

SECRETARY-GENERAL 2009 R2P REPORT:

“It would be counterproductive, and possibly even destructive, to try to revisit the negotiations that led to the provisions of paragraphs 138 and 139 of the Summit Outcome. Those provisions represent a remarkably good outcome, which will well serve the ultimate purpose of the responsibility to protect: to save lives by preventing the most egregious mass violations of human rights, while reinforcing the letter and spirit of the Charter and the abiding principles of responsible sovereignty.”

§3.2.f 2005 World Summit Outcome Document: R2P

The 2005 *World Summit Outcome Document* (WSOD) constitutes the authoritative statement of R2P and is the most direct source on the nature and importance of R2P.⁸¹ Recent work by the Office of the Secretary-General on the obligations and institutions required by R2P consists of filling out, but not in revisiting, the responsibilities described in these key paragraphs.

Four points regarding the WSOD formulation of R2P are important:

- 1. **The WSOD specified the scope of R2P to the four atrocity crimes** of genocide, war crimes, ethnic cleansing and crimes against humanity. Other types of humanitarian crises must be dealt with outside the aegis of the R2P
- 2. **The WSOD placed the United Nations Security Council as the exclusive arbiter of when the international community should respond coercively to atrocity crimes.** While regional organizations and individual nations contribute to R2P in important ways, the principle does not entertain unilateral or multilateral action occurring outside the authority of the United Nations. In particular, ¶139 provides that the UN Security Council is the exclusive arbiter on the use of military force.⁸²

81 A/RES/60/1. It was the WSOD version of R2P that was affirmed by the Security Council in S/RES/1674 (see below).

82 It is not clear whether the WSOD rules out an alternative route for ensuring that actions to protect populations in other States via, for example, the ICJ. Sampford argued that, where the UNSC was unable or unwilling to act, a state or states that believed a humanitarian disaster in another state justified intervention without the agreement of the latter state could take a “sue me” approach. They could accept the compulsory jurisdiction of the ICJ for all issues related to that particular action (including both the intervention and the prior actions by the state subject to the intervention) and invite any other country which disagreed (particularly the state in which the intervention occurred) to accept

While the core of R2P was laid down in paragraphs 138-140 of the WSOD, **other aspects of R2P can be found elsewhere in the Document**, including in the sections on *Peacekeeping* (¶¶92-93), *Rule of Law* (¶¶119-120, 134), *Refugees* (¶133) and the *Peacebuilding Commission* (¶¶97-105).

- 3. **The WSOD determined the threshold for international Pillar Three action to a State’s “manifestly failing” to protect its population.**
- 4. **The WSOD did not lay down criteria for the UN Security Council to utilize in determining whether forceful Ch. VII intervention should occur.** Earlier, the ICISS had advanced six criteria for the authorization of military intervention: right authority, just cause, right intention, last resort, proportional means and reasonable prospects. Refraining from such a declaration, the WSOD allowed the Security Council greater discretion in when and how it would act to prevent atrocity.

The WSOD’s normative significance arises in a variety of ways.⁸³ The WSOD is first

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similar jurisdiction. Where the claims of the intervening countries about the legality of their action were genuinely held and soundly based (e.g. in a re-run of Rwanda which was then of such great concern), they would have little to worry about. The risk would be for the state which had been abusing its citizens contrary to international law. The WSOD would be relevant to the ICJ’s deliberations and may make it less likely to find in favour of states acting without UNSC approval. Nonetheless, the alternative route would still be available and might be useful if there were doubts about a pre-existing UNSC mandate. Charles Sampford, “Sovereignty and Intervention,” in T. Campbell and B. M. Leiser (eds.), *Human Rights in Theory and Practice* (London: Ashgate, 2001). Sampford’s position here could be seen as a contribution to what the 2011 Brazilian concept paper has recently spoken of as “Responsibility while Protecting”: Brazil, *Responsibility While Protecting*.

83 Its significance as a General Assembly Resolution will be discussed below.

Resolution 1265: The Security Council... “Expresses its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed, including through the consideration of appropriate measures at the Council’s disposal in accordance with the Charter of the United Nations...”

and foremost a profoundly important political document. Arising out of the unanimous agreement of the largest ever gathering of world leaders, R2P can claim to represent a truly shared concern for the victims of atrocities and the moral need to protect vulnerable people.

§3.2.g UN Security Council Resolutions

UN Security Council Resolutions: R2P

Security Council Resolutions form a central part of the normative framework of R2P. Their significance in contributing to the principle begins very early in R2P’s development, preceding not only the WSOD, but even the initial ICISS report of 2001, which itself drew upon *prior* Council practice in support of the emerging principle of R2P.⁸⁴ Drawing on the Council’s action with respect to Somalia in Res. 794, ICISS observed that Council Resolutions allowed that responses to atrocity crimes could be justified in the pursuit of international peace, and were for this reason within the ambit of Security Council action. Thus, crucial parts of R2P’s *Pillar Three* were already to be found in on-going Council practice.

Language highly resonant of aspects of R2P’s *Pillar One* and *Pillar Two* can also be found in resolutions prior to the ICISS report. For instance, in Resolution 1270

84 ICISS, *The Responsibility to Protect*, ¶¶2.24-2.27.