Responsibility To Protect: Introduction

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Introduction

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1 The emergence of the Responsibility to Protect

The tragic events of the 1990s and the first decade of the twenty-first century in Darfur, Kosovo, Liberia, Rwanda, Sierra Leone, and Srebrenica have triggered a fundamental rethinking of the role and responsibility of the international community. Indeed, the international community seems to have learned some painful but powerful lessons.

In these and many other cases, the international community, and perhaps first and foremost the Security Council of the United Nations (UN), dramatically failed in their historic promise and aspiration to prevent genocide and other mass atrocities. The truth is that there was simply a lack of sufficiently strong political will, agreement or support to undertake tasks that would have been perfectly possible from a logistical perspective, and which would have saved the lives of millions of people. While in many of these cases troops were eventually sent, intervention was often too late and always too little. Srebrenica stands out as an illustration of a mismatch between the aspiration of prevention, on the one hand, and the number and capabilities of the troops that were actually deployed, on the other.¹

Then UN Secretary-General Kofi Annan captured the general perception that lessons should be learned when he said in 1999 in the UN General Assembly that the international community should try and forge, once and for all, a consensus on how the international community should respond to ‘a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity’.²

What followed was a decade-long debate on how to reconcile the two fundamental principles of international law that lie at the foundation of the UN Charter. On the one hand, each state has the sovereign right to freedom from interference in its domestic affairs and from the threat or use of military force against its territory, enshrined in Articles 2(7) and 2(4) of the UN Charter.³ On the other hand, all states are obliged to protect human rights and fundamental freedoms, which the UN Charter declares to be one of the very purposes of the UN.⁴

The tension between these principles had been particularly highlighted by the decisions of some states to assert a right to ‘humanitarian intervention’, as for example in the case of NATO intervention in the Balkans: a right to intervene militarily without the consent of the government of the affected state or UN authorisation to
protect suffering civilian populations.5 Many states, particularly those threatened with such military interventions, had questioned the legality of the concept, arguing that they infringe on state sovereignty and the attendant international legal rules on the threat or use of force against states.

Yet, at the same time, there have been cases where it was not the legality of a decision to intervene, but rather a failure to do so that was troubling. In retrospect, it is hard to imagine anyone arguing against a forceful, timely intervention in the face of atrocities in Rwanda in 1994. In an age of almost real-time interconnectedness via mass media and a growing public consciousness of interdependence, simply ‘standing by’ no longer seems to be an option.6

The proponents of the principle of Responsibility to Protect (RtoP) believe that it can provide a way out of the deadlock in the debate on humanitarian intervention by reframing the debate in terms of ‘responsibility’ rather than ‘rights’. First, it defines state sovereignty as implying the responsibility of every state to protect its population from human rights abuses, a definition that carries with it the implication that a state’s failure to exercise its sovereign duty to protect leads to a corresponding diminution of its right to non-interference by outside forces. Second, it asserts a ‘responsibility’ on the part of the international community to support states to provide protection and, ultimately, to intervene when they fail to provide the necessary protection.

A major impetus to the development of RtoP was given in 2001 by the report on ‘The Responsibility to Protect’ by the International Commission on Intervention and State Sovereignty (ICISS), a group of international experts mandated to find a balance between the two principles.7 Since the publication of the report, the RtoP concept has resonated worldwide, notably with civil society.8

Four years later, at the World Summit in 2005, the principle of RtoP found its way into the political arena.8 In particular, two paragraphs in the World Summit Outcome (wso) Document have shaped the political debate on RtoP to this day. Paragraph 138 states that: ‘Each individual State has the responsibility to protect its populations from international crimes’. It also says that ‘the international community should, as appropriate, encourage and help States to exercise this responsibility’. Paragraph 139 then 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 VII 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 organisations 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.

