

The Responsibility to Protect

A New Fault-line Along the North-South Divide?

Ramesh Thakur

Professor of Political Science, University of Waterloo

Professor of International Relations, Australian National University

We view events through the prism of our respective collective and individual historical narratives and life experiences. The Responsibility to Protect (R2P) is mainly about protecting at-risk populations largely in developing countries. Because they will be the primary victims and potential beneficiaries, the conversation on R2P should be principally among them. To the extent that developing country viewpoints rarely get an airing, let alone a respectful hearing, in mainstream media, Westerners typically have a badly distorted understanding of many international issues. In general, compared to the industrialised Western countries, developing countries are more interested in justice among rather than within nations, more concerned about the root causes of terrorism like poverty, illiteracy and territorial grievances, more interested in economic development than worried about nuclear proliferation, and more committed to the defence of national sovereignty than the promotion of human rights. The fact that there are individual differences within developing countries and among Westerners does not invalidate the generalisation.

For most Westerners, war has become a remote abstraction far removed from everyday reality. The majority of today's armed conflicts involve challenges to national integration or to the government's authority. Westerners are incapable of comprehending the framework within which developing countries must cope with such challenges; most developing country leaders can empathise with one another on this point. While to Western minds, intervening to stop the bloodletting is restoring order around the

periphery, to developing countries, international intervention is a direct threat to territorial integrity. Then there is the moral hazard of encouraging ethnonational groups everywhere to demand independence and back it with violence that provokes state retaliation, which then promotes external intervention.

Today I want to examine the North-South divide with respect to the new global norm of R2P developed in 2001 and endorsed at the UN World Summit in 2005. Is R2P well-meaning enough to be attractive for its promise of making a difference, yet so vague as to be potentially threatening by being open to abuse? Is it in danger of falling prey to the fatal organisational paradox syndrome, where the effort to preserve the fragile diplomatic consensus in the international community is privileged over the call to protect vulnerable populations that led to the consensus in the first place? Can the North-South consensus on R2P, necessary for the world to be able to translate it from noble sentiment to actual deeds, be stopped from fraying only at the cost of the integrity of R2P that neuters the will to act? Or is R2P a norm in search of a self-justifying crisis?

I begin with a survey of views and opinions across the developing world in 2001, describe the evolution and consolidation of the norm, discuss some challenging test cases, and conclude with an analysis of the July 2009 debate in the UN General Assembly.

The Divisiveness of ‘Humanitarian Intervention’

The practice of intervention, and the belief that this is in the best interests of the natives who will warmly welcome and benefit from it, has a long but not necessarily distinguished lineage. ‘Humanitarian interventions’ rest on assumptions of moral superiority but also reflect the interests and perspectives of the powerful and the rich. The voiceless in the human rights ‘discourse’ are the marginalised and powerless in the global power equation. In Europe, centralising states sought to bring order to their societies by claiming a monopoly on the legitimate use of force. Developing countries fear that in the West, the view has gained ground that anyone *but* legitimate authorities can use force.

Developing countries' attachment to sovereignty is deeply emotional.

'They' (the European colonisers) came to liberate 'us' (the colonised natives) from our local tyrants and stayed to rule as benevolent despots. In the name of enlightenment, they defiled our lands, plundered our resources and expanded their empires. Should they be surprised that their fine talk of humanitarian intervention translates in our consciousness into efforts to resurrect and perpetuate rule by foreigners? That we look for the ugly reality of geostrategic and commercial calculations camouflaged in lofty rhetoric? Should we be mute accomplices when they substitute their mythology of humanitarian intervention for our narratives of colonial oppression? Do they think we do not remember or do not care, or is it simply that they themselves do not care?

The commitment to sovereignty is also functional. Sovereignty is the bedrock principle of the contemporary international system that provides order and stability.

The consultations in 2001 were notable for the sympathetic reception we got to the reformulation of 'humanitarian intervention' into the R2P concept, with the responsibilities to prevent and rebuild as integral components of it.

The hardest line against intervention was taken in Asia. It was argued that humanitarianism is good, interventionism is bad, and 'humanitarian intervention' is 'tantamount to marrying evil to good'. There is no basis for it in the UN Charter.

