



## The Responsibility to Protect: Growing Pains or Early Promise? [Full Text]

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Edward C. Luck

The ever-expanding literature on the responsibility to protect (RtoP) could now fill a small library. The number of graduate theses alone devoted to the topic has been nothing less than staggering. RtoP's contribution to both conceptual thought and policy planning concerning how to prevent genocide and other mass atrocities, therefore, is beyond question. But RtoP was not envisioned as an academic or planning exercise. Nine years after the principle was first articulated by the independent International Commission on Intervention and State Sovereignty (ICISS) and five years after it was refined and adopted by the 2005 World Summit,<sup>1</sup> some are beginning to ask whether, where, and how the concept has made a difference in terms of international and state policy and, more important, in terms of preventing such horrific crimes in the first place. Understandably, many of these early assessments are skeptical. As the official charged with developing the conceptual, political, and institutional elements of RtoP for United Nations Secretary-General Ban Ki-moon, I have followed this growing assessment literature with keen attention. One of the more thoughtful and constructive contributions to this genre appeared in a recent volume of this journal.<sup>2</sup> In "The Responsibility to Protect—Five Years On," Alex J. Bellamy provides a balanced, cogent, and—as the following suggests—provocative analysis of the strengths and weaknesses of RtoP as a policy tool.

Professor Bellamy, the author of one of the better books on RtoP,<sup>3</sup> comments on a series of humanitarian crises since 2005 in which he believes RtoP was either used too little (Somalia), used ineffectively (Darfur), or employed effectively (Kenya). He draws useful lessons from each. Such comparative studies remind us that the ability of RtoP to deliver has been (and will continue to be) mixed. There is no dispute about that. They also demonstrate, however, that it is a bit early in young life to judge what it will be when it grows up as a mature policy tool. There is reason to question, as well, whether Somalia and Darfur are the best tests of RtoP's potential.

None of these situations can be understood only through an RtoP lens. In Somalia, establishing viable governance and reestablishing state control over the country's territory have both been first-order goals of the international community. Without functioning governance, no one can be held fully responsible or accountable for the assaults on civilians. In cases of extreme state fragility and long-running armed conflict, the resolution of the underlying conflict may be a prerequisite for fully achieving RtoP goals. Integrating RtoP and genocide prevention perspectives into policy-making in such situations—whether in terms of peacemaking, peacekeeping, or post-conflict peacebuilding—may be critical to furthering human protection goals. But, as Professor Bellamy recognizes, these perspectives cannot offer magical solutions to stubborn and deeply entrenched political, economic, and security problems. Nor will they, or should they, be the sole basis for policy choices.

The prevention and resolution of armed conflict poses one set of policy challenges, the prevention and curbing of atrocity crimes a distinct but related one. Though these goals are often mutually reinforcing, that is not always the case. Both their distinct and overlapping dimensions should be borne in mind by scholars and practitioners concerned with better policy choices and outcomes. In the months leading to the Rwanda genocide in 1994, for instance, the premium was placed on conflict resolution, as policy-makers in capitals and at the UN ignored the inconvenient warnings of looming genocide. Recent research by Lisa Hultman has found that, historically, the deployment of peacekeepers to situations of ongoing armed conflict has been associated with increasing levels of violence by rebel groups against civilians. More encouragingly, however, when such operations have had an explicit mandate to protect civilians, the incidence of such violence by rebel groups against civilians has actually decreased—that is, the mandates have made a positive difference. Much seems to depend, she suggests, on how each side of the conflict calculates how the arrival of international peacekeepers will affect its power position in the end game and whether attacks on civilians will boost its bargaining position.<sup>4</sup> It should be recognized, as well, that sometimes RtoP crimes are directly associated with armed conflict, but sometimes they are not, as in Kyrgyzstan, Cambodia, and the Holocaust.

In none of Bellamy's cases are the governments the only parties of concern, though international inquiries and the International Criminal Court have found the government in Khartoum to have been responsible for the worst atrocities in Darfur. As the secretary-general's RtoP strategy recognizes—and earlier state-centric versions of RtoP did not—states are not the only actors that commit such mass crimes.<sup>5</sup> If armed groups control territory, as in parts of the Democratic Republic of the Congo (DRC), then they should also be expected to bear a parallel responsibility to protect populations within that territory. As the secretary-general has pointed out, in Sierra Leone international military assistance to the government was required to defeat rebel groups that were committing crimes against humanity. And, as he reminded the Security Council in August of this year, the mass rapes in eastern DRC—surely another crime against humanity—pose a brutal challenge to our "collective responsibility" to protect civilians in conflict zones.<sup>6</sup>

