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"The RtoP and Responsibility While Protecting: The Secretary-General's Timely and Decisive Report on Timely and Decisive Responses"

James Pattison
University of Manchester

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Abstract

The United Nations Secretary-General's report on pillar three of the responsibility to protect (RtoP), "Responsibility to Protect: Timely and Decisive Response," is the most interesting, timely, and decisive of his four reports thus far on the RtoP. To start with, the subject matter of pillar three – the international community's potentially coercive responses to humanitarian crises, including humanitarian intervention – is the most controversial part of the RtoP doctrine and the area that has attracted the most criticism from skeptics. Previous reports, such as *Implementing the Responsibility to Protect* (2009), gave pillar three, and humanitarian intervention in particular, fairly short shrift, focusing instead on the far less controversial issues, such as capacity-building, assistance, and early warning. What is most striking about this new report is its forthrightness on several issues around the RtoP and humanitarian intervention that have, either in previous years or in recent times, been highly contested in both academic and policy circles.

Keywords

Human rights, United Nations, Responsibility to protect, Humanitarian intervention, International criminal justice, Responsibility while protecting

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“The RtoP and Responsibility while Protecting: The Secretary-General’s Timely and Decisive Report on Timely and Decisive Responses”

by James Pattison

The United Nations Secretary-General's report on pillar three of the responsibility to protect (RtoP), "Responsibility to Protect: Timely and Decisive Response," is the most interesting, timely, and decisive of his four reports thus far on the RtoP. To start with, the subject matter of pillar three – the international community's potentially coercive responses to humanitarian crises, including humanitarian intervention – is the most controversial part of the RtoP doctrine and the area that has attracted the most criticism from skeptics. Previous reports, such as [*Implementing the Responsibility to Protect*](#) (2009), gave pillar three, and humanitarian intervention in particular, fairly short shrift, focusing instead on the far less controversial issues, such as capacity-building, assistance, and early warning. What is most striking about this new report is its forthrightness on several issues around the RtoP and humanitarian intervention that have, either in previous years or in recent times, been highly contested in both academic and policy circles.

First, the report defends strongly the moral case for humanitarian intervention on occasion (e.g., "[a]fter the tragedies of Rwanda and Srebrenica, none can argue that Chapter VII measures can never be an appropriate response"). This is contrary to those who, for varying reasons, deny the permissibility of such action.

Second, the report takes a strong stance on some legal issues. Against those who have doubted the legality of humanitarian intervention (in the 1990s in particular), the report asserts that humanitarian intervention is legal when authorized by the UN Security Council ("the Security Council can authorize the use of force"). It also asserts that the Security Council *must* authorize humanitarian intervention and largely dismisses the legal authority of regional organizations to do so (e.g., "Article 53 of the Charter requires that no enforcement action be taken under regional arrangements without the authorization of the Security Council"). Again, this has previously been controversial – some hold that regional organizations are permitted to authorize intervention within their own regions (perhaps providing that they seek post-facto authorization from the Security Council).

Third, against those skeptical of the ICC's merits (and those of other tribunals) and who believe that it has been counterproductive in the promotion of human rights, the report notes that "the emergence of a system of international criminal justice has had a positive influence on the development of the concept of RtoP."

Fourth, the report challenges the more recent claims that the RtoP doctrine is empty rhetoric and has done little to tackle the four central crimes (crimes against humanity, war crimes, ethnic cleansing, and genocide). It argues instead that the "international community has made significant progress" in the implementation of the RtoP.

Fifth, the report takes a very robust line on the issue of sequencing ("[p]illars are not sequenced"). That is, it rejects the view that the three pillars of the RtoP should be carried out sequentially, so that humanitarian intervention would be only a last resort. To that extent, it

repudiates a central aspect of the original "Responsibility while Protecting" (RWP) initiative by Brazil, which in the original concept [note](#) proposed this sequencing (although the Brazilians have since [changed their view on this issue](#)).

