Executive Summary
Backgrounder
Published by The Heritage Foundation
No. 2130
May 1, 2008

The U.S. Should Reject the U.N. "Responsibility to Protect" Doctrine

Steven Groves

The "responsibility to protect" (R2P) doctrine outlines the conditions in which the international community is obligated to intervene in another country, militarily if necessary, to prevent genocide, ethnic cleansing, and other atrocities. Despite its noble goals, the United States should treat the R2P doctrine with extreme caution.

Adopting a doctrine that compels the United States to act to prevent atrocities occurring in other countries would be risky and imprudent. U.S. independence—hard won by the Founders and successive generations of Americans—would be compromised if the United States consented to be legally bound by the R2P doctrine. The United States needs to preserve its national sovereignty by maintaining a monopoly on the decision to deploy diplomatic pressure, economic sanctions, political coercion, and especially its military forces.

There are ongoing efforts to legitimize the R2P doctrine within the United Nations and other international forums. R2P is being advocated by certain organizations that do not necessarily consider the best interests of the United States as a priority. International organizations such as the United Nations and international nongovernmental organizations (NGOs) such as the World Federalist Movement and the Open Society Institute promote R2P in the interest of a nebulous "international community," not in the interests of the United States or its citizens.

If the United States intervenes in the affairs of another nation, that decision should be based on U.S. national interest, not on any other criteria such as those set forth by the R2P doctrine or any other international "test."

Protecting American Sovereignty. Given the recognition of the responsibility to protect doctrine in the 2005 World Summit Outcome Document and the continuing efforts by certain actors in the international community to promote and operationalize R2P, the United States should clarify its position on its national sovereignty and the criteria for the use of its armed forces.

To that end, the United States should:

- **Maintain** its current official position, as set forth in former Ambassador to the U.N. John Bolton's letter regarding the 2005 World Summit Outcome Document, that the R2P doctrine does not create a binding legal obligation on the United States to intervene in another nation for any purpose.
- **Affirm** that the United States need not seek authorization from the U.N. Security Council, the U.N. General Assembly, the international community, or any other international organization to use its military forces to prevent acts of

This paper, in its entirety, can be found at:
www.heritage.org/Research/InternationalOrganizations/bg2130.cfm
Produced by The Margaret Thatcher Center for Freedom
Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
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genocide, ethnic cleansing, or other atrocities occurring in another country.

- **Base** its decisions to intervene in the affairs of other nations—including punitive economic, diplomatic, political, and military measures—on U.S. national interests, not on criteria set forth by the R2P doctrine or any other international "test."
- **Scrutinize** ongoing efforts by certain actors within the international community to operationalize and otherwise promote the R2P doctrine in the United States, the United Nations, the international NGO community, and other international forums.
- **Reject** the notion that the R2P doctrine is an established international norm.

Conclusion. The United States should take no comfort from the fact that, as a party to the 2005 World Summit Outcome Document, it has committed itself only to being "prepared to take collective action" to end atrocities or that the International Commission on Intervention and State Sovereignty's report represents the obligation to prevent atrocities as a mere "responsibility."

R2P advocates are attempting to achieve worldwide consensus that the international community has an obligation to intervene, with military force if necessary, in another country to prevent acts of genocide, ethnic cleansing, and other atrocities. R2P proponents may not be satisfied with anything less than a multilateral treaty—a United Nations Convention on the Responsibility to Protect—that creates binding legal obligations on its signatories.

The United States should therefore continue to treat the responsibility to protect doctrine with grave skepticism. The independence won by America's Founding Fathers and defended by subsequent generations of Americans should not be squandered, but rather should be safeguarded from furtive encroachments by the international community.

Only by maintaining a monopoly on the deployment of diplomatic pressure, economic sanctions, political coercion, and military forces will the United States preserve its national sovereignty. Acceding to a set of criteria such as those set forth by the R2P doctrine would be a dangerous and unnecessary step toward bolstering the authority of the United Nations and the international community and would compromise the consent of the American people.

—Steven Groves is Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.

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Adopting a doctrine that compels the United States to act to prevent atrocities occurring in other countries would be risky and imprudent. U.S. independence—hard won by the Founders and successive generations of Americans—would be compromised if the United States consented to be legally bound by the R2P doctrine. The United States needs to preserve its national sovereignty by maintaining a monopoly on the decision to deploy diplomatic pressure, economic sanctions, political coercion, and especially its military forces.

There are ongoing efforts to legitimize the R2P doctrine within the United Nations and other international forums. The R2P doctrine is being advocated by certain organizations that do not necessarily consider the best interests of the United States as a priority. International organizations such as the United Nations and international nongovernmental organizations (NGOs) such as the World Federalist Movement and the Open Society Institute promote R2P in the interest of a nebulous "international community," not in the interests of the United States or its citizens.

