Sovereignty, Choice, and the Responsibility to Protect

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Abstract
It is commonly asserted that the chief obstacle to advancing acceptance of the responsibility to protect (RtoP) is the reluctance of developing countries to compromise their sovereignty. This paper argues, instead, that both developing and some of the more powerful developed countries have concerns about the implications of RtoP for their sovereignty. The former are more likely to be concerned about territorial sovereignty and the latter about decision-making sovereignty. Both sets of concerns were openly expressed during the debates leading up to the consensus at the 2005 World Summit on RtoP. That consensus was facilitated by the fact that the wording of the relevant provisions of its Outcome Document took both types of reservations about sovereignty into account. The paper argues that the recognition that countries of the North and the South tend to be more united than divided by their determination to preserve their sovereignty should facilitate efforts to achieve consensus on how to operationalise and implement the responsibility to protect.

Keywords
sovereignty, United Nations Charter, UN World Summit 2005, North-South debate, UN General Assembly, UN Security Council, Westphalian sovereignty, Non-Aligned Movement, RtoP Lite

Introduction
It has become a common refrain to assert that the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity presents a challenge to traditional conceptions of state sovereignty. ¹

¹ It is not the place of this essay either to define the components of RtoP or to chronicle its development. These tasks are accomplished, however, in two recent RtoP volumes: Gareth Evans, The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All (Washington, D.C.: Brookings Institution Press, 2008) and Alex J. Bellamy, A Responsibility to Protect: The Global Effort to End Mass Atrocities (Cambridge: Polity, forthcoming 2008).
This, it is said, is the chief reason that some smaller and developing countries have had reservations about embracing the concept. Their reservations, in turn, are widely seen as the primary obstacles to gaining global acceptance of a robust RtoP regime. Further, it is asserted that more developed states, less concerned about their sovereignty because they are more capable of defending themselves militarily or are part of a strong regional bloc, like the European Union, are more likely to accept the responsibility to protect without crippling reservations. This paper contends, on the contrary, that some major powers of the North have acute sovereignty concerns about RtoP as well, though of a different sort. Smaller and weaker states, particularly those that have suffered colonialism, are more prone to interpret sovereignty in territorial terms. Some powerful states, including most pointedly the United States, tend to see sovereignty in terms of freedom of policy choice and hence are reluctant to accept any interpretation of RtoP that implies an automaticity of response.

Rather than seeing sovereignty as the dividing line in a North-South debate over RtoP, this article argues that both sources of sovereignty-induced ambivalence – that affecting the North and that affecting the South – were largely addressed in the formulation of RtoP contained in the Outcome Document from the 2005 World Summit. Otherwise, there could not have been a consensus outcome. Though RtoP has yet to achieve status as a norm in terms of being the product of a legally binding convention, there is no open dissent to the pledge in paragraph 138 of the Outcome Document that the assembled heads of state and government accept the responsibility to prevent the four crimes and their incitement and “will act in accordance with it”. The General Assembly subsequently endorsed the Outcome Document unanimously. The areas of continuing divergence relate to how to operationalise and implement those agreed provisions. In moving forward on that front, the UN Secretary-General and UN Member States need to bear in mind both sets of sovereignty concerns if they are to avoid an unnecessary and caricatured North-South debate over a principle that is well grounded in existing international law and that has broad geographical and political appeal. Sovereignty remains an issue, of course, but one that should guide the approach to RtoP doctrine and practice, not one that should divide the membership and doom the concept to the world of wishful thinking.

**Types and Sources of Sovereignty**

Steve Krasner identifies four distinct ways in which the term sovereignty is commonly used, as follows: