FAULTLINES

The K.P.S. Gill Journal of Conflict & Resolution

Volume 24

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edited by

AJAI SAHNI

Kautilya Books

&

The Institute For Conflict Management

ISBN : 978-93-87809-84-0

Price: ₹ 250
Overseas: US$ 30

Printed by: Kautilya Books
309, Hari Sadan, 20, Ansari Road
Daryaganj, New Delhi-110 002
Phone: 011 47534346, +91 99115 54346

Faultlines: the k.p.s. gill journal of conflict & resolution
Edited by Ajai Sahni

FAULTLINES - THE SERIES

FAULTLINES focuses on various sources and aspects of existing and emerging conflict in the Indian subcontinent. Terrorism and low-intensity wars, communal, caste and other sectarian strife, political violence, organised crime, policing, the criminal justice system and human rights constitute the central focus of the Journal.

FAULTLINES is published each quarter by the INSTITUTE FOR CONFLICT MANAGEMENT.

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'R2P'
From 'Privileged Intervention' to 'Responsible Protection'

Dattesh D. Parulekar*

The use of military force to coerce a sovereign state to adhere to ostensible humanitarian impulses has always been a contentious issue. The concept harks back to the 17th century Grotian precepts, which upheld the punitive culpability of the regent, if he was seen as unable or abjectly unwilling to preserve the emancipatory sanctity of his subjects. This tradition is now enshrined in the 20th Century provisions of the UN Charter, which indelibly enshrined its normative dialectic between an apparent affirmation of the inviolable sovereign primacy of the State, but set it against equally inalienable considerations of establishing and promoting human rights and fundamental freedoms of the citizenry.[1]

Squaring-the-peg of these compulsive yet competitive instincts has been a formidable challenge for the global community, cutting to the heart of tri-dimensional dilemmas:

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1 J.L. Holzgrefe, "The Humanitarian Intervention Debate", in J. L. Holzgrefe and R. O. Keohane eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas,* Cambridge University Press, Cambridge, 2003.

'ethical-solidarist' conceptions of a human milieu partaking in universalised-values; the *'legal-legitimate'* dichotomy contending with the constitutional duality of Sovereignty and placing a premium on the sanctity of the intervention authorising entity and its orderly prior decision-making, all through to the invariability of *'consequentialist-realism'*. These put any prospective militarised humanitarian intervention through the parochial sieve of narrowly outlined national self-interest, whether enlightened or existential.[2]

The overweening disposition of the global comity of nations to respond to the human egregiousness in Libya, albeit chaotically and inchoately, starkly contrasted with the prevaricating positions on the gruesome humanitarian atavism in Syria, and accentuated further by the chilling indifference of the preponderant powers-that-be to the festering situation in Yemen. This has catapulted to the fore questions that have persistently dogged the framework of coercive multilateral humanitarian interventions, through the numbing, fiendish experiences of the volatile and tumultuous decade of the 1990s.

How should the international society come to terms with the daunting spectre of existentiality of innocent marooned civilians, unwittingly ensnared in the crosshairs of degenerative intra-state conflict, within sovereign boundaries? Can the arguably sacrosanct dint of State Sovereignty serve as carte-blanche immunity, for national dispensations which turn on their own citizenry with impunity? How can any globally militarized humanitarian missive, impelled by the hallowed objective of ameliorating and alleviating popular excesses and angst, be requisitely insulated from the potential susceptibility of Machiavellian subversion? How can they be prevented

2 Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure*, Oxford University Press, Oxford, 2007.

from constituting a convenient ruse for politically-induced, collateral regime-change, by the privileged powers-that-be?

With neither the phenomenon of 'Conflict' being quintessentially novel, nor the propensity for 'Intervention', being innately unique in the annals of history, the persistent quest for legitimacy in upholding the rule of law has dwelt upon neither condoning nor sanctioning impunity yet ensuring that perfunctory recourse to armed force is neither blatantly impulsive nor patently unilateralist. This found codification within the aegis of the UN Charter, vide the framework of multilaterally determined *'individual and collective self-defence'* under Chapter VII, and immediately thereafter, through the pioneering entrenchment of the UN mandated Peacekeeping Operations (PKOs). These PKOs envision the mandating of multilateral, multi-national military contingents, primed in pacific-disposition, interposing between hostilely juxtaposed entities to keep them subdued and wedged.[3] With the UN widely acclaimed as the institutional repository of lawful legitimacy, to the extent that the global body's Charter provisions are regarded as legal precepts outside of the twin qualifications set-out earlier, all other uses of armed force, on sovereign states was either expressly proscribed, or tantamount to being held as legally untenable.

But despite the Charter providing for the establishment and promotion of the protection of human rights and fundamental freedoms, such hallowed considerations were perceptively and practically suborned to the greater good consideration, of

3 Only two instances of Chapter VII mandated Collective Security operations, come to light, in the form of the Korean intervention of 1950, and later, the application of measures, to repudiate Iraqi aggression and ingress into Kuwait, in 1990. As regards the format of UN Peacekeeping, notwithstanding its relatively greater traction, still, only a dozen missions were mounted, in the four decades since its inception, in 1948.

preserving the superior sovereign character of the State in the Westphalian mould.

Furthermore, the onerousness of finding political consensus over prosecuting human-rights infractions through the UN system was evident from the limited dint of secularly applicable regime-instruments. Though the Universal Declaration of Human Rights and the Genocide Convention were adopted early only few statist perpetrators have been brought to book so far through the Nuremberg and Tokyo Tribunals, for delinquent actions.[4]

While the Cold War was replete with instances of abominable human rights assailment, the long hiatus in prosecuting such macabre exponents of deliberate pre-meditated human pogroms was due to the bipolar strategic schema, which, placed stifling fetters on meting out condign punitive punishment by virtually precluding potential consensus at the UN.