In fact, the report is in general fairly dismissive of the RWP concept, which is essentially an add-on to the RtoP for instances of humanitarian intervention. It asserts that military interveners should be very careful in their use of force and not go beyond the mandates given to them by the Security Council. The RWP initiative has been driven largely by a skepticism towards humanitarian intervention amongst certain states in light of the NATO campaign in Libya and, in particular, the feelings that: (1) the NATO campaign had exceeded its mandate as France, the US, and the UK undertook regime change that was not authorized by [resolution 1973](#); (2) the civilian casualties were excessive and the targets bombed were not always necessary for achieving the aim of protecting civilians; and (3) France, the US, and the UK (the so-called "P3") largely ignored the opinions of other states on these issues. In contrast, the report first asserts that the NATO campaign was found to be precise in its targeting and that NATO has accounted for its targeting decisions. Second, it implies that civilian casualties are inevitable with military intervention or sanctions. Moreover, the report also oddly interprets the RWP as being about early warning and "doing the right thing, in the right place, at the right time and for the right reasons." This is not what the RWP is about – as already noted, it is about the *means* and *accountability* of action, not about *undertaking* action. In that sense, one way of conceiving the RWP is that it is to RtoP what *jus in bello* is to *jus ad bellum*.

I am not sure that being glib towards the RWP concept is judicious. First, although the suggestion in some quarters that the RWP concept could "save" the RtoP is far too strong (after all, the RWP and criticism of the RtoP really concern only humanitarian intervention – other aspects may be largely unaffected), the RWP concept is nevertheless important for advancing the RtoP. This is not simply because of the need to ameliorate states' concerns about the conduct of humanitarian intervention in light of the campaign in Libya. It is also because the RWP maintains interest in the RtoP. It engenders new debates and controversies, and so will keep states and other actors in the international community talking about the RtoP, which is surely important for its continuing progression. (To be fair, the report appears to admit as much when it notes that RWP can bridge different perspectives and be a catalyst "for further discussion.") Furthermore, the Brazilian initiative of the RWP concept, in effect, provides the RtoP with an additional author of (and stakeholder in) the concept – importantly, one that is from the Global South. Hopefully, Brazil will now play a role in the promotion of the RWP and RtoP more generally.

Second, I think that the RWP concept is, in general, morally desirable. As I have argued [elsewhere](#), those undertaking humanitarian intervention face stricter moral requirements for the conduct of force than traditionally understood in international humanitarian law and Just War Theory. (The RWP hints at this when it says that "[\[t\]he use of force must produce as little violence and instability as possible](#).")

There are a couple more points to note about the report. First, it engages in a minor rewriting of history: the ECOWAS intervention in Sierra Leone in 1997 is cited as an example of a regional organization taking "measures in accordance with the Charter," but in fact this intervention (and

the ECOWAS intervention in Liberia) was undertaken *without* prior Security Council authorization (the Council subsequently authorized its intervention in resolution 1132). This appears to contravene the report's account of the necessity of Security Council authorization in cases of regional organization action (which surely has to be *ex ante* to be *authorization*, rather than *support* or *ratification*). Second, the notion of responsibility within the report seems odd at times. Most notably, in contrast to the central premise of the RtoP doctrine that sovereignty implies responsibility, the report suggests that "[r]esponsibility is an ally of sovereignty," rather than constitutive of it. This could imply that responsibility is not an *inherent* feature of sovereignty (as other versions of RtoP posit), but rather only an add-on to the more traditional notion of sovereignty as authority.

Perhaps I have sounded more critical than I mean to be. The report, overall, is a very welcome addition. In taking a robust approach to several key issues, it should hopefully help to draw a line under some of the more tired debates about humanitarian intervention and the RtoP, so that some progress on the RtoP's implementation – and debates surrounding implementation – can be made. Indeed, generally states engaged in the General Assembly [dialogue](#) on the report seem to have looked upon it favorably. Maybe, then, the report is right to suggest that the RtoP "is a concept whose time has come."

Dr James Pattison is a Senior Lecturer in Politics at the University of Manchester. His research interests include humanitarian intervention, the responsibility to protect, the ethics of war, and the increased use of private military and security companies. His book, Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?, was published by Oxford University Press in 2010. This book was awarded a 'Notable Book Award' in 2011 by the International Studies Association (International Ethics Section) and has recently been published in paperback, with a new preface on the intervention in Libya. His PhD on humanitarian intervention was awarded the Sir Ernest Barker Prize for Best Dissertation in Political Theory by the Political Studies Association. He has published various articles on the ethics of force, including for Ethics and International Affairs, International Theory, the Journal of International Political Theory, the Journal of Military Ethics, the Journal of Applied Philosophy, and the Journal of Political Philosophy. He is currently working on a second monograph on the ethical issues surrounding the use of private military and security companies, The Morality of Private War (under contract with Oxford University Press). Before joining Manchester, he was a Senior Lecturer in International Relations at the University of the West of England, Bristol.