

R2P

**RESPONSIBILITY
TO PROTECT**

**TU BERLIN
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THE FAILURES OF THE 1990S



THE UNDERLYING DILEMMA

“...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?”

Kofi Annan (2000)

REDEFINING THE DEBATE

“If the international community is to respond ... the whole debate must be turned on its head. The issue must be reframed not as an argument about the ‘right to intervene’ but about the ‘responsibility to protect.’”

Mohamed Sahnoun and Gareth Evans (2002)

REDEFINING SOVEREIGNTY

Under R2P “Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility that holds States accountable for the welfare of their people.”

2005 WORLD SUMMIT DEFINITION

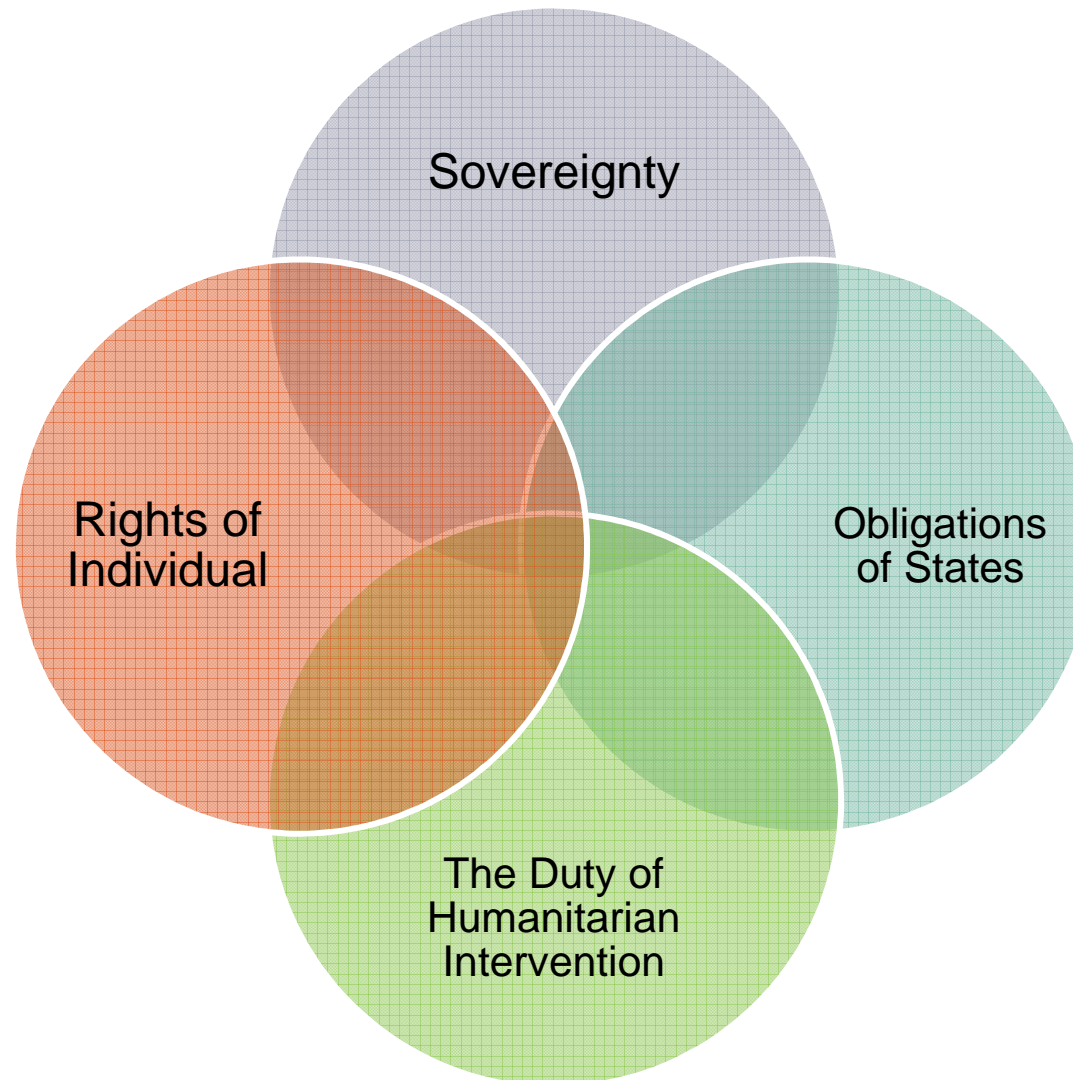
Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility 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.

THE BALANCING ACT OF R2P

R2P attempts to balance several important considerations:

- The rights of individuals to be free from abuse
- The duties of states to prevent abuse of individuals
- The sovereignty and equality of states
- The obligation of the international community to intervene to prevent abuse

OVERLAPPING R2P ISSUES



R2P IN HISTORICAL CONTEXT



UN CHARTER AND THE AFFIRMATION OF SOVEREIGNTY

Article 2(1)

- The Organization is based on the principle of the sovereign equality of all its Members.



