Humanitarian Intervention and the Responsibility to Protect

Security and human rights

Cristina Gabriela Badescu

Global Politics and the Responsibility to Protect

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Acknowledgments

Attention to the responsibility to protect topic increased exponentially after its UN endorsement in September 2005. In light of the large – and incessantly growing – market on R2P, and especially because of the demand for conceptual clarification regarding its framework, a book on the topic that would go back to basics and consider why the responsibility to protect emerged in the first place seemed necessary. The seed for this book was my Ph.D. dissertation, which focused on the search to develop a more acceptable account of the principles and mechanisms associated with humanitarian intervention. In the past three years, however, I have significantly altered and updated the initial chapters to incorporate the key developments on R2P that occurred since I received my Ph.D. in February 2007.

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more specifically, of the calls to protect civilians and implement the R2P agenda. Also, I am especially appreciative of the suggestions and conversations with Victoria Holt, Heidi Hulan, Elissa Golberg, and Bruce Jones, who were very generous in taking the time to answer my questions in the incipient stages of this project.

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par from the International Coalition for the Responsibility to Protect (ICRtoP) has kindly shared information on the ICRtoP's efforts to consolidate support for R2P. I have also benefited from the comments and insights of academic colleagues, such as Linnea Bergholm, with whom I have collaborated on several projects. Furthermore, I am grateful to the small but wonderful administrative team from the Ralph Bunche Institute who made my stay there as visiting research fellow so pleasant. Once I returned to the University of Toronto, Jutta Brunnée patiently answered my questions on the legal dimensions of R2P, and I am thankful for her time. All these people have influenced the views expressed in this book, and the discussion of R2P's prospects for implementation.

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Some of the material in this book was revised from pieces that I had published elsewhere. Chapter 2 is a revised version of "'The Responsibility to Protect': Embracing Sovereignty *and* Human Rights," in Noha Shawki and Michaelene Cox (eds), *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics* (Farnham: Ashgate, 2009). I would like to thank Ashgate for granting me permission to reprint portions of this chapter. Chapter 3 is a refined version of "Authorizing Humanitarian Intervention: Hard Choices in Saving Strangers," *Canadian Journal of Political Science*, vol. 40, no. 1 (2007). I am thankful to Cambridge for allowing the reprint of this earlier version of what is now Chapter 3. One section in Chapter 6, namely "Cases where R2P was considered," includes some elements from an article co-authored with Thomas Weiss: "Misrepresenting R2P and Advancing Norms: An Alternative Spiral?," *International Studies Perspectives*, vol. 11, no. 4 (2010).

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Abbreviations

AMIB	African Mission in Burundi
AMIS	African Union Mission in the Sudan
AMISOM	African Union Mission to Somalia
ASEAN	Association of South East Asian Nations
ASF	African Standby Force (AU)
AU	African Union
CFR	Council on Foreign Relations
DPKO	Department of Peacekeeping Operations (UN)
DRC	Democratic Republic of the Congo
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
ESF	ECOWAS Standby Force
EU	European Union
EUFOR RD	European Union Reserve Deployment (DRC)
GCR2P	Global Centre for the Responsibility to Protect
G77	Group of 77
HLP	High-Level Panel on Threats, Challenges and Change (UN)
HRC	Human Rights Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
ICRtoP	International Coalition for the Responsibility to Protect
IDP	Internally Displaced Person
IFOR	Implementation Force (in Bosnia and Herzegovina)
KFOR	Kosovo Force (NATO Mission in Kosovo)
MINURCAT	United Nations Mission in Central African Republic and Chad

MONUC	United Nations Organization Mission in the Democratic Republic of the Congo (Mission des Nations Unies en République Démocratique du Congo)
MSF	Médecins sans Frontières (Doctors without Borders)
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NRF	NATO Response Force
OAS	Organization of American States
OAU	Organization of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs (UN)
OHCHR	Office of the High Commissioner for Human Rights (UN)
ONUB	United Nations Operation in Burundi (Opération des Nations Unies au Burundi)
OSCE	Organization of Security and Cooperation in Europe
P5	Permanent Five Members of the UN Security Council
R2P	Responsibility to Protect
SADC	Southern African Development Community
SFOR	Stabilization Force (in Bosnia and Herzegovina)
SHIRBRIG	Stand-by High Readiness Brigade
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNAMID	United Nations/African Union Mission in Darfur
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNMIS	United Nations Mission in Sudan
UNOCI	United Nations Operation in Côte d'Ivoire
US	United States
WFM–IGP	World Federalist Movement – Institute for Global Policy

