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THE RESPONSIBILITY TO PROTECT: ITS RISE AND DEMISE

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Abstract

The doctrine of Responsibility to protect was developed in order to address the issue of mass atrocities, which were brought about by intrastate and ethnic conflicts as well as oppressive regimes throughout the world. It embraced the idea of the immunity of human rights, the moral need to intervene in cases that shock human conscience, and posed a challenge to the conventional understanding of sovereignty by redefining it as "responsibility". However, this essay argues that the controversial implementation of the doctrine in Libya and its non-implementation in the case of Syria despite widespread humanitarian crisis in terms of civilian casualties and massive population displacement amount to a failure.

Key words: intervention; sovereignty; humanitarian intervention; Libya; Syria; UN Security Council

INTRODUCTION

As the Cold War came to an end, the last decade of the XX century prompted a search for a "new order" for a world which was torn apart by acts of genocides, intrastate conflicts and ethnic cleansings. In response to growing humanitarian crises international organizations and states including the great powers appeared sharing common concerns and willing to act together.

Subsequently, the United Nations Security Council emerged as an effective institution authorizing use of force by referring to humanitarian concerns in some cases. However, the UN Charter that was designed for the international community of post-World War II simply fell short on justifications for "humanitarian interventions" even if international community and the permanent members of the United Nations Security Council (P5) agreed upon to act. This deficiency was caused by the Charter's adherence to the central principle of modern international system, namely state sovereignty. Thus, the Charter as a substantial source of international law lacked any reference to humanitarian interventions and Article 2(4) reflected a commitment to national sovereignty.

But humanitarian crises continued to emerge questioning what really should fall within the domestic jurisdiction of states, and proposing what warrants an international involvement to avert occurrences of events that shock human conscience. Should international community respond to mass atrocities that take place within sovereign states? Do states have "duties beyond borders"? (Hoffman 1981; Welsh 2004).

FROM HUMANITARIAN INTERVENTION TO RESPONSIBILITY TO PROTECT

Authorization of military action for humanitarian concerns lacked a paramount legality and UNSC could only adopt resolutions as to a "breach of international peace" and "threat to international security" which was an indirect way to respond to some humanitarian crises and call on states to act together (Security Council Resolution 688, and 794). The dilemma of human rights vs. state sovereignty was well known way before the humanitarian interventions in Iraq, former Yugoslavia, Somalia, etc. Yet, the sovereignty as a main rule of the international agreements signed by the sovereigns was not even disputable since the XVII century. Despite the Geneva Convention of 1951, with its roots in the Treaty of Westphalia (1648), the legal framework of modern international law had once again proven to be totally inoperative in cases of mass violations of human rights throughout the 1990s.

The devour for constructing a new norm for the legal justification of the "morally esteemed interventions" that perceives the sovereignty of human beings over the sovereignty of the state had reached its peak in the new millennia when Kofi Annan as the UN Secretary General addressed the General Assembly asking: "If humanitarian interventions is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?" (United Nations 2000).

The International Commission on Intervention and State Sovereignty (ICISS) was formed in 2000 under the auspices of the Canadian government to find an answer. It was "a response to Secretary-General challenge to the international community to endeavor to build a new international consensus on how to react in the face of massive violations of human rights" (ICISS 2001). The commission published its report in December 2001, formulating a new concept, "responsibility to protect" instead of "the right to intervene" in cases of mass atrocities (ICISS 2001). The report seems to be an attempt to re-interpret traditional norms of non-intervention and national sovereignty, and regulate international response to humanitarian crises (Evans 2008). It is based on the view that sovereignty does not only entail rights for states but also carries with it a responsibility to their citizens that of protecting them against grave human rights violations. Thus, instead of questioning sovereignty and calling for an international intervention to respond mass atrocities, thus, dictating a foreign will over national governments, the new doctrine proposes a mechanism of protecting citizens derived from the very concept of national sovereignty. The old dictum of "if sovereignty, then non-intervention" (Vincent 1986: 117) is replaced with "if sovereignty, then responsibility." Hence, in case a state is unable or unwilling to protect its citizens the ICISS report asserts that the responsibility should move on to the international community (Homans 2011).

