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**THE RESPONSIBILITY TO PROTECT  
AND THE ORGANIZATION OF AMERICAN STATES:  
A PATH FORWARD FOR ATROCITY PREVENTION  
AND RESPONSE IN THE AMERICAS**

# **THE RESPONSIBILITY TO PROTECT AND THE ORGANIZATION OF AMERICAN STATES: A PATH FORWARD FOR ATROCITY PREVENTION AND RESPONSE IN THE AMERICAS**

Report of the General Secretariat of the Organization of American States

*Washington, D.C., September 15, 2022*

By Jared Genser

Special Adviser on the Responsibility to Protect

Organization of American States

Jared Genser is the OAS Special Adviser on the Responsibility to Protect, appointed in October 2020. He can be reached at [jgenser@oas.org](mailto:jgenser@oas.org). Special thanks are due to: Monika LeRoy of the General Secretariat and OAS R2P Focal Point. I would also like to acknowledge Hilary Anderson and Allison Kielhold of the Inter-American Commission of Women; the law firm Paul Hastings LLP, which provided pro bono support to research and develop this report including their lawyers Hanna Ali, Carolina Gonzalez, Daniel Holman, Eduardo Morande, Renata Parras, Jay Schuffenhauer, and Thomas Sines, and for translation support; Jim Pitofsky and Amy Proulx of the John Templeton Foundation, which provided the financial support for translating the report and for its production; and Michael Russo, Brian Tronic, Stephanie Herrmann, and Emmanuel Orozco Castellanos of Perseus Strategies, who also provided pro bono support to research and develop this report.

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## FOREWORD BY SECRETARY GENERAL LUIS ALMAGRO

### A HEMISPHERE OF PEACE

Peace means equilibrium in the region. It is also a fundamental principle and value governing relations between the countries of our Hemisphere, a principle that must be preserved at all costs, because it underpins the dynamics of political balance in the region. In particular, we must avoid reactionary politics, as that opens the way for unwanted possibilities in the framework of the Hemisphere's political agenda; the responsibility to protect must be completely aligned and consistent with this principle.

For decades, the relationship between countries in the Hemisphere has not only been peaceful, marked by the interest of countries in preserving peace. The regional application of international law, even when it arises from the global needs of the United Nations system, to preserve the peoples of the Americas from genocide, crimes against humanity, war crimes, and ethnic cleansing must in essence be a reflection of that initial, original state of peace.

The Hall of the Americas has the word "PAX" emblazoned in each of its corners to remind us that there is no greater scourge or atrocity than that which comes from war.

The instrumentalization of the responsibility to protect must be logically clear that no matter how difficult it may be to elaborate ethical truths, the point from which the ensuing conditions for the defense of the principles and values of the international community are established is the preservation of peace and the avoidance of armed conflict or any form of aggression.

Although it may seem like weakness when there are such important values to defend, such as the prevention of mass atrocity crimes and systematic human rights violations, the elements that war and armed conflict unleash will always make those international crimes exponentially worse.

We have a duty to peace and to its preservation in our Hemisphere, even when the costs may sometimes seem high, and the conditions and circumstances imperfect. It is a duty from which we must never stray. It builds trust among regional actors, generates predictability, and controls and mitigates unintended consequences in the inter-American political arena.

*Luis Almagro  
Secretary General  
Organization of American States*

## EXECUTIVE SUMMARY

At the 2005 UN World Summit, the international community made a landmark commitment to protect vulnerable populations around the world. Horrified by the slaughters of innocent civilians that took place in Rwanda, Srebrenica, and elsewhere, Member States of the United Nations concluded that more needed to be done to protect populations from mass atrocity crimes. Drawing on rich debates about state sovereignty and humanitarian intervention and powered by a group of pioneering Member States, the Responsibility to Protect (R2P) was adopted by consensus in the World Summit Outcome Document.

The Responsibility to Protect is a principle of international law that affirms that all states have an obligation to prevent and respond to four mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. The Responsibility to Protect is, first and foremost, a national obligation – states have a duty to protect their own populations. However, R2P also reaffirms the international community has the responsibility to encourage and assist individual states in meeting that responsibility. And when a state is manifestly unwilling or unable to protect its own populations – or is the author of such crimes – the international community must take appropriate collective action, with a timely and decisive response, consistent with the requirements of the UN Charter.

Since its adoption in 2005, R2P has undergone significant normative development and has seen many successes in implementation. However, with populations in more than a dozen countries around the world today facing atrocity crimes – including in our own hemisphere – there is much work to be done to fulfill the promise of R2P.

It is important to emphasize that there are significant misconceptions about R2P. Contrary to what some believe, R2P is not a license for the use of force or regime change. In fact, there are dozens of options that comprise the R2P toolbox, such as sending an envoy or fact-finding mission, commissioning a human rights report, mobilizing humanitarian support for suffering populations, or adopting resolutions with recommendations to relevant parties. These kinds of measures were deployed early to successfully stop the escalation of mass atrocities being committed in such countries as Côte d'Ivoire, Guinea, Kyrgyzstan, and Kenya, among others.

Yet, more than 15 years after the adoption of R2P, it remains clear the UN is not and cannot be the exclusive venue through which to address mass atrocity crimes. R2P has always envisioned a critical role for regional organizations to play; it was never intended to be a doctrine confined to the UN. The World Summit Outcome Document explicitly references the role that regional organizations have to play in R2P's implementation. Senior UN officials – including the UN Secretary-General and successive UN Special Advisers on the Responsibility to Protect – have all spoken about the important and complementary role of regional organizations. Still, however, few regional organizations have substantively engaged with R2P.

The OAS has a long and distinguished history of advancing human rights and acting to prevent conflict. Yet, while the OAS has significant experience and expertise in these areas, it has comparatively little experience in the field of atrocity prevention. Deepening the

Organization's engagement with atrocity prevention and response is a logical and important extension of its existing conflict prevention and human rights efforts.

In May 2018, an OAS Panel of Independent International Experts found reasonable grounds that atrocity crimes were, in fact, taking place in one of its Member States, Venezuela. In light of these findings, Secretary General Luis Almagro raised the question of the international community and the region's responsibility to prevent and respond to these abuses in the fall of that year, highlighting the unanimous approval of the 2005 World Summit Outcome. The OAS hosted its first dialogue on R2P in March 2019, and named Monika Le Roy as the Organization's first focal point on R2P to explore the role the Organization could play in supporting the principle.

The creation of the position of Special Adviser on the Responsibility to Protect by Secretary General Luis Almagro in October 2020 presented a landmark opportunity for the OAS to build upon its existing efforts to prevent and respond to mass atrocities. As the first regional organization in the world to establish the position of a Special Adviser on the Responsibility to Protect, it also has the unique opportunity to set a global standard for regional engagement with R2P. As noted by Secretary General Almagro in the press release from the OAS announcing the appointment of Jared Genser as the first Special Adviser:

Going back to our founding, the OAS has sought to secure peace, justice, and human rights for the people of the Americas. Yet, over time, there have been many mass atrocities committed in far too many countries by repressive and undemocratic regimes. One need look no further than the crimes against humanity being committed today, which come from a deliberate, methodical, and systematic strategy, to understand the consequences of our failure to act together.<sup>1</sup>

Thus, the main objective of this mandate has been to design a framework that will empower the Organization to better act to prevent and respond to mass atrocities in the region. There are a number of policy proposals – focusing on the *prevention* of mass atrocities – that would dramatically enhance the Organization's capabilities to do so.

This report is designed to provide a common foundation for understanding how the Organization of American States can deepen its work in the field of atrocity prevention and response. Importantly, it is strongly informed and guided by the feedback the Special Adviser received from his wide consultations with 45 officials from 30 OAS Member States; 40 officials from different OAS organs, agencies, and entities; and 20 civil society and international organizations.

Specifically, the report begins by defining the principle of the Responsibility to Protect, including explaining its origins and development, legal context, and options for implementation. Next, it explores the perception of R2P in the Americas, including the kind of regional support that exists for R2P today. From there, the report elaborates on the relationship between R2P and the OAS: legal frameworks, existing work of the OAS on human rights and conflict prevention,

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<sup>1</sup> Press Release, Organization of American States, *OAS Secretary General Designates Jared Genser as Special Adviser on the Responsibility to Protect*, Oct. 10, 2020.

and the creation of the position of the OAS Special Adviser on R2P. The report ultimately makes three recommendations, which will be elaborated upon more fully later:

First, the General Secretariat could support the creation of an early-warning mechanism, coordinated by the Special Adviser, to ensure states and other OAS organs are proactively informed about situations of concern as they arise, along with recommendations for their consideration.

Second, Member States could commit to having an annual dialogue in the OAS General Assembly about the responsibility to protect in the region, modeled on the annual Interactive Dialogue on the Responsibility to Protect that takes place at the UN General Assembly. This dialogue could both be focused on discussing regional implementation and ensuring complementarity with UN efforts on R2P.

And third, the Organization could affirm its commitment to R2P through a Permanent Council or General Assembly resolution. Of course, it will be up to the permanent representatives of Member States to decide if they wanted to propose and seek the adoption of such a resolution.

No one should suffer from mass atrocity crimes. With more than a century of experience in regional collaboration, our hemisphere has developed a robust tradition of defending human rights. But recent years have demonstrated the serious gaps in our existing regional protection mechanisms. R2P provides a framework to fill those gaps and to empower the Organization to protect against these most serious human rights violations. While all hope that mass atrocity crimes will never again take place in the region, by recommitting the Organization to atrocity prevention and advancing these initiatives – centered around prevention and early warning – the OAS can do a much better job protecting vulnerable populations throughout the Americas for years to come.

## I. THE RESPONSIBILITY TO PROTECT

### A. *Historical Background*

The principle of the Responsibility to Protect was born in aftermath of turbulent events in the 1990s, intended to reinforce the international community's obligation to prevent and respond to mass atrocity crimes. Three key factors demonstrated the need to develop such a principle: the failures of the existing United Nations (UN) mechanisms to respond to the genocides of the 1990s, questions around the legitimacy of humanitarian intervention, and ongoing political and academic conversations about the evolution of understanding the concept of state sovereignty.

The 1990s witnessed the inability of the UN to prevent and respond to atrocities in areas experiencing profound conflict. The inadequacies of the international system were on full display in Rwanda, where a small group of UN peacekeepers on the ground were unable to stop Hutu extremists as they waged a slaughter campaign of ethnic Tutsis and moderate Hutus in the spring of 1994.<sup>2</sup> Without a mandate to stop the killings, UN peacekeepers on the ground were effectively powerless. As news of the ongoing genocide spread, the UN Security Council (Security Council) voted to mobilize over 5,000 troops, but by the time they arrived, the genocide had been over for months and as many as 800,000 Rwandans had been slaughtered.<sup>3</sup>

The UN was once again powerless to stop atrocities from occurring in the Balkans. In the town of Srebrenica, Bosnian Serbs expelled 20,000 civilians and killed at least 8,372 Bosniak men and boys in 10 days, despite the designation of Srebrenica as a "safe area."<sup>4</sup> During the crisis, 30,000 residents fled to the UN compound for protection, but outnumbered and poorly prepared peacekeepers could only watch as Serb troops took Bosniak men and boys from the compound for execution.<sup>5</sup>

The death tolls from these two conflicts – despite the presence of UN peacekeepers in both cases – highlighted the stark inadequacy of the existing UN Charter system to handle civil wars and prevent mass atrocities, jarring the international community.<sup>6</sup>

When Serbian forces began an ethnic cleansing campaign against the ethnic Albanian majority population in Kosovo, the Security Council condemned the use of force and imposed an arms embargo, eventually leading to diplomatic negotiations between the warring factions.<sup>7</sup> To avoid the consequences of inaction after the failure of negotiations in February 1999, the North Atlantic Treaty Organization (NATO) did not wait for Security Council authorization to begin an

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<sup>2</sup> *Rwanda Genocide: 100 Days of Slaughter*, BBC NEWS, Apr. 4, 2019, available at <https://www.bbc.com/news/world-africa-26875506>.

<sup>3</sup> *Rwandan Genocide*, HISTORY, Oct. 14, 2009, available at <https://www.history.com/topics/africa/rwandan-genocide>.

<sup>4</sup> *Srebrenica Massacre*, BRITANNICA, Jan. 28, 2022, available at <https://www.britannica.com/event/Srebrenica-massacre>.

<sup>5</sup> *Scenes From Hell: 1995 Srebrenica Genocide in Photos*, ASSOCIATED PRESS, Jul. 10, 2020, available at <https://apnews.com/article/massacres-ap-top-news-international-news-europe-photography-ec01765d17e8c27ead9c3f3ea6e6ca36>.

<sup>6</sup> Jared Genser & Irwin Cotler, *THE RESPONSIBILITY TO PROTECT* (1<sup>st</sup> ed., Oxford University Press, 2011), at 6.

<sup>7</sup> *Kosovo Conflict*, BRITANNICA, Nov. 30, 2021, available at <https://www.britannica.com/event/Kosovo-conflict>.

11-week bombing campaign in Kosovo the next month. By June, NATO and Yugoslavia had signed a peace accord outlining troop withdrawal and the return of ethnic Albanians. But in the meantime, Serb troops had forced out most of Kosovo's ethnic Albanians, displacing hundreds of thousands of people.

Later, when the Independent International Commission on Kosovo reviewed the Kosovo intervention, it concluded that under existing international law, the NATO humanitarian intervention was "illegal but legitimate" and asserted an urgent need for clarification of the circumstances under which military force may be used to defend human rights.<sup>8</sup> It also emphasized the importance of early engagement to prevent atrocities, as opposed to reacting to crises when they are already underway.<sup>9</sup>

To address the question of how best to legally protect at-risk civilians from mass atrocities, the Government of Canada and its Foreign Minister Lloyd Axworthy convened the International Commission on Intervention and State Sovereignty (ICISS) in September 2000.<sup>10</sup> The next year, the ICISS issued a report clarifying the circumstances under which it was appropriate for states to protect people at risk in another state. Rather than relying on extra-legal and controversial humanitarian interventions, the international community should consider "the responsibility to protect" as an alternative framework to prevent humanitarian disasters such as those in Rwanda and Srebrenica.<sup>11</sup> Grounded in the obligations of states under relevant international treaties, ICISS sought to further interpret state sovereignty beyond the right to non-interference, placing an onus on the state to protect civilians. In short, when a state is unable or unwilling to protect its people, the obligation to provide protection would be shifted to the broader international community. Although the ICISS report was simply the view of a commission created by the Government of Canada, its seminal work broadened the conversation from humanitarian intervention to the responsibilities of states to protect their populations and the international community to respond to mass atrocity crimes.<sup>12</sup>

As a continuation of this international discourse, UN Secretary-General Kofi Annan formed the High-Level Panel on Threats, Challenges, and Change in 2003.<sup>13</sup> The Panel was tasked more broadly with making recommendations to strengthen the UN's ability to provide for collective security.<sup>14</sup> It found that the UN Charter lacked clarity with respect to saving lives during mass atrocities occurring within a single country.<sup>15</sup> To fill this gap, the Panel asserted that in signing and ratifying the UN Charter, states accept the responsibilities of sovereignty as

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<sup>8</sup> THE KOSOVO CONFLICT, THE INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO, Oct. 23, 2000, at 4 & 298, available at <https://reliefweb.int/report/albania/kosovo-report>.

<sup>9</sup> *Id.*, at 295.

<sup>10</sup> THE RESPONSIBILITY TO PROTECT, *supra* note 6, at 3.

<sup>11</sup> Gareth Evans, et al., THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, Dec. 2001, available at <https://www.idrc.ca/en/book/responsibility-protect-report-international-commission-intervention-and-state-sovereignty> [Hereinafter ICISS REPORT].

<sup>12</sup> THE RESPONSIBILITY TO PROTECT, *supra* note 6, at 21.

<sup>13</sup> *Id.*, at 13.

<sup>14</sup> REPORT OF THE HIGH-LEVEL PANEL ON THREATS, CHALLENGES AND CHANGE, A MORE SECURE WORLD: OUR SHARED RESPONSIBILITY, U.N. Doc. A/59/565, Dec. 2, 2004, at ¶ 3, available at [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/59/565](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/565).

<sup>15</sup> *Id.*, at ¶ 199.

well as its privileges.<sup>16</sup> It concluded that if a state is unable or unwilling to fulfill its obligations to protect civilians, there is a collective responsibility to do so on its behalf; in essence, the principle of non-intervention enshrined in Article 2(7) of the UN Charter could not be used by a government as a shield to permit genocide and other mass atrocities.<sup>17</sup> To set boundaries on the use of military force, the Panel put forth five basic criteria of legitimacy surrounding the seriousness of the threat, the purpose of using force, the viability of non-military options, proportionality of the proposed action, and the probability of military success.<sup>18</sup> Unlike the ICISS report, which recommended the possibility of the UN General Assembly (UNGA) approving the use of force in narrow circumstances, the Panel report required UN Security Council authorization for the use of force.<sup>19</sup>

Both the ICISS and the High-Level Panel reports signaled and catalyzed shifting perceptions of sovereignty, laying the foundation for the Responsibility to Protect. The latter became the basis for a UN reform package leading up to the 2005 UN World Summit – where R2P was adopted.<sup>20</sup>

## ***B. Adoption and Development of R2P at the UN***

At the United Nations, R2P has undergone significant normative development since its adoption in 2005. In the 16 years since the World Summit, R2P has been affirmed twice by the UN General Assembly, repeatedly invoked and applied by the UN Security Council, and endorsed by the UN Human Rights Council. R2P has also been developed and implemented by the offices of the UN Secretary-General and the UN Special Adviser on the Responsibility to Protect. This section will explore how different organs of the UN system have contributed to R2P's continuing development as a principle of international law.

### **1. Adoption of R2P by UN Bodies**

#### **a. 2005 World Summit**

The concept of the Responsibility to Protect moved from policy debates to the political sphere relatively quickly, as an agenda item for the 2005 World Summit, the largest gathering of heads of state and government in history. By all accounts, R2P's inclusion on the World Summit agenda was “a significant step forward” and a “clear recognition of [] how far states have come toward recognizing the Responsibility to Protect as a political imperative.”<sup>21</sup>

The Responsibility to Protect was adopted by consensus in the World Summit Outcome Document. The full text of R2P as adopted can be found in paragraphs 138-140 of the Outcome Document:

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<sup>16</sup> *Id.*, at ¶ 29.

<sup>17</sup> *Id.*, at ¶ 200.

<sup>18</sup> *Id.*, at ¶ 207.

<sup>19</sup> ICISS REPORT, *supra* note 11, at xiii, ¶¶ 6.6-6.7, 6.29-6.30 and *Responsibility to Protect*, OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, accessed May 24, 2021, available at <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.

<sup>20</sup> THE RESPONSIBILITY TO PROTECT, *supra* note 6, at 13.

<sup>21</sup> *Id.*, at 27.

## **Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity**

138. 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 should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. 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 VIII of the Charter, to help to 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 organizations as appropriate, 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.<sup>22</sup>

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

This full presentation of R2P has been summarized as comprising three pillars:

**Pillar I:** Every state has the responsibility to protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing.

**Pillar II:** The international community has the responsibility to encourage and assist individual states in meeting their responsibility to protect.

**Pillar III:** If a state is committing mass atrocity crimes, or is manifestly unwilling or unable to protect its own populations, the international community must take

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<sup>22</sup> *World Summit Outcome Document*, G.A. Res. 60/1, U.N. Doc. A/RES/60/1, Sept. 16, 2005.

appropriate collective action, in a timely and decisive response, consistent with the requirements of the UN Charter.

As explained above, R2P is a narrowly-tailored doctrine with the express objective of protecting vulnerable populations by preventing and responding to mass atrocity crimes. It should be emphasized that R2P was not designed to be applied to situations with many human rights abuses generally, but only narrowly to those situations where the crimes have or could rise to the most severe level, in instances of imminent or ongoing genocide, war crimes, crimes against humanity, and ethnic cleansing. Ultimately, the principle of R2P does not undermine sovereignty, but reinforces it by helping states to meet their existing responsibilities.

Despite misconceptions, R2P is not a justification for military intervention or regime change, as its text makes clear. In reality, the public at large has only heard about the highest-profile examples of the application of Pillar III. Yet R2P is not a general license for the use of force, which is literally the very last resort. Most importantly, however, the authorization of the use of force is *only a possibility if the relevant regional organization supports such an intervention* and only if the UN Security Council specifically approves such an action under Chapter VII of the UN Charter. In other words, the invocation and application of R2P to authorize the use of force is *only permissible in narrower circumstances than is already permissible under the UN Charter*. Under the Charter, the Security Council can authorize the use of force when a situation constitutes a threat to the peace, breach of the peace, or act of aggression, but it does not require any advanced approval from the relevant regional organization.

In fact, there are dozens of options short of the use of force included in the R2P toolbox, such as sending an envoy or fact-finding mission, commissioning a human rights report, mobilizing humanitarian assistance for suffering populations, or political bodies adopting resolutions with recommendations to relevant parties. A later section of this report will explore in greater detail these potential diplomatic, political, economic, and humanitarian actions that form part of the R2P toolbox. These kinds of measures have been deployed early to successfully stop the escalation of mass atrocities being committed in such countries as Côte d'Ivoire, Guinea, Kyrgyzstan, and Kenya, among others.

As one law professor observed about R2P: “It reaffirms critical rules of international law. It shifts the focus from response to prevention. It draws attention to the obligations of states to assist one another in preventing international crimes. And it pulls all of these elements together into an overall concept with normative significance.”<sup>23</sup>

#### b. UN Security Council

Following its adoption at the World Summit, the Security Council has also contributed to the development R2P. On April 28, 2006, the UN Security Council adopted Resolution 1674 regarding the protection of civilians in armed conflict. In its operative clauses, the resolution “[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

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<sup>23</sup> THE RESPONSIBILITY TO PROTECT, *supra* note 6, at 27.

cleansing and crimes against humanity.”<sup>24</sup> The inclusion of this language – and the specific reference to paragraphs 138 and 139 – is significant because it is the first explicit endorsement of R2P by the Security Council.

The reaffirmation of R2P by the Security Council “strengthen[ed] the claim that Member States have legal duties to advance the political commitment” contained in the World Summit Outcome Document.<sup>25</sup> The fact that the members of the Security Council were willing to collectively endorse the concept, and that the P-5 members did not exercise their veto, “generated political momentum for the Responsibility to Protect” just one year after its adoption at the World Summit.<sup>26</sup>

Since the Security Council’s initial endorsement of R2P in Resolution 1674, inclusion of R2P language in UN Security Council resolutions “has shifted from contentious to commonplace.”<sup>27</sup> As of October 2021, 96 Security Council resolutions and 22 presidential statements have invoked R2P regarding individual country situations, as well as on thematic issues including civilian protection, small arms and light weapons, and UN peacekeeping operations.<sup>28</sup>

In December 2015, Spain and Chile hosted an Arria Formula meeting of the Security Council on R2P. With a focus on R2P and non-state actors, the dialogue “considered how the Security Council should best employ and adapt its existing tools to respond to the emerging challenges posed by non-State armed groups that have embraced the use of genocide, war crimes, ethnic cleansing, and crimes against humanity as a strategy for advancing their political objectives.”<sup>29</sup>

Additionally, it is worth noting that there is a growing movement which urges Security Council members to restrict the voluntary use of the veto in instances of potential or ongoing mass atrocities, informed by the commitments made in 2005 to the Responsibility to Protect. These initiatives, the “Political Statement on the Suspension of the Veto in Case of Mass Atrocities” and the “Code of Conduct Regarding Security Council Action Against Genocide, Crimes Against Humanity and War Crimes,” have attracted broad support and are discussed in a subsequent section of this report.

### c. UN General Assembly

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<sup>24</sup> Resolution 1674, U.N. Doc. S/RES/1674 (2006), *adopted* Apr. 28, 2006, at ¶ 4.

<sup>25</sup> THE RESPONSIBILITY TO PROTECT, *supra* note 6, at 30.

<sup>26</sup> *Id.*

<sup>27</sup> Jess Gifkins, *R2P in the UN Security Council: Darfur, Libya and Beyond*, 51(2) COOPERATION AND CONFLICT, at 23 (2016).

<sup>28</sup> *UN Security Council Resolutions and Presidential Statements Referencing R2P*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, *available at* <https://www.globalr2p.org/resources/un-security-council-resolutions-and-presidential-statements-referencing-r2p/>; *see also* Jared Genser, *The United Nations Security Council’s Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement*, 18.2 CHI. J. INT’L L. 419-500 (Winter 2018), *available at* <https://chicagounbound.uchicago.edu/cjil/vol18/iss2/2/>.

<sup>29</sup> *Security Council*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, *available at* <https://www.un.org/en/genocideprevention/security-council.shtml>.

