ESSAYS

Is "Responsibility to Protect" Working?
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On September 16, 2007 there were rallies in London, Paris, New York and San Francisco calling for an international response to the atrocities taking place in Darfur, Sudan. Interestingly, the protesters were unanimously calling for "responsibility to protect," and many of them were carrying banners and picket signs that said "R2P," the abbreviation of "Responsibility to Protect." More recently, the phrase has been spoken and heard in other humanitarian crises in Myanmar, Kenya and Gaza. Even Russia also argued that its use of force in Georgia in August 2008 was an exercise of its responsibility to protect South Ossetians. While more actors in international relations have adopted or invoked the concept of responsibility to protect (R2P), it is another question whether R2P is really working as it stands. Is it a just political catchphrase or an emerging norm? In this essay, I argue that the growing recognition of R2P has not yet led to its institutionalization and, more importantly, sufficient political will to take appropriate action, as the Darfur crisis revealed. Moreover, I argue that more fine-tuning of R2P and commitment by the international community will be required for the idea to develop into an effective norm.

The Emerging Idea of "Responsibility to Protect"

The international community witnessed contrasting responses to intra-state conflicts and wars of the 1990s. On the one hand, it failed to prevent genocide in Rwanda in 1994 and ethnic cleansing in Srebrenica in 1995. These two cases revealed that the international community was not sufficiently prepared and nor was it willing to respond to humanitarian crises, eventually causing a dramatic retrenchment of UN involvement in intra-state conflicts and wars in the mid-90s. On the other hand, NATO-led humanitarian intervention in Kosovo was launched in 1999 in order to end violence and help achieve a peaceful resolution of the crisis. Although NATO took military action on humanitarian grounds, there was severe criticism from some countries, arguing that the intervention was not legitimate due to the absence of UN authorization and the breach of the principle of

non-interference in internal affairs as articulated in the UN Charter. At the center of the controversy was the following question: can humanitarian intervention be prioritized over state sovereignty?

There emerged a new concept of the "responsibility to protect" in order to reconfigure the controversial relationship between state sovereignty, human rights and intervention. The concept originated from a report of the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, published in 2001. The report aimed at bridging the conceptual gap between the right to intervene and state sovereignty. According to the report, "states which fail to act in a morally responsible manner and abuse the human rights of their citizens necessitate intervention by other states which are indeed capable of acting as agents of common humanity."[1] This concept proposes that sovereignty entails responsibility. A state should only be qualified as legitimate if it fulfills its responsibility to protect its citizens from a humanitarian crisis. Therefore, if states fail to protect their own populations, states abrogate their sovereignty. Then, both the right and the responsibility to remedy the situation fall to the international community, and an international intervention for common humanity is permissible and justified.

Since then, R2P has become a central theme in the recommendations of the UN High-Level Panel, *A More Secure World* (2004), and of the UN Secretary-General, *In Larger Freedom* (2005). In the Outcome Document in the World Summit in 2005, there is a section on "responsible to protect" as a global issue. The world leaders at the meeting reached a "clear and unambiguous acceptance by all governments of the collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and willingness to take timely and decisive collective action for this purpose, through the Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to do it."[2] However, it remains to be seen whether R2P has had a real influence on international responses to humanitarian crises such as genocide or mass killings. Can the idea mobilize international efforts to successfully protect those civilians who are affected by armed conflicts? The case of the Darfur crisis can be one example.

