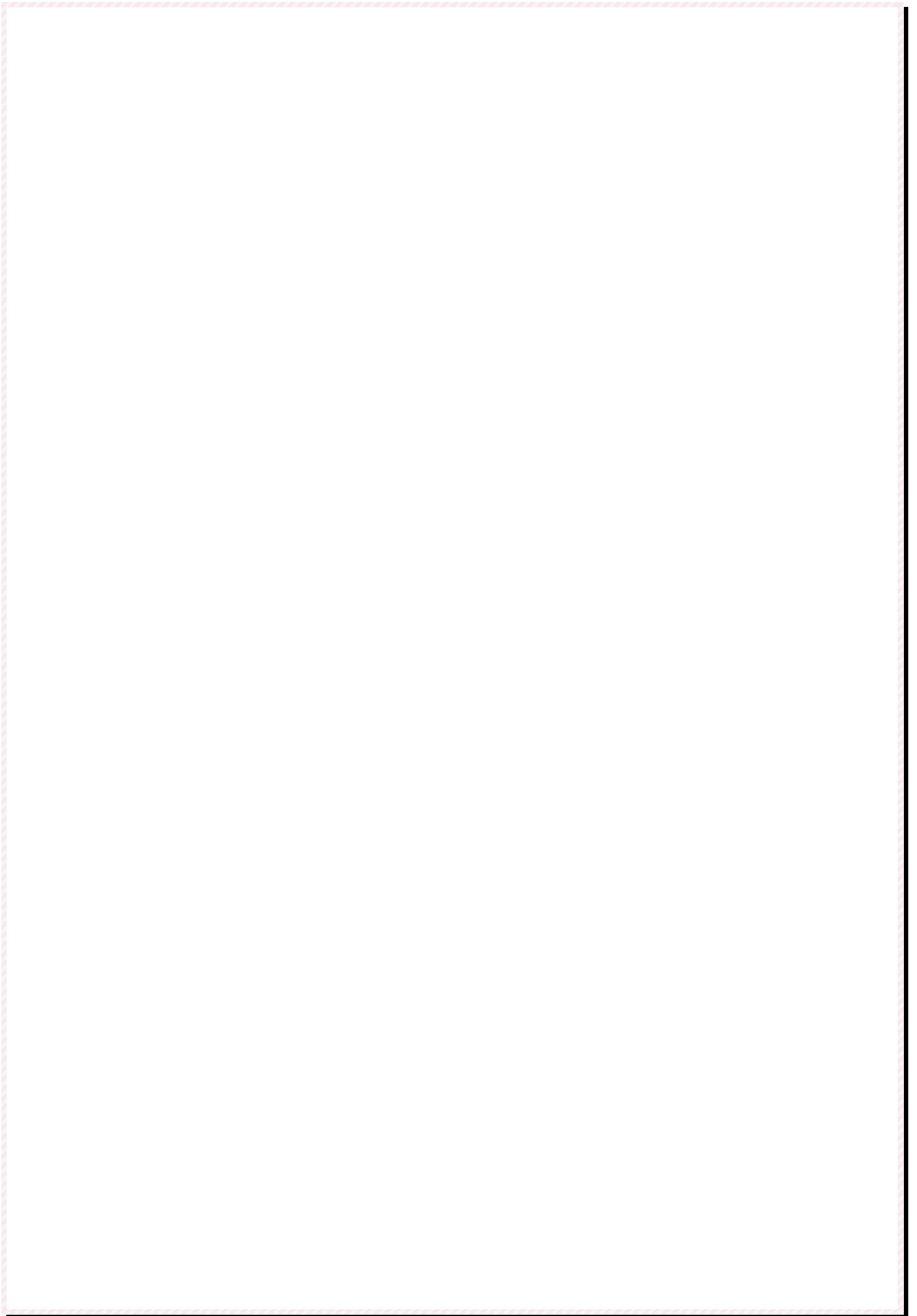




*Australian Refugee Rights Alliance*  
*"No Compromise on Human Rights"*

Responsibility to Protect

**THE HUMAN FACE  
OF AUSTRALIA'S REFUGEE POLICY**





# Australian Refugee Rights Alliance

James Thomson & Julia Roy

## What is it?

The Responsibility to Protect (R2P) is a conceptual breakthrough that provides an answer to the international controversy over 'humanitarian intervention'. As identified by Kofi Annan in 1999 and 2000:

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

## Foundations

In response to international calls for a more definitive approach to conscience shocking situations such as Rwanda and Srebrenica, the Canadian Government established the International Commission on Intervention and State Sovereignty. In 2001, they published a report that identifies as far as possible, "international consensus on what [humanitarian intervention] is politically achievable in the world as we know it today." The report seeks to shift the discourse from "the right to intervene" to "the responsibility to protect" and to change the definition of sovereignty from one of "control" to one of "responsibility".

It identifies three international responsibilities - to *prevent*, *react* and *rebuild*, regions facing "conscience-shocking situations."

