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Who Let the Dogs Out? R, R2P

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Abstract

As a long-time human rights advocate I find myself uncomfortably sharing Rieff's central concern over the link between military intervention and human rights advocacy, forged through the Responsibility to Protect (R2P) doctrine. This common concern is uncomfortable because I don't share his broader sentiments. However, it is also uncomfortable because it involves me swimming against the human rights tide, which seems to have embraced R2P.

Keywords

Human rights, Syria, Responsibility to protect, Sovereignty, Military intervention

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As a long-time human rights advocate I find myself uncomfortably sharing Rieff's central concern over the link between military intervention and human rights advocacy, forged through the Responsibility to Protect (R2P) doctrine. This common concern is uncomfortable because I don't share his broader sentiments. However, it is also uncomfortable because it involves me swimming against the human rights tide, which seems to have embraced R2P.

It is difficult to find a clear connection between the R2P doctrine as currently stated and forcible intervention. Part of the cleverness of R2P is that it has been constructed so as to be virtually impossible to disagree with in principle. On its face it merely claims that states have a responsibility to protect the people they claim to represent and govern. Almost without exception states claim to exist for the benefit of their people; they routinely sign human rights conventions promising not to abuse their peoples' rights. Surely any well-meaning human rights activist would support the principle that governments have a responsibility to protect rather than abuse and destroy those they govern?

However, R2P is not a simple statement of a moral obligation to protect, or a simple restatement of existing human rights commitments. Rather, it operates to reconfigure the concept of state sovereignty, and thereby to reconfigure our understanding of international law as the law of sovereign and equal states. Crucially, it does so in order to reconfigure the starting point for assessing when military intervention against a sovereign state is both lawful and justified.

The origins of R2P lie clearly in an attempt to define the permissible conditions of "humanitarian intervention." R2P originated in the report of an International Commission on Intervention and State Sovereignty established in the wake of concern regarding the legality and morality of NATO's intervention in Kosovo. The report aimed to address the conditions under which such an intervention might be permissible. Having been asked to consider when there was a right to intervene, the report aimed to re-frame debate away from a "right to intervention" and towards a "responsibility to protect." The report justified this as an attempt to shift the emphasis onto prevention rather than intervention, while acknowledging that a right to intervene might exist as a matter of last resort.

However, a more troubling re-framing was effected. The shift from "the right of humanitarian intervention" to the "responsibility to protect" shifted the intervention from an exception to be justified by the intervenors, to an ongoing responsibility which it is up to target states to displace. The phrase "Responsibility to Protect" effected this shift through a double-whammy to state sovereignty. The ambiguity over who has "the responsibility to protect" leaves it Janus-faced: international third party states (the actual or potential "intervenors") can assert a "responsibility to protect" as a basis for ongoing interest in the internal affairs of other states; while target states (in whose territory the intervention occurs) ability to assert sovereignty as a defense against intervention to the extent that act to protect their own citizens. By linking internal sovereignty to external sovereignty, the double-whammy enabled R2P to re-define state sovereignty as the baseline to which clearly authorized intervention is a last-resort exception, to sovereignty as

something to be earned on an ongoing basis, with intervention being a normalized price of failure.

But let us be generous: there were other "good" motives in attempting to define the basis for forcible humanitarian intervention. The International Commission's report was not just an attempt to articulate the space for military intervention, but to bind and limit that space with reference to clear criteria. The context for this project, of course, was an alternative of unbound intervention given its dubious international basis. The Commission's articulation and development of R2P involved an attempt to set a threshold for military intervention by tying it to a definition of "large scale" loss of life or ethnic cleansing and related acts, based on definitions taken from international human rights, humanitarian, and international criminal law. The Commission also set out further "precautionary" criteria, namely: right intent; last resort; use of proportional means; and that the military action be judged to have reasonable prospects of success.