Four phenomena have grown on the dial since the end of the Cold War and the coinciding advent of globalisation.

First, the emergence of the proverbial *'Unipolar Moment'*, marked by the dismemberment of the peer superpower, spawned surging idealism, which had the United States in the vein of the global ring-master and arbiter super-cop, incorporating the promotion of liberal democracies and free market economics, as new-found, though some would say revived, touchstones

4 While human rights violations within sovereign frontiers, remains beyond, the juridical purview of the UN's International Court of Justice (ICJ), the push for establishing a Permanent Court along the lines of the present day International Criminal Court, was left fledgling through the heydays of the Cold War, until the mechanism of the International War Crimes Tribunals (IWCTs), found, almost cataclysmic traction, during the decade of the 1990s.

of its foreign policy.[5] As blissful optimism abounded over ideological incompatibility no longer being a constituting factor in global politics, the United Nations Security Council (UNSC), refreshingly saw greater consensual decision-making.[6]

Second, the emergence of new idioms surrounding human rights, leading to an enlightened and sophisticated understanding of the continuum spanning rudimentary human survival and dignity to beneficent human development, contributed to a broader conception of an all-encompassing and well-rounded concept of *'Human-Security'*. Feral propensities, most notably, genocide, ethnic cleansing, war crimes and crimes against humanity have slithered up the pecking-order, conflating statist security and systemic stability with human-security.[7]

Third, the reality of an increasingly interconnected and interdependent global schema engendered plausible anxieties and delusional insecurities in certain fragile and artificial statist societies, which found convenient release through the rising tide of ethno-nationalist virulence, civil strife and state-led marauding repression.

And finally, the Post-Cold War era saw a new visage of contemporary media, or of embedded-journalism, involving

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5 Francis Fukuyama, "The End of History?", The National Interest, Summer 1989, https://www.embl.de/aboutus/science_society/discussion/discussion_2006/ref1-22june06.pdf.

6 Between 1946 and 1989, six hundred and forty-six (646) Resolutions were adopted, by the UN Security Council, compared to six hundred and thirty-eight (638) UNSC Resolutions, adopted, during 1990-1999. See Simon Chesterman, *Just War or Just Peace?:Humanitarian Intervention and International Law*, Oxford University Press, New York, 2002.

7 J. Jones, "Humanitarian Intervention in a Multipolar World", *Washington University Global Studies Law Review*, Volume 15, Issue 1, 2015.

permeated media-coverage of conflict-hotspots leveraged by round-the-clock media scrutiny known as the *'CNN Effect',* This ensured that myriad human-induced humanitarian catastrophes transpiring in nondescript regions and *mofussil* (rural or provincial) areas, in particular, obscured from mainstream consciousness in the past, were now transported and purveyed in real-time into the public domain, and catapulted to the mind-space and attention of policymakers, compelling strategic reactions and response.[8]

Models of Post-Cold War Armed Humanitarian Interventions

The most vivid defining feature of the Post-Cold War period has been the rising spate of internal conflicts of eclectic hues, morphing away from the staple of inter-state hostilities of the preceding era. What made these conflicts difficult to handle wasn't just the complex humanitarian emergencies that were the upshot of internecine warfare. The warring terrains hugely treacherous due to the intrinsic caprice and cupidity of the protagonists implied that conventionally comprehended rules of engagement were dispensed with, and established avenues for diplomatic resolution and mediating measures were despairingly feckless. The sobering aspect of this was that unlike earlier times, when such messianic acts remained the preserve and province of the State within which they panned out, such hideous actions now found amplification on the global stage, demanding attention and redress. The Post-Cold War Era ushered in a new age of global politics where action taken by the Security Council was increasingly based on the doctrine of collective humanitarian intervention. The

8 J. Western, "Sources of Humanitarian Intervention: Beliefs, Information, and Advocacy in the U.S. Decisions on Somalia and Bosnia", *International Security*, Volume 26, Number 4, 2002, p. 122.

resolutions passed by the Security Council in this period suggest it was progressively willing to treat gross violations of human rights and democracy as threats to regional and international peace and security.

In the 1990s, the question of justifiable humanitarian intervention took on new urgency when states, the United Nations and regional multinational organisations recurrently intervened to help populaces subject to clear human rights abuses and depriving depredations, from Iraq in 1991 to East Timor in 1999.

Much of the drift of such interventions, feeding-off humanitarian impulses, lacked theoretical and operational coherence. The international community's strategic response could be distilled into four forms and formats of intervention.[9] One, an abstention model, where there is no military intervention at all, as was the case at the apogee of the catastrophe in Rwanda; two, an intervention that mainly curatively addressed itself to disaster relief requirements, without appropriating itself to the underlying political and economic causes, as was manifest in the US-led UN mission (UNOSOM/UNITAF) in Somalia; three, a 'relief plus' model, where a 'friendly' government is also installed, like the US has done in several Caribbean and Central American nations, and four, undertaking a full-on reconstruction of the entire political, economic and administrative system of the afflicted country, along the lines of some sort of liberal, democratic and even multicultural system, as has been in evidence in independent Bosnia and Herzegovina and the self-arrogating liberation by Kosovo in the former Yugoslavia and the linear trajectory of freedom in East Timor.

9 K. James, "Models of Humanitarian Intervention: Assessing the Past and Discerning the Future", *Foreign Policy Research Institute (FPRI) WIRE*, Volume 9, Number 6, August 2001.

