Original Article

The responsibility to protect doctrine – Coherent after all: A reply to Friberg-Fernros and Brommesson

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Abstract In a recent International Politics article, Henrik Friberg-Fernros and Douglas Brommesson argue that the responsibility to protect (R2P) doctrine, as it was originally introduced in the International Commission on Intervention and State Sovereignty (ICISS) report, is incoherent. More specifically, they contend that there is a fundamental conflict between the implications of R2P and the six criteria the ICISS sets out to evaluate whether an intervention is justified. This article argues that these assertions are based on a misconception of how the criteria for justified intervention are interpreted in the ICISS report. Building on recent arguments from just war theory, I argue that three of these criteria do not stipulate when it is permitted to intervene, but rather what is permitted in an intervention. Subsequently, I demonstrate that in such an application, these criteria are not incompatible with the R2P.
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Whether and under what circumstances a humanitarian intervention is justified remains one of the most contentious issues in international politics. The most influential attempt to build a consensus on these questions was made by the International Commission on Intervention and State Sovereignty (ICISS), which in 2001 issued a report that introduced the idea of a responsibility to protect (R2P). This holds that the international community has a 'responsibility to react to situations of compelling need for humanitarian protection', which in extreme cases involves 'the need to resort to military action' (ICISS, 2001a, pp. 29, 31). The ICISS, furthermore, sets out six criteria to evaluate whether a military intervention is justified: right authority, just cause, right intention, reasonable prospects, last resort and proportional means.

Over the past decade, the ICISS report has been subjected to an exceptional level of academic scrutiny (Bellamy, 2011, p. 18). One of the most critical assessments was written in a thought-provoking article in this journal, in which Friberg-Fernros and Brommesson (2013) assert that the ICISS report is incoherent. More specifically, they argue that there is a fundamental conflict between the implications of R2P and the six criteria that determine whether an intervention is justified. This article shows that these assertions are based on a misunderstanding of how the criteria for justified intervention are interpreted in the ICISS-report. After summarising Friberg-Fernros and Brommesson's main claims, I argue that criteria for justified intervention can be applied coherently with the idea of a duty to intervene. Subsequently, I refute Friberg-Fernros and Brommesson's argument by demonstrating that the ICISS indeed applies them in a coherent manner.

The Alleged Incoherence of R2P

Friberg-Fernros and Brommesson (2013, p. 605) argue that the incoherence of the R2P doctrine is caused by a conflict 'between inferences about, on the one hand, when a humanitarian war should be waged and, on the other hand, why such a war should be waged'. According to the authors, the ICISS' answer to the latter question implies that states have an obligation to intervene in certain circumstances (Friberg-Fernros and Brommesson, 2013, p. 603). They deduce from the report that an intervention should be waged because the R2P 'may in extreme cases require a humanitarian intervention'. As this R2P implies an obligation, Friberg-Fernros and Brommesson (2013, pp. 608–610) conclude that the ICISS considers launching a humanitarian intervention obligatory in extreme cases. The authors (2013, pp. 609–611) further deduce from the report that an intervention can only be justified if the six criteria for justified intervention are met. From this, they conclude that the 'obligation to intervene is raised when these criteria are fulfilled'.

Friberg-Fernros and Brommesson (2013) furthermore argue that at least three of these criteria – right intention, proportional means and right authority – are only compatible with the idea of a permission to intervene, not an obligation to do so. They subsequently assert that something cannot be permitted and obligatory at the same time, because 'permission is much weaker than obligation' (Friberg-Fernros and Brommesson, 2013, p. 613). The fact that the R2P implies a duty to intervene, while the criteria determine when an intervention is permitted, leads to some 'highly implausible implications' (Friberg-Fernros and Brommesson, 2013, p. 611). More specifically, it opens up the possibility that 'like cases with the exact same moral demand for humanitarian intervention could be treated differently' because one of the criteria is not satisfied (Friberg-Fernros and Brommesson, 2013, p. 616).

Friberg-Fernros and Brommesson (2013) extent their conclusions beyond the ICISS report and assert that the criteria are by definition incompatible with the idea of

a duty to intervene. They argue that the ICISS uses elements from two different lines of thought. On the one hand, the concept of an R2P is based on the recent idea of a cosmopolitan international order based on human rights. On the other hand, the criteria that determine when military interventions are justified are derived from the much older just war tradition (Friberg-Fernros and Brommesson, 2013, p. 607). According to the authors, this attempt to merge elements from such different lines of thought into one doctrine is the cause of R2P's incoherence (Friberg-Fernros and Brommesson, 2013, pp. 606–607).

