

Human Rights Reading Notes

WEEK 1: The dangers of Unconditional Sovereignty

The dangers of Unconditional Sovereignty:

Part 1: Kofi Annan

- The tragedy of East Timor has focused attention once again on the need for timely intervention by the international community when death and suffering are being inflicted on large numbers of people and when the state nominally in charge is unable or unwilling to stop it
- As in Rwanda five years ago, the international community stands accused of doing too little, too late
- Number of these precedents is satisfactory
- The world cannot stand aside when gross and systematic violations of human rights are taking place
- Individual sovereignty has been enhanced by a renewed and spreading consciousness of individual rights
- The genocide in Rwanda showed us how terrible the consequence of inaction can be in the face of mass murder
- On the one hand, is it legitimate for a regional organisation to use force without a UN mandate?
- On the other, is it permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked?
- The greatest threat to the future of international order is the use of force in the absence of a security council mandate.
- Nothing in the UN charter precludes a recognition that there are rights beyond borders
- The charter says that 'armed force shall not be used, save in the common interest'
- 'Intervention' should not be understood as referring only to the use of force
- The new commitment to humanitarian action must be universal
- A new broader definition of national interest is needed, which would induce states to find greater unity in the pursuit of common goals and values
- The collective interest *is* the national interest

Part 2: ICISS - THE RESPONSIBILITY TO PROTECT

The Intervention Dilemma

- Some permanent members of the security council knew that officials connected to the then government were planning genocide
- credible strategies were available to prevent, or at least greatly mitigate the slaughter which followed
- But the security council refused to take necessary action
- Its consequences were not a humanitarian catastrophe for Rwanda: the genocide destabilised the entire Great Lakes region and continues to do so.

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- Kosovo concentrated attention on all the other sides of the argument
- The operation raised major questions about the legitimacy of military intervention in a sovereign state
- were all peaceful means of resolving the conflict fully explored

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- It raises the principle that intervention amounts to a promise to people in need: withdrawal of the UN peace operations in Somalia in 1992-93

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- The only real issue is in ensuring that coercive intervention are effect; for others, questions about legality, process and the possible misuse of precedent from much larger
- For some new interventions herald a new world in which human rights trumps state sovereignty

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- The Government of Canada responded to the Secretary-General's challenge by announcing the establishment of this independent International Commission on Intervention and State Sovereignty (ICISS)
- Try to develop a global political consensus on how to move from polices towards action within the international system

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- Particular emphasis was places on the need to ensure that views of affected populations were heard and taken into account, in addition to the views of governments, intergovernmental and non-governmental organisations (NGOs), and civil society representatives.

New Security Issues

- Full-time war economy
- the state's monopoly over the means of violence is lost
- The increased vulnerability o civilians, and concern about the deliberate use of systematic rape to provoke exclusion from a group.

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- If it stays disengaged, there is the risk of becoming complicit bystanders in massacre, ethnic cleansing and even genocide. few
- 1.23 — May no longer be suitable to protect civilians caught in the middle of bloody struggles between states and insurgents
- 1.24 — There are some cases where international action is precluded by the opposition of a Permanent Five member or other major power

New demands and expectations

1.25 — Some key milestones in this progression have been the Universal Declaration of Human Rights; the four Geneva Conventions

- These agreements and mechanisms have significantly changed expectations at all levels about what is and what is not acceptable conduct by states and other actors

1.26 — Th universal jurisdiction of these instruments is starting to be taken very seriously.

1.29 — Pressure on government to respond for many of these governments, it has created a domestic political cost of inaction and indifference.

The implication for state sovereignty

1.32 — Sovereignty is more than just a functional principle of international relations. For many states and peoples, it is also a recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny.

1.35 — Sovereignty implies a dual responsibility: externally — to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state.

A New Approach: 'The responsibility to Protect'

2.3 Any new approach to intervention on human protection grounds needs to meet at least four basic objectives:

- To establish clearer rules, procedures and criteria for determining whether, when and how to intervene
- To establish the legitimacy of military intervention when necessary and after all other approaches have failed
- To ensure that military intervention, when it occurs is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimise the human costs and institutional damage that will result; and
- To help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace

2.4 — We prefer to talk not of a 'right to intervene' but of a 'responsibility to protect'.