The varied forms of humanitarian interventions, from authorisation of collective interventions through the UN to unilateralist 'coalition-of-the-willing' operations through the auspices of NATO, from circumscribed operations to expansive missions, have raised a phalanx of profound questions about the contentious and selective tenor of humanitarian interventions, devoid of conceptual clarity, legal tenability and political commitment.

First, were the interventions in question genuinely motivated by a sincere desire to assist the victims of atrocities, or borne of ulterior motives, underpinned by insidious collateral considerations? Are the States' rights invariably superior to those of individuals, both morally and legally, or can there be circumstances and situations in which States forfeit certain rights in favour of rights of the Individuals? How can dispensations address the inherent tension reposed within the UN Charter? Can a meaningful and substantive distinction be implemented, between the obsession over legalistic action and the compulsions for undertaking steps borne of legitimate considerations? If States occasionally engage in humanitarian intervention despite its legal prohibition, should their actions be subject to certain standards of behaviour, and if so, what should they be?[10]

An efficacious humanitarian intervention is one which saves lives by preventing or ending violent attacks on unarmed civilians, or by assisting the delivery of aid, or both. Its moral rationalisation is based on the premise that military intervention for human protection purposes can only be justified if the intervention does more good than harm.

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10 O. Ramsbotham and T. Woodhouse, *Humanitarian Intervention in Contemporary Conflict,* Polity Press, Cambridge, 1996, pp.8–66.

More formally, humanitarian military intervention is morally justifiable only when, at a bare minimum, the intended beneficiaries of the action are better off after the intervention than they would have been had the intervention not taken place. Thus, no matter what other legitimating rational is offered, the means of military intervention cannot be justified in humanitarian terms unless there is a reasonable prospect that it will achieve the desired ends (betterment of the human condition).

Having said that, humanitarian intervention is a short time-bound exercise, with limited political objectives, in that it is intended to stall or stave-off suffering. It is not intended to establish enduring peace, or to recast a supplanting or renewed political system in place, although it can establish a basis for peace-building by creating an environment in which people can think about more than mere survival. Explicitly political objectives follow, but are distinct from humanitarian objectives. This distinction becomes blurred when policymakers want an intervention to alleviate human suffering and promote a political resolution to the crisis, as UN-led operations were called-upon to accomplish in tribal-conflict riven Somalia, and ethno-nationalistically chiselled Bosnia and Herzegovina. The difference between humanitarian and political objectives was more obvious in Kosovo and East Timor, where initial humanitarian operations quickly changed to long-term political operations. In brief, humanitarian intervention is meant to protect fundamental human rights in extreme circumstances; it is not meant directly to protect or promote civil and political rights.

Military intervention for human protection purposes takes place in a hostile environment, where the political order is contested and the national government does not have the

capacity or the will to respond to the basic needs of people for safety, shelter, food, water and medical services. In some cases, the government itself is responsible for creating the humanitarian crisis in its effort to defeat rebels or impose demographic changes through killing and forced displacement.

Whatever the moniker or trigger, the essential point is that humanitarian crises are a symptom of deeper political and social problems. The fundamental cause of success and failure across all the cases was the interaction of military strategy with humanitarian objectives and the demands of the situation on the ground. When strategy, objectives and demands were aligned, success was far more likely than when one or more pieces were incongruent. Intervening governments, have a great deal of control over the outcome of a humanitarian intervention if they understand what they are up against and have the political will to pay a price in soldiers' lives to save strangers.[11]

Reframing the 'Sovereignty' Discourse

The principle of sovereignty has been an ever-present theme in international law and politics, and is considered one of the cornerstone principles of the Westphalian statist order. Corollary principles such as non-intervention, non-use of force and non-interference in internal affairs are all hemmed-in, within the Sovereignty doctrine, which has undergone metamorphosing reconceptualisation, in the post-Cold War era. The modern international system is founded on the premise that sovereign states have a right to non-intervention, to be free from unwanted external involvement in their internal affairs. Yet repeated humanitarian interventions since 1991 have impugned the idea of sovereign immunity at the altar of protecting civilians from un-condonable and incalculable

11 Taylor B. Seybolt, op.cit. p.4.

harm. This human security perspective on the use of force, anchored in the belief that the rights of people, not states, are the bedrock of a just and secure world, has found its voice in the concept that states have a responsibility to protect civilians within their jurisdiction.[12]

With the shift from interstate conflicts that plagued the Cold War to the more frequent intrastate conflicts that flared up after the collapse of the Soviet Union, the international community was confronted with the dilemma of undermining the principles delineated in the Charter by intervening in states where gross human rights violations were taking place. These conflicts, fuelled by ethnic or religious tensions have raised the vexing issue of protection of civilians and citizens of these *'failed/failing state(s)'*. Interventions in Somalia, Haiti and East Timor have been poster-boys for the readiness by international actors to circumvent state sovereignty to protect the rights of civilians. This new way of regarding the legitimacy of sovereignty was also emphasised by the NATO intervention in Kosovo (without Security Council authorisation), which clearly highlighted the degradation of the concept of sovereignty in circumstances where human right violations were taking place. The controversy surrounding humanitarian interventions centres, among other things, on its possible violation of the basic principles of state sovereignty, namely interfering in the internal affairs of states on issues that are within in its jurisdiction.