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1 Introduction

Humanitarian intervention and the responsibility to protect

Beginning in April 1994 and lasting for ninety days, Tutsis and moderate Hutus became the victims of a systematic genocidal campaign that resulted in 800,000 deaths in Rwanda. In July 1995, with United Nations (UN) peacekeepers present, 8,000 Bosnian men and boys were massacred in the safe haven of Srebrenica over a few days. In March 1999, the North Atlantic Treaty Organization (NATO) started a bombing campaign against the former Federal Republic of Yugoslavia to protect the Albanian population in Kosovo from being ethnically cleansed. While the first two examples epitomize the lack of reaction in the face of atrocities, NATO's military action in Kosovo was portrayed as illegal. NATO's actions were morally justified yet violated international law, as the UN Security Council had not authorized the military intervention. The above examples of intra-state violence illustrate unimaginable humanitarian consequences resulting from conflicts brought by the end of the Cold War. The horrors of the twentieth century, however, go beyond the mass killings of the 1990s, as suggested by the Holocaust during World War II, and the killing fields of Cambodia during the tyrannical Khmer Rouge rule, when up to two million people were slaughtered between 1975 and 1979. These horrors were not confined to the less developed parts of the world, but affected both North and South. However, an agreed normative foundation for dealing with such crises seemed to be missing.

The humanitarian intervention conundrum

Cases of genocide and mass violence have raised endless debates about the theory and practice of humanitarian intervention to save innocent lives. Since the UN proved itself unable to react in an appropriate and prompt manner to halt the humanitarian tragedies in Rwanda, Burundi, Bosnia, Kosovo and elsewhere, states have begun advocating a right to undertake interventions to stop mass violations of human rights from occurring. Their central concern rests with whether the UN's current regulations on the use of force meet the challenges of the post-Cold War world, and in particular the demands of addressing humanitarian emergencies. International actors tend to agree that killing civilians as a necessary part of state formation is no longer acceptable, nor is standing by idly in the face of massive violations of human rights. And yet, respect for the sovereign

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rights of states remains central among the ordering principles of the international community. How can populations affected by egregious human rights violations be protected? How can the legal constraints on the use of force and respect for state sovereignty be reconciled with the international community's willingness and readiness to take action in such instances? And more importantly, how can protection be offered when the Security Council, which is responsible for authorizing the use of force when threats to international peace and security occur, is paralyzed? Despite many competing proposals and contentious debates, can a prescriptive framework be developed to tackle such concerns? These questions are addressed in this book.

Although humanitarian intervention is believed to be a rather recent phenomenon, its earlier manifestations date back to the nineteenth century. The changes of the international system have impacted the practice of humanitarian intervention over the course of history, with distinctive patterns characterizing interventions in the nineteenth century, the post-UN Charter era, and the more recent post-Cold War period.[1] Until recently, the topic of humanitarian intervention occupied center stage in academic discussions. The concept of military intervention for humanitarian purposes has been one of the most divisive topics in international relations, especially in the post-9/11 environment and even more so in the aftermath of the 2003 invasion of Iraq. The language of morality, law and politics framed its contentious dimensions. Lawyers, international relations theorists, philosophers, and policy makers alike have addressed the dilemmas of humanitarian intervention[2] from a variety of approaches. Discussions on whether there is a legal right of humanitarian intervention, on how to address ethical considerations and what morality requires, and on the practical dilemmas related to the politics of intervention abound in the relevant literature.

Despite extensive consideration, no consensus was reached on the principles governing humanitarian intervention. To its proponents, intervention simply signals the imperative of action in the face of mass violence and is intertwined with a perception of sovereignty as conditional to a state's respect for the human rights of its citizens. To its detractors, humanitarian intervention is an oxymoron that serves as a pretext for selective military intervention without legal sanctioning, and an exercise that only achieves uncertain results. Throughout the 1990s controversy reigned – particularly over Rwanda, Somalia, Bosnia and Kosovo – between supporters of a right of humanitarian intervention and those who argued that state sovereignty precluded any intervention in the internal matters of a state where egregious human rights violations took place.