The use of force for moral reasons is dangerous and counter-productive. It can encourage warring parties to be rigid and irresponsible in the hope of internationalising the conflict. It can facilitate interventions by those exploiting the cloak of legality for self-interested purposes. Far from ending, both can cause or prolong large-scale killings.

There is conceptual incoherence. The individualistic conception of human rights in Western discourse is somehow mystically transformed into collective rights (the protection of groups of people) at the same time as the collective rights of the entire nation are still denied legitimacy.

The inconsistent practice, double standards and the sporadic nature of Western powers' interest in human rights protection proves that noble principles are convenient cloaks for hegemonic interests.

With respect to the agency for lawful authorisation, there was surprising consensus around the world on the central role of the UN, if with the caveat that more frequent interventions by an unreconstructed Security Council would erode the global legitimacy of the UN rather than imbue the interventions with international legitimacy.

There was also general agreement that interventions cannot become the pretext for imposing external political preferences with regard to regimes and political and economic systems.

The Africa Union charter explicitly spells out the principle of intervention with respect to war crimes, genocide and crimes against humanity. This is a shift from 'humanitarian' to 'statutory' intervention wherein African states 'have themselves accepted sovereignty not as a shield but as a responsibility'.¹

Geography and history ensure that in Latin America, 'the contrast between [US] hard power and [UN] legitimacy is viewed in even more vivid colours than in other regions of the globe'. The continent has had its share of rogue regimes (often backed by Washington) that brutalised their own people. The dual experience has shaped its response to the tension between sovereignty and intervention more sharply than in Africa and Asia.

From 2001 to 2009

¹ Dan Kuwali, 'The end of humanitarian intervention: Evaluation of the African Union's right of intervention', *African Journal of Conflict Resolution* 9:1 (2009), pp. 41–62, at p. 41.

The R2P agenda was kept alive by the UN Secretary-General's High-Level Panel in 2004, followed by Kofi Annan's own report in 2005 before endorsement of R2P by government leaders who met at the UN's world summit in autumn 2005. The Outcome Document contained a clear, unambiguous and unanimous acceptance of individual state responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Leaders further declared that they 'are prepared to take collective action, *in [a] timely and decisive manner*, through the Security Council... and in cooperation with relevant regional organisations as [sic] appropriate, should peaceful means be inadequate and [where] national authorities are manifestly failing to protect their populations'.

In January 2009, Ban Ki-moon published his report on implementing R2P which fleshes out in clearer detail many of the original ICISS ideas. Building on the 2005 Outcome Document, the report is effective in packaging R2P as comprising three pillars: the state's own responsibility to protect all peoples on its territory, international assistance to help build a state's capacity to deliver on its responsibility, and the international responsibility to protect.

Three actual test cases are worth discussing here in highlighting the potential for North-South divisions: Myanmar, Gaza and Sri Lanka.

In 2008, with Myanmar's deadly Cyclone Nargis, principles, politics and practicality converged in counselling caution in invoking R2P.

A related danger is seeking remedy in R2P when better or more appropriate tools and instruments are available. With Israel's military offensive on Hamas-ruled **Gaza**, there were issues of *international and UN Charter law* involved: the well established rights to self defence against armed attack and to resist foreign occupation, the validity of these justifications for the resort to violence by Israel and Palestinians and the limits to the exercise of these rights. There were issues of *international humanitarian law*: regardless of whether the use of force itself is lawful or not, the conduct of hostilities is governed by the Geneva laws with respect to proportionality, necessity and distinction between

combatants and civilians. There were charges and counter-charges of possible *war crimes*. In all this, R2P did not seem to be the most pressing or relevant issue.

The debate over Gaza also raises the question of occupying powers' responsibility to protect all peoples living under their occupation, be they Palestinians, Iraqis or Afghans.

In May 2009 there was debate over the relevance and applicability of R2P to **Sri Lanka**. Was it reasonable for the government to build the capacity and demonstrate the determination to defeat the Tigers, one of the most ruthless terrorist organisations of all time, as part of its responsibility to protect? There is also the moral hazard of validating the tactic of taking civilians hostage as human shields.