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Talking Points

- Advocates of the "responsibility to protect" (R2P) doctrine are attempting to achieve worldwide consensus that the international community has an obligation to intervene—militarily if necessary—in another country to prevent acts of genocide and ethnic cleansing.
- To preserve its national sovereignty, the United States must maintain a monopoly on decisions to deploy U.S. military forces and to use diplomatic pressure, economic sanctions, and/or political coercion.
- U.S. national interest, not the R2P doctrine or any other international "test," should guide decisions to intervene in the affairs of other nations.
- The current official U.S. position—that the R2P doctrine does not create a binding legal obligation on the United States—must be maintained.
- The United States does not require authorization from the U.N. Security Council, the U.N. General Assembly, or the international community to intervene militarily to prevent genocide and ethnic cleansing in other nations.

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Origins of the R2P Doctrine

Military intervention by one sovereign nation into another for humanitarian purposes has long been a controversial topic. In the wake of the tragedies in Rwanda and Srebrenica during the mid-1990s, the Canadian government—at the urging of then-U.N. Secretary-General Kofi Annan—launched an initiative to set forth principles for when and under what conditions such an intervention would be justified. To this end, Canada announced in September 2000 the formation of the International Commission on Intervention and State Sovereignty (ICISS) to "foster a global political consensus" for preventing and responding to future incidents of mass killing and ethnic cleansing.

The ICISS Report. In December 2001, the ICISS issued a comprehensive report, *The Responsibility to Protect*.[1] Its two key provisions may be summarized as follows:

1. National governments are responsible for preventing large-scale losses of life and ethnic cleansing in their own populations.
2. In the event that a national government is unable or unwilling to prevent such atrocities, the international community, acting through the United Nations, has a responsibility to act and protect the suffering population, with or without the consent of the recalcitrant government.

The first of these provisions is already widely accepted. To date, 140 nations[2] have pledged to protect their respective populations from genocide under the Convention on the Prevention and Punishment of the Crime of Genocide: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."[3] If a national government fails to protect its own population from genocide or other atrocities, the R2P doctrine holds that the government effectively forfeits its sovereignty and negates its ability to raise the principle of nonintervention to prevent other nations from intervening to protect the vulnerable population.[4]

The second key provision of the ICISS report purports to create an obligation for nations to act to prevent atrocities not only within their own borders, but also in other nations. Specifically, the report states that the international community has a responsibility to intervene in another country with military force to stop:

1. "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation" or
2. "large scale 'ethnic cleansing,' actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."[5]

A New "International Norm." The R2P doctrine is the latest example of an attempt by certain actors in the international community to create new "international norms" to comport with their particular view of how nations should behave.[6] Often, when there is a perceived need for a new interna-

1. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001, at *http://www.iciss.ca/pdf/Commission-Report.pdf* (April 21, 2008).
2. Office of the U.N. High Commissioner for Human Rights, "Ratifications and Reservations: Convention on the Prevention and Punishment of the Crime of Genocide," updated July 18, 2007, at *http://www2.ohchr.org/english/bodies/ratification/1.htm* (April 21, 2008).
3. Notably absent from the R2P doctrine, however, is a requirement that there be an element of specific genocidal intent, which is an element required by the Genocide Convention. Convention on the Prevention and Punishment of the Crime of Genocide, Art. 1, December 9, 1948, at *http://www.unhchr.ch/html/menu3/b/p_genoci.htm* (April 21, 2008).
4. For example, see United States Institute of Peace, "American Interests and UN Reform," pp. 27–33, at *http://www.usip.org/un/report/usip_un_report.pdf* (April 21, 2008).
5. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 32, ¶ 4.19 (emphasis omitted).

tional norm, certain members of the international community—usually international NGOs, government representatives, U.N. officials, and other activists—will gather at a conference for the purpose of "discovering" and/or developing the new norm.[7] These groupings meet to determine what the new norm should entail, write reports, convene conferences, and build networks. They may ultimately call for a convention of national governments to draft a multilateral treaty to memorialize the new norm.[8]

The activities of the ICISS and certain NGOs clearly fit this pattern of norm-creating behavior. The ICISS report announces the discovery of a new "emerging guiding principle" that military intervention to thwart humanitarian atrocities should be recognized as an obligation of the international community:

> While there is not yet a sufficiently strong basis to claim the emergence of a new principle of customary international law, growing state and regional organization practice as well as Security Council precedent *suggest an emerging guiding principle*—which in the Commission's view could properly be termed "the responsibility to protect."[9]

The report continues:

> [F]or present purposes the point is simply that there is a large and accumulating body of law and practice which supports the notion that, whatever form the exercise of that responsibility may properly take, *members of the broad international community of states do have a responsibility to protect both their own citizens and those of other states as well*.[10]

Proponents of the R2P doctrine will likely not be satisfied if the international community merely recognizes R2P as a "guiding principle." The long-term effort is to build consensus within the international community that the guiding principle is worthy of official recognition as a norm that should be memorialized in a multilateral treaty. Proponents may posit that the new norm should be anointed by the "international legal community" as recognized customary international law—a status that would legally bind the nations of the world to behave in a certain manner even in the absence of a treaty.

