

Implementing the Responsibility to Protect

Challenges and Opportunities



Outline

- RtoP: emergence, meaning and scope
- The UN Secretary-General's implementation strategy
- Controversies and challenges
- Next steps

Emergence of RtoP

- Deng and 'sovereignty as responsibility'
- Brahimi report 2000 – UN peacekeepers should be presumed to have protection duties
- UNSC 2000 – adoption of protection agenda
- AU constitutive act - 2000
- ICISS 2001 (responsibility to prevent, react, rebuild)
- UNSC begins adopting PoC mandates
- High-Level Panel – 2004
- Annan's 'In larger freedom' - 2005

2005 World Summit

Para. 138

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility 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, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.



2005 World Summit

Para. 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 to protect 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 inadequate and national authorities are manifestly failing 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 responsibility 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 necessary 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.

UN Secretary-General's Strategy

Three, non-sequential and mutually reinforcing pillars of RtoP:

- 1) The state carries the primary responsibility for protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and their incitement.
- 2) The international community has a responsibility to encourage and assist states in fulfilling this responsibility.
- 3) The international community has a responsibility to use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes. If a 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 UN



Scope and Meaning: CSCAP Consensus

RtoP is

- 1...an internationally agreed concept aimed at protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity and preventing these crimes.
2. ...defined by paragraphs 138-140 of the 2005 World Summit Outcome Document, unanimously adopted by the UN General Assembly
3. ...a concept that rests on three equally important and non-sequential pillars
- 4....universal and enduring. It applies as much to the global North as the global South

RtoP is not

1. ...applied to human security problems other than the four specified crimes
2. ...claiming to establish, a new principle of international law. It is embedded in existing international law and demands only that states act in accordance with existing law.
3. ...about weakening state sovereignty. By affirming the primary responsibility of the state to protect its own populations and promising to help strengthen the state's capacity to protect its population, RtoP contributes to the strengthening of state sovereignty.
4. ...permitting behaviour that is inconsistent with the UN Charter. Specifically, enforcement measures must be expressly authorised by the UN Security Council and all other measures must be consistent with the Charter.
5. ...violating the principle of noninterference. RtoP is consistent with Article 2(7) of the UN Charter and the Treaty of Amity of Cooperation because it does not call for unwanted interference in the domestic affairs of states, with the sole exception of measures adopted by the UN Security Council under Chapter VII of the UN Charter
- 6.... A new label for humanitarian intervention

RtoP in action

- **Darfur (2003-)** – predates RtoP but widely seen as a test case
- **Kenya (2008)** – mediation stems violence
- **Georgia (2008)** – Russia tries (and fails) to use RtoP to justify assault on Georgia
- **Myanmar (2008)** – failed attempt to expand scope of RtoP
- **North Kivu (2008)** – mission and report to SC..
- **Sri Lanka (2008-9)** – difficult politics, ineffective response. Investigation and HRC
- **Guinea (2009)** – UN backed regional diplomacy resolves crisis
- **Kyrgyzstan (2010)** – OSCE mediation; UN support
- **Libya (2011)** – Res. 1970 & 1973 – first use of force for protection purposes without state consent
- **Cote d'Ivoire (2011)** – use of force by UNOCI helps resolve crisis
- **Yemen (2011)** – RtoP referred to as UN assist negotiated transition
- **South Sudan (2011)** – UN assisting state to build protective capacity
- **Abyei – (2011-ongoing)** – UN brokered truce and peacekeepers

Current Situations

- **Syria** - peace plan and monitoring have failed, ceasefires broken down, little consensus in SC
- **Eastern DRC** - M23 rebellion and link to Rwanda. MONUSCO trying to assist government whilst UN promotes regional mediation
- **Somalia** – AMISOM mission – has moved to resolve its own protection issues and a new protection dimension
- **Mali** – OHCHR raises serious worries – but concerns that ECOWAS intervention ignores legitimate Tuareg grievances and won't work
- **Nigeria** – communal/religious violence
- **Uganda/LRA** – multinational force rooting out rebels
- **Myanmar** – communal violence (Rohingya & Buddhist communities)

