

MASS ATROCITY CRIMES

MASS ATROCITY
CRIMES

Preventing Future Outrages

ROBERT I. ROTBERG

Editor

WORLD PEACE FOUNDATION
Cambridge, Massachusetts

HARVARD KENNEDY SCHOOL PROGRAM
ON INTRASTATE CONFLICT
Cambridge, Massachusetts

BROOKINGS INSTITUTION PRESS
Washington, D.C.

Copyright © 2010

WORLD PEACE FOUNDATION

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Brookings Institution Press, except in the case of brief quotations embodied in news articles, critical articles, or reviews.

Mass Atrocity Crimes: Preventing Future Outrages may be ordered from:
Brookings Institution Press, 1775 Massachusetts Avenue, N.W., Washington, D.C. 20036
Telephone: 1-800/537-5487 or 410/516-6956
E-mail: hfscustserv@press.jhu.edu; www.brookings.edu

Library of Congress Cataloging-in-Publication data

Mass atrocity crimes : preventing future outrages / Robert I. Rotberg, editor.
p. cm.

Sponsored by the World Peace Foundation and the Harvard Kennedy School Program on Intrastate Conflict.

Includes bibliographical references and index.

ISBN 978-0-8157-0471-3

1. Genocide—Prevention. 2. Crimes against humanity—Prevention. I. Rotberg, Robert I. II. World Peace Foundation. III. John F. Kennedy School of Government. Program on Intrastate Conflict. IV. Title.

HV6322.7.M374 2010

364.4—dc22

2010013690

9 8 7 6 5 4 3 2 1

Printed on acid-free paper

Typeset in Minion

Composition by Cynthia Stock
Silver Spring, Maryland

Printed by R. R. Donnelley
Harrisonburg, Virginia

EDWARD C. LUCK

6

*Building a Norm:
The Responsibility
to Protect Experience*

The responsibility to protect (R2P) is a big idea, no doubt about it.¹ But it is also an evolving and still contentious one, despite pledges that the heads of state and government made at the 2005 World Summit. They affirmed, unanimously, that they would protect their populations by preventing genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as the incitement of such acts. Further, they agreed that the international community should assist and support states in exercising that responsibility and in building their domestic protection capacities. When national authorities are nevertheless “manifestly failing” to protect their populations from the four specific crimes and violations and peaceful means are inadequate, the world leaders confirmed that the international community would take collective action in a “timely and decisive manner” through the United Nations (UN) Security Council and in accordance with the Charter of the UN, and with the cooperation of regional organizations as appropriate.²

This chapter looks at a piece of the evolution of R2P: the efforts of UN Secretary-General Ban Ki-moon, a host of member states, and a cluster of determined advocates and non-governmental organizations (NGOs) to advance its conceptual, political, and operational development over the course of 2008 and 2009. During that period (and since), this author has served as the secretary-general’s special adviser on these matters. This chapter seeks to shed some light on the strategic and tactical choices that were made then to forward the development and acceptance of R2P. At several points, the discussion addresses the origins and earlier development of R2P, both because recent efforts at the UN build on them and because even the concept’s roots are disputed by some. In addition to telling the story of R2P’s more recent adventures on the world stage, this chapter tests how well the

classic model of norm development that Finnemore and Sikkink have posed holds up in this case.³

At the outset, three things should be said. One, in a formal and technical sense R2P has not yet achieved—and may never achieve—the status of a binding legal norm. Two, to this author at least, the lack of that credential need not condition its effectiveness in terms of affecting the behavior of states and armed groups and the decisions of international bodies. Critics and advocates alike should understand that R2P is a political concept, albeit one based on well-established legal principles and norms. R2P's relevance and power derive from its capacity to help to spur political will for implementing widely accepted and long codified international standards. It promises, in other words, to help to generate what is too often the missing ingredient in international normative development: the will and a strategy for implementation, what the secretary-general calls turning words into deeds. In remarkably short order, compared to the historical development of the human rights, humanitarian, and refugee norms on which it is based, however, R2P is becoming a standard for the kind of proper behavior that is increasingly expected from both states and non-state actors. Three, rather than adding to or distracting from those established norms, R2P seeks to amplify and multiply the voices calling for their implementation and, if necessary, their enforcement.

Despite these distinctions, which matter in inter-governmental discourse, in the academic realm, political scientists regularly equate norms and standards. For example, Finnemore and Sikkink assert that “there is general agreement on the definition of a norm as a standard of appropriate behavior for actors with a given identity.”⁴ This discussion adopts this looser notion of norm and norm development, using “norm” and “standard” interchangeably, as well as referring to R2P as a concept or principle. On the other hand, in the inter-governmental debates about R2P, there has been far less acceptance of R2P as a legal norm than as a generally accepted standard of behavior. This reluctance reflects, as discussed below, the acute concern in some quarters about how R2P standards might be enforced, by whom, and under whose authority.