Indeed, R2P advocates point to existing international law as the basis for creating the R2P doctrine. Specifically, the ICISS report claims that the R2P norm is contemplated—if not already recognized and legitimized—by several existing international agreements and treaties, including:

> fundamental natural law principles; the human rights provisions of the UN Charter; the Universal Declaration of Human Rights together with the Genocide Conventions and Additional Protocols on international humanitarian law; the statute of the International Criminal Court [ICC]; and a number of other international human rights and human protection agreements and covenants.[11]

Ironically, the fact that many nations have not ratified these particular agreements appears unimportant to the ICISS. For example, the United States has ratified neither the statute of the International Criminal Court nor the Additional Protocols on international humanitarian law. Yet R2P advocates apparently expect the United States to recognize

6. See John Fonte, "Liberal Democracy vs. Transnational Progressivism: The Future of the Ideological Civil War Within the West," *Orbis*, Vol. 46, No. 3 (Summer 2002), at *http://www.hudson.org/files/publications/idealogical_war.pdf* (April 21, 2008).
7. For example, see James P. Kelly III, "The Matrix of Human Rights Governance Networks," *Engage*, Vol. 9, Issue 1 (February 2008), at *http://www.fed-soc.org/publications/pubid.691/pub_detail.asp* (April 21, 2008).
8. For a discussion of efforts to create new norms relating to reproductive and sexual health rights, see Douglas Sylva and Susan Yoshihara, "Rights by Stealth: The Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion," Catholic Family & Human Rights Institute *White Paper* No. 8, April 5, 2007, pp. 8–19, at *http://www.c-fam.org/index.php?option=com_docman&task=doc_view&gid=20* (April 21, 2008).
9. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 15, ¶ 2.24 (emphasis added).
10. *Ibid.*, p. 16, ¶ 2.27 (emphasis added).
11. *Ibid.*, p. 16, ¶ 2.26.

and adopt a new international norm that is partially based on these treaties and protocols that it has already rejected.

Legitimizing R2P Within the International Community

Once activists have agreed on the proper framework and content for a "new" norm, they often set about to legitimize the norm throughout the international community.[12] In the years since December 2001, when the ICISS report was released, R2P proponents have successfully integrated the doctrine into key U.N. documentation and have established coalitions and networks of international NGOs to pursue recognition of the doctrine.

Recognition of R2P at the United Nations. In September 2005, the world's leaders met at the United Nations for a "world summit" to make commitments to one another in the fields of development, collective security, human rights, and U.N. reform. The principles agreed upon by the world leaders, including the United States, were set forth in the 2005 World Summit Outcome Document.[13]

R2P advocates successfully inserted the two key provisions of the ICISS report into the text of the Outcome Document. Thus, by accepting the Outcome Document, the international community has made the following commitments regarding the R2P doctrine:

> Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it….
>
> The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means…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* [U.N.] *Charter, including Chapter VII* [the basis for the use of military force]…should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[14]

In sum, the international community's current position, as set forth in the Outcome Document, is that all nations have a collective responsibility to protect the populations of other nations against acts of genocide, ethnic cleansing, and other atrocities. Moreover, the international community, especially the nations that sit on the U.N. Security Council, "are prepared" to use military force, pursuant to Chapter VII of the U.N. Charter, to end those atrocities. For its part, the Security Council subsequently reaffirmed the R2P principles set forth in the Outcome Document in a 2006 resolution dealing with the protection of civilian populations during armed conflict.[15]

Advancing new norms at the United Nations is also accomplished by creating special U.N. working groups and offices dedicated to the development of the norm. U.N. special advisers, special envoys, and other "special" offices have been created in the past to develop issues and norms ranging from climate change to "sport for development and peace."[16]

The R2P doctrine is traveling along the same path. On December 12, 2007, U.N. Secretary-Gen-

12. See Kim R. Holmes, *Liberty's Best Hope: American Leadership for the 21st Century* (Washington, D.C.: The Heritage Foundation, 2008), pp. 52–54.
13. U.N. General Assembly, "2005 World Summit Outcome," A/RES/60/1, U.N. General Assembly, 60th Sess., October 24, 2005.
14. *Ibid.*, p. 31, ¶¶ 138–139 (emphasis added).
15. "The Security Council…[r]eaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." U.N. Security Council Resolution 1674, S/RES/1674, April 28, 2006.

eral Ban Ki Moon created a new assistant secretary-general position, Special Adviser on the Responsibility to Protect, and appointed Professor Edward Luck of Columbia University to fill it. As the special adviser, Luck's primary responsibility "will be conceptual development and consensus building, to assist the General Assembly to continue consideration" of the R2P doctrine. Luck will help the Secretary-General "develop proposals, through a broad consultative process, to be considered by the United Nations membership."[17]

Notably, only three paragraphs of almost 180 paragraphs and 40 pages of the Outcome Document address the R2P doctrine. Yet it was deemed necessary to create a new assistant secretary-general position for the sole purpose of promoting the R2P doctrine.

