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The Politics of Responsibility to Protect

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1 Introduction

In February 2008, Edward C. Luck has been appointed Special Adviser to the Secretary-General, working on the Responsibility to Protect. The long and intricate process that led up to his appointment sheds a light on the political landscape surrounding Responsibility to protect (R2P).

For a concept that addresses central issues of the world order such as sovereignty, violent conflict and human rights, R2P has made an astonishing career. Introduced by the International Commission on Intervention and State Sovereignty (ICISS)¹ in the wake of the attacks of September 11, 2001, the concept survived the divisive debates over the invasion of Iraq and was adopted by 150 heads of states in the Outcome Document of the 2005 UN World Summit.

What is this concept that managed to break the global deadlock after the divisive debates over humanitarian interventions? What is its main intention, and how can it be useful?

As a peacebuilding concept, R2P combines the long-established pillars prevention, reaction (with options from the persuasive to the coercive) and rebuilding into a comprehensive framework. As a political instrument, R2P attempts to overcome the divisive North South debates over “humanitarian interventions” and build a broad consensus on how the international community can deal with cases of mass atrocities occurring in internal conflicts. In this respect, it aims to resolve ideological blockades – beyond geopolitical or economic interests – and regain the capacity to act for the United Nations in cases where timely action is needed most.

On a legal level, R2P attempts to reconcile two sometimes diverging principles of international law: state sovereignty and human rights. On a policy level, it addresses the proliferation of state failure and violent internal conflict with all its implications internally, in the region and on a global level. R2P redefines sovereignty to give the international community the opportunity to address two crucial cases: where a government of a sovereign state is *not willing* to stop mass atrocities (or is even party to the conflict) or where it is *not able* to stop them (e.g. effective loss of monopoly of force in cases of state failure).

¹ The ICISS report built on work done by Francis Deng and his colleagues at the Brookings Institute on “sovereignty as responsibility”.

UN Summit Outcome Document

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

Art. 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.

Art.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.

The Responsibility to Protect had been developed to break the political deadlock after the divisive debates over “humanitarian interventions” in the 1990ies. In this respect, the concept changed the scope and focus of the debate to find consensus with skeptics.² R2P essentially

- transformed the controversial “right to intervene” to a subsidiary “responsibility to react”, leaving it in the hands of sovereign governments to put things right to fend off international action,
- limited the scope of the intervention agenda to four internationally solidly codified cases

² Address by Gareth Evans, to the Seminar “Africa’s Responsibility to Protect”, The Centre for Conflict Resolution, Cape Town, 23.4.2007

(genocide, ethnic cleansing, war crimes) and to crimes against humanity, which is not overly controversial.

- embedded the controversial question of military interventions in a comprehensive concept with a strong focus on prevention,
- broadened the policy options from an “intervention or standing by” approach to a wide cascade of measures ranging from diplomatic pressure, economic and political sanction to military coercion.

2 R2P '08 – where do we stand?

R2P proved its potential to build consensus by the overwhelming approval at the UN World Summit, a remarkable result against the background of the divisive debates over the intervention of Iraq where the US used some human security inspired language to make its case.

Obviously, ideological debates did not dissolve over night, and R2P continued to draw criticism from intervention skeptics and peacebuilding activists alike. In the aftermath of the World Summit, and maybe related to a certain “intervention fatigue” in Western countries and limited political and technical capacities, resistance to the concept in general, and especially to “Responsibility to React” built up. Some developing and emerging countries raised two main concerns: the “Trojans” feared that R2P was a “Trojan horse”, or the divisive humanitarian interventions of the 1990ies in disguise, opening the door for interest-driven interventions by “imperial” or “neo-colonial” powers. Especially leading countries in the Global South such as Egypt, Iran, Cuba, Pakistan, Venezuela and China raised concerns over the potential to abuse R2P to legitimize interventions.³ The “Westphalians” raised more fundamental concerns over the weakening of sovereignty and the structure of the world order. Some diplomats even insisted that the World Summit had “rejected R2P in 2005”.⁴

In this situation, proponents of R2P stepped up their support. A coalition of global NGOs (International Crisis Group, Human Rights Watch, Institute for Global Policy, Oxfam International, and Refugees International) founded the Global

Center on the Responsibility to Protect to “advance and consolidate the World Summit consensus on R2P and protect the integrity of the R2P concept [...]”. UN Secretary General Ban Ki Moon underlined his commitment to the concept by creating the post of a Special Adviser to the Secretary-General in the rank of an Assistant Secretary-General.