Article 2(7)

- Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter...

EMERGENCE OF INTERNATIONAL CRIMINAL LAW



EMERGENCE OF HUMAN RIGHTS ACTIVISM



IMMEDIATE CAUSES OF DEVELOPMENT OF R2P

End of Cold War

- Sense of growing consensus for common action

Common action

- Emergence of international tribunals and novel jurisdictional principles in domestic systems
- Expanded use of Security Council's Chapter VII powers and deployment of UN Peacekeepers

Challenges

- Continued Violence in the DRC, Sierra Leone, Liberia, the DRC, the Balkans, East Timor...
- But, 1999 NATO Intervention in the former Yugoslavia

PRECEDENTS TO R2P

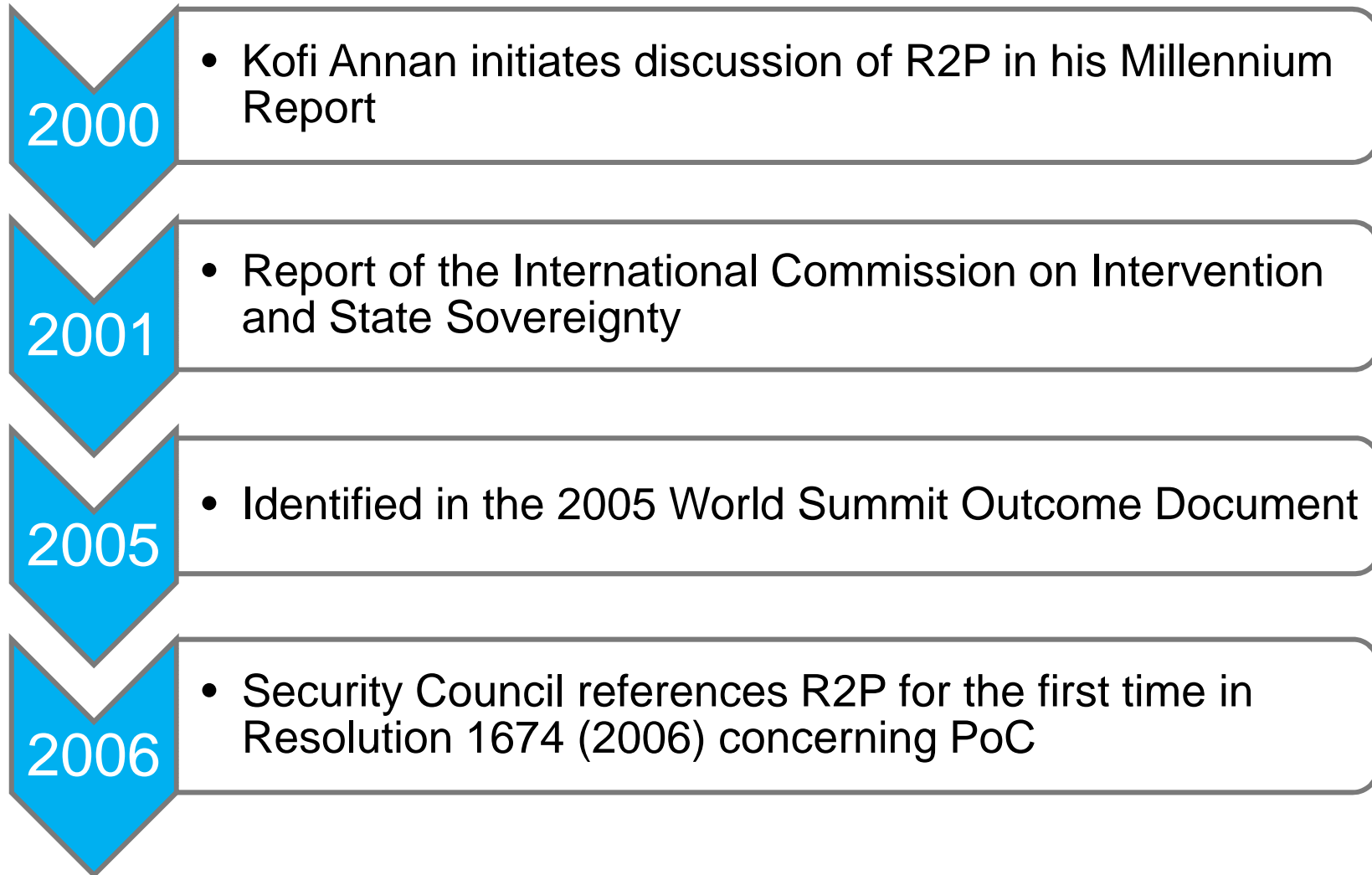
African Union Constitutive Act (2000)