Advocacy in the International NGO Community. R2P advocates have launched a worldwide effort to convince the international community to recognize and accept R2P as a universally accepted doctrine.

For example, in February 2008, a coalition of international NGOs that includes Human Rights Watch and the World Federalist Movement teamed with such sponsors as George Soros's Open Society Institute and the John D. and Catherine T. MacArthur Foundation to launch the Global Centre for the Responsibility to Protect at the City University of New York.[18] The Global Centre will "serve [as] a catalyst for moving the responsibility to protect from principle to practice." It "will conduct, coordinate, and publish research on refining and applying the R2P concept" and "serve as an information clearing house and resource for governments, international institutions, and non-governmental organizations leading the fight against mass atrocities."

Several other international groups have networked with the Global Centre to advocate for R2P around the world, including the Asia–Pacific Centre for Responsibility to Protect in Thailand, the Kofi Annan International Peacekeeping Training Centre in Ghana, the Norwegian Institute for International Affairs, and the Fundación para las Relaciones Internacionales y el Diálogo Exterior in Spain.

Another group—the R2P Coalition—focuses on advocating R2P in the United States.[19] Based in Illinois, the coalition's mission is:

- "To convince the American people and its leaders to embrace the norm of the responsibility to protect as a domestic and foreign policy priority,"
- "To convince our political leadership that the U.S. must join the ICC," and
- "To convince our political leadership to empower the UN and the ICC with a legitimate and effective deterrent and enforcement mechanism—an International Marshals Service—a standing international police force to arrest atrocity crimes indictees."[20]

The R2P Coalition hosted a series of conferences in 2007 and convinced several local governmental entities—such as the City and County of San Francisco—to pass resolutions endorsing the R2P doctrine.[21]

The World Federalist Movement. Perhaps the most active R2P proponent on an international scale is the World Federalist Movement (WFM).[22] The WFM is an international NGO that "seek[s] to invest legal and political authority in world institutions to deal with problems which can only be treated adequately at the global level."[23] The WFM launched Responsibility to Protect–Engaging Civil

16. U.N. Department of Peacekeeping Operations, "Special and Personal Representatives and Envoys of the Secretary-General: Other High Level Appointments," at *http://www.un.org/Depts/dpko/SRSG/high.htm* (April 22, 2008).
17. U.N. Department of Public Information, "Secretary-General Appoints Edward C. Luck of United States Special Adviser," February 21, 2008, at *http://www.un.org/News/Press/docs/2008/sga1120.doc.htm* (April 22, 2008).
18. Global Centre for the Responsibility to Protect, Web site, at *http://www.globalcentrer2p.org/index.html* (April 22, 2008).
19. R2P Coalition, Web site, at *http://r2pcoalition.org/component/option,com_frontpage/Itemid,1* (April 22, 2008).
20. R2P Coalition, "Mission," at *http://r2pcoalition.org/content/view/23/53* (April 22, 2008).
21. R2P Coalition, "R2P Coalition Activities," at *http://r2pcoalition.org/content/section/13/86* (April 22, 2008), and City and County of San Francisco, "Endorsing the United Nations Principle of the Responsibility to Protect," March 14, 2007, at *http://r2pcoalition.org/files/SFR2Pproclamation.jpg* (April 22, 2008).

Society (R2PCS) to "raise awareness of [the ICISS report] and to build a network of non-governmental organizations…that support these principles and subsequently seek their adoption by governments and regional and international organizations."[24]

The WFM devotes a Web site to describing its efforts—supposedly taken at the request of the Canadian government—to reach out to the global NGO community to promote the R2P doctrine.[25] For instance, the WFM promoted the R2P doctrine at the 2003 meeting of the World Social Forum in Porto Alegre, Brazil. The World Social Forum is a summit of tens of thousands of anti–free market and anti-globalization NGOs[26] that are collectively "opposed to neoliberalism and to domination of the world by capital and any form of imperialism, and are committed to building a planetary society directed towards fruitful relationships among Humankind and between it and the Earth."[27] Its annual meetings are scheduled specifically to counter the annual meeting of the World Economic Forum in Davos, Switzerland.

At the 2003 World Social Forum, the WFM "held a seminar on the Responsibility to Protect, distributed thousands of copies of basic information materials and the ICISS Report, took advantage of speaking opportunities on other panels to discuss the Report, and mentioned it from the floor of many seminars."[28]

U.S. Policy and the R2P Doctrine

If wholly accepted as official U.S. policy, the R2P doctrine would greatly expand U.S. obligations to prevent acts of genocide around the world. More important, adoption of R2P would effectively cede U.S. national sovereignty and decision-making power over key components of national security and foreign policy and subject them to the whims of the international community.