These two paragraphs reaffirm that the responsibility to protect individuals from mass atrocities rests, first of all, on the territorial state. They also reaffirm sovereignty and the entitlement of a state to find its own mode of prevention. Even though the events in Libya show what can happen when a state fails to shoulder the tasks of prevention and protection, it does not cast doubt on the fundamental premise that in the first instance, it was up to Libya to protect the individuals within its jurisdiction.9 However, significantly, states have accepted the residual responsibility of the international community: if the territorial state is unwilling or unable to grant protection, it is for the international community to step in, as it did in the case of Libya in 2011. RtoP is thus very much a responsibility that is shared by states where mass atrocities (may) take place and ‘the international community’ – a term that, of course, covers a variety of actors, including the UN, regional organisations and individual states.

The wso Document can be criticised for providing a weaker version of RtoP, often referred to as ‘RtoP lite’, compared to that which had been proposed by the ICISS in 2001. However, in retrospect, the wso Document might be understood as an improvement on the ICISS Report. The initially broad and fuzzy scope of RtoP, as suggested in the 2001 Report, has been narrowed and more precisely circumscribed. It is now agreed that RtoP (only) relates to four core international crimes: genocide, war crimes, crimes against humanity and ethnic cleansing – even though the last crime is a somewhat odd addition, the nature of which is quite different from that of the first three.10 While this is indeed a narrower version of RtoP, from another perspective, it has brought welcome specificity that may be necessary to make the principle acceptable and operational. In any case, it is clear that the wso Document brought RtoP from the realm of academia and civil society into the actual day-to-day affairs of world politics.

Since the wso Document, RtoP has found its way further into the politics of the UN. The wso Document expressly stipulated that the General Assembly should continue with its consideration of RtoP. A major contribution to this process was provided by the 2009 report to the General Assembly by Secretary-General Ban Ki-moon, entitled ‘Implementing the Responsibility to Protect’.11 Importantly, this document has transcribed paragraphs 138–139 of the wso Document into a ‘three-pillar approach’ consisting of:

1. the protection responsibilities of the state (the ‘responsibility to protect’);
2. international assistance and capacity building (the ‘responsibility to rebuild’); and
3. a timely and decisive response to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity (the ‘responsibility to respond’).

It thus continues to operate on the principle that the state has the primary responsibility for protecting its people. If a state fails in this responsibility, this still does not automatically give outsiders the right to intervene. Rather, the international
community must render assistance to that state, in terms of capacities to enable it to meet its responsibilities. However, if, and only if, despite this assistance, a state is ‘unwilling or unable’ to protect its people, the international community’s responsibility is activated.¹³

Despite the symbolic power of the 2005 World Summit, it is to be recalled that RtoP is not a brand new concept. Rather, it is the culmination of an extended process of development. For one thing, the concept has roots in Africa that predate even the ICIS report.¹⁴ Many African states have long endorsed RtoP, at least verbally, and have sometimes even acted in accordance with what it describes, just under a different name.¹⁵

Moreover, RtoP builds on the protection of human rights by the UN and its member states. Building on the 1945 UN Charter, the 1948 Universal Declaration of Human Rights gave clear and unequivocal expression to the moral standard of achievement that universal human values and rights need to be protected. This idea later gave rise to a large number of international agreements. Major milestones include the conclusion of the Genocide Convention in 1948,¹⁶ the conclusion of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁷ and the International Covenant on Civil and Political Rights (ICCPR) in 1966,¹⁸ and the adoption of the Rome Statute of the International Criminal Court in 1998.¹⁹ Many of the rights and obligations contained in these documents have similar aspirations to those of RtoP, which cannot be appreciated and assessed when disconnected from these roots.

Finally, while the Security Council often can be criticised for acting too late in times of crisis, it is also a fact that the practice of peacekeeping has done much in terms of protecting civilians. Though it does not fall under the RtoP label as such, it is clear that protection of individuals from war crimes in particular has been a major objective of peacekeeping missions.