The concerns of some Member States about the concept delayed the creation of the post for a for 8 months, showing once more that R2P is far from being a general consensus. On the contrary, the controversy over the creation of the post of a part time adviser demonstrated that the concerns of opponents have not yet been met.

Some critics from a Latin American and several African countries openly questioned that R2P was adopted by the 2005 World Summit.⁵ Besides, it became clear that especially Russia and China are concerned about the more diffuse term of “mass atrocities”; consequently, they resisted expansion of Francis Deng's mandate.

However, the process of appointing the Special Adviser also demonstrated that R2P still has many potent supporters who stepped up to defend the concept and pushed to create the post of a Special Adviser to the Secretary-General.

Finally, after a lot of wrangling, UN Secretary-General Ban Ki-moon, appointed Edward C. Luck as a ‘Special Adviser to the Secretary-General’: “Recognizing the fledgling nature of agreement on the responsibility to protect, the Special Adviser's primary roles will be conceptual development and consensus-building.”

3 The Strategy of the United Nations Secretary-General

Secretary General Ban Ki Moon repeatedly pointed out his commitment to “operationalizing” R2P⁶. The Secretary General seems to follow a tactical inspired constructivist approach: to sponsor the emergence of a moral norm or a legal frame that has the potential to grow into in-

⁵ Gareth Evans quotes a meeting of the UN budget committee in “Delivering on R2P: Four Misunderstandings, Three Challenges and How to Overcome them, Address to SEF Symposium in Bonn, 20.11.2007”

⁶ Speeches to the Center for Strategic and International Studies, Washington D.C. on January 16, 2007; and to the Royal Institute of International Affairs, London on July 11, 2007; SG annual address to the GA of September 25, 2007 (UN documents SG/SM/10842, SG/SM/11094, and SG/SM/11182).

³ see also: Peter Wittig, Ein neues System kollektiver Sicherheit? In IP 03/ 2006. p. 79; Sabine von Schorlemmer, Die Schutzverantwortung als Element des Friedens, SEF Policy Paper 28, 12/2007.

⁴ Quoted in Ramesh Thakur, “Operationalising the responsibility to protect”, in The Hindu, 15.2. 2008.

ternational customary law. By including R2P in as many statements, resolutions and official documents as possible, the principle will take hold. For instance, the Secretary-General acknowledged that the Outcome Document specifically stated that the GA should "continue its consideration" of R2P. To build a broader consensus on the norm, controversial debates over R2P must be avoided. In that sense, the Special Adviser emphasizes the less controversial "Responsibility to Prevent" over the much debated "Responsibility to React" (including the highly controversial ultimate option, the military intervention). Given the still strong opposition of some key states to R2P, this tactical approach seems to be without much alternative.

However, some observers criticize this approach for neglecting the real innovation of R2P: to embed interventions into a comprehensive peace-building framework, and to lay out ways how to overcome political deadlocks in cases where sovereign governments are unwilling to stop mass atrocities. Those observers fear the discourse could fall behind to what has been achieved in 2005. Furthermore, it is unclear if an emphasis on prevention will cater to the fears of "Trojans".

4 Shortcomings of R2P

Lack of criteria

The lack of any *codified* criteria for military intervention (the set of criteria proposed by the ICISS report have not been adopted by the 2005 World Summit Outcome Document) is the main concern of "Trojans" and of those who believe in a Westphalian interpretation of sovereignty. Trojans fear that the hidden agenda of R2P is to facilitate external interventions, or that R2P could be abused by great powers to legitimize special-interest driven interventions. To address those fears of a "hidden intervention agenda", the R2P concept needs to be substantiated with a set of internationally codified criteria that narrow down who, under which circumstances, and with which means is obliged to intervene. Such a set of criteria cannot prevent political abuse of R2P by great powers, but it would make it harder to make such a case. Proponents of R2P should point out that international norms and specific criteria limit the freedom of great powers to intervene on behalf of their own interests, while at the same time increasing the pressure on those regimes that abuse sovereignty to lash out against their own population.