In the past this infringement was frowned upon in international circles, but with the changing paradigm of sovereignty where people's rights are promoted at the expense

12 M. Ayoob, "Humanitarian Intervention and State Sovereignty", *The International Journal of Human Rights*, Volume 6, Number 1, 2002, pp. 81-102.

of traditional principles, this practice has been increasingly welcomed in the international community. This was characterised by the then UN Secretary General Kofi Annan in his UNGA address (September 20, 1999) as a "developing international norm, in favour of intervention to protect civilians from wholesale slaughter," underscoring a new age of global politics that is increasingly, people-centred.[13]

The averment that humanitarian intervention through militarist means can transpire for wholly altruistic reasons is palpably false. Nevertheless, humanitarian interventions can be sought to be made less arbitrary, selective and unilateralist by tethering them to the time-honoured jus-ad-bellum (just cause; right intention; right authority; last resort; and reasonable prospect for success) attributes for endeavouring to war, and the jus-in-bello (proportionality and discrimination) criterion for conduct during such wars.

Punitive Intervention vis-à-vis R2P

Recognising this tension in dovetailing the conceptual tradition of State Sovereignty, against the epochal moral and political imperative for Militarized Humanitarian Interventions, Kofi Annan frontally addressed this convolute dialectic in his twin expositions, as part of the Annual 'Work of the Organization' Report to the UN General Assembly, as also in his op-ed in *The Economist*[14]. Endeavouring to elicit the forging of politico-diplomatic unity around basic principles of intervention in cases of extenuating need, he asked: "if humanitarian intervention is, indeed, an unacceptable assault

13 M. Ottaway and L. Bethany, "International Interventions and Imperialism: Lessons from the 1990s", *SAIS Review* (Print), Volume 23, Number 2, 2003, pp.71-92.

14 K. Annan, "Two Concepts of Sovereignty", *The Economist*, September 18, 1999, pp. 81-82.

on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of human rights that affect every precept of our common humanity?"[15]

At the nub of the issue was the notion of an undiminished 'Responsibility', anchored in the acknowledgment that when universally accepted human rights are being audaciously trampled-upon or being given a short-shrift on a profligate and rampant scale, there exists an unceasing responsibility on the part of the deviant or delinquent state and the global comity to uphold the primordial welfare of its citizenry.

In response to the UNSG's throwing-down-the-gauntlet impugn, Canada broached and spearheaded the erudite work of the blue-ribbon *'International Commission on Intervention and State Sovereignty'(ICISS),* which produced the seminal *'The Responsibility to Protect (R2P)'* Report in 2001. This fundamentally reconceptualised the dilemma, wedding the upholding of the principle of Sovereignty and the ineluctable consideration for Human Rights.[16] In its attempt to square the circle of Order and Justice, Sovereignty and Individual Rights, the Commission placed a premium on *'Duties',* latent in a State's privilege of Sovereignty. It flipped the issue of intervention for human-protection purposes from a debate about the *'Right-to-Intervene'* (R2I), into one about the *'Responsibility-to-Protect'* (R2P) innocent lives. This follows the logic set out by then UN Under Secretary General Francis Deng and his colleagues through their pioneering work on 'Internally Displaced

15 K. Annan, "Secretary-General Presents his Annual Report to the General Assembly", The United Nations, http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html.

16 International Commission on Intervention and State Sovereignty (ICISS), Evans, Gareth J. & Sahnoun, Mohamed, "The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty", International Development Research Centre, Ottawa, 2001.

Persons' and their rights and entitlements as being integral to human development and security, and bringing a qualitatively refinement to a broad-brush characterisation of Refugees.[17]

The R2P doctrine is based on the premise that whenever a State is unwilling or unable to protect its citizens from gross human rights violations, the responsibility is then shifted to the international community. The ICISS underlined the responsibility of sovereign states to uphold basic human rights. This definition of Sovereignty as Responsibility emphasises two essential elements: one, that state authorities are responsible for the functioning of the state and the protection of the safety and lives of its citizens, and two, that states are responsible for their actions and are thus legally accountable for the consequences of their acts.

The report intended to resolve conflicts between the principles of sovereignty and human rights protections by linking the two and ultimately making human rights the basis for all Sovereignty. Therefore, the principles of sovereignty are legitimate only as long as the State provides the fundamental rights for its citizens.

With the emergence of this new norm of intervention that ultimately minimises the importance and significance of state sovereignty, concerns have been raised over the possibility of ushering in a new form of imperialism. This fear is particularly relevant in parts of the world that had previously fallen under the cloak of colonialism, as humanitarian interventions share certain traits with the civilising missions of the imperial past, where European colonial policies and practices were justified on similar humanitarian grounds.

17 Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford University Press, Oxford, 2002.

The R2P emerged as a response to the inadequacy of protocols associated with the practice of humanitarian intervention, and the difficulty of reconciling sovereignty with human rights. Apprehensions and deficiencies that defined Humanitarian Interventions during the decade of the 1990s, viz., a possible throwback to imperialism by other means, the gross inability to ensure self-governance, a misplaced focus on the 'intervener' as against the 'intervened', etc., informed the discussion and development of R2P. Through the coinage of the Responsibility to Protect (R2P), the Commission (ICISS) hoped to *"bridge the gap between so-called legitimate (ethically justifiable) and legal (legally authorized) intervention."*[18]

Recognising the lack of regulation surrounding humanitarian interventions, R2P attempts to re-frame and refine the idea of militarily intervention for the purpose of human security by relegating Sovereignty concerns subsidiary to the *"protection of individuals against threats to life, livelihood, or dignity that can come from within or without,"* thereby reformulating the phenomenon of human rights-based interventionism.[19] The R2P makes the case for the issue to be reframed not as an argument about the *'Right-to-Intervene'*, but about the *'Responsibility-to-Protect'*. Although this responsibility is owed by all sovereign states to their own citizens in the first instance, it must be picked up by the international community if that first-tier responsibility is abdicated or if it cannot be exercised.