Only one of the situations addressed by Bellamy—Kenya—erupted after the 2005 World Summit adopted RtoP. The worst violence occurred in Darfur before either the World Summit embraced RtoP or the Security Council made protection of civilians a key element of the peacekeeping mandate there. It is a stretch to expect a principle to address successfully violence that raged long before it was accepted by member state governments, much less embodied in international policies and processes. Even in the case of post-election violence in Kenya, the United Nations decided in early 2008 to try to apply RtoP principles to the situation, even though it had not yet developed dedicated machinery for addressing such situations properly. As Professor Bellamy underscores, the ongoing effort to create a joint office on genocide prevention and the promotion of the responsibility to protect at the United Nations offers some promise of an earlier, more coherent, and more

consistent effort across the UN system to address such crimes and violations in the future.<sup>7</sup> But so far there is more promise than practice. Moreover, of these cases, only Kenya, as Professor Bellamy readily acknowledges, was chiefly a matter of prevention, the centerpiece of both the 2005 Summit and Secretary-General Ban's RtoP strategy. The latter calls for an early and flexible response tailored to the circumstances of each situation, but its clear preference is for preventive action—both structural and operational—so that a response to "the manifest failure to protect," to use the words of paragraph 139 of the 2005 Outcome Document, is not necessary.

### Prevention and Response

Prevention, unfortunately, does not always work. A strategy for advancing RtoP principles cannot be considered viable and sustainable unless it also includes ways the responsibility to protect of generating the will and capacity to respond effectively to the failure to prevent. That is why the third pillar of the secretary-general's strategy—response—is every bit as integral and essential as the first two, which largely address means of prevention, by the state and with the assistance of the international community, respectively. The dividing lines between prevention and response are not always neatly and clearly drawn. In Kenya, structural prevention failed, and the postelection violence escalated quickly in some parts of the country. For the United Nations and the rest of the international community, including, importantly, for Kofi Annan's determined mediation on behalf of the African Union, the goal could be no more than preventing the bad from becoming even worse. Yes, it was prevention, but hardly of an ideal sort.

The United Nations, therefore, places a premium on upstream structural prevention, that is, on helping to build the institutions, values, attitudes, policies, and practices that make the commission of any of the four specific crimes associated with the right to protect—genocide, war crimes, ethnic cleansing, and crimes against humanity—completely unacceptable in a given society. The ultimate goal is for states, societies, and peoples to internalize RtoP principles into their very conceptions of the nature of the state and its obligations to the populations within its territory (as well as to others in wartime). As Professor Bellamy puts it, this "long-term agenda" necessarily "involves changing cultures and identities" (p. 164). Preferably, this occurs from within, with a minimum of external pressure or assistance. As he also properly points out, "the further upstream we go in terms of structural prevention, the more difficult it is to demonstrate RtoP's impact" (p. 164). Fair enough, but our first purpose must remain preventing such horrendous crimes, not proving RtoP's worth, however frustrating that may be for hard-core advocates and political scientists alike. What we do need to get a firmer grip on, in any case, is what works in terms of structural prevention and why. This requires the help of scholars and policy analysts. We need more detailed case studies, more candid lessons-learned exercises, and more trans-regional comparisons of what did and did not work, under what conditions, how and why, in different circumstances. Fortunately, the breadth and depth of scholarship now under won the responsibility to protect offers real promise of more precise, differentiated, and authoritative clues to good policy over time.

The hardest questions about the value of the responsibility to protect as a policy tool have revolved around its utility in spurring and shaping an effective response, not in encouraging preventive measures. Here, looking at an array of cases, as Professor Bellamy has, can be both sobering and instructive. On the one hand, RtoP is a universal principle, applicable in all places, all of the time. It should apply equally to rich countries and to poor ones, to powerful states and to fragile ones, to the smallest country in the General Assembly and to the permanent members of the Security Council. Likewise, as adopted by the 2005 World Summit, the responsibility to protect covers any incidence of any of the four crimes and violations, not just the most egregious ones.

On the other hand, while principles are universal, the application of policy measures is necessarily somewhat selective. Policy involves making choices among imperfect options. The intergovernmental bodies charged with making the toughest choices about how and when to respond—whether the Security Council or the General Assembly or the Peace and Security Council of the African Union—are (and are supposed to be) intrinsically political bodies. They do not apply guidelines, standards, or templates in wholly predictable or consistent ways. Politics and national preferences play a part. So do perceptions of what is feasible. It would be safe to assume, for example, that some members of the Security Council would be reluctant to invoke the responsibility to protect in situations where they perceive little chance of enforcing that responsibility, as in Somalia. Others, however, might see a hortatory value in reminding the parties to even the most intransigent of conflicts of their responsibilities to their populations, as did Ahmedou Ould-Abdallah when he served as the secretary-general's Special Representative for Somalia. He made parallel appeals to the Security Council and to the U.S. Congress as well.<sup>8</sup>