The Model

In an influential 1998 article Finnemore and Sikkink laid out a largely persuasive model of how international norms develop. Basically, they argued “that norms evolve in a patterned ‘life cycle’ and that different behavioral

Figure 6-1. *The “Life Cycle”*

Norm emergence	“Norm cascade”	Internalization
Stage 1	Tipping point Stage 2	Stage 3

logics dominate different segments of the life cycle.”⁵ They offered the figure above (here figure 6-1) and the table opposite (table 6-1) to illustrate the “norm life cycle.”⁶

Regarding the first stage, they suggested that “two elements seem common in the successful creation of most new norms: norm entrepreneurs and organizational platforms from which entrepreneurs act.”⁷ As one would expect, their historical review featured international organizations as prime platforms for such efforts. They hypothesized, as well, that after some critical mass of states has adopted a new norm, a “threshold or tipping point” is reached.⁸ The second stage, a “norm cascade,” follows, propelled by an international socialization process.⁹ Such a process involves “peer pressure” within regions as states seek “legitimation, conformity, and esteem.”¹⁰ Eventually, in stage three, the norm becomes “internalized” in state practice and is largely “taken-for-granted.”¹¹ This stage is presumably the ultimate goal of the norm entrepreneurs. At that stage, it is worth noting for R2P purposes, international enforcement would become unnecessary in all but rejectionist states.

What Finnemore and Sikkink described, in essence, is a political process. It is a process that transcends national boundaries, even as its success ultimately depends on decisions made in multiple capitals. It involves a creative and interactive mix of states, international organizations (global and regional), and civil society. As discussed below, the R2P experience coincides with this model in important ways and several of the characteristics that they identified can be seen readily in recent events and developments. However, R2P’s experience to date also raises questions about how certain, sequential, chronological, and unidirectional a contested norm’s “life cycle” is likely to be. Even at this writing, this author is not sure where to place R2P’s development along the three-stage progression, despite a number of encouraging developments. There have been more stops, starts, detours, and regeneration in R2P’s young life than any chart could properly depict. Indeed, the refinement of the concept itself at critical points has both allowed the developmental process to proceed and modified, in significant ways, the shape and content of what was being considered. That said, models are meant to simplify complex processes and this model succeeds admirably in that regard.

Table 6-1. *The Behavioral Logics in the “Life Cycle”*

	<i>Stage 1 Norm emergence</i>	<i>Stage 2 Norm cascade</i>	<i>Stage 3 Internalization</i>
Actors	Norm entrepreneurs with organizational platforms	States, international organizations, networks	Law, professions, bureaucracy
Motives	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
Dominant mechanisms	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

Stage One: Norm Emergence

The model’s two key ingredients for the successful completion of stage one—norm entrepreneurs and organizational platforms—did indeed play critical roles in the emergence of R2P as a “hot” issue on the international agenda. But identifying the prime movers behind R2P does not end the story, because the origins and intellectual roots of R2P are subject to some dispute and occasional reinterpretation. This dispute exists in part because transformative ideas may be claimed by more than one father or mother, and in part because the concept, as accepted by UN member states in 2005, differs in important respects from what was first proposed in the landmark 2001 report of the International Commission on Intervention and State Sovereignty (ICISS). In coining the phrase “responsibility to protect,” the commission sought to address some of the sovereignty concerns that surfaced in the divisive General Assembly debate in 1999 on humanitarian intervention.¹² A major impetus for that debate had been the world body’s failure to prevent or respond effectively to the repeated mass atrocities of the 1990s in places such as Somalia, Rwanda, Bosnia (Srebrenica), and Kosovo. Those theories of humanitarian intervention, in turn, drew, in the 1980s, from Bernard Kouchner’s pioneering advocacy of the notion of the right to interfere (*le droit d’ingérence*) in humanitarian emergencies. Likewise, in arguing that “the primary responsibility for the protection of its people lies with the state itself” and that “sovereignty as responsibility has become the minimum content of good international citizenship,” the commission drew heavily from

the work of Francis Deng and his colleagues at the Brookings Institution in the mid-1990s on sovereignty as responsibility in Africa.¹³

This layered history, with variations on the central theme with each new decade and set of norm entrepreneurs, makes it difficult either to allocate credit to a single person or group or to assert that the concept emerged at any particular point. Yet clearly the most energetic and determined proponent of R2P has been Gareth Evans, the former foreign minister of Australia and co-chair, with Mohamed Sahnoun of Algeria, of the ICISS Commission. He is widely credited with coming up with the phrase “responsibility to protect.”¹⁴ Several other members of the commission have also remained active advocates, as has Lloyd Axworthy, the former Canadian foreign minister who was instrumental in the establishment of the commission at the time of the Kosovo crisis. The idea has not lacked articulate high-level advocates, as former Secretary-General Kofi Annan and his High-level Panel on Threats, Challenges and Change endorsed the commission’s core recommendations.¹⁵ Annan, in fact, asserted that there was an “emerging norm that there is a collective responsibility to protect.”¹⁶ He included a robust set of R2P proposals in his *In Larger Freedom* report to the 2005 World Summit, one of the largest gatherings of heads of state and government ever.