**To Prevent:** to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. This includes economic considerations and the effects of debt accumulation and one-way trade on the developing world, and should be addressed not just at the international-government level, but through domestic policies and state-to-state cooperation.

**To React:** to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. Here too, domestic policies can make significant impacts on those facing humanitarian crises in other nations. For example, complementary protection regimes increase the number of people who qualify for refugee and asylum protection and are thus permitted to migrate to resettlement countries.

**To Rebuild:** to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

It maintains that authority must first and foremost move from the Security Council. "Aimed at providing precise guidance for states faced with human protection claims in other states," the report establishes the "Just Cause Threshold": "actual or apprehended large scale loss of life... or

ethnic cleansing" (including rape) in a state or region which is unable or unwilling to protect the population, thus engaging the international responsibility to protect.

### **International Legislation**

The speed with which R2P has gone from a concept in a small commission report to being included in international law provides hope that it is the vital "conceptual breakthrough" necessary to "close the gap between rhetorical support for prevention and tangible commitment" by world governments.

In 2005, the Outcome of the 60<sup>th</sup> World Summit was passed as a GA resolution, and included two sections, 138 and 139 on the "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." (See appendix 2) This was a ground breaking first step in the international adoption of R2P.

Then, on 28 April 2006, Resolution 1674, the Protection of Civilians in Armed Conflict, was unanimously passed by the Security Council. It affirms that the United Nations, via the authority of the Security Council, is "prepared to take collective action in a timely and decisive manner" when states are "manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity." The Security Council now hosts semi-annual open debates on the protection of civilians, which may become the platform for highlighting situations of grave concern as and before they arise.

However, in one crucial area, the resolution remains weak. Intervention is to be determined on a "case by case basis," a process which has proved slow and ineffective in generating a reflexive response to conscious shocking situations worldwide.

### **UNHCR's Response: R2P enabling complementary protection regimes to "close the gap"**

In two key speeches delivered in November 2005 and June 2006, Assistant High Commissioner Erika Feller expressed her hope that the international adoption of R2P will enable states to over-come issues of sovereignty and security in order to respond reflexively to human suffering and need around the world.

*"The significance of the concept of a responsibility to protect is that it does not rest on mandates, or indeed on international conventions. Rather, it comes into play in response to needs... The protection situation may be equally acute for an earthquake victim in Pakistan, for an IDP in the Sudan, or for a victim of trafficking in Eastern Europe."*

Specifically, she identifies the possibility R2P presents for the development of complementary protection regimes (CPR's), directed at all those who currently occupy the 'gap' between officially recognised refugee, and unofficial 'stranded person.' This category of people includes Internally Displaced Persons (IDP's), stateless people, and people who are unable to flee conflict or catastrophe zones but are deprived in much the same way as those living as refugees. In such circumstances, CPR's can take the form of visa arrangements, for example, "which extend

protection coverage to defined categories of person, who, for whatever reason, are held to be outside the refugee convention."

Feller then goes further, encouraging the international community not to read R2P narrowly, as only a 'pre-emptive strike' option. Instead, she posits that R2P should be engaged not only in situations flowing out of conflict, but from all circumstances in which human need emerges. For example, certain aspects of protection can be satisfied simply by categorising those who might otherwise fall into the gap of lost persons, as refugees according to the 1951 Convention, thus including more people in international and domestic refugee protection schemes.

### **Recommendations**

- 1) The establishment of a "Reflex Response" Policy at the Security Council, by:
  - a) Adopting five basic criteria of legitimacy to test the validity of a claim for intervention:
    - i) **The Just Cause Threshold** – That the seriousness of harm be such that there is or threatens to be large scale loss of life or ethnic cleansing;
    - ii) **Right Intention** – That the primary purpose of the intervention be to halt or avert human suffering;
    - iii) **Last Resort** – That every non-military option has been exhausted, or would be obviously ineffectual;
    - iv) **Proportional Means** – Military intervention should be the minimum necessary to secure the protective objective;
    - v) **Reasonable Prospects** – That on balance, more good than harm will come from intervention.
  - b) An agreement between the five permanent members of the security council that they will **not exercise veto power** over requests for intervention, where immediate national interests are not at stake.
    - i) The capacity of the Security Council to act be not further hindered by insufficient core funds and insufficient military and civilian resources.
- 2) Vesting certain reserve authority in the General Assembly:
  - a) Should the Security Council fail to act, Art10 of the UNC gives a responsibility to the GA for any matter "within the scope of UN authority." Article 11 then grants fallback responsibility with regards specifically to the maintenance of international peace and security. Thus, GA authority can, if necessary, be called upon in the face of overt Security Council failure.
  - b) Be exercised on a balanced consideration as to where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by."
- 3) Ensuring that force protection not overtake the main intervention mission objective.
- 4) That the provisional rules of procedure of the recently created Peacebuilding Commission, including a commitment to ensure civil society consultation through regular modalities, be implemented, and that domestic civil society engagement mechanisms continue to be included in all prevention, reaction and rebuilding strategies.

