Humanitarian Intervention and Responsibility to Protect

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Humanitarian intervention and R2P

Background

• External military intervention is controversial - both when it happens and when it fails to happen.
  – Rwanda (1994): Failure to prevent the genocide
  – Kosovo (1999): Criticism of the air campaign

• Humanitarian intervention/R2P - “State Sovereignty” vs. “Protection of Human Being”, which should prevail in case of conflict

• The Problem: “...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebernica – to gross and systematic violations of human rights that offend every perception of our common humanity?”

  UNSG, Kofi Annan (2000)
Humanitarian intervention and R2P

• **State Sovereignty**

  • "Sovereignty" is looked upon as the exclusive freedom (power) that states have – under international law – within their own territories to independently exercise the functions of the state, both as regards the state's internal life and its external relations.

  • State sovereignty is not unlimited, but limited by the rules and principles of international law.

  • “The principle of state sovereignty”, is not a legal principle itself, but is derived from the rules of international law that ensures the independence of States in relation to each other and their supremacy within the state.
Humanitarian intervention and R2P

Principle of non-intervention and non use of force

• Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations  UNGA res/25/2625 (XXV) (1970)

  – No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

    The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

  – Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

    The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations.
The UK Government’s position to Parliament in November 1998:

“There is no general doctrine of humanitarian necessity in international law. Cases have nevertheless arisen (as in northern Iraq in 1991) when, in the light of all the circumstances, a limited use of force was justifiable in support of purposes laid down by the Security Council but without the council's express authorisation when that was the only means to avert an immediate and overwhelming humanitarian catastrophe. Such cases would in the nature of things be exceptional and would depend on an objective assessment of the factual circumstances at the time and on the terms of relevant decisions of the Security Council bearing on the situation in question.”

The United Kingdom has relied on this doctrine on three occasions:
(i) In protecting the Kurds in Northern Iraq in 1991;
(ii) In maintaining the No Fly Zones in Northern and Southern Iraq from 1991; and
(iii) In using force against the Federal Republic of Yugoslavia in relation to Kosovo in 1999.
Humanitarian intervention and R2P

• *The International Commission on Intervention and State Sovereignty* (ICISS)
  
  – Established (2000) by the Government of Canada, together with a group of major foundations
  
  – Task: to write a report that would help the Secretary-General and everyone else find some new common ground
  
  – To address the question-
    “When, if ever, is it appropriate for states to take military action against another, for the purpose of human protection of the resident peoples?”
  
  – Sub-questions
    » Is there a right of intervention?
    » How and when should it be exercised?
    » Under whose authority?
    » Is intervention an assault on sovereignty?
Humanitarian intervention and R2P

• **ICISS report** - “The Responsibility to Protect”

  – **Shift in focus** from States “right” to humanitarian intervention to States “responsibility” to protect - (Victims perspective)

  • State sovereignty implies responsibility for protecting own people.

  • International responsibility arises when a state is unwilling or unable to halt or avert the serious harm to its population.

    – Intervention to protect human rights is not an intrusion in the sovereignty of a State

    – Human rights violations does not belong to the *domane réservé* that exclude interference from the outside.
Humanitarian intervention and R2P

ICISS report - “The Responsibility to Protect”

The report embraced three specific responsibilities:

• A. The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

• B. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

• C. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.
Humanitarian intervention and R2P

ICISS report - “The Responsibility to Protect”

- Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

  A. **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; or

  B. **large scale ‘ethnic cleansing’**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.
Humanitarian intervention and R2P

ICISS report - Principles for Military Intervention

– To warrant military intervention there must be serious and irreparable harm:
  • Large scale loss of life.
  • Large scale ethnic cleansing.

– Right intention:
  • primary purpose must be to halt or avert human suffering.
  • multilateral operations, clearly supported by the victims concerned.

– Last resort:
  • every non-military option explored.
  • reasonable grounds for believing lesser measures would not have succeeded

– Proportional means:
  • scale, duration and intensity of should be the minimum necessary.

