

# **Responsibility to Protect and the Coercive Enforcement of Human Rights**

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## **I. Introduction**

The issue of human rights has moved to the forefront of UN activities. Since the mid-1990s, within a broader spectrum of UN reform, increasing emphasis has been placed on human rights as an operational priority (the so-called mainstreaming of human rights) throughout UN structures. The UN itself has grown both in size and ambition, notably through the expansion of different local human rights mechanisms and specialized agencies, in conjunction with a rapid growth in human rights NGOs worldwide. The 1990s saw a dramatic opening for human rights as the UN assumed a prominent peace-building role, building human rights protection into its operations as a guiding principle. The limitations of the UN in solving violent conflicts and ensuring human rights protection have been well documented, most demonstrably in the major human rights catastrophes of Rwanda and the Balkans in the 1990s. It is against this backdrop of UN failure to act that efforts to “mainstream” human rights has have taken on new momentum at the turn of the Century.

In particular, the more overtly coercive dimensions of human rights enforcement have emerged front and center in contemporary debates on the appropriate response of the international community to massive human rights violations. Movement towards politically legitimating humanitarian intervention based on collective action – including the use of force – is embodied in the principle of “Responsibility to Protect” or RtoP, and associated efforts to redefine threats to international peace and security that have pushed human rights compliance onto the agenda of the UN Security Council (UNSC). This development reflects three broad trends that inform and, in turn, are informed by RtoP: (1) the broadening of interpretations of threats to international peace and security, including mass atrocities; (2) the reality of constant renegotiations of state sovereignty in matters of human rights, and the legitimate form and scope of international intervention in the domestic affairs of sovereign countries; and (3) the increased acceptability of the use of force for a broad range of policy objectives and associated beliefs in the utility of coercive/military power.

RtoP has rapidly emerged as a notably powerful norm in world politics, notwithstanding its relatively brief lifespan.<sup>1</sup> Elaborated in paragraphs 138 and 139 of the 2005 World Summit Outcome document adopted by the United Nations General Assembly (UNGA) in October 2005, RtoP establishes that individual States have a responsibility to protect their populations from the four major international crimes, genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>2</sup> Most significantly, manifest failure to exercise this responsibility constitutes grounds for UN intervention, including the deployment of military forces as a last resort and in accordance with the principles of the UN Charter and international law.<sup>3</sup> This “securitization of human rights violations” challenges norms of non-interference in the internal affairs of sovereign states.<sup>4</sup> Notably, the UNSC has endorsed the principle of RtoP,<sup>5</sup> recognizing a link between systematic breaches of International Humanitarian Law and threats to international peace and security.<sup>6</sup> Nevertheless, RtoP remains a highly controversial doctrine for many Member States in a post-9/11 (and more acutely post-Iraq war) world – especially with regard to the responsibility to “respond in a timely and decisive manner” as elaborated in paragraph 139.

This paper examines some of the key underlying norms that inform contemporary debate on RtoP. In the process, it also highlights some of the broader implications of a trend towards securitizing human rights. It begins by historically tracing the role of the UN Security Council (UNSC) and General Assembly (UNGA) in situating human rights within the framework of threats to international peace and security. It offers a historically rich assessment of the linkages between responses to massive human rights violations and international security within the UN. Much of the existing literature focuses almost exclusively on mapping such developments within the Security Council in the post-Cold War era. Notwithstanding the primary responsibility of the Council in matters of international peace and security, this paper is intended to act as a corrective to a discussion which, with some notable exceptions,<sup>7</sup> often underspecifies or neglects altogether the role of the UNGA in this arena.

Secondly, despite precedent within UN structures for framing massive violations of human rights as a threat to international peace and security, the more coercive dimensions of human rights enforcement has prompted significant pushback by certain groups of states previously willing to endorse the 2005 World Summit Outcome document. The paper proceeds to unpack some of these contentious dynamics by focusing on first order principles of legitimacy and jurisdiction within and outside UN structures. The question of legitimate authority in sanctioning the use of force is a key point of contention for critics of recent interventions conducted outside the UN Charter in Kosovo and Iraq, as well as for those advocates of reform within the UN. In

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<sup>1</sup> Thomas Weiss notes that “[w]ith the possible exception of the prevention of genocide after World War II, no idea has moved faster or farther in the international normative arena than the Responsibility to Protect.” Thomas Weiss, “R2P after 9/11 and the World Summit,” *Wisconsin International Law Journal* 24 (2006), 741.

