Non-Intervention, or Responsibility to Protect?

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The dilemma of how to deal with and respond to humanitarian disasters and large-scale human rights abuses has come more and more to the forefront of political and academic debate over the last few decades. The fact that nowadays, due to Globalisation, "there is no longer such a thing as a humanitarian catastrophe occurring 'in a faraway country of which we know little'" (ICISS Report 2001: 5) has contributed to this. As a result, the question of whether the international community should still obey the principle of non-intervention or whether the time has come to turn the concept of 'Responsibility to Protect' into an international norm, has been subject to much debate recently amongst policy makers and academics alike. The examination of the question of the relevance and applicability of R2P in a globalised world is divided into three parts. At first, the concept of 'Responsibility to Protect' (R2P), its origins and possible future prospects will be outlined, so as to set the scene for the subsequent discussion. The second part will present the concerns of scholars like Aidan Hehir and Mohammed Ayoob, whose main apprehension relates to what they see as a possibility for the more powerful states to abuse the 'Responsibility to Protect' to not only further their interests, but also to dominate weaker nations (Ayoob 2002: 92; Hehir 2010: 121). Finally, the third part will examine the views held by academics like Alex J. Bellamy and Louise Arbour, who argue that in today's world, states cannot and must not be "innocent and impotent bystanders" of humanitarian disasters and war crimes in foreign countries (Arbour 2008: 445). The general argument of this work will be "that the responsibility to protect, if properly understood, implemented and enforced, provides both conceptual and practical avenues that could help fill the asymmetry between the magnitude of threats to human security and our ability to face them" (Arbour 2008: 456).

The term 'Responsibility to Protect' was most notably promulgated by the International Commission on Intervention and State Sovereignty (ICISS) and describes, in essence, "intervention for human protection purposes" (ICISS Report 2001: 1). The concept is reminiscent of the doctrine of 'Humanitarian Intervention', which Gareth Evans and Mohamed Sahnoun defined as "coercive action against a state to protect people within its borders from suffering grave harm" (Evans and Sahnoun 2002: 99). However, the Commission chose the term 'Responsibility to Protect' for very specific reasons. First of all, as is apparent, if this principle becomes an international norm, the term 'Responsibility' carries more weight as far as enforcement is concerned, since it implies a certain obligation. Secondly, and arguably even more important, is the underlying shift in attention away from a "right to intervene" under the concept of 'Humanitarian Intervention' that centres on the potential interveners, to a "responsibility to protect", focussing on the potential victims and their needs (ICISS Report 2001: 11). This shift is also evident when examining the sub-principles of R2P. The "traditional bond of duty between the host state and its citizens" (Stahn 2007: 108) is reflected in the fact that "this responsibility is owed by all sovereign states to their own citizens in the first instance" and that only "if that first-tier responsibility is abdicated, or if it cannot be exercised", does it transfer to the international community as a whole (Evans and Sahnoun 2002: 101). This "fallback responsibility" (ICISS Report 2001: 17) of the international community is – in order to work most effectively – divided into three parts: responsibility to prevent, responsibility to react, and responsibility to rebuild (ICISS Report 2001). This shows that "the norm [R2P] is engaged from the earliest stages of a situation of concern" (Arbour 2008: 448), with its sub-principle of prevention focussing not on military actions, but rather on political, economic and judicial measures that can be used before a situation escalates (Evans and Sahnoun 2002: 103).

Ever since its "full-fledged elaboration" (Arbour 2008: 447) by the ICISS in 2001, the concept has received much praise, but was also subject to criticism and requests for alterations. In 2005, the concept was discussed at the World Summit where – after much debate – it was finally included in the Outcome Document of the United Nations

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World Summit 2005. However, the wording used in paragraphs 138-140 dedicated to the Responsibility to Protect remains vague and even though the word 'Responsibility' is used, which would imply an obligation, paragraph 138 goes on to say that "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" (World Summit Outcome Document 2005: para. 138; emphasis added). Hence, using the word '*should*' rather than something along the lines of 'are obliged to', fails to place a real duty on states to exercise their 'Responsibility to Protect'. Reaffirming the Outcome Document of the 2005 World Summit, the United Nations Security Council (UNSC) subsequently passed Resolution 1674 (2006), in which it acknowledges the Responsibility to "protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (UNSC Resolution 1674 (2006) para. 4). The acknowledgement of the 'Responsibility to Protect' by the UNSC and the "endorsement [of the R2P] by the world's leaders in 2005" (Arbour 2008: 447) mark important steps on the way towards establishing the 'Responsibility to Protect' as an international norm.

