The Responsibility to Protect: Unfinished Business

By Gareth Evans
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The security issues that preoccupy the major powers these days – and will certainly be most in the minds of those attending the St Petersburg G8 Summit - involve a heady mix of international terrorism, nuclear proliferation, Islamist extremism, resurgent nationalism and, linking most of them, global energy security. Which doesn't leave much room for addressing the great security problem that most worried us throughout the 1990s: what to do about genocide or other mass killing, or ethnic cleansing or other crimes against humanity, committed within the boundaries of a single state.

But this problem is now staring us in the face all over again in Darfur, and we know all too well that it's only a matter of time before it comes at us once more from somewhere else in the world. What *should* be the response of the international community when faced with situations of catastrophic human rights violations within states, where the state in question claims immunity from intervention based on longstanding principles of national sovereignty? When, if ever, *is* it right for states to take coercive action, in particular military action, against another state for the purpose of protecting people at risk within it? Whether or not they are on this G8 agenda, these questions simply have to be addressed, and a workable international consensus reached as to how to answer them.

The Conceptual Breakthrough. The good news is that the international community, after years of wrangling, has more or less agreed on basic principles. We have seen over the last five years the emergence of a new international norm – the 'responsibility to protect' - of really quite fundamental ethical importance and novelty in the international system, and which one that may ultimately become a new rule of customary international law. Language embodying this norm was adopted by the world's heads of state and government meeting at the UN's 60th Anniversary Summit in 2005 and, perhaps even more importantly, has been since reaffirmed, in a resolution passed on 28 April 2006, by the Security Council itself:

> *Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity...The international community, through the United Nations, also has the responsibility …In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity...*

This formal embrace by the international community of the new concept of "the responsibility to protect" – moving away in the process from the incredibly divisive contest between those for and against a "right of humanitarian intervention" – has been a major breakthrough, and a fascinating piece of intellectual history in its own right.

What most inhibited action throughout the postwar years was the perceived constraint imposed by the UN Charter. The 1945 founders - while paying lipservice to the need to protect individual human rights – were overwhelmingly preoccupied with the problem of states waging war against each other and protecting state borders. They gave the new Security Council unprecedentedly sweeping powers to deal with threats to 'international peace and security. But they did not explicitly acknowledge the permissibility of external force being applied in response to an internal catastrophe, and Article 2(7) pointed, if anything, in precisely the opposite direction: nothing, it said, shall authorise intervention "in matters which are essentially within the domestic jurisdiction of any state".

The commencement of the Cold War almost immediately after the UN's founding reinforced the inclination to read the Charter narrowly. So did decolonisation: scores of new member states, newly proud of their identity and often conscious of their fragility, saw the non-intervention norm as one of their few defences against threats and pressures from more powerful international actors. One big agreed exception to the non-intervention principle was the Genocide Convention of 1948. But it was almost as if, with its signing, the task was seen as complete: practically nothing was done to give it effect.

With the end of the Cold War came the defence of Kuwait against Iraq's invasion, and a degree of euphoria about a genuinely rules-based international order at last emerging. But that didn't last long. The quintessential problems of the 1990s became civil war and massive internal violence. With the break-up of various Cold War state structures, most obviously in Yugoslavia, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose. But old habits of non-intervention died very hard. Even when situations cried out for some kind of response, and the international community did react through the UN, it was too often erratically, incompletely or counter-productively.

So we had the debacle of the intervention in Somalia in 1993, the pathetically inadequate response to the genocide in Rwanda in 1994, the lamentable failure to prevent murderous ethnic cleansing occurring in the Balkans, in particular in Srebrenica, in 1995 -- and also the situation Kosovo in 1999, when the international community did in fact intervene as it should have, but without the authority of the Security Council in the face of Russia's threatened veto.

All this generated very fierce debate, utterly unresolved throughout the 1990s. Secretary-General Kofi Annan put the challenge graphically to the General Assembly in 2000: "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?" He, and the international community, were given an answer when the Canadian government-sponsored International Commission on Intervention and State Sovereignty (ICISS) presented its report, entitled *The Responsibility to Protect,* to the UN Secretary General at the end of 2001. The Commission made several contributions to the international policy debate which have been resonating ever since.

The most important was to turn the whole weary debate about the "right to intervene" on its head, and to recharacterise it not as an argument about any "right" at all, but rather about a "responsibility" – one to protect people at grave risk: the relevant perspective was not that of powerful interveners but those needing support. Sovereignty, in the modern

age, involved not just 'control' but 'responsibility'. The state itself has the primary responsibility to protect the individuals within it; but where it fails in that responsibility, through either incapacity or ill-will, that responsibility to protect shifts to the wider international community.

