

The responsibility to protect

The white man's burden?

The responsibility to protect

2005 World Summit Outcome paras 138-9.

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. ...

139. ... 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, ... 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.

The responsibility to protect

The responsibility to protect: UNSC Res 1674 (2006)

4. *Recalls* that deliberately targeting civilians and other protected persons as such in situations of armed conflict is a flagrant violation of international humanitarian law, *reiterates* its condemnation in the strongest terms of such practices, and *demands* that all parties immediately put an end to such practices;

5. *Reaffirms* the provisions of paragraphs 138 and 139 of the 2005 World Summit Document ...

The responsibility to protect

The provisions of paragraphs 138 and 139 of the Summit Outcome suggest that the responsibility to protect rests on the following three pillars:

Pillar one

The protection responsibilities of the State

Pillar two

International assistance and capacity-building

Pillar three

Timely and decisive response.

There is no set sequence to be followed from one pillar to another, nor is it assumed that one is more important than another. ... The State ... remains the bedrock of the responsibility to protect, the purpose of which is to build responsible sovereignty, not to undermine it. (*Implementing the responsibility to protect*. Report of the Secretary-General (UN Doc A/63/677, 12 January 2009)

The responsibility to protect

UN General Assembly debate 23-28 July 2009:
'The long-awaited General Assembly plenary debate on the Responsibility to Protect (RtoP) confirmed overwhelming government support for the historic norm approved at the September 2005 UN Summit. Government after government committed to improving international efforts to prevent and halt genocide, war crimes, crimes against humanity and ethnic cleansing.'
(International Coalition For The Responsibility To Protect (ICRtoP) media release 27 July 2009.

The responsibility to protect

Egypt (speaking for the NAM): [T]here were persistent mixed feelings about implementing the R2P principle, as well as concern about its possible abuse through the expansion of its application to include situations falling beyond the four areas defined in the 2005 World Summit Outcome.

India: [T]he discussions so far had left some delegations deeply disturbed. Perhaps it was a sign of the times that the debate continued to reveal both a sense of helplessness and deep intellectual acrimony in finding the political will to prevent the recurrence of the four identified crimes.

The responsibility to protect

‘Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.’

1. Are we all on the same page?
‘Protection’ vs ‘order’.
2. Conditional sovereignty.
3. Self determination

The responsibility to protect

‘[T]he responsibility to protect has always been the sovereign's obligation. It is not that a new principle has been introduced: rather, its terms have been radically altered. ... *Who* has the responsibility to protect *whom* under what conditions and toward *what end*?’ Mahmood Mamdani, *Saviours and Survivors: Darfur, Politics and the War on Terror* (2009) 276

‘The historical trajectory [reflected in WSO outcome] has been extremely fast.’

The responsibility to protect

1. Are we all on the same page? 'Protection' vs 'order'.
 - Lee Kwan Yew (1994): 'In the East the main object is to have a well ordered society so that everyone can have maximum enjoyment of his freedoms.' (1994) 73 *Foreign Affairs* 109, 111.
 - China's Human Rights Action Plan 2009-10: 'The Chinese Government ... expands citizens' *orderly* participation in political affairs at every level and in every field [emphasis added].

The responsibility to protect

2. Conditional sovereignty:

'These twin responsibilities spell nothing less than conditional sovereignty.' Anne-Marie Slaughter, 'Security, Solidarity and Sovereignty: the Grand Themes of UN Reform' (2005) 99 *AJIL* 619, 628.

'State sovereignty seems less sacrosanct today than in 1945. Richard Haass proposes a bumper sticker, "abuse it and lose it".' Thomas G Weiss, R2P after 9/11 and the World Summit (2006-7) 24 *Wis Int'l LJ* 741, 744.

The responsibility to protect

3. Self determination

'It is the great anti-colonial struggles and the anti-apartheid struggles that restored the human rights of populations across the developing world and therefore were the greatest application of responsibility to protect in world history. ...

The people have inalienable rights and are sovereign. The concept of sovereignty as responsibility either means this and therefore means nothing new or it means something without any foundation in international law, namely that a foreign agency can exercise this responsibility.' (Concept note on R2P by the President of the General Assembly, Miguel d'Escoto Brockmann, 17 July 2009)

'The state, after all, embodies the key political right of citizens, the right of collective self determination.' Mamdani 274

'The [SG's] report contained no analysis of the legitimate right of people to self-determination' (**Cuba**)