For the first time since its adoption by the World Summit in 2005, the UN General Assembly continued its deliberations over the Responsibility to Protect in July 2009. UN Secretary-General Ban Ki-moon presented a report to the General Assembly entitled “Implementing the Responsibility to Protect,” the first thematic report of the Secretary-General on the issue.<sup>30</sup> Subsequently, the President of the General Assembly then scheduled an “informal interactive dialogue,” followed by a formal plenary debate over a period of three days. Over the course of the debate, 94 speakers representing 180 Member States spoke, delivering statements that were “overwhelmingly positive,” indicative of a “clear commitment from the vast majority of Member States to the prevention and halting of atrocity crimes.”<sup>31</sup> Indeed, only four countries sought to challenge or limit the Responsibility to Protect as it was adopted by the World Summit in 2005.<sup>32</sup>

Following substantial and constructive debate, the General Assembly voted to support the Secretary-General’s report. Resolution 63/308 “recall[s] the 2005 World Summit Outcome, especially paragraphs 138 and 139 thereof,” “takes note of the report of the Secretary-General and of the timely and productive debate organized by the President of the General Assembly on the responsibility to protect,” and “decides to continue [the General Assembly’s] consideration of the responsibility to protect.”<sup>33</sup> This endorsement by the General Assembly “lent additional legitimacy and political support” to the Secretary-General’s report – at the time the most detailed discussion of R2P in an official document – “without creating new legal obligations.”<sup>34</sup>

The three products of the 2009 General Assembly – the Secretary-General’s report, the substantive thematic debate with significant participation by Member States, and the resulting General Assembly resolution – contributed to R2P’s continuing growth and evolution as a norm of international law. Indeed, the progress made at the 2009 General Assembly suggested “a growing political consensus” around R2P, where states demonstrated a willingness “to accept the relatively minimalist construction of [R2P] outlined in the World Summit Outcome Document, even when concrete implementation steps are also contemplated.”<sup>35</sup>

Following the 2009 formal debate, the UN General Assembly has hosted four formal debates on R2P (2018, 2019, 2021, and 2022) and eight annual informal interactive dialogues (2010-2017).<sup>36</sup> During these debates, numerous OAS Member States have delivered statements in support of R2P. A summary of these statements are available in a subsequent section of this report. Additionally, each event has been informed by a report of the Secretary-General focused on a thematic issue relevant to the Responsibility to Protect; these reports will be discussed in the following section.

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<sup>30</sup> IMPLEMENTING THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/63/677, Jan. 12, 2009; see also THE RESPONSIBILITY TO PROTECT, *supra* note 6, at 32.

<sup>31</sup> *Implementing the Responsibility to Protect: The 2009 General Assembly Debate: An Assessment*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Aug. 2009, available at <https://www.globalr2p.org/wp-content/uploads/2020/01/2009-UNGA-Debate-Summary.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *The Responsibility to Protect*, G.A. Res. 63/308 U.N. Doc. A/RES/63/308, adopted Sept. 14, 2009, at ¶ 2.

<sup>34</sup> THE RESPONSIBILITY TO PROTECT, *supra* note 6, at 33.

<sup>35</sup> *Id.*

<sup>36</sup> *General Assembly*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, available at <https://www.un.org/en/genocideprevention/general-assembly.shtml>.

At the 2021 plenary debate on R2P, the General Assembly voted by an overwhelming majority to approve the first thematic resolution on R2P since 2009. Recalling Resolution 63/308 and the recommendations made in the Secretary-General's annual reports, Resolution 75/277 resolved to create a standing R2P item on the General Assembly's annual agenda, and formally requests the Secretary-General to report to the General Assembly on R2P and the prevention of mass atrocity crimes.<sup>37</sup> The historic resolution was supported by 22 OAS Member States, including Antigua and Barbuda, Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, the United States, and Uruguay. Six others, including Barbados, Belize, Dominica, Saint Kitts and Nevis, The Bahamas, and Trinidad and Tobago did not vote. Suriname and Saint Vincent and the Grenadines abstained. And only three states, Bolivia, Nicaragua, and Venezuela (for the Maduro regime),<sup>38</sup> voted no.

The adoption of Resolution 75/277 confirms that Member States remain committed to preventing and responding to mass atrocities and contributes to R2P's continued development as a principle of international law.

d. UN Human Rights Council

The UN Human Rights Council has also helped advance the development of R2P both directly and indirectly. Thematically, the mandate of the Human Rights Council overlaps with the objectives of R2P; the Council can “address concerns with Member States about human rights issues and risk factors of atrocity crimes, [make] recommendations that encourage compliance with international human rights standards and obligations, including those that are the basis of the principle of the responsibility to protect, [and advance implementation] through the Human Rights Council's resolutions on country situations and thematic issues, including those directly related to the risk or commission of violations that may amount to atrocity crimes.”<sup>39</sup> Since 2008, the Human Rights Council has adopted 58 resolutions that reference R2P in the context of genocide prevention, transitional justice and human rights, and country-specific situations.<sup>40</sup>

On July 24, 2020, the UN Human Rights Council adopted Resolution 44/14, commemorating the 15th anniversary of the Responsibility to Protect – the first thematic resolution from the Human Rights Council on R2P.<sup>41</sup> Recalling the World Summit Outcome

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<sup>37</sup> *The Responsibility to Protect and the Prevention of Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity*, G.A. Res. 75/277, U.N. Doc. A/RES/75/277, adopted May 18, 2021.

<sup>38</sup> This was the vote of the Nicolás Maduro regime, not the interim government of Juan Guaidó.

<sup>39</sup> *Human Rights Council*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, available at <https://www.un.org/en/genocideprevention/human-rights-council.shtml>.

<sup>40</sup> *UN Human Rights Council Resolutions Referencing R2P*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, May 2, 2022, available at <https://www.globalr2p.org/resources/un-human-rights-council-resolutions-referencing-r2p/>.

<sup>41</sup> *Fifteenth Anniversary of the Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes against Humanity, as Enshrined in the 2005 World Summit Outcome*, H.R.C. Res. 44/14, U.N. Doc. A/HRC/RES/44/14, adopted Jul. 17, 2020. NB: All OAS Member States on the Human Rights Council except Venezuela of the Maduro regime (Argentina, the Bahamas, Brazil, Chile, Mexico, Peru, and Uruguay) voted in favor of the resolution.

Document, General Assembly Resolution 63/308, and the mandate of the Human Rights Council, the resolution resolves to convene an intersessional panel “on the exchange of best practices on strengthening national policies and strategies to implement the responsibility to protect [...] through national mechanisms and other stakeholders.”<sup>42</sup> Further, the resolution requests that the UN High Commissioner for Human Rights prepare a summary report on the panel discussion and to submit it to the Human Rights Council at its forty-eighth session and to the General Assembly.<sup>43</sup> The resolution was adopted 32 to 1, with 14 abstentions; every OAS Member State on the Human Rights Council, with the exception of Venezuela (for the Maduro regime), voted in favor of adopting the resolution (Argentina, the Bahamas, Brazil, Chile, Mexico, Peru, and Uruguay).

An intersessional panel discussion on R2P was held on May 11, 2021, and featured remarks from UN High Commissioner for Human Rights Michelle Bachelet; the UN Special Adviser on R2P, Karen Smith; a Member of the UN Committee on the Elimination of Racial Discrimination, Rita Izsák-Ndiaye; as well as representatives from national human rights bodies and civil society organizations. Twenty UN Member States and the European Union delivered statements, including OAS Member States Peru, Uruguay, Guatemala, Mexico, and the United States. Representatives of the UN Group of Friends of R2P in Geneva and the Steering Group of the Global Network of R2P Focal Points also delivered remarks. Participants in the intersessional panel celebrated the successes of R2P over the last 15 years but noted that R2P’s promise is yet incomplete. The overwhelming majority of participants called for greater integration of R2P in the work of the Human Rights Council, including by incorporating an atrocity prevention lens into the Human Rights Council’s existing mechanisms, such as Special Procedures, Treaty Bodies, and the Universal Periodic Review.<sup>44</sup>

## **2. Development of R2P by UN Offices**

### **a. Office of the UN Secretary-General**

The Office of the UN Secretary-General facilitates the continuing development and implementation of R2P “through his good offices, his briefings to the inter-governmental bodies of the United Nations and the work of the different departments that compose the Secretariat on issues related to early warning, conflict prevention, human rights, cooperation with regional organizations, political engagement with Member States, capacity building, electoral assistance, mediation, [and] administering [peacekeeping, peacebuilding, and political] missions.”<sup>45</sup> Importantly, the cross-cutting nature of the Secretary-General’s mandate requires that he present situations of concern in which “the maintenance of peace and security, including those where

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<sup>42</sup> *Id.*, at ¶ 1.

<sup>43</sup> *Id.*

<sup>44</sup> *UN Human Rights Council Intersessional Panel Discussion to Mark the 15th Anniversary of the Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes against Humanity*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, May 11, 2021, *available at* <https://www.globalr2p.org/resources/un-human-rights-council-intersessional-panel-discussion-to-mark-the-15th-anniversary-of-r2p/>.

<sup>45</sup> *Secretary-General*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, *available at* <https://www.un.org/en/genocideprevention/secretary-general.shtml>

atrocities are likely to occur or are ongoing” to the attention of other bodies of the UN system.<sup>46</sup>

Since 2009, as mentioned above, the Secretary-General has published a thematic annual report on the Responsibility to Protect. These reports have provided foundational guidance for the ongoing development and implementation of R2P, both as a general principle but also often with specific areas of focus. The annual reports have included:

- 2009: *Implementing the Responsibility to Protect*<sup>47</sup>
- 2010: *Early Warning, Assessment, and the Responsibility to Protect*<sup>48</sup>
- 2011: *The Role of Regional and Sub-regional Arrangements in Implementing the Responsibility to Protect*<sup>49</sup>
- 2012: *Timely and Decisive Response*<sup>50</sup>
- 2013: *State Responsibility and Prevention*<sup>51</sup>
- 2014: *Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect*<sup>52</sup>
- 2015: *A Vital and Enduring Commitment: Implementing the Responsibility to Protect*<sup>53</sup>
- 2016: *Mobilising Collective Action: the Next Decade of the Responsibility to Protect*<sup>54</sup>
- 2017: *Implementing the Responsibility to Protect: Accountability for Prevention*<sup>55</sup>
- 2018: *Responsibility to Protect: from Early Warning to Early Action*<sup>56</sup>
- 2019: *Responsibility to Protect: Lessons Learned for Prevention*<sup>57</sup>
- 2020: *Prioritizing Prevention and Strengthening Response: Women and the Responsibility to Protect*<sup>58</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> IMPLEMENTING THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, *supra* note 30.

<sup>48</sup> EARLY WARNING, ASSESSMENT AND THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/64/864, Jul. 14, 2010.

<sup>49</sup> THE ROLE OF REGIONAL AND SUB-REGIONAL ARRANGEMENTS IN IMPLEMENTING THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/65/877, Jun. 28, 2011.

<sup>50</sup> RESPONSIBILITY TO PROTECT: TIMELY AND DECISIVE RESPONSE REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/66/874, Jul. 25, 2012.

<sup>51</sup> RESPONSIBILITY TO PROTECT: STATE RESPONSIBILITY AND PREVENTION: REPORT OF THE SECRETARY GENERAL, U.N. Doc. A/67/929, Jul. 9, 2013.

<sup>52</sup> FULFILLING OUR COLLECTIVE RESPONSIBILITY: INTERNATIONAL ASSISTANCE AND THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/68/947, Jul. 11, 2014.

<sup>53</sup> A VITAL AND ENDURING COMMITMENT: IMPLEMENTING THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/69/981, Jul. 13, 2015.

<sup>54</sup> MOBILIZING COLLECTIVE ACTION: THE NEXT DECADE OF THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/70/999, Jul. 22, 2016.

<sup>55</sup> IMPLEMENTING THE RESPONSIBILITY TO PROTECT: ACCOUNTABILITY FOR PREVENTION: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/71/1016, Aug. 10, 2017.

<sup>56</sup> RESPONSIBILITY TO PROTECT: FROM EARLY WARNING TO EARLY ACTION: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/72/884, Jun. 1, 2018.

<sup>57</sup> RESPONSIBILITY TO PROTECT: LESSONS LEARNED FOR PREVENTION: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/73/898, Jun. 10, 2019.

<sup>58</sup> PRIORITIZING PREVENTION AND STRENGTHENING RESPONSE: WOMEN AND THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/74/964, Jul. 23, 2020.

2021: *Advancing Atrocity Prevention*<sup>59</sup>

2022: *Responsibility to Protect: Prioritizing Children and Young People*<sup>60</sup>

The 2022 report was the first published in response to UN General Assembly Resolution 75/277, adopted on May 18, 2021, where the Secretary-General was requested to “report annually to the General Assembly on the responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>61</sup>

b. Office of the UN Special Adviser on R2P

The position of the Special Adviser on the Responsibility to Protect was established by UN Secretary-General Ban Ki-moon in 2007 with the primary objective of “conceptual development and consensus-building” around the principle.<sup>62</sup> The Special Adviser is also responsible for the “conceptual, political, institutional and operational development” of R2P.<sup>63</sup> Given the interrelated nature of their mandates, the Special Adviser on R2P shares an office with the Special Adviser on the Prevention of Genocide. Since 2007, four people have served as Special Advisers on R2P: Edward Luck, Jennifer Welsh, Ivan Šimonovic, and Karen Smith. George Okoth-Obbo, the fifth Special Adviser, was appointed in December 2021.

The Special Adviser’s office is responsible for exercising an early warning function; advising and mobilizing all interested parties regarding situations of concern; enhancing the capacity of the United Nations to prevent and respond to mass atrocity crimes; raising awareness about the causes and dynamics of these crimes and of the measures that could be taken to prevent them; and advancing R2P’s implementation throughout and within the United Nations system, in Member States at the national level, with regional and sub-regional arrangements, and in cooperation with civil society.<sup>64</sup>

In 2014, the UN Office on Genocide Prevention and the Responsibility to Protect published the *Framework of Analysis for Atrocity Crimes*, a guide for prevention and response to mass atrocities.<sup>65</sup> This document enumerates 14 individual risk factors, each with 8-14 indicators of potential mass atrocity crimes, and provides a roadmap which describes atrocity prevention in practice. The *Framework* allows intergovernmental institutions, government

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<sup>59</sup> ADVANCING ATROCITY PREVENTION: WORK OF THE OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/75/863, May 3, 2021.

<sup>60</sup> RESPONSIBILITY TO PROTECT: PRIORITIZING CHILDREN AND YOUNG PEOPLE: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/76/844-S/2022/428, May 26, 2022.

<sup>61</sup> *The Responsibility to Protect and the Prevention of Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity*, *supra* note 37.

<sup>62</sup> *Letter Dated 31 August 2007 from the Secretary-General Addressed to the President of the Security Council*, U.N. Doc. S/2007/721, Dec. 7, 2007.

<sup>63</sup> *The Office: Mandate*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, available at <https://www.un.org/en/genocideprevention/office-mandate.shtml>.

<sup>64</sup> *Advancing the Responsibility to Protect: Implementation*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, accessed Sept. 30, 2021, available at <https://www.un.org/en/genocideprevention/advancing-responsibility-to-protect.shtml>.

<sup>65</sup> *FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES*, UN OFFICE OF THE SPECIAL ADVISERS ON THE GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, Oct. 2014, available at <https://www.globalr2p.org/resources/framework-of-analysis-for-atrocity-crimes-a-tool-for-prevention/>.

officials, and civil society groups to systematically assess situations of potential or ongoing mass atrocities, apply the lens of R2P, and make recommendations with the objective of protecting vulnerable populations.

The UN Office on Genocide Prevention and the Responsibility to Protect periodically publishes other instructive resources on atrocity prevention.<sup>66</sup> Additionally, the work of the Special Adviser informs the annual report published by the Secretary-General.

### ***C. Legal Context for Understanding R2P***

#### **1. R2P as Adopted by the UN World Summit**

The Responsibility to Protect (R2P) is a global principle adopted unanimously by the UN General Assembly (UNGA) at the 2005 World Summit. As outlined above, R2P was first articulated by the International Commission on Intervention and State Sovereignty (ICISS),<sup>67</sup> and later included in Paragraphs 138–140 of the World Summit Outcome Document (WSOD).<sup>68</sup> The World Summit in 2005 was particularly significant because it reflected the commitment made by Member States in the historic Millennium Declaration of 2000 to reach specific goals to “attain peace, security and disarmament, along with development and poverty eradication; to safeguard human rights and promote the rule of law; to protect our common environment; to meet the special needs of Africa; and to strengthen the United Nations.”<sup>69</sup> As with the important goals focused on advancing global development, the inclusion of R2P within the WSOD demonstrated a critical consensus of the international community to accept the collective responsibility to protect civilians against mass atrocity crimes.<sup>70</sup>

As set out in the WSOD, R2P is described as having three “pillars” of responsibility:

**Pillar One: The responsibility of each State to protect its populations.** Pillar One, captured in the first half of paragraph 138 of the WSOD, states that “Every state has the Responsibility to protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.” This forms the foundation of R2P and States accept this responsibility under paragraph 138 of the WSOD.

**Pillar Two: The responsibility of the international community to assist States in protecting their populations.** The wider international community has the responsibility to encourage and assist individual states in meeting States’ responsibility to protect its populations. The second half of paragraph 138 of the

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<sup>66</sup> *Publications and Resources*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, available at <https://www.un.org/en/genocideprevention/publications-and-resources.shtml>.

<sup>67</sup> See, e.g., ICISS REPORT, *supra* note 11.

<sup>68</sup> *World Summit Outcome Document*, *supra* note 22, at ¶¶ 138–139.

<sup>69</sup> *Background: 71<sup>st</sup> Session of the United Nations General Assembly*, UNITED NATIONS, accessed July 8, 2022, available at <https://www.un.org/en/ga/71/presskit/background.shtml>.

<sup>70</sup> *World Summit Outcome Document*, *supra* note 22; The 2005 World Summit High-Level Plenary Meeting of the 60<sup>th</sup> session of the UN General Assembly, Sept. 14–16, 2005, UN Headquarters, New York, available at [https://www.un.org/en/events/pastevents/worldsummit\\_2005.shtml](https://www.un.org/en/events/pastevents/worldsummit_2005.shtml).

WSOD calls for “[t]he international community” to “encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability” as appropriate.

**Pillar Three: The responsibility of the international community to protect when a State is manifestly failing to protect its populations.** If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter. Paragraph 139 of the WSOD specifies that, “should peaceful means be inadequate and national authorities are manifestly failing to protect their populations, 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 organizations as appropriate.” Paragraph 139 “stress[es] the need for the General Assembly to continue consideration” of R2P and commits the UN Members “as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.”

In short, the WSOD asserts the shared commitment of UN Members to the principle that state sovereignty must yield in narrow circumstances where a state is unable or unwilling to protect its populations from mass atrocity crimes or is the author of such crimes. Through its references to the UN Charter, the WSOD reaffirms this approach as a fully consistent interpretation of the rights and responsibilities of states found within in the UN Charter itself. These principles inform the three pillars of R2P.

Since its adoption in 2005, the UN General Assembly has reaffirmed its commitment to R2P as adopted in the WSOD on a number of occasions: in particular, in a consensus resolution adopted in 2009 following debate on the first UN Secretary-General’s report on implementing the responsibility to protect,<sup>71</sup> and in numerous resolutions addressing specific humanitarian crises that have occurred since that time.<sup>72</sup> On May 18, 2021, the UNGA adopted a resolution on R2P whereby it decided to include in its annual agenda an R2P item and requested that the Secretary-General report annually on R2P.<sup>73</sup> As of October 2021, at least 87 UN Security Council (UNSC) resolutions and presidential statements have referenced R2P and as of June 2022, 31 UNGA resolutions and 66 Human Rights Council resolutions have referenced R2P.<sup>74</sup>

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<sup>71</sup> *The Responsibility to Protect*, G.A. Res. 63/308, U.N. Doc. A/RES/63/308, adopted Sept. 14, 2009.

<sup>72</sup> For a collection of these resolutions and actions, see UN General Assembly Resolutions Referencing R2P, available at <https://www.globalr2p.org/resources/un-general-assembly-resolutions-referencing-r2p-2/>.

<sup>73</sup> *The Responsibility to Protect and the Prevention of Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity*, U.N. Doc A/RES/75/277, May 18, 2021.

<sup>74</sup> For a collection of Security Council resolutions and presidential statements, see UN Security Council Resolutions and Presidential Statements Referencing R2P, available at <https://www.globalr2p.org/resources/un-security-council-resolutions-and-presidential-statements-referencing-r2p/>; For a collection of UNGA resolutions, see UN General Assembly Resolutions Referencing R2P, available at <https://www.globalr2p.org/resources/un-general-assembly-resolutions-referencing-r2p-2/>; For a collection of Human Rights Council resolutions, see UN Human Rights

## 2. Relationship of World Summit Outcome Document to Sources of International Law

As an UNGA resolution, the WSOD is not binding as a matter of international law. Nonetheless, resolutions of the UNGA have important significance because they reflect UN Member States' shared understanding of their obligations within the framework of the international legal system—and by extension, contribute to the development of *opinio juris*,<sup>75</sup> which can contribute to the development of customary international law.<sup>76</sup>

## 3. Relationship of R2P to the UN Charter

The decision of the international community to adopt R2P came from an interest in clarifying the balance between state sovereignty and the commitment to protect and promote human rights included in the UN Charter, in the wake of the genocides in Rwanda and Srebrenica and the NATO intervention into Kosovo.

Within the Charter, the principle of non-intervention is found in Article 2(7), which prohibits the United Nations from intervening “in matters which are essentially within the domestic jurisdiction of any state.”<sup>77</sup> Furthermore, the Charter also states in Article 2(4) that “All Members shall refrain ... from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>78</sup>

While this collective commitment by the UN and its Member States to non-intervention might appear uncontroversial if read in isolation, under Article 1(3), one of the key purposes of the UN is “to achieve international co-operation in solving international problems . . . and in promoting and encouraging respect for human rights and fundamental freedoms . . . .”<sup>79</sup> In addition, the Charter's general commitment to non-intervention does not apply to actions undertaken by the UN Security Council when exercising its “primary responsibility for the maintenance of international peace and security.”<sup>80</sup> For example, Chapter VII of the UN Charter

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Council Resolutions Referencing R2P, available at <https://www.globalr2p.org/resources/un-human-rights-council-resolutions-referencing-r2p/>.

<sup>75</sup> *Opinio juris* refers to practice that is accepted as law and is one of the two elements of customary international law. “To determine the existence and content of a rule of customary international law, it is necessary to Ascertain whether there is a general practice that is accepted as law (*opinio juris*).” *Report of the International Law Commission*, U.N. Doc. A/73/10, Seventieth Session (30 April–1 June and 2 July–10 August 2018), at ¶ 65. In customary international law, *opinio juris* is the second element necessary to establish a legally binding custom. *Opinio juris* denotes a subjective obligation, a sense on behalf of a state that it is bound to the law in question. The International Court of Justice reflects this standard in ICJ Statute, Article 38(1)(b) by reflecting that the custom to be applied must be “accepted as law.” Cornell Law School, *opinio juris* (international law) [https://www.law.cornell.edu/wex/opinio\\_juris\\_\(international\\_law\)](https://www.law.cornell.edu/wex/opinio_juris_(international_law)).

<sup>76</sup> Dr. Hugh Breakey, et. al., *Enhancing Protection Capacity: Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflicts*, 39 Institute for Ethics, Governance and Law (2012), available at <http://collections.unu.edu/eserv/UNU:1618/R2P-POC-Policy-Guide.pdf>.

<sup>77</sup> U.N. Charter, at article 2(7)

<sup>78</sup> *Id.*, at article 2(4).

<sup>79</sup> *Id.*, at article 1(3).

<sup>80</sup> *Id.*, at article 24.

outlines the actions that the Security Council may take when it “determine[s] the existence of any threat to the peace, breach of the peace, or act of aggression.”<sup>81</sup> These range from making recommendations to Member States<sup>82</sup> to measures such as embargoes, sanctions and the severance of diplomatic relations,<sup>83</sup> to “such action by air, sea or land forces as may be necessary to maintain or restore international peace and security.”<sup>84</sup>

As explained by the ICISS, the need for a doctrinal response to the so-called “intervention dilemma” arose because “[w]hat lies ‘essentially within the domestic jurisdiction’ is not further defined and is indeed much contested.”<sup>85</sup> The ICISS sought to reaffirm the sovereignty principle within R2P by making clear that the primary responsibility to protect within a given territory lies with the state itself, as a function of its sovereignty in that territory, and that “it is only if the state is unable or unwilling to fulfil its responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place.”<sup>86</sup> It is only when evaluating if national authorities are failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and whether ‘collective action’ is necessary, that R2P affirms collective action is not only possible but can be necessary within the framework of the UN Charter. In fact, all states also have co-existing and binding legal obligations to prevent and respond to mass atrocity crimes under core treaties of international human rights, humanitarian, and criminal law, which they have signed and ratified.

#### **4. Relationship of R2P to International Treaties**

Under R2P, all states have committed to prevent and respond to mass atrocity crimes including genocide, war crimes, crimes against humanity, and ethnic cleansing. The definition of these crimes primarily derives from existing multilateral treaties, which states have widely signed and ratified. Of particular importance are: (1) the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), (2) the Geneva Conventions, (3) the Rome Statute of the International Criminal Court (Rome Statute) and (4) the International Covenant on Civil and Political Rights (ICCPR). But in addition to defining these crimes, these treaties collectively establish a large number of both affirmative and negative obligations on state parties and on the international community as a whole.