The Darfur Crisis and R2P

The Darfur crisis broke out in February 2003 when the Sudan Liberation Army/ Movement, a black African rebel group, and the Justice and Equality Movement launched attacks on Sudanese governmental military installations in Darfur. In a

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1   International Commission of Intervention and State Sovereignty, *The Responsibility to Protect* (December 2001), 2-3.
2   United Nations, *2005 World Summit Outcome Fact Sheet* (September 2005), 1.

response to the attack on military bases, the Sudanese government based in Khartoum took strong action by deploying military troops, and arming and supporting the so-called Janjaweed militias, made up of Arabs, encouraging them to assault civilians in Darfur, especially those who were considered to be disloyal to the central government.[3] As a result, there were over 300,000 deaths, 2.7 million internally displaced persons and 250,000 refugees in neighboring Chad.[4] According to the International Crisis Group, the humanitarian situation remained catastrophic due to "ongoing state-sponsored violence, layers of aid obstruction, the lack of an overall humanitarian strategic plan, and the weakened state of displaced Sudanese."[5]

Responding to the humanitarian crisis, the international community chose the African Union (AU), which launched a peacekeeping mission in late July 2004, with mandates of monitoring the ceasefire agreement and protecting the civilian population within the capacity of the Force. However, the mission was a failure when AU peacekeepers could not deter or stop the Janjaweed militias from assaulting civilians, and were even attacked by the militia in September 2007. Finally, the mission was replaced by the AU/UN Hybrid Operation in Darfur on December 31, 2007.

What caused the AU to fail in its responsibility to protect civilians in Darfur? The failure can be attributed to a lack of political will and a poor capacity to conduct the mission. First of all, the member states of the AU were not willing to breach the conventional wisdom of non-interference in internal issues. Thus, although Article 4(h) of the AU Charter, which was adopted in 2002, articulates the right of the Union "to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity," the AU sought for consent from the Sudanese government for the mission.[6] This meant that the operation and even movement within the mission would be constrained by the Sudanese government, which was accused of arming and supporting the militias responsible for the atrocities in Darfur. This limited the scope of activities to those acceptable to Khartoum.[7] Moreover, the operation was insufficient in achieving its mandate due to the insufficient number of military personnel to cover the region of Darfur, insufficient financing, poor

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3   Leslie Evans, "The Crisis in Darfur, Sudan," *UCLA International Institute*, http://www. international.ucla.edu (accessed May 3, 2009).

4   *BBC News*, "Q&A: Sudan's Darfur Conflict," http://news.bbc.co.uk/2/hi/africa/3496731. stm (accessed May 3, 2009).

5   *International Crisis Group*, "Crisis in Darfur," http://www.crisisgroup.org/home/index. cfm?id=3060&l=1#C4 (accessed May 3, 2009).

6   African Union, "The Constitutive Act of the African Union," http://www.africa-union. org/About_AU/Constitutive_Act.htm#Article4 (accessed May 3, 2009).

7   Roberto Belloni, "The Tragedy of Darfur and the Limits of the Responsibility to Protect," *Ethnopolitics* 5, no.4 (November 2006): 339.

equipment, and poorly trained peacekeepers committing acts of misconduct. In conclusion, the AU mission in Darfur could not stop hostile activities by the militias toward civilians in the region because of its lack of strong will to intervene in Sudan, even against the state's sovereignty, and insufficient capacity to conduct the mission. In Darfur, R2P was no more than a political catchphrase.

Where were the other Potential Actors?

Indeed, there were three categories of crisis managers who had endorsed the concept of R2P and could have taken military action. First of all, as mentioned above, the UN is one of the most active figures favoring and encouraging R2P. However, the UN refused to authorize a military intervention to protect civilians in Darfur. The UN member states, including the Security Council members, have been unwilling to make the precedent of breaching non-interventionist norms in other countries' domestic affairs. It is noteworthy that the UN Charter is not clear in giving the green light to UN members to intervene in other state's affairs. In addition, the Security Council was likely to be paralyzed under China's threats to veto strong action due to its interest in Sudanese oil reserves.