RtoP, then, can best be seen as a continuation, be it one with a sense of urgency, rather than a radically new idea. The official acceptance of RtoP in 2005 can be regarded as the latest link in a long chain. However, it was not an insignificant next step. The principle played a distinct role in the international response to the Kenyan election dispute of 2007/08²⁰ and the responses to Libya in 2011.²¹ The break with the past is particularly clear when it comes to the recognition of the complementary responsibility of all other states. The task of the international community to assist and possibly even intervene certainly goes a step beyond the idea that the promotion and protection of human rights are legitimate concerns of the international community.²²

For these reasons, we take the position that RtoP should be regarded as an innovative, overarching concept in which both new and existing elements play an integral role. The comprehensive approach embodied by RtoP is thus a key aspect of its added value: it encompasses prevention, reaction and rebuilding, while it addresses not only the role of the state, but also that of the international community acting together.²³

2 Practice

As noted by Edward Luck, the principle of RtoP is designed to change human behaviour. Therefore, in the end, it can only be judged by what does (or does not) happen in practice. The theories that support RtoP, be they legal, political or philosophical (many of which are discussed in this volume), are only a means to an end and not an end in themselves.²⁴ Practice shows that there are some cases that may be used to demonstrate that RtoP can make a difference, but there are at least as many (and actually more) situations where RtoP failed to have any impact.

One (alleged) success story is Kenya’s post-election violence, where Kofi Annan carefully avoided using the term, but acted in its spirit and restored some stability. Yet, the jury is still out on the question of whether it really was a success.²⁵ One of the failures is Darfur, where Sudan not only failed to do what paragraph 138 of the wso Document would have wanted it to do, but where, moreover, the UN failed to do what paragraph 139 wanted it to do.²⁶ Yet, it also is true that no one knows what would have happened in the absence of the insistent pressure applied by the Security Council, the African Union (AU) and other regional organisations, and it may be too simplistic to see Darfur only as a failure of RtoP.

These front-page stories are really only the tip of the iceberg. Beyond the headlines, in contexts that mainly fail to spark the interest of any journalist and thus remain hidden from view, much RtoP activity is going on. In 2010 alone, the UN supported 34 different mediation, facilitation and dialogue efforts, including easing the crisis in Kyrgyzstan and keeping the transition to democracy on track in Guinea. To this we can add the multitude of peacekeeping operations and activities of regional organisations. While RtoP is not often invoked, efforts to protect have become significant in practice, and this raises the question of the basis, scope and limit of the principle of RtoP.

3 Some questions

While the principle of RtoP is now broadly accepted, in certain respects this is only the beginning of its development, rather than its end. The new elements are controversial and the compromise formulations used in the wso Document leave room for and necessitate further interpretation and elaboration. UN Secretary-General Ban Ki-moon recently called the RtoP ‘one of the more powerful but less understood ideas of our times’. He furthermore stated that ’we need a common understanding of what RtoP is and, just as importantly, of what it is not’.²⁷

In particular, four sets of questions stand out.

First, a critical claim of the RtoP doctrine is that both the state where mass atrocities are committed and the international community (a term that we use here as a shorthand for other states and international organisations) have some form of responsibility to prevent such atrocities. This claim raises the question as to what
extent RtoP in fact plays a role in the emergence and allocation of responsibilities. There is a clear overlap between RtoP and many existing (partly legal and partly political) principles and approaches. It has even been suggested that RtoP can be successful when it is not relied upon.\textsuperscript{29} The question is, then, what is the conceptual added value of RtoP compared to existing approaches?

Second, there is the question concerning the legal status of RtoP. The Government of the Netherlands refers to it as a principle of international relations.\textsuperscript{28} But this may be too little; the principle certainly has a legal core. Human rights law, humanitarian law and, after the interpretation given by the International Court of Justice (ICJ) in 2008, also the Genocide Convention place obligations on states to prevent situations falling under these treaties.\textsuperscript{30} However, the scope of these obligations is uncertain. For example, do states in Europe (or the European Union (EU)) have a legal obligation to take action to prevent genocide and other mass atrocities in a state in, for example, Africa?

A third set of questions relates to the balance between the responsibilities of the territorial state, on the one hand, and those of third states, international organisations and, indeed, 'the international community' on the other. RtoP is very much a responsibility that is shared by various actors. It is clear that the territorial state should act first and the UN should take the lead if things go wrong. But how, exactly, responsibilities should be divided between the UN and regional organisations and between third states ('who should save Darfur?') remains one of the intriguing mysteries surrounding the concept.

