The Responsibility to Protect in the Global System

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1 Introduction

The Responsibility to Protect (R2P) doctrine is based on the assumption that the state is to remain at the heart of world order. It is true that the doctrine implies a weakening of state sovereignty concomitant with the process of globalisation and greater possibility of interference in the internal affairs of states than in the past. What is weakened, however, is the individual state, i.e. this or that state which behaves irresponsibly, not the state as such, nor the global system of states. R2P presupposes the existence of states at the core of the system. It requires states to behave responsibly towards their own citizens and calls for measures to be taken by states, possibly in cooperation with international organisations and other non-state actors.

A question that is rarely posed when dealing with R2P is whether and to what extent R2P can work in a world in which states appear less and less capable of providing people with protection. The global economy, in particular, is often said to undermine the current ability of states to provide protection from unemployment, state insolvency, hunger, and other economic macro-variables affecting people’s daily lives. In these conditions the appeal of R2P to the responsibility of governments, either to protect their own citizens or to

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intervene elsewhere to assist people in need, risks sounding like the last cry for a better boat while the boat is irremediably sinking.

I propose that R2P is seen from this global perspective. For sake of brevity, the following observations will take nearly all R2P details and literature for granted and will not engage with the many views surrounding the doctrine. The focus is on whether R2P makes sense in a world of states which appear increasingly unable to afford it and on the possible consequences that this state of affairs may have for the protection of people in the future.

2 Legal Bugs in the R2P Doctrine

Far too many difficulties surround R2P as a legal standard (as opposed to a banner for political struggle): (a) is there an “emerging norm,” or hopefully a rule or a set of rules already in effect, in international law authorising (if not imposing) R2P? (b) If so, to which situations does it apply exactly? (c) What is its content? (d) Which otherwise unlawful measures does it allow to take? (e) Who exactly is allowed to take such measures? (f) Is R2P doctrine really necessary to support the existence of a rule or rules leading to such legal results?

All of the above questions are far from having received a convincing answer. First, no R2P “emerging norm” (neither customary, nor natural) exists, let alone a rule or set of rules already in force having the effect of modifying legal outcomes on the sole ground of R2P as a general doctrine. R2P per se thus neither authorises nor imposes any otherwise unlawful measure, nor does it make mandatory an exhortatory measure. Even as a “guide to behaviour,” as sometimes presented, it lacks clarity.

Secondly, attempts have been made to “apply” R2P to a variety of situations going well beyond those endorsed by the UN General Assembly in 2005.\(^3\)

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3 GA Resolution 1 (60), 24 October 2005, “World Summit Outcome” document, UN Doc A/RES/60/1, limiting the hypotheses under which states are “prepared” to react to genocide, war crimes, ethnic cleansing, and crimes against humanity (par. 138–139). See also UNSG Report of 12 January 2009, “Implementing the Responsibility to Protect,” UN Doc A/63/677, pointing out that R2P applies only to “genocide, war crimes, ethnic cleansing and crimes against humanity,” and should not extend to “other calamities, such as HIV/AIDS, climate change or the response to natural disasters” (par. 10(b)) (cf. note 5 below). See, for more recent discussions at the UN Security Council, UN Doc S/PV.6650 (Resumption 1), 9 November 2011, and the statements made at the UN General Assembly by Belgium, Benin, Brazil, Costa Rica, Cuba, Estonia, Ghana, Holy See, Italy, Liechtenstein, Luxembourg, Macedonia, the Netherlands, Nicaragua, Norway, Paraguay, Sweden, Syria, Zimbabwe at <http://gadebate.un.org>, accessed 30 December 2013.