THE RESPONSIBILITY TO PROTECT AT 10: THE CHALLENGE OF PROTECTING THE WORLD’S MOST VULNERABLE POPULATIONS

Humanitarian Intervention: A Dissenting View
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The massive corpus of books and articles on humanitarian intervention contains a consensus that this policy is both desirable and feasible. By “policy,” I mean in this instance the use of military force, without the consent of the state at which it is directed and with widespread international support, to stop the massive killing, within countries, of unarmed people.

There are, to be sure, various forms of humanitarian intervention that fall short of the use of force. These include but are not limited to: 1) early-warning mechanisms that alert the international community that mass killings are likely to occur within a particular society so that outside parties have time to take preventative measures; 2) third-party mediation aimed at achieving a political solution among the contending parties to head off, or to stop, the escalation toward bloodletting; 3) political pressure applied on the leaders of groups that are identified as the perpetrators of violence; 4) economic sanctions against the same parties; and 5) peacekeeping, once a political settlement has been achieved, to

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ensure that the peace holds, so that additional agreements and safeguards can be put into place in order to prevent a recurrence of violence.

But these lesser forms of intervention are not new. The international community has resorted to them on numerous occasions, and they are relatively uncontroversial. I do not mean to denigrate their importance, or to suggest that they are easy to implement or that they always work. My point is that these measures don’t add anything radically different to the tool kit that has long been available for dealing with atrocities. By contrast, the use of force, the last resort of the Responsibility to Protect (R2P) program, is both (relatively) new and evokes fervent debate. It stokes controversy because it represents a qualitative change from the five diplomatic steps I have enumerated above.

R2P’s rationale for using force as a measure of last resort rests on a dramatic redefinition of the conventional conception of state sovereignty, which held that (by and large) the goings-on within the borders of a state were not the business of other states, and that force could not be used to influence their course or likely outcome. This conception of sovereignty, which began to take root in the mid-17th century following the Peace of Westphalia, was the basis on which India’s 1971 intervention in East Pakistan (now Bangladesh) and Vietnam’s in Cambodia (1978) were widely condemned, even though each was preceded by, and in fact ended, mass atrocities. Indeed, knowing that the humanitarian defense would cut no ice internationally, India and Vietnam, as well as Tanzania – which in 1978 intervened militarily to topple the brutal regime of Idi Amin in Uganda – defended their actions on the grounds of national security. Nonintervention and respect for sovereignty, even if not always adhered to, have enjoyed wide international support, chiefly because of the widely shared belief that permitting unrestrained intervention would increase the frequency of war and promote instability in the world. The widespread support for sovereignty was also based on the conviction that blessing armed intervention on normative or legal grounds would provide a fig leaf of legitimacy to cynical states bent on using intervention to advance their strategic interest, all the while proclaiming lofty motives.

R2P breaks with established Westphalian tradition in calling for the contravention of sovereignty when states perpetrate, or are unable or unwilling to stop, mass killings
within their own borders. It justifies this prescription by proposing a new conception of sovereignty. Sovereignty, in the eyes of R2P’s originators and supporters, has two aspects. The international community has the responsibility to respect it as a cardinal principle of international law and state practice. But it also has the duty to intervene, starting with non-military measures, when a state will not, or is incapable of, fulfilling an essential responsibility that accompanies the privilege of sovereignty: safeguarding its citizens from atrocities. States that fail to discharge this duty cannot claim sovereign immunity as a defense. The responsibility to protect people who are the victims of wanton violence passes, in these circumstances, to the community of nations.

R2P thus strikes a balance between state immunity on one hand and the right of people not to be killed en masse on the other. It does not legitimize—let alone prescribe—peremptory military interventions or call for setting sovereignty aside, except in extremis (and then, too, when all other reasonable measures have failed to solve the problem). This qualified legitimization of the breaching of sovereignty through armed intervention from without is the distinctive contribution of R2P—and also its most controversial aspect.

R2P deserves praise for at least two reasons. It recognizes and respects state sovereignty, but also provides a formula for responding to the most severe form of human rights violations, namely mass killing. And it offers a policy that can, with the support of the international community, provide an answer to an important question: In the wake of the mass killings in Rwanda, the former Yugoslavia, Darfur, the Congo, the Central African Republic, and South Sudan (to list but a few dismaying examples), how can the international community develop a response to mass killings within states—a form of violence which, since the end of the Second World War, has claimed more human lives (well over 4 million) than any other form of violence? The impulse behind R2P, then, is laudable, and its creativity and judiciousness admirable.