In summary, Friberg-Fernros and Brommesson (2013) postulate two claims. The first claim is that the ICISS holds the following position: 'First that a justified intervention is considered obligatory, and second that this obligation is raised when the abovementioned six criteria are met'. The second claim is that these criteria are not coherent with the idea of a duty to intervene because they give rise to situations where there is a moral demand for intervention but one of the criteria is not satisfied.

Just War Criteria and the Duty to Intervene

As a first step in refuting Friberg-Fernros and Brommesson's (2013) claims, this section argues that the just war criteria can be applied in a coherent way with the idea of a duty to intervene. The latter idea was actually already suggested by a doctrine that is generally considered to be a particular strand of the just war tradition: the 'Holy War' doctrine (Bellamy, 2006, p. 44). This asserts that God can do more than merely permit a war, He can also command one. The criteria for legitimate intervention are, however, derived from another strand of the just war tradition, generally referred to as 'classic' just war theory, that only supports the notion of a right to go to war (Bellamy, 2004, p. 139). The criteria for legitimate intervention and the idea of a duty to intervene thus originate from different strands of the same tradition, which hold different opinions on whether there are circumstances that give rise to an obligation, rather than a right, to go to war.

However, a doctrine that includes both rights and obligations is not by definition incoherent. As argued by Tan (2006, pp. 86–87), 'all obligatory actions must be by definition permissible, one cannot be required to do that which one is required not to do'. For example, if all minors are obliged to go to school, they should all be allowed to do so. However, obligations can generally be uphold in many ways. Minors can, for example, uphold their obligation to go to school by either driving to school by car or by bike. Evidently, incoherence is not raised if only some of the actions required to uphold an obligation are permitted. The rule that minors are only permitted to drive to school by bike, and not by car, is evidently not incompatible with a general obligation to go to school. Nor is this obligation neutralised if a minor drives to school by car. The rule merely determines what is permitted to uphold this obligation. Permissions and obligations are thus not incompatible if the former only defines what

is permitted to uphold the latter and does not make it impossible to do so in a permitted manner.

Furthermore, the just war criteria cannot only be used to assert when it is justified to resort to war, but also to define what is permitted in war. Traditionally, criteria from just war theory are divided in two categories: 'Jus ad bellum' and 'Jus in bello' (Fixdal and Smith, 1998, p. 286). The former identifies the circumstances under which it is justified to resort to war, the latter discusses what actions are justified in a war. The criteria mentioned in the ICISS report are traditionally categorised under 'Jus ad bellum', apparently justifying Friberg-Fernros and Brommesson's (2013) assertion that all of them determine the circumstances under which one may resort to the use of force (Fixdal and Smith, 1998, p. 286; Bellamy, 2006, p. 127). However, several publications assert that these 'ad bellum'-criteria are not only applicable to the latter question.

Kemp (1988, p. 61), for example, argues that the just war tradition constitutes a moral theory, and therefore in first instance a guide to human conduct. As such, individual actions constitute its primary object of evaluation. He subsequently asserts that war is not one human action, but a composite of human actions. Therefore, the decision to start a war is only one of the actions that need to be evaluated to make statements on its legitimacy. Even if the former decision is justified, actions in this war can still be unjustified (Kemp, 1988, pp. 68–70).

Kemp (1988, p. 72) furthermore maintains that the full set of just war criteria can be used to evaluate other actions than the decision to initiate a war. In line with this argument, several recent publications argue that ad bellum principles can also be used to evaluate in belli actions (McMahan, 2006; Toner, 2010; Pattison, 2011). Most interesting for current purpose is an argument made by Toner (2010), who claims that a number of guidelines for legitimate action remains constant from the start of a war to its finish. These factors address the following five questions: 'what is a sufficient provocation to use force, what objectives may be sought by force, why or for what ends, who has authority to decide, and when or in what circumstances'. According to Toner (2010, p. 95), the ad bellum criteria can be used to answer these questions throughout a war, 'from its initiation, through its conduct, to its conclusion'.

