

Notes for a Presentation at SIPRI

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Check Against Delivery

Introduction

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I was present at the conception of the Responsibility to Protect.

At the time I was the Political Director in the Canadian Foreign Ministry.

Foreign Minister Lloyd Axworthy and I were discussing our despair at the unconscionable international response to the genocide in Rwanda and the ethnic cleansing and war crimes in the Balkans.

And we decided to try to do something about it.

We created a commission, the International Commission on Intervention and State Sovereignty, which was broadly representative of the global community and which would consult people in every region of the world.

The ICISS Commission met for a year and completed its report in the Fall of 2001, in the wake of 9/11.

In December 2001, I delivered the report to Secretary General Kofi Annan.

In September 2005, the Millennium Summit endorsed the essence of the report, warp speed in the diplomatic world.

The rapidity with which the idea was adopted belied the difficulty involved.

There were two keys to our success.

1. Successive Canadian Governments championed the report doggedly, and
2. We bypassed the Permanent Representatives in New York and took our arguments straight to capitals.

(Both these keys need to be born in mind as advocates of R2P struggle to overcome the obstinacy and backsliding evident in New York.)

Beginning already in 2001, the Canadian Government had established an office to promote the report.

It did so doggedly, until the report was ultimately adopted.

The priority was endorsed by the new Government when there was a change in leadership.

For once, we did not indulge in light switch diplomacy.

On the eve of the 2005 summit, then Prime Minister Martin, who had adopted the issue personally, made several key phone calls to foreign colleagues to persuade them to instruct their Permanent Representatives in New York to relent in their opposition.

In parallel we carried out a regional strategy because we thought capitals were likely to have more latitude to agree than their representatives in New York did.

The main problem lay in persuading Permanent Representatives in New York, who seemed untroubled by blocking an idea that could benefit millions of the most wretched people in the world.

They were more interested in self-indulgent diplomatic games playing, akin to the irresponsible chicanery that went on in the UN Security Council during the Rwanda genocide.

The bypass strategy worked.

The strategy led to a success, and potentially a very big success for Canadian diplomacy.

I thought it was a good idea then; and I think it is still a good idea.

Buyer's Remorse

Over its first sixty plus years, the United Nations has been a consistent builder and promoter of international principles and norms.

The UN's normative contributions have arguably left a deeper and more enduring mark on the world than its operations and programmes have.

The implementation of these path-breaking norms has typically been anything but sure or quick.

Successive United Nations (UN) Secretaries-General have spoken eloquently of the responsibilities of states towards their populations.

And of the unacceptability of states hiding behind a veil of sovereignty as they abuse the very people they are obliged to protect.

Member States apparently largely concur.

The consensus Outcome Document from the September 2005 World Summit – the largest gathering of heads of state and government in history – endorsed the notion.

Heads of State and Government agreed that both states and the international community, through the United Nations, had the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity (see paragraphs 138 and 139 of the Outcome Document).

In paragraph 138 of the Outcome Document, the assembled states declared that “we accept that responsibility and will act in accordance with it.”

Paragraph 139 details the responsibilities they accepted

- to assist states in building their capacity for protection,
- to employ the peaceful instruments of Chapters VI and VIII of the UN Charter to help protect populations from these crimes,
- and, when “peaceful means prove to be inadequate and national authorities manifestly fail to protect their populations,” “to take collective action, in a timely and decisive manner,” through the UN Security Council and the enforcement provisions of Chapter VII.

These normative developments, however, have not been matched by comparable progress in practice, in the development of international machinery or the generation of political will.

Indeed, the sluggish and inadequate responses to the long unfolding events in Darfur are evidence of lessons not learned.

Some developing countries, particularly in Africa and Asia, seem to be having second thoughts about the R2P doctrine they so recently endorsed at the World Summit.

The term in North America, at least, for their attitude is “buyer’s remorse”.

African “buyer’s remorse” is particularly worrisome.

It was the African Union (AU), in its Constitutive Act (Article 4 (h)) of 2000, that asserted “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.”

That was a full five years before the UN acted.

African support had been critical to gaining the inclusion of R2P language in the Outcome Document, so slippage in political support in Africa is worrying.

Meanwhile in the Secretariat, the new UN Secretary-General, Ban Ki-moon, has made the implementation of R2P one of his highest priorities.

He did not want to have his tenure blemished by the kinds of genocides and mass atrocities that had his predecessors were.

His determination to push ahead was likely reinforced by the trips he made to Darfur early in his tenure.

He has apparently stressed the importance of deeds over words, for moving from promise to performance.

And yet, the UN remains stymied on its first major test, Darfur.

It is a classic case of the UN promising more than it is prepared to deliver.

That is to say, member countries promised more than they were prepared to deliver.

At stake is not just the credibility and integrity of the UN, but more tragically the lives and dignity of untold numbers of innocent civilians.

As always, the basic fault lies with member states and the absence of political will.

In Darfur, unlike Rwanda, the Council did not look the other way.

Yet its members still failed to find agreement on an effective and timely course of action.