International secretariats are pledged to apply international standards and norms impartially, above the preferences of any given member state or group of states. But they, too, have to set priorities and make choices. This is particularly true in these early stages as RtoP is getting established as a policy practice, and not just a slogan. There are, sadly, simply too many RtoP crimes being committed in too many places to address all of them simultaneously or equally effectively. A war crime, for example, may be an individual and isolated act. As a general rule, the focus of secretariats and intergovernmental bodies alike will tend to gravitate to the places where the risk of a rapid escalation to mass violence is perceived to be the most acute and/or where the chances of making a positive difference appear highest. For both reasons, international attention was drawn to the widespread violence and apparent acts of ethnic cleansing in southern Kyrgyzstan in June 2010.<sup>9</sup> Again, of the cases selected for Bellamy's analysis, only in Kenya were the chances both of escalation and of making a difference seen as high. the responsibility to protect

At first glance, Professor Bellamy's comparative assessment seems to confirm the obvious: that the responsibility to protect has been markedly more successful in the easier cases than in the harder ones. That would be circular reasoning, however, based on the assumption that if we can do something, it must be easy, and if we cannot, then it must be very difficult. But people and institutions can learn to do challenging things. With sufficient effort, determination, planning, tools, and expertise, extraordinary things are sometimes achieved. The price and opportunity costs may be dear, however. On the other hand, short-term successes may not be sustainable, given the substantial recidivism of both conflict and atrocity crimes. This is why the secretary-general's RtoP strategy places as great an emphasis on post-conflict peacebuilding as on peacekeeping.

### Politics and Costs

These observations bring us to the core questions of costs—short- and long-term— and of politics, of both the domestic and international varieties. Have the costs of committing RtoP crimes or of failing to act in the face of such mass atrocities risen since 2005? Have the costs of responding or of taking preventive action been affected one way or the other? Have perceptions of the relative value and costs of prevention versus response been altered in any observable way? Are political values and priorities evolving on these matters as a result of the 2005 commitments and of the subsequent efforts to clarify both the conceptual and operational aspects of the responsibility to protect? Are perceptions of legitimacy regarding these matters evolving as well?

Professor Bellamy provides a mixed answer, based on a somewhat different formulation of these questions. He correctly associates RtoP's "policy agenda" with prevention more than response (p. 163). From that perspective, he contends that "the key long-term test is whether there are fewer cases of mass killing to respond to." I could not agree more. Moreover, he notes that "the period since the adoption of the RtoP has been associated with a general decline in mass atrocities. But we cannot conclude that RtoP *caused* this effect, because each of the trends was evident prior to 2005." I would not suggest otherwise, as there are far too many factors and variables involved to make any cause-and-effect assumptions, especially at such an early date. Nor is there any guarantee that these encouraging trends will be sustained in the future.

Indeed, RtoP has been the product of, as much as the catalyst for, changing attitudes and priorities. The 2005 endorsement of RtoP would have been unimaginable in 1985, 1995, or even 2000. Questions of human security—whether phrased in terms of sexual violence, children and armed conflict, the protection of civilians, or even terrorism—had been moving to the forefront of international attention and political priorities for a decade or more. Human rights and humanitarian affairs had followed similar political paths years before. Their experiences in that regard remain relevant, reminding us of the value of both optimism and patience. Riding on these human security waves, the endorsement of RtoP in 2005 reflected how much political, social, and security values had already changed.

Of course, resistance to operationalizing RtoP remains, but it appears to be a receding impulse, judging by the 2009 debate and 2010 dialogue in the General Assembly. Relatively few delegations voiced doubts about the way forward outlined in the secretary-general's comprehensive 2009 report, and even fewer questioned the proposals on early warning and assessment—traditionally controversial issues around the UN—in his 2010 report on those matters. Concerns about selectivity in RtoP's application by the Security Council and about possible misuse by powerful member states, however, are more persistent.<sup>10</sup> On balance, the tide of legitimacy continues to rise in RtoP's favor, whether despite or because of the slow pace of implementation. In 2009 the General Assembly addressed the secretary-general's strategy in a frontal and largely productive way and then adopted—by consensus—its first resolution on RtoP. Since then its "continuing consideration" of RtoP has moved on to early warning and assessment in 2010, and next will address regional and subregional arrangements in 2011.<sup>11</sup>

Piece by piece, the puzzle of RtoP as international policy is being assembled. The 2009 report of the secretary-general provides an overarching strategy and a skeletal policy framework for moving forward, but few of the instrumental and institutional pieces are yet in place for making its proposals fully operational. As Professor Bellamy asserts, "if national, regional, and global institutions support the behaviors and build the capacities envisaged by the UN secretary-general, it will be easier and less costly to prevent and respond effectively to genocide and mass atrocities" (p. 166). Unilateral abuse of the concept will become less acceptable and, hopefully, less frequent as multilateral options for implementing RtoP principles become better established and more credible. Here, Professor Bellamy finds comfort in the cases of Myanmar and Georgia, in which powerful countries sought to invoke RtoP under what he deemed inappropriate circumstances. These cases the responsibility to protect confirmed, in his view, that "while great powers might be tempted to pursue this course, RtoP does not confer automatic legitimacy on coercive interference in the event of a political or humanitarian crisis. This would seem to suggest that fears about RtoP being used as a Trojan horse are unwarranted" (p. 152). Likewise, as the political costs of acting appropriately decline, the domestic and international costs of doing nothing in the face of atrocity should rise. But, like so many other big ideas at the consensus-driven United Nations, putting the pieces together is slow and often tedious work. The sluggish pace of norm-building contrasts unfavorably with the rapidity with which mass atrocities can unfold. Maintaining the enthusiasm of publics, parliaments, and policy-makers through these extended processes will be a challenging task, especially if there are conspicuous failures to act to halt unfolding major atrocities during this formative phase.

