

THE NOTION OF HUMANITY AND A WAR FOR HUMANITY

Volkan ERDUR*

Abstract

The term “humanity” takes important part in different law disciplines, such as criminal law, war law, humanitarian law etc., although some authors like Coupland (2001) think that this term has ambiguity about its definition. When it is thought that there is an essential link between this term and the notion of humanitarian intervention and this notion involves economic sanctions or military operations, which causes ironically deaths of soldiers of intervener states at the same time, to end indispensable human right violations occurring in another state, the importance of what humanity is getting higher value from day to day. When it comes to current doctrine of humanitarian intervention, which is called Responsibility to Protect (R2P), it is clear that it is based on the principles of Just War Tradition so the thoughts of philosophers, for instance Thomas Aquinas, Immanuel Kant, Francisco de Vitoria etc., about this tradition will be the corner stone to understand what the legality and morality of an intervention is, in which conditions a humanitarian intervention can be performed and why this conditions are necessary.

Keywords: Humanity, war, Responsibility to Protect, humanitarian intervention

* The University of Sussex, UK.

The Notion Of Humanity And A War For Humanity

Introduction

The term “humanity” takes important part in different law disciplines, such as criminal law, war law, humanitarian law etc., although some authors like Coupland (2001) think that this term has ambiguity about its definition. When it is thought that there is an essential link between this term and the notion of humanitarian intervention and this notion involves economic sanctions or military operations, which causes ironically deaths of soldiers of intervener states at the same time, to end indispensable human right violations occurring in another state, the importance of what humanity is getting higher value from day to day.

According to United Nations (UN) Charter, all states are equal and they have their own sovereignty, which means that all states have a right to rule within their own territory (Ayoob, 2002, p.82). Moreover, all states must refrain from the use of force and its threats in relations with other states. Because of this, it can be said that the notion of humanitarian intervention does not suit to main principles, which is sovereignty and prohibition of use of force, of UN Charter and it is a very controversial notion which leads a lot of discussion about its legality and morality.

When it comes to current doctrine of humanitarian intervention, which is called Responsibility to Protect (R2P), it is clear that it is based on the principles of Just War Tradition so the thoughts of philosophers, for instance Thomas Aquinas, Immanuel Kant, Francisco de Vitoria etc., about this tradition will be the corner stone to understand what the legality and morality of an intervention is, in which conditions a humanitarian intervention can be performed and why this conditions are necessary.

In the light of this information, in this essay, I will mention about the definitions of the term humanity and the notion of humanitarian intervention. Then, it will be discussed whether it is possible to wage a war under the name of humanity while explaining the Just War Tradition with the help of the thoughts of philosophers. After giving some information about the history of humanitarian intervention and its developments from past to present, the problems inherent in the notion of humanitarian intervention will be mentioned while giving examples. Finally, the Libya intervention by NATO in 2011 and its consequences will be asserted as an example of first responsibility to protect implementation in our world.

Humanity: popular definitions

Humanity is defined in many different ways; for some it can mean humans collectively, while carrying ideas of philanthropy and altruism at the same time. Crimes against humanity and the laws of humanity are mentioned in international treaties, with humanity used as a central tenet in international law. A moral force is implied by humanity, how and whether this controls inhumanity that involves violence is not clear. Those who use the terms humanitarian often see themselves on the moral high-ground although it is not clear

if humanity has become detached from modern concepts of development, human rights, humanitarian intervention and security of citizens (Coupland, 2001, p.969).

Further, Teitel (2004, p.225) takes the meaning of humanity to originate in natural law and shared moral rules, and distinct from humanity as a collective entity and from notions of humane behaviour, although if speaking about humankind in the collective sense or to a notion of being human is unclear. It seems to be a combination of the law of human rights, natural law and the law of war. A tension in notions of humanity has existed over the years which has both divided and brought the two sides together. This seems to describe present political realities, where the international community is changing politically from one based on sovereign states to a more individualised and fragmented system; only held together by notions of preserving humanity.

The Tradition of Just War: Waging War in the Name of Humanity

Realist social philosophers such as Hobbes and Machiavelli see humans as basically evil and unreliable due to the original sin they must bear. They see that humans they must be controlled by the state's supreme authority and the state's interests, safety and wellbeing are greater than individual's societal rights. This because Hobbes and Machiavelli view the existence of states as the only way in which order in society can be kept on.