<sup>2</sup> 2005 World Summit Outcome, UN Doc. A/60/1, 15 September 2005.

<sup>3</sup> G.A., Sixtieth Session, 8<sup>th</sup> plen. mtg., UN Doc. A/RES/60/1, paras. 138 and 139, 24 October 2005.

<sup>4</sup> See P. G. Danchin and H. Fischer, *United Nations Reform and the New Collective Security* (Cambridge: Cambridge University Press, 2010).

<sup>5</sup> S. Res. 1674, 28 April 2006 (protection of civilians in armed conflict); and S. Res. 1706, 31 August 2006 (Darfur conflict).

<sup>6</sup> See also S. Res. 1265, 17 September 1999 (protection of civilians in armed conflict); S. Res. 1296, 19 April 2000 (protection of civilians during armed conflict); and S. Res. 1325 (respect women’s rights during armed conflict).

<sup>7</sup> T. M. Franck, *Recourse to Force: Threats and Armed Attacks* (New York: Cambridge University Press, 2002).

particular, many States are highly critical of delegating the authority to override State sovereignty to the UNSC, a body they view as unrepresentative and monopolized by traditionally dominant States.

Thirdly, current debate surrounding implementation has increasingly focused on RtoP as a doctrine of prevention as much as enforcement under the rubric of the ‘Three Pillar System’ devised by the UN Secretary General in his 2009 report to the UNGA: (1) the protection responsibilities of the State; (2) international assistance and capacity-building; and (3) timely and decisive response.<sup>8</sup> This has raised questions regarding the relative emphasis between the pillars, particularly concerning the specific responsibilities that may be entailed for prevention and enforcement. This debate is being conducted in the context of contemporary developments that are testing the relevance of RtoP to diverse situational crises and the notable reluctance of the Security Council to apply RtoP to ongoing crisis situations.<sup>9</sup> Observers, such as Nicholas Wheeler, criticized the 2005 World Summit Outcome document for failing to address two fundamental questions: what should happen if the UNSC is unable or unwilling to authorize the use of force to prevent or end a humanitarian tragedy? And second, how could better implementation of this norm save strangers in the future?<sup>10</sup> Issues of legitimacy, authority, and implementation raised by these questions and explored in this paper remain of central concern. The UNSC and UNGA historical record of activity in the area of human rights enforcement provides valuable historical context to a fuller understanding of the contours of this contemporary debate.

## **II. Violations of human rights and threats to international peace and security**

This section of the paper addresses the role of the UNSC and the UNGA in the elaboration of RtoP and, more broadly, their contribution to underlying historical precedents that inform the securitization of human rights within UN structures. José Alvarez’s contention that RtoP “reflects a pre-9/11 (but post-Cold War) view of sovereignty” may be accurate.<sup>11</sup> However, the basic idea that in the event of gross and systematic violations of human rights by a State, that State forfeits its claim to non-interference has historical precedent within the normative confines of the UNGA that goes back decades. The Assembly has played a significant part in the gradual inclusion of human rights within the classical frame of threats to international peace and security, a historical role which is often underspecified or neglected in scholarly and policy accounts of human rights enforcement focused on the executive arm of the UN, the UNSC. The historical record of the UNGA in the slow progression towards securitization of human rights nevertheless has an important bearing on current debates on RtoP, offering a distinct angle of vision on key areas of contention.

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<sup>8</sup> S.G. Report to the UN G.A., “Implementing the Responsibility to Protect”, pp. 8-9

<sup>9</sup> Alex J. Bellamy, “The Responsibility to Protect – Five Years On,” *Ethics & International Affairs* 24 (2010), 145

<sup>10</sup> See Nicholas Wheeler, “A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit,” *Journal of International Law & Relations* 2 (2006), 95.

<sup>11</sup> José E. Alvarez, “The Schizophrenias of R2P,” 2007 Hague Joint Conference on Contemporary Issues of International Law: Criminal Jurisdiction 100 Years After the 1907 Hague Peace Conference, The Hague, The Netherlands, June 30, 2007.