

# The Responsibility to Protect: challenges & opportunities in light of the Libyan intervention

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# Introduction

Alex Stark | November 2011

The international community has a contentious history when it comes to preventing and halting mass atrocities. Throughout the 20th and early 21st centuries, states largely failed to act according to their responsibilities as signatories of the 1948 Genocide Convention, ‘standing by’ time after time while civilians were targeted by their leaders, despite their declarations that such crimes must “never again” be allowed to happen. It was only in 2001, under the shadow of shameful inaction during the Rwandan genocide and in light of the perceived success of the 1999 Kosovo intervention, that the international community was finally able to produce a comprehensive framework of policy tools designed to guide states towards preventing mass atrocities. The Responsibility to Protect (often referred to as R2P or RtoP) aimed to halt atrocities as they occurred, and rebuild and reconstruct societies in the wake of such crimes. It represented the policy realization of the statement “never again”. Now a growing international relations, human rights and international security norm, R2P cuts to the core of what it means to be a moral player in the international arena.

Emerging from a report written by the International Commission on Intervention and State Sovereignty (ICISS), a Canadian government-led initiative established in 2000, R2P represented a re-working of the traditionally sacrosanct international relations concept of absolute sovereignty. Although the notion of sovereignty has been debated and adjusted over time, it has retained its essential definition in international law, that a state has absolute supremacy over its territory and citizens. In the ICISS report,<sup>1</sup> sovereignty was re-defined and extended to include the responsibility a state bears towards protecting its own civilians from harm. Furthermore, in cases where a state is unable or unwilling to protect its civilians from mass atrocity crimes, the ICISS report asserts that the international community has a responsibility to act swiftly in order to prevent or interdict such crimes.

The framework and scope of R2P was officially codified at the 2005 UN World Summit. In paragraphs 138-139 of the outcome document, governments agreed that “Each individual State has the responsibility to protect its populations... through appropriate and necessary means,” and “The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations”.<sup>2</sup> The document specifies that R2P applies in the case of four distinct crimes: genocide, war crimes, ethnic cleansing and crimes against humanity, which had previously been defined under international law by the Rome Statute of the International Criminal Court.

R2P’s next milestone came in 2009, when UN Secretary-General Ban Ki-moon released the report “Implementing the Responsibility to Protect,” outlining three principles, or “pillars,” of R2P.<sup>3</sup> The first pillar describes the new approach in relation to sovereignty, highlighting that states have the primary responsibility to protect their own civilians against mass atrocities crimes. Pillar two asserts that the international community is committed to providing assistance to states to build their capacities to prevent such mass atrocities, and that “prevention... is a key ingredient for a successful strategy for the responsibility to protect.” The third pillar says that in cases where a state is unable to provide protection for its citizens, the international community has the responsibility to respond “collectively in a timely and decisive manner... to provide such protection.”<sup>4</sup> The UN General Assembly adopted a resolution (A/RES/63/308), taking note of the report and subsequent debate within the UNGA.

The existence of the report highlights an essential tension within the international community surrounding the R2P norm. It is widely accepted by everyone from policymakers and heads of

State to civil society members, that states have the responsibility to protect their citizens, and that the international community has the responsibility to intervene on some level when states fail to do so. And yet, the methods and degree of this response remains controversial.

This tension was brought to the fore on March 17, 2011, when the UN Security Council adopted Resolution 1973 in response to the escalating civil war in Libya. Citing Chapter VII of the United Nations Charter, the Security Council authorized member states “to take all necessary measures... to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamhoriya.”<sup>5</sup> The subsequent invasion, originally led by the UK, France and the US - and soon after taken over by NATO - re-ignited the debate over what kinds of policy measures should be used to prevent imminent mass atrocities, and particularly whether military intervention is an appropriate response.

This collection seeks to draw attention to some of the salient points of a heated and multifaceted debate. Gareth Evans’ remark in the interview that concludes the collection illustrates why R2P represents such a deeply relevant concept today: “maybe, just maybe, we’ll be able to say ‘never again’ in the future without having to periodically look back, as has so often been the case in the past, asking ourselves, with a mixture of anger, incomprehension and shame, how did it happen again.”

In the first essay, Thomas Weiss traces the evolution of the R2P concept since its inception in 2001. Weiss notes that although R2P is often described as an “emerging” norm, it has already played a decisive role in shaping international debates about human rights violations and humanitarian response. He points to a tension and challenge that lies at the heart of conceptualizing and operationalizing R2P. On the one hand it must not be defined too broadly, as “broadening

perspectives has opened the floodgates to an overflow of appeals to address too many problems.” Yet on the other hand, it must not be defined too narrowly, as R2P “is not only about the use of military force.”

Ramesh Thakur addresses critiques of the military intervention in Libya as an instance of R2P in action, explaining that “the United Nations was neither designed nor expected to be a pacifist organization.” Thakur places R2P in a context of understanding the UN as a collective security institution. He asks “under what circumstances is the use of force necessary, justified and required to provide effective international humanitarian protection to at-risk populations without the consent of their own government?” and asserts that R2P is a useful norm in shaping military humanitarian intervention. On the importance of military intervention as one tool of R2P, he argues that “to be meaningful, the R2P spectrum of action must include military force as the sharp-edge option of last resort.”

Mary-ellen O’Connell provides a contrast to Thakur’s perspective. She asserts that in Libya, military force was not in fact used as an option of last resort, noting that sanctions, negotiations, and other peaceful measures were barely attempted beforehand. International law demands that military interveners show that their actions are not only a last resort, but also that they will do more good than harm. With tens of thousands of civilians killed during the intervention, O’Connell feels it can be questioned on both fronts and posits that given the large numbers of civilian casualties, the military intervention in Libya can hardly be considered a case of R2P in action.

Aidan Hehir offers another critique of the intervention in Libya. The use of R2P is predicated on the assent of the UN Security Council, a body with 5 permanent members who each yield a veto that is inherently politically biased and therefore

## Whither R2P?

Thomas G. Weiss | August 2011

remains a “structural barrier to effective action.” He argues that R2P has no inherent moral meaning or influence when it has been applied inconsistently according to the interests of the 5 permanent members of the Security Council. “Substantial legal, political and institutional reform” at the UN, rather than R2P, is needed to ensure the prevention of future mass atrocities.

Alex Bellamy confronts another criticism levied at R2P in light of the military action in Libya—namely, whether the concept can be distinguished from regime change. Because of the inherent institutional biases that Hehir notes, many developing countries, including emerging major players on the international stage like China, Brazil, and South Africa, have criticized R2P as a ruse for western powers to affect regime change. The international community must carefully maintain the distinction between R2P and regime change, he argues, if R2P is to be applied in the future without objections from these countries.

David Chandler argues that in fact, because the West has managed to elude responsibility for the outcome of the Libya intervention, Libya hardly represents an instance of humanitarian intervention at all. In the 1990’s, when the norm of humanitarian intervention was emerging, the UN, NATO, and the EU positioned themselves as global sovereigns in a world where they perceived the immanent emergence of a new liberal global order of cosmopolitan law and human rights. Yet after the intervention in Kosovo, and the failed wars in Iraq and of Afghanistan, the order that has emerged is instead a “complex, unstable world, where interventions are ad hoc and do not involve Western responsibility or transformative promise.” The discourse that has emerged post-Libya has little to do with the original conversations around humanitarian intervention and R2P.

Rodger Shanahan describes the dangers that such an inconsistent application of R2P may cause for

its continued relevance as an international norm. He notes that “the selectivity of the concept’s application has already opened it up to criticism from those parts of the international community who see in R2P another justification for western interference in the developing world’s internal political affairs” and concludes that “the next few years will see whether R2P is likely to prosper or fade away as its practical limitations are judged against whatever successes it can claim.”