Meanwhile, the UN Secretariat has not been as quick as it needs to be to get its own house in order.

As with the implementation of the Millennium Development goals, concept is one thing;

And implementation is another.

To begin to address this problem, Secretary-General Moon has upgraded the existing post of Special Adviser for the Prevention of Genocide to Under-Secretary-General level.

He has made it a full-time position, and given it a broader mandate and new title: Special Representative for the Prevention of Genocide and Mass Atrocities (SRPGMA).

He has appointed the estimable Francis Deng, himself a Sudanese, who had done groundbreaking conceptual work on sovereignty as responsibility.

USG Deng's title encompassed all four crimes included under the World Summit's Outcome document.

In addition, the UN Secretary-General established a new position of Special Adviser on the Responsibility to Protect, (SARP), at the Assistant Secretary-General level.

It is a part-time position mandated to help the Secretariat and member countries to achieve conceptual clarity, to build political support, and to propose ways of improving the performance of the UN.

For this task, he chose Edward Luck, a former head of UNA/USA, a former professor at Columbia, and Vice President and Director of Studies at the well regarded International Peace Academy in New York.

The Special Representative and Special Adviser, sharing an office suite and somewhat expanded staff, will work largely as a team in pursuing their dual mandates.

In October the UN's Policy Committee, the equivalent of a government cabinet, adopted an eight-point plan.

Subsequently the Special Adviser is embarking on a series of meetings and roundtables around the world to get the input of leading experts and practitioners.

The first was held in Stellenbosch in South Africa to derive lessons from past experience at preventing genocide and mass crimes – both successful and unsuccessful.

Over the past two years, since the World Summit, commentators and political figures have voiced starkly different perspectives on the scope and core content of R2P.

Some have wanted to apply R2P to problems as diverse as HIV/AIDS or the rights of indigenous peoples.

But the Secretariat has promoted a more focused approach, based on the four crimes – genocide, war crimes, ethnic cleansing, and crimes against humanity – specified in the Outcome Document.

Otherwise, there is a real danger of stretching the principle to the point of conceptual coherence and operational disutility.

Much of the public debate has revolved around questions of how and under what conditions and source of authorization military intervention might be contemplated for protection purposes.

The Outcome Document, however, does recognize the possibility of Chapter VII coercive action through the UN Security Council when states “manifestly fail” to meet their protection responsibilities.

But it places much greater emphasis on prevention, including through capacity building and non-coercive action under Chapters VI and VIII of the UN Charter.

The preoccupation with the military dimension of R2P has skewed post-Summit discourse, permitting skeptics to cast the doctrine as a façade for interventions undertaken by the strong against the weak for other purposes.

This tendency is threatening to frame the issues in divisive, North-South terms, unrelated to the origins and purposes of the concept or to the language of the Outcome Document.

The Iraq war and its humanitarian justifications, albeit only after the WMD and terrorism rationales collapsed, has raised suspicions in many third world countries.

It has made the jobs of the unscrupulous abusers, such as Khartoum, much easier as they play on the fears of countries that empathize with them.

It has, also, made the job of advocates much harder.

Member countries have to address several problems, starting with understanding better what is preventing them from doing prevention and what is inhibiting them from taking effective action in protection crises?

The Secretariat, for its part, intends to work initially on;

- indicators of potential or impending genocide or mass atrocities,
- on decisions points within problematic countries where international attention might make a difference,
- on existing early warning capacities and processes in the UN system and on how these might be strengthened and better integrated,
- on how communication and information flows, and warning signs, generated by the far-flung field operations of the UN, regional, and independent organizations are assessed and evaluated,
- on linkages between the UN and its partners on prevention, early warning, and analytical functions,
- and, importantly, on what steps governments, regional and sub-regional groups, and civil society have taken to prevent dangerous tendencies in some states and on how such capacities could both be strengthened and replicated elsewhere.

The thrust of this effort will be to find ways of helping states to succeed rather than considering ways to react only after they have failed.

Conclusion

It is worth recalling that decisions of the General Assembly, including of its World Summit, are not legally binding on the Member States.

The Outcome Document does not have the legal status of a negotiated convention or treaty.

Nevertheless, it does constitute a moral and political obligation and, one hopes, is already having some effect on the way leaders of Member States think about these matters.

The political costs of doing nothing when genocide or mass atrocities unfold is rising.

When we were promoting the Responsibility to Protect doctrine from 2000 to 2004, it was evident that many of the Non-Aligned Movement states feared that the idea would generate too much intervention.

The fear among Secretariat officials and representatives of the western/northern countries, on the contrary, was that there would be too little.

They were not convinced that the peoples of the world, especially the economically advanced world, would prove willing to sacrifice their sons and daughters in elective wars.

“Operationalizing” the responsibility to protect will be neither quick nor easy.

As with so many issues at the UN, incrementalism is more effective than “big bang” change.

I continue to think that R2P is on the right side of history.

It is still a good idea.

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

Para. 138:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

Para. 139:

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.