

The UN Doctrine on the Responsibility to Protect

*Can it be enforced to prevent wars, genocides and crimes
against humanity?*

South Lakeland & Lancaster City United Nations Association

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Shakespeare Centre, Kendal

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Introduction

Thank you Luckshan and South Lakeland & Lancaster City United Nations Association for inviting me to come and give a talk today. Its amazing how much good work is being done by your branch on a ongoing basis. It is a privilege to be among peace and human rights activist. You are thinkers and change makers, the driving force for social change in our world.

We are discussing a very important concept today of **Responsibility to Protect**. We will examine obstacles for its enforcements, what action we can be taken - for instance making Darfur as a test case. In conclusion we will explore what it will take to make R2P concept a reality enforceable under International law.

Responsibility to Protect Doctrine

Responsibility to Protect is a concept for intervention in a state by the international community (which preferably through the UN) for the prevention of genocide, ethnic cleansing, mass killings and human rights violations taking place, in a country which is unwilling (or unable) to stop it. At that time, the wider international community then has a collective responsibility to take whatever action is necessary to prevent it. It is central to human security in all its dimensions. It is crucial to building post-conflict societies, supporting the rule of law, multilateral and democratic institutions.

R2P is a intellectual breakthrough, a shift in politics, where more and more public opinion and governments are coming around the idea to the fact that something needs to be done to avoid genocide or mass killing if it is taking place in a country. The concept took 20 odd years to be formed after it was floated in the 1980s, initiated by Gareth Evans and endorsed by Kofi Annan in the 1990s, before being adopted as a concept by the UN's World Leader's Summit in 2005.

The summit endorsed the so-called "**Responsibility to Protect**", subsequently approved by the Security Council, establishing the principle that sovereignty of a country is not sacrosanct and that the Security Council should be prepared to act when countries either commit or fail to prevent genocide or crimes against humanity on their territories. It is a moral rather than a legal obligation. We will today explore how the international community can take actions to enforce it via the route of international Criminal Court, the UN Security Council, and citizen initiatives. At the end of the Q&A session, we will try to formulate a motion on R2P enforcement which can be passed on to the UNA UK for action.

Responsibility to Protect is a recently developed concept in international relations. It aims to provide a legal and ethical basis for "humanitarian intervention" : the intervention by external actors (preferably the international community through the UN) in a state that is unwilling or unable to fight genocide, massive killings and other massive human rights violations. The concept places a moral pressure on states to protect the human rights of people in countries other than their own. If a particular state is unwilling or unable to carry out its responsibility to prevent such abuses, that responsibility must be transferred to the international community, which will solve problems primarily via peaceful means (such as diplomatic pressure, dialogue, even sanctions), an expression of universal morality or, as a last resort, through the use of military force.

Some criticise the responsibility to protect as a form of "Western imperialism". Other says that it places too much emphasis on violence and does not address equally devastating cases of

famine and poverty. Many also question the focus on military interventions which can encourage governments to take unilateral military actions for their own agenda.

There are recent cases for intervention: Yugoslavia, Iraq, Somalia, Bosnia and Herzegovina, Rwanda, Kosovo and now Darfur, Sudan, which stand out as test cases for R2P.

In two recent cases, in 1999 and 2003, military action in Yugoslavia and Iraq was taken by a coalition of UN member states without UN support. These decisions were controversial, and whatever the moral implications have badly damaged the UN.

Thus, before intervention is mandated by the UN, it is necessary for the Security Council to establish the need for intervention, confirm the inability of the state concerned to co-operate, and satisfy its members that intervention would be legitimate. One decision already made by the Council is the importance of intervention in cases of genocide. This puts the onus on the Council to decide that genocide is occurring. In the case of Rwanda, in which a UN peace-keeping force was already present, the Council declined to support the allegation of genocide and thus refused to send reinforcements. This was an example where intervention should have been mandatory.

Each of these cases was different. Intervention in Somalia was approved by the UN, which appointed the US as its agent. This intervention failed to restore peace. In Bosnia UN forces had an inadequate mandate or forces; allowed to monitor the civil war by the Yugoslav government the UN commander was given barely a quarter of the forces he requested and the mission failed.