The next two essays step back from Libya to take a look at different, and often less discussed, aspects of the theory and practice of R2P. Rachel Gerber emphasizes the importance of the “prevention pillar”; one that is frequently neglected in international policy discussions, but is perhaps even more important than intervention: “why wait to halt a massacre if early engagement might avert it entirely?” Gerber argues that the challenge to R2P lies in developing the prevention pillar further, and that “we must develop a framework for prevention that at once targets these unique dynamics across the various phases of potential crisis and prioritizes atrocity-focused objectives within broader efforts to prevent conflict, promote security, and encourage economic development.”

Abiodun Williams discusses the role that R2P plays in peacemaking. While describing several challenges, he notes that in branching out from a focus of military intervention, R2P could “enhance local and international institutional capacities to assess and address the risk of atrocities at an earlier stage through primary prevention, ensure robust measures are taken to halt R2P crimes in a more consistent manner, and rebuild societies emerging from conflict.”

<sup>1</sup> <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

<sup>2</sup> For the full text, see <http://bit.ly/ul1XL8>

<sup>3</sup> For the full text, see <http://bit.ly/ix62p5>

<sup>4</sup> <http://globalr2p.org/pdf/SGR2PEng.pdf>

<sup>5</sup> <http://bit.ly/g6N26A>

With the exception of Raphael Lemkin’s efforts and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, no idea has moved faster in the international normative arena than “the responsibility to protect” (R2P, or the uglier RtoP in current UN parlance), the title of the 2001 report from the International Commission on Intervention and State Sovereignty (ICISS).<sup>1</sup>

Friends and foes have agreed that the commission’s contribution to forestalling and stopping mass atrocities was its specific framework with a three-pronged responsibility—to prevent, to react, to rebuild.

Prevention was not an ICISS afterthought, but the motivation for convening the commission in fall 2000 was to break new ground and about reacting to mass atrocities. Its comparative advantage, at least in comparison with other international blue-ribbon groups, was a narrow focus—what used to be called “humanitarian intervention.” Receptivity to its recommendations reflected not only the idealism of a few like-minded norm entrepreneurs but also its demand-driven character. After divisive and inconsistent instances of military humanitarianism in the tumultuous 1990s, states genuinely sought guidance about intervening across borders to protect and assist war victims.

The original formulation of R2P by the ICISS sandwiched military force in between the sliced-white-bread of prevention and post-conflict peace-building. These popular issues made military intervention for human protection purposes somewhat more palatable than it had been, especially to Third World critics. And then UN secretary-general Kofi Annan, who had used the bully pulpit far more than his predecessors to serve to push human rights in general and preventing mass atrocities in particular,<sup>2</sup> heartily welcomed the report. Nonetheless, sovereignty remained paramount, the deployment of military force objectionable, and R2P contested.

As he has done for too many issues since taking office in 2007, Secretary-General Ban Ki-moon has sought to finesse controversy. His January 2009 report emphasized three supposedly equal pillars underpinning R2P—state responsibility, capacity building, and international responses.<sup>3</sup> According to Ramesh Thakur, “the report did not retreat from the necessity for outside military action in some circumstances but it diluted the central defining feature of R2P.”<sup>4</sup> I would be harsher: the Secretary-General sought to sidestep considering the third pillar, the sharp end of the R2P stick of using or threatening to use military force to stop mass atrocities. As James Pattison reminds us, “humanitarian intervention is only one part of the doctrine of the responsibility to protect, but... it is part of the responsibility to protect.”<sup>5</sup> That reality became clear once again with R2P’s first unequivocal application to justify the international action in Libya.<sup>6</sup>

So, whither R2P? Given R2P’s declared goal of changing the discourse about a visceral humanitarian reaction and make mass atrocities a distant memory, how long can a norm be “emerging” before it “has emerged”? Whatever one’s views about the current consensus or lack thereof, the responsibility to protect certainly has shaped international conversations—diplomatic, military, and academic—about responding to egregious violations of human rights and conscience-shocking humanitarian disasters. It would be useful to readers to review history.

R2P moves beyond the contested and counterproductive label of “humanitarian intervention.” Beginning with the international response in northern Iraq in 1991, this moniker had led to largely circular tirades about the agency, timing, legitimacy, means, circumstances, and advisability of using military force to protect human beings.

The central normative tenet of the responsibility to

protect is that state sovereignty is contingent and not absolute; it entails duties not simply rights. After centuries of largely looking the other way, sovereignty no longer provides a license for mass murder in the eyes of legitimate members of the international community of states. Every state has a responsibility to protect its own citizens from mass killings and other gross violations of their rights. If any state, however, is manifestly unable or unwilling to exercise that responsibility, or is the perpetrator of mass atrocities, its sovereignty is abrogated. Meanwhile, the responsibility to protect devolves to the international community of states, ideally acting through the UN Security Council.

This dual framework—internal and external—drew upon work by Francis Deng and Roberta Cohen about “sovereignty as responsibility.” As envisaged in the 2001 ICISS report and embraced later by over 150 heads of state and government at the UN’s 2005 World Summit,<sup>7</sup> the reframing moved away from humanitarian intervention as a “right.” Deng, Cohen, the ICISS, and the World Summit emphasized the need—indeed, the responsibility—for the international community of states, embodied by the United Nations and mandated since its creation to deliver “freedom from fear,” to do everything possible to prevent mass atrocities. Deploying military force is an option after alternatives have been considered and patently failed. Military intervention to protect the vulnerable is restricted, in the summit’s language, to cases of “genocide, war crimes, ethnic cleansing and crimes against humanity”—or the shorthand of “mass atrocity crimes” in this essay.

Using military force in extremis with a view toward “saving strangers”<sup>8</sup> was the lynch-pin for the debate resulting from international inaction in 1994 in Rwanda (doing too little too late) and action in 1999 in Kosovo (according to some, doing too much too soon). The original R2P agenda encompasses a range of responses to mass atrocities, from prevention to post-conflict rebuilding, and not merely the use of overwhelming military force to stop them after they begin. The World Summit set aside peace-building (or included it as part of prevention, thereby downgrading it). But the distinct spectrum of prevention, reaction, and rebuilding remains

preferable. The integrity of the original ICISS conceptualization suffers when diluted or conflated so that prevention becomes an all-encompassing category without a meaningful policy edge.

Whether using the original ICISS conception or the 2005 World Summit version, two specific challenges remain. First, R2P should not become synonymous with everything that the United Nations does. In addition to reacting and protecting civilians at risk, the value added of R2P consists of proximate prevention and proximate peace-building—that is, efforts to move back from the brink of mass atrocities that have yet to become widespread or after such crimes to ensure that they do not recur. International action is required before the only option is the US Army’s 82nd Airborne Division; and additional commitments to help mend societies are also essential in order to avoid beginning anew a cycle of settling accounts and crimes.

In short, the responsibility to protect is not about the protection of everyone from everything. Broadening perspectives has opened the floodgates to an overflow of appeals to address too many problems. For example, part of the political support at the World Summit reflected an understandable but erroneous desire to use R2P to mobilize support for root-cause prevention, or investments in economic and social development. As bureaucrats invariably seek justifications for pet projects, we run the risk that everything is on the R2P agenda. It is emotionally tempting to say that we have a responsibility to protect people from HIV/AIDS and small arms, and the Inuit from global warming. However, if R2P means everything, it means nothing.

Second, at the other end of the spectrum, the responsibility to protect also should not be viewed too narrowly. It is not only about the use of military force. The broad emphasis especially pertinent after Washington’s and London’s 2003 rhetoric disingenuously morphed into a vague “humanitarian” justification for the war in Iraq when weapons of mass destruction and links to Al-Qaeda proved non-existent. The 2003 Iraq war temporarily was a conversation stopper for R2P as critics looked askance upon the consideration of

any humanitarian justification for military force. Contemporary foreign adventurism and imperial meddling in humanitarian guise were not more acceptable than earlier incarnations.

Yet R2P breaks new ground in coming to the rescue. In addition to the usual attributes of a sovereign state that students encounter in international relations and law courses and in the 1934 Montevideo Convention—people, authority, territory, and independence—there is another: a modicum of respect for human rights. The interpretation of privileges for sovereigns has made room for modest responsibilities as well. When a state is unable or manifestly unwilling to protect the rights of its population—and especially when it perpetuates abuse—that state loses its sovereignty along with the accompanying right of non-intervention. The traditional rule of non-interference in the internal affairs of other countries does not apply in the face of mass atrocities.