The doctrine of Responsibility to protect (R2P) maintains that a sovereign is entitled to protect not violate the rights of its subjects, and the failure to protect ascertains the absence of sovereignty. In this way, international coercive measure, introduced as part of R2P, cannot be interpreted as an intervention into a "sovereign entity" since sovereignty is dissipated with the failure to protect.

With such an attempt to reformulate the concepts of sovereignty and intervention the ICISS report aimed to influence the conduct of international relations and the way in which sovereign states behave toward their own citizens. Re-conceptualizing sovereignty as responsibility and not a right or dominion was expected to break the deadlock on the sovereignty-humanitarian intervention debate. Moreover, avoidance of the contested term 'humanitarian intervention' was an attempt to disperse the resistance of the non-Western world to the idea of an international role in addressing 'domestic human rights issues' by Western powers with imperialistic motives.

In 2004, even though R2P was then referred to as an "emerging norm" (United Nations 2004) of international law, it was repeatedly endorsed on the highest levels of the international community mostly through stressing that the Charter reaffirmed a fundamental faith in human rights but did not do much to protect them, thus R2P could be an ideal reinforcement concerning the nature of the Charter.

Finally, the principle of Responsibility to protect was established as a "norm" in the 2005 World Summit where it was unanimously agreed upon by all UN member states - including Russia and China who had raised concerns for state sovereignty before (Wheeler 2000). Narrowing down the issues addressed by R2P the Outcome Document specifically referred to protecting populations from "genocide, war crimes, ethnic cleansing and crimes against humanity" (United Nations 2005). In doing so, with the Outcome Document, states undertook the responsibility to take "collective action, in timely and decisive manner, through the Security Council" (United Nations 2005). Assigning the Security Council such a task was consistent with the Council's mandate to "maintain international peace and security". Thus it was important that Security Council too reaffirmed the emerging "norm" of responsibility to protect. This came in 2006 with Security Council Resolution 1674, for the first time the Council made a reference to the Responsibility to protect in a resolution adopted by all members including Russia and China. With the Resolution 1674 Security Council pledged its commitment to address mass atrocities as "systematic, fragrant and widespread violations of international humanitarian and human rights law may constitute a threat to international peace and security" (Security Council 2006).

THE DOCTRINE OF R2P AND ITS PRACTICAL IMPLICATIONS

As outlined in the Outcome Document agreed upon by more than 150 heads of state and government the doctrine of R2P consists of three pillars:

- The state carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
- The international community has a responsibility to encourage and assist states in fulfilling this responsibility;

- The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations (United Nations 2005).

It had been expected that the newly "emerging norm" of R2P would be effective in preventing gross violations of human rights. Besides, it was expected that the concept of R2P would resolve the tension between state sovereignty and the idea of humanitarian intervention as a last resort in cases of mass atrocities committed by a sovereign state. Thus, its (r)evolutionary arguments regarding humanitarianism, the limits and conditions of sovereignty and the responsibilities of the international community rendered R2P a moral, conceptual and practical tool to address humanitarian crises of the new millennium (Doyle 2016).

The understanding of sovereignty had gradually evolved in favor of individuals from the day it was considered as unlimited power of the state over a given territory and its people. R2P has carried the understanding of sovereignty into the realm of responsibility. The notion of "sovereignty as responsibility" as reformulated by the International Commission on Intervention and State Sovereignty (ICISS 2001), implies that the state authorities are directly responsible for guaranteeing the safety and security of its citizens, and the international community has a duty to assist states in fulfilling this duty. If the state fails to fulfill the duty of protecting its peoples, by omission or commission, then the contract signed becomes void (Hobbes 2009), and the responsibility of protecting masses from anarchy or tyranny converts to the international community (Holzgrefe 2013).

As a response to "new interventionism" of the 1990s the proponents of R2P, as recognized in the Outcome Document of 2005, argued that invocation of R2P needs to be done case by case. Furthermore, the principle of R2P placed military intervention as a means of "last resort." The international community has the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means" before an outright military operation to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Moreover, the humanitarian consequences of the intervention should clearly be less than the predicted results of inaction, and the proposed military action is to be kept on the proportion (Zifcak 2014). Thus, the R2P does not propose an immediate coercive response to all cases of humanitarian crises. It envisages preventive measures as well as conflict management and conflict resolution mechanisms.