So, in the remarkably brief span of four years from its first articulation, R2P attracted both an impeccable array of norm entrepreneurs and the attention of the most prominent forum imaginable. One would have been excused for thinking that the proverbial “tipping point” had been reached and the promised “norm cascade” of the second stage would soon follow. But the model fails to incorporate the interactive and sometimes even dysfunctional nature of international politics, assuming an overly linear conception of progress. It seemed that as R2P was gaining its glittering chorus of advocates, the opposition, with keen memories of the General Assembly’s humanitarian intervention debate just a half dozen years before, began to dig in that much deeper. Hegel might well have detected his dialectical process of thesis-antithesis-synthesis at work in this posing of opposites before the search for common ground. Indeed, the sharp criticisms of R2P that a number of developing and non-aligned countries expressed in the months preceding the 2005 World Summit gave little reason to be optimistic about its eventual adoption.¹⁷

Given this unpromising political context, it is all the more remarkable that the summit nevertheless reached consensus regarding the language to endorse R2P. Certainly this accord was due in part to the hard work of norm entrepreneurs, ranging from friendly member states to then

Secretary-General Annan and members of the ICISS Commission. But important substantive changes in the R2P vision were also incorporated to gain wider support among the membership. These modifications were essential because few governments felt any sense of ownership of the ideas that Annan put forward. The ICISS report, while impressive in many ways, was the product of an independent blue-ribbon panel. Though the commission had held hearings in various parts of the world, no inter-governmental body had debated or tempered its proposals. The same could be said of the High-level Panel on Threats, Challenges and Change and its endorsement of the ICISS conclusions and recommendations. Norm entrepreneurs, in other words, may get an idea to the conference table and even influence the subsequent deliberations, but they cannot substitute for governments and their interactions. So it is instructive to compare and contrast the ICISS proposals and the language that the summit actually adopted four years later. Three distinctions between the ICISS's and the summit's approaches stand out.

One, according to Jean Ping, president of the General Assembly in the months leading up to the summit and subsequently chairman of the African Union Commission, the critical breakthrough came when Munir Akram, then permanent representative of Pakistan to the UN, suggested that R2P should be "linked" to a specific set of atrocity crimes.¹⁸ This distinction would address, to some extent, the concerns of many states, including some smaller developed, as well as developing, countries, that major military powers could use R2P as a pretext for intervening militarily in places such as Iraq. The ICISS report had not defined precisely or consistently from what people were to be protected. In its prescribed principles for military intervention, the commission spoke of "the just cause threshold," namely "there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

A. "Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or

B. Large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."¹⁹

The report's foreword, however, underlined "that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape, from starvation."²⁰ One of the "basic principles" enunciated by the commission was that "where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it,

the principle of non-intervention yields to the international responsibility to protect.”²¹

The independent commission, of course, was laying out important principles about the nature of state and international responsibility, not negotiating a legal or political document. Faced with the latter task, the subsequent World Summit had to be more precise about when R2P would or would not apply. Paragraphs 138 to 140 of the Summit Outcome Document sought to define both the scope of R2P crimes and the prevention and protection responsibilities of states and international organizations. The summit agreed, unanimously, that the scope of R2P would be limited to cases of genocide, war crimes, ethnic cleansing, and crimes against humanity. As the secretary-general’s 2009 report noted,

It should be underscored that the provisions of paragraphs 138 and 139 of the Summit Outcome are firmly anchored in well-established principles of international law. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes and crimes against humanity. Ethnic cleansing is not a crime in its own right under international law, but acts of ethnic cleansing may constitute one of the other three crimes.²²

In innumerable consultations with member states about the secretary-general’s strategy for advancing R2P, this author found it necessary to reassure them that his approach was narrow but deep—narrow in terms of not going an inch beyond the four specified crimes but deep in terms of the number of tools the UN system and its partners should bring to the tasks of prevention and protection.

Early in my work as Special Adviser, in May 2008, Cyclone Nargis struck Myanmar (Burma). Some prominent personalities, including Foreign Minister Kouchner of France, urged international intervention to speed the delivery of relief to the beleaguered population there under a R2P rubric.²³ Evans contended that the situation had not yet reached R2P proportions, but that the government of Myanmar’s persistent refusal to facilitate international relief efforts over time could amount to a crime against humanity and therefore invoke a R2P response.²⁴ This author asserted that this was not a R2P situation in terms of what had been agreed upon at the 2005 Summit and most member states, including importantly Myanmar’s neighbors in the Association of Southeast Asian Nations (ASEAN), seemed to agree. Taking this stance was more than a political calculation, however. Existing standards for human rights, humanitarian delivery and access, and the treatment of

internally displaced persons already applied to this kind of situation and it was not clear what invoking R2P would add to the chorus.²⁵ It was critical at that early stage of R2P development, moreover, to avoid falling into the UN's usual trap of making straightforward concepts incoherent, unintelligible, and unusable by stretching them to cover more and more issues and concerns. The secretary-general wanted to make R2P operational, not just appealing, and this required discipline, constraint, and consistency in its application.

A second critical difference between the ICISS report of 2001 and the Summit Outcome Document of 2005 is in their treatment of what both agreed would be an extreme measure: the coercive use of force in a R2P contingency. Many diplomats, particularly from the developing world, saw the ICISS report as a more attractive façade for unilateral humanitarian intervention; the notion that they thought they had squelched in the 1999 General Assembly debate. When this author started to work on R2P for the secretary-general, he was surprised that several leading representatives of developing countries told him that they had “killed” or “buried” R2P at the 2005 Summit. What they meant, it turned out, was that they once again had resisted the adoption of humanitarian intervention as a unilateral, coercive, and largely military doctrine. While the ICISS report stressed the importance of prevention, these diplomats perceived it to be a reincarnation of the right to intervene militarily in such situations. The opening sentence in the foreword did not help to dispel this impression: “This report is about the so-called ‘right of humanitarian intervention’: the question of when, if ever, it is appropriate for states to take coercive—and in particular military—action against another state for the purpose of protecting people at risk in that other state.”²⁶ The report's careful and detailed presentation of “principles for military intervention,” as well as its seeming focus on the Security Council as the prime international actor, added to the sense that there was little difference between R2P and humanitarian intervention. This seeming similarity was a theme that the opponents of R2P revived repeatedly during the 2009 General Assembly debate.