Prevention Gap

Given the number of crises and violent conflicts worldwide, and combined with growing domestic resistance against international engagement in Western countries and scarce capacities of international actors, it remains hard to mobilize political will to act (with options from the persuasive to the coercive) in an early stage of any crisis. On the other hand, once the coverage of shocking violence in the media mobilizes political will for action, the window of opportunity for prevention has often already closed. This means, in reality, the major strength of R2P, its comprehensive approach with a strong emphasis on prevention, will rarely play out, leaving policy makers again with the dilemma to witness ever more large scale killings while building up political and diplomatic pressure or to intervene militarily to stop mass atrocities.

Projection Gap

To subsume a crisis under R2P, one needs to project genocide, ethnic cleansing, large scale war crimes or crimes against humanity at a point in time where such crimes have not (yet) occurred. Unsurprisingly, most states resist to be put on such a watch list, fearing damage to their international reputation. Resistance from state actors make it harder or even impossible to implement preventive strategies at a time when such strategies still have the potential to make a difference.

Internationalization of Conflicts

The establishment of a moral or (eventually) legal obligation for the international community to act on behalf of populations facing genocide etc. could raise expectations on the side of conflict parties that external powers will tip the balance of the internal conflict to their favor. In the logic of asymmetrical warfare, it could become rational to provoke overreactions of the opponent in order to drag the international community into the conflict. However valid such assumptions may be, the very existence of such logic could complicate peace negotiations.

Capabilities Gap

R2P establishes a blueprint for a global peace and security regime that is incongruent with the existing capabilities of the international community. Under R2P, the ideal approach to every crisis worldwide would be early preventive action on all political levels, reaction with necessary means from the persuasive to the coercive, and rebuilding with adequate financial and technical

means. However, political will and capacity to substantively address the legions of crises is a very scarce resource in the international community. This resource has recently even more decreased due to increasing domestic pressure against worldwide engagement of Western powers. Further, the capacity of the international peacekeeping system is severely overstretched, both of the UN peacekeeping administration and of contributing states to provide the necessary means. Thus, either R2P raises false expectations that contribute to further delegitimization of the UN system, or the lack of capacities leads to a selective implementation of R2P, creating double standards that delegitimize R2P.

5 The way ahead: Strategies to address the R2P impasse

Cater to Westphalians by reconfirming the principle of sovereignty

In order to reach out to “Westphalian” critics of R2P, the legitimacy of some of their arguments should be acknowledged. The positive functions of state sovereignty in the international system can be emphasized without undermining the basic notion of R2P. Historically, sovereignty had been “invented” to end a very similar situation R2P tries to tackle today: thirty years of (civil) war in Europe. Sovereignty has worked since then as a “buffer” between rival powers, and kept internal conditions out of international disputes, making it harder to declare war over questions in the domestic jurisdiction of a sovereign state. For the new and in many cases weaker states of the Global South, sovereignty and non-intervention have served – at least in theory- as a “firewall” against external interference. To underline the commitment to the principle of sovereignty could help to cater to the fears of traditional “Westphalians”

Emphasize the limits of sovereignty

Sovereignty, even under a strict Westphalian definition, has never been absolute. In order to reconcile the tension between the principles of sovereignty and human rights, sovereignty has been conceded in the Convention of Genocide (1948), the human rights legal framework, and with a set of UN resolutions in the 1990ies.⁷ Under the

⁷ “No state may threaten minorities (Resolution 688), carry out mass displacements (Resolution 1203) or allow a human tragedy of inconceivable magnitude (Resolution 794)”, cited in U. Golaszinski / J. Steinhilber, *New Ground Rules for Interventions*, Dialogue on Globalization Briefing Paper 02/2005. Semegnish As-

conditions of global interdependence, sovereignty is further eroding. States face many “external interventions” every day, stemming from international law, international institutions, aid conditionality, market forces, and cultural and religious exchange. It should be emphasized that under the conditions of growing global interdependence, the definition of sovereignty must be adapted also in the field of security. Compared to broader concepts such as “humanitarian interventions” and “human security”, R2P can be considered the least intrusive.