## Functions

In that regard, Professor Bellamy draws an overly sharp distinction between what he sees as RtoP's two chief functions, which in his view "are not complementary." The first—where he believes RtoP can and will make a difference—is the "political commitment to prevent and halt genocide and mass atrocities accompanied by a policy agenda in need of implementation" (p. 158). In other words, when the summit-level commitments of 2005 are matched with the comprehensive strategy laid out by the secretary-general in 2009, the combination has the potential to make a real difference if member states utilize both the words and the tools faithfully and appropriately. Implementation will not be automatic, of course, but a sustained and broad-based effort at the United Nations and key regional bodies, backed by a sturdier political will in capitals, could make a difference. A virtuous cycle of peer pressure, public expectations, learning, training, and internalization could follow, as it has to some extent in the General Assembly's RtoP discourse.

The prevention of genocide, war crimes, and crimes against humanity has long been solidly anchored in international law. RtoP adds little in that respect. But the reaffirmation and recommitment embodied in the 2005 World Summit Outcome Document add a universal and high-level political dimension that the struggle against genocide has sorely lacked over the past six decades. Likewise, the reports and strategies of the secretary-general, as well as the vigorous debates they have triggered in the General Assembly, offer a detailed and relatively coherent way forward. They embody, in short, Professor Bellamy's "policy agenda." In contrast, the UN's genocide prevention efforts, though more embedded bureaucratically, were never tested through the crucible of a series of reports by the secretary-general and debates in the General Assembly. The next step, according to both the secretary-general and Professor Bellamy, is to integrate and strengthen these twin mandates through the establishment of a joint office on the prevention of genocide and the promotion of the responsibility to protect. To some extent, this step was foreshadowed by the decision by the heads of state and government in 2005 to

include the paragraph supporting the work of the Special Adviser on the Prevention of Genocide in the RtoP section of the Outcome Document.

This brings us back to Professor Bellamy's second, and less favored, function for RtoP: as a "speech act and catalyst for action." In his view, "one cannot sustain a commitment to the long-term prevention of genocide and mass atrocities as part of RtoP while also conceptualizing RtoP as primarily a speech act that acts as a catalyst for action" (p. 160). True, each of the two approaches cannot be simultaneously embraced as the primary function of RtoP. But on an operational plane, these two functions need not be incompatible, if pursued in reasonable proportions and if it is understood that a call to action does not necessarily refer to military or coercive action. Bellamy is right to reject claims that the mere invocation of the RtoP mantra would be sufficient to spur political will and to end interethnic violence in any but the most favorable circumstances. As noted earlier, neither recent history nor common logic would support such sweeping claims. Stopping such horrendous crimes is not going to be so quick or so easy. These are calculated, not random, events. Those inciting and organizing them will not be dissuaded by moral or legal appeals alone.

On the other hand, Bellamy surely does not intend to denigrate either quiet or public diplomacy as an instrument of public policy. Historically, private and public messaging has been one of the handiest and most effective tools available to the secretary-general and other global and regional leaders. Public communications may help to persuade actors to meet their RtoP commitments, while private reminders that impunity is not what it used to be may help to discourage the incitement, commission, or escalation of such crimes. The latter appears to have made a difference in Cote d'Ivoire, Kenya, and Guinea. Whether the former will prove effective in helping to staunch further violence in Kyrgyzstan remains to be seen. In theory, the RtoP tool kit appears quite extensive, but in practice in specific situations the number of available and useful tools is likely to be much more limited. If speech acts are not founded on a realistic possibility that they will the responsibility to protect be backed up, if necessary, by other measures, then they will ring hollow and lose credibility.