These recent interpretations of just war theory thus argue to not only use the ad bellum criteria to assess when the resort to war is permitted, but also to define what is permitted in such a permitted war. Applied in such a way, the fact that these criteria imply a permission does not make them incoherent with the idea of an obligation to intervene. In such applications, these criteria determine whether the obligation to intervene is uphold in a permitted manner. Whether this obligation is raised or when there is a right to intervene, however, does not depend on whether these criteria are satisfied. Just like the obligation to go to school does not expire if a minor drives to school by car, an obligation to intervene does not expire if it is uphold in an unpermitted manner.

The Criteria and the ICISS Report

So far, I have argued that criteria derived from just war theory are compatible with a duty to intervene if they are used to determine what is permitted in an obligated intervention. Several phrases in the ICISS report suggest that at least some of its criteria for justified intervention are intended for this purpose, rather than to stipulate when it is permitted to intervene. The ICISS postulates that one of its four basic objectives is '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' (ICISS, 2001a, p. 11). By setting out this objective, which applies to situations 'when' interventions occur, the ICISS indicates it aims to provide guidelines that apply to other questions than 'when' it is permitted to intervene. The ICISS (2001a, p. 29) furthermore argues that the criteria are intended 'to ensure that the intervention remains both defensible in principle and workable and acceptable in practice'. The word 'remains' implies that an intervention can lose its legitimacy. As the criteria are intended to avoid this from happening, they can be expected to provide guidelines to decisions that follow the start of an operation.

In the remainder of this section, I first demonstrate that the three criteria that Friberg-Fernros and Brommesson (2013) consider incoherent with the idea of a duty to intervene are used in the ICISS report to determine what is permitted in an obliged intervention. Subsequently, I argue that the other three criteria, that do address the question of when an intervention should occur, are not incoherent with the idea of an obligation to intervene for human protection purposes.

Right intention

The first criterion that Friberg-Fernros and Brommesson (2013) consider incoherent with the idea of an obligation to intervene is right intention. According to the authors (2013), this requirement makes 'the state of mind of the representatives of the international community' decisive for 'whether there is a R2P'. This implies that 'the R2P would be abolished' if the international community intended 'something else than a right intention'. Hereby, Friberg-Fernros and Brommesson (2013) follow a traditional Augustinian interpretation of the right intention criterion, which focusses on the 'inward disposition that drove one to war' (Bellamy, 2006, p. 27). Furthermore, they apply a very stringent definition of the criterion, which demands of intervening states to not have any other intention than the 'right intention'. Under this interpretation, the right intention criterion indeed gives rise to contradictory situations where the duty to protect cannot be fulfilled in a permitted manner. A state whose representatives have any ulterior intrinsic motives for intervening in an extreme humanitarian emergency would be forced to either refrain from upholding its R2P or carry out an unpermitted intervention.

Several authors, however, hold alternative interpretations of the right intention criterion. In his cosmopolitan account of justified intervention, Moellendorf (2002, p. 122) postulates that the legitimacy of a state action depends on 'whether or not actions owed to persons are performed, not why they are performed'. In line with this utilitarian argument Wheeler (2001, p. 38) contends that an intervention that is 'motivated by non-humanitarian reasons' can be justified 'if these motives, and the means employed, do not undermine a positive humanitarian outcome'.

Other authors combine such a focus on the consequences of an intervention with the more traditional inward-looking interpretation of right intention. Tesón (2003, p. 115) postulates that an actor's intentions are good, if 'he aims to achieve the good consequences'. This corresponds with the 'in belli' interpretation of right intention of Toner (2010, p. 99), which requires combatants to intend achieving only legitimate military objectives. These more inward-looking, consequential interpretations of the right intention criterion are satisfied if states only pursue objectives that they expect to have good consequences, independent of their deeper intrinsic motives. In this interpretation, the criterion thus determines what objectives can be pursued during an intervention, rather than when a state has the right to intervene.

The ICISS seems to follow the latter interpretation of right intention. In the relevant paragraphs of its report, it emphasises the importance of the expected consequences of pursuing alternative objectives rather than the intrinsic motivations of the intervening states. The ICISS (2001a, p. 36) explicitly recognises that 'complete disinterestedness (…) may be an ideal, but it is not likely always to be reality'. Furthermore, the report focusses on the expected impact of pursuing alternative objectives. It for example argues that the overthrow of regimes as such is not a legitimate objective, but 'disabling a regime's capacity to harm its own people' can be justified when it is 'essential to discharging the mandate of protection'.