- 5) That the newly emerging Human Rights Council, the Peacebuilding Commission and Fund and the Democracy Commission and Fund:
- a) be utilized to their full potential in keeping with the principles of R2P,
  - b) that they be not hindered by insufficient core funds and civilian resources,
  - c) the potential scope of each of these organisations to:
    - i) monitor emerging situations,
    - ii) strengthen democratic, social and economic functions of vulnerable regions,
    - iii) coordinate official government and inter-governmental responses with domestic civil organisations, and
    - iv) assist with rebuilding efforts in a collaborative manner with the UNHCR and the principles of R2P, be further investigated, and that
  - d) an independent commission be established to report, before the 2007 Ex-Com, on the viability of 6(c).

### **endnotes**

1. Asfaw, Semegnish, Guillermo Kerber, and Peter Weiderud, eds. The Responsibility to Protect - Ethical and Theological Reflections. Geneva: World Council of Churches, 2005.
2. "Engaging Civil Society." Responsibility to Protect. Aug. 2006. World Federalist Movement - Institute for Global Policy. <<http://www.responsibilitytoprotect.org>>.
3. Evans, Gareth. "The Responsibility to Protect: Unfinished Business", Gareth Evans in G8 Summit 2006: Issues and Instruments (the Official Summit Publication). International Crisis Group. 2006. <<http://www.crisisgroup.org/home/index.cfm?id=4269&l=1>>.
4. Feller, Erika. "The Responsibility to Protect – Closing the Gaps in the International Protection Regime and the New EXCOM Conclusion on Complementary Forms of Protection." International Protection, UNHCR. "Moving on: Forced Migration and Human Rights". NSW Parliament House, Sydney. 22 Nov. 2005. <<http://www.unhcr.org/cgi-bin/texis/vtx/admin/opendoc.htm?tbl=ADMIN&id=43a692122>>.
5. Feller, Erika. "Towards a Culture of Protection." 8th Annual Forum on Human Rights: Global Human Rights Protection - the Way Forward. Dublin, Ireland. 24 June 2006. <<http://www.unhcr.org/cgi-bin/texis/vtx/admin/opendoc.htm?tbl=ADMIN&id=44aba8d54>>.
6. "Small Number of Countries Holding UN World Summit Hostage on Human Rights, Security, Poverty." Human Rights Watch. 5 Sept. 2005. <[http://hrw.org/english/docs/2005/09/07/global11694\\_txt.htm](http://hrw.org/english/docs/2005/09/07/global11694_txt.htm)>.
7. THE RESPONSIBILITY TO PROTECT. International Commission on Intervention and State Sovereignty. Ottawa: International Development Research Centre, 2001. <<http://www.iciss.ca/report-en.asp>>.
8. For all noted UN documents please visit: "Responsibility to Protect." Key World Summit Follow Up Issues. <<http://www.reformtheun.org/index.php/issues/1736?theme=alt4>>

## **Where does your nation stand on R2P?**

<p>Nations that have expressly supported R2P:</p>	<p>The African Group, including recent explicit endorsement by:</p> <p>Congo* Ghana* Tanzania* Australia Argentina* Canada* Chile Columbia* (Acknowledges internal security problems, and stresses that international efforts and presence, especially of the UN and ICRC, are welcomed, but must work <i>with</i> the Columbian Government, not parallel to it.)</p>	<p>The European Union, including recent explicit endorsement by:</p> <p>Austria* Denmark* France* Greece* Ireland Slovakia* Slovenia* Sweden* United Kingdom* Guatemala Iraq* Japan* Liechtenstein* New Zealand Peru* Singapore Uganda*</p>
---	---	---

\*Makes explicit mention of R2P at the S.C. open debate on the protection of civilians.

### **Encouraging domestic political will**

The role of NGOs and civil society has been absolutely vital in bringing R2P this far; as such their invaluable contributions should be supported financially and corroboratively. NGOs often bridge the gap between an international initiative and domestic political will. In particular, the World Council of Churches, Amnesty International, Human Rights Watch and International Crisis Group have released statements and letters on R2P which have raised awareness at each level of domestic-civil and international society. "Political leaders often underestimate the sheer sense of decency and compassion that prevails in their electorates... unfortunately, this is always harder to convey at the crucial stage of prevention than it is after some actual horror has occurred." Arguments to encourage domestic political will:

- a) "The best *financial* argument is that earlier action is always cheaper than later action."
- b) "These days, peace is generally regarded as much better for business than war."
- c) Partisan arguments are delicate, but can be important tools in recruiting domestic support.

### **Additional Resources:**

For more information, visit: [www.responsibilitytoprotect.org](http://www.responsibilitytoprotect.org). Select "Learn About R2P" and follow the links.

Also, the World Council of Churches book *The Responsibility to Protect – Ethical and Theological Reflections* provides an excellent background on the development of R2P, the role of civil society, and the significant impact R2P could have on struggling populations in the near future.