The Report insists on a dual responsibility of Sovereignty; *externally—to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state,* utilising the philosophy that

18 M. W. Doyle, "The Folly of Protection: Is Intervention Against Qaddafi's Regime Legal and Legitimate?", *Foreign Affairs*, March 20, 2011.

19 Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All,* The Brookings Institution Press, Washington DC, 2009.

sovereignty hinges on the behaviour of the sovereign.[20] While not according States, the explicit right to intervene militarily in cases of mass atrocities, R2P acknowledges the responsibility of the international community to respond when a government is either unwilling or unable to protect its own citizens. The ICISS panel consciously choose sagacious conservatism over plausible adventurism as the reactionary component inherent in R2P, stating that, *"the Responsibility-to-React, with military coercion, can only be justified, when the Responsibility-to-Prevent, has been fully discharged,"* even as they reaffirmed that Just War principles as determinants of the legitimacy of any given Intervention.[21]

With its foundations in prevailing international law, the Commission mooted R2P as a response mechanism to address the broad spreadsheet of threats confronting states, which included natural disasters too, hoping that it would make for facile acceptance. However, the synthesised UN document produced by the Secretary General's Office as a working draft for consideration and subsequent adoption by the Membership confined it specifically to four sets of mass atrocities: genocide, war crimes, ethnic cleansing, and crimes against humanity.

Curiously enough this found traction in the 2005 World Summit's 'Outcome Document', that enshrined and mainstreamed the R2P doctrine within the UN System.[22] The identification of such crimes as the premise for the application of R2P derives much of its legitimacy from the jurisprudence

20 Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, Polity Press, Cambridge, 2012.

21 Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds*, Routledge, New York, 2011.

22 United Nations General Assembly, "2005 World Summit Outcome", September 15, 2005, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement.

of the international and hybrid Criminal Tribunals (CTs), built during the 1990s, such as the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), and the permanent International Criminal Court (ICC).

R2P was a conscious attempt to pare through what had become the Gordian-knot of humanitarian intervention. States have insisted for too long on the concept of sovereignty as necessarily being free from external control; but sovereignty has evolved to mean much more than that. While it is established that all States are equally sovereign, despite each State's individual sovereignty, evolving international law has already set many constraints on what States can do. The emerging concept of human security has created additional demands and expectations in relation to the way States treat their own people. The defense of State sovereignty does not include a claim of the unlimited power of a State to do what it wants, to its own people.

The **first**, and perhaps ultimately the most politically useful contribution of R2P was to invent a new way of talking about humanitarian intervention. The ICISS sought to throw out the debate about the right to intervene and to re-characterise it not as an argument about any right at all but rather about a responsibility to protect people at grave risk, with the relevant perspective not being that of the prospective interveners, but more appropriately, of those needing support.[23] This new language clearly has been helpful in taking the heat and emotion out of the policy debate, and forced the actors to think afresh about what the real issues are.

23 J. Welsh, "Review Essay: From Right to Responsibility: Humanitarian Intervention and International Society", *Global Governance*, Volume 8, Number 4, 2002, pp. 503-521.

The **second** contribution of the ICISS, was to formulate a new lingua-franca alluding to sovereignty, in essence arguing it should not be seen not as 'Control', but as a 'Responsibility'. Sovereignty is no longer just the ability of a country to exercise exclusive and absolute control within its territory, it is also the recognition of the equal worth and dignity of its people, it argues. As much as Sovereignty accords States the right to protect themselves from external interference, it also proffers the people of such a State the right to protection from brutal disturbances of their personal lives. This dual responsibility vests primarily with the State. But, if the State is unwilling or unable to honor that responsibility, or itself turns perpetrator of atrocities against its people, then the responsibility to protect the victims of such atrocities transfers to the international community, acting ideally, though not necessarily, through the United Nations Security Council.

The **third** contribution was to make it clear, that the responsibility to protect extends to a whole continuum of obligations, encapsulated-in and delineated-through the Three Pillars framework, viz., *the 'Responsibility-to-Prevent', the 'Responsibility-to-React' and the 'Responsibility-to-Rebuild'*, where military intervention is only considered as a last resort in the second option.[24]

The **fourth** contribution was to come up with guidelines for when military action is finally appropriate from the standpoint of its legality and legitimacy. The effectiveness of the global Collective Security System, as with any other legal order, depends ultimately not only on the legality of decisions, but also on the common perception of their legitimacy, i.e.,

24 Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All," *Irish Studies in International Affairs*, Volume 20, Number 1, 2009.

their being made on solid evidentiary grounds and for the right reasons, morally as well as legally.[25]

Starting from a presumption of Non-Intervention, deviation from which must be exceptional and justified, the ICISS Report (2001), offered practical guidelines for the exceptional and exigent measure of military intervention to protect large swathes of people from imminent and intolerable danger. The Commission argued that all the relevant decision-making criteria can be succinctly summarised under six basic rubrics: *Right Authority, Just Cause, Right Intention, Last Resort, Proportional Means and Reasonable Prospects.*[26]

R2P should be heralded as a normative principle for guiding international behavior because of its multi-dimensionality. The responsibility to protect is an umbrella concept, embracing not just the *"responsibility to react",* but the *"responsibility to prevent"* and the *"responsibility to rebuild"* as well, the last two of which have been relatively neglected in the traditional discourse.[27] Elevating their importance to the same level as that of reaction should do much to make the concept of reaction itself more palatable.

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25 Eugenia Lopez-Jacoiste, "The UN Collective Security and its Relationship with Economic Sanctions and Human Rights", *Max Planck Yearbook of United Nations Law*, Volume 14, 2010.