At the 54th session of the UN General Assembly in 1999, Kofi Annan, then UN Secretary-General, challenged member states to prevent "another Rwanda" and to reach consensus on the issue of humanitarian intervention. This moment was soon dubbed by commentators as the trigger for the search to produce a new prescriptive framework for the contentious humanitarian intervention debate. The response to this question was the creation of the responsibility to protect, hereafter referred to by its acronym, R2P.[3] This innovation signals a potential

breakthrough to the age-old debate. This book focuses on the contributions made by R2P to the debate on intervention.

In response to Kofi Annan's challenge, the Canadian government established the International Commission on Intervention and State Sovereignty (ICISS) in 2000 to address the quest of solving the humanitarian intervention conundrum. The Commission was launched in September 2000, and was chaired by the former Australian foreign minister, Gareth Evans, and one of the UN Secretary-General's special advisers at the time, Mohamed Sahnoun. The ICISS issued its ninety-page report, "The Responsibility to Protect," in December 2001, together with a 400-page supplementary volume under the same title, by Thomas Weiss and Don Hubert, detailing the background research on the topic. Despite being established by the Canadian government, the ICISS was an independent commission, whose report reflected its balance in composition, its innovative character, comprehensiveness, and outreach.[4] The concept of R2P was then endorsed in the 2004 report of the UN High-Level Panel entitled "A More Secure World: Our Shared Responsibility," and in the 2005 report of the former UN Secretary-General, "In Larger Freedom." Its most significant normative advance came in September 2005, when heads of state and government supported R2P in paragraphs 138 and 139 of the World Summit Outcome Document. The UN Security Council made specific references to R2P on three occasions: in two resolutions on the protection of civilians in armed conflict, namely resolution 1674 of April 2006 and resolution 1894 of November 2009, and in the August 2006 resolution 1706 on Darfur, which was the first to link R2P to a particular conflict. UN Secretary-General Ban Ki-moon appointed a special adviser tasked with promoting R2P, Edward Luck, and released his own report in January 2009 suggestively entitled "Implementing the Responsibility to Protect."

The responsibility to protect framework

R2P provides a prescriptive framework to further the discourse beyond the controversial use of force for humanitarian purposes, to addressing the protection of mass atrocity victims. As R2P emerged from the quest to solve the intervention conundrum, its recommendations address many of the contentious issues raised by the concept of humanitarian intervention. This book will assess the extent to which such recommendations bring consensus to some of the most controversial questions on intervention. Equally important, R2P has been described as "the most dramatic normative development of our time" (Thakur and Weiss 2009: 22). The attention to the topic among academics and practitioners increased exponentially after the world leaders' endorsement of R2P at the UN in September 2005, which had a genuine impact on the humanitarian intervention debate.

The political evolution of R2P deserves a brief description to pinpoint the key steps in its normative trajectory and also the elements that capture its transformation from the framework proposed in the 2001 ICISS report to its representation in 2009, in the report of the UN Secretary-General and the General Assembly debate on the topic. As expected, however, its central normative tenet has

remained a constant throughout its progression: state sovereignty entails responsibility and, therefore, each state has a responsibility to protect its citizens from mass killings and other gross violations of their rights. If that state is unable or unwilling to carry out that function, the state abrogates its sovereignty, and the responsibility to protect falls to the international community. Two aspects of the R2P framework are, thus, key: state sovereignty as responsibility, and international responsibility in egregious circumstances. The 2001 report put forward three components of the broader responsibility to protect umbrella, namely the responsibility to prevent, the responsibility to react and the responsibility to rebuild. The report includes separate chapters on the need to prevent gross violations of human rights from arising, the responsibility to react to them when they occur, and the responsibility to rebuild after any military intervention.

Given the goal of this study to assess R2P's contributions to the humanitarian intervention debate, the responsibility to react is the focus in subsequent analysis. It is this component that has come to be broadly equated with R2P, especially since its endorsement under "the international responsibility to take collective action" format in the UN Summit Outcome Document of September 2005. This is not to say that the other two elements identified by the ICISS report as essential components of the R2P agenda – prevention and post-conflict rebuilding – are less attainable or valuable; they are equally important, as recently acknowledged in UN and regional forums. Rather, the recommendations regarding the reaction component of R2P provide the material to assess this norm's theoretical potential to solve the contentiousness of the humanitarian intervention debate.