In Kosovo the determination of NATO commanders, led by US forces, took military action - although they had received no mandate from the Security Council. This resulted in the destruction of much of the Serbian infrastructure, including civilian casualties.

Before returning to the case for intervention in Darfur, I am going to outline obstacles for enforcement and what actions can be taken to implement R2P.

Obstacles for enforcement

The UN Charter prohibits to intervene in the domestic affairs of a state. Article 2, paragraph 7: "Nothing contained in the present charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."

The cumbersome process of the UN Security Council to take a decision as the ultimate authority to enforce resides with the five permanent members, which results in inactivity, indecision and long delays.

There is a need to persuade the Security Council to embrace specific guidelines for the legitimate use of military force, at least in the context of R2P, if not more generally. The Canadian Commission argued strongly that this was an integral part of the package: if we cannot get general agreement about which are the kinds of cases that clearly demand coercive military action, and which are those where the responsibility to protect should be exercised with less shattering effect, there is a risk that the R2P principle will be misused, and that such consensus around it as there is at the moment will evaporate. (In the minds of many, R2P was misused in Iraq by those arguing, in the absence of other plausible rationales, that Saddam's tyranny against his own people – particularly his large-scale violence against the Kurds and Shiites many years earlier – fully justified his military overthrow).

What is needed for the use of force for intervention^[3] – and the High Level Panel and Secretary-General have agreed – is the adoption of five basic ‘criteria of legitimacy’ to test the validity of any case made for a coercive humanitarian intervention. These criteria are, in short, the seriousness of the harm being threatened (which would need to involve large scale loss of life or ethnic cleansing, happening here and now and not in the distant past, to *prima facie* justify military action); the primary purpose of the proposed military action (to halt or avert harm); whether there were reasonably available peaceful alternatives; the proportionality of the response; and the balance of consequences – whether, overall, more good than harm would be done.

There will always be argument about how these criteria should be applied in particular situations. Darfur is a tricky case in point: there is no doubt about the scale of the catastrophe and the international community’s responsibility to help resolve it, but coercive military force applied without Khartoum’s agreement – in effect, an invasion – would almost certainly be counterproductive. It is reasonable to assume, however, that if agreed criteria had to be systematically addressed every time force was proposed, there would be a much better chance of consensus being reached in these cases, and less risk of the Security Council being bypassed.

Limited resources at the disposal of UN for the civilian, military and general logistical support makes it difficult for enforcement to work. We should solve the problem of *capacity*, ensuring that if we are to exercise the responsibility to protect, and in particular the responsibility to react to clear and present dangers, the required civilian and military resources are always available in the right amounts. In the case of military capacity, those countries with apparently massive resources are often preoccupied with battles and deployments elsewhere, or have the wrong kind of troop configurations and equipment to do the fast and flexible jobs most often required. Throughout Europe in particular, in country after country, the number of troops operationally deployable at any given time is a tiny percentage of the men and women in uniform. Elsewhere in the world, there may be no apparent shortage of boots able to go on the ground – but there will be issues of training, command, control and communications capability, transportability and general logistic support. Unless these problems are tackled, R2P will often be more theoretical than real.

Global arms trade (\$1300 billion) and continued sales of arms and other military hardware encourages violence, conflicts genocides and mass killings around the world. Government provided millions of dollars in military aid to military dictatorship and oppressive governments throughout the world, many of those countries now have appallingly high levels of armed violence. Countless victims of conflicts throughout the world from Latin America, to the Balkans to the Middle East, have a devastating effect that armed conflicts have on the civilian population particularly on women and children.

Last but not least, there is ever-recurring problem of generating the *political will* to act. For most countries this is hardest to find when military force is involved, even if the required capacity is there, but it is also needed to mobilize non-military coercive action like sanctions or bringing atrocity crime suspects before international criminal courts, and it is also a requirement even for utterly non-coercive preventive action, like targeted development assistance, which may nonetheless involve expensive resources and the commitment to apply them effectively. Finding the will to do anything hard, expensive or politically sensitive is just a given in public affairs, domestically or internationally. Its absence should be the occasion not for lamentation, but mobilization.