Emphasize R2P is not a Western concept

Even before R2P has been endorsed in the World summit by 150 member states, the African Union had incorporated the principle in its Constitutive Act in 2000. Several African states also played a key role in the negotiations to include R2P language into the World Summit Outcome document. Further, peacebuilders especially from Africa are strongly calling on the Global North to live up to its responsibility to protect. In order to cater to Trojan fears, it will be key to emphasize that R2P might have been sponsored by Canada in its initial stage, but is not a Western concept.

Develop a set of criteria for interventions

The development and codification of a set of criteria for international interventions with a clear modus of decision making should be discussed in an open and inclusive way. A set of codified criteria can de-politicize an inherently political question: who should address under which mandate and with what means mass atrocities in internal conflicts? In order to address “Trojan” fears, the formulation of criteria needs to be discussed in a historically sensitive way- keeping in mind that the discourse over “just war” used the language of containing war while it de facto legitimized the use of force. However, internationally codified or at least widely accepted criteria help to restrain the abuse of R2P by great powers, cater to the fears of “Trojans” and provide a basis for a broad international consensus that enhances the crucial legitimacy for interventions. The set of criteria proposed in the ICISS report (right authority, just cause, right intention, last resort, proportional means, reasonable prospect) already goes into the right direction. The

faw in “The Responsibility to Protect”, World Council of Churches, 2005, cites GA Resolution 43/131 on humanitarian assistance for victims of natural disasters, and GA resolution 45/100 introducing relief corridors.

nature of R2P as one further step towards a “global domestic policy” that is responsible for world citizens gives another hint where to look for criteria: domestic police law defines the delicate consideration between the necessary and the least intrusive means to protect.

Resist tendencies to broaden or abuse R2P

One of the main ideas of R2P is that there are just causes that justify the use of force beyond the two exemptions of the UN Charter. Thus, ever since R2P started its astonishing career in the international normative arena, activists have tried to jump on the bandwagon and argued to broaden the concept to include their own agenda. Some recent remarks by Lloyd Axworthy can serve as an example of these tendencies:

“Although R2P was originally intended to deal solely with situations of mass atrocity, if it becomes a standard part of global governance, the principles of R2P unbundled and applied in a different way may have lessons to teach about forging solutions to other shared problems so that the single sovereign state doesn't get in the way of collective efforts [whether one thinks of global warming, terrorism, migration, transnational crime or water management]. This could lead to a new global architecture that would help us achieve shared objectives, thus escaping the Westphalian nation-state straitjacket that impedes real progress toward solutions to today's global risks.”⁸

Maybe the main contribution of R2P proponents is to point out time and again the limited scope of the concept, and to argue against attempts to expand R2P beyond the four internationally widely accepted and solidly codified cases of genocide, ethnic cleansing, war crimes and, crimes against humanity. Any attempt to use R2P to legitimize action on behalf of the entire human security agenda will doom the prospects of the concept to become effective international customary law.

Further, attempts by “humanitarian interventionists” to use R2P language to justify their own interventionist agenda must be resisted. The major advantage of R2P is that it has the potential to overcome the North South divide over the question how to deal with mass atrocities. In order to unlock ideological blockades— beyond geopoliti-

cal and economic interests— that hinder timely solutions in cases that need timely action by the international community, the divisive debates of the 1990ies must be left behind. To blur the lines between humanitarian interventions and R2P will spur the fears of “Trojans”, and damage the potential of R2P to reach such a much needed international consensus.

Build the infrastructure for R2P

To overcome the “prevention gap”, early warning- early action networks need to be installed or strengthened, when already in place. In addition to the systems installed by sub-regional organizations in e.g. Africa, civil society organizations need to be included in a “mobilization chain”. Especially human rights organizations and churches can play a crucial role by bringing to attention crisis in their early stages, and in mobilizing their counterparts in the North, who then could start campaigning to mobilize political will for early preventive action.

Adhere to the “right authority”

A key problem in the international response to mass atrocities is that political blockades in the UNSC prevent timely action. Some observers thus argue to find ways to bypass the UNSC under such circumstances to save the lives of victims. To bypass the Security Council on questions of war and peace, however, would push the entire United Nations system to the sidelines.⁹ Further, it would fuel the fears of “Trojans” over interest driven interventions from great powers. Only a multilateral institution does have the legitimacy to mandate a military intervention, giving it the much needed legitimacy that is crucial in asymmetrical conflict.