The U.S. government, as a party to the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), is currently obligated to prevent acts of genocide that occur within U.S. territory.[29] The Genocide Convention Implementation Act of 1987 (the Proxmire Act), the legislation implementing the Genocide Convention, was signed into law by President Ronald Reagan in 1988.[30] The Proxmire Act defined the crime of genocide as an act committed "with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group." The new law even criminalized the act of inciting another person to commit an act of genocide.[31] Importantly, U.S. enforcement of these criminal offenses was limited to acts committed in the United States.[32]

However, adoption of the R2P norm would obligate the United States to prevent *all* acts of geno-

22. International Human Rights Law Clinic, Human Rights Center, *The Responsibility to Protect (R2P): Moving the Campaign Forward*, University of California, Berkeley, October 2007, at *http://www.hrcberkeley.org/pdfs/R2P-Final-Report.pdf* (April 22, 2008).
23. World Federalist Movement, Institute for Global Policy, "Statement of Purpose," at *http://www.wfm.org/site/index.php/articles/9* (April 22, 2008).
24. World Federalist Movement, Institute for Global Policy, "WFM's Project: Responsibility to Protect—Engaging Civil Society," at *http://www.wfm.org/site/index.php/articles/19* (April 22, 2008).
25. Responsibility to Protect–Engaging Civil Society, Web site, at *http://www.responsibilitytoprotect.org* (April 22, 2008).
26. Responsibility to Protect–Engaging Civil Society, "NGO Consultative Process," at *http://www.responsibilitytoprotect.org/index.php/pages/17?page=2* (April 22, 2008).
27. World Social Forum 2008, "Charter of Principles of the World Social Forum," ¶ 1, at *http://dev.wsf2008.net/eng/node/72* (April 22, 2008).
28. Responsibility to Protect–Engaging Civil Society, "NGO Consultative Process."
29. Convention on the Prevention and Punishment of the Crime of Genocide.
30. 18 U.S. Code § 1091.
31. 18 U.S. Code § 1091(c).
32. 18 U.S. Code § 1091(d). The Proxmire Act also criminalizes genocidal acts committed by U.S. nationals outside of U.S. territory.

cide, ethnic cleansing, and war crimes even if they occur outside of the U.S. Such an obligation would impose unique responsibilities. As the world's pre-eminent military force, the United States would have to bear a disproportionate share of the R2P international commitment. In the event that acts of genocide and ethnic cleansing occur, the vast majority of nations in the international community could reasonably plead military inferiority on each such occasion, leaving the United States to bear the brunt of any intervention. Most members of the international community could also plead poverty, again leaving the United States to fund the intervention. Even if the intervention is funded through the United Nations system, the United States would still pay an unequal share of the cost.[33]

Current U.S. Policy. The current U.S. position on the R2P doctrine was set forth in a letter from former U.S. Ambassador to the United Nations John Bolton to other members of the international community in the run-up to the 2005 World Summit. Ambassador Bolton's letter made it clear that the United States was skeptical of creating a legal obligation requiring one nation to intervene in another:

> [W]e note that the [U.N.] Charter has never been interpreted as creating a legal obligation for Security Council members to support enforcement action in various cases involving serious breaches of international peace. Accordingly, we believe just as strongly that a determination as to what particular measures to adopt in specific cases cannot be predetermined in the abstract but should remain a decision within the purview of the Security Council.[34]

With reference to the R2P text that was included in the Outcome Document, Ambassador Bolton stated:

> [W]e would like to make changes to make clear that the obligation/responsibility discussed in the text is not of a legal character…. We do not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law.[35]

Notwithstanding that position, Ambassador Bolton's letter made the following statement regarding what the United States was willing to commit to in relation to the R2P doctrine:

> For its part, the United States *stands ready to take collective action, in a timely and decisive manner, through the Security Council under Chapter VII of the UN Charter and, as appropriate, in co-operation with relevant regional organizations, should peaceful means be inadequate and national authorities be unwilling or unable to protect their populations*.[36]

The current position of the United States, therefore, is that, while it "stands ready" to take collective action to prevent genocide and ethnic cleansing in another nation, it rejects the notion that it is *legally obligated* to intervene to prevent such atrocities. This position is in harmony with the U.S. commitment in the Outcome Document in which the United States, as a member of the world community, agreed that it was "prepared to take collective action" to protect vulnerable populations.[37] While hardly a renunciation of the R2P doctrine, the current U.S. position falls well short of committing to a legal obligation to act.

