

IMPLICATIONS OF RESPONSIBILITY TO PROTECT (RtoP) FOR THE UN CHARTER

by *Dashell Yancha-Po*

Introduction

One of the most complex issues confronting the post-Cold War era is the question of humanitarian intervention. The changing nature of armed conflict saw the rise of internal conflicts, ethnic wars, and intra-state violence. Before 9/11 came to reconfigure the world's focus to terrorism, the quintessential peace and security problem was not inter-state war but civil war and internal violence perpetrated in a massive scale.¹ In most of these cases, civilians make up the vast majority of casualties, subsequently leading to humanitarian crises and intervention for human protection purposes.

The cases of Rwanda, Kosovo, Bosnia, and Somalia, among others, amplified the debate within the international community regarding humanitarian intervention. Some sectors claim that the international community is not intervening enough; for others, it is intervening too much. Intervention – in whatever form it takes – is still eyed with understandable suspicion and mistrust. Questions of legality, processes, effectiveness, and possible abuse hound the humanitarian intervention debate.

The contrasting cases of Rwanda and Kosovo edify this debate. The Rwandan case showed the consequences of inaction in the face of mass murder while the Kosovo case presented questions of legitimacy as NATO forces intervened in the crisis without UNSC authorization. Two lessons can be gleaned from these cases: that “the world cannot stand aside when gross and systematic violations are taking place,” and that “intervention must be based on legitimate and universal principles if it is to enjoy sustained support.”²

The differing positions of those who support the right of states to humanitarian intervention and those who perceive intervention as an infringement against state sovereignty deeply divided the United Nations and defined international political discourse towards the end of the twentieth century.

In his report to the Millennium Assembly in 2000, former UN Secretary General Kofi Annan asked: “...if humanitarian intervention is an unacceptable assault on sovereignty, then how should we respond to gross and systemic violations of human rights that affect every precept of our common humanity?”³ He challenged the international community to find a consensus on the principle of non-intervention as embodied in a state's right to sovereignty, and the role of the international community to respond to mass atrocity crimes.

The Government of Canada responded to this challenge by establishing the International Commission on Intervention and State Sovereignty (ICISS)⁴ to resolve the question of when state sovereignty must yield to the protection of individuals in cases when the state is unable or unwilling to halt the perpetration of massive human rights violations within its territory.

The zenith of the ICISS work was the production of the report, *The Responsibility to Protect* (also known as RtoP or R2P) in 2001.

The UN thus entered a new era of collective security when RtoP was unanimously adopted by member states in the 2005 World Summit. Such was a momentous event for Mr. Annan who considered RtoP's endorsement in the World Summit as one of his most precious achievements.⁵ Nonetheless, it was UN Secretary General Ban Ki-moon who began the arduous journey towards a deeper understanding of the concept.

In 2009, Mr. Ban released a report, *Implementing the Responsibility to Protect* where he outlined a three-pillar strategy in RtoP implementation. Of the three pillars, the third pillar elicits much controversy because of its impact on the concept of non-intervention.

Amidst the various issues hounding RtoP these days, especially in light of the ongoing crises situations in Syria and Mali, this paper focuses on the following questions: Can we consider R2P as an “exception” to the non-intervention provision of the UN Charter? Does R2P extend the scope of the work of the UNSC? Should the UN Charter be amended to accommodate the RtoP principle, particularly its third pillar? This paper limits its scope to the discussion of the implications of RtoP for the UN Charter. An in-depth analysis of RtoP’s relevance and sustainability as a concept is best left to be the subject matter of another paper.

Thus, we begin our discussion with the evolution, development, and processes undergone by the concept of RtoP in the UN. This will be followed by a review of the UN Charter’s provisions on sovereignty, where the concept of non-intervention is inevitably and inextricably tied. Finally, we will discuss the three pillar framework of RtoP and their implications for the UN Charter.