Actions for enforcement

Engaging civil society

Civil society organizations have assumed significant responsibilities for the protection of civilians through human rights monitoring, providing humanitarian assistance and peacebuilding, to name a few. Because R2P is an important element for the enhancement of these efforts, civil society organizations should endorse R2P and support efforts to raise awareness and acceptance of R2P.

What is now needed is for civil society to raise awareness about this historic commitment. Civil society organizations (CSOs) should seek to inform their governments, regional organizations and other inter-and non-governmental organizations about the endorsement of R2P at the 2005 world Summit. Engage government officials, national parliamentarians, regional and sub-regional organizations and parliamentarians to consider whether steps are being taken to incorporate these norms into strategies on human rights, peacebuilding, prevention of armed conflict and protection of civilians.

CSOs should also seek to engage in a strategy with other members of civil society to encourage the implementation of R2P principles at the national and regional level, and incorporate the R2P principles into their own work. The responsibility to protect principles should be invoked by civil society organizations in conflict-specific situation to hold their governments accountable for protecting populations within and beyond their own borders.

We need methods of gaining the confidence of civil society in the assessment of alternatives to war. The understanding of “intervention” should be widened to include methods of conflict prevention and resolution other than the use of military force. It is too easy for heads of state to assert that “all diplomatic avenues have been explored”. History shows that this is rarely the case. In both the Kosovo and the Iraq wars, it later emerged that the proponents of war rejected potentially hopeful back-channel diplomatic approaches.

How is it possible to ensure that R2P is not used to justify politically-motivated interventions or interventions conducted without international approval?

While R2P itself can't prevent unilateral actions, civil society and the public can use R2P as a standard against which to judge proposed actions. R2P is meant to act as a safeguard against unilateral intervention by states seeking to advance their status as global or regional powers by requiring that any response to large-scale threats to populations take the form of a collective response. R2P requires that the right authority approve any intervention. The UN, by its nature as a representative international body, is the principal institution to confer legitimacy upon any use of force. The Security Council is the principal organ to take on this responsibility, as it is charged with the maintenance of international peace and security. The Secretary General, the High-level Panel, the ICISS report^[4] and other supporters of R2P proposed additional criteria to serve as a threshold for military intervention. The just cause criterion requires that interventions for human protection purposes only occur to halt or avert large-scale loss of life, or large-scale ethnic cleansing. Other proposed criteria are that any interventions take place with the right intention, as a last resort, using proportional means and carrying reasonable prospects of success.

How can R2P be expected to prevent genocide and other massive crimes that are the result of a deeply-rooted problems in a society?

R2P is a norm that reconciles the needs and rights of the individual with the duties of the international community and the rights of the sovereign State. It is not considered a panacea to resolve the problems that lead to genocide or massive human rights violations. But as a new international commitment, along with the commitments to the Peacebuilding Commission, the Human Rights Council, the establishment of the International Criminal Court, the adoption of Security Council resolution 1325 on women, peace and security, and an array of regional initiatives to institutionalise prevention, peacekeeping and peace enforcement, R2P can enhance the ability of the international community to prevent and react to deadly conflict and secure peace.

For R2P to succeed, we should protect core values of life - freedom, equality, tolerance and multiculturalism – for living and working together in peace and harmony. However different we may think we are, according to the human genome, our DNA is 99.9% the same for short, tall, fat and thin people of any race, colour and language. All human beings are genetically the same so why are we obsessed with our identity? So in medical terms, Hindi-Muslim, Israelis-Palestinians, and Hutus-Tutsis, have the same identical DNA.

The example of East European countries freeing themselves from the yoke of the Soviet Union and Communism is a classic example of citizen actions coming to fruition. In this case, the leader of the Soviet Union, Michael Gorbachev, did not send the troops to quell the rebellion. In other words, his silence and inaction became a catalyst for the independence of Eastern European states. One could argue that he got the Nobel Peace Prize for remaining silent.