Moreover, the outdated discourse of humanitarian intervention is turned on its head and transformed from that properly detested in the global South. The merits of particular situations should be evaluated rather than blindly given an imprimatur as “humanitarian.” For anyone familiar with the number of sins justified by that adjective, this change marks a profound shift away from the rights of outsiders to intervene toward the rights of populations at risk to assistance and protection and the responsibility of outsiders to help.

In what Gareth Evans calculates to be “a blink of the eye in the history of ideas,”<sup>9</sup> developments since the release of the ICISS report in December 2001 show that R2P has moved from the passionate prose of an international commission’s report toward being a mainstay of international public policy debates. Edward Luck aptly reminds us that the lifespan of successful norms is “measured in centuries, not decades,”<sup>10</sup> but R2P seems firmly embedded in the values of international society and occasionally in policies and tactics for a particular crisis. And it certainly has the potential to evolve further in customary international law and to contribute to ongoing conversations about the qualifications of states as legitimate, rather than rogue, sovereigns.

Merely listing contemporary headlines is impressive. Prior to the World Summit’s endorsement of R2P, in 2004 the UN’s High-Level Panel on Threats, Challenges and Change issued *A More Secure World: Our Shared Responsibility*, which supported “the emerging norm that there is a collective international responsibility to protect.”<sup>11</sup> Kofi Annan endorsed it in his 2005 report, *In Larger Freedom*.<sup>12</sup> In addition to the official blessing by the UN General Assembly in October 2005, the Security Council has referred to R2P on several occasions: the April 2006 resolution 1674 on the protection of civilians in armed conflict expressly “reaffirms the provisions of paragraphs 138 and 139” and the August 2006 resolution 1706 on Darfur repeats the same language with specific reference to that conflict. The first operational references to the “responsibility to protect” came against Libya in 2011: resolution 1970 had unanimous support for a substantial package of Chapter VII efforts (arms embargo, asset freeze, travel bans, and reference of the situation to the International Criminal Court); and no state voted against resolution 1973, which authorized “all necessary measures” to enforce a no-fly zone and protect civilians. Subsequently in July 2011, in approving a new peacekeeping mission in South Sudan, R2P once again figured in resolution 1996. In addition, the Human Rights Council referred to R2P for the first time in resolution S-15/1, which led to the General Assembly’s resolution 65/60 that suspended Libyan membership in that council. UN administrative strengthening began in 2007 when UN Secretary-General Ban Ki-moon appointed a special adviser for the prevention of genocide (Francis M. Deng) and another tasked with promoting R2P (Edward C. Luck). He has referred to the implementation of R2P as one of his priorities. As noted earlier, however, the Secretariat’s emphases have been overwhelmingly on the first two pillars of Ban’s conception (the protection responsibilities of individual states, international assistance and capacity-building for weak ones), thereby hoping to finesse controversy over what launched the debate in the first place, the use of military force for human protection purposes.

In mid-2009 and the following two summers,

the General Assembly engaged in an “informal interactive dialogue,” further steps in R2P’s normative journey from idea to a widely internalized basis for policy and decision-making,<sup>13</sup> which Ramesh Thakur called “the most dramatic normative development of our time.”<sup>14</sup> The states members of the “Group of Friends” of the responsibility to protect in New York, the UN special adviser, and civil society have successfully advanced the cause.

Initially, many observers feared that the debate would lead to diluting the September 2005 commitment. Fears about normative back-pedaling seemed concrete enough; for instance on the eve of the debate, *The Economist* described opponents who were “busily sharpening their knives.”<sup>15</sup> The Nicaraguan president of the General Assembly, Father Miguel d’Escoto Brockmann, unsheathed his Marxist dagger and suggested “a more accurate name for R2P would be...redecorated colonialism.”<sup>16</sup>

However, R2P-naysayers were deeply disappointed by the discernible shift from antipathy to wider public acceptance of the norm over the last three summers.<sup>17</sup> Whether Libya has accelerated the internalization of the norm is difficult to say at this juncture. It is worth noting that “R2P focal points” from capitals and New York gathered in May 2011 at the invitation of the foreign ministers from Costa Rica, Denmark, and Ghana<sup>18</sup>—an initiative that figured in the report from the secretary-general to third inter-active dialogue in July 2011.<sup>19</sup> In spite of the stalemate in Libya, the conversation was less controversial than in the previous two summers with fewer of the usual suspects claiming no consensus. The 2011 focus on regional organizations was especially timely in that regional diplomacy was crucial to the Libyan intervention, which involved the Gulf Cooperation Council, the Arab League, the Islamic Conference, and the African Union (AU). In Côte d’Ivoire, the AU’s diplomacy was ultimately unsuccessful but helpful in making the ultimate UN decisions as was pressure from the Economic Community of West African States to act militarily.<sup>20</sup>

Libya’s people were protected from the kind of murderous harm that Muammar el-Qaddafi inflicted

on unarmed civilians early in March 2011 and continued to menace against those “cockroaches” who opposed him (the same term used in 1994 by Rwanda’s murderous government). As the situations in Tripoli and elsewhere across the wider Middle East unfold, acute dilemmas will remain for humanitarians and policymakers.<sup>21</sup> If the operation fares well, the norm will be strengthened. If it goes poorly, future decision-making about its implementation may be even more problematic than in the past.

It may thereby increase the decibel level of claims from naysayers who emphasize the potential of the responsibility to protect to backfire. The repression of dissent in Syria, Bahrain, and Yemen, for instance, lends weight to claims from contrarians. Alan Kuperman, for instance, argues that the expectation of benefiting from possible outside “intervention”—and he includes sanctions, embargoes, judicial pursuit, and military force under this rubric—emboldens sub-state groups of rebels either to launch or continue fighting.<sup>22</sup> There is no evidence that international mumbling has affected calculations by local militias and elites to prolong violence. While it is conceivable that belligerents could try and gain international support for their causes with an R2P appeal, thus far no such problem has arisen.

Is robust humanitarianism destined to constitute a moral hazard? There might be a problem were there an insurance policy for humanitarians as there is for banks, which permits the latter to be reckless with other peoples’ money. But there is no such global life insurance policy; surely dissenters in Libya as well as Syria and Yemen understand that humanitarian talk is cheap. Is there a danger of too much military humanitarianism? Hardly.

If taken seriously, the moral hazard argument leads to the conclusion that pledging to do nothing is appropriate, thereby re-issuing a license for mass murder to wannabe thugs. While blow-back from Libya is inevitable, nonetheless R2P is alive and well. International action in 2011 suggests that it is not quixotic to utter “never again”—that is, no more Holocausts, Cambodias, and Rwandas—and occasionally to mean it.

<sup>1</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001); and Thomas G. Weiss and Don Hubert, *The Responsibility to Protect: Research, Bibliography, Background* (Ottawa: International Development Research Centre, 2001). For interpretations by commissioners, see Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings, 2008); and Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge: Cambridge University Press, 2006). The author’s version of the normative itinerary is *Humanitarian Intervention: Ideas in Action* (Cambridge: Polity Press, 2007, 2nd edition forthcoming 2012).

<sup>2</sup> See, for example, Kofi A. Annan, *The Question of Intervention – Statements by the Secretary-General* (New York: UN, 1999).

<sup>3</sup> Ban Ki-moon, *Implementing the Responsibility to Protect*, Report of the Secretary-General, UN document A/63/677, 12 January 2009.

<sup>4</sup> Ramesh Thakur, *The Responsibility To Protect: Norms, Laws and the Use of Force in International Politics* (London: Routledge, 2011), 150.

<sup>5</sup> James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010), 250.

<sup>6</sup> This argument first appeared in Thomas G. Weiss, “RtoP Alive and Well after Libya” *Ethics & International Affairs* 25, 3 (2011): 1-6.