RtoP in the UN

The formulation of RtoP came at a time when the UN was at a crossroads. In his last General Assembly address for the twentieth century, UN Secretary General Kofi Annan warned that if the “collective conscience of humanity... cannot find in the United Nations its greatest tribunal, there is a grave danger that it will look elsewhere for peace and for justice.”⁶ This impliedly called for serious steps towards revitalizing the UN and reforming the world body so as to continue serving the best interests of the world’s peoples and to maintain its relevance in the twenty-first century.

Mr. Annan may have well been reflecting upon the role of the UN as it came to grips with cycles of violence from various parts of the world. He stated, “from Sierra Leone to Sudan to Angola to the Balkans to Cambodia and to Afghanistan, there are a great number of peoples who need more than just words of sympathy from the international community.”⁷ He exhorted “the international community to reach a consensus not only on the principle that massive and systemic violations of human rights must be checked but also on ways of deciding what action is necessary, when and by whom.”⁸

Mr. Annan’s emphasis on the roles of sovereign states and of the international community as well as his views on intervention for the purpose of protecting civilians from massive human rights violations are the framework upon which ICISS produced its seminal work, *The Responsibility to Protect (RtoP)* in 2001. The central theme of the Report⁹ revolved around “the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe... but when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”

Essentially, RtoP involves the promotion of a changed notion of sovereignty: from sovereignty as control to sovereignty as responsibility. Rethinking sovereignty as responsibility implies the dual responsibility of state authorities: *external responsibility* – to respect the sovereignty of other states, and *internal responsibility* – to respect the dignity and basic rights of all peoples within such state. It is this understanding of sovereignty which is crucial in the ICISS¹⁰ approach to the challenge posed by Mr. Annan on how to balance sovereignty with intervention for human protection purposes. The ICISS resolved the said challenge by modifying the terminologies of the debate from the contentious “right to intervene” to a more acceptable “responsibility to protect.”

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The core idea of RtoP is simple: to turn the notion of the right to intervene upside down, i.e, RtoP does not talk about the right of big states to do anything, but rather, it emphasizes the responsibility of all states to protect their own people from atrocity crimes and to help other states do so.¹⁰ Further, RtoP moves away from the concept of

humanitarian intervention by emphasizing on the primary responsibility of the state to protect its own population and allowing the international community to assist states in such endeavor.¹¹ Where humanitarian intervention emphasizes coercive military action, RtoP puts emphasis on prevention as its single most important dimension.

After the ICISS released its report in 2001, the RtoP concept continuously made strides in international political discourse, particularly in the UN. In 2004, the UN High Level Panel on Threats, Challenges and Change produced the report, *A More Secure World: Our Shared Responsibility*. The Panel drew linkages among the concepts of security, solidarity, and sovereignty as the underlying themes of a “new comprehensive collective security system.” The report identified four key conceptual contributions that define this new security system: 1) the redefinition of international security to include both state security and human security; 2) a common understanding of terrorism; 3) assertion of a collective right to prevent catastrophic attacks; and 4) endorsement of RtoP.¹²

In endorsing RtoP, the Panel reinterpreted the very act of signing the UN Charter as an affirmation of a state’s willingness to accept the responsibilities that flow out of state sovereignty.¹³ By reaffirming the findings of ICISS about the dual responsibility of states, the Panel emphasized two things: that sovereignty attaches to a state as a means of ensuring the security of its citizens and that a state not only has a duty to protect its own peoples but also to “meet its obligations to the wider international community.”¹⁴ These twin responsibilities of states imply the limits of state sovereignty which states are bound to accept by virtue of their signatures to the UN Charter.

In March 2005, the Panel’s report and recommendations were subsequently endorsed by Mr. Annan in his report, *In Larger Freedom* where he emphasized the need to “embrace, and when necessary, act on the principle.” According to him, “the time has come for Governments to be held to account, both to their citizens and to each other, for respect of the dignity of the individual, to which they too often pay only lip service.” He added that it is time to “move from an era of legislation to an era of implementation.”¹⁵

A few months later, the principle of RtoP gained headway in the international political milieu when UN member states unanimously adopted the World Summit Outcome Document (WSOD) which contained two paragraphs¹⁶ relating to the RtoP concept. The WSOD is crucial to the conceptual evolution of RtoP as it explicitly limited RtoP’s application to four specific mass atrocity crimes: genocide, ethnic cleansing, crimes against humanity, and war crimes.