The inapplicability of R2P does not, of course, exempt the government or the Tigers from the requirements of IHL in the conduct of hostilities. Where R2P does apply to the government, it is in its preventive and rebuilding components.

The July 2009 General Assembly Debate

The General Assembly debate on R2P in July 2009 was addressed by 94 speakers, almost two-thirds of them from Africa, Asia and Latin America. Almost all re-affirmed the 2005 consensus, expressed opposition to any effort to re-open it and insisted that its scope be restricted to the specified four crimes. Most supported Ban's three-pillar strategy based on the 2005 document. Several expressed reservations about selectivity and double standards. Some urged voluntary self-restraint in the use of the veto when faced with atrocity crimes. There was near-unanimity in accepting state and international responsibility to prevent atrocities through building state capacity and will and providing international assistance (Pillars One and Two) and in grounding these fundamental obligations in the UN Charter, human rights treaties and IHL. Most affirmed that should other measures not be adequate, timely and decisive coercive action, including the use of force, is warranted to save lives. Ghana's delegate noted that R2P attempted to strike a balance between non-interference and what the African Union calls non-indifference. The

pro-R2P interventions by the delegates of East Timor and Rwanda were especially poignant.

Only a few rejected the use of force in any circumstance. Only Cuba, Nicaragua, Sudan and Venezuela sought to roll back the 2005 consensus. The debate was a resounding success for the R2P principle and for advocates and victims working to prevent atrocity crimes by all means necessary within the Charter regime.

Conclusion

It seems reasonable to conclude that the developing countries were reassured by the refusal of most countries to broaden the 2005 crimes to cover natural disasters in Myanmar in 2008 and the broad support of Sri Lanka's right to defend the state against a violent secession by terrorist means in 2009. Had these cases gone in the opposite direction, the tenor and outcome of the General Assembly debate might well have been totally different.

Our choice in the real world is no longer between intervention and non-intervention, but between different modes of intervention: ad hoc or rules-based, unilateral or multilateral, and consensual or deeply divisive. R2P will help the world to be better prepared – normatively, organisationally and operationally – to meet the challenge, wherever and whenever it arises again, as assuredly it will. It is rooted in human solidarity, not in the exceptionalism of the virtuous West against the evil rest.

R2P is more about building state capacity than undermining state sovereignty. The scope for military intervention is narrow and tight. The instruments for implementing its prevention and reconstruction responsibilities are plentiful. When post-election violence broke out in Kenya in December 2007–January 2008, Francis Deng urged the authorities to meet their responsibility to protect the civilian population. Desmond Tutu interpreted the African and global reaction to the Kenyan violence as 'action on a fundamental principle – the Responsibility to Protect'. Called in to mediate, Annan too saw the crisis

in R2P terms. His successful mediation to produce a power-sharing deal is our only positive R2P marker to date.

The 2005 Outcome Document navigates the treacherous shoals between the Scylla of callous indifference to the plight of victims and the Charybdis of self-righteous interference in others' internal affairs. R2P is rooted as firmly in indigenous values and traditions as in abstract notions of sovereignty derived from European thought and practice. Many traditional Asian cultures stress the symbiotic link between loyalty of citizens to sovereigns and duties owed by kings to subjects.

It is easy to mistake the volubility of the few for broad agreement among the many. R2P has been described as being narrow but deep. Support for R2P in the global South may not, yet, be very deep, but it is broad. For 350 years, from the Treaty of Westphalia in 1648 to 1998, sovereignty functioned as institutionalised indifference. R2P is the mobiliser of last resort of the world's will to act to prevent and halt mass atrocities. It is our normative instrument of choice to convert a shocked international conscience into timely and decisive collective action.

In closing, to paraphrase the mantra of Realism, international politics, like all politics, is a struggle for ascendancy of competing normative architectures of world order. The present dispensation of the international order reflects the two-century dominance of Western power, values and ideas. As power shifts and the world returns to the historical norm of China, India and Asia more generally being lead players at the centre and not periphery of world affairs, there is an urgent need for Asians to shift – mentally, intellectually and operationally – from being norm spoilers and hesitant norm followers to becoming norm entrepreneurs and norm champions. “Responsible stakeholderhood” will require adjustments to habits of thinking and action both on the part of the West and on the part of Asians.