The assembled heads of state and government in 2005 did not deny the possibility that coercive action might be necessary in extreme R2P cases, but they put it in the context of the UN Charter, a multilateral decision-making authority, and the wider tools available to the world body for peaceful settlement. “In this context,” they stated, “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.”²⁷ The key phrase here is “timely and decisive” action, whether it is of a military or non-military, a coercive or non-coercive, character. The secretary-general’s strategy, in that regard, stresses “the value of prevention and, when it fails, of early and flexible response tailored to the circumstances of each case.”²⁸ No option should automatically be ruled in or out. And no two cases are identical. As he stressed on various occasions, it would be morally unacceptable to base one’s strategy only on responding to mass crimes after the bodies have started to pile up and when only extreme measures would make a difference.²⁹ Likewise, good policymaking depends on keeping multiple options open, not relying on a single tool or scenario to do the trick in all cases.

The third difference that stood out between the 2001 and 2005 interpretations of R2P lies in how they described the range of policy measures for advancing prevention and protection goals. The ICISS report described three sets of responsibilities: 1) the responsibility to prevent; 2) the responsibility to react; and 3) the responsibility to rebuild. It referred to these as “integral and essential components” and to the need for “conceptual, normative and operational linkages between assistance, intervention and reconstruction.”³⁰ The need to rebuild, it noted at several points, would be particularly acute after a coercive military intervention.³¹ The distinctions among these three responsibilities were cast along functional lines, not in terms of whose responsibility it would be to perform each function; though clearly the responsibility to react would fall to the international community and particularly to the Security Council.

The 2005 Outcome Document, on the other hand, focused more on who was responsible for what. Paragraph 138 stated, in unambiguous terms, that:

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.

In the secretary-general’s strategy, this was to become the first of three R2P pillars of equal length and strength.³² This pledge of state responsibility, undertaken at the heads of state and government level, would have to serve as the bedrock of R2P, because the international community could rarely

expect to be able to be a substitute for the state. The second pillar, relating to the international responsibility to help, assist, and support the state in meeting this core responsibility, appears in various ways in paragraphs 138 and 139, but is not stated clearly and precisely at any single point in the document. This author had to derive the second pillar through a deconstruction of these paragraphs word by word and phrase by phrase, as well as through conversations with delegates about what their intent had been in 2005. The secretary-general's pillar two strategy encompasses not only R2P-oriented development, human rights, governance, peacebuilding, rule of law, and security sector reform efforts, but also two types of consent-based military activities. One such effort is preventive peacekeeping deployments, as in the former Yugoslav Republic of Macedonia (FYROM) and in Burundi.³³ The second is military assistance, including Chapter VII enforcement missions, to help beleaguered governments confronted by armed groups that control portions of their territory and are committing R2P crimes, as in Sierra Leone.

It has been the third, response, pillar of the secretary-general's strategy that has attracted the most attention and concern among some of the member states.³⁴ Carefully drawn from the last sentence of paragraph 138 on early warning and the whole of paragraph 139, the third pillar of the strategy seeks to make the fullest possible use of the wide range of tools, procedures, and arrangements described in Chapters VI, VII, and VIII of the UN Charter. The discussion of military options is quite robust in the secretary-general's report, but occupies a less prominent place than it does in the ICISS report because of the increased attention to other possible measures. While substantial attention is given to the Security Council and its decision-making processes, the important roles of the General Assembly, the secretary-general, and regional and sub-regional organizations are also described in some detail.

Was the 2005 consensus regarding R2P a step forward or backward in terms of establishing a strong norm or standard compared to the way R2P was initially framed in the 2001 ICISS report? If the 2005 Summit was a "tipping point," which way did it tip: toward a reinforced or diluted norm? Some R2P proponents initially derided the summit language as "R2P-lite." They pointed to the caveat-heavy reference to collective action in paragraph 139, as well as to the invocation of a "continuing consideration" role for the General Assembly. On the other hand, Secretary-General Annan, among others, called the R2P language "an historic breakthrough."³⁵ Given the summit delegates' inability to find any common language on some other high visibility issues, such as disarmament, the R2P consensus stands out as one of the more conspicuous successes from the summit. The 2001 conception of R2P,

it should be recalled, was negotiated among blue-ribbon panelists, not government officials, among a handful of leading internationalists, not scores of representatives of truly diverse countries.