Another example to consider is the pending prosecution by the International Criminal Court of Charles Taylor, deposed leader of Liberia. He was a prominent warlord in the Liberian Civil War in the early 1990s, was elected president, and then forced into exile. It transpired after the concerted campaign to catch him by the international community, he now faces trial for perpetrating crimes against humanity to his own people.

For R2P to function, we need to achieve clarification on the following rules of war:

- the legal limits on the UN Security Council authorize to launch armed intervention
- the scope of application of the concept of genocide and responsibility to protect
- how far politicians, officials and citizens can be held legally responsible for violations of international humanitarian law
- how international and domestic law can deal with wars of aggression

Darfur and R2P

Pressure on the UN to act is understandably very strong where the civilian population is suffering from internal strife in states where the government is unable or unwilling to change its policies as is the case in Darfur, where after 3 years, an estimated 300,000 are dead and it is unclear when the UN force will be sent and who will enforce the peace in Darfur.

As the Nobel Peace Prize winner, Bishop Desmond Tutu said on the Global Day for Darfur:

"From Cape Town to London, Moscow to New York, concerned citizens are asking why the UN Security Council's resolutions on Darfur have yet to be enforced.

"We are still waiting for a no-fly zone, targeted sanctions against the architects of the genocide, and referrals to the International War Crimes Tribunal.

"No wonder the Khartoum regime doubts the resolve of the international community, and dares to deny UN peacekeepers' access to Darfur,"

The problem is with the structure of the United Nations which does not foster quick and decisive responses. Vetoes by the permanent members of the Security Council—or even threats of vetoes—can undermine effective international action. Bureaucratic hurdles and diplomatic negotiations can be time-consuming, making it difficult to respond to rapidly unfolding events. More generally, any form of international coercion is usually diplomatically and politically costly, creating a strong incentive for international actors to avoid difficult measures. The international response to the crisis in Darfur is illustrative. China, which has ties to the Sudanese government and enjoys a permanent seat on the Security Council, was reported to have opposed coercive measures like sanctions.^[5] The first Security Council resolution that took any direct action against the perpetrators of human rights abuses was not passed until March 29, 2005, two years after the violence began. Even today, ethnically targeted violence and a 'culture of impunity' continue in Darfur.^[6]

Agreement this August, has been reached by which Security Council finally authorised UNIMIS to deploy peacekeepers in Darfur, but categorically rejected by the Sudanese government.

So we find ourselves in a difficult situation where innocent civilians are being killed and large-scale genocide is unfolding in one hand, and the international community is unable to enforce R2P. Diplomatic channels, mediation and other tools have not been effective to stop violence. So what are the ways open to us to stop the bloodshed.

- a) Strengthen the African Union peacekeepers. The problem is that they are there and not effective.
- b) Send the UN peacekeepers without permission of the Sudanese government. This is being discussed but no decision has been taken.
- c) Refer the Sudanese government to International Criminal Court (ICC), charged with crimes against humanity. The problem with this is the duration of time while the killings continue.
- d) Use of force and resorting to military action. It could stop the killings quickly and effectively. However, without the agreement of Khartoum, it may be counterproductive.
- e) Bring all parties, Sudan neighbour's, African countries, 5 permanent members of the Security Council, government and rebels, to have a dialogue and find a solution. This should be a catalyst for a non-violent, solution. However, the problem is who will initiate this process and how long will it take?

Conclusion

So the concept of R2P is morally sound, accepted by the international community, but hard to enforce. R2P concept is a challenge for civil society and the broader peace movement. Our responsibility is to ensure that genocides and wars against humanity do not occur and if they do, how can we respond quickly and effectively to stop killings, torture and rapes.

A small group of dissenters continues to express concern that powerful countries will use R2P as a pretence for military intervention.

Although the UN Summit Outcome Document includes a reference to the need for the General Assembly to continue considering R2P and its implications, currently there is no formal inter-governmental process to implement R2P at the UN. In April 2006, the Security Council “reaffirm[ed]” the World Summit Outcome Document provisions “regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” in Resolution 1674 on the protection of civilians in armed conflict. In the Summit Outcome Document, world leaders affirmed that the international community is prepared to take action through the Security Council in a timely and decisive manner on a case by case basis when states are manifestly failing to protect their populations. Resolution 1674 signifies that the Security Council has accepted this role. Further discussions are still needed to determine how R2P will be put into practice, particularly to determine when R2P should apply and what measures should be used.