The unanimous adoption of R2P by the UNGA was therefore not an isolated action seeking to create new legal obligations but was built upon a solid corpus of pre-existing and legally-binding multilateral treaty commitments. This table provides a reference for these ratifications by individual OAS Member States:

#### **Status of Treaty Ratifications of OAS Member States**

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<sup>81</sup> *Id.*, at article 39.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*, at article 41.

<sup>84</sup> *Id.*, at article 42.

<sup>85</sup> ICISS REPORT, *supra* note 11, at ¶ 6.2.

<sup>86</sup> See Stevie Martin, *Sovereignty and the Responsibility to Protect*, 20 GRIFFITH L. REV 153 (2014), available at <https://www.tandfonline.com/doi/abs/10.1080/10383441.2011.10854694> (noting the ICISS position reconciling sovereignty and humanitarian interests).

<b>OAS Member State</b>	<b>Genocide Convention</b>	<b>Geneva Convention IV (Civilians)</b>	<b>Rome Statute of the Int'l Criminal Court</b>	<b>International Convention on Civil &amp; Political Rights</b>
Antigua & Barbuda	25 Oct 1988 d	6 Oct 1986 d	18 Jun 2001	3 Jul 2019 a
Argentina	5 Jun 1956 a	18 Sep 1956	8 Feb 2001	8 Aug 1986
Barbados	14 Jan 1980 a	10 Sep 1968 d	10 Dec 2002	5 Jan 1973 a
Belize	10 Mar 1998 a	29 Jun 1984 a	5 Apr 2000	10 Jun 1996 a
Bolivia	14 Jun 2005	10 Dec 1976	27 Jun 2002	12 Aug 1982 a
Brazil	15 Apr 1952	29 Jun 1957	20 Jun 2002	24 Jan 1992 a
Canada	3 Sep 1952	14 May 1965	7 Jul 2000	19 May 1976 a
Chile	3 Jun 1953	12 Oct 1950	29 Jun 2009	10 Feb 1972
Colombia	27 Oct 1959	8 Nov 1961	5 Aug 2002	29 Oct 1969
Costa Rica	14 Oct 1950 a	15 Oct 1960 a	7 Jun 2001	29 Nov 1968
Dominica	13 May 2019 a	28 Sep 1961 d	12 Feb 2001 a	17 Jun 1993 a
Dominican Republic	11 Dec 1948 s	22 Jan 1958 a	12 May 2005	4 Jan 1978 a
Ecuador	21 Dec 1949	11 Aug 1954	5 Feb 2002	6 Mar 1969
El Salvador	28 Sep 1950	17 Jun 1953	3 Mar 2016 a	30 Nov 1979
Grenada		13 Apr 1981 d	19 May 2011 a	6 Sep 1991 a
Guatemala	13 Jan 1950	14 May 1952	2 Apr 2012 a	5 May 1992 a
Guyana		22 July 1968 d	24 Sep 2004	15 Feb 1977
Haiti	14 Oct 1950	11 Apr 1957 a		6 Feb 1991 a
Honduras	5 Mar 1952	30 Dec 1965 a	1 Jul 2002	25 Aug 1997
Jamaica	23 Sep 1968 a	20 July 1964 d		3 Oct 1975
Mexico	22 Jul 1952	29 Oct 1952	28 Oct 2005	23 Mar 1981 a
Nicaragua	29 Jan 1952 a	17 Dec 1953		12 Mar 1980 a
Panama	11 Jan 1950	10 Feb 1956 a	21 Mar 2002	8 Mar 1977

Paraguay	3 Oct 2001	23 Oct 1961	14 May 2001	10 Jun 1992 a
Peru	24 Feb 1960	15 Feb 1956	10 Nov 2001	28 Apr 1978
St. Kitts & Nevis		14 Feb 1986 d	22 Aug 2006 a	
Saint Lucia	2 Jun 1970	18 Sep 1981 d	18 Aug 2010	22 Sep 2011 s
St. Vinc. & Grenadines	9 Nov 1981 a	1 Apr 1981 a	3 Dec 2002 a	9 Nov 1981 a
Suriname		13 Oct 1976 d	15 Jul 2008 a	28 Dec 1976 a
The Bahamas	2 Jun 1970	11 July 1975 d	29 Dec 2000 s	23 Dec 2008
Trinidad & Tobago	13 Dec 2002 a	24 Sept 1963 a	6 Apr 1999	21 Dec 1978 a
United States of America	25 Nov 1988	2 Aug 1955	31 Dec 2000 s	8 Jun 1992
Uruguay	11 Jul 1967	5 Mar 1969	28 Jun 2002	1 Apr 1970
Venezuela	12 Jul 1960 a	13 Feb 1956	7 Jun 2000	10 May 1978

## Legend

*Date Only:* The state has ratified the treaty, indicating its consent to be bound.

*a:* The state has acceded to the treaty, which is an act of accepting the offer to become a party to a treaty already signed and ratified by other states.

*d:* The state is a successor state of a prior sovereign that had ratified the treaty and remains bound to the treaty.

*s:* The state has signed the treaty but not ratified it. This means it has demonstrated its intent to be bound and cannot take positive steps to act contrary to its object and purpose, but it does not yet need to bring its domestic law into compliance with the treaty.

*Empty Cell:* The state as neither signed nor ratified the treaty.

It is important to emphasize that the obligations of OAS Member States, which are states parties to the above four treaties, are *already* legally binding. By understanding these pre-existing legal obligations, it is clear that the codification of R2P by the 2005 World Summit simply reaffirmed the responsibilities of states, individually and collectively, and created a roadmap by which the international community could more effectively prevent and respond to mass atrocity crimes.

### a. Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)

The first of these treaties, the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) was adopted by the UNGA in 1948. All 196 contracting parties “undertake to prevent and to punish” acts of genocide “whether committed in time of

peace or in time of war.”<sup>87</sup> Article II of the Genocide Convention defines “genocide” as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group,” and Article III extends the prohibition to secondary acts such as conspiracy, incitement, attempt, and complicity. Applying the Genocide Convention in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, the International Court of Justice (“ICJ”) has confirmed that states have a positive obligation to prevent genocide under the Genocide Convention and that “a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”<sup>88</sup>

In addition, states parties to the Genocide Convention commit to enact domestic legislation to enforce and penalize genocide crimes and to grant extradition to other contracting parties in such cases.<sup>89</sup> Additionally, the Genocide Convention creates a role for international bodies by providing that States “may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide” and related actions defined in the Genocide Convention.<sup>90</sup>

#### b. Geneva Conventions

The four 1949 Geneva Conventions as complemented by three additional protocols constitute a core part of international humanitarian law, regulate the conduct of armed conflict, and protect individuals who do not or are no longer taking part in active hostilities.<sup>91</sup> Under common Article 1 to the four Geneva Conventions, states have an obligation to respect and to ensure respect for the Geneva Conventions and it is widely accepted that such obligation is “binding on all States and competent international organizations.”<sup>92</sup> The ICJ “reinforced this assertion, noting that ‘a great many rules of humanitarian law applicable in armed conflict are so

<sup>87</sup> Convention for the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951, at article I [Hereinafter *Genocide Convention*].

<sup>88</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), International Court of Justice, I.C.J., Feb. 26, 2007, at ¶ 431.

<sup>89</sup> *Genocide Convention*, supra note 87, at articles V and VII.

<sup>90</sup> *Genocide Convention*, supra note 87, at article VIII.

<sup>91</sup> *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949*; *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949*; *Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949*; *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, of 8 June 1977; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, of 8 June 1977; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III)*, of 8 December 2005.

<sup>92</sup> Laurence Boisson de Chazournes and Luigi Condorelli, *Common Article 1 of the Geneva Conventions Revisited: Protecting Collective Interests*, INTERNATIONAL REVIEW OF THE RED CROSS, 31-03-2000 Article, No. 837.

fundamental’ that ‘these fundamental rules are to be observed by all States whether or not they have ratified the Conventions that contain them.’”<sup>93</sup>

The first three Geneva Conventions apply to combatants no longer taking active part in the hostilities, while the Fourth Geneva Convention provides for the protection of civilian populations.<sup>94</sup> The two Additional Protocols to the Geneva Conventions, ratified in 1977, provide for the protection of victims in international and non-international armed conflict and prohibit the intentional use of armed force against civilians.<sup>95</sup> All four Geneva Conventions and Additional Protocol I also define certain “grave breaches” for which the parties have greater obligations. These include “willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health” against the protected individuals of the respective Geneva Conventions,<sup>96</sup> extended to include additional categories of protected individuals under the Additional Protocol I.<sup>97</sup> The former UN Commission on Human Rights stated that grave breaches of the Additional Protocols constitute war crimes.<sup>98</sup> Additionally, the Rome Statute, which established the International Criminal Court, defines grave breaches of the Geneva Conventions as war crimes.

Importantly for the R2P context, the Geneva Conventions create one of the bases for an exception to the idea of unfettered sovereignty. Although the four Geneva Conventions apply in times of international armed conflict, common article 3 to the Geneva Conventions extends certain commitments to *intrastate* conflicts (“armed conflict not of an international character”) and sets out a number of humanitarian prohibitions that apply to persons taking no active part in the hostilities “at any time and in any place whatsoever.”<sup>99</sup> These include “violence to life and person” of non-combatants, including “murder . . . mutilation, cruel treatment and torture,” the “taking of hostages,” humiliating and degrading treatment, and “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court.”<sup>100</sup>

A number of international tribunals have recognized common article 3 of the Geneva Conventions to be customary international law, binding on all States, and the breach of its provisions has been recognized as a war crime in the Statutes of the International Criminal Tribunal of Rwanda, of the Special Court for Sierra Leone, of the International Criminal Court, and the International Criminal Tribunal for the former Yugoslavia.<sup>101</sup> Additional Protocol II to

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<sup>93</sup> *Id.* (citing *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, Jul. 8, 1996, I.C.J.R., at ¶ 79).

<sup>94</sup> The first three conventions protect (1) wounded and sick soldiers on land; (2) wounded, sick and shipwrecked military personnel at sea, and (3) prisoners of war, respectively.

<sup>95</sup> *Additional Protocol I to the Geneva Conventions; Additional Protocol II to the Geneva Conventions*.

<sup>96</sup> See 04-06-2004 FAQ, INTERNATIONAL COMMITTEE OF THE RED CROSS, *How “Grave Breaches” are Defined in the Geneva Conventions and Additional Protocols*; Geneva Convention (I), at article 50; Geneva Convention (II), at article 51; Geneva Convention (III), at article 130; Geneva Convention (IV), at article 147.

<sup>97</sup> Additional Protocol I to the Geneva Conventions, at article 11(4), 85.

<sup>98</sup> UN Commission on Human Rights, Res. 1982/1 (*ibid.* § 98).

<sup>99</sup> Geneva Convention IV, at article 3(1).

<sup>100</sup> *Id.*

<sup>101</sup> INTERNATIONAL COMMITTEE OF THE RED CROSS, IHL Database, Customary IHL, *Rule 156. Definition of War Crimes* (citing ICTR Statute, at article 4; Statute of the Special Court for Sierra Leone, at article 3; ICC Statute, at article 8(2)(c); see, e.g., ICTY, *Tadić* case, Interlocutory Appeal (cited in Vol. II, Ch. 32, § 928); ICTY, *Jelisić* case, Judgment (*ibid.*, § 934).

the Geneva Convention expands further on the protection of victims of non-international armed conflicts. Certain acts prohibited under Additional Protocol II, such as directing attacks against civilian populations, pillaging or displacement of the civilian population other than for security or imperative military reasons, among others, constitute war crimes under article 8(2)(e) of the Rome Statute.

c. Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court (the Rome Statute) codified the concept of four core international crimes – genocide crimes against humanity, war crimes, and the crime of aggression – with reference to the prohibitions set forth in the Genocide Convention and Geneva Convention IV.<sup>102</sup>

For **genocide**, article 6 of the Rome Statute repeats the definitions set out in Article 2 of the Genocide Convention.

For **crimes against humanity**, Article 7 of the Rome Statute defines these as acts committed as part of a widespread or systematic attack directed against any civilian population including the following: murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or severe deprivation of physical liberty, torture, certain acts of sexual violence, persecution, enforced disappearance, the crime of apartheid and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>103</sup>

For **war crimes**, Article 8 of the Rome Statute sets out different provisions which depend on whether the armed conflict is of international or non-international nature and draws from sources of international humanitarian law.<sup>104</sup> In an international armed conflict, war crimes include (i) grave breaches of the Geneva Conventions<sup>105</sup> and (ii) other serious violations of the laws and customs applicable in international armed conflict including directing attacks against civilians, civilian objects, undefended towns and buildings which are not military objectives, employing poison, committing outrages upon personal dignity, among other acts.<sup>106</sup> For non-international armed conflict, war crimes include (i) “serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949,”<sup>107</sup> and (ii) “[o]ther serious violations of the laws and customs applicable in armed conflicts not of an

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<sup>102</sup> Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, *entered into force* July 1, 2002 [Hereinafter *Rome Statute*]. The Rome Statute provides for four crimes within the jurisdiction of the court: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; and (d) the crime of aggression.

<sup>103</sup> *Rome Statute*, *supra* note 102, at article 7.

<sup>104</sup> For a comparison of war crimes as defined in the Rome Statute and other sources of international law, see INTERNATIONAL COMMITTEE OF THE RED CROSS, *War Crimes Under the Rome Statute of the International Criminal Court and Their Source in International Humanitarian Law*, Oct. 2008.

<sup>105</sup> For definitions of grave breaches of the Geneva Conventions see Geneva Convention (I), at article 50; Geneva Convention (II), at article 51; Geneva Convention (III), at article 130; Geneva Convention (IV), at article 147.

<sup>106</sup> *Rome Statute*, *supra* note 102, at article 8, ¶ 2(a) and article 8, ¶ 2(b).

<sup>107</sup> *Id.*, at article 8, ¶ 2(c).

international character, within the established framework of international law.”<sup>108</sup> As it relates to potential war crimes, the Rome Statute does not extend to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature” that do not rise to the level of ‘armed conflicts’ in the context of the Geneva Conventions.<sup>109</sup>

d. International Covenant on Civil and Political Rights (ICCPR)

In addition to the above treaties, the International Covenant on Civil and Political Rights (ICCPR) includes a number of provisions relevant to R2P. Under the ICCPR, States undertake to respect and ensure the rights recognized by the ICCPR of all individuals within a State’s territory and jurisdiction and to adopt measures necessary to give effect to such rights.<sup>110</sup> Although the ICCPR does not define any of the four crimes of R2P, it prohibits certain acts which fall under genocide, crimes against humanity, and war crimes. Further, the ICCPR serves as a gap-filler for states which have not signed or ratified the Rome Statute since it prohibits certain acts which fall under the definitions of crimes against humanity and war crimes, such as torture, cruel, inhuman, or degrading treatment or punishment, arbitrary deprivation of life, enforced disappearance, and arbitrary detention.

e. Definition of Ethnic Cleansing as an Atrocity Crime

Unlike genocide, war crimes, and crimes against humanity, “ethnic cleansing” is not explicitly named and defined in the instruments described above. In this respect, the UNGA has observed ethnic cleansing “is not a crime in its own right under international law,” but that “acts of ethnic cleansing may constitute one of the other three crimes.”<sup>111</sup> A UN Commission of Experts on the issue defined ethnic cleansing as “rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area”<sup>112</sup> and as “purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”<sup>113</sup> That same Commission determined that ethnic cleansing has been carried out by means of “murder, torture, arbitrary arrest and detention, extra-judicial executions, rape and sexual assault, confinement of civilian population in ghetto areas, forcible removal, displacement and deportation of civilian population, deliberate military attacks or threats of attacks on civilians and civilians areas, and wanton destruction of property,” and affirmed that such practices constitute crimes against humanity, can be assimilated to specific war crimes and fall within the meaning of genocide.<sup>114</sup> The use of the term ethnic cleansing to describe these

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<sup>108</sup> *Id.*, at article 8, ¶ 2(e).

<sup>109</sup> *Id.*, at article 8, ¶ 2(d).

<sup>110</sup> International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at art. 2.

<sup>111</sup> IMPLEMENTING THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, *supra* note 30.

<sup>112</sup> *Letter Dated 9 February 1993 from the Secretary-General Addressed to the President of the Security Council*, U.N. Doc. S/25274, Feb. 10, 1993.

<sup>113</sup> *Letter Dated 24 May 1994 from the Secretary-General to the President of the Security Council*, U.N. Doc. S/1994/674, May 27, 1994.

<sup>114</sup> *Letter Dated 9 February 1993 from the Secretary-General Addressed to the President of the Security Council*, *supra* note 112, at ¶ 56.

situations was further affirmed by its use in indictments and judgments of the International Criminal Tribunal for the Former Yugoslavia.<sup>115</sup>

## **5. R2P and the Women, Peace, and Security Agenda**

### **a. Gender Blindness in the Origins of R2P**

Although the principle of R2P is compatible with the feminist agenda, in that it places limits on state sovereignty from a perspective of the protection of human rights and emphasizes non-military engagement (when possible), R2P has been criticized for having been developed without adequate attention to the lived realities of women and girls. In addition, it has been argued the principle also depends on gendered accounts of the value of military intervention in international affairs that limit the possible responses to atrocities.<sup>116</sup> In this regard, it is important to note that only one of the twelve members of the ICISS was a woman and the High Level Panel had only four women members compared to 12 men. This representation disparity was not uncommon in international law when R2P was first developed and therefore the principle primarily reflects men's lives, experiences, and priorities.

Similarly, scholars have pointed to masculine bias in the early formation of the principle and argue R2P failed to explicitly engage with the gender perspective until its 12th annual report published in 2020.<sup>117</sup> In addition to the lack of women's representation in decision-making structures, only seven of the 2,000 sources listed in the ICISS database explored gender and atrocities, and only four examined women and security. Additionally, the ICISS report did not include the term "gender," and its three references to "women" did not recognize women's contributions to conflict and post-conflict environments or the need to include women in these environments. References to women as active agents or to gender inequalities as root causes for atrocity crimes are also absent from the report.<sup>118</sup>

On a positive note, however, the UN Secretary-General's 2020 report on R2P "tackles the 'gender-blindness' limitation head-on and places gender at the center of R2P implementation," but progress is limited by political resistance within the United Nations, lack of an adequate gender analysis, and the failure to adequately coordinate the implementation of R2P with the women, peace and security (WPS) agenda of the UN Security Council.<sup>119</sup>

Other scholars offer an alternative point of view with their argument that the protection of women and their role as agents of protection are implied within the principal's rubric.<sup>120</sup> They

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<sup>115</sup> Global Centre for the Responsibility to Protect, *The Responsibility to Protect: A Background Briefing*, Jan. 14, 2021.

<sup>116</sup> Hilary Charlesworth, *Feminist Reflections on the Responsibility to Protect*, 2(3) GLOBAL RESPONSIBILITY TO PROTECT 232-249 (2010).

<sup>117</sup> Cristina G. Stefan, *Opportunity for Gendering the Responsibility to Protect Agenda at the United Nations?*, 1(3) GLOBAL STUDIES QUARTERLY 1-13 (2021). For a chart that depicts all references to "gender" and "women" in the R2P annual reports from 2009-2020, see Annex II.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Sara E. Davies and Sarah Teitt, *Engendering the Responsibility to Protect: Women and the Prevention of Mass Atrocities*, 4(2) GLOBAL RESPONSIBILITY TO PROTECT 198-222 (2012).

focus on the text's link to the protection of women, opportunities for gender mainstreaming into early warning, preventative diplomacy, peacekeeping and conflict resolution processes, and the fact that the four crimes related to R2P specifically include the widespread and systematic use of violence against women. Furthermore, they argue that R2P permits the opportunity to view these acts not only as crimes but also as threats to international peace and security, which, "requires states and the international community to view their responsibilities to these groups under the three pillar approach – not just to respond, but to prevent and rebuild."<sup>121</sup> However, they recognize the valid critique that R2P frames women as either victims of sexual violence (particularly victims of rape) or as natural peacemakers, which is a common stereotype.<sup>122</sup>

These scholars have argued for an approach that emphasizes prevention over reaction, and inclusion and participation from the local level over intervention from the international level, which complements the work of the Inter-American Human Rights system in establishing state responsibilities to protect women from violence, as discussed in the following section. The 2020 R2P report in particular has been characterized as progressive and "pathbreaking in its clarity around the gender dynamics of atrocity crimes, in recognizing women's multiple and vital roles in supporting the prevention and protection agendas, and the importance of empowering women."<sup>123</sup>

b. The Convention of Belém do Pará and State Responsibility  
Regarding Violence against Women

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará, 1994), defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere" (Article 2).<sup>124</sup> It also establishes that women have the right to live a life free of violence and confirms that violence against women constitutes a violation of their human rights and fundamental freedoms. The Convention, the first of its kind to focus specifically on violence against women and the inter-American legal instrument with the most ratifications, calls for the establishment of mechanisms to protect and defend women's rights as essential to combating violence against women.

Chapter III of the Convention of Belém do Pará stipulates state responsibilities regarding violence against women and under Article 7 makes it an obligation for states parties "to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence" with special emphasis on the introduction of the necessary domestic legislation and administrative mechanisms. Under Article 9, states parties are also required to take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons, and of the vulnerability of women subjected to violence while pregnant or who are disabled, of minor age,

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<sup>121</sup> *Id.*

<sup>122</sup> See, e.g., *supra* note 116 and note 117.

<sup>123</sup> *Opportunity for Gendering the Responsibility to Protect Agenda at the United Nations?*, *supra* note 117.

<sup>124</sup> Organization of American States, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para")*, Jun. 9, 1994.

elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

In 2004, the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), was established within the Inter-American Commission of Women (CIM) at the OAS to analyze state progress in its implementation, although to date, the MESECVI has not turned its attention to violence against women in the context of conflict, emergencies or other complex humanitarian settings. The following section looks at how state responsibility to protect women ties into the WPS agenda and R2P and explains a more integrated understanding of the changing nature of conflict, security, and peace is necessary to guarantee women a life without violence.

c. A Renewed Women, Peace and Security Agenda in a Changing Context of Conflict

While most countries in the Americas are not in formal conflict, the region suffers from high levels of (armed) violence, social inequalities, weakened state institutions, and other scenarios that are comparable to a traditional conflict. Structural inequalities, in particular large income gaps between the rich and poor and persistent gender inequalities, fuel social conflict and create environments that are ripe for organized crime, corruption, and the erosion of democratic institutions.<sup>125</sup> In parallel with the gradual escalation of criminal violence, citizen insecurity is a constant complaint in the region and is directly related to armed violence, which persists in part because of the carrying, use, and deployment of small arms and light weapons.<sup>126</sup> The proliferation of small arms has a devastating impact on the Americas. In 2017 alone, the region reported 37% of the global homicide total despite having only 13% of the world's population.<sup>127</sup> According to the United Nations Office on Drugs and Crime (UNODC), organized crime has caused more deaths than conflict and terrorism combined.<sup>128</sup> Clearly, the absence of formal inter- or intra-state conflict is not the only indicator of whether a country is peaceful and secure.

As the WPS agenda centers on conflict and peace, how states understand both concepts is key to ensuring women's security, and our understanding of what "security" looks like. A broader understanding of peace as more than just an absence of violence or war (positive peace as opposed to negative peace) allows us to address the root causes of conflict and mass atrocities, including violence against women, and place more emphasis on prevention.<sup>129</sup> Similarly, states must question what security is and how it encompasses the needs of all people in a society. Feminist scholars have recognized that traditional notions of security, which focus on the state's ability to protect its own borders and maintain internal "order," do not fully encompass the insecurities of civilians and, in particular, the physical, economic, sexual, and reproductive

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<sup>125</sup> *It Has Been Proven, Less Inequality Means Less Crime*, WORLD BANK, 2014, available at <https://www.worldbank.org/en/news/feature/2014/09/03/latinoamerica-menos-desigualdad-se-reduce-el-crimen>.

<sup>126</sup> *Paths to Peace and Security, Forged by Women*, INTER-AMERICAN COMMISSION OF WOMEN, 2022.

<sup>127</sup> The Americas is the region with the highest homicide rate in the world (17.2 victims of intentional homicide per 100,000 people) – almost three times the global average (6.1 victims per 100,000 people). GLOBAL STUDY ON HOMICIDE EXECUTIVE SUMMARY, UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2019, at 11.

<sup>128</sup> Between 1990 and 2017, there were 2,250,000 deaths related to armed conflict, while 11,770,000 people died from criminal activities. *Id.*, at 12.