One of the major contributions of R2P to the intervention debate is conceptual. The novelty came from the way in which the ICISS posed the underlying question of the report to the countries opposing the basic tenets of the humanitarian intervention model: If humanitarian intervention was not an acceptable answer, then what would such countries envision if the international community was faced with another Rwanda? R2P shaped itself as the answer to this question. The ICISS report changed the language of "humanitarian intervention" with "responsibility to protect," in order to move away from the impasse reached by the "right to intervene" debate. In correlation, the focus also moved from the prospective interveners to the civilians in need of protection. This occurred in a context in which broader security concepts were shifting from national to human security. The ICISS report tackled the widening gap between the codified practice of international behavior captured in the UN Charter by the explicit emphasis on the need to respect state sovereignty, on the one hand, and actual state practice during the 1990s, which underlined the limits of sovereignty and the need to protect human rights, on the other (2001: 15).

The reinterpretation of sovereignty, portrayed in terms of responsibility rather than control, is another major facet of the ICISS report. The revolutionary formulation of "sovereignty as responsibility" Francis Deng initially proposed in relation to the protection of internally displaced populations served as inspiration for the Commission, although this aspect was not formally acknowledged in the

ICISS report. Deng's own work on internal displacement from the late 1980s, together with Roberta Cohen's emphasis on the internal dimension of protection, while depicting sovereignty as implying "a responsibility on the part of governments to protect their citizens," mark the origins behind the ICISS representation of R2P (e.g. Cohen 1991; Deng and Zartman 1991; Deng 1993, 1995). This formulation also helped to make R2P more acceptable to strong adherents of sovereignty and nonintervention.

The R2P framework addresses the "moral imbalance" between sovereignty and human rights, and suggests that approaching sovereignty as responsibility answers this moral inadequacy. Essentially, the right to interfere in a state where extreme violations of human rights are taking place comes from the failure of that state to meet its responsibilities as a sovereign member of the international community. The conditions to be satisfied before the most coercive form of reaction – military intervention – takes place represent another key element of the ICISS report. The commission sets the bar very high in terms of thresholds for humanitarian intervention:

> A. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product of either deliberate state action, or state neglect or inability to act, or a failed state situation; or B. large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.
>
> (2001: xii)

The report also proposes five criteria of legitimacy, as a set of benchmarks for reaching consensus in any particular case requiring intervention. Although not novel – but molded after Saint Augustine's Just War doctrine of the 400s – the criteria of legitimacy could have been further refined to address modern conflicts and to make it into subsequent R2P formulations at the UN, to prevent abuse.[5] They were not. Evidently, criteria cannot guarantee reaction. Apart from the legitimacy criteria, the sixth condition relates to legality and depicts the right authority for any intervention. The ICISS recommends that UN Security Council authorization needs to be sought prior to the use of force. However, there are two alternatives if authorization fails in a case "crying out for action," namely the UN General Assembly holding an emergency session under the "Uniting for Peace" procedure, and regional organizations opting for Chapter VIII of the UN Charter.

Despite being eclipsed by the events of 11 September 2001 and the war on terror, R2P managed to survive with the help of norm entrepreneurs like the former UN Secretary-General Kofi Annan who played an important role in keeping it on the UN agenda after the release of the ICISS report. One key exercise was the endorsement of R2P in the report of the High-Level Panel on Threats, Challenges and Change (HLP), as "an emerging norm ... [establishing] a collective international responsibility to protect" (United Nations 2004a: paras 65–66). Apart from proposing that the UN adopt the emerging norm of R2P, the

HLP also recommended that guidelines governing the use of force be adopted by the UN General Assembly and the Security Council, closely paralleling those proposed in the ICISS report. The HLP report departed from the R2P recommendations in its omission to discuss what happens in instances where the Security Council is unable or unwilling to act. Still, the proposition that the Security Council has the authority and also the responsibility to use force preventively to maintain international peace and security was an innovation in the HLP report. The High-Level Panel report informed the work of the former UN Secretary-General, Kofi Annan, who was asked to submit to the General Assembly his recommendations for the agenda of the 2005 Summit.