In 2006, the UN Security Council (UNSC) also reaffirmed the provisions of these two paragraphs, particularly in its Resolution 1674¹⁷ on the protection of civilians in armed conflict and in Resolution 1706¹⁸ on the conflict in Darfur. Some say that this reflected global consensus on the concept, since it was endorsed by the UN’s highest decision-making body.¹⁹

The change of leadership in the UN in 2007 did not douse the “RtoP hype” within the UN as the newly-elected UN Secretary General Ban Ki-moon continued the work of his predecessor as regards RtoP consensus-building. In 2009, Mr. Ban released a report entitled, *Implementing the Responsibility to Protect*²⁰ where he outlined a three-pillar strategy in R2P implementation. Since then, Mr. Ban has subsequently released annual reports on the different aspects of RtoP. In 2010, he produced a second report, *Early Warning, Assessment and the Responsibility to Protect*²¹ where he discussed how the UN system can best gather and analyze information, develop policy options and translate these into early engagement to address deteriorating crisis situations. In 2011, he released his third report, *The Role of Regional and Sub-regional Arrangements in Implementing the Responsibility to Protect*²² where he emphasized the importance of collaboration between regional and sub-regional arrangements as well as the crucial role of civil society organizations in enhancing such collaboration. In 2012, Mr. Ban’s report, *Timely and Decisive Response*²³ emphasized the various dimensions of the third pillar and the close connection between prevention and response. The report also took note of the UN Charter-based tools for implementing the concept, the partnerships that have so far been utilized, as well as the Brazilian-led proposal, “Responsibility while Protecting” (RwP). In 2013, Mr. Ban’s fifth report, *Responsibility to protect: State responsibility and prevention*²⁴ focused on the prevention of atrocity crimes as key element in advancing RtoP. He notes the vital importance of early action to prevent atrocity crimes and the horrific consequences when such prevention fails. The report also assessed the causes, risk factors, and

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dynamics of such crimes and reviewed the array of structural and operational measures that states can take to prevent atrocity crimes. These annual reports were presented by Mr. Ban in the informal and interactive dialogues on RtoP in the General Assembly.

Aside from being tackled in these informal settings, the concept has nonetheless been formally invoked by the UNSC in various occasions. In particular, 2011 marked an important chapter in the application of RtoP as the UNSC invoked it several times: when it called on the Libyan authorities “responsibility to protect its population (S/RES/1970),²⁵ (S/RES/1973);²⁶ when it condemned the serious abuses and violations of international law in Côte d’Ivoire and reaffirmed the primary responsibility of each state to protect civilians (S/RES/1975),²⁷ when it advised the South Sudan government to fulfill its responsibility to protect civilians in compliance with international humanitarian, human rights, and refugee laws...(S/RES/1996);²⁸ and when it called on the Yemeni government’s responsibility to protect its population (S/RES/2014).²⁹

Although the application of RtoP has been mired in controversy, such as allegations of selectivity, inconsistent application, and being used as guise for regime change particularly with respect to Libya, the concept may be said to have advanced with extraordinary speed, if we are to consider the pace with which important normative and conceptual innovations are introduced in international law. Indeed, no idea has moved faster in the international normative arena than RtoP.³⁰

With the ongoing atrocities in Syria, R2P’s critics have fresh grounds to attack the doctrine, with some even suggesting that RtoP be abandoned in favor of unilateral action by states willing to support intervention in any given case.³¹ But such regression would only be disastrous, because despite the collective failure to respond effectively in Syria, RtoP remains the most legitimate and promising instrument to protect vulnerable populations from mass atrocities.³²

Sovereignty and Non-Intervention in the Age of RtoP

This section will review the provisions of the UN Charter relating to sovereignty and its related concept of non-intervention, with the particular aim of answering the question: Can RtoP be considered as an exception to the non-intervention provisions of the UN Charter?