<sup>129</sup> J. Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*, INTERNATIONAL PEACE RESEARCH INSTITUTE OSLO, 1996.

vulnerabilities of women.<sup>130</sup> Similarly, in section II(4)(i) of the Declaration on Security in the Americas (2003), the Organization of American States recognized:

The security threats, concerns, and other challenges in the hemispheric context are of diverse nature and multidimensional scope, and the traditional concept and approach must be expanded to encompass new and nontraditional threats, which include political, economic, social, health, and environmental aspects.<sup>131</sup>

These more nuanced understandings of conflict, peace, and security point to a fundamental link between gender equality, violence against women, and peace and security. A study from Harvard University found that gender equality is the number one predictor of peace, more so than wealth, the level of democracy, or the religious identity of a state.<sup>132</sup> Gender inequality has also been identified as a root cause of war. In other words, violent conflict is more probable in societies with larger gender gaps. The CEDAW Committee also recognizes that the rapidly increasing prevalence of sexual violence can serve as an early warning of conflict.<sup>133</sup>

The WPS agenda challenges power hierarchies and structural inequalities as a fundamental step for peacebuilding and conflict prevention. Similarly, R2P must include the elimination of gender inequalities and violence against women as an important method of preventing mass atrocities against women. As the Inter-American Commission of Women has explained, the current reality of the Americas calls for a renewed focus on a WPS agenda that not only addresses women's protection in changing contexts of conflict, including social conflict, but also how their participation in decision-making processes and institutions can prevent this conflict and is key for recovery and peace-building efforts. This renewed agenda encompasses women in formal conflict settings but also contemplates violence against women in the private and digital spheres and conflicts caused or exacerbated by climate degradation and natural disasters, displacement and migration, high levels of homicide, organized crime, drug and human trafficking, the proliferation of small arms, extreme poverty, and discrimination and structural inequalities, among other realities. By taking into account these settings of social conflict, the WPS agenda can help us expand traditional concepts of peace and security to better address the violence that women face, strengthen the prevention of mass atrocities and advance towards more equitable societies by advocating for gendered understandings of human and multidimensional security and positive peace.

#### d. Synergies and Tensions between R2P and the WPS Agenda

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<sup>130</sup> Linda Basch, *Human Security, Globalization, and Feminist Visions*, 16(1) PEACE REVIEW 5-12 (2006); see also M. Dam, *Women, Peace and Security: Feminist Critique of UN Security Council Resolution 1325*, 22(2) HUMAN RIGHTS DEFENDER 11-13 (2013); see also Elisabeth Porter, *Feminists Building Peace and Reconciliation: Beyond Post-Conflict*, 4(2) PEACEBUILDING 210-225 (2016).

<sup>131</sup> Organization of American States, *Declaration on Security in the Americas*, Oct. 28, 2003, available at <https://www.oas.org/en/sms/docs/DECLARATION%20SECURITY%20AMERICAS%20REV%201%20-%2028%20OCT%202003%20CE00339.pdf>.

<sup>132</sup> J. O' Neil, *Engaging Women in Disarmament, Demobilization, and Reintegration: Insights for Colombia*, INCLUSIVE SECURITY, Mar. 2015, available at <https://www.inclusivesecurity.org/publication/engaging-women-in-disarmament-demobilization-and-reintegration-ddr-insights-for-colombia/>.

<sup>133</sup> CEDAW Committee, General Recommendation No. 30, at Section IV(A).

Although R2P and the WPS agenda have yet to work in a coordinated manner, there are areas in which they overlap.

First, they both have a similar protection pillar, which has historically received more attention than any other pillar in both frameworks. As previously mentioned, this can be problematic as it can reinforce stereotypes of women as victims rather than agents of change. This focus on protection has resulted in deficient attention and efforts to improve participation and prevention in the use of both R2P and the WPS agenda.<sup>134</sup>

Second, they also share the goal of prevention, although this can be limited to a narrow focus on prevention of sexual and gender-based violence without addressing the structural gender inequalities that perpetuate all forms of violence against women.

And third, they both share the goal of combating impunity and ensuring justice and accountability for atrocity crimes, again with a particular, and perhaps limiting, focus on perpetrators of sexual and gender-based violence.

Despite these areas of common ground, there are some ongoing tensions between the WPS and R2P agendas. Scholars touch on the WPS agenda's concern that R2P focuses on a timely and decisive response, a contentious topic for those concerned with gendered security and a blind spot of particular concern in the Americas, where democratic deterioration has been a main contributing factor to the increase of insecurity. There is also the state centric focus of R2P, which aims to restore sovereign authority and promote non-intervention when possible. This can be problematic for the WPS agenda given that states and the international community are not always responsible actors that guarantee the protection of women.<sup>135</sup> Finally, there has been some concern that given the more nuanced, creative, and complex discourse of the WPS agenda that its integration with R2P discourse could slow its development.<sup>136</sup>

#### ***D. Role of Regional Organizations in Implementing R2P***

##### **1. World Summit Outcome Document**

From the adoption of the World Summit Outcome Document in 2005, R2P envisioned the international community – and specifically regional organizations – would play a critical role in protecting vulnerable populations from mass atrocity crimes. Indeed, World Summit Outcome Document references the importance of regional organizations in implementing R2P.

Paragraph 138, which establishes that the responsibility to protect is above all a sovereign responsibility, underscores that the international community must support states in fulfilling their obligations under R2P:

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<sup>134</sup> M. O'Reilly, *Where the WPS Pillars Intersect*, in THE OXFORD HANDBOOK OF WOMEN, PEACE, AND SECURITY (S. Davies and J. True, 2019).

<sup>135</sup> L. Hall and L. Shepard, *WPS and R2P: Theorizing Responsibility and Protection*, in, RESPONSIBILITY TO PROTECT AND WOMEN, PEACE, AND SECURITY: ALIGNING THE PROTECTION AGENDA, at 53-80 (S. E. Davies, Z. Nwokora, E. Stamnes, and S. Teitt, Martinus Nijhoff Publishers, 2013).

<sup>136</sup> *Id.*

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 should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.<sup>137</sup>

Paragraph 139 presents policy options the international community can utilize to protect vulnerable populations when states are “manifestly failing” to fulfill their sovereign obligation:

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 VIII of the Charter, to help to 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 organizations as appropriate, 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.<sup>138</sup>

The international community has at its disposal a broad range of measures to comply with the need for “timely and decisive collective action.” These measures include political, economic, diplomatic, and humanitarian initiatives, and the overwhelming majority of them are peaceful means to protect populations. A subsequent section of this report explores these policy options in greater detail.

It is critical to emphasize here that regional organizations have significant power when it comes to debating R2P’s option of very last resort: the authorization of the use of force. As discussed previously, the use of force can only be utilized by the UN Security Council in accordance with Chapter VII of the UN Charter. But, within the framework of R2P, the use of force can only also be considered “in cooperation with relevant regional organizations as appropriate.” This clause excludes an interpretation that somehow the Security Council could act against the wishes of the relevant regional organization. In the context of the OAS, this

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<sup>137</sup> *World Summit Outcome Document*, *supra* note 22.

<sup>138</sup> *Id.*

clause requires the assent of the Permanent Council or General Assembly, the political bodies which represent the collective views of the Members States of Organization. Therefore, if the political bodies of the OAS are opposed to the use of force in a country situation, then the UN Security Council cannot authorize the use of force in that case in the Americas under the R2P framework.

## **2. UN General Assembly Discussions on Regional Organizations**

In 2011, then UN Secretary-General Ban Ki-moon presented a detailed report to the UN Security Council and UN General Assembly entitled “The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect.” The Secretary-General recalled the clauses of the World Summit Outcome Document regarding the international community and regional organizations and highlights how regional organizations are well-placed to make transformative contributions in the field of atrocity prevention.

The Secretary-General also reaffirmed the essential role that regional organizations play in implementing R2P, noting that “energetic implementation efforts by regional and subregional organizations can bring added value to each of the three pillars of my strategy for fulfilling the promise of the responsibility to protect.” While the Responsibility to Protect is first and foremost a sovereign responsibility, “regional and subregional arrangements can encourage Governments to recognize their obligations under relevant international conventions and to identify and address sources of friction within their societies before they lead to violence or atrocities.” In terms of assisting states, regional organizations are well-equipped to facilitate normative development, to foster preparedness and planning, and to act as intermediaries between individual countries and global decision-makers. And regarding a timely and decisive response by the international community, “natural synergies” between the United Nations and its regional partners “can help to spur both mutual confidence and a shared understanding of the nature and scope of the challenges to be addressed in a particular case, as well as of the policy choices ahead and their likely consequences down the road.”

While the Secretary-General acknowledged that implementation of R2P should respect institutional and cultural differences that differ by region, he declared unequivocally: “Each region must move forward, step by step, to ensure that populations are more protected and that the risk of mass atrocities recedes with each passing year.” He concluded by “[encouraging] members of the Security Council and of the Peacebuilding Commission, in particular, to consider ways in which greater collaboration in planning and in policymaking between those bodies and regional and subregional ones could be fostered, including on how to discourage the commission of atrocities and promote national responsibility and accountability.”

The publication of the Secretary-General’s 2011 report preceded the informal interactive dialogue that took place at the UN General Assembly, the topic of which was also “The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect.” During the dialogue, Secretary-General Ban Ki-moon reiterated the points made in his report, saying:

Everywhere, efforts are underway to improve early warning, to improve normative development, to end impunity and to assist States under

stress. Everywhere, global, regional, and subregional organizations are helping States to meet their sovereign responsibilities to their populations . . . Regional and subregional arrangements, along with civil society, have made cardinal contributions to each of the pillars of my implementation strategy . . . It is evidence, for instance, that members of the United Nations Security Council have paid close attention to the views of regional partners in determining how to respond to the acute crises in Côte d'Ivoire, Libya, and elsewhere . . . My report, therefore, offers a number of ideas for enhancing consultations, planning, early warning, and assessments with our regional and subregional partners . . . Today's dialogue should open a sustained cross-regional conversation on lessons learned and practical experiences. At the United Nations, we are listening and learning.<sup>139</sup>

A number of OAS Member States participated in that 2011 dialogue on the role of regional organizations in implementing R2P, including Canada, Chile, Brazil, Guatemala, Honduras, Mexico, the United States. In addition, both OAS Secretary for Political Affairs Victor Rico Frontaura, and Barbados, on behalf of CARICOM, presented statements. They will be discussed later in Section III.B., when the relationship between the OAS and R2P is addressed more fully.

### **3. Statements by UN Special Advisers on R2P**

Similarly, all five of the previous UN Special Advisers have spoken out about the need for regional engagement in atrocity prevention within the framework of R2P.

The first UN Special Adviser on R2P, Dr. Edward Luck, gave an interview where he emphasized clearly that the responsibility to address situations of mass atrocity crimes must begin with individual states, then engage regional organizations, and then, only if those efforts have failed, engage the UN system. Speaking about the situation in Libya, where the efforts of regional organizations were crucial, he said:

And very importantly, the Arab League, the African Union, the Gulf Cooperation Council, all acted before the Security Council did. Even the Human Rights Council in Geneva recommended to the General Assembly that Libya be suspended from its participation in that body. So others acted first. In this case it was really the way the Charter had meant it to be: the parties and then the regional bodies first try to resolve the differences; if they can't, then they refer them to the Security Council, so in some ways it's a bottom up process. It's not the Security Council or the permanent members sitting around and dictating to the world.

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<sup>139</sup> UN Secretary-General Ban Ki-moon, *Remarks to General Assembly Informal Interactive Dialogue on the Responsibility to Protect*, UNITED NATIONS, Jul 12, 2011, available at <https://www.un.org/sg/en/content/sg/speeches/2011-07-12/remarks-general-assembly-informal-interactive-dialogue-responsibility>.

The second UN Special Adviser, Dr. Jennifer Welsh, stressed that regional initiatives are necessary to continuing the development of R2P:

The future implementation of R2P depends upon a spirit of partnership, which is of course rooted in national efforts, but which also involves the work of regional and international organizations and civil society.

Dr. Ivan Šimonović, the third UN Special Adviser, spoke about the emergence of supplementary networks to advance atrocity prevention and how those networks might translate to formally institutionalized regional infrastructures:

We have seen the development of regional and global networks of focal points on the responsibility to protect and the prevention of genocide and atrocity crimes over the past decade, which can support the development of the national and regional architecture needed to implement this principle and encourage the sharing of good practices and expertise.

The fourth UN Special Adviser, Dr. Karen Smith, made “regionalizing R2P” a key objective of her tenure as Special Adviser, and she has frequently addressed the need for greater regional engagement. In August 2020, she wrote about the nuanced advantages that regional organizations have to offer in the field of atrocity prevention:

It is important to emphasize the vital role that regional responses – including those centered around regional and sub-regional organizations – can play in preventing and responding to atrocity crimes. These [efforts of regional organizations] should not necessarily be seen as supplanting global efforts, but the advantages, including that regional organizations are often better placed to take early action, are well known and should be encouraged. Relatedly, because some (sub-) regional organizations have made significant progress in implementing and operationalizing R2P, there is much potential for mutual learning.

In June 2021, the OAS Special Adviser on R2P hosted a private discussion with Dr. Smith for OAS Permanent Representatives and their colleagues regarding the role that the OAS can play in preventing and responding to mass atrocities. In her remarks, Dr. Smith highlighted the “essential role” of regional organizations in implementing R2P:

Collaboration and coordination between the United Nations and regional and sub-regional organizations on these matters [] remains critical to advancing atrocity prevention and implementing the responsibility to protect. [...] I also encourage you to explore regional venues to support each other in the implementation of this prevention and protection agenda. It is clear that you all share a commitment to prevent atrocity crimes. Let that be the common ground to engage with your neighbors and the rest of the international community.

And the fifth and current UN Special Adviser George Okoth-Obbo, who was just appointed in December 2021, said the following:

The role of regional organizations in the grounding and implementation of the responsibility to protect is a pivotal one. Globally, that role is both recognized and underscored in the World Summit Outcome Document itself and, within the regions concerned, in relevant regional normative, institutional or operational instruments, frameworks and approaches mandated or developed to give effect to the outputs or outcomes of the responsibility to protect. Typically, the role stretches across the spectrum from the further conceptual, normative and policy development of R2P to reinforcing its understanding, consensus, institutionalization and operationalization. While articulated at the regional level, the role encompasses as well both global and national dimensions and figures issues, challenges and opportunities that can be distinctive and diverse yet also common and inter-related. In my view, it is not possible to envisage the responsibility to protect taking root, developing and flourishing universally in a predictable, productive and sustainable manner without its political, policy, normative, institutional and operational footings being likewise strongly and predictably grounded at regional level. Thus, I consider collaboration and complementarity with regional organizations as a very important part of my work as Special Adviser on the Responsibility to Protect.<sup>140</sup>

#### 4. Actions by Other Regional Organizations

Regional participation has always been a key requirement for R2P's implementation, but organizations have generally failed to fully incorporate R2P's objectives into their respective regional frameworks. Some scholars have termed this failure a "responsibility gap," noting that other parties (such as local actors and NGOs) have stepped in to overcome the lack of involvement by states and regional organizations.<sup>141</sup> While the OAS is the first regional organization to appoint a Special Adviser tasked with institutionalizing a formal atrocity prevention agenda in accordance with the R2P framework, it is important to recognize the steps taken by other regional organizations to engage productively with atrocity prevention generally.

##### a. African Union

The African Union has taken concerted steps to protect populations from mass atrocity crimes under the regional principle of "non-indifference," a principle similar in both concept and practice to R2P. Language compatible with R2P is written into the Constitutive Act of the African Union, the organization's governing document: Article 4(h) reserves "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity," and Article 4(j) reserves "the right of Member States to request intervention from the Union in order to restore peace and security."<sup>142</sup> The AU's Peace and Security Council works in a number of areas

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<sup>140</sup> Email from George Okoth-Obbo, UN Special Adviser on the Responsibility to Protect, to Jared Genser, OAS Special Adviser on the Responsibility to Protect, Aug. 29, 2022.

<sup>141</sup> David Carment, Sean Winchester, and Joe Landry, *The Role of Regional Organizations: A Responsibility Gap?*, in Alex J. Bellamy and Tim Dunne, *THE OXFORD HANDBOOK ON THE RESPONSIBILITY TO PROTECT* (Oxford University Press, 2016).

<sup>142</sup> Constitutive Act of the African Union, *adopted* Jul. 11, 2000 [Hereinafter Constitutive Act].

relevant to the prevention of mass atrocities, including by engaging in early warning, supporting peace operations and intervention in accordance with Article 4(h) of the Constitutive Act, peacebuilding and humanitarian reconstruction, and humanitarian action and disaster management.<sup>143</sup>

The African Commission and Court on Human and People's Rights have also worked to advance normative development by referring to R2P in their decisions. For example, the Commission's Resolution 117 (2007), "Strengthening the Responsibility to Protect in Africa," recalling in its preambulatory clauses the principles expressed in the Constitutive Act, the 1999 ICISS Report, and the 2005 World Summit Outcome Document, urged all interested parties to attend to situations of potential mass atrocity crimes in Sudan, Somalia, the Democratic Republic of Congo, Chad, and the Central African Republic.<sup>144</sup>

The AU's activities in the areas of preventative diplomacy, peacekeeping, and peace enforcement can all be properly characterized as practices within the scope of R2P. The success of the African Union in operationalizing peacekeeping missions – such as the African Mission in Sudan (AMIS), the African Mission in Burundi (AMIB), and the United Nations-African Union Mission in Darfur – has done a great deal to mainstream principles of R2P in practice on the African continent.<sup>145</sup>

#### b. European Union

The European Union has been a leader in the field of conflict prevention, especially since the atrocities of the 1990s. The 2001 European Council at Gothenburg established four areas of priority for conflict prevention: setting clear political priorities for preventative actions; improving early warning, action, and policy coherence; enhancing instruments for long- and short-term prevention; and building effective partnerships for prevention.<sup>146</sup> In the years shortly after R2P's adoption at the 2005 World Summit, the European Union was reticent to fully embrace the principle, generally treating it "as a legal concept that required norm-building through diplomatic channels and multilateral cooperation over time."<sup>147</sup> However, in recent years, the European Union has invested more political and diplomatic capital in furthering R2P.<sup>148</sup>

In 2013, the European Parliament adopted a resolution calling on the European Commission, Council, External Action Service, and Parliament to jointly prepare an interinstitutional "Consensus on R2P," to include a "common understanding of the implications

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<sup>143</sup> FROM NON-INTERFERENCE TO NON-INDIFFERENCE: THE AFRICAN UNION AND THE RESPONSIBILITY TO PROTECT, INTERNATIONAL REFUGEE RIGHTS INITIATIVE, Sept. 2017, *available at* <https://reliefweb.int/sites/reliefweb.int/files/resources/AU%20R2P%20-%20final.pdf>.

<sup>144</sup> *Resolution on Strengthening the Responsibility to Protect in Africa*, African Commission on Human and Peoples Rights, Res. 117 (XXXXII) 07, Nov. 28, 2007.

<sup>145</sup> *The Role of Regional Organizations: A Responsibility Gap?*, *supra* note 141, at 6.

<sup>146</sup> *Id.*, at 10.

<sup>147</sup> *Id.*

<sup>148</sup> Edward Newman and Cristina G. Stefan, *The European Union and the Responsibility to Protect*, The JCMS Blog, May 13, 2020, *available at* <http://jcms.ideasoneurope.eu/2020/05/13/the-european-union-and-the-responsibility-to-protect/>.

of R2P for the EU's external action and the role its actions and instruments can play in situations of concern.”<sup>149</sup> In 2016, the European Union was the first regional organization to appoint an R2P Focal Point, which coordinates its atrocity prevention efforts and participates in the Global Network of R2P Focal Points. And in 2018, the European External Action Service published its *Toolkit for Atrocity Prevention*, which is designed to coordinate the organization's responses to atrocities.<sup>150</sup> Representatives of the European Union have also engaged positively with atrocity prevention at the annual UN debates and dialogues on R2P.

#### c. Economic Community of West African States

While established with a mandate focused on economic integration, the Economic Community of West African States (ECOWAS) has maintained a high degree of involvement in the field of regional conflict prevention. ECOWAS has developed a regional infrastructure for early warning, the Early Warning and Response Network, which consists of an observation and monitoring center located at the ECOWAS Secretariat and observation and monitoring zones within the sub-region.<sup>151</sup> During the 2016 electoral crisis in The Gambia, ECOWAS utilized preventative diplomacy and the threat of military intervention to restore democracy – a measure consistent with its regional mandate and jurisdiction – in an environment with a heightened risk of atrocity crimes.<sup>152</sup> The head of the United Nations Office for West Africa and the Sahel (UNOWAS) called the outcome of the crisis “a success of preventative diplomacy that has been achieved through the mobilization of regional actors in perfect coordination with the international community.”<sup>153</sup> It is important to note that promoting democracy and good governance is separate from R2P – while ECOWAS's incorporation of R2P principles into its unique regional peace and security framework “shows the contributory role of sub-regional organizations to the implementation of R2P-related measures to protect civilians,” it does not have a dedicated system for atrocity prevention.<sup>154</sup>

#### d. Association of Southeast Asian Nations (ASEAN)

<sup>149</sup> *UN Principle of the 'Responsibility to Protect'*, European Parliament Recommendation to the Council, 2012/2143 (INI), Apr. 18, 2013.

<sup>150</sup> EU RESPONSIBILITY TO PROTECT – ATROCITY PREVENTION TOOLKIT, EUROPEAN EXTERNAL ACTION SERVICE, Sept. 2018, available at [https://eeas.europa.eu/sites/default/files/eu\\_r2p\\_atrocity\\_prevention\\_toolkit.pdf](https://eeas.europa.eu/sites/default/files/eu_r2p_atrocity_prevention_toolkit.pdf).

<sup>151</sup> *ECOWAS Early Warning and Response Network (ECOWARN)*, MIGRANTS IN COUNTRIES IN CRISIS (MICIC), accessed Jul. 7, 2022, available at <https://micicinitiative.iom.int/ecowas-early-warning-and-response-network-ecowarn>.

<sup>152</sup> Emma Wabuke, *Regional Organizations' Application of R2P: The ECOWAS Military Intervention Into the Gambia*, LAWFARE, May 22, 2019, available at <https://www.lawfareblog.com/regional-organizations-application-r2p-ecowas-military-intervention-gambia>; see also Christof Hartmann, *Writing the Script? ECOWAS' intervention mechanism*, in GOVERNANCE TRANSFER BY REGIONAL ORGANIZATIONS (Tanja A. Börzell and Vera van Hüllen, Palgrave MacMillan, 2015).

<sup>153</sup> Jaclyn Streitfeld-Hall, *Conflict Averted Without Anyone Firing a Shot: Subregional, Multilateral Action Helps Prevent Atrocities in The Gambia*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Apr. 17, 2017, available at <https://www.globalr2p.org/publications/conflict-averted-without-anyone-firing-a-shot-subregional-multilateral-action-helps-prevent-atrocities-in-the-gambia/>.

<sup>154</sup> John Bosco Nizeimana, *The Responsibility to Protect and Sub-Regional Organizations: the Case of The Gambia*, RESPONSIBILITY TO PROTECT STUDENT JOURNAL, UNIVERSITY OF LEEDS SCHOOL OF POLITICS AND INTERNATIONAL STUDIES, Aug. 6, 2018, available at <https://web.archive.org/web/20210302230342/http://r2pstudentjournal.leeds.ac.uk/2018/08/06/the-responsibility-to-protect-and-sub-regional-organisations-the-case-of-the-gambia/>.

The Association of Southeast Asian Nations (ASEAN) has made no substantive progress toward adopting an atrocity prevention framework at the regional level. Scholars have attributed this failure to “iron-clad” commitments to the principles of sovereignty and non-interference.<sup>155</sup> However, despite a lack of movement at the organizational level, individual ASEAN Member States have expressed their support for R2P in global fora. For example, ASEAN Member States Indonesia, Myanmar, the Philippines, and Singapore all spoke favorably about the principle at the 2022 UN General Assembly debate on R2P. ASEAN Member States have also affirmed that regional organizations “can and must play a more active role” in R2P’s implementation.<sup>156</sup> Still, a number of factors (including a commitment to regime stability, a perceived lack of relevance for R2P in the region, and an emphasis on intervention over prevention) inhibit greater normative development and capacity building for atrocity prevention within ASEAN.<sup>157</sup>

Despite the barriers that prevent R2P’s institutional implementation within ASEAN, scholars of the principle and of the subregion have repeatedly affirmed that greater engagement with R2P would be transformative for protecting vulnerable populations in Southeast Asia. In September 2014, the High-Level Advisory Panel on the Responsibility to Protect in Southeast Asia published the landmark report, “Mainstreaming the Responsibility to Protect in Southeast Asia: Pathway Towards a Caring ASEAN Community.”<sup>158</sup> The report provides a thorough examination of the R2P principle, assesses R2P in a Southeast Asian context, and provides key recommendations for institutionalizing the principle in the region. Importantly, the report highlights the need for strengthening cooperation and partnership between ASEAN and the UN with respect to atrocity prevention initiatives – once again affirming that regional organizations have a complementary and non-duplicative role to play with R2P’s implementation.

Similarly, the Final Report of the Study Group on the Responsibility to Protect of the Council for Security Cooperation in the Asia Pacific (CSCAP) provides 12 recommendations for implementing R2P in the Asia Pacific, and identifies steps that would help translate the concept from “words to deeds.”<sup>159</sup> The report clarifies that R2P “does not create new legal obligations, but is rooted in existing international law,” “is consistent with regional norms,” and “represents a commitment to implement existing law in relation to genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>160</sup> The report recommends enhanced partnership between the Asia

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<sup>155</sup> *The Role of Regional Organizations: A Responsibility Gap?*, *supra* note 141, at 8.