Assessments of whether 2005 represented forward or backward movement depend in large part on whether the core of R2P is considered to be states' commitment to prevention and protection or the legitimization of a military response to mass atrocity crimes. Those still wedded to notions of humanitarian intervention might have had some reason for disappointment. But for those of us who welcomed the ICISS report as a compelling way to assuage some of the dilemmas that the rather sterile humanitarian intervention debate posed at the end of the century, the language in the 2005 document offered a further encouraging step toward a R2P conception that was sustainable politically, flexible tactically, and feasible operationally. The ICISS report, after all, underscored that it sought to shift the terms of the debate from the responsibility of the international community to those of the state toward its people and from those considering intervention to those needing assistance and protection.³⁶

In several ways, moreover, the language that was used in 2005 added elements that were missing in 2001. For instance, the Outcome Document spoke of a state's responsibilities to the populations on its territory, not just to its citizens; such a distinction is critical when addressing identity-based crimes. At the summit, the heads of state and government pledged to prevent the incitement of as well as the commission of the four crimes. For operational purposes, this is a significant addition, as the secretary-general and his representatives have been able to persuade the parties to stop their incitement of violence in Côte d'Ivoire in 2004 and Kenya in 2008, among other places. Paragraph 138 of the Outcome Document includes an unambiguous endorsement of a UN early warning mechanism, something that is critical to an effective prevention strategy but was once quite controversial among the member states. The 2005 Outcome Document also recognizes the important role that regional bodies can play in prevention and protection efforts, a point that the secretary-general's report seizes on with some enthusiasm. Finally, paragraph 139 calls on the General Assembly to "continue consideration" of R2P, something some advocates fret about but a critical step in the further development of R2P as a global standard. So, at least in this author's view, it was a rush to judgment to call the language used in 2005 "R2P-lite." That language provided, instead, a remarkably solid and broad foundation on which to begin to build effective strategy, policy, and mechanisms for the prevention of and protection against the worst atrocity crimes.

Stage Two: "Norm Cascade"

As noted earlier, two years after the World Summit political support for R2P had ebbed, with some prominent representatives of developing countries claiming at that point that they had "killed" the concept at the summit. If the summit were to have served as a "tipping point" leading to a "norm cascade," as the Finnemore-Sikkink model would have predicted, then there was little evidence that it had worked, at least not to that point. Clearly the transition from their stage one to stage two does not happen automatically or inexorably in every case. In the case of R2P, for one, a lot of conceptual and political work would be required to spur anything resembling a "norm cascade." As suggested above, there is no reason to assume—as the model seems to—that normative progress necessarily follows a linear or unidirectional path. It is a political process, not a physical one. Even a cascade of water, of course, can be manipulated in any direction: speeding, slowing, curbing, or diverting the flow.

Though their model so far has fit the course of R2P development awkwardly at best, the terms that Finnemore and Sikkink used to describe the generic normative development process seem much more apt. The political strategy that Secretary-General Ban Ki-moon has pursued, with the critical help of like-minded member states and NGOs, indeed has resembled an international socialization process. Surely, as they had hypothesized, this has involved "peer pressure" within and across regions as states have sought "legitimation, conformity, and esteem."³⁷ With a contested norm, such as R2P, its supporters first need to ensure that association with the norm is seen as legitimizing rather than delegitimizing for most states. This involves reframing the debate. This feat has to be accomplished, of course, when those opposing the norm are trying to frame the debate along very different lines.

In crafting the secretary-general's strategy for advancing R2P, this author was acutely aware of the need to seize the high road in terms of laying out its intellectual and political lineage and to project a clear image of which historical situations compelled its development. In the secretary-general's 2009 report, *Implementing the Responsibility to Protect*, that this author drafted as his Special Adviser on these matters, he laid out his understanding of the origins of R2P. Citing the experiences of the Holocaust, Cambodia, Rwanda, and Srebrenica, he concluded that "the brutal legacy of the twentieth century speaks bitterly and graphically of the profound failures of individual States to live up to their most basic and compelling responsibilities, as well as the collective inadequacies of international institutions. . . . Could we not find

the will and the capacity in the new century to do better?"³⁸ He underscored that countries in the North as well as in the South, and with different social systems and levels of development, had experienced the trauma of mass domestic violence.³⁹ This issue was, in other words, a universal problem that the world's only virtually universal political body had to address, as well as through regional, sub-regional, and national efforts.

Over the course of 2008 and the first half of 2009, as the battle lines were drawn for the 2009 General Assembly debate on the secretary-general's report, the origins of the concept of R2P were acutely contested. Was it, as some charged, a northern notion that had been imposed on the global South as a rationale for armed intervention in weaker countries? Or, as Secretary-General Ban has contended, did it emerge "from the soil, spirit, experience and institutions of Africa?"⁴⁰ For both substantive and political reasons, the secretary-general regularly invoked the notion of sovereignty as responsibility that had been developed by Deng and his colleagues more than a dozen years before. Both ECOWAS and the African Union (AU) had endorsed R2P-like principles before the 2001 ICISS Commission coined the phrase. The AU stressed *non-indifference* in such situations, unlike its predecessor, the Organization of African Unity (OAU) that had emphasized non-interference.

The secretary-general, however, was not the only player to appreciate that prevailing political perceptions about where it came from, how it was developed, and whose purposes it was meant to serve shape the legitimacy and viability of an international principle. Seeking to articulate quite a different history was one of the most prominent R2P skeptics, the president of the sixty-third Session of the General Assembly, Miguel D'Escoto Brockmann, a former Sandinista Foreign Minister of Nicaragua. "Is it more likely," he asked, "that the R[2]P principle would be applied only by the strong against the weak?" In his view, "recent disastrous interventions give developing countries strong reason to fear that laudable motives can end up being misused, as so often in the past, to justify interventions against weaker states."⁴¹ Some developing countries, such as Venezuela, Cuba, Nicaragua, Iran, the Sudan, and North Korea, echoed this line in the 2009 General Assembly debate on R2P.⁴² What was most striking, however, especially given the way that the president of the General Assembly had tried to frame the debate, was that most developing countries, particularly smaller ones and almost all African countries, agreed with the secretary-general about the African origins of R2P.⁴³ Egypt, speaking as chair of the Non-Aligned Movement (NAM),

explicitly endorsed the secretary-general's account of the role of the AU and the African experience in the development of R2P.⁴⁴