Since its inception in 2001, RtoP has both gained prominence and “notoriety” as a concept: prominence because it challenged traditional ways of defining state sovereignty; and notoriety because it stimulated discussions on the touchy subject of humanitarian intervention.

Two revered concepts in international relations thus form the backbone of RtoP: sovereignty and intervention. The classic RtoP debate revolves around finding the balance between state sovereignty and intervention by the international community for humanitarian purposes.

State sovereignty has been traditionally and loosely defined as the exclusive right of a state to govern its own affairs and be free from external control;³³ a state is said to possess sovereignty when it is able to act independently without the consent of, control of, or intervention from any other state. The concept of sovereignty is therefore inextricably linked to the concept of non-intervention.

Both sovereignty and non-intervention comprise the basic rules governing international order acknowledged in the UN Charter. Article 2.1 states that the UN is based on the principle of the sovereign equality of all its members, reflecting a Westphalian system of thought that established the modern concept of sovereign statehood. While the UN Charter does not expressly state the principle of non-intervention as a rule governing the relations of states, it nonetheless contains provisions which imply the said doctrine:

☐ *Article 2(4)*. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

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- ☐ *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; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Article 2(4) provides a general prohibition among member states on the use of force and extends the use of force beyond war to encompass other types of unilateral force and threat of force.³⁴ On the other hand, Article 2(7) specifically refers to proscription of intervention by the UN, as an organization, “in matters which are essentially within the domestic jurisdiction of any state.” The fact that Article 2(7) does not provide any specific criteria for determining what matters may be considered as “essentially within the domestic jurisdiction” of states has given the UN and its organs leeway in applying these terms to particular cases.³⁵ The said Article also laid the exception (enforcement measures under Chapter VII) to the prohibition on intervention in addition to the other recognized exception under the Charter, i.e, the use of force in relation to measures of collective and individual self-defense.

The foregoing provisions highlight the importance of sovereign equality, territorial integrity, and domestic jurisdiction of states. Yet, new realities have steered the international political milieu away from the state-centric system that defined the twentieth century. These realities include, but are not limited to: the emergence of non-state actors, institutions and mechanisms; the new security issues such as the proliferation of intra-state warfare and the increased vulnerability of civilians; the new demands and expectations, such as stronger mechanisms for human rights protection and the concept of human security; and, the emergence of failed states. These realities – coupled with the irreversible impact of globalization and technology – have challenged the once-impenetrable fortress of state sovereignty and its corollary concept, non-intervention. The emerging view is that sovereignty is no longer sacrosanct,³⁶ nor is it only about the right of states to do as they please. The dual nature of sovereignty has gained recognition and this was emphasized by Mr. Annan in his article, *Two Concepts of Sovereignty*.³⁷

Mr. Annan claimed that states are now understood to be instruments at the service of their peoples and not vice versa. Sovereignty refers to both state sovereignty and individual sovereignty where the latter emphasizes fundamental freedom of each individual.

The changing nature of sovereignty as well as the humanitarian crises in Rwanda, Kosovo, Bosnia and Somalia defined the context upon which the concept of RtoP developed. The massive and systemic human rights violations occurring in various parts of the world painted a bleak picture for the future of UN, particularly on the latter’s relevance and credibility. Hence, RtoP’s entry in international political discourse was both opportune and necessary – if only for the UN to regain institutional integrity and the trust and respect of the world’s peoples. The development of RtoP coincided with efforts towards UN reform. Membership to the UN no longer simply meant validation and protection of the sovereign status of states but rather that the UN Charter itself became an agent of change by being a collective instrument in holding its members to their word: that of protecting their own peoples.³⁸