<sup>156</sup> *Official Record, 105<sup>th</sup> General Assembly Plenary Meeting*, U.N. Doc. A/72/PV.105, Jul. 2, 2018; *see also Summary of the UN General Assembly Plenary Meeting on the Responsibility to Protect*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Jul. 2018, *available at* <http://s156658.gridserver.com/media/files/2018-summary-of-unga-plenary-on-r2p.pdf>.

<sup>157</sup> *The Role of Regional Organizations: A Responsibility Gap?*, *supra* note 141, at 8.

<sup>158</sup> MAINSTREAMING THE RESPONSIBILITY TO PROTECT IN SOUTHEAST ASIA: PATHWAY TOWARDS A CARING ASEAN COMMUNITY, HIGH-LEVEL ADVISORY PANEL ON THE RESPONSIBILITY TO PROTECT IN SOUTHEAST ASIA, Sept. 9, 2014, *available at* [https://www.un.org/en/genocideprevention/documents/responsibility-to-protect/HLAP%20Report\\_FINAL.pdf](https://www.un.org/en/genocideprevention/documents/responsibility-to-protect/HLAP%20Report_FINAL.pdf).

<sup>159</sup> FINAL REPORT OF STUDY GROUP ON THE RESPONSIBILITY TO PROTECT, COUNCIL FOR SECURITY COOPERATION IN THE ASIA PACIFIC, 2011, *available at* <http://www.cscap.org/uploads/docs/RtoP/CSCAP%20Study%20Group%20on%20RtoP%20-%20Final%20Report.pdf>.

<sup>160</sup> *Id.* at 3.

Pacific region and the United Nations, and calls for “the establishment of a regional standing capacity for preventing and responding to” mass atrocity crimes.<sup>161</sup>

e. Organization for Security and Cooperation in Europe (OSCE)

Since the end of the Cold War, the Organization for Security and Cooperation in Europe (OSCE) has remained an important multilateral institution devoted to regional security and stability in Europe and Eurasia. Often working in tandem with the European Union, the OSCE has for decades engaged in conflict prevention and mediation activities throughout the region. Particularly notable is the OSCE’s Conflict Prevention Centre, which conducts operations in a host of security fields including early warning, crisis response, dialogue facilitation, and policy analysis.<sup>162</sup> The OSCE’s High Commissioner for National Minorities also plays a critical role in prevention by monitoring potential situations of conflict, addressing both the short-term triggers of and long-term structural concerns regarding inter-ethnic tension.<sup>163</sup> But while these organs of the OSCE conduct activities that are thematically related to atrocity prevention and aligned with the objectives of R2P, the Organization does not have a specifically-designed apparatus for preventing and responding to mass atrocities.

There is also an urgent need for the OSCE to respond further to atrocities being committed by the Russian Federation in the war in Ukraine. OSCE mechanisms are equipped to monitor and gather information on human rights violations, including possible or ongoing atrocity crimes. For example, the OSCE Special Monitoring Mission for Ukraine “gathers information and provides impartial fact-based reports on the security situation on the ground (including specific incidents), monitors and supports respect for human rights commitments, and works to establish contacts and facilitate dialogue, with the aim of reducing tensions.”<sup>164</sup> However, the SMM’s mandate expired on March 31, 2022 – just one month following Russia’s invasion of the country. While the objectives of the SMM were highly compatible with the principles central to R2P, the SMM’s mandate expired. Officials of the OSCE regularly speak out to condemn Russian crimes in Ukraine.<sup>165</sup>

***E. R2P in Practice: Options for Implementation by Pillar***

Since 2009, the UN Secretary-General has advanced the conceptual and practical development of R2P through annual reports to the UNGA and the Security Council. These reports detail a strategy for implementation of R2P based on the “three equal and mutually-reinforcing pillars”: (1) the protection responsibilities of the state, (2) international assistance and

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<sup>161</sup> *Id.*

<sup>162</sup> *The OSCE Conflict Prevention Centre*, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, accessed Sept. 30, 2021, available at [https://www.osce.org/files/f/documents/e/3/13717\\_0.pdf](https://www.osce.org/files/f/documents/e/3/13717_0.pdf).

<sup>163</sup> *High Commissioner on National Minorities*, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, accessed Sept. 30, 2021, available at [https://www.osce.org/files/f/documents/8/3/33317\\_5.pdf](https://www.osce.org/files/f/documents/8/3/33317_5.pdf).

<sup>164</sup> *The Crisis in and around Ukraine*, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, accessed Jul. 8, 2022, available at <https://www.osce.org/ukrainecrisis>.

<sup>165</sup> See, e.g., *OSCE Secretary General Condemns Use of Sexual Violence as Weapon of War, Urges for International Support to Survivors*, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, Jun. 19, 2022, available at <https://www.osce.org/secretariat/520670>.

capacity-building, and (3) timely and decisive response.<sup>166</sup> The three pillars of R2P encompass a wide range of policy tools and measures for detecting, preventing, and responding to atrocity crimes. Of the 32 policy options, only the last contemplates the potential authorization of the use of armed force, and then strictly only within the framework of Chapter VII of the UN Charter and “in cooperation with relevant regional organizations.”<sup>167</sup> This precludes any action being undertaken in the Americas within the framework of R2P that does not have the prior and explicit support of the Permanent Council of the Organization of American States.

## 1. Pillar I: The Protection Responsibilities of the State

The first pillar refers to the primary “responsibility of each State to protect all populations within their borders by preventing genocide, war crimes, ethnic cleansing and crimes against humanity (‘atrocity crimes’) in accordance with their national and international obligations.”<sup>168</sup> These are eight policy options for atrocity prevention and examples of these policies in practice.<sup>169</sup>

1. **Impartial Oversight of Political Transitions:** Impartial electoral management bodies play an important role in ensuring the integrity of the electoral process. Monitoring by a robust and independent civil society, in addition to representatives of political parties, can help to ensure that elections are open, transparent, and free from malicious influence, and that they are accepted as credible.
2. **Professional and Accountable Security Sector:** A legitimate and effective security sector can contribute to mitigating the risk of atrocity crimes by controlling the means to commit atrocity crimes and deterring instances of misconduct and abuse. Attributes of a legitimate security sector includes transparency, diversity among the ranks, professionalism, and democratic civilian oversight.
3. **Rule of Law and Human Rights:** The rule of law strengthens the capacity of a society to overcome risks associated with emerging atrocity crimes. When the rule of law is weak or under stress, national institutions are less able to function and protect vulnerable populations.
4. **Early Warning and Atrocity Prevention Capacity:** Early preventative action can address both structural and operational factors that affect a State’s ability to prevent atrocity crimes. Although there is no one-size-fits all approach to atrocity prevention, some actions are most successful when undertaken in partnership with other nations, regional organizations, or civil society.

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<sup>166</sup> *Secretary-General, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT*, accessed Sept. 8, 2021, available at <https://www.un.org/en/genocideprevention/secretary-general.shtml>; See e.g., IMPLEMENTING THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, *supra* note 30.

<sup>167</sup> *World Summit Outcome Document*, *supra* note 22, at ¶ 139.

<sup>168</sup> RESPONSIBILITY TO PROTECT: STATE RESPONSIBILITY AND PREVENTION: REPORT OF THE SECRETARY GENERAL, *supra* note 51.

<sup>169</sup> COMPENDIUM OF PRACTICE, IMPLEMENTATION OF THE RESPONSIBILITY TO PROTECT 2005-2016, U.N. OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, Mar. 20, 2017, at 5–11.

5. **Capacity for Dialogue and Conflict Resolution:** Institutionalized processes for dialogue between the state and communities are important to maintain open channels of communication and build trust. An effective national mechanism can regularly assess the risk factors and root causes of tensions and identify ways to address those tensions before they escalate.
6. **Legitimate and Effective Transitional Justice:** Transitional justice initiatives may embrace both judicial and non-judicial mechanisms, including individual prosecutions, reparations, and institutional reform.
7. **Equitable Distribution of Economic Resources:** A range of political, social, and economic measures can be taken to increase equity in the distribution of assets, resources, income, and opportunities among groups to promote overall economic development and well-being. Measures to promote horizontal equality may include anti-discrimination measures, employment programs for marginalized populations, and fiscal reforms to enhance transparency and equity.
8. **Education Relevant to Atrocity Crime Prevention:** Education can promote tolerance and an understanding of the value of diversity. Education systems are effective when they reflect the ethnic, national, and culture diversity of societies and set an example of inclusiveness in their policies.

## 2. Pillar II: Internal Assistance and Capacity-Building

The second pillar focuses on the collective responsibility of the international community to “encourage and help States to exercise this responsibility, support the United Nations in establishing an early warning capability, and assist those which are under stress before crises and conflicts break out.”<sup>170</sup> This pillar includes 18 policy options which, together, aim to reinforce the principles of sovereign equality, collective responsibility, international assistance and international partnerships.<sup>171</sup>

9. **International Human Rights Monitoring, Peer Review, and Observer Missions:** Monitoring and peer review are powerful forms of encouragement that hold states accountable for incidents that may signal or lead to atrocity crimes. As part of the Universal Periodic Review, the United Nations Human Rights Council engages in a recurring assessment of the human rights records of each Member State. This provides an opportunity for all states to declare what actions they have taken to improve human rights in their countries and share best practices around the globe. Likewise, observer missions instill a culture of accountability and contribute to early warning systems. Furthermore, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) requires that states parties to the Protocol of San Salvador “submit periodic reports on the

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<sup>170</sup> FULFILLING OUR COLLECTIVE RESPONSIBILITY: INTERNATIONAL ASSISTANCE AND THE RESPONSIBILITY TO PROTECT: REPORT OF THE SECRETARY-GENERAL, *supra* note 52.

<sup>171</sup> COMPENDIUM OF PRACTICE, IMPLEMENTATION OF THE RESPONSIBILITY TO PROTECT 2005-2016, *supra* note 169, at 12-35.

progressive measures they have taken to ensure due respect for the rights set forth in” the protocol.<sup>172</sup>

10. **Preventative Diplomacy:** Member States may employ preventative diplomacy to reduce the vulnerability of populations to atrocity crimes and support neighbors under political stress.
11. **Dispute Resolution Expertise in Mediation and Political Dialogue:** The international community can provide guidance and dispute resolution expertise in mediation and political dialogue to support local efforts to prevent and end atrocity crimes.
12. **Support for a Professional and Accountable Security Sector:** Support for a professional and accountable security sector is key to building a state’s capacity to respond to threats posed by armed non-state actors that may have the motive and means to commit atrocity crimes.
13. **Support for Impartial Institutions for Overseeing Political Transitions:** Elections and transitions of power are frequent sources of conflict which, in extreme situations, can lead to atrocity crimes. Therefore, support for impartial institutions for overseeing political transitions is an important part of the international community’s international assistance and capacity-building role. During the 2013 elections in Kenya, reform was undertaken to improve public confidence and reduce the risk of atrocity crimes, including technical and financial support from the United Nations Development Programme (UNDP) and donors to Kenya’s Independent Electoral and Boundaries Commission.
14. **Support for Independent Judicial and Human Rights Institutions:** Support for independent judicial and human rights institutions offers two particular ways of mitigating the risk of atrocity crimes. First, it is a mechanism for redressing grievances in the community as an alternative to violent and/or extralegal means of justice. Second, it provides a means of bringing those who plan, incite, or commit atrocity crimes to justice, thereby contributing to the International Criminal Court’s core principle of complementarity.
15. **Building Early Warning Capacity:** Building early warning capacity is critical to the objective of preventing atrocity crimes. Many international actors, institutions and states have developed programs aimed at identifying and addressing atrocity crimes in their early stages.
16. **Building Capacity for Dialogue and Conflict Resolution:** Like preventative diplomacy and dispute resolution, building a capacity for dialogue and conflict resolution is an important element of the international community’s responsibility to protect. For example, ASEAN Parliamentarians for Human Rights, working in conjunction with the Asia-Pacific Centre for the Responsibility to Protect, has helped to convene national and

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<sup>172</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights “Protocol of San Salvador,” Organization of American States, OAS Doc. 0AS/Ser.L/V/I.4 rev. 13, *adopted* Nov. 17, 1988, at article 19.

regional workshops for government agencies and Parliamentarians on the responsibility to protect and atrocity crime prevention.

17. **Building Capacity to Counteract Prejudice and Hate Speech:** Hate speech that constitutes incitement to violence has often encouraged perpetrators to commit atrocity crimes. Building capacity to counteract prejudice and hate speech, which can make atrocity crimes appear desirable or permissible, is an important inhibitor to their commission. The German government and civil society actors have for many years supported efforts to counter hate speech and language that would seek to deny historical atrocity crimes. Regional initiatives, such as the Council of Europe's Declaration by the Committee of Ministers on the legacy of the "No Hate Speech Movement" youth campaign, adopted in 2019, also serve this purpose.
18. **Support for Legitimate and Effective Transitional Justice:** The international community plays an important role in building support for legitimate and effective transitional justice. This often requires bold steps on the part of Member States to uncover past atrocity crimes and bring those responsible to justice. The European Union has regularly supported the establishment of Truth and Reconciliation Commissions to restore and establish country memory and to provide a forum for victims, witnesses, and perpetrators to recount their experiences of human rights abuses.
19. **Denying the Means to Commit Atrocity Crimes:** Member States may deny the means to commit atrocity crimes by stemming the flow of small arms and light weapons, illicit financing, and other forms of illegal trafficking across borders and regions. Recognizing the historical nexus between the illicit flow of light weapons and atrocity crimes, the UN Security Council Resolution 2117 (2003) encourages members to accede to the United Nations Convention Against Transnational Organized Crime, implement the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and the International Instrument to Enable States to Identify and Trace, in a Timely Manner, Illicit Small Arms and Light Weapons, and consider signing and ratifying the Arms Trade Treaty.
20. **Criminal Investigations, Fact-Finding Missions, & Commissions of Inquiry:** The use of criminal investigations and the creation of fact-finding missions and commissions of inquiry encourages accountability and protection of vulnerable populations. In 2018, the Inter-American Commission on Human Rights conducted a working visit to monitor the situation in Nicaragua and subsequently provided a set of initial recommendations to the government of Nicaragua. The IACHR then created an independent Interdisciplinary Group of Independent Experts (GIEI) to support continued investigations and a follow-up mechanism (MESENI) to verify the implementation of the recommendations issued by the IACHR.<sup>173</sup>

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<sup>173</sup> NICARAGUA: CONCENTRATION OF POWER AND THE UNDERMINING OF THE RULE OF LAW, INTER-AM. COM'N ON HUMAN RIGHTS, October 21, 2021.

21. **Protection of Refugees and Internally Displaced Persons:** Because atrocity crimes frequently target vulnerable unsettled populations, the protection of refugees and internally displaced persons is key to building capacity to prevent such crimes.
22. **Protection of Civilians in Humanitarian Emergencies:** The protection of civilians in humanitarian emergencies is critical to preventing armed conflict from spilling over into full-scale atrocity crimes.
23. **Peacekeeping and Stabilization Assistance:** States may in some cases seek assistance from regional or international military forces to protect civilians subject to or at risk of atrocity crimes through peacekeeping and stabilization assistance. The Regional Assistance Mission to the Solomon Islands, established in 2003 at the request of the Government of the Solomon Islands and with the full participation of the Pacific Islands Forum, provided comprehensive military, civilian, and police support to national authorities to help to protect the population by disarming military and criminal groups, establishing the rule of law, and holding perpetrators accountable through criminal justice mechanisms.
24. **Support for Efforts to Combat Sexual Violence:** Encouragement aimed at upholding prohibitions related to conflict-related sexual violence is an important part of international capacity-building. The international community can play an important role in keeping the issue of sexual violence in the spotlight.

### 3. Pillar III: Timely and Decisive Response

The third pillar refers to the international community's responsibility through the UN and in cooperation with regional organizations to "take collective action, in a timely and decisive manner," to protect populations from atrocity crimes.<sup>174</sup> Under Chapters VI and VIII of the UN Charter, the UN Security Council can undertake a range of diplomatic, humanitarian, and other peaceful means that the international community may use to prevent the escalation of atrocity crimes. These include mediation and diplomacy, public advocacy, investigations, observer missions, ICC referrals, and sanctions. If national authorities are manifestly failing to protect their populations even after the exhaustion of these means, pillar three contemplates as a very last resort the possibility of the authorization of the use of force but *only* strictly within the framework of Chapter VII of the UN Charter *and* in cooperation with relevant regional organizations.

The following are eight policy options available under Chapters VI, VII, and VIII of the UN Charter and examples of when these have been put into practice.<sup>175</sup>

25. **Mediation and Preventative Diplomacy:** Dispute resolution expertise and mechanisms have been successful tools in preventing and responding to crises. For example, in 2008,

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<sup>174</sup> RESPONSIBILITY TO PROTECT: TIMELY AND DECISIVE RESPONSE REPORT OF THE SECRETARY-GENERAL, *supra* note 50.

<sup>175</sup> COMPENDIUM OF PRACTICE, IMPLEMENTATION OF THE RESPONSIBILITY TO PROTECT 2005-2016, *supra* note 169, at 36-43.

an African Union mediation with the support of former UN Secretary-General Kofi Annan helped to mitigate the scale and potential recurrence of atrocity crimes in Kenya triggered by a disputed presidential election held in December 2007. Preventative diplomacy has also come in the form of the appointment of eminent persons or special envoys to initiate dialogue and prepare for local, regional, or United Nations mediation or facilitation efforts. In 2010, the United Nations Regional Centre for Preventative Diplomacy for Central Asia played a pivotal role in addressing inter-communal violence in Kyrgyzstan.

26. **Public Advocacy:** Public advocacy is an important tool to focus national, regional, or international attention on situations of concern. In 2008, the United Nations Secretary-General and the Special Adviser on the Prevention of Genocide called publicly for an end to post-election violence in Kenya and warned Kenyan leaders that they would be held accountable for violations of international humanitarian law committed at their instigation.
27. **Criminal Investigations, Fact-Finding Missions, and Commissions of Inquiry:** Impartial criminal investigations, fact-finding missions, and commissions of inquiry establish objectively whether atrocity crimes have occurred, report on a State's ability to deal with such crimes, highlight the root causes of such crimes, and develop how to move forward including holding responsible actors accountable. In 2009, international and regional partners, including the United Nations and Economic Community of West African States (ECOWAS), supported criminal processes in Guinea in the aftermath of the 2000 stadium massacre in Conakry, including the establishment of a Commission of Inquiry. In 2017, the General Secretariat of the OAS gathered evidence on the situation of Venezuela through a series of public hearings and subsequently the General Secretary of the OAS appointed the Panel of Independent International Experts on the Possible Commission of Crimes Against Humanity in Venezuela to review the evidence. The panel determined there were reasonable grounds to believe that the "acts to which the civilian population of Venezuela was subjected to, dating back to at least February 12, 2014, constitute crimes against humanity, in accordance with Article 7..." of the Rome Statute.<sup>176</sup> In December 2020, the OAS Special Adviser on the Responsibility to Protect published a detailed report updating the information from the Panel Report and criticizing the then Prosecutor of the International Criminal Court Fatou Bensouda for failing to open an investigation into the situation of Venezuela despite having had a preliminary inquiry open for several years.<sup>177</sup>
28. **Monitoring or Observer Missions:** Monitoring or observer missions provide another vehicle for reporting and verifying information. Such monitoring offers real-time

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<sup>176</sup> REPORT OF THE GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES AND THE PANEL OF INDEPENDENT INTERNATIONAL EXPERTS ON THE POSSIBLE COMMISSION OF CRIMES AGAINST HUMANITY IN VENEZUELA: SECOND EDITION, ORGANIZATION OF AMERICAN STATES GENERAL SECRETARIAT, Mar. 2021, at 453.

<sup>177</sup> Jared Genser, FOSTERING IMPUNITY: THE IMPACT OF THE FAILURE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO OPEN AN INVESTIGATION INTO THE POSSIBLE COMMISSION OF CRIMES AGAINST HUMANITY IN VENEZUELA, ORGANIZATION OF AMERICAN STATES GENERAL SECRETARIAT, Dec. 2, 2020, *available at* <http://www.oas.org/documents/eng/press/Crimes-Against-Humanity-in-Venezuela-II-ENG.pdf> [Hereinafter FOSTERING IMPUNITY].

accounts of the situation on the ground and can assist various parties' investigations into specific incidents, assess parties' compliance with agreements and human rights obligations, identify sources of threats, and deter atrocity crimes through their very existence.

**29. Referral to the International Criminal Court (ICC):** As stated in the UN Secretary-General's July 2012 Report on the third pillar of R2P, the ICC is relevant to R2P in that it "works to put an end to impunity for the perpetrators of the most serious crimes and thus to contribute to the prevention of such crimes."<sup>178</sup> In this respect, the Secretary-General found that "threat of referrals to ICC can undoubtedly serve a preventative purpose and the engagement of ICC in response to the alleged perpetration of crimes can contribute to the overall response."<sup>179</sup> Examples include the 2016 conviction of Ahmad al Faqi Al Mahdi for the war crime of directing attacks against religions and historic buildings in Timbuktu, Mali<sup>180</sup> and the 2019 conviction of Congolese militia leader Bosco Ntaganda for crimes against humanity.<sup>181</sup> In 2018, the Panel of Independent International Experts on the Possible Commission of Crimes Against Humanity in Venezuela recommended that the OAS Secretary General submit a report on the situation of Venezuela to the Prosecutor of the ICC and that State Parties to the Rome Statute call for the opening of an investigation into the crimes against humanity set forth in such report.<sup>182</sup> Subsequently, the OAS Secretary General submitted the report to the Prosecutor of the ICC and the Governments of the Republic of Argentina, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru referred the situation of Venezuela to the ICC pursuant to Article 14 of the Rome Statute.<sup>183</sup> Notably, "[t]his referral was the first in the history of the ICC, that a State Party, or a group of States Parties, invoked Article 14, concerning the situation of another State Party to the Office of the Prosecutor of the ICC, thus establishing an important precedent in international law."<sup>184</sup>

**30. Sanctions:** Sanctions encompass coercive measures such as freezing of financial assets of both the government and officials of a regime and imposition of travel bans; controlling the availability of luxury goods, high-value commodities, and weapons; limiting diplomatic contact of states with a target entity; and imposing restrictions on scientific and technical cooperation. Such sanctions can be imposed by the UN Security Council, regional bodies, or individual states. Sanctions can be structured carefully to hold targets accountable while minimizing the impact on the civilian population. For

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<sup>178</sup> RESPONSIBILITY TO PROTECT: TIMELY AND DECISIVE RESPONSE REPORT OF THE SECRETARY-GENERAL, *supra* note 50, at ¶ 29.

<sup>179</sup> *Id.*

<sup>180</sup> *Prosecutor v. Al Mahdi*, ICC-01/12-01/15, Judgment and Sentence, Sept. 27, 2016, available at [https://www.icc-cpi.int/CourtRecords/CR2016\\_07244.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF).

<sup>181</sup> *Prosecutor v. Ntaganda*, ICC-01/04-02/06 A A2, Judgement on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'judgement,' Mar. 30, 2021, available at [https://www.icc-cpi.int/CourtRecords/CR2021\\_03027.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_03027.PDF).

<sup>182</sup> REPORT OF THE GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES AND THE PANEL OF INDEPENDENT INTERNATIONAL EXPERTS ON THE POSSIBLE COMMISSION OF CRIMES AGAINST HUMANITY IN VENEZUELA: SECOND EDITION, *supra* note 176, at 435.

<sup>183</sup> *Id.*, at Annex III.

<sup>184</sup> *Id.*

example, the EU suspended assets and imposed a travel ban on certain individuals from Burundi in 2015 for their commission of gross human rights violations.

31. **Protection of Civilians in Humanitarian Emergencies, Refugees, and Internally Displaced Persons:** The international community may also intervene to ensure the protection of civilians in humanitarian emergencies, refugees, and internally displaced persons. In 2014, Australia participated in humanitarian airdrops in an effort to assist Iraq in protecting its people from atrocity crimes.
32. **UN Charter Chapter VII Authorized Use of Force:** According to the U.N. Secretary-General's 2012 report on *Responsibility to Protect*, the use of force may be contemplated only under authorization of the Security Council and when other measures are judged unlikely to succeed or have already failed. Measures may include "the deployment of United Nations-sanctioned multinational forces for establishing security zones, the imposition of no-fly zones, the establishment of a military presence on land and at sea for protection or deterrence purposes, or any other means, as determined by the Security Council."<sup>185</sup> For example, in 2011, after numerous failed attempts at negotiations, both the Arab League and African Union *asked* the Security Council to act urgently and it then decided to authorize the use of force to protect civilian-populated areas in Libya. In 2012, at the request of the Government of Mali, ECOWAS mobilized international efforts to help protect vulnerable populations in northern Mali, including by contributing to the African-led International Support Mission to Mali (AFISMA). Later, also at the request of the Government, the Security Council created the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).<sup>186</sup> Again, as noted previously, there can be no authorization of the use of force by the Security Council on the basis of R2P *without the support of the relevant regional organization*, which for the Americas would require an advance and explicit request by the Permanent Council of the OAS.

