R2P and the Protection of Minorities

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1 Introduction

...if humanitarian intervention is, indeed, an unacceptable assault 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?

The above plea by former UN Secretary General Kofi Annan to the international community was more than a *cri de coeur*. It was also symptomatic of a *grand malaise* following NATO’s 1999 intervention in Kosovo to protect the Albanian minority from the violent exactions of then Yugoslav President Slobodan Milošević, an intervention widely criticised as a military action which infringed state sovereignty. As a result, there quickly emerged a move to formulate a less “risky” doctrine than humanitarian intervention. Thus was born in September 2000 the International Commission on Intervention and State Sovereignty (ICISS), an initiative sponsored by the Canadian Government and a number of foundations, composed of eminent diplomats, politicians and scholars, which was able to finalise and present a report on “The Responsibility to Protect” (R2P). This sounded – in the eyes of many – the death knell of the “right” of humanitarian intervention and its replacement by a more palatable “responsibility” to protect:

State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable

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to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.4

Thus, it is first and primarily for a government of a country to protect its own population, and only later if this government is unable or unwilling to do so – as when those in control of the state itself are involved in or supportive of acts of genocide – that the responsibility is said to be able to shift to the international community. The United Nations has subsequently endorsed politically – if not legally – R2P in the 2005 World Summit Outcome Document of the United Nations when it was adopted by the General Assembly.5

The 2001 ICISS Report for its part envisaged that R2P would be limited to situations where a “just cause threshold” was reached to justify military intervention for the purpose of protection, and that this would involve “large scale loss of life” or “large scale ethnic cleansing”:

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.6

This was subsequently modified by the UN consensus to what would be considered more politically or legally accurate “just causes” of genocide, war crimes, ethnic cleansing and crimes against humanity.7

The focus in both cases to international crimes such as genocide and ethnic cleansing as the main possible causes for the invocation of R2P is seldom commented upon. Yet it is significant as manifesting a particularly significant dimension of R2P and of its predecessor, the right to humanitarian intervention, as will be seen later in this chapter.

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4 ICISS, 2001, p. XI.
5 UN Doc. A/RES/60/1, 24 October 2005.
6 ICISS, 2001, p. XII.
7 2005 World Summit Outcome, Paragraph 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.