However, the ICISS report already indicates two additional ways to overcome a political deadlock in the UNSC that is consistent with international law: the “uniting for peace” procedure and a mandate by a regional organization that can be legitimized by the UNSC ex post. The first option requires a two third majority in the general assembly, making it an unlikely solution. The second option could prove to be a way forward. The AU, for instance, has proven its willingness to act in the case of Darfur. International actors who traditionally adhere to a non-intervention policy such as China have indicated that a condemnation of a regional organization would

⁸ Lloyd Axworthy and Allan Rock, “Breathe New Life into R2P; Canada Has Abandoned the Very Principle It Once Championed at the United Nations”, The Globe and Mail, 29 January 2008.

⁹ See also Gareth Evans, The responsibility to protect and September 11, Address to UNU/ Canadian Government seminar on R2P, 6.2.2007.

make it easier for them to endorse action in the UNSC.¹⁰

Advance coherent approach inside the UN system

Some UN institutions are still skeptical of the concept. Further, R2P has not been properly implemented in the overall strategy. In order to build an international consensus on the issue, it will be crucial to have a system-wide coherent approach. Secretary General Ban Ki Moon has taken the lead to implement R2P in all areas of UN policy.

Make a R2P case

Along the same lines, it will be crucial to point out which crises qualify as R2P cases, and which cases do not. It will be key to get the discourse over R2P out of the divisive debates over the Iraq invasion. Further, it would be beneficial to clarify the differences between such cases as Darfur, Burma and Kenya. Which cases qualify as R2P cases, and which measures would seem appropriate?

It will be crucial to point out what the benefit of R2P can be in preventing further escalation in a crisis (e.g. in Kenya). To make a R2P case is risky, but can be helpful to build support for the concept if the outcome matches the expectations.

Avoid double standards

There is the great danger that the selective application of R2P will create double standards, undermining the legitimacy of the concept. Understandably, given the current "peacekeeping overstretch", the international community aims to avoid commitments in every crisis worldwide. In the future, this gap between needs and capacities will rather widen. However, acting in one crisis while leaving another aside will raise concerns over double standards and fuel "Trojan" fears over a hidden agenda. Thus, in each case it must be argued comprehensively if it qualifies as a R2P case or not.

6 Conclusion

The astonishing career of R2P in the international normative arena underlines the potential of the concept to overcome North South divides over the crucial question how to address mass atrocities in internal violent conflicts.

However the diplomatic struggle over the concept, and more recently, over the appointment of the Special Adviser to the Secretary-General, show that R2P still faces significant resistance that cannot be explained by misunderstandings or a lack of information.

It will be crucial to reach out to those who make legitimate claims, and to avoid giving ammunition to those who want to chip away the norm only to stay clear of being targeted for their own misdeeds. In order to address legitimate fears of "Trojans" and "Westphalians", the safeguards against abuse of the concept need to be strengthened. In order to avoid a rollback, it will be crucial to keep the scope of R2P strictly limited to the internationally accepted cases of genocide, war crimes, ethnic cleansing and crimes against humanity.

With this combination of a comprehensive approach and a limited scope in the most controversial question of the use of force, R2P is a good starting point to build a global consensus on how to tackle mass atrocities occurring in internal conflicts. This consensus is much needed to overcome ideological debates (beyond geopolitical interests) that repeatedly block political decision making in cases where timely action is needed. A broad consensus on how to deal with questions such as violent internal conflict, sovereignty, the use of force and large scale human rights violations will be crucial for the functioning of a multilateral system.

Policy makers, academics and experts in the UN Secretariat and those affiliated with the Global Center on R2P have clearly understood these necessities. Now it would be wise for those who truly support a human rights agenda to join this coalition to build the norm of Responsibility to Protect.

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¹⁰ See also S. Kleine-Ahlbrandt/ A. Small, "China's New Dictatorship Diplomacy. Is Beijing Parting With Pariahs?" in *Foreign Affairs*, January/February 2008.

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