Having thus set the scene by explaining what exactly is meant by 'Responsibility to Protect', this essay will now first examine the criticism put forward regarding this concept by academics such as Mohamed Ayoob and Aidan Hehir. One principle that always surfaces in relation to R2P is that of non-intervention under which "a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have the corresponding duty not to intervene in its internal affairs" (Evans and Sahnoun 2002: 102). The concept of non-intervention is closely linked with the existence of the Westphalian system of sovereign states and has arguably "created a more peaceful, orderly world system" (Hehir 2010: 122). Sovereignty and non-intervention are, hence, often "the only protection that weak states have against the strong. […] interventionism is illegal and illegitimate because it offends against the constitutive norms of international society" (Bellamy 2003: 324). This is connected to the argument put forward by some that a right or even responsibility to intervene introduces a hierarchy into the relationship between the state that intervenes and the nation that is intervened upon and thus the world order would be disrupted (Arbour 2008: 447). However it is not only the weaker, developing states that fear infringement of their sovereignty. If the 'Responsibility to Protect' becomes a ratified, accepted and binding international norm, the more powerful developed states will also lose part of their sovereignty to the international community – their decision-making sovereignty (Luck 2011: 13). Hence both, developing and developed states fear that at least a part of their sovereignty will be compromised under R2P – for the developing states it is territorial sovereignty and for the developed states their decision-making sovereignty.

The infringement on states' sovereignty outlined above is one of the potential 'risks' associated with implementing the 'Responsibility to Protect', another is the danger of R2P being used as a cloak to cover up a state's "naked pursuit of national self-interest" (Arbour 2008: 446). Using the concept to justify an intervention that is not motivated by the desire to help the victims of oppression or Human Rights violations, but by the want for natural resources or dominion over the state in crisis must not happen if the doctrine is to retain any respectability. If it this would happen, it would completely undermine the legitimacy of the principle and would either lead to its demise or at least to a degree of cautiousness in its application up to the point where it is of limited use. Just as the concept of 'Responsibility to Protect' can be over- or misused, there is also the danger that it could "facilitate Western *inaction*" (Hehir 2010: 123). Aidan Hehir has argued that the two general thresholds that must be met in order for R2P to become applicable – namely "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation" and "large scale ethnic-cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape" (ICISS Report 2001: 32) – could, due to their ambiguity, lead to action either being taken too late or even not at all, since there is much room for states reluctant to intervene to argue that these thresholds have not yet been met. However, instead of seeing these potential risks as obstacles to establishing R2P as an international norm, they should rather be regarded as signposts pointing towards parts of the concept that need improvement in order to fulfil its purpose.

A final, but nevertheless also significant risk that will be discussed here regards the execution of any operation carried out under the banner of 'Responsibility to Protect'. The handling of the recent events in Libya has led journalist and author David Rieff to use the rather extreme headline "R2P, R.I.P." for his article concerning the end of UNSC and NATO intervention in Libya (Rieff 2011). Even though the title chosen seems radical, it does serve as an attention-grabber and, upon closer examination, it becomes clear why it was chosen. David Rieff outlines how the

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operation in Libya was conducted and what happened during the intervention which, "at first glance […] looks like a textbook case of how the new U.N. doctrine of the Responsibility to Protect (R2P) was supposed to work" (Rieff 2011). The example of Libya, as he claims, shows how an operation that is based on the doctrine of R2P and achieved so much – forestalling the massacre in Benghazi in March is just one example – can get 'carried away' and go beyond its mandate, thus threatening not only the legitimacy of that particular intervention, but of the 'Responsibility to Protect' in general (Rieff 2011). As noted above, R2P entails a responsibility to prevent, react and rebuild, but it is "emphatically not about regime change" (Rieff 2011). However, in Libya, "NATO military operations brought down Qaddafi's 42-year-long dictatorship" (Rieff 2011) and thus went beyond their mandate. Once again, although it raises serious concerns, this example needs to be regarded as a form of constructive criticism, rather than as a sign that the principle of 'Responsibility to Protect' should not be endorsed. All the situations and risks above point to areas of R2P that require particular attention, so that the concept can become a binding international norm and not an "easily abused framework for Western states, and indeed powerful states generally" (Hehir 2010: 223).

Having considered the main risks and criticisms regarding R2P, let us now look at why in today's world we can no longer hide behind the traditional norm of non-intervention, but need a norm of 'Responsibility to Protect'. Over the last few decades, the effects of Globalisation on information technology and communications systems have been significant. Suddenly, "situations in 'unimportant' parts of the world, such as those in Kosovo and Somalia, […] became matters for domestic debate within Western states in the 1990s" (Hehir 2010: 6). Previously, without "the ability to broadcast live around the world" (Hehir 2010: 5), humanitarian disasters or Human Rights violations in countries other than one's neighbours, did not instantly – if at all – appear on in the media. Nowadays, though, "With the world as close and interdependent as it now is, and with crises in "faraway countries of which we know little" as capable as they now are of generating major problems elsewhere […] it is strongly arguable that it is in every country's interest to contribute cooperatively to the resolution of such problems, quite apart from the humanitarian imperative to do so" (Evans 2004, para. 41). This unprecedented closeness and interdependency almost turns all states into neighbours with a mutual 'Responsibility to Protect'. Irrespective of where in the world one is, it is possible to see and hear what is happening in nations on the other side of the globe and be affected by it. This has led Louise Arbour to assert that "whether one likes it or not, the fact is that the global web of our interdependence makes it altogether unpersuasive for anyone to claim a status of 'impotent and powerless bystander' in the face of gross violations of human rights" (Arbour 2008: 445). Moreover, given this drastic change in circumstances, one cannot expect traditional principles of international relations – like non-intervention – to still be one-hundred percent applicable. Maybe, now that we live in this interconnected world of Globalisation we have to acknowledge the need for a 'Responsibility to Protect' and realise that "the principle of non-interference must be qualified in important respects" (Tony Blair, Doctrine of the international community speech to the Economic Club Chicago, 22.4.1999).