– Reasonable prospects:
  • reasonable chance of success.
  • consequences of action not worse than the consequences of inaction.
Humanitarian intervention and R2P

ICISS report - Right Authority

• Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

• If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:
  I. consideration of the matter by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure; and

II. action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.
Western Concept?

- *Individual state’s position on R2P:*

  1. *Support without reservation: Australia, Canada, France, Germany, Spain, UK, North Europe; most countries in Africa.*

  2. *Support with reservation/constructive suggestions: Brazil, China, Indonesia, Japan, Russia, the US etc.*

Humanitarian intervention and R2P

• The evolving/developing concept in the last 10 years

1. 2005 World Summit Outcome Document
2. Three Pillars in 2009
3. Implementation 2009-2014
4. 2015: New Focus & Challenges ahead
Humanitarian intervention and R2P

- The R2P in the outcome document in 2005 is close to the ideas of the ICISS report, but has narrow scope & meaning.

ICISS’s R2P

- a human rights violations
- b certain criteria for intervention
- c academic/policy discussion
- d criticized as new intervention

R2P in 2005

- a only 4 mass atrocity crimes
- b no criteria for intervention
- c only UN authority intervention
- d political commitment
- ……
Humanitarian intervention and R2P

- The concept of R2P applies only to the four international crimes of “genocide, war crimes, ethnic cleansing and crimes against humanity”;

Atrocity crimes

The **2014 UN SG report** uses the term “atrocity crimes” to refer to the four acts specified in para. 138 of the World Summit Outcome Document

- The four crimes are well embedded in existing customary international law

- Refers to the policy of a particular group to systematically displace or deport another group from a territory on the basis of religious, ethnic or national origin

- Ethnic cleansing has no formal legal definition – the forcible deportation of a population is defined as a crime against humanity

**World Summit Outcome document (2005)**
World Leaders adopted the R2P concept
• 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.

• 139. ....

• 140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

World Summit Outcome document (2005)
World Leaders adopted the R2P concept
Humanitarian intervention and R2P

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 of the United Nations, to help protect populations from 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 manifestly fail 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.

World Summit Outcome document (2005)
World Leaders adopted the R2P concept
The R2P rests on three Pillars (non-sequential and equally important):

• **Pillar one**: The state bears the primary responsibility to protect their population from genocide, war crimes, crimes against humanity and ethnic cleansing.

• **Pillar two**: The international community, i.e. the UN, regional organizations, governments and civil society, must assist states in fulfilling their protection obligations, *inter alia* by:
  – Encouraging States to meet their responsibilities under Pillar one;
  – Helping States to exercise this responsibilities;
  – Helping States to build their capacity to protect; and
  – Assisting States “under stress before crises and conflicts break out”

• **Pillar three**: timely and decisive response. When a state manifestly fails to protect its population or is in fact the perpetrator of these crimes, the international community has a responsibility to take *collective action* in a timely and decisive manner to prevent or halt the commission of mass atrocities. Such action must be on a case-by-case basis using a broad range of political, economic, humanitarian, and should peaceful means prove inadequate, coercive measures, including the use of force.

*2009 Implementing the Responsibility to Protect --- 3 pillars*
Article 8 bis
1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
[(a)-g)]

To be activated by additional decisions to be taken after 1 January 2017 by the 2/3 majority of States Parties
Humanitarian intervention and R2P

SUM-UP R2P

Shift in focus
- Shift in focus from States “right” to humanitarian intervention to States “responsibility” to protect - (Victims perspective)

4 mass atrocity crimes
- Genocide, war crimes, ethnic cleansing and crimes against humanity

Three dimensions of R2P

(a) The responsibility of a State to protect its citizens from atrocities

(b) The responsibility of the international community to prevent to massive human rights violations

(c) The responsibility of the international community to react to massive human rights violations

Military intervention
- In accordance with the UN Charter (SC decision, Chap VII)
Humanitarian intervention and R2P