Annan's report talked about the need to "embrace the responsibility to protect, and, when necessary, [to] ... act on it" (2005a: para. 135). If a state fails to protect its citizens, the international community must apply a range of peaceful diplomatic and humanitarian measures, with force to be employed only as a last resort. The report of the UN Secretary-General departed in one significant way from the HLP recommendations. This departure had an important impact on governmental acceptance of R2P later on. The HLP considered R2P a subset of its discussion of "Collective Security and the Use of Force," including it under "Using Force: Rules and Guidelines" (United Nations 2004a: paras 183–209). As such, many governments viewed the HLP's recommendations on R2P as resuscitating the humanitarian intervention debate and reconfirming an unlawful interference in the internal affairs of sovereign states. In contrast, the former UN Secretary-General's report, "In Larger Freedom," separated the normative aspects of R2P (the assertion of the responsibility to protect as a basis for collective action) from the discussion of the use of force.

Few expected R2P to be among the issues discussed in the 2005 Summit Outcome Document, in spite of Annan's support for it. And yet, R2P made it into the final Outcome Document. In relation to key landmarks of the twentieth century, R2P inclusion occurred approximately ten years after the failures to react to the horrors of Rwanda and Srebrenica, thirty years after the Cambodian killing fields, and sixty years after the liberation of the Holocaust Nazi death camps, when the "never again" dictum was born. September 2005 was a defining moment in the normative evolution of the responsibility to protect. It marked the first time R2P was endorsed in a universal forum, with all UN member states unanimously accepting their responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity. As a result of a compromise to obtain the consent of concerned states, the final text of the Summit Outcome Document was weaker than the text of the ICISS report and those of the High-Level Panel (2004a) and the former UN Secretary-General (Annan 2005a). However, the language was sufficiently strong to express endorsement for a new set of principles on national and international responsibility.

The two paragraphs referring to R2P in the Summit Outcome Document, namely paragraphs 138 and 139, explicitly state that there is not only a state responsibility to protect its population but also a subsidiary responsibility for the

international community. These paragraphs express a willingness to act when agreed thresholds take place, however, the "sovereignty as responsibility" argument could have been more clearly stated. The responsibility to protect framework as adopted by the General Assembly is different from that originally envisioned by the ICISS. As expected in this format, the references to R2P neither reintroduce criteria for the use of force into the UN regime nor recognize legality for armed humanitarian intervention outside the use of force regime established by the UN Charter. However, there is no doubt that the adoption of R2P represents an ideological and normative shift which affects the way in which states' responsibilities, as set forth in the UN Charter, are implemented. Given the history of the debates on humanitarian intervention, R2P's inclusion in the Summit's Outcome Document is significant. Indeed, this marked R2P's most important normative advance to date.

The UN Security Council has referred to R2P in three resolutions since then. On 28 April 2006, resolution 1674 on the protection of civilians in armed conflict "reaffirms the provisions of paragraphs 138 and 139 of the World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." This is the first official Security Council reference to the responsibility to protect. For the normative development of R2P, the significance is that this is legally binding, unlike all its previous incarnations. R2P was further promoted by its reference in relation to specific conflicts. On 31 August 2006, the Security Council passed resolution 1706 that demanded a rapid deployment of UN peacekeepers in Sudan. This resolution made explicit reference to R2P, by reaffirming the provisions on R2P from resolution 1674 and from paragraphs 138 and 139 of the 2005 World Summit Outcome Document. Resolution 1894 passed in November 2009 was the last one, to date, to reaffirm the provisions on R2P included in the 2005 Outcome Document.

The next highlight that brought fresh momentum to R2P occurred in 2008, when the UN Secretary-General, Ban Ki-moon, declared his personal commitment to turning R2P into reality in a July 2008 speech in Berlin. It was in this speech that he first exposed the new portrayal of R2P as "a three-pillar approach." Also in 2008, Ban Ki-moon appointed his special adviser on issues related to R2P, Edward Luck, whom he tasked with the conceptual development of R2P and a report on the topic, in addition to building consensus on R2P among UN member states. The report of the UN Secretary-General, "Implementing the Responsibility to Protect," was released in January 2009. It details the representation of R2P along three pillars: the protection responsibilities of the state; the responsibility of the international community to assist states in fulfilling their national obligations; and the commitment to timely and decisive collective action consistent with the UN Charter. The three pillars are equal in terms of size, strength and viability. Equally significant, the report argues that there is no sequence for implementation to be followed from one pillar to another (United Nations 2009a: 2).

The report's view on R2P is narrow by maintaining the focus of its application to the four crimes identified in the Summit Outcome Document, namely

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