Thinkers from the Just War perspective concur with the notion of original sin, but, differently to the realists, who have a conception of the international system as comprised of many parts, Just War theorists conceive humanity as a single group comprised of individuals, families, clans, societies and states. These many different aspects of society also bring their own views on how decisions should be made in terms of international relations and use of military force. The biggest difference is on how the power of the state, as both Just War and realists see the state as the entity holding the power. Realists argue that this power is the main motivation for sanctioning military force and war, whereas classical Just War thinkers may never sanction this but at times work for those who wish to implement justice and right (Elshtain, 2001, p.4-5).

The term 'classical' is used to justify the Just War perspective as there are two views on the resort to war; the first is the classical view which sees force used by the state to aid the suffering of civilians and human rights violations inflicted by other sovereign states. This is diametrically opposed to the notion of non-intervention. The second, Just War, sanctions war in the case of self-defence, a notion which affects the modern day international legal system (Johnson, 2008, p.543). Just War is seen as supporting modern-day humanitarian intervention in sovereign states it has only recently been evident in the literature to justify humanitarian intervention (Fixdal and Smith, 1998, p.285). Just War was based originally on two notions, *jus ad bellum* and *jus in bellum*. The former is consulted when war is decided on and to justify our reasoning, the latter is linked to the business of conducting the war (Fixdal and Smith, 1998, p.286).

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However, such a division was not employed by Thomas Aquinas whose ideas were shaped by Augustinian notions. He did not concur that a crusade approach was correct (a proactive approach) but on the contrary, supported a reactive position on the justness of any war. Aquinas stated three caveats were to be fulfilled in order for a just war to be waged: it is necessary to have a ruler holding the authority to declare war. Second, just cause is required, in that those upon whom war is to be waged deserve this. Third, right intention is required on the part of those intending to wage war on a sovereign nation in order to achieve good and prevent evil (Hehir, 2010, p.28).

In the light of this information, it can be said that right authority is provided by Aquinas as a condition of just war, where by the sovereign can decide on the use of force as they are charged with the ultimate authority of protecting their citizens. Aquinas gives a clue to his conditions to be met, stating that actions which are carried out in response to harm done by others. Right intention is one which Aquinas is free from notions of revenge, hatred or desire for worldly power.

European moralists sanctioned war in order to implement and defend rights and law; self-defence was just one of these sanctions. This group saw rulers as having the right and duty to apply laws outside their own borders; with two types of universal law in place. A law of nations (*jus gentium*) which are general notions accepted in different communities, not a law which apply to all people. The second is natural law which is comprised of precepts underlined by reason thus binding for all. For example, slavery was permitted as it did not contravene the law of nations; however, it did breach natural law, in that it cannot be defended as a just practice although it was defended under this law for some time (Nardin, 2002, p.58). According to Hehir (2010, p29), natural law and the law of nations is seen as key parts of international law's history as the concept of universality facilitated the growth of modern common international law.

The notion that it is impossible to comprehend the justness of war was first argued by Francisco de Vitoria (1492-1546) as he argued that divine revelation was not an essential requirement in determining natural law, as only God could know this. Vitoria urged broad consultation before sanctioning the use of force, including those who disagreed with the use of force. In Vitoria's view, customary law and the Law of Nations should be equated and subjects should bow to their sovereign's authority as each sovereign nation has the right to engage in war if it saw just cause to do so. These claims by Vitoria support the notion that wars waged by states were just by definition. For example, Vitoria argues that state intervention in the case of a moral norm being violated was justified, while describing in the case of the Spanish use of force against Native Americans who engaged in cannibalism (Hehir, 2010, p.30).

The notion of a war waged on divine principles was rebuffed by Grotius (1583-1645) who propounded that a secular justification was necessary for a use of force. His theories were shaped by the Thirty Years War in which the sides cited divine rights as grounds for waging war. He argued that divine law could not be cited by mankind, but can only be a

product of conventions between sovereign states. He applied a caveat however, in that any war must benefit humanity and not simply the state which wished to wage war. He claims that the only valid justifications for war are self-defence, the punishment, the upholding of legal rights, the repair of harm and cases in which no possibility of just compromise was possible (Hehir, 2010, pp.30-31).