The "responsibility to protect", as articulated by the Commission, was not just about military intervention. It extended to a whole continuum of obligations: the responsibility to *prevent* (to address both the root causes and direct causes of internal conflict and other man-made crises); the responsibility to *react* (to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention); and the responsibility to *rebuild* (to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation).

The Canadian Commission's report found an immediate constituency among international commentators and lawyers and NGOs, and more importantly, in sub-Saharan Africa, where the concern had long been more about mobilising support for the afflicted than protecting absolute sovereignty. But the real momentum for its formal embrace came when the Secretary-General's High Level Panel on Threats, Challenges and Change included the concept in its December 2004 report, and the Secretary-General himself then made it a central plank in his own recommendations to the General Assembly, meeting as the World Summit in September 2005. Although not without some bumps along the way, it was there adopted unanimously.

On any view, the evolution in just five years of the 'responsibility to protect' concept from a gleam in an obscure commission's eye to what now might be described as a broadly accepted international norm – now familiar enough to have its own acronym, 'R2P' - is an extremely encouraging story. But it's not the whole story.

Unfinished Business. The not so good news is that we still cannot be at all confident that the world will respond quickly, effectively and appropriately to new human rights catastrophes as they arise. There are at least three pieces of unfinished business to attend to.

First, there is a need to persuade the Security Council to embrace specific guidelines for the legitimate use of military force, at least in the context of R2P, if not more generally. The Canadian Commission argued strongly that this was an integral part of the package: if we cannot get general agreement about which are the kinds of cases that clearly demand coercive military action, and which are those where the responsibility to protect should be exercised with less shattering effect, there is a risk that the R2P principle will be misused, and that such consensus around it as there is at the moment will evaporate. (In the minds of many, R2P was misused in Iraq by those arguing, in the absence of other plausible rationales, that Saddam's tyranny against his own people – particularly his large-scale violence against the Kurds and Shiites many years earlier – fully justified his military overthrow.)

What is needed – and the High Level Panel and Secretary-General have agreed – is the adoption of five basic 'criteria of legitimacy' to test the validity of any case made for a coercive humanitarian intervention. These criteria are, in short, the seriousness of the

harm being threatened (which would need to involve large scale loss of life or ethnic cleansing, happening here and now and not in the distant past, to *prima facie* justify military action); the primary purpose of the proposed military action (to halt or avert harm); whether there were reasonably available peaceful alternatives; the proportionality of the response; and the balance of consequences – whether, overall, more good than harm would be done.

There will always be argument about how these criteria should be applied in particular situations. Darfur is a tricky case in point: there is no doubt about the scale of the catastrophe and the international community's responsibility to help resolve it, but coercive military force applied without Khartoum's agreement – in effect, an invasion – would almost certainly be counterproductive. It is reasonable to assume, however, that if agreed criteria had to be systematically addressed every time force was proposed, there would be a much better chance of consensus being reached in these cases, and less risk of the Security Council being bypassed.

Second, we have to solve the problem of *capacity*, ensuring that if we are to exercise the responsibility to protect, and in particular the responsibility to react to clear and present dangers, the required civilian and military resources are always available in the right amounts. In the case of military capacity, those countries with apparently massive resources are often preoccupied with battles and deployments elsewhere, or have the wrong kind of troop configurations and equipment to do the fast and flexible jobs most often required. Throughout Europe in particular, in country after country, the number of troops operationally deployable at any given time is a tiny percentage of the men and women in uniform. Elsewhere in the world, there may be no apparent shortage of boots able to go on the ground – but there will be issues of training, command, control and communications capability, transportability and general logistic support. Unless these problems are tackled, R2P will often be more theoretical than real.

Last but not least, there is ever-recurring problem of generating the *political will* to act. For most countries this is hardest to find when military force is involved, even if the required capacity is there, but it is also needed to mobilize non-military coercive action like sanctions or bringing atrocity crime suspects before international criminal courts, and it is also a requirement even for utterly non-coercive preventive action, like targeted development assistance, which may nonetheless involve expensive resources and the commitment to apply them effectively. Finding the will to do anything hard, expensive or politically sensitive is just a given in public affairs, domestically or internationally. Its absence should be the occasion not for lamentation, but mobilization.

Part of the task here must be to generate much more widespread understanding and support for the responsibility to protect concept itself. It is becoming better known by policymakers and those in the media and elsewhere who influence them. But R2P is not yet a household term anywhere in the world – and it needs to become one everywhere. We have to get to the point where, when the next conscience-shocking mass human rights violation comes along, the reflex response, of both governments and publics around the world, is to find reasons to act, not reasons to pretend it is none of our business. And that means some sustained campaigning by all those of us who take seriously - as we must, despite all the backsliding case after case – the battle cry 'never again!' Our common

humanity demands that the responsibility to protect be a permanent item on the global security agenda – as a matter not just of principle but of operational practice.

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