The meaning of Sovereignty

2.9 — None were prepared to rule out *a priori* the use of force in another country in order to rescue nationals who were trapped and threatened there.

The organising principle of the UN system

2.12 - The majority of today's armed conflicts are internal, not inter-state

Sovereignty as a responsibility

2.14 — An international obligation voluntarily accepted by member states

- But there is a necessary re-characterisation involved: from *sovereignty as control* to *sovereignty as responsibility* in both internal functions and external duties

2.17 — Together the Universal Declaration and the two Covenants mapped out the international human rights agenda, established the benchmark for state conduct

2.22 — The emphasis in the security debate shifts, with this focus, from territorial security, and security through armaments to security through human development with access to food and employment, and to environmental security

Emerging practice:

- 2.24 — Growing state and regional organisation practice as well as security council precedent suggest an emerging guiding principle — which in the commissions view could properly be termed 'the responsibility to protect'.
- 2.25 — The emerging principle in question is that intervention for human protection purposes, including military intervention in extreme cases, is supportable when major harm to civilised is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator.

Shifting the terms of the debate

- The traditional language of the sovereignty — intervention debate — in terms of "the right of humanitarian intervention" or the 'right to intervene' — is unhelpful in at least three respects.

First: It necessarily focuses attention on the claims, rights and prerogatives of the potentially intervening states much more so than on the urgent needs of the potential beneficiaries of the action.

Secondly: By focusing narrowly on the act of intervention, the traditional language does not adequately

take into account the need for either prior preventive effort or subsequent follow up assistance.

Thirdly: Although this point should not be overstated, the familiar language does effectively operate to trump sovereignty with intervention at the outset of the debate: it loads the dice in favour of intervention before the argument has even begun, by tending to label and delegitimise dissent as anti-humanitarian.

2.9 — The commission is of the view that the debate about intervention for human protection purposes should focus not on 'the right to intervene' but on 'the responsibility to protect'. The proposed change in terminology is also a change in perspective, reversing the perceptions inherent in the traditional language, and adding some additional ones:

First; The responsibility to protect implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention.

Secondly; The responsibility to protect acknowledges that the primary responsibility in this regard rests with the state concerned, and that it is only if the state is unable or unwilling to fulfil this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place.

Thirdly; The responsibility to protect means not just the 'responsibility to react', but the 'responsibility to prevent' and the 'responsibility to rebuild' as well.

2.3 — Commission believes that responsibility to protect resides first and foremost with the state whose people are directly affected.

2.31 — While the state whose people are directly affected has the default responsibility to protect, a residual responsibility also lies with the broader community of states.

2.33- Changing the terms of the debate from 'right to intervene' to 'responsibility to protect' helps to shift the focus of discussion where it belongs — on the requirements of those who need or seek assistance.

- Questions of legitimacy, authority, operational effectiveness and political will.

WEEK 2: Problems and Critiques around R2P

Part A: Jennifer Welsh

- As noted by other contributors to this roundtable, the response of the international community to civilian deaths in Libya - and the threat of further mass atrocities - is unusual in two key respects;
- First, security council resolution 1973 authorised 'all necessary measures' to protect civilians without consent of the 'host' state.
- The council's intentions, and actions, could not be interpreted as anything other than coercive.
- Second, in contrast to other crises involving alleged crimes against humanity, diplomacy produced a decisive response in a relatively short period of time.
- Thomas Weiss's claimed 'the main challenge facing the responsibility to protect is how to act, not how to build normative consensus'.
- The security council, has remained largely silent on R2P.
- This relative lack of attention to R2P has been fuelled by a variety of factors, including continuing contestation over what responsibilities the principle entails, who precisely bears the international responsibility, and who a state's responsibility to protect its own population has manifestly failed.
- Protection of Civilians (PoC) and R2P overlap, they are not the same: the PoC is in one sense narrower, in that it only refers to situations of armed conflict (and R2P crimes can occur outside that context): but it is also broader in that the rights of civilians in armed conflict extend beyond protection from mass atrocities.