<sup>7</sup> 2005 World Summit Outcome, UN General Assembly Resolution A/RES/60/1, 24 October 2005, paras. 138-140.

<sup>8</sup> Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

<sup>9</sup> Evans, *The Responsibility to Protect*, 28.

<sup>10</sup> Edward C. Luck, “The Responsibility to Protect: The First Decade,” *Global Responsibility to Protect* 3, no. 4 (2011): forthcoming.

<sup>11</sup> High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004), para. 203.

<sup>12</sup> Kofi A. Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All* (New York: United Nations, 2005).

<sup>13</sup> For discussions about the theory of normative advance, see Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (1998): 887-917; Thomas Risse, Stephen Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University

Press, 1999); and Margaret Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

<sup>14</sup> Ramesh Thakur and Thomas G. Weiss, “R2P: From Idea to Norm—and Action?” *Global Responsibility to Protect*, 1, 1 (2009): 22.

<sup>15</sup> “An Idea whose Time Has Come—and Gone?” *The Economist*, 23 July 2009.

<sup>16</sup> “Statement by the President of the General Assembly, Miguel d’Escoto Brockmann, at the Opening of the 97th Session of the General Assembly,” 23 July 2009.

<sup>17</sup> For accounts, see Global Centre for the Responsibility to Protect, available at: <http://globalr2p.org/advocacy/index.php>.

<sup>18</sup> See Global Centre for the Responsibility to Protect, “Meeting of National Focal Points on R2P Convened by Costa Rica, Denmark and Ghana, New York, 17 and 18 May 2011,” GCR2P Report, June 2011, available at: <http://globalr2p.org/advocacy/index.php>.

<sup>19</sup> Ban Ki-moon, *The Role of Regional and Sub-regional Arrangements in Implementing the Responsibility to Protect*, Report of the Secretary-General, UN document A/65/877, 27 June 2011, para. 28.

<sup>20</sup> Thomas J. Bassett and Scott Straus, “Defending Democracy in Côte d’Ivoire,” *Foreign Affairs* 90, no. 4 (2011): 130-140.

<sup>21</sup> See Michael Barnett and Thomas G. Weiss, *Humanitarianism Contested: Where Angels Fear to Tread* (London: Routledge, 2011).

<sup>22</sup> See Alan J. Kuperman, “Mitigating the Moral Hazard of Humanitarian Intervention: Lessons from Economics,” *Global Governance* 14, no. 2 (2008): 219-240; and “The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans,” *International Studies Quarterly* 52 (2008): 49-80.

# R2P, Libya and International Politics as the Struggle for Competing Normative Architectures

Ramesh Thakur | September 2011

The United Nations was neither designed nor expected to be a pacifist organisation. Its origins lie in the anti-Nazi wartime military alliance among Britain, the United States and the Soviet Union. The all-powerful UN Security Council is the world's duly – and only – sworn in sheriff for enforcing international law and order. It was given sharper focus and tougher international law enforcement powers than the League Council.

The system of collective security against interstate aggression never materialised. In the decades after World War II the nature of armed conflict was transformed. Interstate warfare between uniformed armies gave way to irregular conflict between rival armed groups. The nature of the state too changed from its idealised European version. Many communist and newly-decolonised countries were internal security states whose regimes ruled through terror, often with the material assistance and diplomatic support of the United States as it acquired many of the trappings of a national security state in the transcendental struggle with the Soviet Union.

Increasingly, the principal victims of both types of violence were civilians. Advances in telecommunications brought the full horror of their plight into the world's living rooms. In the meantime, the goals of promoting human rights and democratic governance, protecting civilian victims of humanitarian atrocities and punishing governmental perpetrators of mass crimes became more important. The responsibility to protect (R2P), first articulated by the International Commission on Intervention and State Sovereignty in 2001 and endorsed unanimously by world leaders in 2005, spoke eloquently to the need to change the UN's normative framework in line with the changed reality of threats and victims.

R2P attempts to strike a balance between the

centuries-old tradition of noninterference and institutionalised non-indifference. It was designed to help the world to be better prepared – normatively, organisationally and operationally – to meet the recurrent challenge of military intervention wherever and whenever atrocities are committed. Its preventive and rebuilding pillars involve strengthening a state's capacity to handle its own law and order problems. The world's comfort level is much greater with action under Pillar One (building state capacity) and Pillar Two (international assistance to build state capacity) than Pillar Three (international military intervention). But, to be meaningful, the R2P spectrum of action must include military force as the sharp-edge option of last resort.

By its very nature, including unpredictability, unintended consequences and the risk to innocent civilians caught in the crossfire, warfare is inherently brutal: there is nothing humanitarian about the means. Still, under contemporary conditions the fundamental question cannot be avoided: under what circumstances is the use of force necessary, justified and required to provide effective international humanitarian protection to at-risk populations without the consent of their own government? Absent R2P, the intervention is more likely to be ad hoc, unilateral, self-interested and deeply divisive.

That was a key difference between Kosovo in 1999, Iraq in 2003 and Libya this year. Failures in Africa and the Balkans in the 1990s reflected structural, political and operational deficiencies that accounted for the UN's inability to save strangers from a life of hell on earth. R2P responds to the idealised United Nations as the symbol of an imagined and constructed community of strangers: We are our brothers' and sisters' keepers.

In the Balkans, it took NATO almost the full

decade to intervene with air power. In Libya, it took one month to mobilise a broad coalition, secure a UN mandate, establish and enforce no-fly and no-drive zones, stop Gaddafi's advancing army and prevent a massacre of the innocents in Benghazi. Adopted on 17 March by a 10-0-5 vote (with China, Russia, Brazil, Germany, India abstaining), Security Council Resolution 1973 was carefully crafted both to authorise and delimit the scope of intervention. It specified the purpose of military action as humanitarian protection and limited the means to that goal at a time when Gaddafi loyalists were poised to recapture Benghazi, with almost a million people. The decisive factor for many was the highly credible threat to hunt down opponents alley by alley, house by house, room by room, with no mercy or pity.

In contrast to the Bush doctrine, under President Barack Obama the United States acted in concert with others, not alone; coaxed, persuaded and heeded, did not impose its will; and set clear limits on goals and means. This did not please some shadow warriors. Referring to the role of Hillary Clinton, Susan Rice, and Samantha Power in arguing for limited military action in Libya against the noninterventionist inclinations of the male Defense Secretary and National Security Adviser, Jacob Hebrunn derided Obama for effectively having been henpecked into interventionism by 'these Valkyries of foreign affairs' (National Interest, 21 March). Mark Krikorian was no less misogynist, commenting caustically that 'our commander-in-chief is an effete vacillator who is pushed around by his female subordinates' (National Review Online, 21 March).

The Libyan people's euphoria and NATO's relief over the successful military campaign to remove Gaddafi is likely to temper criticisms of the manner in which NATO rode roughshod over UN authorization to protect civilians. The jury is

still out on whether international military action in Libya will promote consolidation or softening of the R2P norm. Resolution 1973 authorised military action to prevent civilian slaughter but not intervene in the civil war (any state has the right to use force to suppress armed uprisings), effect regime change, or target Gaddafi. To the extent that he was so targeted, NATO exceeded UN authority in breach of the Charter law.

That said, we should not retreat into naivety on what may be required in particular circumstances. Already in 2003, I wrote in the International Journal of Human Rights that 'If defeat of a non-compliant state or regime is the only way to achieve the human protection goals, then so be it'. In Libya, the West's strategic interests coincided with UN values. This does not mean that the latter was subordinated to the former. It does mean, as was the case with Australia vis-à-vis East Timor in 1999, that there was a better prospect of sustained NATO engagement in an operation on its borders than if Western interests were not affected. Paris, London and Washington – and UN Secretary-General Ban Ki-moon – did not waver in their resolve, despite critics from the left pushing for diplomacy and critics from the right calling for boots on the ground. Too many seemed to expect and demand instant military gratification. Six months to overthrow an entrenched and determined dictator is not tardy.

