

THE RESPONSIBILITY TO PROTECT AND THE POLITICIZATION OF INTERNATIONAL LAW

Anne Orford*

This paper will explore the implications of the shift from the language of humanitarian intervention which dominated international law and international relations in the 1990s, to the language of the “responsibility to protect” which has gradually colonised the legal and political debate since its development by the International Commission on Intervention and State Sovereignty (ICISS) in 2001. The paper traces the movement by states and within the United Nations towards the adoption of the concept of an international responsibility to protect populations at risk. The paper argues that this responsibility to protect creates a new normative environment in which to understand the obligations of the international community. In addition, it expands the temporal focus of “intervention”, by including three elements within the notion of a responsibility to protect – a responsibility to prevent, a responsibility to react and a responsibility to rebuild. Yet by describing the justification for this expanded role of the international community in terms of the logic of “protection”, this new doctrine stands in a complicated relationship to a long tradition of absolutist or authoritarian state theorising, in which the relation between state and subject was figured in terms of protection and obedience. This paper will argue that the overall effect is radically to politicize the international law relating to human rights and development, use of force and post-conflict administration.

* University of Melbourne Law School.