Conversely, if more robust steps, such as coercive measures by the Security Council under Chapter VII of the UN Charter, are not preceded by efforts at persuasion through private and public diplomacy, then they would be less likely to have the kind of broad public and political support to make them both sustainable and effective. Besides, paragraph 139 of the 2005 Outcome Document underscores that such "collective action, in a timely and decisive manner," is to be considered by the Security Council when "peaceful means [are] inadequate and national authorities manifestly fail to protect their populations" from the four specified crimes and violations. It is hard to envision a situation in which hard measures under Chapter VII would be employed without earlier recourse to private and public diplomacy. Effective strategies have multiple components. Different tactics and tools may be employed either sequentially at various stages of a crisis or by distinct actors—the Security Council, General Assembly, secretary-general, regional or subregional organizations, influential governments, neighbors, transnational NGOs, or local civil society and parliamentarians—at the same time. The relationship between the policy and messaging functions identified by Professor Bellamy, therefore, can be much more symbiotic, dynamic, and mutually reinforcing than those who still claim that RtoP is just a more genteel phrase for military intervention would care to admit.

### **Norms, Expectations, and Compliance Pull**

Though he does not put it in quite such bald terms, Professor Bellamy, like any number of other scholars and analysts, at heart appears to object to RtoP as a "speech act" out of an understandable concern that member states and international officials will, when push comes to shove, give little more than lip service to the principle. This is a recurrent worry for practitioners as well. As he phrases it, "this persistent gap between what is needed and what is delivered cannot be primarily ascribed to the situation's complexity, but instead reflects the limited extent to which RtoP has the capacity to generate 'compliance pull' in international society" (pp. 153–54). However, surely it is not a question of whether the invocation of RtoP exerts no pull, as the very political opposition (as well as enthusiasm) the concept generates speaks to the widespread perception of its potency as a political rallying cry. Nor could one credibly assert that it exerts sufficient compliance pull as to ensure either consistent compliance with RtoP principles around the world or effective response to breaches when they do occur. The road to full implementation remains both long and steep. So how full or empty is the RtoP glass? More to the point, is the level rising or falling when it comes to RtoP's compliance pull?

This author, naturally, tends to see the glass, though less than half full at this point, filling slowly and unevenly. As Professor Bellamy's assessment implies, the secretary-general's strategy and the initial steps he is taking to operationalize RtoP are meant, in part, to provide further sustenance and sustainability to this larger enterprise. The annual reports and dialogues in the General Assembly, discussed above, are one means of trying to keep the issue on the minds of policy-makers in capitals and of diplomats in New York. The lively academic discourse and the dedicated efforts of NGOs, such as the Global Centre for the Responsibility to Protect, the International Coalition for the Responsibility to Protect, and the Asia-Pacific Centre for the Responsibility to Protect, both reflect and encourage the continuing interest in civil society to move RtoP from words to deeds. What is most needed, of course, are more cases where RtoP and the UN's new tools are both invoked and make a demonstrable, positive difference on the ground and in people's lives. Political will is not a given or static quantity. It can be built or destroyed by actions over time.

Here, expectations matter. RtoP is particularly susceptible to the best-being-the-enemy-of-the-good syndrome. If we expected norms, standards, and principles to be respected and implemented at all places, all of the time, then we would not have any. The bar would be too high. Generally, if pursued with some vigor and consistency, compliance tends to expand and deepen over time, as has been the case with human rights and humanitarian norms. Moreover, the most consequential standards and norms have important aspirational qualities, as goals of behavior to be emulated and attained over time. If they simply described current behavior, they would add little of consequence.

In terms of expectations, Professor Bellamy's lucid discussion of "RtoP as a norm" (pp. 160–62) does not travel well from the realm of political science to the realm of politics, though he usually manages to straddle this fault line better than most. Drawing from Martha Finnemore and Kathryn Sikkink, he posits that norms "are shared expectations of appropriate behavior for actors with a given identity" (p. 160).<sup>12</sup> By that definition, RtoP would surely qualify as a norm. In intergovernmental discourse, however, norms are to have a binding legal quality the responsibility to protect that RtoP lacks, though some of its component parts, like genocide prevention, do not.<sup>13</sup> Definition aside, Professor Bellamy raises two more consequential

questions related to the normative character of RtoP. One, he asks whether the second and third pillars of the secretary-general's strategy, on international assistance to the state and on an international response to the manifest failure to protect, respectively, should be "properly called norms" (p. 161). Two, in casting doubt on such a claim, he contends that they exert insufficient compliance pull because "they are weakened by the problem of indeterminacy" (p. 161). Each of these assertions bears closer scrutiny.

To this author, at least, to test whether the second and third pillars are norms—even in political science terms—is to raise something of a straw man. The secretary-general's strategy aims to be just that, a hopefully integrated and coherent set of ideas for implementing the RtoP norms, principles, or standards adopted by the heads of state and government in 2005. It does not seek to add new norms or standards to the ambitious ones that had been agreed at that point. The strategy draws faithfully and diligently from the 2005 consensus text. The most unequivocal RtoP statement of that document comes in paragraph 138, where the world leaders, referring to the responsibility of "each individual state" to protect populations by preventing the four crimes or their incitement, assert that "we accept that responsibility and will act in accordance with it." This is unambiguous and unconditional. On the other hand, the international community "should, as appropriate, encourage and help States to exercise their responsibility" (paragraph 138) and "also has the responsibility" to use appropriate means under Chapters VI and VIII of the UN Charter "to help protect populations" from these crimes (paragraph 139). They are "prepared to take collective action, in a timely and decisive manner, through the Security Council" under the conditions noted earlier (paragraph 139). The international commitment is to help and, in certain circumstances, to act collectively.