The outcome is a triumph first and foremost for the citizen soldiers who refused to let fear of Gaddafi determine their destiny any longer. It is a triumph secondly for R2P. NATO military muscle deployed on behalf of UN political will helped to level the killing field between citizens and a tyrant. It is possible for the international community, working through the authenticated, UN-centred structures and procedures of organised multilateralism, to deploy international force to neutralise the military

## How to Lose a Revolution

Mary Ellen O'Connell | October 2011

might of a thug and intervene between him and his victims with reduced civilian casualties and little risk of military casualties.

But the ruins of Libya's political infrastructure and parlous state of its coffers mean that the third component of R2P – the international responsibility to rebuild – will also come into play. Libya's infrastructure remains largely intact as there was no Iraq-style shock-and-awe bombing campaign. The willingness, nature and duration of outside help will also help to shape the judgment of history on whether Western motivations were primarily self-interested geopolitical and commercial, or the disinterested desire to protect civilians from being killed.

As with the war itself, however, the lead role will have to be assumed by Libyans themselves, while the international community can assist without assuming ownership of the process or responsibility for the outcome. The price of that in turn may require the international community to accept and live with the political choices made by the Libyans. Their immediate priorities are to establish security, law and order; prevent lootings and reprisals and stop attacks on black Africans by lighter-skinned Arabs as the new normal; defeat remaining pockets of resistance by Gaddafi loyalists, establish control over the whole country and avert a protracted low-level insurgency; restore infrastructure and public services; and ameliorate the humanitarian suffering. After immediate humanitarian needs have been met, national reconciliation based on the politics of concessions, compromises and power-sharing accommodation, reconstruction, and continuing regional and international support will be the next order of business.

Libya marks the first time the Security Council authorised an international R2P operation. Côte d'Ivoire is the first time it authorised the use of military force by outside powers solely for the protection of civilians. Between them, Resolutions

1973 and 1975 show that including R2P language in the preamble might provide the normative justification for civilian protection demands in the operational paragraphs of UN mandates.

The two operations mark a pivotal rebalancing of interests and values. In the old world order, international politics, like all politics, was a struggle for power. The new international politics will be about the struggle for the ascendancy of competing normative architectures based on a combination of power, understood as the disciplined application of force, and values and ideas. In both Libya and Côte d'Ivoire, regimes that had lost all domestic and international legitimacy declared war on their own people. In both, global political responses were shaped by universal values rather than strategic interests. Because the United Nations is taking the lead in redefining sovereignty by aligning state prerogatives with the will and consent of the people, the ruling class of any country must now fear the risk and threat of international economic, criminal justice and military action if they violate global standards of conduct and cross UN red lines of behaviour.

I can sleep more soundly with that comforting thought.

Some are calling the coalition intervention that began 19 March 2011, in Libya a success. I call tens of thousands of deaths and injuries a tragedy. When such casualties occur owing to a military intervention never shown to be necessary, the intervention is a failure.

The Libyan rebels took up arms to fight Muammar Gadhafi in mid-February 2011. When they did so, they failed to take into account the loyalty, training, and resources of Gadhafi's forces. They also failed to realize that revolutions such as theirs depend on non-violence. Influenced perhaps by calls for no-fly zones and other forms of military intervention in Egypt, the Libyan rebels failed to understand both the importance of non-violence and the importance of self-reliance.

The revolutions in Tunisia and Egypt succeeded in part because regime opponents understood both of these facts. Brave individuals demonstrated peacefully, contrasting their movements with the violence, torture, and suppression of the dictatorial regimes. Egyptians and Tunisians needed no outside military intervention from the West. Such intervention would have called into question the claim to be popular movements. In this, too, the Tunisian and Egyptian opposition distinguished themselves from the dictators. The "strong" men have relied for decades on close ties to Western powers, receiving excessive military assistance.

How could any authentic pro-democracy activist agree to resort to the very means employed by the dictators for decades?

Before the rebels took up arms in Libya, fewer than 100 people had been killed. After the rebels chose war, the numbers reached around 250. Then Gadhafi made a threat to go "house-to-house" in Benghazi to end the rebellion unless fighters laid down their arms.<sup>1</sup> The next day NATO began bombing. In late August, the rebels announced that 50,000 had been killed.<sup>2</sup> A week later, they revised

their numbers down to 30,000 killed with tens of thousands more injured.<sup>3</sup> Tens of thousands killed is no measure of success in a revolution that should have been peaceful.

The response to these casualty figures is often that more people might have been killed without the intervention. International law, however, mandates that before any resort to military force a prediction be made about the necessity and cost of war. The principle of necessity requires that even a use of force with a lawful basis in the United Nations Charter, such as Security Council authorization, must nevertheless be a last resort and have the prospect of achieving more good than harm.<sup>4</sup> The interveners failed at the outset to demonstrate either aspect of necessity. Serious analysis prior to the intervention would have revealed the greater likelihood for high casualties from intervention, not from the alternatives to it.

A vote was taken in the Security Council in the hours after Gadhafi's Benghazi threat; Resolution 1973 authorizes military force to protect civilians. Bombing began within hours of the vote, only one month after the civil war began, with comparisons to Rwanda and Bosnia, and President's Obama's statement that the use of force would last only a few days. These are indications that neither the Security Council nor the states involved in the intervention were focused on the test of necessity. With NATO intervention a violent insurrection that might have been suppressed in a few days gained a new lease on life.<sup>5</sup> Fighting is continuing after six months. And, of course, Libya is neither Rwanda nor Bosnia. Gadhafi's threat was made during the fighting of a civil war. The genocide in Rwanda and the massacre at Srebrenica occurred when UN peacekeepers promised to protect civilians but did not.

No account seems to have been taken of the prospects of success. Little is known about the leaders of the uprising, except many worked for

Gadhafi for decades and all believe in resort to force. U.S. Secretary of Defense Robert Gates opposed the intervention as militarily infeasible. Indeed, no showing was made of how a no-fly zone or bombing would protect the civilians in Benghazi or elsewhere. Armed conflict involves killing and in most armed conflicts today, civilians die in intolerably high numbers.

Clearer of all, the intervention was anything but a last resort. Sanctions, including an arms embargo, had hardly been put in place when the bombs began to fly. There was no attempt to use peaceful means to protect civilians such as gaining safe passage out of Benghazi.<sup>6</sup> The rebels wanted no negotiation that might lead to Gadhafi stepping down in exchange for amnesty or a safe haven abroad.<sup>7</sup> The coalition became the fighting arm of the rebellion, installing a new regime amidst serious questions about their intentions and capabilities. In May, the apostolic vicar of Tripoli called the decision to bomb and the failure to employ peaceful means immoral.<sup>8</sup> The Arab League changed its position and called for restraint.

Chris Hedges predicts that the longer-term results of the intervention will be more death: “I know enough of Libya, a country I covered for many years as the Middle East bureau chief for the New York Times, to assure you that the chaos and bloodletting have only begun. ...”<sup>9</sup> Richard Falk predicts much the same based past interventions:

“The record of military intervention during the last several decades is one of almost unbroken failure if either the human costs or political outcomes are taken into proper account. Such interventionary experience in the Islamic world during the last fifty years makes it impossible to sustain the burden of persuasion that would be needed to justify an anti-regime intervention in Libya in some ethically and legally persuasive way.”<sup>10</sup>

If the coalition decision for war was not focused on necessity what explains it? France’s Sarkozy and Britain’s Cameron led the advocacy for intervention. Both face tough political and economic situations at home. Focus on Libya and a call for humanitarianism could be helpful. In

addition, Sarkozy had been badly embarrassed by his close ties to the Tunisian dictator Ben Ali. Support for war in Libya has helped his image in France.<sup>11</sup>

U.S. UN Ambassador Susan Rice had been in the Clinton administration during the Rwanda genocide when the U.S. supported the withdrawal of UN peacekeepers. Her references to Rwanda appear to be an attempt to remedy that past failure.