Hehir, (2010, p.31) points out that codification, sovereign equality and inviolability was established by Emmerich Vattel (1714-1767) who argued that just war cannot be undertaken in order to aid the subjects of another sovereign state as this leaves the opportunity for abuse to be committed on the grounds of a 'just' intervention,

As states are not "subject to a common external constraint" (Bellamy, 2006, p.82). Immanuel Kant (1724-1804) remained dubious in regard to the validity of natural law and moral persuasion. He was, however, keen to establish legally based agreements between states (Hehir, 2010, p.31). He advocated that natural law, as the basis for morality would lead to authoritarianism, and if this was to be avoided then sovereign states must be subject to the control of international law, which would extend the requirement to be moral to all of mankind (Devetak, 2007, p.152).

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Humanitarian Intervention: Definitions

There is not strict definition of humanitarian intervention in spite of it being a growing notion in international society (Charney, 1999, p.836). The term humanitarian has been analysed by Kardas (2003, p.52) as an adjective which categorises the quality of a notion or action ranging from military action to humanitarian measures. As for intervention, it could mean anything from the distribution of aid to condemnation of a state which has breached human rights. It is this ambiguity which has meant that the UN is still to standardise exactly what is meant by humanitarian intervention, even though they are responsible for carrying out humanitarian intervention. (Kent, 2004, p.867).

Related to finding a workable definition of humanitarian intervention, Macklem (2008, p.369) who argues that using of military force (or its threat) towards other sovereign nations by a single state or group of states, which attempts to inhibit human rights atrocities against citizens of other states, without the approval of the sovereign nation in question. Regan (1996, p.339) argues that any action taken to effect a change of government in the case of a country experiencing a humanitarian crisis is in fact humanitarian intervention. Heinze (2004, pp.472-473) concurs, arguing that humanitarian intervention can be classed as military or non-military (i.e. economic sanctions). According to Wesley (2005, p.60), the power of economic sanctions to effect humanitarian measures has been used by the West since the 80s, when foreign aid via the IMF was linked to requirements that standards of humanitarian treatment of a state's citizens.

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I see the use of force or its threat as justified in terms of humanitarian intervention. When it comes to present, in order to effect humanitarian intervention, economic sanctions can be more effective than military intervention, as globalisation has led to an interdependent world economy in the modern world. Both options should be seen as humanitarian intervention when they are used to end human rights contraventions in other states.

Humanitarian Intervention: Legitimacy and Morality

In the modern world Just War precepts are the basis for humanitarian intervention and are based on Aquinas' conception of just war. With the recent plethora of humanitarian tragedies, new grounds for sanctioning humanitarian intervention while ensuring that these are not abused in the pursuit of the intervening states' own interests. (Kavalski, 2006, p.141).

This view however, is criticised by Bellamy (2003, p.17) who argues that sanctioning humanitarian intervention will always be motivated by political interests, and so we cannot ever achieve an intervention which is free of self-interest. However, he does argue that a pragmatic view can sometimes provide the fairest path, but even here it is subject to argument between intervening states as to how it will be achieved. (Bellamy, 2006, p.148).

Thus, two types of conditions have been presented used to legitimise a humanitarian intervention: *jus ad bellum* (to wage a just war) and *jus in bellum* (to conduct a just war). They both encompass just cause, right intention, proportionality, last resort, reasonable hope and legitimate authority. (Fixdal and Smith, 1998, p.286). The most recent development in defining just humanitarian intervention is doctrine of R2P which will be examined in a later section. It encompasses all of the above caveats for a just war (Eldem, 2015, pp.12-13).

Distinguishing the arguments on how legitimate and moral humanitarian intervention is not an easy matter as separating the issues surrounding morality and legitimacy is complex. Some argue that these issues both depend on the notion of Just War and its caveats including just cause (Heinze, 2004, p.473). Chandler (2006, p.5) points out that arguments based on what is right morally give strength to an intervention in a sovereign state on humanitarian grounds. He sees this as being a stronger justification than a purely intellectual approach which attempts to define when intervention is called for. Also, he suggests that using a moral judgement to support an intervention means rejecting traditional political notions of Right and Left, as it transcends them both. It is this which causes concern about using moral judgements, as their inherent vagueness means they are subject to criticism (Chandler, 2006, p.63). Another point is that those who attempt to justify intervention on moral grounds are open to accusations of using the moral case to justify waging war. He argues that the moral basis of the intervention is really the way in which the political obstacles before an intervention are sanctioned (Chandler, 2006, p.107).