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<sup>185</sup> RESPONSIBILITY TO PROTECT: TIMELY AND DECISIVE RESPONSE REPORT OF THE SECRETARY-GENERAL, *supra* note 50, at ¶ 32.

<sup>186</sup> Resolution 2100, Res. 2100 (2013), U.N. Doc. S/RES/2100 (2013), *adopted* Apr. 25, 2013.

## II. THE RESPONSIBILITY TO PROTECT IN THE AMERICAS

### A. *Historical Background*

The Americas is a region characterized by diverse and specific historical, economic, political, and cultural attributes. The confluence of cultures – indigenous, African, and European – over centuries, combined with the experiences of colonization, independence, and revolution, have created a dynamic regional landscape. The countries of the Americas have developed rich traditions of human rights theory and practice, often out of opposition to human rights violations. Accordingly, countries in the region have developed distinct perspectives regarding the responsibility to protect and its implementation.

Understanding the unique historical context of the Americas is necessary to analyze views on R2P from the region. Two factors in particular have shaped how the countries of the continent view the responsibility to protect: a history of unwanted foreign interventions, and memories of atrocity crimes committed under past military dictatorships.

First, a legacy of foreign interference (military, political, and/or economic) has “nurtured a political and legal culture of resistance and defense” in the region.<sup>187</sup> Consequently, international law and the principle of non-intervention are upheld as safeguards to national sovereignty. These principles, strongly tied to regional diplomatic and cultural attitudes, have become important regional contributions to international law.<sup>188</sup> The responsibility to protect is often perceived as a doctrine revolving around or requiring foreign intervention – this perception is erroneous, as described in preceding and succeeding sections of this report. Nevertheless, the region remains understandably wary to R2P when inaccurately portrayed as threatening intervention or interference from abroad.

Second, the region suffered a series of brutal military dictatorships during the second half of the twentieth century which had disastrous effects on the human rights landscape throughout the Americas. Utilizing the discourse of absolute national sovereignty, cultivated partially in response to foreign intervention, state security forces throughout the region “perpetrated numerous mass atrocities, including enforced disappearances and extrajudicial killings.”<sup>189</sup> Transitional justice processes, especially through truth and reconciliation commissions and criminal prosecutions, have shed a bright light the crimes perpetrated by these regimes. However, given the relative recency of these atrocities, many victims and their families are still awaiting information about what happened to their loved ones – especially those subjected to enforced disappearances.

The views of the region with respect to R2P have been shaped by these two common factors, as well as more specific national contexts. Some 15 years after the adoption of the

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<sup>187</sup> Gilberto Marcos Antonio Rodrigues, *Latin America and the Caribbean*, in *THE RESPONSIBILITY TO PROTECT*, at 185 (Jared Genser & Irwin Cotler, Edition 1, Oxford University Press, 2011), at 185.

<sup>188</sup> Andrés Serbin and Andrei Serbin Pont, *Latin America and the Responsibility to Protect: Divergent Views from the South?*, 20 PENSAMIENTO PROPIO 11 (2015).

<sup>189</sup> Rodrigues, *Latin America and the Caribbean*, *supra* note 187, at 186.

World Summit Outcome Document, the countries of the Americas have developed diverse positions regarding the responsibility to protect.

Many countries in the region have engaged positively and substantively with R2P over the course of its development as a norm of international law. Representatives from the Americas played important roles during processes that resulted in the founding documents behind the principle of R2P, including the International Commission on Intervention and State Sovereignty (2000), and the UN Secretary-General's High Level Panel on Threats, Challenges, and Change (2004).<sup>190</sup> Countries from the region have strongly supported R2P's development as a norm, including by presenting a paper to the UN General Assembly to "enhance the debate" about R2P at the 2005 World Summit. Most indicative of regional attitudes is the annual dialogue of the UN General Assembly on R2P (held informally until 2021, when it was formally placed on the agenda), explained in greater detail in a subsequent section of this report. Generally speaking, there is a regional belief that emphasis should be placed on prevention efforts. This belief aligns R2P's principal aim of strengthening early warning practices as a means to protect vulnerable populations.

Still, a number of states in the region have expressed their strong opposition to R2P. These states have been vocal critics of R2P at the United Nations.

It is clear that the responsibility to protect remains a topic on the regional agenda. Given different perspectives held by states in the Americas, there is much room for discussion regarding best practices for implementation focused on prevention.

## ***B. Regional Support for R2P***

For years, countries of the Americas have expressed their support for R2P by engaging in multilateral networks dedicated to atrocity prevention. Additionally, states have expressed their support for political initiatives that would allow the UN to more effectively prevent and respond to mass atrocity crimes. Taking all of this into account, advancing atrocity prevention at the OAS is not only aligned with R2P's objectives, but also aligned with the past and present work of OAS Member States to protect vulnerable populations from mass atrocity crimes.

### **1. Group of Friends of the Responsibility to Protect**

The Group of Friends of R2P is informal inter-governmental platform for Permanent Missions to the United Nations. The Group of Friends promotes dialogue and encourages UN Member States to advance the effective prevention of genocide, war crimes, ethnic cleansing and crimes against humanity. Established in 2008 in New York and in 2015 in Geneva, the Group of Friends "serve[s] as a space for Member States to discuss issues related to R2P and atrocity prevention at the UN" and often features "high-level UN officials as guest speakers, including the UN Secretary-General and the High Commissioner for Human Rights."<sup>191</sup>

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<sup>190</sup> *Id.*

<sup>191</sup> *Group of Friends of the Responsibility to Protect*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, accessed Sept. 30, 2021, available at <https://www.globalr2p.org/group-of-friends-of-the-responsibility-to-protect/>.

Additionally, the Group of Friends regularly participates at UN events. The Group of Friends delivers joint statements during General Assembly debates, at open debates in the Security Council, and during sessions at the Human Rights Council. In addition to participating at the General Assembly debates on R2P in 2018, 2019, 2021, and 2022, the Group of Friends also delivered statements at previous informal interactive dialogues on R2P.

Some 53 Member States of the United Nations and the European Union are members of the Group of Friends of R2P. From the Americas, Argentina, Canada, Chile, Costa Rica, Guatemala, Mexico, Panama, Peru, the United States, and Uruguay are members.<sup>192</sup>

## **2. Global Network of R2P Focal Points**

Launched in 2010, the Global Network of R2P Focal Points is a convenor of senior government officials who facilitate national mechanisms for atrocity prevention and promote international cooperation.<sup>193</sup> R2P Focal Points come from a wide array of positions in their respective governments, including from Ministries of Foreign Affairs, Ministries of Justice, Ministries of the Interior and National Peace Councils. The diversity of the Network's makeup reaffirms that national approaches to atrocity prevention should be guided by local contexts, but also demonstrates the value of interconnectivity and knowledge sharing. A government's choice to appoint an R2P Focal Point – from any office – is a strong indicator of its commitment to atrocity prevention.

The Global Network of R2P Focal Points hosts annual meetings, as well as regional meetings and workshops, focused on sharing best practices and building ties among members. R2P Focal Points also collaborate on initiatives such as joint advocacy campaigns, capacity building projects, workshops, and training exercises.

The OAS R2P Focal Point has coordinated R2P issues from the General Secretariat. The next meeting of the Global Network of R2P Focal Points will be hosted by the OAS. In addition, Argentina, Canada, Chile, Costa Rica, Guatemala, Mexico, Panama, Peru, the United States, and Uruguay have all appointed R2P Focal Points.<sup>194</sup>

## **3. Latin American Network for Genocide and Mass Atrocity Prevention**

The Latin American Network for Genocide and Mass Atrocity Prevention is an informal forum for regional cooperation in partnership with the Auschwitz Institute for Peace and Reconciliation (AIPR). The Network was established in 2012 by the Human Rights Secretariats

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<sup>192</sup> *Statement Made on Behalf of the Group of Friends of the Responsibility to Protect, Delivered by Her Excellency Ambassador Alya Ahmed S. Al-Thani Permanent Representative of the State of Qatar to the United Nations, before the Open Debate of the United Nations Security Council on Women, Peace and Security: Sexual Violence in Conflict*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Apr. 23, 2019, available at <https://www.globalr2p.org/wp-content/uploads/2019/08/2019-UNSC-GOF-WPS.pdf>.

<sup>193</sup> *Global Network of R2P Focal Points*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, accessed Sept. 30, 2021, available at <https://www.globalr2p.org/the-global-network-of-r2p-focal-points/>.

<sup>194</sup> *Members of the Global Network of R2P Focal Points*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Nov. 8, 2020, available at <https://www.globalr2p.org/resources/members-of-the-global-network-of-r2p-focal-points/>.

of Argentina and Brazil, as well as the Ministry of Foreign Affairs of Argentina, in collaboration with AIPR, the United Nations Office of the Special Advisers on the Prevention of Genocide and on the Responsibility to Protect (OSAPG), and the Stanley Foundation.

The Network's primary objectives are (1) to provide training to its members, including the development and implementation of a common curriculum in genocide and mass atrocity prevention to be applied to training programs for the institutions of each participating member country, and (2) to generate spaces for mutual collaboration and regional cooperation on genocide and mass atrocity prevention. By hosting seminars and workshops, publishing informative resources, and facilitating connections between Member States, the Network has achieved great successes in assisting members in developing national initiatives for preventing atrocities.

Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay, and Venezuela are members of the Latin American Network.

#### **4. Supporters of Security Council Veto Reform Initiatives**

##### **a. Supporters of the Political Declaration on Suspension of the Veto**

At the 2015 UN General Assembly, the delegations of France and Mexico presented the "Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocity," a pact aiming to limit the voluntary use of the veto by the Permanent Members of the Security Council in situations where mass atrocities are present. The Declaration invokes R2P by citing its foundational language in Paragraph 139 of the World Summit Outcome Document, recalling "that the Heads of state and government of the United Nations expressed their readiness to 'take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter' when national authorities fail to protect their populations."<sup>195</sup> The Declaration continues, affirming that "the Security Council should not be prevented by the use of veto from taking action with the aim of preventing or bringing an end to situations involving the commission of mass atrocities," and that the undersigned "express [their] strong resolve to continue [their] efforts to prevent and end the commission of mass atrocities."<sup>196</sup>

As of October 2021, 103 Member States and 2 UN observers are signatories to the declaration, including OAS Member States Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, and Uruguay.<sup>197</sup>

##### **b. Supporters of the ACT Group Security Council Code of Conduct**

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<sup>195</sup> *Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Aug. 1, 2015, available at <https://www.globalr2p.org/resources/political-declaration-on-suspension-of-veto-powers-in-cases-of-mass-atrocities/>.

<sup>196</sup> *Id.*

<sup>197</sup> *List of Supporters of the Political Declaration on Suspension of Veto*, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Jun. 15, 2016, available at <https://www.globalr2p.org/resources/list-of-supporters-of-the-political-declaration-on-suspension-of-veto/>.

In July 2015, the Accountability, Coherence and Transparency (ACT) Group published the “Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes.” The Code of Conduct contains “a general and positive pledge to support Security Council action against genocide, crimes against humanity and war crimes,” and is “complemented by a more specific pledge to not vote against credible draft Security Council resolutions that are aimed at preventing or ending those crimes.”<sup>198</sup>

The Code of Conduct has been signed by 117 UN Member States and 2 observers. OAS Member States Argentina, Belize, Canada, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Vincent and the Grenadines, Trinidad and Tobago, and Uruguay have signed onto the Code of Conduct.<sup>199</sup>

## 5. Engagement on R2P by OAS Member States at United Nations

This chart indicates OAS Member States that have engaged in discussion on R2P at the United Nations, either during a formal debate at the UN General Assembly, during an informal interactive dialogue, or in another forum such as the UN Security Council:<sup>200</sup>

### Engagement on R2P by OAS Member States at the United Nations

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Antigua and Barbuda																		
Argentina		x	x		x	x		x	x			x	x	x	x	x	x	
Barbados	x						x											
Belize																		
Bolivia					x				x	x		x	x	x				
Brazil					x	x	x	x	x	x	x	x	x	x	x		x	
Canada	x	x	x		x		x	x	x			x	x	x	x	x	x	
Chile							x	x	x			x	x	x	x			
Colombia					x											x	x	
Costa Rica					x	x	x	x	x	x	x	x	x	x	x	x	x	x
Dominica																		
Dominican Republic																		
Ecuador					x				x	x		x	x	x	x			
El Salvador																		
Grenada																		
Guatemala			x			x	x	x	x	x		x	x	x		x	x	
Guyana																		
Haiti													x					x
Honduras							x								x	x		x
Jamaica													x					
Mexico			x			x	x	x	x	x	x	x	x	x	x		x	x
Nicaragua					x	x	x		x			x	x					x
Panama					x				x		x	x	x	x	x		x	
Paraguay							x		x	x			x					
Peru		x		x		x		x	x	x	x	x	x	x	x	x	x	x
Saint Lucia																		
St. Kitts & N.																		
St. Vin. & G.																		
Suriname																		
Bahamas																		
Trin. & Tob.																		
United States	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Uruguay					x	x		x	x	x	x	x	x	x	x	x	x	x
Venezuela									x	x	x	x	x	x	x			x

<sup>198</sup> Letter Dated 14 December 2015 from the Permanent Representative of Liechtenstein to the United Nations Addressed to the Secretary-General, U.N. Doc. A/70/621, Dec. 14, 2015.

<sup>199</sup> List of Signatories to the ACT Code of Conduct, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, Jun. 20, 2019, available at <https://www.globalr2p.org/resources/list-of-signatories-to-the-act-code-of-conduct/>.

<sup>200</sup> Most of these statements can be found at the website of the Global Centre on the Responsibility to Protect, available at <https://www.globalr2p.org>.

## **6. Questions Raised About R2P by Member States and Responses**

Since his appointment in October 2020, the OAS Special Adviser on the Responsibility to Protect, Jared Genser, has been consulting with permanent representatives from OAS Member States, their staffs and foreign ministries, officials of the OAS, and civil society representatives about the Responsibility to Protect.

In these dialogues, he sought to listen and learn as well as explain his perspective on these issues. These consultations have been foundational as he considered how the region might better prepare to prevent and respond to mass atrocities in the future. Regarding the scope of his mandate and his work going forward, he has had meetings or substantive written communications with 45 officials from 30 OAS Member States; 40 officials from different OAS organs, agencies, and entities; and 20 civil society and international organizations. In addition to the Member States he met with, the list below is indicative of the breadth and scope of meetings he had with officials from organs, agencies, and entities of the OAS.

### **General Secretariat**

- Secretary General
- Secretariat for Strengthening Democracy
  - Department for Strengthening Democracy and Special Missions
  - Department for the Promotion of Peace and Coordination with Subnational Governments
    - OAS Mission to Support the Peace Process in Colombia (MAPP)
  - Observatory for Democracy and Integral Development in the Americas
- Secretariat for Access to Rights and Equity
- Secretariat for Multidimensional Security
  - Department of Public Security, Section on Public Security Information and Knowledge
- Secretariat for Hemispheric Affairs
- Secretariat for Legal Affairs
- OAS Chair to Address the Venezuela Migration and Refugee Crisis in the Region

### **Inter-American Commission of Women**

### **Inter-American Commission on Human Rights (Full Commission and Senior Staff)**

### **Inter-American Court on Human Rights**

### III. THE ORGANIZATION OF AMERICAN STATES AND THE RESPONSIBILITY TO PROTECT

#### A. *Legal Framework*

The instruments that form the legal framework of the Organization, principally the OAS Charter and the American Convention on Human Rights, do not specifically reference mass atrocities or the obligations of states to protect vulnerable populations. However, while preventing and responding to mass atrocities are not explicitly legal obligations of states included in these instruments, the purpose and intention of the Responsibility to Protect are highly consistent with the existing objectives of the Organization and the commitments of its Member States.

#### 1. OAS Charter

R2P is fully consistent with the OAS Charter. Article 2 of the Charter, for example, sets forth the purposes of the OAS, which include:

- a) To strengthen the peace and security of the continent; . . .
- e) To seek the solution of political, juridical, and economic problems that may arise among them; . . .
- f) To promote, by cooperative action, their economic, social, and cultural development.<sup>201</sup>

In addition, R2P is consistent with many of the principles articulated in Article 3 of the Charter:

- a) International law is the standard of conduct of States in their reciprocal relations;
- b) International order consists essentially of respect for the personality, sovereignty, and independence of States, and the faithful fulfillment of obligations derived from treaties and other sources of international law; . . .
- j) Social justice and social security are bases of lasting peace; . . .
- l) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex; . . .
- n) The education of peoples should be directed toward justice, freedom, and peace.<sup>202</sup>

The OAS Charter also has strong emphasis on the principles of non-intervention and non-interference:

Article 3(b): International order consists essentially of respect for the personality, sovereignty, and independence of States . . . .<sup>203</sup>

Article 19: No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing

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<sup>201</sup> Charter of the Organization of American States, 119 U.N.T.S. 3, *amended and adopted* June 10, 1993, at article 2.

<sup>202</sup> *Id.*, at article 3.

<sup>203</sup> *Id.*, at article 3(b).

principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.<sup>204</sup>

Article 20: No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.<sup>205</sup>

Article 21: The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.<sup>206</sup>

However, the Charter acknowledges that measures to maintain peace and security in conformity with other treaties do not contravene the aforementioned commitments to non-interference and non-intervention:

Article 23: Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 19 and 21.<sup>207</sup>

As discussed above, the principle of R2P reinforces sovereignty by helping states to meet their existing responsibilities under international law, and by putting strict limits on the how the use of force might be employed – which would require a specific request from the Permanent Council of the OAS to the UN Security Council – the doctrine puts restrictive guardrails on the international community’s ability to intervene in any country in the Americas.

## **2. American Convention on Human Rights**

While the American Convention on Human Rights protects numerous rights relevant to mass atrocity crimes, including the right to life and right to humane treatment, it does not explicitly reference such crimes. This is a gap that leaves states with limited guidance regarding their specific obligations to prevent and respond to mass atrocity crimes within the Inter-American system.

Yet, the Convention recognizes its own limitations and permits the interpretation of other international law treaties where necessary or appropriate. Article 29(d) states that nothing in the American Convention excludes or limits the effect of *other* international human rights treaties, meaning that states’ accession to the American Convention is compatible with other obligations of states found under international human rights treaties to which they are parties.<sup>208</sup>

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<sup>204</sup> *Id.*, at article 19.

<sup>205</sup> *Id.*, at article 20.

<sup>206</sup> *Id.*, at article 21.

<sup>207</sup> *Id.*, at article 23.

<sup>208</sup> American Convention on Human Rights “Pact of San Jose, Costa Rica,” 1144 U.N.T.S. 123, *entered into force* July 18, 1978, at article 29(d).

Further, Article 64(1) empowers the Inter-American Court of Human Rights to interpret “other treaties concerning the protection of human rights in the American states,” including those closely connected to the doctrine of R2P, such as the Genocide Convention and the ICCPR.<sup>209</sup>

While the Court can consider these other instruments, they are not the primary focus of the Inter-American human rights system.

But given the wide array of other international legal commitments made by its Member States, the OAS has an important role to play in implementing R2P. This is because all OAS Member States are UN Member States, R2P was adopted by consensus at the UN in 2005, and OAS Member States have widely signed on to the underlying human rights treaties that provided the legal foundation for the adoption of R2P.

### ***B. The OAS and Sub-Regional Organizations in Atrocity Prevention and Response***

Over the decades, the OAS has cultivated valuable expertise in protecting human rights and preventing conflict. Nonetheless, as OAS Secretary for Political Affairs Victor Rico Frontaura indicated at the 2011 UN General Assembly’s informal interactive dialogue on R2P, those two areas are functionally different from atrocity prevention:

Mr. President, since its creation the OAS has accumulated vast experience and developed high-quality expertise in inter- and intra-state conflict prevention, management, and resolution. In addition, the inter-American system has developed an effective and legitimate normative and procedural structure to protect and defend human rights. *However, these two areas are distinct from the prevention of mass atrocities.*<sup>210</sup>

Further, while Secretary Rico expressed general support for atrocity prevention activities, he noted that atrocity prevention had not been a priority of the Organization because the region had not recently suffered from mass atrocity crimes:

[T]he OAS has few existing mechanisms and mandates that specifically address and prevent the threats expressed in the narrow definition of R2P. This situation reflects the positive fact that the region did not face those types of atrocities, except for specific periods when specific regions and countries experienced systematic human rights violations.<sup>211</sup>

The Secretary’s remarks, it is worth emphasizing, were made three years before the beginning of the crisis in Venezuela. But 11 years after that dialogue, the same can still be said –

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<sup>209</sup> *Id.*, at article 64(1).

<sup>210</sup> Statement by OAS Secretary for Political Affairs Victor Rico Frontaura, at the Informal Interactive Dialogue on the Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect, UNGA, Jul. 11, 2011, *available at* <https://www.globalr2p.org/resources/statement-by-the-organization-of-american-states-at-the-2011-un-general-assembly-informal-interactive-dialogue-on-the-responsibility-to-protect/> (emphasis added).

<sup>211</sup> *Id.*

the OAS has generally not engaged in atrocity prevention. While many particular actions undertaken by the OAS and its constituent bodies can be properly analyzed as being consistent with or advancing R2P, these efforts have been pursued for other reasons and without the focus and organizational framework that R2P provides.

Interestingly, in the same 2011 UNGA debate addressed by Secretary Rico, the Government of Barbados presented a detailed statement on behalf of the Caribbean Community (CARICOM) discussing its views of R2P.<sup>212</sup> Ambassador Goddard spoke of how the international community had been seeking to find ways in which R2P can be translated into practice in a manner that is effective but also noted concerns that the principle could be abused. After speaking about UN Secretary-General Ban Ki-moon's 2011 report, which cited progress being made by ECOWAS, the African Union, and OSCE, he observed:

Regional organizations often have a clear advantage over the Security Council in responding to such situations. Their decision-making procedures are more flexible than those of the Security Council. They also have a direct stake in achieving a more favourable outcome and under normal circumstances, can be expected to act more expeditiously. Moreover, by virtue of their membership in the same regional family, regional states can be expected to have a better understanding of the impulses driving the actors in the offending state, and their judgments and proposals for solution are less likely to arouse suspicion or skepticism than would those of states outside the region.<sup>213</sup>

CARICOM could not have said it any better. Indeed, this is exactly the role that is envisioned by the UN for regional organizations, as discussed previously in detail in Section I.D. Ambassador Goddard concluded:

CARICOM firmly believes that states have a sacred responsibility to protect their populations – a responsibility that comes with sovereignty. We also believe that in a situation of actual or imminent genocide, war crimes, ethnic cleansing, or crimes against humanity, regional and sub-regional organizations are uniquely placed to play a pivotal role . . . CARICOM sincerely believes that the concept of the responsibility to protect deserves further attention from the international community and looks forward to continuing engagement, aimed at achieving its universal acceptance.<sup>214</sup>

While R2P has developed enormously in the years since that statement, it is important to emphasize that the existing human rights structures of the OAS were never designed to exercise the early warning or preventative function that R2P envisions. Indeed, the Inter-American Commission and Court “typically focus more on dispensation of justice after the fact,” and their “design inhibits their capacity to react quickly to the risk or threat of mass atrocities being

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<sup>212</sup> Statement by H.E. Joseph Goddard, Permanent Representative of Barbados to the United Nations, on behalf of the Caribbean Community (CARICOM), at the Informal Interactive Dialogue on the Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect, UNGA, Jul. 11, 2011, *available at* <https://www.globalr2p.org/resources/statement-by-barbados-on-behalf-of-caricom-at-the-2011-un-general-assembly-informal-interactive-dialogue-on-the-responsibility-to-protect/>.

<sup>213</sup> *Id.*, at 2.

<sup>214</sup> *Id.*

committed in the hemisphere.”<sup>215</sup> Similarly, while the Commission and Court are well suited to provide *ex post facto* justice to victims of human rights abuses, their institutional design, generally speaking, does not allow them to rapidly mobilize a response to mass atrocities, nor does it allow them to make recommendations or requests of entities other than OAS Member States. Yet when mass atrocities are emerging or underway, there needs to be a coordinated approach across all relevant OAS organs, agencies, and entities.

It is also worth recalling that neither the Inter-American Commission or Court of Human Rights has the jurisdiction to investigate and prosecute individuals accused of the commission of mass atrocity crimes. The issue of individual criminal responsibility relating to these alleged crimes falls exclusively within the jurisdiction of the International Criminal Court, under the Rome Statute, for the many OAS Member States that have become states parties to the treaty.

In addition, although OAS organs have jurisdiction to interpret Member States’ treaty obligations under regional instruments in light of their other international treaty obligations, they do not have jurisdiction to evaluate and report on Member States’ compliance with international treaties that form the foundation of R2P on their own. As explained above, R2P draws its authority from a different set of international legal instruments, including the Genocide Convention, the Geneva Conventions, the Rome Statute, and the International Covenant on Civil and Political Rights. As a result, the Inter-American human rights system has not generally focused on examining human rights abuses in the Americas through the lens of atrocity prevention and response, as such. Given these distinct legal mandates, although the work of the Inter-American human rights system has engaged on issues that thematically related to atrocity prevention, in practice it is functionally separate. Therefore, advancing R2P and atrocity prevention at the OAS is complementary and non-duplicative of the work of the Inter-American human rights system.