26 The Just War principles have been retained, but suitably modernized, in that, 'Just Cause' no longer pertains to religious affiliation, but implies large-scale loss of life and extrication from homelands. Similarly, the idea of 'Right Authority,' no longer vests with the Pope, as it was once considered to do, but with the United Nations, and possibly with Regional Organizations.

27 N. J. Wheeler, "A Victory for Common Humanity?: The Responsibility to Protect after the 2005 World Summit", *Journal of International Relations and International Law*, Volume 2, Number 1, 2005, p. 95.

The Responsibility to Prevent

This relates to taking cogent preventive measures before the onset of the humanitarian exigency to the extent it may be possible. The imperative intent should be to mitigate rancor and address the sources of violence that imperil populations in terms of the political, economic and security risks. This prioritises the quest for identifying situations which portend the specter of mass atrocity crimes, a crucial factor that distinguishes R2P from humanitarian intervention. The issue with humanitarian intervention with its tendency to singularly focus on military intervention, which lent it to skepticism and misgivings. The focus was on halting the problem, but not necessarily to solve it. It addressed the problem only after the damage had already been done, rather than preventing it from occurring in the first place.

The strength of 'R2P' lies in the fact that the antidote or elixir is intended to precede the problem. The idea of premature readiness-in-response was broached by the then UN Secretary General Boutros Boutros Ghali in his Supplement to the Agenda for Peace document of January, 1992. But the chasms between platitudinous rhetorical commitment and the gaping shortfall in tangible operational contributions by the major powers at the UN meant repeated pleas for a real-time hands-on diplomatic/ military mechanism within the UN System, met with tepid support and remained largely elusive. Cases of the Secretary General indulging in Crisis Diplomacy, with the imprimatur of the Security Council, were few and far between.[28] The R2P pitch for an integral preventive structure has also acted as a fillip to the boots-on-the-ground 'Peace Operations' (POs) architecture

28 "Agenda for Peace: Preventive Diplomacy, Peace-making and Peacekeeping", Report of the UN Secretary General, pursuant to the Statement Adopted by the Security Council, 47th Session of the UN General Assembly, June 17, 1992, www.un-documents.net/a47-277.htm.

of the UN Peace-building Commission, although much more needs to be done.

The Responsibility to React

Arguably the most critical strand of the R2P, it's also the most arduous and onerous of aspects to actualise and get right, within the framework. It proffers a slew of operative measures from coercive instruments such as sanctions and the threat of international prosecution, all the way upto actual military intervention. Drawing on the numbing experiences of Rwanda and Srebrenica, where pre-meditated slaughter of innocent civilians took place under the gaze of the UN and the international community, it is rooted in the resolve to not let such aggravating incidents recur. However, rather than put the onus on an overweening section within the global community which could use this for strategic political ends through the notion of 'regime-change', the responsibility to protect is cast upon the state where the crisis is erupting.

Only if that state is unable or unwilling to redress situations of grave human need, in some cases perhaps even because it is the government itself that is doing the damage, the responsibility to take appropriate action falls upon other members of the international community.

The Outcome Document makes this clear beyond a smidgen of doubt, identifying the flexible means available in a sequence, moving from the less to more intrusive and coercive. Unlike humanitarian intervention, which is the one trick pony of deployment of armed force for all conditions and situations, here military intervention is not the only option. The failure of direct prevention measures to contain a humanitarian crisis does not mean that military action is necessarily required. Wherever possible, coercive measures short of military

intervention ought first to be examined, and employed as an escalatory ladder. The continuum moves from peace mediation, facilitation and negotiations of varied hues and persuasions, to ostracising and sequestering strategies of revoking diplomatic recognition, expulsion from international organisations, and even travel embargoes.

A whole range of economic incentives and disincentives can be operationalised as carrot and stick, although, as has been documented, their efficaciousness rests on widest possible embrace by the UN's membership. Should all this fail, the prospect of military intervention is the last resort. What distinguishes this from outright humanitarian intervention is that though the range of measures held true for them, too, they were invariably shunned for an overt all-or-nothing consideration of militarised interventions, generating much angst. It cannot be over-emphasised that military intervention is only a last resort.

But in the event, it does happen, R2P has sought to allay and assuage the squeamishness of the international community with humanitarian intervention by formulating clear rules defining when and how to proceed. The R2P doctrine asserts that *"the international responsibility to intervene and halt mass killings and ethnic cleansing is situated in the Security Council, and that any intervention should be efficient and effective."*

Towards this end, it draws on the Just War principles. For instance, under the threshold of '*Just Cause'*, R2P presupposes action both in times of actuality and in real-time anticipation of extreme conditions which implies a reasoned apprehension of major loss of human life. Similarly, in respect of the *'Right Intention'*, R2P affords the latitude to use past experiences with the turpitude of a certain target state or its regime, as basis enough to mandate real-time action to forestall potential

mass murder or crimes against humanity. In a similar vein, the qualifying bar for *'Last Resort'*, according to R2P, need not mean the deployment of armed measures as the last option. Instead, where the situation is observed as fast degenerating, it counsels to dispense with considerations of fostering domestic order over an earnest undertaking of pre-emptive armed action.

Much in consonance, the yardstick for *'Proportionate Means'* is kept normatively foreclosed, yet, tied to the duration it might take to consummate the mission. It sets out and makes it incumbent upon the intervening entity to stay the course as long as it takes to accomplish the objectives, not more, not less, implicitly making it mandatory for intervening states to make an enduring commitment to the mission. Moreover, the conception of *'Reasonable Prospects for Success,'* makes it incumbent upon the decision-making powers to deliberate not only whether they want to get their hands dirty, but as to what it would take to overturn the situation to favorable disposition, clearly aimed and intended at checking blithe and flippant interventions.