There is also the second category of potential actors - coalitions of willing or individual states. Although the US and UK openly endorsed R2P, and have the military capacity, they did not consider a military intervention in Darfur for several reasons. First, these countries prioritized the Naivasha negotiations and implementing the Comprehensive Peace Agreement as a result of the peace talks between the southern part of Sudan and the central government. In fear of ruining the process if they raised issues of other regional demands such as Darfur or eastern Sudan at the negotiating table, these countries could not take strong action on the humanitarian disaster in Darfur. Second, there was a heightened skepticism towards humanitarian intervention after the US and UK-led Iraq War in 2003. When their accusation towards Saddam Hussein of developing weapons of mass destruction as the initial cause for the invasion moved to more humanitarian arguments, the US and the UK had much less room to launch another humanitarian intervention in Sudan. Finally, from the US perspective, the Sudanese government was an important partner for operating the "War on Terrorism" campaign. For these reasons the US, UK and France did not consider military action by themselves.

Regional organizations including NATO and the EU are the third category of options. First, NATO doctrine covers issues of responding to mass killings and ethnic cleansing. Moreover, NATO has the capacity to conduct medium-scale or large-scale enforcement operations.[8] However, NATO did not consider deploying its own troops. Instead, NATO has helped the AU expand its peacekeeping mis-

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8   Paul D. Williams, "Military Responses to Mass Killing: The African Union Mission in Sudan," *International Peacekeeping* 13, no.2 (June 2006): 170-172.

sion in Darfur by providing airlifts for additional AU peacekeepers into the region and by training AU personnel since July 2005.[9] The weak response of NATO can be explained in the same way that its leading countries such as the US and UK did not take responsibility over protecting civilians in Darfur. There is also the implication that NATO has less interest in a humanitarian crisis in relatively remote areas compared to incidents such as the Balkans crisis of the 1990s. Second, there is the EU as a potential crisis manager in Darfur. According to the *European Security Strategy*, the 2003 report of *A Secure Europe in a Better World*, the EU would take more responsibility in global security and regional conflicts. This strategy also points out that "military instruments may be needed to restore order, humanitarian means to tackle the immediate crisis."[10] The EU has also been developing rapid reaction forces that can be deployed within 60 days with 50,000~60,000 military troops with full implementation. Although even before the UN report a broad cross-section of the European Parliament had advocated decisive military action to protect the civilian population in Darfur, there was no such action from the EU. All the fine words about rapid reaction forces or European Security and Defense Policy did not make the idea of R2P into a reality which could save lives in Darfur.

Although other actors such as the UN, NATO, EU and individual states could have conducted the operation in a more effective way, the reality was that the AU, which was incapable of achieving the mandate of R2P, took the job and failed in the end. The Darfur crisis symbolically showed that, despite the adoption and endorsement of R2P, all the actors in the international community still lacked the political will to implement R2P. It implies that there is a long way to go for the international community to fully exercise the idea.

Criticism, and the Way to Strengthen the Idea

Like other emerging norms and ideas which often have been denounced and resisted, R2P is also not immune to criticism. First of all, there is the view that humanitarian intervention based on R2P is another form of neo-imperialism. Most notably, a profound suspicion on the many parts of the Global South has been reinforced by the US-led invasion of Iraq in 2003. The fear is that great powers use human rights and civilian protection as a tool for pursuing their own national interests.[11] In addition, critics argue that the concept of R2P is often confused

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9   NATO Topics, "Assisting the AU in Darfur, Sudan," North Atlantic Treaty Organisation, http://www.nato.int/issues/darfur/index.html (accessed May 3, 2009).

10   Council of the European Union, *A Secure Europe in a Better World: European Security Strategy*, (Brussels, December 12, 2003), 1-7.

11   Gareth Evans, "The Responsibility to Protect: Creating and Implementing a New International Norm," *Address to Human Rights Law Resource Centre* (Melbourne, August 13, 2007) and Community Legal Centres and Lawyers for Human Rights (Sydney, August 28, 2007) http://www.

with military intervention against all cases, even when diplomatic or economic measures in some cases can be more effective than military action. Even when military action is used as a last resort, there is no clear principle or guideline over who will take the duty or how much military force is required. In this sense, the reference to "case-by-case decision-making in the implementation of R2P" in the Outcome Document from the World Summit suggests that the terms of international interventionism may remain fluid.[12]