Deepening the work of the OAS in the field of atrocity prevention is a natural extension of its existing human rights and conflict prevention work with the same ultimate objective: protecting the peoples of the Americas. Some Member States have expressed apprehension that actions taken by the OAS to prevent and respond to mass atrocities under R2P would violate the Organization’s commitment to non-intervention and non-interference. First, R2P is a doctrine that supports state sovereignty by assisting states in meeting their obligations under international law. Second, by signing on to international treaties, states have exercised their sovereign power to agree to let themselves be held accountable for their conduct relating to those treaties. Accordingly, it is not an improper interference for the other states, the OAS, and the UN to hold states accountable for their existing international legal responsibilities from treaties they voluntarily joined. Ultimately, the efforts to advance R2P at the OAS builds upon the prior commitments of states made at the UN, strengthens states’ commitments to international human rights treaties, and draw on the participation of OAS Member States in support of R2P in other fora.

### ***C. Work by OAS Organs, Agencies, and Entities***

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<sup>215</sup> Hilaire Sobers, *The Inter-American System of Human Rights*, in *AN INSTITUTIONAL APPROACH TO THE RESPONSIBILITY TO PROTECT*, at 467 (Gentian Zyberi, Cambridge University Press, 2013).

Although almost always with no reference to and disconnected from R2P, numerous organs, agencies, and entities of the OAS have engaged in activities that are consistent with or advance the R2P principle. These include the General Assembly and Permanent Council. In addition, the Inter-American Court of Human Rights (the IACtHR, or Court) and the Inter-American Commission on Human Rights (the IACHR, or Commission) have played a key role in defining and advocating human rights protections and educating OAS Member States of the obligation to protect their populations from atrocity crimes. As described below, the Court has issued a number of rulings condemning mass atrocity crimes and encouraging Member States to provide protection for their populations. Similarly, the Commission has issued various precautionary measures and publications advocating for populations at risk and calling on the OAS and Member States to take measures for their protection and assistance. Beyond these bodies, the OAS has also established numerous other programmatic initiatives seeking to ensure the effectiveness of American Convention on Human Rights, including the elements which are, in practice, aligned with R2P. But it has really only been the General Secretariat and Secretary General Almagro who have directly engaged on advancing discussion on R2P and its application within the OAS.

## 1. The General Assembly

The General Assembly is the supreme organ of the Organization of American States and comprises the delegations of all the Member States. It is the premier venue for hemispheric cooperation and deliberation and plays a critical role in monitoring situations of concern for human rights in the region. The General Assembly has a sweeping mandate, defined in the Charter, and sets forth the “mechanisms, policies, actions, and mandates of the Organization.”<sup>216</sup> As such, the General Assembly possesses significant potential to engage in atrocity prevention and response work under the framework of R2P. In fact, numerous resolutions and declarations adopted by the General Assembly have advanced actions compatible with R2P such as the following:

Promoting support for human rights defenders in the region, as it did in 2006;<sup>217</sup>  
 Recommending the inclusion of human rights-oriented material into formal curricula for young children, as it did in 2007;<sup>218</sup>  
 Earmarking funds to support human rights monitoring and reporting work, as it did in 2007;<sup>219</sup>  
 Supporting the strengthening of national human rights systems and mechanisms, as it did in 2007;<sup>220</sup>

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<sup>216</sup> *OAS General Assembly*, ORGANIZATION OF AMERICAN STATES, accessed July 8, 2022, available at [https://www.oas.org/en/about/general\\_assembly.asp](https://www.oas.org/en/about/general_assembly.asp).

<sup>217</sup> Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas, AG/RES. 2177, adopted Jun. 6, 2006.

<sup>218</sup> Proposal to Incorporate Human Rights Education into Formal Education for Schoolchildren Aged 10 to 14, in accordance with the Protocol of San Salvador, AG/RES. 2321, adopted Jun. 5, 2007.

<sup>219</sup> Establishment of the Oliver Jackman Voluntary Capital Fund to Finance the Inter-American Human Rights System, AG/RES. 2329, adopted Jun. 5, 2007.

<sup>220</sup> Strengthening of the National Human Rights Systems of the Member States and Support for the Work of Defenders of the People, Defenders of the Population, and Human Rights Attorneys or Commissioners (Ombudsmen), AG/RES. 2345, adopted Jun. 5, 2007.

Publishing findings on the intersection between human rights and climate change (a threat-multiplier in situations of atrocity), as it did in 2008;<sup>221</sup>  
 Expressing concern about human rights violations perpetrated against those because of their sexual orientation or gender identity, as it did in 2008;<sup>222</sup>  
 Affirming commitments to instruments of international law designed to prevent armed conflict, as it did with respect to the Inter-American Convention on Transparency in Conventional Weapons Acquisitions in 2009;<sup>223</sup>  
 Promoting regional confidence- and security building in the region, as it did in 2009;<sup>224</sup>  
 Protecting asylum seekers and their families, as it did in 2010;<sup>225</sup>  
 Supporting existing mechanisms for disaster prevention and response and humanitarian assistance among Member States, as it did in 2010;<sup>226</sup>  
 Promoting respect for international humanitarian law, as it did in 2011;<sup>227</sup>  
 Affirming the need to prevent internal displacement, and to appropriately care for internally displaced peoples, as it did in 2011;<sup>228</sup>  
 Promoting international criminal justice, and institutions that advance such justice, such as the International Criminal Court, as it did in 2012;<sup>229</sup>  
 Advancing women's human rights and gender equity and equality, as it did in 2013;<sup>230</sup>  
 Demanding an end to torture and other cruel, inhuman, or degrading treatment or punishment, as it did in 2014;<sup>231</sup>  
 Affirming the rights of indigenous peoples, as it did in 2014;<sup>232</sup>  
 Examining the intersection of food security, climate change, and migration, as it did in 2016;<sup>233</sup>  
 Promoting the strengthening of democracy, as it did in 2017;<sup>234</sup>  
 Advancing a multidimensional approach to hemispheric security, as it did in 2018;<sup>235</sup>

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<sup>221</sup> Human Rights and Climate Change in the Americas, AG/RES. 2429, *adopted* Jun. 3, 2008.

<sup>222</sup> Human Rights, Sexual Orientation, and Gender Identity, AG/RES. 2435, *adopted* Jun. 3, 2008.

<sup>223</sup> Inter-American Convention on Transparency in Conventional Weapons Acquisitions, AG/RES. 2445, *adopted* Jun. 4, 2009.

<sup>224</sup> Confidence- and Security-Building in the Americas, AG/RES. 2447, *adopted* Jun. 4, 2009.

<sup>225</sup> Protection of Asylum Seekers and Refugees in the Americas, AG/RES. 2597, *adopted* Jun. 8, 2010.

<sup>226</sup> Existing Mechanisms for Disaster Prevention and Response and Humanitarian Assistance among the Member States, AG/RES. 2610, *adopted* Jun. 8, 2010.

<sup>227</sup> Promotion of and Respect for International Humanitarian Law, AG/RES. 2650, *adopted* Jun. 7, 2011.

<sup>228</sup> Internally Displaced Persons, AG/RES. 2667, *adopted* Jun. 7, 2011.

<sup>229</sup> Promotion of the International Criminal Court, AG/RES. 2728, *adopted* Jun. 4, 2012.

<sup>230</sup> Promotion of Women's Human Rights and Gender Equity and Equality and Strengthening of the Inter-American Commission of Women, AG/RES. 2770, *adopted* Jun. 5, 2013.

<sup>231</sup> Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, AG/RES. 2829, *adopted* Jun. 4, 2014.

<sup>232</sup> Rights of the Indigenous Peoples of the Americas, AG/DEC. 79, *adopted* Jun. 5, 2014.

<sup>233</sup> Declaration on Climate Change, Food Security, and Migration in the Americas, AG/DEC. 88, *adopted* Jun. 14, 2016.

<sup>234</sup> Strengthening Democracy, AG/RES. 2905, *adopted* Jun. 20, 2017.

<sup>235</sup> Advancing Hemispheric Security: A Multidimensional Approach, AG/RES. 2925, *adopted* Jun. 5, 2018.

Endorsing the restoration of democratic institutions and respect for human rights, as it did with respect to Nicaragua in 2020;<sup>236</sup> and  
Addressing the promotion and protection of human rights, such as supporting human rights defenders, as it did in 2021.<sup>237</sup>

## 2. The Permanent Council

As a principal organ of the OAS that meets regularly, the Permanent Council exercises an important function in monitoring situations of concern in the hemisphere. This monitoring and reporting capacity is highly compatible with the objectives central to R2P. Indeed, the Permanent Council has regularly engaged in activities that fall under the umbrella of atrocity prevention and R2P. While the Permanent Council is governed by the OAS Charter and thus does not have a specific mandate with respect to R2P or atrocity prevention, it has on numerous occasions approved resolutions that reflect the R2P principle as described in this report. For example, the Permanent Council has undertaken important prevention and response activities such as:

Condemning political crises (such as a coup d'état) with the potential to escalate into human rights or humanitarian crises, as it did with respect to Honduras in 2009;<sup>238</sup>  
Maintaining and increasing funds available to support regional human rights work, as it did in 2011;<sup>239</sup>

Urging respect for democratic institutions, transparent elections, and peaceful transfers of power, as it did with respect to Haiti in 2016;<sup>240</sup>

Urging effective dialogue to bring about peaceful solutions to crises, as it did with respect to Venezuela in 2016, and to Nicaragua in 2019;<sup>241</sup>

Continuing to monitor developments and remain seized of possible situations of concern, as it did with respect to Haiti in 2016, and to Nicaragua in 2019;<sup>242</sup>

Encouraging respect for and recognition of indigenous peoples, as it did in 2018;<sup>243</sup>

Condemning an ongoing human rights crisis in a country, as it did with respect to Venezuela in 2019;<sup>244</sup>

Demanding independent, international investigative missions to advance justice for the victims and accountability for the perpetrators of human rights abuses, as it did with respect to Venezuela in 2019;<sup>245</sup>

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<sup>236</sup> Restoring Democratic Institutions and Respect for Human Rights in Nicaragua through Free and Fair Elections, AG/RES. 2962, *adopted* Oct. 21, 2020.

<sup>237</sup> Promotion and Protection of Human Rights, AG/RES. 2976, *adopted* Nov. 12, 2021.

<sup>238</sup> Current Situation in Honduras, CP/RES. 953, *adopted* Jun. 28, 2009.

<sup>239</sup> Initiative for Strengthening the Inter-American Human Rights System. CP/RES. 981, *adopted* Feb 18, 2011.

<sup>240</sup> Declaration on the Electoral Process in Haiti, CP/DEC. 64, *adopted* Aug. 11, 2016.

<sup>241</sup> Declaration of the Permanent Council Supporting the National Dialogue in the Bolivarian Republic of Venezuela, CP/DEC. 66, *adopted* Nov. 16, 2016; *see also* The Situation in Nicaragua, CP/RES. 1128, *adopted* May 21, 2019.

<sup>242</sup> Declaration on the Electoral Process in Haiti, *supra* note 240; *see also* The Situation in Nicaragua, *supra* note 241.

<sup>243</sup> Inter-American Week of Indigenous Peoples, CP/RES. 1094, *adopted* Feb. 21, 2018.

<sup>244</sup> Resolution on the Human Rights Situation in Venezuela, CP/RES. 1133, *adopted* Aug. 28, 2019.

<sup>245</sup> *Id.*

Strengthening linkages between international organizations tasked with human rights monitoring and protection, as it did with respect to Venezuela in 2019;<sup>246</sup>  
 Expressing concern about a deteriorating human rights situation, as it did with respect to Nicaragua in May 2019;<sup>247</sup>  
 Encouraging the provision of humanitarian assistance to support vulnerable populations, as it did with respect Venezuela in 2019;<sup>248</sup>  
 Condemning political crises (such as a presidential assassination) with the potential to escalate into human rights or humanitarian crises, as it did with respect to Haiti in 2021;<sup>249</sup>  
 Calling for the release of political prisoners and implementation of the principles of the Inter-American Democratic Charter, as it did with Nicaragua in 2021;<sup>250</sup> and  
 Suspending the status of a permanent observer to the OAS, as it did with the Russian Federation because of its commission of “terrible atrocities” and violations of international law in 2022.<sup>251</sup>

The Permanent Council also regularly holds sessions to consider situations in individual countries or on thematic issues (for example, the February 18, 2022, special meeting to consider the situation in Nicaragua).<sup>252</sup> These meetings allow for fact-finding and exchanges of information to take place and provide a forum for robust deliberation on how to best protect vulnerable populations. While the Permanent Council does not have an explicitly-defined mandate with respect to R2P, it offers a venue where discussions on atrocity prevention and response can take place.

### 3. The General Secretariat

The General Secretariat, led by Secretary General Luis Almagro and with the support of his dedicated staff, regularly engages in work that advances the principle of R2P. This work has deepened the Organization’s engagement with R2P both thematically and on country-specific situations.

Thematically, Secretary General Almagro has been a pioneer in institutionalizing R2P at the regional level, in light of the findings published by the OAS Panel of Independent International Experts in May 2018 that crimes against humanity were being committed in Venezuela. Through a series of dialogues and other activities, the Secretary General has made clear the General Secretariat’s position on R2P, which is that any actions undertaken to advance implementation of this principle must be taken in full accordance with international law. This practice has emphasized national sovereignty is not unconditional when it comes to

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<sup>246</sup> *Id.*

<sup>247</sup> The Situation in Nicaragua, *supra* note 241.

<sup>248</sup> Humanitarian Assistance in Venezuela, CP/RES. 1123, *adopted* Mar. 27, 2019.

<sup>249</sup> Condemnation of the Assassination of President of Haiti and Support for Democratic Institutions and Dialogue, CP/DEC. 75, *adopted* Jul. 7, 2021.

<sup>250</sup> The Situation in Nicaragua, CP/RES. 1182, *adopted* Oct. 20, 2021.

<sup>251</sup> Suspension of the Status of the Russian Federation as a Permanent Observer to the Organization of America States, CP/RES. 1195, *adopted* Apr. 21, 2022.

<sup>252</sup> *OAS Permanent Council to Consider the Situation in Nicaragua*, ORGANIZATION OF AMERICAN STATES, Feb. 16, 2022, *available at* [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=AVI-025/22](https://www.oas.org/en/media_center/press_release.asp?sCodigo=AVI-025/22).

the protection of human rights and human dignity. In fact, R2P reaffirms that the rights of sovereign powers include the corresponding primary responsibility to protect their peoples, and that this, in turn, reaffirms their sovereignty. The protection of peoples is a recognized imperative of the OAS and is also the foundation of numerous treaties under international law.

Since the adoption of R2P, it has become clear that it is helpful to apply the principle early with preventative measures and refer to it throughout and not wait until wider mass atrocities are taking place. When there is a lack of political will, international action has been delayed. Therefore, these situations and the issues at stake must be re-framed to enable collective action that can prevent such abuses taking from place. This is why the OAS has sought to formalize the principle of R2P within its work and within the bodies and membership that make up the broader Organization.

The OAS held its first dialogue on R2P in March 2019<sup>253</sup> and named Monika LeRoy from the General Secretariat to serve as the first R2P Focal Point to explore the role the Organization could play in supporting the principle. She also served as the OAS representative to the Global Network of R2P Focal Points, a coalition of national and regional representatives established to improve intra-governmental and inter-governmental efforts to prevent and halt mass atrocities. In October 2020, Secretary General Almagro designated Jared Genser as OAS Special Adviser on the Responsibility to Protect – the first such position of its kind – which demonstrated the OAS’s ability to be a leader among regional organizations in this space. The OAS is also hosting the 10th annual meeting of the Global Network of R2P Focal Points in September 2022, convening experts on atrocity prevention from around the world.

The General Secretariat has been heavily engaged on R2P with respect to the situation in Venezuela. In 2018, Secretary General Almagro designated a panel of independent international experts to evaluate the possible commission of crimes against humanity in Venezuela. The panel concluded that reasonable grounds exist to believe that crimes against humanity have been committed in Venezuela dating back to at least February 12, 2014. The panel’s report was presented to the Office of the Prosecutor of the International Criminal Court, and galvanized support for the unprecedented joint referral of the situation in Venezuela from six States Parties to the Rome Statute.<sup>254</sup>

In 2019, the General Secretariat hosted hearings on state corruption and the humanitarian crisis in the country, which were opened by the Secretary General himself. Also in 2019, the General Secretariat hosted a conference entitled “The Responsibility to Protect in the Americas,” which sought to answer the question, “Is it time to renew the discussion on the principle and application of R2P in the Americas?”<sup>255</sup> In a panel discussion on the responsibility to protect in

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<sup>253</sup> Conference, *The Responsibility to Protect in the Americas*, ORGANIZATION OF AMERICAN STATES, Mar. 21, 2019 (including Secretary General Almagro, Jennifer Welsh, former UN Special Adviser on R2P, Simon Adams, Executive Director of the Global Centre on R2P, among others).

<sup>254</sup> Press Release, “Panel of Independent International Experts Finds “Reasonable Grounds” for Crimes against Humanity Committed in Venezuela,” ORGANIZATION OF AMERICAN STATES, May 29, 2018, *available at* [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-031/18](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-031/18).

<sup>255</sup> *OAS to Host Conference on “The Responsibility to Protect in the Americas,”* ORGANIZATION OF AMERICAN STATES, Mar. 18, 2019, *available at* [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=AVI-042/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=AVI-042/19). [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=AVI-042/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=AVI-042/19).

Venezuela hosted by the Center for Strategic and International Studies later that year, Secretary General Almagro remarked: “And I think somehow we can say we have already started to apply the responsibility to protect in the Venezuelan case. Because there have already been negotiations, there already have been good offices [visits], we have already had diplomatic missions, we have already experimented with dialogue processes, and we have already moved forward to sanctions . . . And all those are steps linked to the responsibility to protect. The first measure can never be the last measure. It is a process of political accumulation, and we have been accumulating.”<sup>256</sup> That summer, Secretary General Almagro also published a journal article entitled “Deepening R2P in Latin America,” where he explained:

The Responsibility to Protect . . . has been revived in international law—in Latin America, of all possible places in the world—by the Venezuelan crisis. I believe Venezuela needs an all hands-on-deck approach, because the Western Hemisphere’s worst humanitarian and migratory crisis is worsening due to the systematic violation of human rights, crimes against humanity and crimes of atrocity, torture, murder, extrajudicial killings, enforced disappearances and political imprisonment by the Nicolás Maduro usurper dictatorship. Indifference to any such situation is unacceptable. Most importantly, the Venezuelan people should not be denied *a priori* the right to all instruments provided by international law in the twenty-first century, such as R2P. The Venezuelan people have the right to be protected and we have the responsibility to protect Venezuelans.

It is important at the onset to underline that R2P is not synonymous with military intervention. My objective, as Secretary General of the Organization of American States . . . is to achieve peace in Venezuela. Today there is systematic violence in Venezuela; it is an undeclared Dirty War against the Venezuelan people in which the Maduro regime uses conventional and unconventional weapons against its own people. The more that is known about R2P, the more necessary it becomes to refer to it throughout the process, and not specifically at the end of the process . . .

We can never be so immoral as to be indifferent to the suffering and systematic violation of the rights of millions. We can never be indifferent to a purge of millions of Venezuelans forced to leave their country as a result of this systematic violation of human rights, ranging from health violations, denying medicines, denying medical treatment for political reasons, denying food to children and minors, holding and torturing political prisoners, and carrying out extrajudicial executions in communities.

The response of the international community to such repression and crimes against humanity cannot be simply a press release of an official statement of condemnation. Public statements are completely insufficient at this point; they do not protect Venezuelans or alleviate their suffering. Statements of condemnation have absolutely no influence on the Maduro regime in terms of making it halt the aggression towards its own people.

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<sup>256</sup> *The Responsibility to Protect in Venezuela*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, May 8, 2019, available at <https://www.csis.org/events/responsibility-protect-venezuela>.

If there is evident international consensus on the magnitude of the Venezuelan crisis, on the daily suffering of Venezuelans who are victims of the deliberate and systematic actions of the Maduro regime, then the international community should respond accordingly.

Why is it so difficult for the international community to protect Venezuelans?

Why is it so difficult to allow Venezuelans to access their legitimate right to be protected?<sup>257</sup>

And in December 2020, the General Secretariat released a report, prepared by the Special Adviser on R2P, concluding that crimes against humanity continue to be perpetrated in Venezuela, and that the failure of the Prosecutor of the International Criminal Court has enabled the Maduro regime to commit atrocities with impunity.<sup>258</sup> Ultimately, on November 3, 2021, ICC Prosecutor Karim A.A. Khan, announced he had formally opened an investigation into the situation in Venezuela.<sup>259</sup> It is undoubtable that the relentless efforts of Secretary General Almagro and the General Secretariat made a critical contribution to accelerating the opening of the ICC investigation.

Beyond this, Secretary General Almagro and the General Secretariat have also advanced actions consistent with R2P both thematically and in country-specific situations in a wide array of ways such as through presentations to the General Assembly and Permanent Council, in public and private meetings, in statements and press releases, and in tweets.

#### **4. Inter-American Court of Human Rights**

As an autonomous judicial institution whose mission is to promote and protect human rights, the Court has issued a number of rulings that relate to R2P. Though not explicitly invoking R2P, the Court advances the principles of Pillar Two when it reminds Member States of their obligations to protect human rights and to prevent the occurrence of future atrocity crimes. From that perspective, it is worth highlighting some examples of the Court's decisions in which Member States were highlighted for their failure to protect populations from mass atrocity crimes or to uphold internationally-protected rights as a result of such crimes. In a number of these judgments, the Court has observed the importance of those "international instruments with varied content and juridical effects (treaties, conventions, resolutions and declarations)," together representing "the corpus juris of international human rights law," in determining "the context of

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<sup>257</sup> Luis Almagro, *Deepening R2P in Latin America*, CENTER FOR INTERNATIONAL RELATIONS AND SUSTAINABLE DEVELOPMENT, 14 HORIZONS 198-209 (Summer 2019).

<sup>258</sup> Press Release, "OAS General Secretariat Report Reaffirms Crimes against Humanity in Venezuela," ORGANIZATION OF AMERICAN STATES, Dec. 2, 2020, *available at* [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-122/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-122/20).

<sup>259</sup> Press Release, "ICC Prosecutor, Mr. Karim A.A. Khan QC, Opens an Investigation Into the Situation in Venezuela and Concludes Memorandum of Understanding with the Government," INTERNATIONAL CRIMINAL COURT, ICC-OTP-2021111105-PR1625, Nov. 5, 2021, *available at* <https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-opens-investigation-situation-venezuela-and-concludes>

the evolution of the fundamental rights of the human persons” that applies to its own decisions.<sup>260</sup>

*Almonacid Arellano, et al vs. Chile (IACtHR 2006)* addressed the arbitrary arrest and murder of a professor and political activist during the days following the coup against President Allende. The Court held that Chile had violated the victim's rights to a fair trial and to judicial protection under the American Convention on Human Rights.<sup>261</sup> In so ruling, the Court noted that “the observance by State agents or officials of a law which violates the Convention gives rise to the international liability of such State, as contemplated in International Human Rights Law, in the sense that every State is internationally responsible for the acts or omissions of any of its powers or bodies for the violation of internationally protected rights, pursuant to Article 1(1) of the American Convention.”<sup>262</sup>

*Massacres of El Mozote and Nearby Places v. El Salvador (IACtHR 2012)* addressed massacres committed by the Salvadoran Army. The Court established that “States are obliged to respect and ensure the human rights recognized in the Convention” and that “the first obligation assumed by States Parties is to respect the rights and freedoms recognized therein.”<sup>263</sup> Echoing earlier rulings, the Court asserted that “The State has the legal obligation to prevent, reasonably, human rights violations, and to investigate, genuinely using the means available to it, the violations committed within their jurisdiction in order to identify those responsible, impose the pertinent punishments on them, and ensure adequate reparation for the victim.”<sup>264</sup>

*Trabajadores De La Hacienda Brasil Verde v. Brazil (IACtHR 2016)* addressed the use of slave labor by a farm in the northeast of Brazil. Although the primary acts of violence were not perpetrated by state actors, the Court held that Brazil had violated several articles of the American Convention on Human Rights (including Article 6(1) (Prohibition of Slavery, Slave-Trade, Traffic in Women and Involuntary Servitude), Article 8(1) (Right to a Fair Trial), Article 19 (Rights of the Child), Article 25 (Right to Judicial Protection)) due to the State’s “repeated failure to stop the practice, punish those responsible and provide victims remedies.”<sup>265</sup>

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<sup>260</sup> *The Massacres of El Mozote and Nearby Places v. El Salvador*, INTER-AM. CT. H. R., Oct. 25, 2012, at note 363, available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_252\\_ing1.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_252_ing1.pdf).