A fourth set of questions relates to how responsibilities are to be shared and divided within the international community. This question arises in several ways. One concerns the relationship between the UN Security Council and regional organisations. It also arises within the category of third states and regional organisations. It is one thing to argue that all states have to act in case of mass atrocities, but this does not answer the question as to which state or organisation is to act. In the ICISS report, the appeal to the international community is a very general one, leaving us with an unallocated duty to protect.\textsuperscript{31} It also raises the question as to what the 'international community' should do. What type of measures can and should states take to achieve such prevention? What should peacekeepers do to contribute to protection?

In short, while generally considered to be important and endorsed by states and international organisations, and despite having been the subject of earlier books,\textsuperscript{32} the principle of RtoP is still surrounded by uncertainty concerning its scope, the contents of its legal core and vagueness in terms of its moral and political underpinnings and implications. It is therefore of utmost importance to analyse the RtoP principle both from the perspective of different disciplines and from the perspective of different regions. In order for the RtoP principle to be truly helpful in tackling humanitarian crises in the world, more clarity on the principle, its foundations and practical implications is needed.

The aim of this volume is thus first and foremost to clarify the nature and content of RtoP. In particular, it seeks to discuss and assess the extent to which the RtoP principle is grounded in international law, to explore the potential of the principle as a moral or political principle beyond that which is currently legally prescribed, and to examine how and the extent to which international institutions, including the EU and the UN, can use RtoP to contribute to the aim of protecting victims in cases of genocide, ethnic cleansing, crimes against humanity and war crimes. In this endeavour, the volume covers the disciplines of international law, international relations and moral philosophy.

4 The structure of this book

The present volume is divided into five sections, each seeking to provide a specific perspective to further our understanding of RtoP.

It starts with a case study to set the scene of the debate and invite critical reflection: in her introductory contribution, Serena K. Sharma discusses the post-election violence that erupted in Kenya in 2007/8 and critically assesses the claim that it was the first successful application of RtoP. She specifically points to the idiosyncrasies of the Kenyan case, cautioning against its use as a blueprint for developing 'best practices', as well as against taking a short-term view when it comes to evaluating international efforts to apply RtoP.

In Part 1, four authors elaborate on the emergence of RtoP as a concept at the international level and the political context that has shaped its development. Edward C. Luck, currently Special Adviser to the UN Secretary-General on the Responsibility to Protect, sketches the 'journey' that has been undertaken so far along a number of mileposts. He reminds us of the roots of RtoP in the broader movements for human rights, humanitarian affairs, and human security, and points to a number of historic shifts marking the intellectual and political history of the concept, from humanitarian intervention to the UN Report of the Secretary-General, 'Implementing the Responsibility to Protect'.\textsuperscript{33} RtoP, in his view, is continuously gathering momentum and has become a movement rather than merely a concept, which in order to be viable will now need great commitment, inventiveness and prudence to transform its foundational ideas into feasible and practical implementation strategies.

Mark Swatuk-Evstein then critically examines the history of RtoP, especially in relation to the concept of 'humanitarian intervention'. Emphasising the goal of reframing the debate that was aimed at by proponents of RtoP, he deplores the lack of deep engagement with and embedding in the doctrinal history of humanitarian intervention in the main documents on RtoP. In response, he provides a detailed and critical discussion of this history, and contends that the current 'new' approach has not yet brought substantial change, given the 'old' problem of political will to take action when the values of humanity are at stake.
Marc Alexander Gionet subsequently looks more closely at the role of Canada, a state that played a critical part in the emergence of the concept. He shows the potential influence and effectiveness that a middle power can bring to international relations, by putting RtoP onto the international agenda and shaping the discourse and normative development of international law and policy. He also examines how subsequent domestic political changes have had an impact on Canada's continuing commitment to the concept, and its leadership role in giving shape to the implementation of RtoP.

Mapping the conceptual trail of RtoP within the forum of Security Council Open Debates on the Protection of Civilians (PoC) in armed conflict held between 1999 and 2010, Ludovica Poli analyses what she identifies as a 'growing culture of protection'. Providing an overview of the main UN documents and activities related to the PoC, she reflects on the ongoing debates that are currently on the Security Council's agenda, and the impact and potential added value of the conceptual framework of RtoP for these debates. In doing this, she also offers a more detailed understanding of the evolution of states' concerns and expectations, as exemplified within these debates.