Therefore, a mutually-reinforcing relationship exists between RtoP and the UN Charter. RtoP actually bolsters and reinforces the concept of sovereignty in the Charter because it veers away from the traditional notion of sovereignty as control to sovereignty as responsibility, which implies state accountability. And one of the implications of accountability is empowering the true sovereign – the people (or in the case of the UN Charter, the world’s peoples). RtoP therefore strengthens the concept of sovereignty because it emphasizes bringing back to the world’s peoples the power they wield – be this in the form of action, reaction, prevention, or rebuilding. At a time when there is a perceived softening of sovereignty, RtoP redefined the concept of sovereignty to make it more relevant and responsive in a changing global order. It did so by refocusing the sovereignty concept away from the “state” to its “people.” It can be recalled that during the early years of the founding of the UN, the focus was on the protection of the state; however, at the end of the twentieth century, protecting people wherever they lived, had become central.³⁹

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While RtoP reinforces the concept of sovereignty, it nonetheless bears a different effect on the doctrine of non-intervention. One of the basic principles of RtoP states that “where a population is suffering serious harm...

and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. This is where the controversial nature of RtoP lies, as it opens up a Pandora's Box of difficult questions: What are the manifestations of a state's unwillingness and inability to halt or avert a serious harm? Who decides when a state is unable to halt a serious harm? Who wields the power to exercise the international responsibility to protect?⁴⁰ Isn't RtoP another justification for western interference in the developing world's internal political affairs?

These questions reveal that the crux of the controversy surrounding RtoP lies in its impact on the doctrine of non-intervention. Hence, this paper's question: Can RtoP be considered an amendment to the UN Charter provisions on non-intervention?

In answering this question, we need to consider the nature and status of RtoP. If we go back to the historical evolution of the said concept, RtoP was a by-product of the work of the ICISS which was primarily created to respond to the challenge posed by then Secretary General Kofi Annan on how to reconcile sovereignty with

intervention for human protection purposes. RtoP was not envisaged to be a legally binding tool but more of a political concept having political effects. It is best understood as a reaffirmation and codification of already existing norms.⁴¹ It creates no legal change nor does it give rise to any legal obligation since it is not a legal concept; it is merely embedded within the existing international legal order.⁴² RtoP's strength comes from its status as a political concept, and not a legal one; hence focus should be on developing RtoP to increase its support and effectiveness through its political influence.⁴³

Thus, RtoP cannot be considered an amendment to the UN Charter provision on non-intervention because it is a mere political rhetoric that is aspirational and morally persuasive at best. It only reiterates the view that all signatories to the UN Charter accept a responsibility to protect their own citizens. There is nothing novel in the RtoP concept that merits amendment of the Charter nor does it have the capacity to impose additional obligations to states which support it. The RtoP doctrine merely augments existing international human rights standards. It is primarily a political tool that has the potential of altering mindsets that have become accustomed to complacency and worse, indifference.

Using this thread of argument, RtoP does not extend nor expand the scope of UNSC work. The UNSC still remains as the primary UN organ responsible for the maintenance of international peace and security. No state can invoke RtoP as justification for unilateral intervention since any form of intervention must still adhere to certain rules laid down in the UN Charter, primary of which is the requisite UNSC authorization.

RtoP boosts the UNSC's role by the very principles that it stands for, particularly its emphasis on prevention. Such emphasis on prevention is based on the recognition that "mass atrocities do not arise de novo, but in a context of inequalities and conflict."⁴⁴ UN Secretary General Ban has this to say about prevention – which is at the core of RtoP:

Prevention may sound abstract, but it is very concrete and specific. It means, among other things, that States translate obligations and standards set out in international law... into policies, programmes, laws and institutions that protect and empower their people. It involves accountability mechanisms, early warning, education and inter-community dialogue.⁴⁵

Three Pillars of RtoP

This section will discuss the three pillars of RtoP and their implications for the UN Charter as we attempt to answer the final question posited in this paper: Should the UN Charter be amended to accommodate the third pillar of RtoP?

A three-pillar approach for the operationalization of RtoP was first enunciated in 2009 by UN Secretary General Ban Ki-moon in his report, *Implementing the Responsibility to Protect*. This three pillar strategy is outlined, as follows:

- ❑ Pillar one: The protection responsibilities of the state
- ❑ Pillar two: International assistance and capacity building
- ❑ Pillar three: Timely and decisive response

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While the first two pillars seem innocuous, the third pillar is quite contentious. Briefly, the first pillar calls on the continuing responsibility of the state to protect its population, whether they comprise its nationals or not, from the commission and incitement of the four mass atrocity crimes of genocide, ethnic cleansing, crime against humanity, and war crimes. This primary responsibility is unquestionably derived from the nature of state sovereignty and the state's continuing legal obligations under international law. The first pillar merely affirms a state's enduring responsibility to protect its population.