Key Points

- RtoP becoming a 'living reality' – lens through which protection crises viewed and strategies created
- Practice has helped clarify meaning and scope
- Use of RtoP lens not considered particularly controversial
- Range of different situations
 - Armed conflict/civil war
 - Communal violence
 - Domestic disturbances
 - State fragility
- Range of different actors engaged (UN, Regional arrangements, Individual states, Civil society) – prevention works best when these actors (esp. UN and Reg Orgs) work together
- Wide range of tools employed, including:
 - Fact-finding and investigations
 - Mediation and diplomacy
 - Human rights instruments and mechanisms
 - Capacity building assistance to the state
 - Humanitarian assistance and protection
 - Peacekeeping
 - Targeted sanctions
 - Referrals to ICC and other judicial processes
 - Military assistance to the state
 - No fly zones
 - Use of force
- Coercion is a rare exception, not the norm [and these are only the cases where crimes committed or were thought imminent]
- No blueprint for action; Importance of lessons learning

Implementation at UN: Building Consensus

- Member States have reaffirmed support for RtoP:
- 2009 General Assembly Resolution committed assembly to ongoing consideration of its implementation
- SC Res. 1674 (2006) and 1894 (2009) reaffirm RtoP
- SC refers to RtoP in 2011 statement on preventive diplomacy
- Explicit references in resolutions on Darfur, Libya, Yemen, South Sudan



Implementation at UN

- 2009: SG report outlines comprehensive strategy for implementing RtoP (three pillars)
- 2010: SG report sets out case for developing an early warning and assessment capacity and convening mechanism (both now operational)
- 2011: SG report on role of regional arrangements
- 2012: SG report on timely and decisive response...

Timely and Decisive Response – key principles

- RtoP universal and enduring – question is not whether to apply RtoP, but how best to
- Three pillars are interrelated and mutually supportive
- Action under pillars 2 and 3 aims to restore sovereignty, not erode it, by helping states fulfil their pillar 1 duties
- Focus should be on early action, tailored to individual situation
- No blueprint – each situation different though concept must be applied consistently
- Early preventive action reduces need for more difficult responsive action later



Timely and Decisive Response -- tools

- Ch. VI – UNSG can use ‘good offices’: negotiation, enquiry, mediation, conciliation, arbitration, and judicial settlement, resort to regional agencies or arrangements, or other peaceful means
- Mediation and preventive diplomacy (eminent persons, special envoys)
- Public advocacy (condemnation etc.)
- Fact-finding and commissions of Inquiry (including mechanisms for UN HR treaty bodies to appoint special rapporteurs)
- Monitoring and observer missions
- Public reporting of crimes (e.g. children in armed conflict, sexual violence)
- Targeted sanctions
- Use of force in various forms
- Work of other actors (General Assembly, regional organizations, humanitarian agencies, human rights council)



Controversies and Challenges

• Controversies

- Accountability for the use of force (Libya)
- 'Failures' to protect (Darfur, Sri Lanka, Syria)
- Syria difficulties a result of Libya pushback?
- Extent to which UN Member States have reached consensus on RtoP (and issue of non-interference)
- Consistency
 - Secretariat
 - Member States
- Academic critiques:
 - RtoP meaningless
 - RtoP dangerous

• Challenges

- Chronological sequencing of the three pillars
- Criteria for use of force decision-making (ICISS)
- Deepening engagement of states and civil society
- Translating prevention into 'living reality'
 - Political obstacles (states reluctant to act early)
 - Methodological obstacles (predicting threats, delimiting action)
 - Resource issues (where to direct limited resources)
 - Institutional issues (overlap with other agendas)

Responsibility whilst Protecting (Brazil)

- Focuses on:
 - Primacy of prevention
 - Need for decisions to be based on good analysis
 - [criteria for use of force]
 - Accountability
- Useful catalyst for lessons learning
- Key elements to take from the initiative:
 - We need to move prevention from rhetoric to living reality
 - Need to strength analytical capacity
 - SC (non-perm members) could consider accountability measures in individual resolutions

Member states must be prepared to receive briefings and permit early preventive action (peaceful means)

Priorities

- Mainstreaming RtoP/atrocity prevention within UN system
- Working towards development of a strategy for prevention (including prevention of incitement)
- Strengthening implementation partnerships (esp. UN-regional organization)
- Deepening the engagement of states and civil society with implementation goals (focal points, group of friends, Latin America network etc.)
- Learning lessons to improve prevention and response