Other administration members who joined Rice’s call for intervention have long academic records supporting “responsibility to protect.”<sup>12</sup> Responsibility to protect or “R2P” has been associated with promoting resort to military force as an acceptable approach to extremely serious problems, discouraging thinking about creative, peaceful alternatives with a better chance to succeed. Did the rebels in Libya risk an uprising against the country’s military because they heard calls for military intervention in Egypt and statements about “nothing off the table?” Another aspect of the failed revolution in Libya may well be the further undermining of the prohibition on force. Moreover, the coalition went beyond anything authorized by the Security Council likely undermining the authority of that body, too.

And then there is the oil. Hedges believes the intervention was always about controlling Libya’s oil “despite all the high-blown rhetoric surrounding it.”<sup>13</sup>

Gadhafi may have fled Tripoli but this fact cannot lead to the conclusion that the pro-democracy revolution was a success. The successful revolutions of the Arab Spring have been the non-violent ones.

<sup>1</sup> Maria Golovnina, and Patrick Worsnip, Qaddafi Orders Storming of Benghazi; UN Meets, Arabnews.com, Mar. 18, 2011, <http://arabnews.com/middleeast/article320780.ece>.

<sup>2</sup> Kim Sengupta, Rebel Leaders Put Libya Death Toll at 50,000, Independent.co.uk, Aug. 31, 2011, <http://www.independent.co.uk/news/world/africa/rebel-leaders-put-libya-death-toll-at-50000...>

<sup>3</sup> Libya: Estimated 30,000 Died in War; 4,000 Still Missing, Huffington post, Sept. 8, 2011, [http://www.huffingtonpost.com/2011/09/08/libya-war-died\\_n\\_953456.html](http://www.huffingtonpost.com/2011/09/08/libya-war-died_n_953456.html).

<sup>4</sup> For more on the rules on the use of force in international law and their link to the Just War Doctrine, see, Mary Ellen O’Connell, Preserving the Peace: The Continuing Ban on War Between States, 38 Cal. Western. L. Rev. 41 (2008).

<sup>5</sup> See, e.g., Rob Crilly, Libya: Benghazi about to Fall... Then Came the Planes, Telegraph, Mar. 20, 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8393843/Libya-Benghazi-about-to-fall...-then-came-the-planes.html>.

<sup>6</sup> See Robert C. Johansen, Opinion: How to Save Lives in Libya, Establish a Humanitarian Corridor Where Libyans Can Avoid Violence, Globalpost, Mar. 13, 2011, <http://www.globalpost.com/dispatch/news/opinion/110311/liba-united-nations-gaddafi>.

<sup>7</sup> Mark Tran, Libyan Rebels Protest Over African Union Peace Mission, Guardian, April 11, 2011, <http://www.guardian.co.uk/world/2011/apr11/libya-rebels-protest-peace-mission/print>.

<sup>8</sup> Prelate Questions Morality of Libya Bombings, Maghreb, European Bishops Stress Plight of Migrants, Zenit.org, May 2, 2011.

<sup>9</sup> Chris Hedges, Libya: Here We Go Again, Nation of Change, Sept. 6, 2011, <http://www.nationofchange.org/print/1685>.

<sup>10</sup> Richard Falk, Libya: Will We Ever Learn? Kicking the Intervention Habit, Mar. 11, 2011, <http://www.noltairnet.org/article168826.html>.

<sup>11</sup> Pierre Tran, Why did France Move So Forcefully on Libya? Defense News, Mar. 28, 2011, [www.defensenews.com](http://www.defensenews.com).

<sup>12</sup> For more on the metamorphosis of humanitarian intervention into “responsibility to protect” or “R2P” and the concept’s conflicts with international law, see, Mary Ellen O’Connell, Responsibility to Peace: A Critique of R2P, 4 J. Intervention and Statebuilding 39 (Mar. 2010) republished in Critical Perspectives on the Responsibility to Protect (Philip Cunliffe ed. Routledge, 2011).

<sup>13</sup> Hedges, supra note 9.

# The Illusion of Progress: Libya and the Future of R2P

Aidan Hehir | September 2011

The term “the Responsibility to Protect” (R2P) has, as its supporters seldom tire of stating, made a swift ascension from the periphery to the centre of international political discourse. The March 2011 intervention in Libya catalysed a further surge in the term’s currency and a renewed championing of its efficacy. If, however, the ubiquity of a term was indicative of its practical importance R2P would never have had to be contrived. Following the Holocaust “Never Again!” was an oft repeated refrain finding legal expression with the 1948 Genocide Convention. Unfortunately, “Never Again!” became little more than a tragically ironic shibboleth – a ‘dead letter’ according to Kofi Annan<sup>1</sup> – as mass atrocities occurred with depressing regularity.

The problem with R2P is precisely that which rendered “Never Again!” and the Genocide Convention impotent, namely that its enforcement is predicated on the assent of the Security Council.<sup>2</sup> As per the 2005 World Summit Outcome Document and various General Assembly and Security Council resolutions since, the implementation of R2P is explicitly conditional on the support of the permanent five members of the Security Council (P5). Only the very naive imagine that the P5 honour Article 24.1 of the Charter and act on behalf of UN member states; each state’s respective national interest determines their position on a particular issue much more so than their commitment to legal or moral principles.

The emergence of R2P was, in fact, a function of this flawed system. On a number of occasions during the 1990’s the Security Council used its Chapter VII powers to sanction intervention for humanitarian purposes but many other cases – most notably Rwanda– were simply ignored.<sup>3</sup> NATO’s intervention in Kosovo in 1999 occurred without Council sanction and the ensuing outcry was a causal factor in the creation of R2P.

What has R2P done to redress this structural

barrier to effective action? The answer, sadly, is nothing. The laws governing the use of force and the structure of the UN are the same now as they were in 1991.<sup>4</sup> For all the hype surrounding R2P it constitutes no more than a slogan which has served to embolden those convinced that eloquent appeals to behave responsibly influence world politics. Since R2P was officially recognised at the World Summit a number of mass atrocities have occurred which undeniably warranted external intervention. Yet, in the face of state-sponsored slaughter in Sri Lanka, Darfur and the DRC, the Security Council chose not to sanction effective action. If R2P meant something and had real influence, why was this? Supporters argue that R2P constitutes more than military intervention and such action is not always prudent. A more accurate explanation, however, is that the response of the “international community” remains dependant on the interests of the P5; in the absence of a duty to act R2P constitutes no more than a ‘discretionary entitlement’.<sup>5</sup> Hence inconsistency and inertia are inevitable.

Of course, the Security Council did sanction intervention against Libya in March 2011. It is worth noting, however, that the term “responsibility to protect” does not appear in either resolution 1970 or 1973. Likewise, President Obama’s landmark speech on the 28th March made no mention at all of R2P. While I supported the use of force against Libya – and support the principle of humanitarian intervention more generally – this cannot reasonably be said to constitute anymore than a welcome aberration consistent with resolutions passed in the 1990s before R2P.<sup>6</sup> There have always been humanitarian activists and NGOs making impassioned appeals to “do something”.<sup>7</sup> History suggests that the P5 are often willing, however, to ignore these calls.<sup>8</sup> The mere fact that R2P exists and that the P5 sanctioned action against Libya does not mean there is a causal relationship between the two.

For argument sake let’s assume that David

Cameron, Barak Obama, Nicholas Sarkozy pushed for action because of their desire to honour the commitments their predecessors made to R2P. Such a collective unity of purpose would of course be an interesting phenomenon in itself, but would it actually constitute evidence that R2P was likely to continue to make a difference? Action taken on the basis of a commitment to a principle derived from altruistic individual impulses cannot be reasonably cited as constituting a precedent or new norm. Rather, it is more accurately described as aberrant, albeit welcome, behaviour impelled by a unique constellation of necessarily temporal factors. More importantly, is it plausible that Russia and China considered R2P when determining their response? If not, the implementation of R2P in cases of mass atrocity in the future will necessarily be unlikely.