<sup>261</sup> *Almonacid Arellano et al v. Chile*, INTER-AM. CT. H. R., Sept. 26, 2006, available at <https://iachr.ils.edu/cases/almonacid-arellano-et-al-v-chile>.

<sup>262</sup> *Id.*, at ¶ 123.

<sup>263</sup> *The Massacres of El Mozote and Nearby Places v. El Salvador*, *supra* note 260.

<sup>264</sup> *Velásquez Rodríguez v. Honduras*, INTER-AM. CT. H. R., July 29, 1988, at ¶ 174 and *Vélez Restrepo and family members v. Colombia*, INTER-AM. CT. H. R., Sept. 3, 2012, at ¶ 186.

<sup>265</sup> *Trabajadores de la Hacienda Brasil Verde v. Brazil*, INTER-AM. CT. H. R., Oct. 20, 2016, at ¶¶ 129-130, available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_318\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf) and Iris Weiser, *Case Comment: Inter-American Court Issues its First Decision on Modern Day Slavery: Case of Hacienda Brasil Verde*, INSTITUT PHILIPPE KIRSCH INSTITUTE, Feb. 16, 2018, available at <https://www.kirschinstitute.ca/hacienda-brasil-verde>.

## 5. Inter-American Commission on Human Rights

The Commission has repeatedly exercised its jurisdiction in ways that advance Pillar Two of R2P:

**Precautionary Measures.** Many of the precautionary measures adopted by the Commission reflect human rights and humanitarian norms and standards in line with Pillar Two of R2P. The precautionary measures publicly advocate for populations at risk (i.e. indigenous communities, minorities, political opponents, etc.) in need of protection and assistance (e.g. “*in serious and urgent situations of suffering irritable harm, the Commission may, on its own initiative or at the request of a party, request that a State adopts measures precautionary measures.*”)<sup>266</sup> Under these precautionary measures, Member States are reminded of their human rights obligations and requested to adopt the necessary protections in favor of the beneficiaries and report back to the Commission on the actions or measures implemented. Examples of IACHR precautionary measures that have promoted principles similar to R2P include *Tsotsil Indigenous Families*,<sup>267</sup> *Edgar Francisco Parrales Castillo Regarding Nicaragua*,<sup>268</sup> *Juan José Gámez Maza Regarding Venezuela*,<sup>269</sup> and *Juana Mora Cedeño, et al Regarding Cuba*,<sup>270</sup> among others.

**Thematic Reports.** As part of its mission, the Commission and rapporteurs established by the Commission research, write, and publish an enormous number of reports relating to a variety of matters, including human rights. These reports are produced based on monitoring activities, consultation, and ongoing dialogue with Member States and civil society undertaken by the Commission and specific Rapporteurs, often with a focus on protecting vulnerable populations and minorities such as women, indigenous peoples, LGBTQ+ people, and others.<sup>271</sup> Consistent with Pillar Two of R2P, reports issued by the Commission and the

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<sup>266</sup> *Precautionary Measures: Their Practice as a Guarantee of Respecting Fundamental Rights and Preventing Irreparable Damage*, OAS, accessed July 7, 2022, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/mc/about-precautionary.asp>.

<sup>267</sup> *Resolution 35/2021 Precautionary Measure No. 284-18: Tsotsil Indigenous Families From Twelve Identified Communities of Aldama, Chiapas, Regarding Mexico*, INTER-AM. COMM’N ON HUMAN RIGHTS, adopted Apr. 23, 2021, available at [https://www.oas.org/en/iachr/decisions/mc/2021/res\\_35-21\\_mc\\_284-18\\_mx\\_en.pdf](https://www.oas.org/en/iachr/decisions/mc/2021/res_35-21_mc_284-18_mx_en.pdf).

<sup>268</sup> *Resolution 1/2022 Precautionary Measure No. 1088-21: Edgar Francisco Parrales Castillo Regarding Nicaragua*, INTER-AM. COMM’N ON HUMAN RIGHTS, adopted Jan. 12, 2022, available at [https://www.oas.org/en/iachr/decisions/mc/2022/res\\_1-22\\_mc\\_1088-21\\_ni\\_en.pdf](https://www.oas.org/en/iachr/decisions/mc/2022/res_1-22_mc_1088-21_ni_en.pdf).

<sup>269</sup> *Resolution 54/2020 Precautionary Measures No. 698-20: Juan José Gámez Maza Regarding the Bolivarian Republic of Venezuela*, INTER-AM. COMM’N ON HUMAN RIGHTS, adopted Sept. 2, 2020, available at [https://www.oas.org/en/iachr/decisions/pdf/2020/res\\_54-20\\_mc\\_698-20\\_ve\\_en.pdf](https://www.oas.org/en/iachr/decisions/pdf/2020/res_54-20_mc_698-20_ve_en.pdf).

<sup>270</sup> *Resolution 37/2016 Precautionary Measures No. 236-16 : Juana Mora Cedeño et al. Regarding Cuba*, INTER-AM. COMM’N ON HUMAN RIGHTS, adopted July 3, 2016, available at <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC236-16-ES.pdf> (in Spanish).

<sup>271</sup> See, e.g., REPORT ON TRANS AND GENDER-DIVERSE PERSONS AND THEIR ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS, INTER-AM. COMM’N ON HUMAN RIGHTS, Aug. 7, 2020; VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICAN AND THE CARIBBEAN, INTER-AM. COMM’N ON HUMAN RIGHTS, Nov. 14, 2019; SITUATION OF HUMAN RIGHTS OF THE INDIGENOUS AND TRIBAL PEOPLES OF THE PAN-AMAZON REGION, INTER-AM. COMM’N ON HUMAN RIGHTS, Sept. 29, 2019; INTERNAL DISPLACEMENT IN THE NORTHERN TRIANGLE OF CENTRAL AMERICA: PUBLIC POLICY GUIDELINES, INTER-AM. COMM’N ON HUMAN RIGHTS, July 27, 2018; REPORT ON CITIZEN SECURITY AND HUMAN RIGHTS, INTER-AM. COMM’N ON HUMAN RIGHTS, Dec. 31, 2009; COMPENDIUM OF THE INTER-AMERICAN COMMISSION ON HUMAN

Rapporteurs promote the observance and protection of human rights in a variety of respects such as raising awareness of situations that adversely affect the human rights of populations in Member States,<sup>272</sup> reminding Member States of their human rights obligations,<sup>273</sup> and providing concrete examples of how Member States are actively protecting their populations from atrocity crimes and situations where atrocity crimes could occur.<sup>274</sup> For example, in December 2009, the Commission published the Report on Citizen Security and Human Rights. That report identified the human rights standards relevant to citizen security and laid out both positive and negative obligations for Member States in respect to upholding these obligations for all persons under their jurisdiction.<sup>275</sup> The report also set forth general and specific recommendations for Member States to implement to ensure that their populations are protected.<sup>276</sup>

**Country Reports.** In addition, the Commission researches, writes, and publishes numerous country-specific reports on human rights. A subset of these reports have been more

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RIGHTS ON TRUTH, JUSTICE AND REPARATION IN TRANSITIONAL CONTEXTS, INTER-AM. COMM’N ON HUMAN RIGHTS, Apr. 12, 2021; THE RIGHT TO THE TRUTH IN THE AMERICAS, INTER-AM. COMM’N ON HUMAN RIGHTS, Aug. 13, 2014; TRUTH, JUSTICE AND REPARATION: FOURTH REPORT ON HUMAN RIGHTS SITUATION IN COLOMBIA, INTER-AM. COMM’N ON HUMAN RIGHTS, Dec. 31, 2013.

<sup>272</sup> See, e.g., SITUATION OF HUMAN RIGHTS OF THE INDIGENOUS AND TRIBAL PEOPLES OF THE PAN-AMAZON REGION, *supra* note 271, at 94-97 (highlighting examples of forced and violent displacement of indigenous peoples), 97-101 (noting a “high level of impunity in the region with respect to human rights violations committed in connection with mining, natural resource exploitation, or development projects”), and 101-104 (providing examples of threats, harassment, attacks towards, and murders of, human rights defenders, indigenous leaders and communities, and urging Member States to “investigate and punish anyone, including State agents, who commit acts of violence against the life or bodily integrity of the demonstrators or third parties”).

<sup>273</sup> See, e.g., INTERNAL DISPLACEMENT IN THE NORTHERN TRIANGLE OF CENTRAL AMERICA: PUBLIC POLICY GUIDELINES, *supra* note 271, at 47 (stating that “the Commission wishes to reiterate that internal displacement entails the violation of a large number of human rights whose realization the State has an obligation to ensure”) and COMPENDIUM OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON TRUTH, JUSTICE AND REPARATION IN TRANSITIONAL CONTEXTS, *supra* note 271, at 110 (“Specifically, regarding guarantees of non-repetition in contexts of transitional justice, the Commission has made various recommendations to the States aimed at the adoption of legislative, administrative, and any other measures, in order to adapt legislation and judicial practices to inter-American standards, and thus eradicate problems and obstacles in matters of truth and justice.”).

<sup>274</sup> See, e.g., COMPENDIUM OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON TRUTH, JUSTICE AND REPARATION IN TRANSITIONAL CONTEXTS, *supra* note 271, at 87 (positively valuing the creation of the National Commission for the Search for Disappeared Adults in El Salvador).

<sup>275</sup> See REPORT ON CITIZEN SECURITY AND HUMAN RIGHTS, *supra* note 271, at 15 (reminding Member States of their obligations to protect their populations from violations of human rights by third parties, stating that Member States’ “international responsibility may arise from the attribution of human rights violations committed by third parties or individuals, within the framework of the State’s obligations to guarantee respect for those rights between individuals.”), 16 (reminding Member States of their “obligation to adopt prevention and protection measures for individuals” and that “[it] is not sufficient to abstain from violating these rights. States must adopt positive and specific measures in response to the specific needs of those who require protection because of their personal profile or their current situation.”), and 17-18 (reminding Member States that the “obligation of States to investigate cases of violations of [human] rights arises from this general obligation to guarantee the rights established in Article 1(1) of the Convention together with the substantive right that must be protected or ensured and the due process and judicial protection guarantees set forth in Articles 8 and 25” and that “[c]rimes against humanity give rise to the violation of a series of non-derogable rights that are recognized by the American Convention, whose violation cannot remain unpunished.”).

<sup>276</sup> See *id.*, at 95.

substantially focused on country situations – such as in Venezuela,<sup>277</sup> Nicaragua,<sup>278</sup> and Colombia<sup>279</sup> – where the work is consistent with or advances R2P, even though the reports have not been framed in that manner.

## 6. Other OAS Initiatives in the R2P Space

The main goal of the OAS is to promote peace and security in the region by peaceful and diplomatic means, without the use of force, through direct negotiation, good offices engagement, mediation, investigation and conciliation, arbitration, judicial settlement, or any other measure agreed to by the parties. Although the OAS does not have a formal mandate in atrocity prevention or R2P, as with many multilateral and regional organizations, the OAS has developed a number of departments, initiatives, and programs aimed at resolving conflict, preventing human right violations, monitoring compliance with the American Convention on Human Rights, and promoting human rights and peace in the region, all of which are essential tools in atrocity prevention. These tools ensure the accountability of Member States in compliance with their commitments as well as to empower and enable action by countries in the face of deteriorating situations in another country or area in the hemisphere. These initiatives, while not explicitly tied to R2P, are consistent with the R2P principle, and relevant nonetheless.

The **Office of the High Commissioner for Human Rights (OHCHR)** in Colombia is led by the UN Human Rights Council, and has partnered with the IACHR since 1997 to provide technical assistance, monitoring and strengthening the promotion and protection of human rights in Colombia. The monitoring work has positioned OHCHR in Colombia as a key reference to provide reliable and objective information on the human rights situation in the country.<sup>280</sup> This work has consistently advanced R2P – Colombia and the international community have used the information developed by OHCHR in Colombia as a basis for actions to prevent and respond to human rights violations.<sup>281</sup> OHCHR promotes justice for grave human rights violations and breaches of international humanitarian law by strengthening the capacities of the transitional justice mechanisms in Colombia in analyzing and prosecuting gross human rights violations.<sup>282</sup> In particular, OHCHR issues periodic reports on the human rights situation in Colombia, highlighting areas in which Colombia is meeting its human rights obligations as well as areas that require additional work.<sup>283</sup>

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<sup>277</sup> SITUATION OF HUMAN RIGHTS IN VENEZUELA – DEMOCRATIC INSTITUTIONS, THE RULE OF LAW, AND HUMAN RIGHTS, INTER-AM. COMM’N ON HUMAN RIGHTS, Dec. 31, 2017.

<sup>278</sup> NICARAGUA: CONCENTRATION OF POWER AND WEAKENED RULE OF LAW, INTER-AM. COMM’N ON HUMAN RIGHTS, Oct. 28, 2021; GROSS HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF SOCIAL PROTESTS IN NICARAGUA, INTER-AM. COMM’N ON HUMAN RIGHTS, INTER-AM. COMM’N ON HUMAN RIGHTS, Jun. 21, 2018.

<sup>279</sup> TRUTH, JUSTICE, AND REPARATION – FOURTH REPORT ON THE SITUATION IN COLOMBIA, INTER-AM. COMM’N ON HUMAN RIGHTS, Dec. 31, 2013.

<sup>280</sup> *OHCHR in Colombia: Profile*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, accessed July 7, 2022, available at <https://www.ohchr.org/EN/Countries/LACRegion/Pages/COSummary1314.aspx>.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *See, e.g.*, TRIGÉSIMO INFORME DEL SECRETARIO GENERAL AL CONSEJO PERMANENTE SOBRE LA MISIÓN DE APOYO AL PROCESO DE PAZ EN COLOMBIA DE LA ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, MAPP/OEA, June 2021.

The **Department of Sustainable Democracy and Special Missions** (DSDSM) provides technical assistance and advisory services to the Office of the Secretary General, Member States and the political bodies in connection with conflict resolution and strengthening of democratic institutions. Since 2005, the DSDSM has launched, supported and/or coordinated various programs and special missions, such as Mission to Support the Peace Process in Colombia (MAPP), the Mission to Support the Combating of Corruption and Impunity in Honduras (MACCIH) and the Inter-American Judicial Facilitators Program, among others.<sup>284</sup> These programs and special missions have helped Member States in building better institutional frameworks that better protect their populations from human rights violations and atrocity crimes.

**Special Monitoring or Follow-Up Mechanisms** (SMM) are case-specific measures established with the narrow purpose of ensuring the effective implementation of the Commission recommendations.<sup>285</sup> In particular, the SMMs are intended to facilitate a more holistic analysis of the decisions and recommendations of the Commission, provide public exposure on the human rights case or situation in question, and allow the Commission to conduct systematic and periodic monitoring, permitting more in-depth and focused follow-up efforts by the Commission.<sup>286</sup> As an application of the Pillar Two of R2P, the SMMs encourage Member States to exercise responsibility by holding them accountable for the protection of human rights. It also serves as early warning system for future atrocity crimes. Examples of SMM initiatives related to R2P include (1) the SMM to the Belém do Pará Convention (“MESECVI”),<sup>287</sup> (2) SMM for Nicaragua (“MESENI”),<sup>288</sup> and (3) SMM for Venezuela (“MESEVE”).<sup>289</sup>

**The Fund for Peace: Peaceful Settlement of Territorial Disputes** (the OAS Peace Fund), established in 2000,<sup>290</sup> allows Member States to benefit from a range of conflict resolution mechanisms contemplated under the OAS Charter.<sup>291</sup> Disputes for which the OAS Peace Fund contributed resources toward peaceable resolution include (1) the maritime boundary dispute between Honduras and Nicaragua,<sup>292</sup> (2) border dispute between El Salvador and Honduras,<sup>293</sup> and (3) the Belize-Guatemala territorial dispute. By providing dispute resolution

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<sup>284</sup> *Department of Sustainable Democracy and Special Missions*, OAS, available at <https://www.oas.org/en/spa/dsdsm/acerca.asp>.

<sup>285</sup> *Special Mechanisms*, OAS, accessed July 7, 2022, available at <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/activities/follow-up/special-mechanisms.asp>.

<sup>286</sup> *Id.*

<sup>287</sup> *What is MESECVI?*, OAS, accessed July 7, 2022, available at <https://www.oas.org/en/mesecvi/about.asp>.

<sup>288</sup> *Special Monitoring Mechanism for Nicaragua (MESENI)*, OAS IACHR, available at <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/meseni/default.asp>.

<sup>289</sup> *Special Monitoring Mechanism for Venezuela (MESEVE)*, OAS, available at <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/meseve/default.asp#>.

<sup>290</sup> *Resolution 1756 (XXX-O/00) Fund for Peace: Peaceful Settlement of Territorial Disputes*, OAS, adopted June 6, 2000.

<sup>291</sup> *The OAS Peace Fund*, OAS PEACE FUND, available at <https://www.oas.org/sap/peacefund/peacefund>.

<sup>292</sup> *Honduras and Nicaragua*, OAS PEACE FUND, available at <https://www.oas.org/sap/peacefund/hondurasandnicaragua>.

<sup>293</sup> *El Salvador and Honduras*, OAS PEACE FUND, available at <https://www.oas.org/sap/peacefund/hondurasandelsalvador>.

expertise and facilitating political dialogue among Member States, the OAS Peace Fund fosters peace and prevents atrocity crimes in the context of war.

Beyond these, there are many other OAS programs and initiatives whose work advances one or more of the R2P pillars described above. These include, for example, the (a) Interdisciplinary Group of Independent Experts; (b) International Commission for Support and Verification in Nicaragua; (c) Mediation Programs; (d) Mediation Support Unit; (e) OAS envoys or special missions; (f) OAS Unit for the Promotion of Democracy (UPD); (g) *Programa de Prevención de los Delitos Vinculados a la Migración*; and (h) *Red Interamericana de Desarrollo y Profesionalización Policial*.

#### ***D. Role of the OAS Special Adviser on the Responsibility to Protect***

The position of the OAS Special Adviser on the Responsibility to Protect was created by Secretary General Luis Almagro in October 2020. The Special Adviser has been tasked with designing a framework that will empower the OAS to better prevent and respond to mass atrocity crimes in the Americas and deepening the Organization's engagement with R2P by developing a regional architecture to address mass atrocities. Indeed, the creation of the position represents a recognition that mass atrocities are being committed in the region – as demonstrated by the situation in Venezuela – and that the OAS must be prepared to respond to ongoing and potential threats of such crimes.

In considering how the OAS might better prevent and respond to mass atrocity crimes, the Special Adviser carried out broad consultations with permanent representatives of OAS Member States, permanent representatives of OAS permanent observers, other government representatives, different organs and agencies of the OAS including the Inter-American Commission and Court of Human Rights, and civil society organizations. Importantly, these consultations have demonstrated that there is broad institutional support for deeper engagement with R2P, as the principle is presented in this report.

Through all this work, the Special Adviser is committed to open communications and transparency with all interested parties. The written reports that he publishes as part of his mandate, such as this report, will also serve to provide accurate and actionable information to the OAS and its Member States to assist in their decision-making processes.

Additionally, the Special Adviser is committed to the principles of non-duplication and complementarity, both horizontally and vertically. Horizontally, his work must complement the OAS's ongoing work on the protection of human rights and conflict prevention. Vertically, his work must complement the work done by the UN on atrocity prevention. Remaining in close contact both with colleagues in other organs, agencies, and entities of the OAS and at the UN will help to ensure that his work is complementary to and non-duplicative of theirs. Through his consultations with the Inter-American Commission and Court, he confirmed that while their mandates are related, they are distinct because each applies different legal frameworks. The Special Adviser's discussions with the UN Special Adviser on the Responsibility to Protect have also been positive, and his engagement with that office will continue to ensure that work on R2P at the regional level is additive and complementary to the work at the UN.

Furthermore, the Special Adviser's discussions have demonstrated the need for greater engagement with gender issues, as atrocity crimes can affect marginalized communities in varied ways. Beyond the assessment of specific country situations, the mandate as Special Adviser also allows him to examine thematic issues that may constitute mass atrocity crimes.

#### IV. RECOMMENDATIONS FOR DEVELOPING A REGIONAL SYSTEM WITHIN THE ORGANIZATION OF AMERICAN STATES TO PREVENT AND RESPOND TO MASS ATROCITIES IN THE RESPONSIBILITY TO PROTECT FRAMEWORK

Based on the above, and supported by wide consultations with stakeholders, the Special Adviser has identified three initiatives that would greatly improve the Organization's capacity to prevent and respond to emerging mass atrocity crimes in the region. These are intentionally initial steps that would have a maximum impact while requiring only minimal resources. They are designed to build on past efforts of the OAS and would be complementary to its ongoing work and that of the United Nations.

First, the General Secretariat of the Organization could support the creation of an early-warning mechanism, to ensure states and other OAS organs are proactively informed about situations of concern as they arise, along with recommendations for their consideration. It is important this mechanism ensure women's equal and meaningful participation in early-warning and prevention efforts. Such a system would be coordinated by the Special Adviser's office and would draw substantially on the *Framework of Analysis for Atrocity Crimes*, a prevention guide published by the UN in 2014.<sup>294</sup> This guide enumerates 14 individual risk factors, each with 8-14 indicators of potential mass atrocity crimes, and provides an excellent roadmap to describe atrocity prevention in practice. Based on the benchmarks and indicators included in the *UN Framework of Analysis*, the Special Adviser's Office would be able to monitor situations of concern and, as appropriate, based on emerging situations of concern, prepare written reports regarding such situations, apply the *UN Framework of Analysis*, and present detailed report with recommendations for relevant OAS organs and agencies. The General Secretariat could also instruct the Special Adviser to prepare a training workshop on R2P for key Secretariat staff. Such a workshop could also be offered to other OAS agencies, as well as to Permanent Representatives and their staffs. The OAS could then work to synergize its efforts on intersecting human rights/peace and security agendas (such as R2P and WPS).

Creating an early-warning mechanism would be a fundamental step forward: In past instances of atrocity crimes, reporting on a situation of concern is too often siloed, meaning that different difficult challenges of a particular situation are not taken together to portray a cohesive, demonstrative picture of the reality on the ground. To address this challenge, the Special Adviser will use his position to synthesize, summarize, and analyze the best available information from a variety of different perspectives, including political, economic, human rights, and humanitarian spheres and then apply the *UN Framework* to that information, making recommendations as appropriate to OAS organs, agencies, and entities. These efforts could include strengthening risk analysis with gender-sensitive indicators and sex-disaggregated data. An early warning mechanism like this would provide the opportunity for earlier engagement by OAS Member States and could prevent a situation of concern from spiraling unchecked into a catastrophe.

Second, Member States could commit to having an annual broad and multi-stakeholder dialogue in the OAS General Assembly about the responsibility to protect in the region. To frame this dialogue, Member States could request the Special Adviser to prepare an annual report

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<sup>294</sup> FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES, *supra* note 65.

summarizing his efforts in the prior year and identifying and analyzing and specific situations of concern in the region. A dialogue like this would be modeled on the annual Interactive Dialogue on the Responsibility to Protect that takes place at the UN General Assembly. This dialogue could both be focused on discussing regional implementation and ensuring complementarity with UN efforts on R2P with a gender perspective.

And third, the Organization could affirm its commitment to R2P through a Permanent Council or General Assembly resolution. Such a resolution might include language noting that all OAS Member States are Member States of the UN, which adopted R2P by unanimous consent; that OAS Member States have repeatedly expressed their dedication to R2P in other fora (such as the UN, the Group of Friends of R2P, and the Latin American Network for Genocide and Mass Atrocity Prevention); restating that R2P is a doctrine narrowly focused on preventing and responding to mass atrocities, and is not a mechanism for regime change or military intervention; recognizing the clear linkages between the promotion and protection of women and girl's rights and the prevention of mass atrocity crimes; and committing to using all the tools at the Organization's disposal to protect populations vulnerable to mass atrocity crimes in the region. Of course, it will be up to the permanent representatives of Member States to decide if they wanted to propose and seek the adoption of such a resolution.

The OAS cannot remain silent and be another international bystander to past and ongoing mass atrocities. If the existing system is not effectively responding to the demands and needs of the victims of mass atrocities in the Americas, at the very least the OAS should build a regional mechanism that can prevent and respond more efficiently, and in a timely manner, to crimes of this nature in the Western Hemisphere. The costs of not having an R2P regional mechanism at the OAS so far has been the continued loss of human lives and the persistence of impunity for mass atrocities crimes.

## ANNEX I: GENDER BLINDNESS IN THE R2P PRINCIPLE

In order to highlight the historical lack of explicit mention of “gender” and “women” in the R2P principle, the chart below illustrates the amount of direct references to both of the terms in the R2P annual reports from 2009-2020.

Annual Reports on R2P <sup>295</sup>					
Year	References to “Gender”	References to “Women”	Year	References to “Gender”	References to “Women”
2009	5	6	2015	1	4
2010	1	0	2016	2	2
2011	1	2	2017	1	7
2012	0	0	2018	4	10
2013	3	6	2019	5	11
2014	6	8	2020	73	192

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<sup>295</sup> *Opportunity for Gendering the Responsibility to Protect Agenda at the United Nations?*, *supra* note 117.



# OAS

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More rights for more people