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33. The United States is assessed 22 percent of the U.N. regular budget and over 26 percent of the peacekeeping budget.
34. John Bolton, letter to other U.N. member states regarding the 2005 World Summit Outcome Document, August 30, 2005, at *http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=219* (April 22, 2008).
35. *Ibid.*
36. *Ibid.* (emphasis in original). In addition to the statement of the U.S. position vis-à-vis the Outcome Document, Ambassador Bolton's successor as U.S. Ambassador to the United Nations referred to the R2P doctrine during his Senate confirmation hearing as one of his five priorities: "Third, ending the massive humanitarian crisis in Darfur in order to save the lives of innocents and fulfill the commitment of the United States and the international community to a responsibility to protect people from atrocities and genocide." Zalmay Khalilzad, statement to the Committee on Foreign Relations, U.S. Senate, March 15, 2007, at *http://www.state.gov/p/nea/rls/rm/2007/81756.htm* (April 22, 2008).
37. U.N. General Assembly, "2005 World Summit Outcome," p. 31, ¶ 139.

Future U.S. Policy. Of course, this is no guarantee that the U.S. position will not change when a new Administration comes to power in January 2009. Of the three remaining presidential candidates, all have made statements in favor of humanitarian intervention in general or the R2P doctrine specifically.

For example, when asked in a presidential candidate questionnaire about R2P, Senator Hillary Clinton (D–NY) responded that the United Nations should take steps to "operationalize" the R2P doctrine and stated:

> As President I will adopt a policy that recognizes the prevention of mass atrocities as an important national security interest of the United States, not just a humanitarian goal. I will develop a government-wide strategy to support this policy, including a strategy for working with other leading democracies, the United Nations, and regional organizations.[38]

Senator Barack Obama (D–IL) was more circumspect in his answer to the same questionnaire, stating only that "[t]he Responsibility to Protect is an important and developing concept in international affairs and one which my Administration will closely monitor."[39]

Senator John McCain (R–AZ), while not specifically mentioning R2P, has repeatedly stated a willingness to use military force to prevent atrocities in other countries:

> I supported humanitarian intervention in order to stop genocide in Kosovo. I wish that the U.S. had acted—with force if necessary—to stop genocide in Rwanda. In neither of these places were America's vital national security interests at stake, though our national values were. Murder in Kosovo and genocide in Rwanda demanded intervention.[40]

Senator McCain also stated:

> Africa continues to offer the most compelling case for humanitarian intervention. With respect to the Darfur region of Sudan, I fear that the United States is once again repeating the mistakes it made in Bosnia and Rwanda.… My administration will consider the use of all elements of American power to stop the outrageous acts of human destruction that have unfolded there.[41]

While neither Senator McCain nor Senator Clinton has explicitly recognized the existence of a legal obligation to intervene in another country where atrocities are occurring, both have characterized the prevention of genocide as a U.S. national interest, although they apparently disagree on whether or not it constitutes a national *security* interest.

While genocide, war crimes, and other atrocities will always be incompatible with American values, the McCain and Clinton statements raise the issue of whether preventing genocide and ethnic cleansing would necessarily constitute a vital U.S. national interest. In some situations, acts of large-scale ethnic cleansing in some remote nation may indeed affect U.S. national interests.

However, the real question is whether or not the United States should obligate itself through an international compact to use its military forces as the rest of the world sees fit in cases of genocide and ethnic cleansing. Accepting such an obligation would arguably empower other nations to judge whether U.S. national interests or national values are at stake. That begs the question of who will decide whether the United States must commit its limited resources—including its military forces—to prevent atrocities occurring in a foreign land. The R2P doctrine is designed to take decision making on these crucial issues out of the hands of the United

38. Hillary Clinton, response to 2008 Presidential Candidate Questionnaire, at *http://globalsolutions.org/08orbust/quotes/2007/11/27/quote620* (April 22, 2008).
39. Barack Obama, response to 2008 Presidential Candidate Questionnaire, at *http://globalsolutions.org/08orbust/quotes/2007/10/31/quote490* (April 22, 2008).
40. John McCain, "Iraq: The Test of a Generation," remarks prepared for delivery at a meeting of the Council on Foreign Relations, April 22, 2004, at *http://www.cfr.org/publication/6973* (April 22, 2008).
41. John McCain, "An Enduring Peace Built on Freedom," *Foreign Affairs*, Vol. 86, No. 6 (November/December 2007), at *http://www.foreignaffairs.org/20071101faessay86602/john-mccain/an-enduring-peace-built-on-freedom.html* (April 22, 2008).

States and place it in the hands of the international community, operating through the United Nations.

If the United States consented to such a doctrine, it would effectively surrender its authority to exercise an essential, sovereign power.

First Principles and National Sovereignty

The United States must not surrender its independence and sovereignty cavalierly. The Founding Fathers and subsequent generations of Americans paid a high price to achieve America's sovereignty and secure the unalienable rights of U.S. citizens. The government formed by the Founders to safeguard American independence and protect individual rights derives its powers from the consent of the governed, not from any other nation or group of nations.[42]

Having achieved its independence by fighting a costly war, America's Founders approached permanent alliances and foreign entanglements with a fair degree of skepticism. President George Washington, in his 1796 farewell address, favored extending America's commercial relations with other nations but warned against extensive political connections.[43] Washington well understood that legitimate governments are formed only through gaining the consent of the people. He therefore placed a high value on the independence that the United States had achieved and was rightfully dubious about involvement in European intrigues.