Even if that collective action is to be "timely and decisive," it is to be decided through a political process in the Security Council (or, less frequently, the General Assembly). Pacific measures may be taken by the secretary-general under Chapter VI, or regional arrangements may act under Chapter VIII of the Charter. There is no pre-commitment to take coercive enforcement action, no automaticity or rigid template demanding a particular course of action on this or any other nonprocedural matter before the Security Council. That conception of the Council's role was rejected at the UN's founding conference in San Francisco in 1945, as well as through more than six decades of practice since.

The wording of paragraph 139 imposes an obligation on the international community to consider a range of possible actions to help protect populations and to respond to cases of manifest failure to protect. However, it does not, and cannot, require a successful outcome. For one thing, there is no certain way of knowing beforehand which course of action will make the most positive difference. This is not a science. Outcomes are not pre-ordained. And these dilemmas are hardly new. States parties have long had obligations under the 1948 Convention on the Prevention and Punishment of Genocide. Interestingly, the International Court of Justice (ICJ), in its 2007 judgment in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, found that states parties have a duty "to employ all measures reasonably available to them so as to prevent genocide as far as possible." According to the ICJ, "the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide."<sup>14</sup> This obligation to try falls most heavily on the fifteen members of the Security Council and on others with a capacity to make a positive difference.<sup>15</sup> The ICJ asked whether Serbian authorities had exercised "due diligence" in terms of the massacre at Srebrenica, and determined that they had not.<sup>16</sup>

At times, UN-authorized force may be justified as part of a "timely and decisive" response. At times, it may be the only way to prevent further bloodletting. But it hardly qualifies as the cure-all some would want it to be. Like other policy tools, military interventions for humanitarian purposes do not always succeed in saving lives or in sticking to their humanitarian purposes. Their costs and risks tend to be high, while assessments of their effectiveness over time vary.<sup>17</sup> Moreover, there have been relatively few instances of intervention for primarily humanitarian purposes, whether undertaken unilaterally or collectively. Though some critics fret that RtoP could prove to be a humanitarian veneer by which powerful states could justify military intervention in the developing world, more often the problem has been the opposite: that the capable have stood by as the slaughter of civilians unfolded before the world's—and sometimes even UN peacekeepers'—eyes. They have looked for excuses not to act, rather than for reasons to intervene. Indeed, the Security Council's selectivity and seeming indifference to such suffering have been criticized more often in the General Assembly debates on RtoP than has its supposed eagerness to intervene. The core purpose of the ICISS exercise and of the responsibility to protect its invention of the responsibility to protect concept in the first place, it should be recalled, was to get beyond the then already stale debate on humanitarian intervention by military means.

In an intriguing but ultimately unpersuasive line of reasoning, Professor Bellamy contends that the very flexibility of RtoP as a policy instrument is a weakness in terms of its compliance pull. In his words, "The more precisely a norm indicates the behavior it expects in a given situation, the stronger its compliance-pull" (p. 161). Because RtoP does not specify precisely what is expected of external actors "once states agree that *something* ought to be done (p. 162)," "the extent to which actors are satisfying shared expectations of appropriate behavior" (ibid.) would be unclear, thus reducing compliance pull. But could not the same thing be said for almost all norms, which tend to be specific about what kind of behavior is prohibited but vague about how others should respond to gross violations? Which human rights or humanitarian norm also stipulates detailed enforcement or compliance mechanisms? What RtoP brings to existing norms on genocide prevention, war crimes, ethnic cleansing, and crimes against humanity, in fact, is the nucleus of a multilateral compliance mechanism.

Agreeing that something ought to be done when an important international standard has been breached in unacceptable ways is the critical first step. That is why norms and standards matter. Their task is not to determine with any precision what the most appropriate policy response should be in each case. Here, as with his discussion of pillars two and three as norms, there is some confusion between norms and the policy agenda for encouraging their implementation.

Whatever one thinks about compliance pull, there is strong reason to believe that the RtoP provisions of the 2005 Outcome Document would never have been agreed upon if they were any more specific on the course of action that would have to be followed in cases of manifest failure to protect. Paragraph 139 takes care to specify who should decide on collective measures—the Security Council—and what should be the guiding framework—the UN Charter. Legal authority would be critical, but then it would be up to the political processes laid out in the Charter to decide an appropriate response. As this author has noted elsewhere, decision-making sovereignty was every bit as important in 2005 to powerful states as territorial sovereignty was to less powerful ones.<sup>18</sup> Member states—big and small ones alike—just do not like to be told that

there is a particular course of action that they are obligated to take in certain circumstances. Under Article 25, all member states "agree to accept and carry out the decisions of the Security Council 362 Edward C. Luck in accordance with the present Charter." But the binding quality of its decisions makes the Council unique. It is not about to be bound by others or to be told how it must act in these or other circumstances.