What is, thus, important to underline is that R2P is not just about responsibility to react. It involves the responsibility to prevent which seeks to take steps to ensure mass violations of human rights will not occur, and most importantly the responsibility to rebuild which extend a duty to international community to help build economy and institutions in the country concerned. The main problem with R2P when it comes to righting a wrong in a sovereign country by use of force is the question of when, with whom and how to do so. Besides, how many civilian deaths would fulfill the requirements of an R2P intervention is again a mystery. All these add to the political nature of the R2P let alone the challenges it poses to core principles of international relations namely state sovereignty and non-intervention.

Moreover, as a moral stand against grave human rights violations, the R2P may be agreeable despite some divergent views on it, but as a practice it is likely to be a constant source of disagreements, even conflicts among "sovereign" states. The claims of inconsistencies, double standards, operational failures and unexpected outcomes will always haunt the debate on the implementation or non-implementation of R2P.

THE PRACTICE AND NON-PRACTICE OF R2P:
THE CASES OF LIBYA AND SYRIA

Regardless of the rapid development of R2P as a "norm for our times" (Bellamy 2015) it wasn't until the adoption of the Security Council Resolution 1973 in 2011 with its explicit reference to R2P that the doctrine on paper was applied in practice with its controversial coercive mechanism. Resolution 1973 was justified by a broad reference to the need to "maintain or restore international peace and security" claimed to be threatened by the aggression of the Libyan government toward its own citizens (Security Council Resolution 1973). Thus, after "determining that the situation in the Libyan Arab Jamahiriya continues a threat to international peace and security" (Security Council Resolution 1973) the resolution asked for an immediate ceasefire, demanded the formation of a no-fly zone and permitted all necessary measures for her members to implement the no-fly zone and protect the civilians in Libya.

The citation of the doctrine of Responsibility to protect as the ground for an international intervention by the UNSC – unlike the case of Kosovo - was seen by some as a beginning of a new era (Weiss 2011; Bellamy and Williams 2011). The Resolution 1973 was, in fact, the first of its kind authorizing use of force based on the doctrine of R2P against a "sovereign country," which differentiated it from all other Security Council resolutions that make references to responsibility of governments and international community to protect civilians. At first, the Resolution 1973 appeared as a consensus to initiate a set of humanitarian measures to ensure protection of the civilians, however, soon it was taken by the coalition powers as a mandate to induce a "regime change" in Libya. Even though the resolutions never authorized a specific duty to the NATO, it begun its assault against the Libyan Government forces and contributed to the ousting of Muammar Gaddafi from power. The breach of the mandate of the Resolution by setting an objective to overthrow the regime instead of protecting civilians was hard to justify from a legal/normative point of view that discredited the practice and reliability of the doctrine of R2P (Zifcak 2014).

Despite the military victory on the ground, the means used for this victory and the consequences of "the day after" didn't only reveal the overwhelming differences between the non-disputable doctrine of R2P and its controversial implementation, it also justified the concerns of the parties -especially Russia and China- who abstained from the voting of resolution 1973 in the Security Council and were not very enthusiastic right from the beginning about the doctrine of R2P (Morris 2013). Hence, the empirical failure of R2P illustrated the inherent problems of the doctrine when it comes to resolving unrest within a sovereign country. Questions of when, by whom and how to use force begged for concrete answers that are above the domain of international power-politics. Military intervention that NATO conducted was considered by critiques as a breach of Security Council Resolution 1973 which demanded the immediate establishment of a cease-fire and an end to all

violence. Besides, there was no proper effort on the part of the intervening states to establish a no-fly zone, and cease-fire demanded by Resolution 1973 wasn't enforced for the rebels (Hehir 2013). Moreover, the critiques argued that in the Libyan case the intervening powers deviated from the fundamental norm of neutrality of the R2P to arming and funding rebels against the government.

According to the Outcome Document that regulates implementation of R2P international community has also the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means" before an outright military operation to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Thus, military intervention has to be the "last resort." Was it the last resort in the case of Libya? Whether these other peaceful measures were taken by the intervening states before a military action in Libya is doubtful (Morris 2013). The argument that situation on the ground required a speedy military response has a point but this does not change the policy revealed soon of the coalitions forces to use the Security Council mandate to ensure a regime change in Libya.