This interpretation also clearly comes to surface in the discussion of the criterion in the supplementary volume to the report. Here, the ICISS (2001b, p. 141) argues it is primarily concerned with assessing 'the consequences of the action, not the moral worth of the actor (the intervening force)'. It subsequently postulates that 'a non-humanitarian intention does not in itself make the intervention contrary to human rights principles'. Moreover, the section on right intention is concluded with the requirement that 'the overriding agenda of both short- and long-term activities remains the safety and security of the affected local civilian populations' (ICISS, 2001b, p. 141).

The R2P doctrine thus only permits states to pursue objectives that they expect to be essential for 'discharging the mandate of protection', but does not postulate that the intervening states should be intrinsically motivated by humanitarian concerns. Evidently, it is perfectly possible to take up the R2P by only pursuing objectives that are essential to achieve protection. Furthermore, if states do pursue other objectives, this does not imply there was no obligation to intervene or this obligation is neutralised. It only means that this obligation was not uphold in a permitted way. The right intention criterion is thus not incompatible with the obligation to intervene,

as it only postulates what is permitted to uphold the R2P and does not make it impossible to do so in a permitted way.

Proportional means

The second allegedly incoherent criterion is 'proportional means'. Friberg-Fernros and Brommesson (2013, p. 611) postulate that the R2P could be neutralised if the international community 'uses more violence than necessary'. The ICISS indeed argues that 'the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question'. This requirement, however, corresponds to what Hurka (2005, p. 38) terms the 'comparative in belli' application of the proportionality criterion, which 'compares the net effect of particular tactic in war with those of alternatives that may be less harmful'. Following this interpretation, the proportionality requirement merely restricts what is permitted in a war. In the case of the R2P doctrine, this is the minimum necessary to uphold the duty to intervene. The latter, however, does not imply that a state was not obliged to intervene if its actions exceeded this minimum, only that it was not permitted to carry out the particular actions that exceeded the minimum. Furthermore, it is possible to uphold the obligation to intervene by only doing the necessary minimum actions. The proportionality criterion is thus not incompatible with the R2P.

The traditional, ad bellum, interpretation of proportionality is also mentioned in the ICISS report. The latter concerns the consequences of the intervention, and 'holds that the war must not have bad effects that are out of proportion to the good that it would achieve' (McMahan, 2006, pp. 708–709). The ICISS, however, discusses this under the closely related reasonable prospects criterion (Hurka, 2005, p. 37; Toner, 2010, p. 94), where it argues that 'military intervention is not justified (…) if the consequences of embarking upon the intervention are likely to be worse than if there is not action at all' (ICISS, 2001a, p. 37). Friberg-Fernros and Brommesson (2013), however, do not consider this requirement incoherent with a duty to intervene. As will be argued below, they are correct in this regard.

Right authority

The last criterion that Friberg-Fernros and Brommesson (2013) consider incoherent with a duty to protect is 'right authority'. The ICISS mentions three institutions that have the authority to determine whether a military intervention should go ahead: the Security Council, the General Assembly and regional organisations. According to Friberg-Fernros and Brommesson (2013), this implies that the duty to intervene would cease to exist if the international community would be unable to reach a decision in these three forums. However, the 'right authority' criterion of the ICISS does not stipulate that the R2P only arises if one of the three institutions authorises an

intervention. It does describe how the decision to intervene should be taken and, in the process, attributes additional obligations to certain decision-making bodies.

First of all, the ICISS argues that states should seek Security Council authorisation before any military intervention (ICISS, 2001a, p. 50). However, it immediately postulates that this Security Council has the obligation to 'deal promptly' with such requests. In addition, the ICISS (2001a, p. 52) explicitly postulates that the Security Council should 'exercise – and not abdicate – ' 'its responsibility to protect, which 'means clear and responsible leadership by the council especially when significant loss of human life is occurring or is threatened'. If the Security Council refrains from authorising an intervention in an extreme case, this thus certainly does not mean the R2P does 'not exist'. Instead, it means that the Security Council does not uphold its obligation.