Finally, it addresses *'Legitimate Authority'* suggesting that while the United Nations is the prima donna and not merely first-among-equals in authorising the Use of Force for R2P led intervention, it's not sacrilegious to look beyond the pale of the UN. Particularly when the threat or actual use of Veto power by a P5 member could scuttle overwhelming sentiment and predominant consensus.

The Responsibility to Rebuild

Where the R2P clearly diverges from classical humanitarian intervention is in this remit of obligation. The manner in which most humanitarian military interventions have been deployed during the 1990s, was virtually a mirror-image of speculative-

money that makes it's way to equity-markets; *quick to enter, even quicker to exit, with little-to-no appetite for stomaching risk, with seldom the tenacity and resilience, to see-out momentary adversity and stay the course*. R2P obligates the interventionists to assume a genuine international commitment to help rebuild peace, promote good governance, and foster sustainable development processes. This implies staying the course on full assistance, with recovery; reconstruction and reconciliation; and addressing in the process the causes of the harm the intervention was designed to halt or avert, such as mine clearance, or apprehending of indicted war criminals.

The responsibility to rebuild focuses on the recovery, reconstruction and reconciliation of a state, and aims at preventing potential recurrences of humanitarian crises. After the conflict has been arrested, there is still no guarantee that the crisis is completely over. The responsibility to rebuild is necessary to stabilise the situation.

Post-conflict peace building is not the end of the process of conflict resolution; rather, it is the beginning of a new process of conflict prevention, with a focus on strengthening structures to tackle the longer-term, root causes of the violence in question.

Structural Infirmities in the 'Punitive Interventions' Continuum

The R2P has been in vogue for over a decade, and has become a touchstone in academic discourse and literature as well in diplomatic resolutions and language. But its conceptual weakness stems from its inability to reconcile the moral impulse of saving strangers in distress with the often-militating parochial self-interest that predominates the strategic calculus of nations primed to intervene, and underpins considerations,

for or against, precise and tangible interventionism.[29] In a practical universe of national interests, it's hard to believe that nations can motivate themselves into intervening in god-forsaken strategic environments, treacherous for their troops, and exacting prohibitively high costs, simply in the quixotic belief of shielding innocent civilians, alien to them, from the depravity of abhorrent, mass atrocity crimes.

Despite the empirical and anecdotal evidence of humanitarian intervention in Somalia, and later in Serbia over the province of Kosovo, such instances of the 1990s remain exceptions rather than the norm in exhorting and stirring action in support of the spirit of humanitarianism.

The more plausible explanation for multilateral humanitarian action is likely to be of *'mixed motives'*, representing the embodiment of a dynamic interplay between the virtues and dividends of value driven perception politics on the one hand, with the unvarnished recognition of the vexatious pitfalls of getting embroiled in foreign soil for little to no strategic gain.

The framework of R2P, which transcends singular militarised intervention by encouraging the deployment of the full spectrum of tools and instruments in preventive hue, seems best placed to embrace the notion of mixed motives, inherent to its exercise. Intervening states need to explain to their domestic audiences and electoral constituencies the extenuating rationale for intervening in milieus where no apparent or existential interests are at stake. They may even seek prior approbation under the principle of governmental accountability through informed consent, and in the same vein, would need sustained popular traction to be able to endure the intervention operation,

29 M. Barnett, *The Empire of Humanity: A History of Humanitarianism*, Cornell University Press, New York, 2011.

until its logical conclusion, and not cataclysmically abort the mandate as has been the norm in interventions gone by.[30]

This said, since the ostensible object of such R2P driven actions are to essentially protect civilians, the inevitability of some degree of narrow self-interest bringing intervening states on board must be seamlessly assimilated within the overriding humanitarian impulse of the intervention. Otherwise, it would be a formidable proposition to convince the dispensation of the target-state that such action is not masquerading imperialist machinations or seeking insidious regime-change, as has been the case with Omar Bashir regime over Darfur in Sudan (2005), and lately, with the civilian-military government over the Rakhine state in Myanmar.

Intrinsic to the concept and praxis of R2P, is the 'triad of pillars' approach. The most interesting is Responsibility to Prevent, with much riding on the outcome of deployment of pertinent measures as an antidote.

In a world of imagined, constructed, interpreted and contrived realities, when R2P steps in to thwart what might have been, the ability to clearly quantify the benefits of such preventive action(s), are obviously subject to argument and debate. This is premised on the contestable principle of the immediate costs of action outweighing the inevitable consequences of inaction. One could also quibble over the scope and extent of the portending crisis having been averted, and to what extent it could have metastasised had it been allowed to fester and stew.

While empirical and anecdotal evidence can be marshalled to argue either side of the debate it is difficult to argue either

30 A. Krieg, *Motivations for Humanitarian Intervention: Theoretical and Empirical Considerations*, Springer, Heidelberg, 2013, p. 126.

way with certitude. While numbing inaction in Rwanda during the mid-1990s exemplified the unpardonable cost of inertia, one cannot but point to the cost staved-off by action against Serbia over Kosovo (albeit a tad delayed), and the smothering dividends of reasonably swift move to action, under UNSCR 1973, in Libya.[31]

While the benefits of humanitarian intervention are in the remit of imagination, its exacting costs are eminently evident.