The second pillar focuses on the international community's commitment to assist states in meeting such obligations affirmed in the first pillar. It seeks to encourage the cooperation of UN member states, regional and sub-regional arrangements as well as civil society and private sectors in this endeavor. The second pillar is crucial in forging policies, procedures, and practice that can be consistently applied and widely supported. This pillar goes beyond the state enclave to emphasize the importance of international solidarity, mainly through cooperation, collaboration, and support for capacity-building activities with regard to state responsibilities mentioned in the first pillar.

Meanwhile, the controversy surrounding the third pillar derives from paragraph 139 of the World Summit Outcome Document which states that: 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... In this context, we are prepared to take **collective action, in a timely and decisive manner**, through the Security Council... should peaceful means be inadequate and national authorities **manifestly fail to protect** their populations... (*emphasis supplied*)

And there's the rub: the use of the following phrases – “collective action,” “timely and decisive manner,” and “manifestly fail” may be interpreted in several ways using varying contexts. *Who sets the criteria for “manifest failure” by a state? Who decides what is timely and decisive? Who sets the standard for collective action? How timely and decisive is a timely and decisive response?* Such questions begging for clarity may sometimes border on the philosophical; but as practical policy questions, they can be answered by studying the full text of paragraph 139. The said paragraph emphasizes that a wider range of collective action, from peaceful to non-peaceful, could be invoked by the international community if two conditions are met: 1) that peaceful means are inadequate and 2) that national authorities are manifestly failing to protect their populations from the four mass atrocity crimes.

The timeliness and decisiveness of the response does not necessarily entail the use of force – as in fact, force should be the last resort considering that there is a broad range of tools available to the international community – under the UN Charter – such as pacific measures (Chapter VI), coercive options (Chapter VII) and/or collaboration with regional and sub-regional arrangements (Chapter VIII). The process of ascertaining the most appropriate course of action and method of implementing this must fall within the ambit of the UN Charter. The response must be tailored to the circumstances of the situation (on a case-by-case basis) and completely in accordance with the provisions of the UN Charter.

Simply put, any response by the international community – acting through the UN – must be done within the bounds of what is allowable under the UN Charter and the UNSC rules.

[T]he UN Charter needs no amending since it is fully consistent with the third pillar of the RtoP framework. The international acceptance of RtoP does not imply that this automatically translates into normative adjustment of the UN Charter.

Hence, to answer this section's question: the UN Charter needs no amending since it is fully consistent with the third pillar of the RtoP framework. The international acceptance of RtoP does not imply that this automatically translates into normative adjustment of the UN Charter.⁴⁶

Conclusion

RtoP is not a novel concept that is separate and distinct from the provisions of the UN Charter. RtoP, not being a legal instrument, does not modify the scope of UNSC work nor does it amend the UN Charter. It complements existing norms and standards aimed at protecting the world's peoples. It finds justification in the social contract theory and is based on the moral and normative underpinnings of what a sovereign state ought to be and how it ought to act.

Now then, if RtoP is fully consistent with the UN Charter, what does it offer beyond the Charter provisions? What is the value of RtoP if it is a mere political tool? What is the value of RtoP if it cannot bind states? What is the value of

RtoP amidst ongoing crisis situations such those as in Mali and Syria, among others?

The value of RtoP lies in its potential to change mindsets against indifference and inaction in the face of gross human rights violations. It is a concept which has the potential of becoming an international norm that seeks to end a statist mindset based on the belief that what happens within state borders is nobody else's business. RtoP has proven its value in challenging, if not altering, traditional worldviews on the connotation of sovereignty being merely about state control.