Part of the task here must be to generate much more widespread understanding and support for the responsibility to protect concept itself. It is becoming known by policymakers and those in the media and elsewhere who influence them. But R2P is not yet a household term anywhere in the world – and it needs to become one everywhere. We have to get to the point where, when the next conscience-shocking mass human rights violation comes along, the reflex response, of both governments and publics around the world, is to find reasons to act, not reasons to pretend it is none of our business. And that means some sustained campaigning by all those of us who take seriously - as we must, despite all the backsliding case after case – the battle cry ‘never again!’ Our common humanity demands that the responsibility to protect be a permanent item on the global security agenda – as a matter not just of principle but of operational practice.

We have to believe that every person has dignity and deserves a chance, that we all do better when we work together, that our differences are interesting but our common humanity matters more, and then we have to turn this set of lofty ideas into action in a world that is profoundly divided, not just as we see it, over our political and religious differences, but divided in fact.

We are all gathered here today who are visionary and agents of change what I call next generation people. Similar meetings were held in the long past when ideas of uprooting slavery, abolishing apartheid, independence from former colonies were discussed. Today we are in a situation where slavery is abolished, apartheid is not more and most of the former colonies are independent states. If that can be done, then surely we can make a breakthrough for the R2P concept to become a new rule of customary international law and enforceable.

Thank you for listening.

For the report, The Responsibility to Protect, please visit <http://www.iciss.ca>

For R2PCS documents, please visit <http://www.responsibilitytoprotect.org/documents>

For further information please visit:

Action for UN Renewal

www.action-for-un-renewal.org.uk

VM Centre for Peace

www.vmpeace.org

Vijay Mehta is president of VM Centre for Peace, Founding Trustee of Fortune Forum Charity, Chair of Action for UN Renewal, and co-Chair of World Disarmament Campaign. He is an author and global activist for peace, development, human rights and the environment. Some of his notable books are The Fortune Forum Summit: For a Sustainable Future, Arms No More, and The United Nations and Its Future in the 21st Century. He is also a member of the national CND Council.

He along with his daughter Renu Mehta founder of Fortune Forum charity (www.fortuneforum.org) held two summits in London in 2006 and 2007. The summits raised over a million pounds for charity and attracted a worldwide audience of 1.3 billion people (one fifth of humanity) including print and media coverage. The keynote speakers for the first and second summit were Bill Clinton, former US President and Al Gore, former US vice-President, and recipient of the Nobel Peace Prize 2007.

Vijay Mehta has appeared in various TV programmes including BBC World, Press TV, Ajtak-24 hour Indian news channel, and Think Peace documentary, Canada, among others. The Independent, Observer and Guardian newspapers, among other journals have written about him. His life is devoted to the service of peace, humanity and our planet.

He has written a book called 'Climate Change 365,' which will be soon available to download free of charge in electronic form from the website www.climatechange365.eu.

^[1] Vijay Mehta, 'The Fortune Forum Code: For a Sustainable Future,' (VM Centre for Peace, 2006), p.26

^[2] This is part of a speech by Vijay Mehta – "UN Institutional Reforms:," 26 June 2006, World Peace Forum, Vancouver, Canada. www.vmpeace.org

^[3] Gareth Evans, "The Responsibility Protect: Unfinished Business" 17 July 2006, www.crisisgroup.org

^[4] International Commission on Intervention and State Sovereignty. ICISS was an ad hoc commission which in 2001 worked to popularise the concept of humanitarian intervention under the name of "Responsibility to protect."

^[5] Sudan Warns Against Intervention, BBC NEWS, July 27, 2004, <http://news.bbc.co.uk/2/hi/africa/3931411.stm>.

^[6] Jonah Fisher, "Culture of Impunity" in Darfur, BBC NEWS, Sept. 26, 2005, <http://news.bbc.co.uk/2/hi/africa/4283956.stm> (quoting Juan Mendez, U.N. Special Advisor on Genocide).