From the outset of my work on R2P, three things were clear to this author. One, by early 2008 support for the principle of R2P was regressing, not progressing among member states. Permanent damage would have been done both to the prospects for turning R2P from words to deeds and to the UN's credibility if steps were not taken to reverse the tide. Two, only an assertive strategy aimed at the UN membership as a whole could hope to restore the 2005 consensus. This, in turn, would require bringing the issue to the General Assembly, which had never addressed R2P directly. The focus of the debate, moreover, should be the secretary-general's clearly articulated implementation strategy. He would have to define, indeed redefine, the terms of the debate. It was, in other words, time to press the restart button, not to rest on the laurels of 2005. Many of the "friends" of R2P questioned the wisdom of taking such a risk, given push-back on the part of key developing countries in recent years on a range of human rights and humanitarian issues. The risks of moving forward were real, but, in this author's view, the downside risk of doing nothing was even greater.

Three, it was evident that if the presumption persisted that R2P was a North-South issue, then its political fate was sealed, whether or not the assembly took up the matter. The key variable lay in the attitude of the developing, not the developed, world. Mass atrocities can, and have, occurred in every part of the world. But in recent decades the frequency and depth of devastation of such traumas have been greater in smaller and more fragile developing countries. These countries have every reason to want more effective international efforts at prevention and protection, as long as these are undertaken under proper UN or regional authority and call on the full range of UN tools under Chapters VI, VII, and VIII of the UN Charter. So the goal was to spur latent support in developing countries by carefully listening to their concerns and expectations and by incorporating them as fully as possible in the secretary-general's report, while maintaining solid, but not dominant, support from the developed world. By and large, this approach appears to have worked well, as the 2009 General Assembly debate was more upbeat than most expected, and the subsequent consensus adoption of a R2P resolution, albeit of a modest and largely procedural sort, far exceeded anyone's expectations.⁴⁵ Characteristically, Guatemala, hardly a global power, but a country that still bears the deep and lasting scars of past atrocity crimes, drafted and negotiated the resolution.

R2P may be a global standard, but the politics of forwarding it tends to be regional, as Finnemore and Sikkink would have predicted. The UN's 192 member states are largely organized around regional groups. Some large trans-regional groups, such as the NAM and the Office of the Islamic Conference (OIC) also matter politically.⁴⁶ This author's consultations with the NAM were both extensive and instructive. Since the support of African countries, especially sub-Saharan ones, had been critical to achieving the 2005 results and R2P's African roots were an essential dimension of the secretary-general's narrative, the first step was to help to renew the sense of African ownership of the issue that had largely been lost since 2005. Rwanda, whose horrific 1994 genocide epitomized all that R2P seeks to prevent, was particularly active in encouraging the revival of African enthusiasm for the concept. The results were gratifying.

Latin American and Caribbean countries, with their strong traditions of respect for sovereignty, law, and human rights, generally supported R2P in 2005. The group, however, was more divided on a number of political and ideological questions by 2008 and 2009. While most of the region spoke favorably at the 2009 debate, five of the eight member states that offered an explanation of position on the consensus resolution were from the region.⁴⁷

In 2008, at the outset of the preparation of the secretary-general's report and the General Assembly debate, it was widely expected that the biggest opposition to R2P would come from Asia. Fortunately, that did not prove to be the case. This author thought it best to focus initially on the ASEAN countries, both because of their numbers and because there had been some encouraging political developments in the region. Indonesia, for instance, as the most populous country in the region with the world's largest Islamic population, had become much more hospitable to democratic and humanitarian values than before. What this author and others in New York did not understand well, however, was how well-developed was civil society interest in R2P in the region.⁴⁸ Some of this interest, apparently, could be attributed to the regional outreach efforts of the ICISS Commission many years before. In any case, the ASEAN countries were largely supportive of R2P at the 2009 debate, perhaps lending credence to the Finnemore-Sikkink emphasis on peer pressure. Others engaged the leadership of India, the last to come aboard in 2005, at a high level. Both of these Asian governments—Indonesia and India—took a more positive stance in 2009 than in 2005, though China remained cautious.

Whether any of these encouraging developments qualify as a "norm cascade" remains to be seen. But the core proposition put forward by Finnemore

and Sikkink—that the attitudes of neighbors and peers affect national elites—seems on target. It was striking, in this regard, to see so many of the world's so-called rising powers move to the R2P camp, as the principle took on the status of a global standard of proper behavior. R2P, one hopes, will continue to rise with them.

Conclusion

At the center of this narrative is the intimate interplay between politics, at several levels, and the evolution of norms and standards that some wish could be above narrow and parochial political concerns. As the still young history of R2P vividly illustrates, the development of international norms and standards, similar to law, is an inherently and predominantly political process. The most effective advocates and norm entrepreneurs have understood this reality and have played the political game skillfully. Those who wait for others to see the rationality or morality of their position, who expect the attractiveness of the emerging norm or standard to do the work, are likely to be disappointed. The development of norms is really the story of the expansion of political support for particular sets of ideas and values.