Part II of the volume focuses on various contentious issues of international law relevant to conceptualising and operationalising RtoP. Jaan K. Kleffner takes a closer look at the scope of the crimes that trigger RtoP. He investigates two core questions that arise from the inclusion of the crimes of genocide, war crimes, crimes against humanity and ethnic cleansing under the first pillar of RtoP: first, whether reliance on international crimes is indeed the most desirable approach; and second, whether the choice of and limitation to these specific crimes is convincing. A number of paradoxes, ambiguities and inconsistencies, such as those exemplified in the debate concerning the applicability of RtoP to the post-cyclone period in Myanmar, are identified and discussed.

Hanna Brollowski analyses the obligations of third states arising under common Article 1 of the 1949 Geneva Conventions, showing that the moral and political principle of RtoP is firmly grounded in international law. Her analysis establishes that despite vocal criticism against RtoP grounded in arguments concerning the primary importance of state sovereignty, having signed treaties such as the four 1949 Geneva Conventions, states have already agreed to be bound by specific provisions. Specifically, she analyses common Article 1 as the basis of a shared responsibility between individual states and the international community in order to 'ensure respect for the Geneva Conventions'.

Hamne Cuyckens and Philip De Man add a critical voice to the debate focusing on the (lack of) conceptual clarity of and distinction between RtoP (as narrowed down to the four core crimes) and the related concept of conflict prevention at the UN and EU levels. Overlap and conceptual entanglement, they argue, are posing serious challenges to efforts to implement RtoP and put into question the added value of the doctrine. Their analysis focuses in particular on developments in the thinking on and practice of conflict prevention of the past two decades.

Nina H.B. Jørgensen approaches the issue from the perspective of state responsibility, namely the rules governing the responsibility of states for internationally wrongful acts (as mirrored in the International Law Commission’s Articles on State Responsibility). The further evolution of the notion of state responsibility in the application of such rules to the wrongful acts of international organisations (as contained in the Draft Articles on the Responsibility of International Organisations) gives rise to interesting reflections on their implications for and overlap with what is being discussed under the heading of RtoP. The notion of 'serious breaches' of obligations emanating from jus cogens norms serves as a starting point for her analysis. This way, she positions the RtoP debate firmly within the existing (and emerging) framework of international law.

Eliau Lieblich analyses the interaction between the concept of RtoP and the legal norms currently governing consensual intervention in internal armed conflicts; those situations in which intervention is invited or consented to by one of the parties to a conflict. After giving a brief overview of the historical developments in the law regarding consensual intervention, Lieblich analyses possible interactions between RtoP and the three aspects: (a) parties' capacity to express consent, (b) the withdrawal of consent and (c) the interaction between consent and RtoP in situations in which the UN Security Council (fails to) act. In the final part of the chapter, she applies these insights to the case of Libya.

Part III of this volume seeks to bring together a number of legal, political and ethical perspectives on RtoP, specifically in relation to the concept of humanitarian intervention. Is the concept distinguishable from its yet more controversial predecessor? Is there an added value in reframing this debate?

Emanating from the notion that RtoP has not modified existing international legal rules concerning jus ad bellum, Diana Amnéus examines whether the emergence of RtoP has de facto led to an acceptance of a right to humanitarian intervention under international law. Applying the criteria and principles for military intervention as purported by RtoP, the author examines post-Cold War state practice of both authorised and unauthorised interventions through an 'RtoP lens'. In order to be able to infer a potential customary law status of a norm on humanitarian intervention, she examines the responses of other states to such interventions.

James Pattison sheds light on the debate from an ethical perspective, examining fundamental normative questions concerning agency and moral obligations. The author asks who are the actors that ought to intervene in RtoP situations in an effort to counter the problem of diffusion by clarifying the localisation and attribution of moral responsibility entailed in the notion of RtoP. He undertakes this examination from the perspective of what he terms a Moderate Instrumentalist Approach, taking the likely effectiveness of an actor, rather than authorisation by the UN or an actor's motives, as the principal yardstick to evaluate the desirability of different options.