A major weakness of moral justifications for humanitarian intervention is that they are open to abuse by Western states. An example of this is the invasion of Afghanistan, where the moral case did not outweigh the legal case for intervention. However, the intervention was legitimised by fait accompli means Zizek (2000, p.56). The West's hypocrisy has also been attacked by

Booth (1994, p.57) who argues that governments change the rules according to their own interests, obeying and violating them as it suits them to.

If another example is needed, the internal conflict in Syria is a burning issue these days. The powerful countries which did not hesitate to intervene in Libya in 2011, while justifying the atrocities happening there, are still ignoring the huge number of victims caused by this conflict. In my opinion, the intervention in Libya but the non-intervention in Syria strengthens my thesis that great powers act depending on their national interests.

Humanitarian Intervention: A History and Developments

1-) Pre- Cold War

The UN was founded after WW2 to manage interactions between the member states using diplomacy instead of force. Article 2/3 of the UN Charter provides that member states must refrain from using military force which includes interventions, against other states (Hekimoglu, 2013). Caveats are provided however, for example, self-defence and UN Security Council resolutions under chapter VII allow use of force against other member states (Reçber, 2008). In other words, After the UN establishment, all party states have accepted that all states are equal, the use of force prohibited and the UN has the power of enforcement of these laws (Hobe, 2002, p.658). Related to this is Ayoob' Sovereignty is defined as ‘...the right to rule over a delimited territory and the population residing within it’ (2002, p.82).

However, the doctrine of non-intervention is seen by supporters of the moral case for intervention to be more powerful than a state's sovereignty. Welsh (2002, p.503) argues that the main issue with intervention on humanitarian grounds results from the disparity between the safeguarding of sovereignty via non-intervention and international norms stemming from humanitarian crises which require intervention. The UN, is not truly equal according to Welsh (2002, p.504), as because it assumes that all states are sovereign, it is inherently unequal due to the right to veto of the US, France and Britain Russia and China.

Action taken by the UN has been heavily criticized due to the issue with the right to veto as it has often led to humanitarian crises not being dealt with. This is demonstrated by the case of Kosovo, where member states were so sure that Russia would veto any intervention that the case was not brought in front of the Security Council. A second reason is because the UN is not able to establish any new international laws. (Hehir, 2010, p.136).

In spite of its problems, the UN represents a new era in international relations as it accepts the sovereign equality of states outside the union, which is supported by the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty of 21 December 1965 and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN of 24 October 1970. The latter provides that each state is equal in terms of sovereign rights and that other nations have no rights to intervene in their domestic affairs using military force, which reach back to the primitive conception of the state (Chandler, 2006, p.127).

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However, despite all these provisions, three violations have been witnessed, the Indian intervention in Bangladesh in 1971, the Vietnamese intervention in Cambodia in 1978 and Tanzania's 1979 Intervention in Uganda.

To give my own view, the UN system is based on the equality of states. This equality is being provided with the help of the prohibition of the use of force, and being respectful of state's sovereignty while not interfering in state's internal affairs. However, if the prohibition about use force is bent and the notion of sovereignty loses its importance against that of humanitarian intervention, it will provide a pretext for powerful countries to intervene in other country's affairs in pursuant to their interests. On the other hand, state sovereignty should not be used as an excuse to ignore grave human rights breaches. My suggestion about this issue is that a supra-nationalist institution, which has the right to make decisions whether an intervention is necessary or not, should be founded. In addition, state's interests will form no part in this kind of decision and this institution will erase any possible suspicion about the motivation behind the intervention.