Yet the doctrine represents an odd mix of the political and apolitical. On one hand, it recognizes that contingent circumstances (including the degree of risk to the intervening parties) rule out intervention in every instance: absolute consistency is impossible. On the other hand, R2P invokes universal moral principles and purports to offer a plan of action for banishing the scourge of atrocities so that it becomes a thing of the past. These two
aspects of R2P are at odds with one another. Moreover, the first ultimately undercuts the second and, in so doing, raises questions about the extent to which R2P can claim to be truly universal in its ambit and normative in its essence.

Consider certain categories of states that, no matter how egregious their violation of the supposed universal normative prohibition against atrocities, will never be on the receiving end of military intervention: the front-rank powers (for example, China and Russia); middle-rank powers (like India, Iran, Pakistan, Nigeria, Egypt, and Syria) that possess the wherewithal to make intervention a hazardous enterprise for would-be interveners; and regimes that have powerful friends and allies (consider, say, Saudi Arabia, Israel, Sudan) who can be counted upon to block Security Council resolutions intended to enable armed intervention or to provide political and military backing. This leaves weak and friendless countries as the most likely targets of humanitarian military intervention. The problems this creates for R2P’s claim to be a normative, universal plan of action undertaken under the aegis of the United Nations should be obvious. One can understand why the doctrine’s critics denounce it as a program that, in practice, will prove selective, pragmatic (and thus not unlike the “realism” that R2P’s advocates condemn), and morally incoherent.

R2P’s acolytes respond that such criticism amounts to naiveté, insisting that intervention will simply not be feasible on every occasion. Moreover, they insist that R2P represents a vast improvement over past practice—a giant step forward in the effort to save innocents from slaughter. Yet a policy that contains so many caveats (given the requirement that the risks be tolerable, which means that several categories of potential perpetrators are exempt from it) but nevertheless claims to be based on universality and ethically grounded legitimacy inevitably will naturally evoke skepticism, even opposition.

R2P’s champions claim that it rests on a new normative global consensus. With the end of the Cold War, they claim, states have come to embrace universal human rights with unprecedented fervor, enabling global agreement on the imperative of stopping mass atrocities. But they offer neither a theoretical argument nor empirical evidence in support of this assertion. How is it, for example, that this supposed consensus arose so quickly after the Cold War, bringing about a dramatic change in the ways that states have
traditionally thought and acted? Beyond the dubious contention that there has been a worldwide “diffusion” of human rights norms that has produced, in relatively short order, a universal consensus on how to deal with atrocities, no persuasive theoretical explanation exists for what, by any standard, represents a major transformation in the nature of world politics. In support of their contention that a new global consensus on humanitarian intervention has emerged, proponents of R2P point to the UN’s 2005 World Summit and the incorporation of R2P into the Outcome Document adopted at the end of that conclave. Yet a close look at the wording pertaining to R2P in the Outcome Document’s text shows that the state signatories did not undertake any concrete obligation with respect to the implementation of R2P. The wording related to the doctrine does no more than enjoin states to accept it, in principle, as an available and desirable measure to be used to combat mass killings. The signatories are not required to do anything concrete in the event that atrocities occur. R2P as formulated in the Outcome Document, while high-minded in tone, is vacuous in operational terms.