If we are to redress the depressing litany of inaction and the prevalence of inhumanitarian nonintervention we must accept that, catchy though “R2P” is, slogans are not enough. Substantial legal, political and institutional reform is required least those suffering egregious violence remain prey to the temporal whims of the P5. It is unfortunate that many R2P advocates resolutely fail to even engage with such considerations.

<sup>1</sup> Annan, K. (2001) ‘Message Honouring Raphael Lemkin’, Press Release SG/SM/7842, 13 June, <http://www.un.org/News/Press/docs/2001/sgsm7842.doc.htm> [Accessed November 2010]

<sup>2</sup> Stahn, C. (2007) ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’, *American Journal of International Law*, 101/1, pp. 99-120

<sup>3</sup> Chesterman, S. (2003) ‘Hard Cases Make Bad Law’ in A. Lang, (ed.) *Just Intervention* (Washington D.C., Georgetown University Press)

<sup>4</sup> Hehir, A. (2009) ‘NATO’s Humanitarian Intervention in Kosovo: Precedent or Aberration?’, *Journal of Human Rights*, 8/3, pp. 245-264

<sup>5</sup> Berman, F. (2007) ‘Moral Versus Legal Legitimacy’ in C. Reed and D. Ryall (eds.) *The Price of Peace* (Cambridge: Cambridge University Press), p. 161

<sup>6</sup> Chesterman, S. (2011) “‘Leading from Behind’: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya’, *Ethics and International Affairs*, 25/3, pp. 1-2;

<sup>7</sup> Bass, G. (2008) *Freedoms Battle: The Origins of Humanitarian Intervention* (New York: Vintage Books)

<sup>8</sup> Hehir, A. (2008) *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society* (Hampshire: Palgrave), pp. 53-75

# The Responsibility to Protect and the Problem of Regime Change

Alex J. Bellamy | September 2011

The use of attack helicopters by the UN mission in Cote d'Ivoire to oust Laurent Gbagbo from power in April 2011 and NATO's decision to interpret UN Security Council Resolution 1973 as permission for the use of airpower to assist the Transitional National Council of Libya to overthrow the Gaddafi regime provoked a strong response from several UN member states.<sup>1</sup> Long-standing critics of the Responsibility to Protect (RtoP), Nicaragua and Venezuela, used particularly blunt language to criticise what they saw as the UN's complicity in neo-imperialist interventionism dressed up in humanitarian garb. Nicaragua complained: "Once again we have witnessed the shameful manipulation of the slogan "protection of civilians" for dishonourable political purposes, seeking unequivocally and blatantly to impose regime change, attacking the sovereignty of a State Member of the United Nations [Libya] and violating the Organization's Charter. Once again, the logic of interventionism and hegemony has prevailed through a disastrous decision with incalculable potential consequences for tens of millions of individuals worldwide."<sup>2</sup> Venezuela added that "It is regrettable that certain countries are seeking regime change in Libya, in violation of the Charter of the United Nations. Those actions contravene resolution 1973 (2011), which calls for respect for the sovereignty and territorial integrity of Libya."<sup>3</sup>

More worryingly than these stark criticisms from two of the half a dozen or so unreconstructed opponents of RtoP, however, was the fact that three members of the emerging 'BRICS' (Brazil, Russia, India, China, South Africa) group – all of whom had moved over the past few years towards an accommodation with the new principle – also spoke out strongly against the UN's and NATO's actions in Cote d'Ivoire and Libya. China, a permanent member of the Security Council argued that:

"The responsibility to protect civilians lies first

and foremost with the Government of the country concerned. The international community and external organizations can provide constructive assistance, but they must observe the principles of objectivity and neutrality and fully respect the independence, sovereignty, unity and territorial integrity of the country concerned. There must be no attempt at regime change or involvement in civil war by any party under the guise of protecting civilians."<sup>4</sup>

Brazil concurred:

"The protection of civilians is a humanitarian imperative. It is a distinct concept that must not be confused or conflated with threats to international peace and security, as described in the Charter, or with the responsibility to protect. We must avoid excessively broad interpretations of the protection of civilians, which could link it to the exacerbation of conflict, compromise the impartiality of the United Nations or create the perception that it is being used as a smokescreen for intervention or regime change. To that end, we must ensure that all efforts to protect civilians be strictly in keeping with the Charter and based on a rigorous and non-selective application of international humanitarian law."<sup>5</sup>

And South Africa noted that:

"We are concerned that the implementation of these resolutions [on Libya and Cote d'Ivoire] appears to go beyond their letter and spirit. It is important that, as international actors and external organizations provide constructive assistance, they should nonetheless comply with the provisions of the United Nations Charter, fully respect the will, sovereignty and territorial integrity of the country concerned, and refrain from advancing political agendas that go beyond the protection of civilian mandates, including regime change. In our view, such actions will undermine the gains made in this discourse and provide ammunition to those

who have always been sceptical of the concept. In the final analysis, the implementation of these resolutions will determine whether our actions have yielded the intended result of protecting civilians."<sup>6</sup>

The relationship between RtoP and regime change has long been an uncomfortable one. The principal objections to the 2001 report of the International Commission on Intervention and State Sovereignty which coined the phrase Responsibility to Protect came from states and commentators worried about the widened potential for abuse that may accompany any relaxing of the general prohibition on force contained in Article 2(4) of the Charter. David Chandler, for instance, described the report as an argument for law-making and enforcement by the [SAI] West.<sup>7</sup> Amongst states, this view was most clearly expressed by Venezuela, which argued that the responsibility to protect would merely serve the interests of the powerful by granting them more freedom to intervene in the affairs of the weak without necessarily increasing global cooperation in response to humanitarian emergencies.<sup>8</sup>

The Chinese government had opposed the Responsibility to Protect throughout the ICISS (International Commission on Intervention and State Sovereignty) process, fearing that it might legitimise intervention not expressly authorised by the UN Security Council though it accepted that 'massive humanitarian' crises were 'the legitimate concern of the international community'.<sup>9</sup> Whilst Russia supported the rhetoric of the responsibility to protect, it shared China's belief that no action be taken without Security Council approval, arguing that the UN was already equipped to deal with humanitarian crises and suggesting that, by countenancing unauthorised intervention, the Responsibility to Protect risked undermining the Charter.<sup>10</sup> The Non-Aligned Movement (NAM) also initially rejected the concept on the same grounds. India, for example, argued that the Council was already sufficiently empowered to act

in humanitarian emergencies and observed that the failure to act in the past was caused by a lack of political will, not a lack of authority.<sup>11</sup> Speaking on behalf of the NAM, the Malaysian government argued that the Responsibility to Protect potentially represented a reincarnation of humanitarian intervention for which there was no basis in international law.<sup>12</sup>

Attempts by some American and British leaders to justify the 2003 invasion of Iraq by reference to RtoP-type language served only to strengthen suspicions. ICISS co-chair Gareth Evans argued that the 'poorly and inconsistently' argued humanitarian justification for the war in Iraq 'almost choked at birth what many were hoping was an emerging new norm justifying intervention on the basis of the principle of "responsibility to protect"'.<sup>13</sup> This view was widely held: Ian Williams argued that the Iraq war brought 'humanitarian intervention into disrepute'; Richard Falk lamented that the war risked undermining consensus at the UN; Karl Kaiser insisted that 'Washington has lowered [consensus on] the humanitarian intervention approach to an unprecedented level'; John Kampfner suggested that 'there has been no better time for dictators to act with impunity', and a Fund for Peace project collating regional responses to humanitarian intervention found that in the one consultation conducted immediately before the Iraq war, in Europe, participants were reluctant to support humanitarian intervention for fear of tacitly legitimising the invasion of Iraq.<sup>14</sup> David Clark, a former Special Advisor to the British Foreign Office argued that 'Iraq has ruined our case for humanitarian wars. As long as US power remains in the hands of the Republican right, it will be impossible to build a consensus on the left behind the idea that it can be a power for good. Those who continue to insist that it can, risk discrediting the concept of humanitarian intervention'.<sup>15</sup>

In the light of these concerns, it is hardly surprising

that the consensus that emerged on RtoP in 2005 depended to a great extent on efforts to distinguish it from the concept regime change. This was achieved in two principal ways. First, and most importantly, paragraph 139 of the World Summit Outcome Document stated quite categorically that any use of force must be expressly authorised by the UN Security Council acting under Chapter VII of the Charter. It reads: '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 organizations as appropriate, should peacefully means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity...'<sup>16</sup> This provision squarely closed the door to the use of force or other means of coercion without the authorisation of the UN Security Council. Second, the agreement was just as emphatic on the scope of RtoP. Whilst ICISS had failed to pin down precisely what it was that RtoP referred to (listing all manner of different forms of human insecurity at different junctures of the report), the 2005 World Summit agreement was absolutely clear that the principle referred to the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. Because each of these crimes was already prohibited and because states committed to exercise their RtoP through the UN Charter, the principle emerged not as a new legal principle but rather as a political commitment to implement already existing law. Thus conceived, RtoP could only give rise to the use of force when the Security Council judged it necessary in order to prevent genocide, war crimes, ethnic cleansing and crimes against humanity or to protect populations from these four crimes.