No matter how meticulously planned and targeted coercive operations are, they invariably exert collateral damage and accidental deaths; killing of innocent civilians and depredation of infrastructure, which is bound to have a more immediate impact on popular collective consciousness, than a conjectured counterfactual scenario. It is broadly understood that the proposition of deployment of military force without collateral damage or infractions of humanitarian and legal norms is a non-sequitur. Perceptions of the costs and benefits of preventive operations tend to be slanted and skewed towards costs, even when the mission arguably accomplishes what it set out to do, viz., averting a mass atrocity. To that extent, there appears to be a structural tendency for such operations to be judged more by the damage they inflict, than by the harm they stave-off, with the threshold being particularly high where the intervention is preceded or accosted by concomitant propaganda surrounding the hallowed objectives.

What's good for the goose should be good for the gander, is a tough proposition to argue in favour of the interveners,

31 R. Murray, "Humanitarianism, Responsibility or Rationality? Evaluating Intervention as State Strategy", in Aidan Hehir and Robert W. Murray eds., *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*, Palgrave Macmillan, Houndmills, 2013.

since their moral superiority in relation to the recalcitrant and devious elements perpetrating human rights violence makes them beholden to a higher standard. This makes it incumbent upon them to ensure, without exception, that the militarist goals of intervention do not come at the expense of moral standards and rationale behind the operation. The inability to satisfy this criterion imperils the legitimacy of the mission itself. Another predicament confronting interveners is to operate authoritatively in a fluid environment in a manner that maintains their neutrality and action-objectivity. This includes identifying and calling-out combatants on their perfidy, particularly where they tend to be sub-national actors or militias, or even the deviant regime itself.

The dimensional pillar of the '*Responsibility to Prevent*' is bookended by the *'Responsibility to Rebuild'*. This asserts that interveners in R2P situations should exude a genuine commitment to forging a durable peace and promoting good governance and sustainable development, predicated on the philosophical mooring that *peace is not just the absence of violence but the procreation of enduring mechanisms, for inclusive development*.

While some have averred that an international legal duty in the nature of an obligation exists, this has been contested by others. Nevertheless, despite the fact that the 2005 version of the R2P doctrine, adopted and embraced by the global comity, was conspicuous by its absence of any reference to a duty or responsibility to rebuild war-torn societies lacerated by ravenous strife, the chaos in post-Gadaffi Libya, which ensued in the aftermath of operationalising R2P mandated action in Libya in 2011, shows that military interventions commandeered within a narrow straitjacket are susceptible to destabilisation and extraneous subversions. This casts misgivings on the inherent

efficaciousness of the operation.[32] This in turn can conflagrate not just the target country in question, but engulf an entire sub-region, sparking exponentially burgeoned deleterious consequences, both politico-security and humanitarian.

R2P also remains bedevilled by the difficulties of determining how far to venture and where exactly to cease.[33] The ground-zero experience of myriad humanitarian interventions, in the pre-R2P period and even since, is that, mandates often get over-extended by the vagaries and vicissitudes of how things shape up in real-time. This requires the intervening framework to being dynamic and hands-on in responding to quickly changing situations. While offering protective cover seems the no-brainer way to go to shield innocent populations, how long can such protection be proffered without effecting material changes to the situation on ground? And in the absence of any substantive change, what happens when such protective cover is withdrawn, other than to witness a relapse of conflict and its pernicious consequences, is moot.

Tenuous Gains

There is little gain saying that since the end of the Cold War, the question of legitimacy has cropped up in areas like humanitarian intervention, the scope of international institutions and the realm of law. Legitimacy in essence is multifaceted, finding its basis in myriad constructs, encompassing the concepts (moral and epistemic) of *Right, Legality, Custom, Tradition and Popular Approbation*. Conflict

32 Alex J. Bellamy, "The Responsibilities of Victory: Just Post Bellum and the Just War", *Review of International Studies*, Volume 34, Number 4, 2008, pp. 601-625.

33 M. Binder, "Humanitarian Crises and the International Politics of Selectivity*", Human Rights Review*, Volume 10, Number 3, 2009, pp. 327-348.

in inter-state affairs is ubiquitous, and involves the process of legitimisation and de-legitimisation, framed in terms of norms and principles, which are deemed generally accepted, and accordingly compared to corresponding criteria through which the legitimacy of certain practices or institutions are measured.

The legitimacy of humanitarian intervention has been contested, for more than a century, yet the clamour for such intervention persists. Normative evolution and institutional design have been closely linked since the first debates over humanitarian intervention more than a century ago.

Three norms have competed in shaping state practice and the normative discourse; *Human Rights, Peace Preservation, and Sovereignty*. The rebalancing of these norms over time, most recently as the state's responsibility to protect, has reflected specific international institutional environments. The contemporary legitimacy of humanitarian intervention is based on UN Security Council's authorisation of the use of force. Although the Security Council is often viewed as representative of great-power influence, international acceptance of its role is based on the role of non-permanent members and their support for the sovereignty norm. The current rebalanced norms support humanitarian intervention, but institutional bias that protects state sovereignty and the changing character of mass violence may undermine its tenuous contemporary legitimacy. Normative adjustments and new institutional designs are required to ensure the legitimacy of international action which protects populations against mass violence. There is no silver bullet to adorn interventions with guaranteed success. Yet, should interventionism meet with the widest possible consensus in terms of their conception and in the scope of the mission, their efficacy can be significantly enhanced towards alleviation and amelioration of human rights violations. Towards this end,

R2P despite its more than decade long inception, remains a norm in evolution, and shorn of a practical action plan which can indemnify against the factors that hobbled and blighted unilateralist humanitarian interventions of yore, will be challenged by similar insinuations of selective application and circumscribed impact.