2-) The Responsibility To Protect - Post Cold War

At the end of the Cold War, many instances of human rights violations were witnessed in the so called failed states formed from the dissolved Soviet Union (Ulusoy, 2013, p.270). This was the driving force behind the international community stepping forward to take on this responsibility. (Eldem, 2015, pp.4-5). These cases provide an interesting test as to whether intervention in humanitarian grounds was actually needed or not, as in Rwanda and Bosnia, the efforts of the international community were seen as being too late. When compared to Sierra Leone in '97 and East Timor in 1995, no debate preceded these interventions by the international community and NATO decided to intervene in Kosovo regardless of a lack of support from the UN. According to (Evans and Sahnoun, 2001, p.100) it was this which sowed the seeds of doubt over the legitimacy of such interventions

The fact that humanitarian intervention is without a commonly agreed definition of human rights violations which allows it to be enacted. (Ulusoy, 2013, p.272). Saying this, in Kuwait in 1991 when Iraq was forced to withdraw its forces and which led to the invasion in 2003, shows that the principle of state sovereignty can be restricted if an emergency situation involving a threat to human life emerges. Also, the Security Council was ground-breaking in locating domestic dynamics on the doctrine of "international peace and protection of security" (Rice and Loomis, 2007, pp.65-66).

The Security Council has been criticised by Kofi Annan for its ineffective resolutions on the subject of humanitarian interventions (Evans and Sahnoun, 2012, p.100) which was responded to by Canada who called a meeting of the International Commission on Intervention and State Sovereignty – ICISS (Arsava, 2011, p.105). The commission proposed that state sovereignty requires a state to protect its citizens, if this was violated, and then it becomes the international community's responsibility to do so (Eldem, 2015, p.9). This responsibility has been described by Peltonen (2011, p.60) as "internal" responsibility which underscores the fact that 'external'

responsibility also exists in that states should respect other state's sovereignty. The doctrine of the responsibility to protect, enshrined by the ICISS is made up of 3 aspects "prevention", "reaction" and "reconstruction", which demonstrates that military force is only to be considered as a last resort when all other avenues have been exhausted. These avenues being Just Cause, Right Intention, Last Resort, Proportional Means, Reasonable Prospects and Right Authority (Eldem, 2015, pp.9-10). Ultimately the Security Council has ultimate right authority. The ICISS is not trying to take the place of the Security Council, but attempts to make its resolutions more efficient. For instance, when the Security Council cannot agree on a course of action to counter a humanitarian crisis, the UN General Assembly could step in to alleviate conditions, as for example it did in Korea in 1950 and Congo in 1960. When the General Assembly is unable to do so, regional communities can be sanctioned to do so (Evans and Sahnoun, 2012, pp.106-107).

From my point of view, this is a very innovative solution which provides a fresh approach to human rights crises. With the help of this, the General Assembly could take a decision about humanitarian intervention when permanent members of Security Council were not agreed with each other, so the veto rights of permanent members could be diluted. For example, non- agreement between Russia and the U.S.A about humanitarian intervention in Syria is still going on and, with the help of this innovative solution, the interests of permanent members would not form a part in taking decisions about intervention and, perhaps, many deaths caused by internal conflicts in Syria could have been prevented.

The doctrine of R2P was debated at the High Level Panel on Threats, Challenges and Change in 2004 after the publication of the ICISS report. It was granted that the international committee owned responsibility to protect against humanitarian crises along with the Security Council's authorization (Keskin, 2009, pp.76-77) although what would happen if authorisation was not given was not clear. Kofi Annan then filed a report in 2005 calling for the international community to move against violations of human rights. The UN World Summit was also held in 2005 which mentioned the notion of the responsibility to protect in Articles 138 and 139 of the Summit Report (Massingham, 2009, p.809). The doctrine of the responsibility was unanimously accepted (Eldem, 2015, p.10). Non-violent means of resolving humanitarian crises were to be favoured over military means in cases of ethnic cleansing, war crimes and contraventions of human rights, but military action could be sanctioned with Security Council authorisation if these methods were unsuccessful (Keskin, 2009, p.77). It was in 2006 that the Security Council announced resolution number 1674 which required member states to act in cases of armed conflict to protect civilians from harm, confirming Articles 138 and 139 that the Security Council is willing to act in the case of a widespread violation of human rights such as ethnic cleansing (Telli, 2012, pp.213-214).

