermore, a variety of policy tools under Chapters VI, VII, and VII of the UN Charter should be used to prevent, deter, and react to the violations of four R2P crimes. Dr. Edward C. Luck, the former Special Adviser on the Responsibility to Protect, also highlighted that while no sequence was proposed in terms of which crime has more serious grave consequences than others, it was understood that many of the risk factors behind these four crimes were usually interconnected, and prevention and protection efforts should "encompass the whole range of R2P crimes and violations" (Luck 2008). The R2P paragraphs in the 2005 WSO further clarified the kinds of tools, actors, and procedures involved in implementing R2P.

Based on the recommendation of the 2005 World Summit Outcome, the UN Secretary-General Ban Ki-moon has developed a mutually reinforcing three-pillar approach on R2P. These pillars are non-sequential and to be adopted as needed on a case-by-case basis, simultaneously if necessary, in full partnership with regional, sub-regional, and international organizations. As formulated in the Secretary-General's 2009 Report (A/63/677) on *Implementing the Responsibility to Protect,* the three pillars of R2P entail: 1) The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity, and ethnic cleansing, and their incitement; 2) the international community has a responsibility to encourage and assist States in fulfilling this responsibility; and 3) the international community has a responsibility to use appropriate diplomatic, humanitarian, and other

means to protect populations from these crimes. If the State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations. The latest Secretary-General's report on R2P further noted that in implementing these pillars, the real question is not so much whether the R2P "applies" in a given situation, since states have a responsibility to protect their populations at all times, but rather how best to use specific measures identified under each pillar to prevent and respond to R2P crimes in a timely and decisive manner (United Nations 2014).

Greater input from the Global South into the theoretical conceptualization and practical implementation has been crucial for R2P's relevance in today's world. In that light, Brazil's "Responsibility while Protecting" (RwP) in the aftermath of the Libyan intervention marked an important contribution from a major actor in the Global South that can greatly strengthen the credibility of the R2P principle. RwP proposed a set of criteria for military intervention, a monitoring-and-review mechanism to assess the implementation of Security Council mandates, and a renewed emphasis on capacity building to avert crises before they happen. RwP therefore stressed three major principles: accountability, assessment, and prevention (United Nations 2014).

Most recently, the Rights up Front initiative, launched in December 2013 by UN Secretary-General Ban Ki-moon, has added another dimension to the debate on R2P. The Rights up Front initiative was inspired by the Petrie Report of 2012, which assessed the UN's response to the final months of the 2009 war in Sri Lanka. This independent review panel report, chaired by Charles Petrie, was extremely critical of the United Nations in its protection capacity and called its actions a "systematic failure" in Sri Lanka. It also called for a comprehensive review of the UN system regarding the implementation of its humanitarian and protection mandates. Hence, the Rights up Front strategy is mainly aimed at enhancing coordination capacity within the UN system and attempts to strengthen the actions of the General Assembly, the Security Council, and the UN Human Rights Council for greater coherence and efficiency (Boon 2014). There are six action plans outlined in the Rights up Front initiative:

ACTION 1: Integrating human rights into the lifeblood of the UN so all staff understand their own and the Organization's human rights obligations.
ACTION 2: Providing Member States with candid information with respect to peoples at risk of, or subject to, serious violations of human rights or humanitarian law.

ACTION 3: Ensuring coherent strategies of action on the ground and leveraging the UN system's capacities to respond in a concerted manner.
ACTION 4: Clarifying and streamlining procedures at headquarters to enhance communication with the field and facilitate early, coordinated action.
ACTION 5: Strengthening the UN's human rights capacity, particularly through better coordination of its human rights entities.
ACTION 6: Developing a common UN system for information management on serious violations of human rights and humanitarian law.

While there is no explicit reference to the R2P principle, the Secretary-General's Rights up Front initiative has been seen as an important development in the future implementation of R2P, especially as the Member States and the UN organs look toward mainstreaming R2P at national, regional, and international levels. In particular, Action 4 has strong correlations to Pillar One and Pillar Two of R2P, and also underscores the centrality of human rights in the works of the UN system. As we look ahead to the new UN Secretary-General sustaining and further enhancing the momentum built during Ben's service will be critical in mainstream R2P in the US system.

R2P Today and the Role of the Private Sector

As evident in the previous discussion on the normative trajectory of R2P in the last decade, R2P has generally been considered in the state-centric perspective, with the UN as the main channel for both discussion and action. While the central role of the UN in maintaining global peace and security cannot be dismissed, the complex nature of today's conflicts calls for a paradigm shift in how we prevent and respond to R2P crimes. Ranging from the General Assembly to the Human Rights Council to the Security Council and the Peacebuilding Commission, as well as various UN programs and specialized agencies, different organs of the UN system have been instrumental in responding to humanitarian crises and building capacity against mass atrocity crimes (United Nations 2014). Hence, the focus of our attention should not be on replacing the capacities and roles already played by the international organizations such as the UN or regional bodies, or a state's primary responsibilities, but about how best to fill the gap found in our existing mechanisms for protection capacity.

Undoubtedly, profit-making is the first priority for the private sector. At the same time, it is useful to remember that a stable political environment is generally conducive to business interests, and building a positive reputation in the community is in line with many firms' business objectives. In fact, there are many examples of corporations behaving altruistically since the dawn of the nineteenth century, ranging anywhere from selfless giving to self-interested giving (Crowther 2008, 59). While human rights