In order to avoid another debate on the conflicts between state sovereignty and humanitarian intervention, and to develop R2P into an effective norm, these criticisms should be clarified and resolved. Above all, the concern that R2P is a coercive measure to militarily intervene in weak states needs to be addressed by emphasizing its broad range of options including preventive, diplomatic, political, economic and legal response to conflict. Military intervention should be considered as the last resort only when all other options are exhausted or inapplicable, and must be proportional to specific cases. In addition, it is also necessary for intervening parties to have legitimacy from the Security Council when the use of force is required. In this sense, Gareth Evans, President of the International Crisis Group, pointed out that the Russian incursion in Georgia in 2008 cannot be framed as R2P, even though Moscow insisted on "taking responsibility to protect its own civilians," because military action was not a last resort, not proportionate to the conflict, and did not gain legitimacy from the international community.[13]

Moreover, it is important to note that R2P has not only reactive and coercive measures, but also preventive and peaceful ones to address human suffering. As the ICISS report emphasized, prevention is "the most important single dimension" of R2P, and this idea entails a responsibility to prevent before the international community reacts to humanitarian crises. In this sense, the role of the international community is to help states build up their own capacity to protect citizens of their territories. This support can take many forms including providing development assistance and support to enhancing good governance, the rule of law and human rights. These supports can mitigate the Global South's concerns about neo-imperialism and persuade more states to join the effort to promote R2P. Moreover, the UN and other regional organizations also have to focus more on

crisisgroup.org/home/index.cfm?id=5036&l=1 (accessed May 3, 2009).

12   Richard Gowan and Ian Johnstone, "New Challenges for Peacekeeping: Protection, Peacebuilding and the War on Terror," Coping with Crisis working Paper Series, *International Peace Academy* (March 2007): 8-10.

13   Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All," Address to Project on Leadership and Building State Capacity at Woodrow Wilson International Center for Scholars (Washington D.C., October 28, 2008) http://www.wilsoncenter.org/index.cfm?topic_id=1411&fuseaction=topics.event_summary&event_id=477764 (accessed May 3, 2009).

developing an early warning system in order to take action before local situations escalate, calling for tougher responses.

Can R2P be an Effective International Norm?

The newly emerging idea of R2P can be seen as a serious challenge to the UN Charter and the overall international system. It is the UN Charter that is based on equal sovereignty and non-interference in domestic affairs. More fundamentally, the international system has been founded around the Westphalian model that maintains a society of sovereign states. However, the idea of R2P poses the fundamental question of whether the conventional model of international order needs to be reconsidered, giving greater powers to the international community to protect civilians from all grave crimes against humanity beyond the scope of state sovereignty. Even though R2P cannot rapidly replace the entire existing system of international legal conventions, the recognition of the international responsibility to protect people in danger of atrocities can be an important advance in a paradigm shift toward a New World Order.

Despite its significant implication for the international order, however, R2P remains an idea at present, not a real power mobilizing institutional resources and drawing sufficient political will to take appropriate actions. It is important to note that R2P is not in the inevitable and irreversible process of becoming an effective norm: it is one thing to endorse the idea and another to institutionalize and implement it. Moreover, the idea can be made vulnerable to distortion by major states. At the same time, it can be also be regarded by the Global South as a new slogan to justify military intervention in weaker and poorer states. In order to avoid misunderstanding and misuse of R2P, therefore, the concept has to be further clarified and elaborated upon regarding the use of force as well as the positive duty of R2P. Above all, it requires a multidimensional and multilateral discourse on R2P among governments, international and regional organizations, and non-governmental groups. Like global climate change, which has certainly been at the top of the global agenda after the Nobel Prize was awarded to Al Gore and the Intergovernmental Panel on Climate Change in 2007, the concept of R2P can also become more consolidated only when the idea is promoted and shared with various stakeholders around the globe. The idea might, then, finally develop into a fully accepted and effective international norm.   **PEAR**