Integral to national sovereignty is the right to make authoritative decisions on foreign policy and national resources, particularly the use of the nation's military forces. Many of the reasons why America fought the War of Independence against Great Britain revolved around Britain's taxation of the American people without their consent and its practice of "declaring themselves invested with power to legislate for us in all cases whatsoever."[44] Once America gained control of its revenue, natural resources, and industry and had formed a government separate and apart from any other, the Founders would not have compromised or delegated its prerogatives to any other nation or group of nations. Washington rightly warned his countrymen to "steer clear" of such foreign influence and instead to rely on "temporary alliances for extraordinary emergencies."[45]

The R2P doctrine strikes at the heart of the Founders' notion of national sovereignty. The Founders would have deplored the idea that the United States would cede control—any control—of its armed forces to the caprice of the world community without the consent of the American people. Washington stated that the decision to go to war is a key element of national sovereignty that should be exercised at the discretion of the American government:

> Our detached and distant situation invites and enables us to pursue a different course. If we remain one people under an efficient government, the period is not far off…when we may choose peace or war, as our interest, guided by justice, shall counsel.[46]

The U.S. interest, guided by justice and exercised with the consent of the American people, must remain the standard for making decisions of war and peace. The interest of the international community, which is guided by its own collective notion of justice and without the consent of the American people, should not serve as America's barometer, especially when placing the lives of U.S. military men and women in jeopardy.[47] The United States

42. The Declaration of Independence, July 4, 1776.
43. George Washington, "Farewell Address," September 19, 1796, at *http://www.yale.edu/lawweb/avalon/washing.htm* (April 22, 2008).
44. The Declaration of Independence.
45. Washington, "Farewell Address."
46. *Ibid.*
47. See Lee A. Casey and David B. Rivkin, Jr., "International Law and the Nation-State at the U.N.," in *Reclaiming the Language of Freedom at the United Nations*, Heritage Foundation *Special Report* No. 8, September 6, 2006, at *http://www.heritage.org/Research/WorldwideFreedom/upload/sr_8.pdf*.

cannot rely on world opinion, as expressed through an emerging international norm such as R2P, to set the proper criteria for the use of U.S. military force. The commitment to use force must be made exclusively by the U.S. government acting as an independent, sovereign nation based on its own criteria for military intervention.[48]

In sum, the R2P doctrine does not harmonize with the first principles of the United States. Adopting a doctrine that binds the United States to scores of other nations and dictates how it must act to prevent atrocities is the very sort of foreign entanglement against which Washington warned us. The United States would betray the Founding Fathers' achievement of independence and sovereignty if it wholly acceded to the R2P doctrine.

Additional R2P Impracticalities

In addition to the corrosive effect that the R2P norm, if wholly adopted, would have on U.S. national sovereignty, other aspects of R2P are impractical and collectively fatal to the doctrine.

Under the R2P doctrine, if the United States decides on its own that acts of genocide or ethnic cleansing require intervention, the procedural hoops set forth by the R2P doctrine would prevent the U.S. from acting expeditiously. Additionally, the "precautionary principles" scattered throughout the R2P doctrine would significantly hinder the combat operations of any U.S. armed force ultimately committed to such a mission.

Assignment of Authority to the United Nations. When a crisis or other major world event endangers a U.S. national interest, the United States must have the ability to take action as it sees fit. In the event that the United States determines that atrocities in a foreign land must be stopped, the R2P doctrine would restrict the ability of U.S. armed forces to respond swiftly by requiring the United States to clear a series of barriers and defer to the judgment of multilateral bodies.

Specifically, the R2P doctrine requires the United States or any other nation seeking to end genocide to ask the U.N. Security Council for permission to intervene. Indeed, the ICISS report states that the Security Council should be the "first port of call" and that there is "absolutely no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes."[49] The Security Council's failure to act in Rwanda and Srebrenica—the very situations that gave rise to the ICISS effort—is apparently of little consequence.

Moreover, even if the Security Council fails to act, the R2P doctrine does not free the United States or any other nation to act. Instead, it suggests that authority for military intervention must be sought either from the U.N. General Assembly or from regional or sub-regional organizations.[50]

The U.S. national interest—not the U.N. Security Council, the U.N. General Assembly, or any other regional organization—should dictate the use of U.S. military force as well as the imposition of economic, political, and diplomatic sanctions. Whether that interest is best pursued through the U.N. Security Council, through NATO, in ad hoc "coalitions of the willing," or completely alone is for the President, the Congress, and the American people to decide. History shows that most nations decide to use their military forces based, first, on their own interests; second, on the interests of their close allies; and last, if at all, on the interests of an undefined "international community." The United States should not submit to a doctrine that would make it the perennial exception to that historical trend.

