R2P and Humanitarian Intervention in a Historical Perspective

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1 Introduction

Being a relatively young concept R2P is by its very nature future-oriented. The basic events leading to the introduction and affirmation of R2P in the international legal order can be summarized as follows: while this term was first used by Francis M. Deng in 1995, in 2001 it was the subject of a thorough-going study by a Canadian government sponsored group of experts, the International Commission on Intervention and State Sovereignty (ICISS). Only four years later, this concept was officially accepted by the United Nations General Assembly (UNGA) at the World Summit. Thereby it made its way into the Outcome Document of 15 September 2005.¹ This was a success unexpected by most, and only afterwards did governments, human rights activists and academia become slowly aware of the enormous potential residing in this concept. First an array of states, which were either strongly attached to a traditional concept of sovereignty or had a bad human rights record (or both), opposed R2P notwithstanding the fact that it had been unanimously approved by the State Community in 2005. In the end, however, the forces operating in favour of R2P were stronger, and in 2011 the Security Council, a body which had initially taken a rather prudent stance towards R2P, referred to it in order to authorize the use of force against Libya.²

As this intervention turned out to be completely successful from a military point of view, political and academic interest in R2P grew further. A genuinely felt desire to unearth the enormous potential lying in R2P could be felt. In this context also, efforts were increased to clarify the historical dimension of R2P, and in particular to distinguish this concept from that of humanitarian intervention. Over the course of the years, these endeavours grew ever more sophisticated and an ever-growing academic community is developing research interests in this field.

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¹ See UNGA 2005 World Summit Outcome, A/RES/60/1 of 24 October 2005.
Looking more closely at R2P it is not possible to deny the strong conceptual and historical relationship with humanitarian intervention, even if such denial is very common. As the concept of humanitarian intervention has widely fallen into disfavour and in general appears to be incompatible with UN law, to refer to the historical roots of R2P seemed to be hardly appropriate when this new approach was launched. At least this held true for the first few years. As R2P has, in the meantime, become a firmly established concept and attention has turned to its inherent potential, the time has come to look back to the more distant past. In fact, the ahistorical approach which sees in R2P a completely new and isolated development creates continuously a need for justification as to the ensuing limitations of sovereignty. If it is possible, on the other hand, to demonstrate that the roots of R2P can be traced far back into the history of international relations and state theory in an international legal order strongly based on long-lasting state practice, justifications will come to hand far more easily. What has been part of the international legal system since time immemorial will hardly be rejected for the time being, in particular if humanitarian goals are thereby pursued and any recourse to force is rendered compatible with UN law. Laying bare the far-reaching historical roots of R2P is associated furthermore with an ulterior advantage: even in the past specific justifications had to be found for limitations of sovereignty following from acts of humanitarian intervention and these lines of reasoning to a considerable extent are still of value today. At a closer look it becomes clear how many the similarities are between the broader circumstances of intervention today and in the past, in particular in the 19th century. This holds true both for possible justifications for intervention and with regard to its prospects for success and the acceptance of the intervention by the state community. If we continuously call to mind the heinous crimes of the past which today are classified as genocide, crimes against humanity and war crimes, the interventions carried out to stop those crimes, the interventions called for but never undertaken to confront them, and the various attempts to justify the necessary restrictions of sovereignty, an important contribution can be made to impede that such crimes should happen again.

3 Of an exemplary character were the (ongoing) attempts by historians, political scientist and lawyers fully to shed light on the Holocaust, although much work has still to be done in this field. In contrast to this, other crimes, such as the genocide committed on the Armenians in 1915, have been, at least partly and in some quarters, ignored, denied or covered up. These omissions had most serious consequences as they created the impression that even the perpetrators of crimes of such a magnitude, unheard of before, could get away unscathed.

Thus it is known that Adolf Hitler on 22 August 1939 made the following cynical declaration before the High Generality of the Wehrmacht at the Obersalzberg: “Tell me: Who still