The non-activation of responsibility to rebuild in a failed state also escalated criticisms. The reservations of the states who abstained from Resolution 1973 were further acknowledged in 2012 by the Secretary-General himself as he stated:

> Others have expressed the view that those charged with implementing Council Resolution 1973 exceeded the mandate they were given by the Council (…) it is important that the international community learn from these experiences and that concerns expressed by the member states are taken into account in the future (United Nations 2012).

Following the mis-practice of R2P in Libya the crisis unfolded in Syria, where every aspect of the civil war begged for R2P to be implemented in full, demonstrated the barriers to its practice (Thakur 2015), and the shortcomings of the principle in a game of power politics (Tocci 2016). The scenes from the ground in Syria have for long warranted full implementation of R2P. According to The Economist the death toll in Syria reached 470 000 at the beginning of 2016 (The Economist 2016), and since the beginning of the civil war more than half of the population in the country have been displaced. Commission of Inquiry authorized by the UN Human Rights Council published reports documenting massive human rights violations committed by government forces and armed opposition groups. According to the Commission's reports civilians were attacked, health and aid workers were targeted, barrel bombs and chemical weapons were used and indiscriminate executions were carried out, torture and rape were widely practiced (United Nations Human Rights Council 2014). All these clearly constituted "crimes against humanity and war crimes" concluded the Commission, the occurrences which R2P was set to prevent and act upon. Thus, the scale of humanitarian crisis and crimes perpetrated had justified the invocation of the norm of R2P with its coercive element. Yet, the Security Council, responsible for the maintenance of international peace and security, could not reach a consensus on responding to the atrocities in Syria. Though the Council referred to "responsibility to protect" the civilians in its five resolutions on Syria none authorized the use of coercive means under Chapter VII of the UN Charter like Resolution 1973 regarding Libya to end violence targeted the civilians. Attempts to pass resolutions in the Security Council to impose sanctions on Syria and bring the Syrian government before International

Criminal Court for committing war crimes and crimes against humanity were repeatedly vetoed by Russia and China (Ziegler 2016). The Russian opposition to any attempt within the Security Council to impose sanctions on Syria prevented the Council to take a step under Chapter VII of the Charter. The Russians, viewing the Syrian government as their staunch ally in the Middle East, were determined not to let an intervention in Syria similar to the one in Libya that would result in a regime change (Valenta and Valenta 2016).

However, international community worked together to bring the warring sides to agree on a ceasefire and peace settlement for which various rounds of talks were initiated by the UN in Geneva. Besides, the UN agencies worked hard to improve access to Syrian civilians in need of humanitarian aid. These minor successes aside, the Security Council, and thereby international community, has failed in protecting the Syrian civilians.

The Syrian case demonstrated that in the absence of consensus among the "permanent five" of the Security Council it is highly unlikely to use R2P in full with its coercive means. During the first years of the civil war the inaction of the Security Council was caused due to the breakdown of consensus on the implementation of R2P over Libya (Nuruzzaman 2013). Later, even with the arrival of ISIS as an "enemy of humanity," the silence of the Council continued since the "permanent five" could not agree on political objectives of implementing R2P and diverged about their own strategic gains. The idea of protecting civilians got lost in the search for influence in the aftermath of an intervention in Syria.

CONCLUSION

As a moral stand against grave human rights violations R2P had enjoyed unanimous international support, but as a practice it has demonstrated to be a constant source of disagreement among sovereign states. Inconsistencies, double standards, operational failures, conflicting interests of parties involved and unexpected outcomes proved to undermine validity of R2P.

Evidently, the covert agenda for regime change in Libya when implemented, and the failure to employ it when needed in Syria marked consecutive setbacks for both the doctrine and practice of R2P. The principle has conclusively failed to justly and effectively address the deep rooted problems it had offered to solve and gave the impression to be a good tool of political jockeying more than a compelling means to prevent mass atrocities.

Even though R2P has proven to be selective, ineffective and open to abuses dismissing R2P altogether would only reinforce the dilemmas of today and display the inability of the international community to act to stop atrocities that shock human conscience. In order not to nullify the achievements of R2P on humanitarian concerns and the reinterpretation of state sovereignty in international law, the principle needs to be subjected to serious restructuring that will make it more feasible and definite – in other words less imperfect.

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