### Political Will and the Future

Ultimately, of course, it is all about political will. This is true for those considering inciting or committing such atrocities, for those within the society who could help curb those impulses, for neighboring countries and for regional and subregional bodies, for international NGOs and secretariats, and for the members of the United Nations and its Security Council. That is why the responsibility to protect is a political rather than a legal concept, why the work of RtoP-focused NGOs and of independent scholars, such as Professor Bellamy, matter so much; why it is essential that RtoP assessments and perspectives become better integrated in country-specific decision-making processes in the UN, regional institutions, and national governments; and why the moral imperative that RtoP represents should not be neglected even in our most hardheaded analyses of the choices ahead. Values shape priorities, and sometimes even political will.

At this point, the responsibility to protect could expect no mark other than an incomplete. It has yet to prove that it can make a deep and sustained difference in terms of either preventing genocide and other atrocity crimes and their incitement or offering or spurring a modicum of protection to vulnerable populations. But studies have shown both that peacekeepers, when properly mandated and equipped, can offer protection from atrocity crimes and that international engagement and expressions of concern have helped to prevent genocidal acts in troubled societies. The secretary-general's efforts to reach out to all 192 member states have demonstrated the possibility of building wider, deeper, and more diverse constituencies for the operationalization of RtoP. The upside potential is clearly there. What would we have said in 1953 about the chances that the Universal Declaration on Human Rights or the Genocide Convention, when they were just five years old, would come to play a transformative role in international policy and in the relations between the state and its people? Who would have been prescient enough to foresee in those dire days either how much the world would change or how much these conventions would change the world? We live in much more fluid and dynamic times, not least in the realm of ideas, values, and institutions. For all of RtoP's faults and frailties, time may well be on its side. the responsibility to protect

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### NOTES

<sup>1</sup> At the 2005 World Summit, the heads of state and government unanimously pledged to protect their populations by preventing genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as by preventing the incitement of such acts. They agreed, also, that the international community should assist and support states in that regard, including "those which are under stress before crimes and conflicts break out." They pledged to "support the United Nations in establishing an early warning capability." They noted the international community's responsibility to use peaceful means under Chapters VI and VIII of the UN Charter to offer protection. When such "means [are] inadequate," they underscored that they "are prepared to take collective action, in a timely and decisive manner, through the Security Council." In January 2009, UN Secretary-General Ban Ki-moon offered a three-part strategy for turning these fine words into deeds. The first pillar is the prevention and protection responsibility of the state, something for which international institutions can rarely substitute. The second pillar is the responsibility of the international community to help states meet those core responsibilities, whether through targeted development assistance, capacity building, preventive action, or helping the state defeat armed groups that are committing such atrocities. Under the third pillar—response—the international community should utilize the full range of tools under Chapters VI, VII, and VIII of the UN Charter to respond to situations of the manifest failure to protect against the four crimes.

<sup>2</sup> Alex J. Bellamy, "The Responsibility to Protect—Five Years On," *Ethics & International Affairs* 24, no. 2 (Summer 2010), pp. 143–69.

<sup>3</sup> Alex J. Bellamy, *Responsibility to Protect* (Cambridge: Polity Press, 2009).

<sup>4</sup> Lisa Hultman, "Keeping Peace or Spurring Violence? Unintended Effects of Peace Operations on Violence Against Civilians," *Civil Wars* 2, nos. 1–2 (March–June 2010), pp. 29–46.

<sup>5</sup> "Implementing the Responsibility to Protect: Report of the Secretary-General," A/63/677, January 12, 2009. For a commentary on how the secretary-general's approach and that endorsed by the heads of state and government at the 2005 World Summit differed from that first proposed by the International Commission on Intervention and State Sovereignty in 2001, see Edward C. Luck, "Building a Norm: The Responsibility to Protect Experience," in Robert I. Rotberg, ed., *Mass Atrocity Crimes: Preventing Future Outrages* (Washington, D.C.: Brookings Institution Press, 2010), pp. 108–27.

<sup>6</sup> Remarks by the secretary-general to the Security Council, U.N. document SG/SM/13070, August 25, 2010.

<sup>7</sup> See Annex to A/63/677; *ibid.*; and "Early Warning, Assessment, and the Responsibility to Protect: Report of the Secretary-General," A/64/864, July 14, 2010.

<sup>8</sup> Remarks by the Special Representative for Somalia to the Security Council, S/PV.5858, March 20, 2008. The special representative made a similar plea to the U.S. Congress in 2009, underscoring that the "issue of Responsibility to Protect (R2P) is at stake" in Somalia; available at [foreignaffairs.house.gov/111/abd062509.pdf](http://foreignaffairs.house.gov/111/abd062509.pdf), p. 2.