Operational Flexibility vs. Precautionary Principles. Even if surrendering control of America's armed forces to the will of the world community were acceptable, the U.S. military could not operate effectively under the R2P doctrine.

Once committed to a military operation with all of its attendant risks, U.S. armed forces must be

48. James Jay Carafano, Baker Spring, and Mackenzie M. Eaglen, "Providing for the Common Defense: What 10 Years of Progress Would Look Like," Heritage Foundation *Backgrounder* No. 2108, February 19, 2008, pp. 2–3, at *http://www.heritage.org/Research/NationalSecurity/bg2108.cfm*.

49. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 53, ¶ 6.28, and p. 49, ¶ 6.14.

50. *Ibid.*, p. 53, ¶¶ 6.29–6.31.

allowed the operational freedom to create the conditions to succeed. However, the R2P doctrine espouses a "proportional means" limitation to the rules of engagement that would likely hinder the success of a military intervention. Specifically, the ICISS report suggests that the "scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question."[51] In other words, any intervening armed force may act only to end genocidal acts and ethnic cleansing—and go no further.

However, a combat environment is rarely so predictable. Some situations would require the total destruction of the forces perpetrating the genocide or the overthrow of the government providing command and control. Yet the ICISS report states that "[t]he effect on the political system of the country targeted should be limited…to what is strictly necessary to accomplish the purpose of the intervention."[52] Several instances of genocide and ethnic cleansing in recent history have occurred with the complicity and active involvement of a national government and its armed forces. It is unrealistic to mandate that a military intervention limit its effect on the political system and its leadership while stopping genocidal crimes. It is likewise naïve to believe that government forces that are complicit in genocidal acts would cease and desist from committing atrocities after a military intervention has ended and the intervening troops are withdrawn.

In addition, the R2P doctrine demands that "all the rules of international humanitarian law should be strictly observed" in the event of a military intervention.[53] There is, however, widespread debate over certain crucial aspects of that law. For example, there are major differences of opinion regarding the classification, treatment, confinement, and trial of certain classes of enemy combatants. The use of certain weapons, such as cluster bombs and land mines, is also disputed. The R2P's requirement of strict observance of the law of armed conflict is therefore unachievable because there is broad disagreement on what "strict observance" would entail.

Protecting American Sovereignty

Given the recognition of the responsibility to protect doctrine in the 2005 World Summit Outcome Document, as well as the continuing efforts by certain actors in the international community to promote and operationalize R2P, the United States should clarify its position on its national sovereignty and the criteria for the use of its armed forces.

To that end, the United States should:

- **Maintain** its current official position, as set forth in Ambassador Bolton's letter regarding the 2005 World Summit Outcome Document, that the R2P doctrine does not create a binding legal obligation on the United States to intervene in another nation for any purpose.
- **Affirm** that the United States need not seek authorization from the U.N. Security Council, the U.N. General Assembly, the international community, or any other international organization to use its military forces to prevent acts of genocide, ethnic cleansing, or other atrocities occurring in another country.
- **Base** its decisions to intervene in the affairs of other nations—including punitive economic, diplomatic, political, and military measures—on U.S. national interests, not on criteria set forth by the R2P doctrine or any other international "test."
- **Scrutinize** ongoing efforts by certain actors within the international community to operationalize and otherwise promote the R2P doctrine in the United States, the United Nations, the international NGO community, and other international forums.
- **Reject** the notion that the R2P doctrine is an established international norm.

Conclusion

The United States should take no comfort from the fact that, as a party to the 2005 World Summit Outcome Document, it has committed itself only to being "prepared to take collective action" to end

51. *Ibid.*, p. 37, ¶ 4.39.
52. *Ibid.*
53. *Ibid.*, ¶ 4.40.

atrocities or that the ICISS report represents the obligation to prevent atrocities as a mere "responsibility." R2P advocates are attempting to achieve worldwide consensus that the international community has an obligation to intervene, with military force if necessary, in another country to prevent acts of genocide, ethnic cleansing, and other atrocities. R2P proponents may not be satisfied with anything less than a multilateral treaty—a United Nations Convention on the Responsibility to Protect—that creates binding legal obligations on its signatories.

The United States should therefore continue to treat the responsibility to protect doctrine with grave skepticism. The independence won by the Founders and defended by subsequent generations of Americans should not be squandered, but rather should be safeguarded from furtive encroachments by the international community.

Only by maintaining a monopoly on the deployment of diplomatic pressure, economic sanctions, political coercion, and military forces will the United States preserve its national sovereignty. Acceding to a set of criteria such as those set forth by the R2P doctrine would be a dangerous and unnecessary step toward bolstering the authority of the United Nations and the international community and would compromise the consent of the American people.

—Steven Groves is Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.