The popularization of the concept, however, as set out on the associated website of the "International Coalition on R2P" makes reference to a new "norm of international security and human rights" (not the usual bedfellows), with the restraining criteria a little difficult to find. NGOs are asked to sign a vaguely worded statement of support for the concept of R2P, in which it is unclear whether a commitment to the use of force as a last resort is a required central article of the faith, or an optional extra. It is difficult to tell whether the growth of the R2P coalition, which now includes key human rights groups such as Human Rights Watch and Amnesty International, represents a human rights consensus on last-resort military intervention in the name of "human rights" protection, or merely a commitment to the uncontroversial idea that states, on their own and collectively, should always strive to protect civilians. The R2P church is not so much broad as ambiguous: signing R2P statements could signify little more than support for an alternative language for traditional human rights lobbying, or it could signify a fairly unrestrained endorsement of military intervention in the name of preventing "human suffering" in countries too weak to resist. In fact, supporters and detractors of R2P argue over which it is, and which vision of R2P will triumph. No doubt NGOs will struggle with states as to whether prevention or harsh cure will come to characterize the "new norm" But perhaps the main point is that R2P seems to be a doctrine crafted to bring everyone and all possibilities within its fold. Whether one enters the fold ends up being little more than a strategic question of whether one can better shape the application of the doctrine from within the fold or outside it.

And so, Human Rights NGOs now call for force-based interventions, as demonstrated recently in Syria, although they tend to stop short of calling for military force. However, any attempt to use UNSC resolutions to address human rights abuses, must involve a reality check as a new 'game' whereby UNSC resolutions which do not clearly authorize use of military force, are viewed a malleable by intevening states. UNSC resolution words do not hold their ordinary meaning, but rather the meaning that UNSC members know they will contain for the other members. Thus from the first Iraq war onward, the key UNSC Resolution trigger words for the authorization of force are what might seem to the uninitiated to be rather vague references to "serious consequences" ensuing from a failure of the target state to comply. In fact, when the French threatened to veto the (failed) second UNSC Resolution in the lead up to the second Gulf War, regardless of what the wording was, thereby leading to US charges of unreasonableness (and the

re-naming of French fries in the US), it did so largely because it had become clear that even the words 'French fries, French fries, French fries' would have been taken by those favoring intervention to authorize force. The failed draft "second" UNSC Resolution did not even mention 'serious consequences' (the wording taken to authorize the first Iraq war), much less explicitly authorize force. Rather, it specified what constituted Iraqi failure to comply with earlier resolutions, with what would follow left implicit in the air rather than in the text. With regard to the recent intervention in Libya, armed with this experience of how difficult it is to move from using a threatening to an authorizing UNSC Resolution, even when one sacrifices any mention of the use of force in the second resolution, the British and American strategy appeared to be to just get some sort of authorization for some sort of force, a few references to "all necessary means," and then to launch into whatever regime change seemed appropriate as the conflict progressed.

So what are human rights groups to do? There are no easy answers and, of course, right intent, serious and committed trying of alternatives, proportionality, and reasonable prospects of success, while wonderful criteria, are rather difficult to apply even if the political will and discipline were there. In their absence, the lack of clarity over R2P combined with shifty dances over UNSC authorization of force presents the human rights community with a fait accompli of gross human rights violations and messy geopolitical response, to which they must either be amoral bystanders or apparent supporters of either violation or intervention. In this context, R2P casts them as constant supporter. Difficult or not, if human rights has anything to do with moral entrepreneurship, surely we can find a better language and a better game to play.

Christine Bell is Professor of Constitutional Law, University of Edinburgh She read law at Selwyn College, Cambridge, (1988) and gained an LL.M in Law from Harvard Law School (1990), supported by a Harkness Fellowship. She is a former Director of the Human Rights Centre, Queens University of Belfast, and of the Transitional Justice Institute, University of Ulster. Her research interests lie in the interface between constitutional and international law, gender and conflict, and legal theory, with a particular interest in peace processes and their agreements. She has participated in a number of peace negotiations. In 2007 Christine won the American Society of International Law's Francis Deake Prize for her article on 'Peace Agreements: Their Nature and Legal Status' 100(2) American Journal of International Law. She has authored two books: On the Law of Peace: Peace Agreements and the Lex Pacificatoria (Oxford University Press, 2008) which won the Hart Socio-Legal Book Prize, awarded by the Socio-legal Studies Association UK, and Peace Agreements and Human Rights (Oxford University Press, 2000).