- United Nations engaged with the development of the R2P in 2009-2014

- UNR 1674
- UNR 1894 (in 2009)
- UNR 1970 (Libya in 2011)
- UNR 1973 (Libya in 2011)
- UNR 1975 (Cote d’Ivoire) in 2011
- UNR 1996 (Sudan, 2011)
- UNR 2014 (Yemen in 2011)
- UNR 2085 (Mali in 2012)
- UNR 2100 (Mali in 2013)
- UNR 2121 (Sudan in 2013)

- Security Council
- SG Reports
- Special Advisors


- 2009 Implementing the Responsibility to Protect --- 3 pillars
- 2010 Early warning, assessment and the Responsibility to Protect
- 2011 The role of regional and sub-regional arrangement in implementing the R2P
- 2012 Responsibility to Protect: timely and decisive response
- 2013 Responsibility to Protect: state responsibility and prevention
- 2014 Fulfilling our collective responsibility: international assistance and the R2P
- .......

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Humanitarian intervention and R2P

R2P in Practice - Libya case

• The R2P was referenced extensively as a framework for the Libya case.

  - UN R 1970 (Feb. 26, 2011): considering “the gross and systematic violation of human rights” in Libya, the UNSC demanded an end to violence; “recalling the Libyan authorities’ responsibility to protect its population”, imposed a series of International sanctions. The UNSC also decided to refer the situation to the International Criminal Court;

  - UN R 1973 (Mar 17, 2011): the UNSC demanded an immediate ceasefire in Libya, including an end to ongoing attacks against civilians, which might constitute “crimes against humanity”. The UNSC authorized member states to take “all necessary measures” to protect civilians under threat of attack in the country.

How to judge the Libya as the first case which the UNSC authorized a military intervention citing the R2P?
Humanitarian intervention and R2P

R2P in Practice - Libya case

• SR res 1973

  Acting under chapter VII
  – Demands immediate establishment of cease-fire
  – Demands end to violence and all attacks against, and abuses of, civilians
  – Authorizes Member States
    • Protection of civilians (Op 4)
    • No Fly Zone (Op 8)
    • Enforcement of Arms Embargo (Op 13)
  – Ban on Flights
  – Assets freeze
  – Designations (travel restrictions)
  – Panel of Experts

"Authorizes Member states that have notified the Secretary General, acting nationally or through regional organizations or arrangements, and acting in co-operation with the Secretary-General, to take all necessary measures..."
Humanitarian intervention and R2P

• SR res 1973

  – Protection of civilians (Op 4)
    “... to protect civilians and civilian populated areas under threat of attack... while excluding a foreign occupation force of any form...”.

  – No Fly Zone (op 8)
    ”...to enforce compliance with the ban on flights [in order to help protect civilians]...”.

  – Enforcement of the arms embargo (Op 13)
    “...to ensure strict implementation of the arms embargo... to inspect...on the high seas, vessels and aircraft bound to or from [Libya]....”.
Humanitarian intervention and R2P

SR res 1973 (2011)
Operation Unified Protector (OUP) militär insats

NFZ

R2P  EMB
26 Feb: SR Res 1970
   • Embargo etc.
17 Mar: SR Res 1973
   • Protect civilians + NFZ + Embargo
20 Mar: US, UK, FR et al., starts military operations
   • National US Command
23 Mar: SWE Armed Forces starts planning
27 Mar: NATO Lead operation
29 Mar: SWE GOV prop.
31 Mar: Parliamentary debate (UFö)
1 Apr: Parliament- and government decision
   NFZ: Attack and reconnaissance, no ground attacks
2 Apr: basing Sigonella
6 Apr: TOA
16 Apr: FOC

17 Jun: Parliament- and government decision
   Reconnaissance
23 Jun: New SWE mandat implemented
16 Sep: SR res xxxx
20 Oct: Gaddafi killed
24 Oct: SWE engagement ended
Organisation

North Atlantic Council, NAC
SHAPE

Joint Force Command Unified Protector
Neapel

Air Component Command
(ACC) Izmir

Combined Air Operations Center 5 (CAOC)
Poggio Reanatico

Land CC

Maritime CC

FL 01
Size:
- Length: 14.1 m
- Span: 8.4 m
- Height: 4.5 m

Netto weight: ~7 ton
Max weight: ~14 ton
Max speed: Mach 2
Op time: 8 h (AAR)