The value of RtoP is its emphasis on prevention and the fostering of individual responsibility. If RtoP is too abstract a concept then it might help to bring it down to the level of individual responsibility. As noted in a UN report, "even in the worst genocide, there are ordinary people who refuse to be complicit in the collective evil, who display the values, the independence and the will to say no to... hatred and violence." Individual responsibility emanates from individual values as collective responsibility emanates from a collective sense of what is valued – such as human dignity and a dignified way of living.

Further, RtoP provides an enabling environment for the flourishing of solidarity among nations; for strengthening preventive diplomacy and other diplomatic measures; for boosting regional and sub-regional arrangements, particularly in providing political will and operational support independently or in collaboration with the UN; and for bolstering capacity-building mechanisms among states specifically in developing early warning competencies.

RtoP is not a panacea to the world's evils nor was it intended to be. A deeper understanding of the concept, however, might start a collective consciousness that could slowly resolve collective indifference. And collective indifference is what fuels the acts of genocide, war crimes, ethnic cleansing, and crimes against humanity.

It is not the binding character – or, in the case of RtoP, the lack of it – that determines a particular concept's value, relevance, and importance. Several international human rights declarations are also not legally-binding but such attribute does not denigrate their significance. A case in point is the 1948 Universal Declaration of Human Rights which, although not originally intended to have binding force, have since gained binding character as customary law.

As to this paper's main aim of studying the implications of RtoP for the UN Charter, it is crucial to go back to what RtoP initially intended to achieve: "to develop a global political consensus on how to move from polemics- and often paralysis- towards action within the international system, particularly through the United Nations" in addressing inaction amidst people suffering at the mercy of civil wars, insurgencies, state repression, and state collapse.

What this implies is that RtoP was crafted taking into account its consistent application with UN Charter provisions. It provides an ideal avenue for the UN Security Council to fulfill its envisioned role under the UN Charter, i.e., to be primarily responsible for the maintenance of international peace and security because "any event or process that leads to large scale death or lessening of life chances and undermines states... is a threat to international security."⁴⁷

Hence, RtoP is ideally, a concept that has the potential of becoming an international norm promoting an altered notion of sovereignty, addressing institutionalized indifference in the face of the identified four specific mass atrocity crimes, and strengthening solidarity and cooperation among states in the area of preventive diplomacy – all done within the realm of the UN Charter.

To reiterate, the development of RtoP, being a complementary concept to the principles laid down in the UN Charter, need not have any direct consequence that merits amendment of the Charter. At least, for the time being. ❁

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Endnotes

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- ³ Kofi Annan, *We, the Peoples: The Role of the UN in the 21st Century*, (New York: United Nations Department of Public Information, 2000), 48.
- ⁴ The 12 Commissioners of ICISS are: Gareth Evans (Australia), Mohamed Sahnoun (Algeria), Gisèle Côté-Harper (Canada), Lee Hamilton (United States), Michael Ignatieff (Canada), Vladimir Lukin (Russia), Klaus Naumann (Germany), Cyril Ramaphosa (South Africa), Fidel V. Ramos (Philippines), Cornelio Sommaruga (Switzerland), Eduardo Stein Barillas (Guatemala), and Ramesh Thakur (India).
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- ⁶ United Nations, *Secretary General Presents His Annual Report to General Assembly*.
- ⁷ United Nations, *Secretary General Presents His Annual Report to General Assembly*.
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- ¹¹ Alex Bellamy, "The Responsibility to Protect – Five Years On". *Ethics and International Affairs*, 24, No.2 (2010), 143.
- ¹² Anne-Marie Slaughter, "Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform." *The American Journal of International Law*, Vol. 99, No. 3 (2005), 622.
- ¹³ Slaughter, "Security, Solidarity, and Sovereignty," 627.
- ¹⁴ Slaughter, "Security, Solidarity, and Sovereignty," 628.
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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... 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.

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.
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Dashell Yancha-Po was Senior Foreign Affairs Research Specialist with the Center for International Relations and Strategic Studies of the Foreign Service Institute at the time this article was written. She is currently State Counsel at the Department of Justice.

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