The new General Secretary of the UN, Ban Ki-Moon commissioned a report on the development and implementation of the doctrine of R2P in 2005. The report was met with mixed reactions, with some member states arguing that it provided Western countries with the excuse to become involved in their own countries; others compared it to neo-colonialism. However, the report reached ratification by 67 states under resolution no. 63/308, and it set out the three grounds of the Responsibility to Protect:

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- 1-) the responsibility for protecting its own citizens from crimes against humanity including war crimes and massacre is that of the state.
- 2-) this responsibility will be aided by the International community.
- 3-) If the state cannot fulfil its responsibilities in a timely fashion, the International community will assume responsibility, using diplomatic or military options as necessary (Eldem, 2015, pp.12-13).

Humanitarian Intervention: The First Responsibility to Protect Implementation

In terms of the recent situation in Libya with mass humanitarian contraventions, when the country was divided into pro and anti-Kaddafi elements and civil war erupted in 2011. This war was condemned by the international community; an arms embargo, asset freezing and a travel ban were implemented to stop the harm to civilians. The regime was ordered to appear before the International Criminal Court. But, resolution no 1793 was announced by the UN and military action was sanctioned with a no-fly zone and NATO airstrikes leading to the defeat of Kaddafi's regime. (Eldem, 2015, pp.15-17). This intervention was considered to have been launched in a timely fashion Zifcak (2012, p.11), although the intervention was criticised as the UN effected a regime shift in Libya as the UN funded opposition groups within Libya, not only an intervention based on humanitarian grounds (Thakur, 2013, pp.69-70). In the writer's view, this intervention in Libya was illegal as the purpose of resolution 1973 only legitimates use of force to protect civilians. To sum up, the UN acted improperly as it did not remain impartial to the internal politics of Libya as required by resolution 1973. Moreover, the international community reacted to this attempt to fulfil the responsibility to protect with suspicion, as NATO was seen as contravening the resolution (Eldem, 2015, p.18).

Conclusion

Neither the term humanity nor the notion of humanitarian intervention have agreed definitions. The meanings carried by definitions are unclear although there are some reasonable definitions which are imposed by authors. Those like Kent (2004, p.867) claim that this ambiguity about humanitarian intervention prevents the stabilization of it, so UN implementations on this notion were unequal.

The notion of humanitarian intervention contradicts one of the main principles of the UN, which is state sovereignty. This contradiction was intended to be eliminated with the help of the Security Council Resolutions. This approach can be clearly seen at the High Panel in 2004 and the UN World Summit in 2006 because an authorisation of the Security Council was found necessary enough to intervene in another country at these meetings. Due to the developments on the notion of humanitarian intervention, human rights has got ahead of the classical view of state sovereignty and the old fashioned notion of humanitarian intervention gave its place to a new R2P doctrine.

The modern day R2P doctrine is based on the Just War Tradition. As Aquinas said, justness of intervention has three legs; right authority, just cause and right intention. When it

comes to the legitimacy and morality of humanitarian intervention, according to Heinze (2004, p.473), these notions are one within the other and if an intervention provides jus ad bellum and jus in bellum of the Just War notion, there will not be any problem about its legality or morality.

The principle of sovereignty and prohibition of the use of force are the guarantees of entity of developing countries against developed countries. With these principles, the UN has tried to provide equality for all states without differentiating between states. If the notion of humanitarian intervention pierce states' sovereignty and opens a way to intervene for powerful countries, the powerful states can use this to impose their interests on another country, leading to the biggest problem which can be confronted in the international arena. On the other hand, ignoring the massacres happening in a country should not be acceptable while excusing states' sovereignty within the scope of the humanity. I think sovereignty can be bent while applying in real terms, Just War principles. One of the other problems about humanitarian intervention is that the powerful states can manipulate the notion of humanitarian intervention in pursuant to their interests. For example, the intervention in Libya in 2011, but the non-interference in Syria, strengthens the thesis that great powers act depending on their national interests and this destroys the consistency of the international arena. However, an objective notion is necessary which prioritizes human purposes and does not protect states' interests. The deficiency of the notion of R2P should be remedied in this sense. Otherwise, it will not remain an international principle and it is certain that great powers will use it as an excuse to further their interests by intervening in other states' affairs.

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