This vacuity did not stem from sloppiness on the part of the Outcome Document’s drafters. During the debates on R2P at the World Summit, states – particularly the United States through its redoubtable UN ambassador John Bolton – fiercely resisted efforts to provide R2P with teeth by ensuring that states would undertake specific responsibilities as part of their responsibility to protect. Thus many states signed on because they were confident that they would not be bound to actually back their principled stance on R2P with concrete action when the chips were down and people were being slaughtered. The permanent members of the Security Council (the P5) had an added escape hatch: R2P could be implemented only with their authorization and was thus subject to veto. Russia, China, and the United States insisted on, and succeeded in obtaining, this stipulation. This provision also reassured states that were not part of the P5: they could expect allies and friends who are veto-bearing Security Council members to block R2P resolutions aimed at them. This calculation has proved valid. Consider the refusal of China and Russia to permit R2P resolutions aimed at the regime of Bashar al-Assad despite the large-scale atrocities it has committed against Syrian civilians since 2011.
So the Outcome Document was indeed an important landmark for R2P; but its significance has been exaggerated. As even supporters of R2P, such as Alex Bellamy and Geoffrey Robertson, concede, R2P as presented in the 2005 Outcome Document won universal acceptance because it amounted to an anodyne, lowest-common-denominator formulation. But even if it had been more concrete, we can hardly say, given the history of the Genocide Convention and the Convention Against Torture, that states’ behavior would have been changed markedly – that they would cease doing what was textually prohibited (mass killing) and take steps to punish states that violate the proscribed practice.

The fact remains that states are loath to undertake binding commitments to discharge moral duties, but all too willing to invoke ethics as a justification for what they do for other reasons. When it comes to armed humanitarian intervention, they are (the historical record demonstrates) willing to act only when the cost, defined in terms of the danger to which their troops are exposed during rescue campaigns, is negligible at minimum. This explain NATO’s high-altitude bombing campaigns in Kosovo and Libya, and the refusal of the major powers to deploy substantial numbers of ground troops to stop the slaughter in any country in which mass atrocities are being perpetrated. The calls of scholars such as Michael Walzer and Nicholas Wheeler for intervention with ground forces, to bring the killing to an end as expeditiously as possible, have fallen deaf ears. The fact remains that a majority of Americans and Europeans do not support armed humanitarian interventions that could led to the death of their soldiers—something that leaders in the West are well aware of. Hence the immaculate interventions we have seen in recent years. Hence the formulations, such as Robert Pape’s, for humanitarian intervention that combine realism and just war theory but with an important caveat: interventions to stop mass atrocities are essential but only if virtually no soldiers belonging to the intervening side are likely to perish in the course of saving souls. What does states’ extreme reluctance to assume even minimal risks in the service of a norm that they have embraced so fervently say about their true commitment to stopping atrocities?

Another aspect of humanitarian intervention that all but guarantees that it will not be exercised universally (in any meaningful sense) pertains to what, in just war theory, has
come to be called jus post-bellum: creating order, ensuring stability, advancing justice, and assisting with economic reconstruction and growth once a humanitarian intervention has been completed. Libya represents a paradigmatic instance of the failure to discharge jus post-bellum duties. Following the 2011 NATO-plus intervention in Libya, that country has become a blood-drenched anarchy: two rival governments vie for power but possess precious little of it, because armed militias, criminal syndicates, religious extremists, and terrorist cells act with impunity, engaging in all manner of violence. Indeed, to retain power each government relies on warlords and militias – and the military intervention of other countries. Not only are Libyans unsafe, their predicament has created serious problems for neighboring states, which face terrorist attacks hatched from inside Libya and, more generally, the spillover effects of its rampant violence. In addition, Libya’s turbulence has made it a venue for intervention by surrounding states that back rival centers of power, thus aggravating the chaos.

In principle, a significant commitment of troops and money might have helped stabilize Libya; but no major power has stepped forward. Yes, NATO conducted so-called stability operations in Bosnia, Kosovo, Afghanistan, and Iraq – but with mixed results, and to attain even this degree of success the alliance has had to establish a prolonged and substantial post-war military presence. The price tag for these post-bellum efforts now exceeds $1 trillion. How many such campaigns are Western societies, the places in which the anti-atrocity norm has the greatest purchase, truly prepared to carry out?

Where does this leave us? Yes, there will be humanitarian interventions, but only on a highly selective basis, and when the human cost for interveners is very low. When the costs are high, or atrocities occur in a place that is of marginal consequence for the states most capable of intervening, they will (as they always have) be quite prepared to continue witnessing horrific atrocities, exclaiming all the while that the “international community” must take action. In truth, there does not exist an international community in the form of a collection of societies united by shared ethical commitments. As the fate of Rwandans, Darfuris, Congolese, and Syrians demonstrates, states are quite willing to witness a great many atrocities while doing little – or even nothing at all. People of goodwill and
decency will continue to devise universal plans of action to stop atrocities. But, for the reasons I have discussed, they will not succeed.