Norms and standards, especially in their formative years, are likely to be somewhat contested. The more that they bite, in terms of affecting state behavior, the more contentious they are likely to be. As theorists of compliance with international law have long recognized, there is a wide set of legal norms that are not controversial for the simple reason that they only confirm and perpetuate existing patterns of behavior and interests.⁴⁹ Such coordination or cooperation rules may play essential social and governance functions, but they are not of great political or policy interest. Nor does their path have much in common with the more arduous road travelled by more demanding and far-reaching standards such as R2P. The latter's course is apt to be uneven, circuitous, and uncertain. It is not quick or short. Persistence pays, as the end goal of gaining something close to an international consensus, not only on the principle but also on a feasible implementation strategy, is worth sustained effort over a number of years.

There is reason for optimism about recent progress in the normative development of R2P. It should be borne in mind, however, that neither an encouraging debate, a consensus resolution, nor even a summit-level declaration constitutes a consolidated norm. R2P-like language is appearing in all sorts of international statements, resolutions, and conventions. This trend is largely encouraging, though it shows lingering caution about invoking the

actual phrase “responsibility to protect.” Efforts are under way to embed R2P in the UN bureaucracy through a joint office on genocide prevention and R2P, an early warning and assessment capacity, and inter-departmental, inter-agency machinery for rapidly developing system-wide policy options in emergency situations. Operational departments, programs, and agencies are being asked to identify ways that they can mainstream R2P principles and objectives into their ongoing work. The General Assembly is beginning to consider how best to focus and carry out its “continuing consideration” role. And the secretary-general has asked this author to work with independent scholars on the preparation of case studies of good and best R2P practices, particularly in the realm of prevention and capacity-building.

The third stage—internalizing R2P standards in state policy and practice—is both the most critical and the most difficult phase to measure. Researchers tell us that the incidence of genocide has declined over the past fifteen years, but neither the causes nor the sustainability of this encouraging trend are evident.⁵⁰ R2P is both a reflection of and a stimulus for such changes in state behavior. The ultimate test of R2P will be in capitals and on the ground, not in international meeting halls. If, a decade from now, atrocity crimes are markedly less frequent and, when they occur, the international response is more ready, vigorous, and effective than it has been in the past, then all of the normative work of the past ten years can be declared a success. The goal can be no less than to moderate the actions of both states and armed groups. The progress to date in clarifying, building, and spreading R2P standards—as real as it has been—constitutes only the initial steps of a long journey. There is reason to believe, nevertheless, that we have now embarked on the right track.

Notes

1. Most public groups and authors have preferred the acronym R2P, but the UN has consistently used RtoP both because it seems more accurate and because it helps to distinguish the UN’s approach to the concept from the various forms and meanings that independent authors, groups, and commissions have given it.

2. UN General Assembly, Sixtieth Session, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, 2005, paras. 138 and 139.

3. Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization*, LII (1998), 887–917.

4. *Ibid.*, 891.

5. *Ibid.*, 888.

6. *Ibid.*, 896 and 898, respectively.

7. *Ibid.*, 896.

8. *Ibid.*, 901.

9. They credit this phrase to Cass R. Sunstein. See his “Social Norms and Social Roles,” in Cass R. Sunstein, *Free Markets and Social Justice* (New York, 1997), 32–69.

10. Finnemore and Sikkink, “International Norm Dynamics,” 903.

11. *Ibid.*, 904–905.

12. For Kofi Annan’s address on 20 September 1999, see *Secretary-General’s Annual Report to UN General Assembly*, Fifty-fourth Session, UN Doc. SG/SM/7136, 1999; for the subsequent debate, see UN General Assembly, UN Doc. A/54/PV.8 and PV.9, 1999. As this author has discussed elsewhere, it has not only been developing countries that have been concerned about sovereignty when it comes to R2P. While smaller or weaker countries tend to be worried about preserving their territorial sovereignty vis-à-vis larger and possibly predatory powers, militarily strong countries may be sensitive to any doctrine that implies an automaticity of response in such situations, as it could compromise their decision-making sovereignty. See Edward C. Luck, “Sovereignty, Choice, and the Responsibility to Protect,” *Global Responsibility to Protect*, I (2009), 10–21.

13. Report of the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa, 2001), 1; *Ibid.*, 8; Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C., 1996).

14. For a full accounting of his views, see Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, D.C., 2008).

15. Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc. A/59/2005 (New York, 2005), 34–35, paras. 132 and 135; *Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change* (New York, 2004), 65–66, paras. 199–203.

16. *In Larger Freedom*, 35, para. 135.

17. Luck, “Sovereignty,” 17–18.

18. International Peace Institute, the Office of the UN Special Adviser on the Prevention of Genocide, and the InterAfrica Group, *The Responsibility to Protect (RtoP) and Genocide Prevention in Africa* (New York, 2009), 12.

19. ICISS, *The Responsibility to Protect*, xii.

20. *Ibid.*, xiii.

21. *Ibid.*, xi.

22. UN, *Report of the Secretary-General on Implementing the Responsibility to Protect*, UN Doc. A/63/677 (New York, 2009), 5, para. 3.