“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 Convention on the Prevention and Punishment of the Crime of Genocide (1948)

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

IMPORTANT DEVELOPMENTS TO THE R2P DOCTRINE



THE CONTENTS OF R2P



PILLARS OF R2P

States carry the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing

The international community has a responsibility to encourage and assist States in fulfilling this responsibility

The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations

ELEMENTS OF R2P

The responsibility to prevent

addressing in advance the root causes and direct causes of internal conflict

The responsibility to react

responding to violations with appropriate measures, including sanctions, international prosecutions and military intervention

The responsibility to rebuild

providing full assistance with recovery, reconstruction and reconciliation, particularly after a military intervention

PRIORITIES FOR R2P

- 1) Prevention is the most important dimension of R2P
- 2) Less intrusive and coercive measures should be considered first

MILITARY INTERVENTION



PRE-REQUISITES

Military intervention is always an “exceptional and extraordinary” measure

It can only be justified by serious and irreparable harm occurring to human beings, or the imminent likelihood of their occurrence

PRECAUTIONARY PRINCIPLES

Right intention

- Must have “primary purpose” of ending violations
- Multilateral operations strongly preferred and wishes of victims should be considered

Last resort

- Only after every other alternative has been exhausted

Proportional means

- Limited to lowest level and duration needed to end violations

Reasonable prospects

- Must be a reasonable chance of success
- Consequences cannot be foreseeably worse than non-action

RIGHT AUTHORITY

R2P is a mechanism for involving the Security Council

- Pushes the Council to expeditiously respond to problems or authorize intervention
- Acknowledges that the Security Council is best suited to authorize military intervention
- Posits that Security Council authorization should always be sought first
- Impresses on P-5 states not to use their veto power arbitrarily

In the alternative, R2P allows for

- Authorization by the General Assembly under its “Uniting for Peace” procedure (Resolution 377 of 1950)
- Authorization by regional organizations such as the AU with subsequent Security Council authorization

RIGHT AUTHORITY

However, if the Security Council “fails to discharge its responsibility to protect”...

“concerned states may not rule out other means to meet the gravity and urgency of that situation”

CRITICISMS OF R2P



RUSE FOR ILLEGITIMATE INTERVENTION

There is a long history of illegitimate intervention, from Spain (1936) to Iran (1953) to Guatemala (1954) to ...



Picasso's depiction of Guernica

DISMANTLES THE INTERNATIONAL ORDER

Dismantles the Westphalian state that ended the 30 Years War and provided stability within the international system



Treaty of Münster

UNEQUAL APPLICATION

It is only applied in countries disfavored by the most powerful, but never in those favored by the most powerful, or in the most powerful states themselves

No R2P

Gaza

Crimea

R2P

Libya

Central African Republic

Darfur

LACK OF SPECIFICITY FOR MILITARY INTERVENTION

The 2001 report of the International Commission on Intervention and State Sovereignty is the only body to detail the obligations for and limits of military intervention; it is not based in treaty or custom

The 2001 report lists six basic operational directives for military interventions, but these have not been given sufficient attention and strategically / tactically operationalized

LIMITED FOCUS

The 2005 World Summit Outcome Document limited R2P to conventional conflict based issues, but does not include other severe causes of human suffering, from climate change to hunger.

Despite the focus on prevention, the proposed responses to conventional conflicts are too limited to early warning and armed intervention, rather than focusing on the long term need for development, including rule of law and economic development.

GERMANY AND R2P



STATEMENT TO THE GENERAL ASSEMBLY (11 SEPT. 2013)

“Germany remains a strong advocate of [R2P]. Some have said that the concept of [R2P] has failed to prevent mass atrocities, in Syria and elsewhere. But ... it is not the concept of R2P that is to blame. We should rather look at our individual and collective failure, as States and the international community, when we ask ‘what went wrong’.”

STATEMENT TO THE GENERAL ASSEMBLY (11 SEPT. 2013)

“... we have always underlined the vital importance of the preventive aspects of R2P. These aspects and early warning in our view are key elements of the concept of R2P.

... The appropriate and necessary measures that states can take to prevent mass atrocities are diverse and allow for a tailor-made approach. ... The implementation of R2P depends fundamentally on the granting and protection of human rights and the establishment of rule of law.”

HISTORICAL CONSIDERATIONS

- Restraint is a general feature of German foreign policy when it comes to military affairs
- In 1999, German involvement in the NATO campaign in Serbia was framed in proto R2P language and referenced Germany's past to justify intervention
- General concern over futility of armed force in recent interventions in Afghanistan, Iraq and Libya

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