If the Security Council does not uphold its R2P, the ICISS (2001a, p. 53) stipulates the international community should seek alternative means of discharging the R2P. Although it suggests two such alternative means, regional organisations and the General Assembly, intervening without approval of these organisations is not explicitly termed unjustified. The report merely stipulates that such interventions do not 'find wide favour' (ICISS, 2001a, p. 54). In the supplementary volume, it even argues that 'from an ethical standpoint, it does not follow that interventions by a single state are necessarily illegitimate'. The ICISS thus suggests that states should seek the authorisation of a legitimate body, but refrains from labelling an intervention that fails to secure such authorisation as unjustified.

In summary, the Right Authority criterion does not determine when the duty to intervene arises, but how the international community should decide on military intervention. First, states should attempt to secure authorisation of the Security Council, which has the responsibility to authorise interventions. If it fails to do so, states should try other institutions. However, if this procedure is not respected, the duty to intervene is not 'neutralised'. Instead, it means that the duty to intervene was not upheld in a permitted manner.

The coherent criteria: Just cause, reasonable prospects and last resort

Friberg-Fernros and Brommesson (2013) do not consider the remaining three criteria – just cause, reasonable prospects and last resort – incompatible with the duty to intervene. Strikingly, these criteria actually do determine when states should intervene to uphold their duty to protect, not what is allowed in an intervention. They are, however, not incoherent with the reasons 'why' a humanitarian war should be waged: the responsibility of the international community to 'provide life-supporting protection and assistance to populations at risk' (ICISS, 2001a, p. 17).

In line with just war theory, the ICISS is clearly of the opinion that the use of force is 'in itself undesirable and normally wrong', but may in some cases be necessary and right to protect populations at risk (Fixdal and Smith, 1998, p. 287). The commission

recognises that 'intervention in domestic affairs of state can often be harmful' (ICISS, 2001a, pp. 17, 31). Even non-military measures should, according to the Commission (ICISS, 2001a, p. 29), 'be used with extreme care to avoid doing more harm than good – especially to civilian populations'. 'The inherent risks that accompany any use of deadly force' raise more intense concerns than other measures (ICISS, 2001a, p. 29). Because of these risks, a military operation is not always the appropriate instrument to protect populations at risk. In line with the principle 'first do no harm', the Commission argues this is only the case if it does more harm than good. In other words, humanitarian intervention can only be an appropriate means to achieve the R2P if it actually produces more human protection than harms the human security it was meant to protect (Hurka, 2005, p. 38).

The three criteria that determine when an intervention is justified specify the situations where the benefits of an intervention can outweigh its costs. First of all, the just cause criterion specifies what risks for populations are sufficiently grave that they can outweigh the costs of intervention: large-scale loss of life and ethnic cleansing. Second, the reasonable prospect criterion stipulates that 'military intervention is not justified if actual protection cannot be achieved, or if the consequences of embarking upon the intervention are likely to be worse than if there is no action at all' (ICISS, 2001a, p. 37). It is self-evident that the benefits of an intervention can never outweigh its costs if human protection cannot be achieved or if its consequences make the situation worse. Third, because an intervention is considered more harmful than other possible measures, it can only be justified if these less harmful measures cannot provide human protection.

The three requirements that determine when the R2P gives rise to a duty to intervene are thus not incoherent with the reason why states should intervene: their duty to protect populations against grave human rights violations. This duty is only uphold if the international actions do more good than harm for these populations. Intervening in other cases would be incoherent with the ICISS' objective to focus on the rights of those 'seeking or needing support' (ICISS, 2001a, p. 17).

Conclusion

In this article, I argued that Friberg-Fernros and Brommesson's argument on the incoherence of the R2P doctrine is flawed. Contrary to their first claim, the ICISS does not argue that the obligation to intervene is raised when the six criteria are satisfied. Three of these criteria do not address the question of when an intervention is obligated or permitted, but what is permitted in an obliged intervention: right intention, right authority and proportional means. Contrary to their second claim, these criteria do not give rise to situations where there is a moral demand for intervention but a state is not permitted to intervene because one of the criteria is not met. First of all, the three criteria Friberg-Fernros and Brommesson deemed incoherent do not address the question of when intervening is obligated, nor do they make it impossible

to uphold this obligation. Second, the three other criteria do not contradict the idea of an obligation to protect populations against grave human right violations but specify when a military operation is the appropriate way to do so.

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