Equipement:
- Radar, EWS, AAR capability, link 16, secure radio
- Adjusted to NATO standards
AIM-2000 IRIS-T (Rb 98)
27 mm gun Mauser BK 27 (Akan)
AIM-120 AMRAAM (Rb 99)
Recce POD
• Digital camera
• 25 Mpix
• 80 GB

Litening III
• Laserdirecting POD
• Videocamera
• IR-camera
• Edited 1 day ahead
  – Missions
  – Targets
• Delivered (N/S).
• Collected by MSE

• Mission analysis
• Data into digital planning
• Digital maps
• Mission coordination
• EW briefing
• CSAR/PR

• Execution
• Tactics
• Coordination
• Sequels
• Pilots equipped

• Weather briefing
• Intel update briefing
• Late changes

-12h
ATO
Mission-planning

-4h
Missionbrief

-2h
Step brief

-1h
Start-up

-30min

• Start engine
• Control of
• Weaponary systems
• Radio, Radar
• Link 16
• TAR POD
• Mission planning
• Radiocheck
**AAR (+30min)**
- Fence in
- Systems readystate
- Transponder off

**On station (+1h)**
- Passes boarder of Libya
- 2-ship commander
  - TAR
- 2-ship second
  - Air surveillance
  - Threat assessment

**AAR (+1.5h)**
- New mission (dynamic ISR)
- Remaining targets

**Off station (+2-3h)**
- Leaving target area
- Inflight report
- Fence out
  - Systems secured
  - Transponder on
EVALUATION

Data From RECCE POD
- From aircraft
- Loaded into evaluation equipment

Debriefing, pilot
- Results
- Threats
- Incidents

OPERATIONAL EFFECT
- Final TAR report to CAOC
- Analysed pictures
- Verbal description

START
MISSION

LANDING
+3,5h

MISREP

+1h

RECCEEXREP

+2h
“...to protect civilians and civilian populated areas under threat of attack...”.

**Who can be attacked?**
- person who has actual attacking civilians?
- those who support, order the attack?
- Gaddafi?

**When can the attack take place?**
- before, during and after the attack?
- Systematic / latent aggression?

**How can attacks take place?**
- Warning - cancel?
- Combat?
- Support for Anti-Gaddafi forces?

**Involvement in the civil war?**
Shift of power?
Humanitarian intervention and R2P

• IHL

“The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances” (AP I, art 1)

“In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.” (AP I art 57:1)

“those who plan or decide upon an attack shall:
(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects ...”. (AP I, art 57:2 a)

“In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.” (AP I, art 57:4).
The Swedish military unit in Operation Unified Protector (OUP) has - under humanitarian law - a collective responsibility during peace operations to, when practicable, together with other states' military contributions minimize the risk of civilian casualties during peace carrying out the operation, even if the Swedish military unit not taking part in hostilities or otherwise not participate in all parts of the military operation.
Details pre-strike

Target Name: NR1 - Radio technical unit - SE - MISRATA SA-2 SITE

SPK 39 IV NEAR VERTICAL EO / ALL COORDINATES AND MEASUREMENTS ARE APPROXIMATE

Area C

TALL KING
32 19 52N
014 58 59E

Prob. ODD PAIR
32 19 50N
014 58 58E

Bunker with at least 4 antennas
32 19 49N
014 58 56E

U/I Vehicles

SWEDISH ÖPPEN / UNCLASSIFIED
Details post-strike

TALL KING
Prob. destroyed but standing
32 19 50N
014 59 06E

Prob. ODD PAIR
Prob. Undamaged
32 19 49N
014 59 05E

Collapsed bunker

Area C

Target Name: MISRATAH EW SITE
Target ID: TGT 579
SPK 39 IV NEAR VERTICAL EO / ALL COORDINATES AND MEASUREMENTS ARE APPROXIMATE

SWEDISH ÖPPEN / UNCLASSIFIED