Jennifer M. Webb questions the suggestion made by many proponents of RtoP that under the new umbrella term, the doctrine of humanitarian intervention has
been eliminated from its scope. On the face of it, given the explicit allocation in the wso Document of any residual responsibility to use force to the un Security Council, this view would seem to be correct. Yet, the author argues that, on closer inspection, an overly narrow definition of humanitarian intervention eclipses consideration of instances where forcible interventions have been undertaken with humanitarian aims and where the consent of the target state has been ambiguous or even coerced.

In Part iv the authors discuss international organisations and their respective approaches to RtoP. In addition to a discussion of the un Security Council, three contributions will focus on the role that regional agencies can play in effectively operationalising RtoP, which has often been referred to – for example, in paragraph 139 of the wso Document referring to the responsibility of the international community to operate 'in accordance with [Chapter viii] of the Charter' – pointing to the un's relationship to regional agencies and arrangements.

In the first contribution to this section, Anne Peters examines whether, in the light of RtoP, members of the Security Council would be legally obliged to authorise sufficiently robust action in RtoP situations. On the basis of the scenario of a veto by one of the permanent members of the Security Council in such a situation, the author argues that if RtoP were to be accepted as a binding legal principle, one of its consequences would be, at least, a procedural obligation to justify inaction. Doctrinal consistence, she argues, would in fact lead one to conclude that in RtoP situations, inaction or vetoing a proposal for a Security Council resolution authorising robust action would amount to an illegal act.

Focusing on the organisation credited with pioneering international efforts at legislating on RtoP, Ademola Abass examines the au's standpoints and early applications of principles that form the basis of RtoP. He specifically investigates the Un's principles of 'non-indifference', 'non-interference', and its right to intervene in its member states as contained in the au's Constitutive Act, and their impact on RtoP. In addition, the author discusses the pertinent question of whether, in RtoP situations, the au's Ezulwini Consensus and several allied instruments would allow regional organisations to act in the absence of robust action authorised by the Security Council. Considering the examples of au 'interventions' in Kenya and Darfur, Abass reveals a number of pitfalls and the extent of progress when it comes to implementing RtoP regionally on the African continent.

Turning towards the Association of Southeast Asian Nations (asean), Noel M. Morada considers what role could be played by asean in preventing mass atrocities that are included under the RtoP concept. His contribution pays specific attention to the political systems of member states and the overall political context, as well as institutional and cultural dynamics of the organisation that serve as a context for RtoP implementation in the region. Adding a vision from within the non-governmental sector, the author subsequently examines the role played by the Asia Pacific Centre for RtoP and perceptions of the concept by other regional civil society groups working in the area of conflict prevention and peace-building.

In an in-depth analysis of the eu stance on RtoP, Jan Wouters, Philip De Man and Marie Vincent seek to contribute to clarifying the nature of the eu's vision – as contained in specific RtoP documents, as well as the Charter – concerning the role that regional organisations should play in operationalising and implementing RtoP. The authors detail how the eu has so far positioned itself towards this emerging norm and how it conceives its own capacities to contribute to its further evolution and practical applications. While recognising the eu's relatively strong formal commitment to RtoP, they deplore the organisation's 'slow, haphazard and equivocal' reaction to the Libyan crisis.

Part v seeks to explore in more detail some specific aspects of implementing RtoP, pointing out the urgent need to better understand the nature and roots of mass violence and genocide and to contextualise prevention efforts.

Turning to a pertinent point within the legal debate around RtoP, which will be crucial for its implementation, Jennifer D. Halbert investigates the question of who would be the beneficiary of RtoP, and crucially whether 'populations' ought to be beneficiaries of RtoP, as stipulated in the wso Document, or rather 'citizens', 'civilians', as referred to by a significant majority of states during relevant un debates, suggesting that international and state practice is inconsistent with the adopted documents on RtoP. This has far-reaching implications for the implementation of RtoP, risking an undue narrowing of its scope; one that would exclude, for example, a response to the pleas of child soldiers and refugees. More widely, this issue could have an impact on existing obligations under international human rights, humanitarian and criminal law, to which RtoP relates.