Aside from the fact that the suffering of foreign peoples can now be witnessed by private citizens at home on TV, in the political realm it is the emergence of the Human Rights Regime that carries another incentive to endorse the principle of 'Responsibility to Protect'. The obligations implicit in this Regime are part of the reason why in a world of sovereign nation states, world leaders would "unanimously declare that all states have the responsibility to protect their citizens […] and that they stood 'prepared' to take collective action in cases where national authorities 'are manifestly failing to protect their populations'" (Bellamy 2009: 2). The ICISS declared that nowadays we live in "a new world in which human rights trumps state sovereignty"(ICISS Report 2001: 2). Hence, the focus is shifting from states, and their rights and protection, to the individual members of society and their universal rights as such. Having declared the protection of Human Rights a requirement of good international citizenship and a value to be protected, the international community found itself in need to develop effective mechanisms to uphold this principle and Louise Arbour argues "that the responsibility to protect, if properly understood, implemented and enforced" can provide viable means to do so (Arbour 2008: 456). The acknowledgement that Human Rights have to be protected and that the state holds primary responsibility to do so is closely tied to the idea of "sovereignty as responsibility" (ICISS Report 2001: 13). According to this notion, every sovereign state holds a responsibility to protect the life and liberty of its citizens and only if this responsibility is fulfilled, can the state also legitimately claim that others respect its external sovereignty (Bellamy 2009: 19). Looking at 'sovereignty' and the principle of non-intervention, which is closely linked to it, this way also partly solves the dilemma outlined above of how to avert humanitarian catastrophes without violating a state's sovereignty. Since, if the state in question fails to protect its citizens from a humanitarian disaster or is itself the perpetrator, it cannot expect the international community to respect the principle of non-intervention in

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the affairs of sovereign states. This is because that state lost its sovereignty the moment it didn't protect its population and thus an intervention carried out under an R2P mandate would not violate that state's sovereignty.

Overall, it has been shown that "growing state and regional organization practice as well as Security Council precedent do suggest an emerging norm, or guiding principle, which can usefully be described, in the Commissions language, as "the responsibility to protect"" (Evans 2004, para. 27). This essay set out to, first of all, give a brief overview of what is understood by R2P and how the concept has evolved over the past decade. Arguments of scholars like Aidan Hehir and Mohammed Ayoob who are more critical of the need for and benefits of 'Responsibility to Protect' as an accepted international norm were discussed in the second part of the essay. One of their main concerns was regarding the upholding of the principle of non-intervention and the infringement of a state's sovereignty. Regarding those apprehensions it was argued that, whilst these are valid claims, given the changing nature of the international system, these principles might need to be revised in order to suit the context of Globalisation. Another argument by R2P's critics that was discussed concerned the question of to what extent states would use R2P-rhetoric either as a cover for an intervention not motivated by the desire to right wrongs, but by national self-interest or, on the other hand, "to justify non-intervention" (Hehir 2010: 224). Once again, this is a valid concern, however it has been shown that rather than letting this impede further development of the principle of 'Responsibility to Protect', these risks point out those parts of the doctrine that, for it to become a binding norm, need particular attention and revision. The final concern addressed was regarding the execution of the operation itself. Here, all that can be said is that no situation is predictable and that the intervening forces are always running the risk of going beyond their mandate. However, once again, this should not stop us from implementing the 'Responsibility to Protect' as an international norm. It makes us aware of the pitfalls that are inherent in any such undertaking and hence offers the possibility for improvement.

Finally, it can be concluded that "for some, the international community is not intervening enough; for others it is intervening much too often" (ICISS Report 2001: 1-2). However, as has been established, "the realities of globalization and growing interdependency" (ICISS Report 2001: 7) make it impossible to turn our backs on large-scale Human Rights violations and Crimes against Humanity committed in foreign countries. If we want to avoid any more 'Rwandas' in this new century, we need to "develop consistent, credible and enforceable standards to guide state and intergovernmental practice" (ICISS Report, 2001: 11) and to this end, "RtoP has proven to be a politically powerful idea, whose time appears to have come" (Luck 2011: 23).

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