<sup>9</sup> Among the statements along this line, see those of the UN High Commissioner for Human Rights, OSCE High Commissioner for National Minorities, and jointly by the UN Special Advisers on the Prevention of Genocide and on the responsibility to protect at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10150&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10150&LangID=E); [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10220&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10220&LangID=E); [www.osce.org/documents/hcnm/2010/06/44564\\_en.pdf](http://www.osce.org/documents/hcnm/2010/06/44564_en.pdf); and [www.un.org/prevention/genocide/advise/pdf/Statement%20of%20Special%20Advisers%20Deng%20and%20Luck%20on%20the%20situation%20in%20Kyrgyzstan%2015%20June%202010.pdf](http://www.un.org/prevention/genocide/advise/pdf/Statement%20of%20Special%20Advisers%20Deng%20and%20Luck%20on%20the%20situation%20in%20Kyrgyzstan%2015%20June%202010.pdf). As of this writing, it is too early to gauge their cumulative effect.

<sup>10</sup> For a useful assessment of the July 2009 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"; available at [globalr2p.org/media/pdf/GCR2P General Assembly Debate Assessment.pdf](http://globalr2p.org/media/pdf/GCR2P%20General%20Assembly%20Debate%20Assessment.pdf); and the International Coalition for the Responsibility to Protect (ICRtoP), "Report on the General Assembly Plenary Debate on the Responsibility to Protect" (September 15, 2009); available at [responsibilitytoprotect.org/ICRtoPGAdebate.pdf](http://responsibilitytoprotect.org/ICRtoPGAdebate.pdf). For a summary of the August 9, 2010, informal General Assembly interactive dialogue on "Early Warning, Assessment, and the Responsibility to Protect," see the

ICRtoP at [www.responsibilitytoprotect.org/Summary%20of%20EW%20dialogue%20on%209%20August%202010\(2\).pdf](http://www.responsibilitytoprotect.org/Summary%20of%20EW%20dialogue%20on%209%20August%202010(2).pdf).

For the remarks of the secretary-general in July 2009, see SG/SM/12374, July 21, 2009. For the August 2010 and July 2009 statements by the Special Adviser to the U.N. Secretary-General Edward C. Luck, see [www.ipinst.org/events/podcasts/185-we-should-not-wait-for-the-bad-news-ed-luck-says-at-un-general-assembly-meeting.html](http://www.ipinst.org/events/podcasts/185-we-should-not-wait-for-the-bad-news-ed-luck-says-at-un-general-assembly-meeting.html), and [www.ipinst.org/images/pdfs/luck\\_qa\\_statement23july2009.pdf](http://www.ipinst.org/images/pdfs/luck_qa_statement23july2009.pdf), respectively. For a summary of the August 9, 2010, informal General Assembly interactive dialogue on "Early Warning, Assessment, and the Responsibility to Protect" prepared by the Global Centre for the Responsibility to Protect, see [globalr2p.org/resources/](http://globalr2p.org/resources/).

<sup>11</sup> First articulated in paragraph 139 of the 2005 Outcome Document, the General Assembly's mandate to continue its consideration of RtoP was reaffirmed in a consensus resolution following the July debate, one of the largest of the year. See UN General Assembly resolution A/RES/63/308, September 14, 2009.

<sup>12</sup> See Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998), pp. 887–917. For an assessment of how well the evolution of 364 Edward C. Luck RtoP fits their model for norm development, see Edward C. Luck, "Building a Norm: The Responsibility to Protect Experience."

<sup>13</sup> When wearing a UN hat, this author refers to RtoP as a concept, principle, or standard instead.

<sup>14</sup> International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, General List, no. 91, Judgment, February 26, 2007, para. 430.

<sup>15</sup> See, for instance, "Preventing Mass Atrocities: A Conversation with Louise Arbour," Council on Foreign Relations, Washington, D.C., June 8, 2007; and Louise Arbour, "The Responsibility to Protect as a Duty of Care in International Law and Practice," *Review of International Studies* 34, no. 3 (2008), pp. 445–58, esp. p. 453 on the responsibilities of the five permanent members given their veto power.

<sup>16</sup> International Court of Justice, *Bosnia and Herzegovina v. Serbia and Montenegro* Judgment.

<sup>17</sup> For a more positive assessment, see Taylor B. Sebolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford: Oxford University Press, 2007). For a more negative one, see Benjamin Valentino, "The Perils of Limited Humanitarian Intervention: Lessons from the 1990s," *Wisconsin International Law Journal* 24, no. 3 (Fall 2006), pp. 723–40.

<sup>18</sup> See Edward C. Luck, "Sovereignty, Choice, and the Responsibility to Protect," *Global Responsibility to Protect* 1, no. 1 (2009), pp. 10–21.

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