Veronica Bilkova subsequently investigates the relationship between RtoP and unilateral non-forcible measures taken by individual states, groups of states and international organisations that aim to prevent or stop RtoP crimes (such as, for example, political, diplomatic, economic or financial sanctions adopted outside the un system). She concludes that there is a need for clarification of international law on these issues.

Gentian Zyberi examines the potential role of the icj in the implementation of RtoP. After examining the icj's jurisdiction in regard to mass atrocities, he examines the role that the Court has played and could play in regard to RtoP.

Julia Hoffmann and Anaka Okany examine the role that incitement to commit genocide, especially via the mass media, plays in processes that precede the occurrence of mass violence, as well as relevant norms concerning the prevention of such incitement under international law. Contrasting this with the ex post facto approach that has been taken to international criminal prosecution of incitement until now, their central proposition is that for effective prevention, RtoP would have to be triggered at this early stage in escalation processes, when people are skilfully manipulated and publicly incited; and when timely, non-military interventions would still hold the promise of saving lives. They propose an international standard that could guide such efforts.
Francis M. Deng, currently the UN Secretary-General's Special Adviser on the Prevention of Genocide, focuses our attention on the larger context in which genocide can occur and its root causes, emphasizing the importance of identity construction and perception, and the complex and pivotal role of prevention. Providing a number of risk and trigger factors that increase the likelihood of genocide occurring and discussing ways of constructively managing diversity, the author provides a starting point for the development of an analytical framework for contextualising the debate.

Finally, Daniel Jonah Goldhagen spells out a thought-provoking plan to end genocide, which will undoubtedly create controversy and unease among those accused of and confronted with what the author considers to be the continuing ignorance, incompetence and inexcusable complicity of our age when it comes to stopping genocide; and finally, not least among those critical of and concerned about the potential abuses of RtoP. Founded on what he terms ‘eliminationism’ as a guiding theoretical concept to analyse the behaviour of political leaders that leads to genocide, Goldhagen writes a forceful critique of an overly formalistic approach to prevention that is bound by legal hair-splitting and our blindness towards the fact that eliminationist measures are used as tools of purposeful, planned political strategy, rather than the result of ‘mere’ hatred. Instead, he advocates proactive – some might say belligerent – prevention, intervention and punishment strategies, including ‘wanted dead or alive’ measures against abusive leaders, executed by the world’s democracies under the leadership of the US.

In the concluding observations, we draw together the main threads of the contributions and sketch some of the most salient current developments in order to identify the most important questions facing scholars engaged with the task of further developing the principle.

Notes

1 See the revealing analysis of the failures of the UN in the Report of the Secretary-General pursuant to General Assembly Resolution 52/35 (1999), UN Doc A/54/449.
3 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS xvi (UN Charter).
4 Ibid, Preamble.
5 See Part IV of the present volume.
6 See eg Gionet’s contribution in the present volume, at 65.
7 Iciss Report (n 3).
8 See eg the International Coalition for RtoP <http://www.responsibilitytoprotect.org>.
10 This is also confirmed in UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970/2011, where the UNSC recalls ‘the Libyan authorities’ responsibility to protect its population’, and in UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973/2011, where the UNSC reiterated ‘the responsibility of the Libyan authorities to protect the Libyan population’ and reaffirmed that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians’.
11 Kieffer’s contribution in the present volume, at 85-91.
13 WSO Document (n 10), para 139.
15 See eg Abas’s contribution in the present volume, at 215-236.
20 See Sharma’s contribution in the present volume, at 27-35.
21 Resolution 1970 and Resolution 1973 (n 11).
23 Ibid at 15.
24 See Luck’s contribution in the present volume, at 39-46.
25 See Sharma’s contribution in the present volume, at 27-35.
27 Secretary-General Defends, Clarifies ‘Responsible Sovereignty: International Cooperation For A Changed World’, UN Department of Public Information, UN Doc. SG/SAM/1701 (15 July 2008).
28 See Luck’s contribution in the present volume, at 39-46.
30 See eg Brollowski’s contribution in the present volume at 93-110.
31 See Pattison’s contribution in the present volume, at 173-182.
33 Implementing the Responsibility to Protect Report (n 12).