23. See, for example, the remarks of Bernard Kouchner, in “Myanmar Faces Pressure to Allow Major Aid Effort,” *New York Times* (8 May 2008); Lloyd Axworthy and Allan Rock, “Responsibility to Protect? Yes,” *Globe and Mail* (9 May 2008); Ramesh

Thakur, "Should the UN Invoke the Responsibility to Protect?" *Globe and Mail* (8 May 2008); Ivo Daalder and Paul Stares, "The UN's Responsibility to Protect," *International Herald Tribune* (13 May 2008). For a balanced assessment, see Asia-Pacific Centre on the Responsibility to Protect, *Cyclone Nargis and the Responsibility to Protect*, Myanmar/Burma Briefing No. 2 (Brisbane, Australia, 2008).

24. Gareth Evans, "Facing Up to Our Responsibilities," *The Guardian* (12 May 2008).

25. Edward C. Luck, "International Disaster Assistance: Policy Options," briefing to the Subcommittee on International Development, Foreign Assistance, Economic Affairs and International Environmental Protection, U.S. Senate Committee on Foreign Relations, 17 June 2008.

26. ICISS, *The Responsibility to Protect*, vii.

27. UN, *2005 World Summit Outcome*, para. 139.

28. UN, *Implementing the Responsibility to Protect*, 2.

29. See, for example, address by the secretary-general in Berlin. See Secretary-General, "Secretary-General Defends, Clarifies 'Responsibility to Protect' at Berlin Event on 'Responsible Sovereignty: International Cooperation for a Changed World,'" UN Doc. SG/SM/11701, 2008.

30. ICISS, *The Responsibility to Protect*, 17.

31. *Ibid.*, xi; 39–45.

32. UN, *Implementing the Responsibility to Protect*, 10–14.

33. The United Nations Preventive Deployment Force (UNPREDEP) in the Former Yugoslav Republic of Macedonia (FYROM) is mentioned in the ICISS report as well.

34. UN, *Implementing the Responsibility to Protect*, 22–28.

35. Address by Secretary-General Kofi Annan in Portugal. See Secretary-General, "World Summit Achieved Concrete, Significant Gains in Human Rights, Rule of Law, Secretary-General Says in Address to Universidade Nova De Lisboa," UN Doc. SG/SM/10161, 2005.

36. ICISS, *The Responsibility to Protect*, 16–18.

37. Finnemore and Sikkink, "International Norm Dynamics," 903.

38. UN, *Implementing the Responsibility to Protect*, 5, para. 5.

39. *Ibid.*, 5–6, para. 6.

40. Secretary-General, "Upcoming Debate on Responsibility to Protect Not About History, but About Character of United Nations, Secretary-General Tells General Assembly," UN Doc. SG/SM/12374, 2009.

41. UN General Assembly, UN Doc. A/63/PV.101, 2009, 20.

42. For the statements that Venezuela and Cuba made, see UN General Assembly, UN Doc. A/63/PV. 99, 2009, 3–6; 21–23, respectively; for the statements that Iran, Nicaragua, and North Korea made, see UN General Assembly, UN Doc. A/63/PV.100, 2009, 10–11; 12–13; 17–18, respectively; and for the statement that the Sudan made, see UN General Assembly, UN Doc. A/63/PV.101, 2009, 10–11.

43. For a useful assessment of the debate by two active NGOs, see the Global Centre on the Responsibility to Protect, “Implementing the Responsibility to Protect, The 2009 General Assembly Debate: An Assessment” (2009), available at <http://globalr2p.org/media/pdf/Meeting%20Summary%20Reflections%20on%20the%20UN%20General%20Assembly%20debate%20on%20R2P.pdf> (accessed 21 January 2010); International Coalition on the Responsibility to Protect, “Report on the General Assembly Debate on the Responsibility to Protect,” (2009), available at <http://responsibilitytoprotect.org/ICRtoPGAdebate.pdf> (accessed 21 January 2010). Unfortunately, the major press stories, written before the debate, predicted that it would be divisive given the PGA’s negative stance.

44. “The Secretary-General has rightly noted in his report and presentation that the African Union is a pioneer in implementing the responsibility to protect due to its particular historical experience.” See UN General Assembly, UN Doc. A/63/PV.97, 2009, 6.

45. UN General Assembly, Sixty-third Session, Resolution 308, UN Doc. A/RES/63/308, 2009.

46. The 130-member Group of 77 developing countries, which the Sudan chaired in 2009, is focused more on economic matters.

47. They included Venezuela, Cuba, Nicaragua, Bolivia, and Ecuador. The other three were the Sudan, Syria, and Iran. See UN General Assembly, UN Doc. A/63/PV.105, 2009, 2–7.

48. Particularly impressive has been the work of the Asia-Pacific Centre for the Responsibility to Protect (www.r2pasiapacific.org), which has received substantial support from the Australian government.

49. See, for example, George W. Downs and Andrea Trento, “The Compliance Gap: Some Conceptual Issues,” in Edward C. Luck and Michael W. Doyle (eds.), *International Law and Organization: Closing the Compliance Gap* (Lanham, MD, 2004), 19–40.

50. Human Security Centre, *Human Security Report Brief 2006* (British Columbia, 2006), 14–15, available at www.humansecuritybrief.info/2006/contents/finalversion.pdf (accessed 21 January 2010); Conflict Data Program, Uppsala University, available at www.pcr.uu.se/research/UCDP/graphs/one-sided_fatalities_2007.pdf (accessed 21 January 2010).