Neither UNOCI (UN Operation in Cote d'Ivoire)'s activities in Cote d'Ivoire nor NATO's in Libya contravened the letter of this consensus. Both acted under Chapter VII resolutions which authorised the use of force to protect civilians. In the strictest sense, therefore, the problem was not so much the use of force to protect civilians from mass atrocities – in both cases this had been duly authorised by the Security Council – but the facts that this use of force resulted in regime

change and that this result was intended by those responsible for implementing the Security Council's decisions even though the Council itself had not specifically authorised regime change. Given the sensitivities identified earlier, it is not surprising that the Special Advisor to the Secretary-General on RtoP, Edward Luck, responded to questions about the link between RtoP and regime change by insisting that the two were distinct. He told the Council on Foreign Relations, 'I should say that it isn't the goal of the responsibility to protect to change regimes. The goal is to protect populations. It may be in some cases that the only way to protect populations is to change the regime, but that certainly is not the goal of the R2P per se'.<sup>17</sup> But Luck's answer rightly points to a fundamental dilemma: in situations where a state is responsible for committing genocide, war crimes, ethnic cleansing and/or crimes against humanity, how can the international community exercise its responsibility to protect populations without imposing regime change?

It may well be that Luck is right to argue that in some situations only regime change will do – I think he is. But because of the deep concern on the part of many member states that RtoP could give rise to a regime change agenda and the equally deep global opposition to such an agenda, it is incumbent on us to explore the relationship more deeply in order to ascertain whether there are ways of maintaining a clear distinction between RtoP and regime change without sacrificing the protection of civilians. This is particularly urgent given the evidence that among other factors, the perception among the BRICS that the UN and NATO went too far in Cote d'Ivoire and Libya has encouraged them to block a timely, decisive and united response to the killing of civilians by the governments in Syria and Yemen.

<sup>1</sup> For an overview, see Alex J. Bellamy and Paul D. Williams, 'The New Politics of Protection: Cote d'Ivoire, Libya and the Responsibility to Protect', *International Affairs*, 87 (4) 2011.

<sup>2</sup> These four quotes from S/PV.6531, 10 May 2011.

<sup>3</sup> S/PV.6531 (resumption 1), 10 May 2011.

<sup>4</sup> S/PV.6531, 10 May 2011.

<sup>5</sup> S/PV.6531, 10 May 2011.

<sup>6</sup> S/PV.6531, 10 May 2011.

<sup>7</sup> David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto, 2002), p. 135.

<sup>8</sup> Speech by President Hugo Chavez to the 60th General Assembly, 15 September 2005. Text available at <http://www.embavenez-us.org/news.php?nid=1745>

<sup>9</sup> Position Paper of the People's Republic of China, pp. 10-12.

<sup>10</sup> See Yevgeny Primakov, UN Process, not Humanitarian Intervention, is World's Best Hope', *New Perspectives Quarterly*, 2 September 2004, at [http://www.digitalnpq.org/global\\_services/global%20viewpoint/02-09-04primakov.html](http://www.digitalnpq.org/global_services/global%20viewpoint/02-09-04primakov.html).

<sup>11</sup> Anita Inder Singh, 'UN at Sixty: New Strategies a Must for Effectiveness', *The Tribune: On-Line Edition* (Chandigarh, India), 30 September 2005. Available at <http://www.tribuneindia.com/2005/20050930/edit.htm#4>

<sup>12</sup> See Statement by the Chairman of the Coordinating Bureau [Malaysia] of the Non-Aligned Movement on Behalf of the Non-Aligned Movement at the Informal Meeting of the Plenary of the General Assembly Concerning the Draft Outcome Document of the High-Level Plenary Meeting of the General Assembly Delivered by H. E. Ambassador Radzi Rahman, Charge's D'Affaires A. I. Of the Permanent Mission Malaysia to the United Nations, New York. 21 June 2005.

<sup>13</sup> Gareth Evans, 'When is it Right to Fight?', *Survival*, 46 (3) 2004, pp. 59-82.

<sup>14</sup> Respectively, Ian Williams, 'Intervene with Caution', *In These Times*, 28 July 2003, Falk 'Humanitarian Intervention', p. 2, Karl Kaiser, 'A European Perspective on the Post Iraq New International Order', paper presented at the Center for Strategic and International Studies, Jakarta, 29 July 2003, John Kampfner interviewed by Tim Dunne at [www.ex.ac.uk/ships/news/kampfner.htm](http://www.ex.ac.uk/ships/news/kampfner.htm) accessed 15 March 2004, and The Fund for Peace, *Neighbours on Alert: Regional Views on Humanitarian Intervention*, Summary Report of the Regional Responses to Internal War Program, October 2003, p. 6.

<sup>15</sup> David Clark, 'Iraq Has Wrecked Our Case for Humanitarian Wars', *The Guardian*, 12 August 2003.

<sup>16</sup> United Nations General Assembly, '2005 Summit

Outcome', A/60/L.1, 20 September 2005, paras. 138-9.

<sup>17</sup> Edward Luck, interview with Bernard Gwertzman, Council on Foreign Relations, 1 September 2011, at <http://www.cfr.org/syria/syria-follow-libya/p25745>.

# Libya: The End of Intervention

David Chandler | November 2011

During the Libyan bombing campaign, many commentators argued that we were witnessing the return of ‘humanitarian intervention’ and that Libya demonstrated that finally the ‘Responsibility to Protect’ had come of age. At the time I argued on e-IR<sup>1</sup> that the context and discourses of intervention were very different from those of the 1990s, in which rights of intervention were posed as clashing with those of state sovereignty.

It is very important to grasp that Libya has been universally hailed as a success across academia and the media, precisely because it has none of the baggage of 1990s-style humanitarian interventions. In the 1990s, humanitarian interventions were tremendously problematic: they threatened to divide the international community; to undermine the standing of the United Nations and international law; and made Western powers responsible for the conduct of ‘humanitarian wars’ as well as for the liberal and transformative nature of their outcomes.

Back in the 1990s, humanitarian intervention was lauded by academic commentators as heralding a new global order of cosmopolitan law and human rights. We were told that this order would see the domestication of the anarchic global sphere. Liberal internationalists argued that the only barrier to this new liberal order was the recalcitrant elites seeking to hide behind the formal trappings of sovereignty. Sovereignty was to give way to a new international order and those states, which were unwilling or unable to protect the lives and rights of their citizens, were held to have ceded their sovereign responsibilities to the international community. The international assumption of these responsibilities led to the replacement of neutral international peacekeeping by the long-term engagements of peacebuilding and statebuilding, exemplified in the international protectorates of Bosnia and Kosovo.

In the world of international intervention, the UN, NATO and the EU took on the responsibilities of immanent global sovereigns in a world perceived

to be on the verge of a global liberal order. This liberalising and universalising teleology reached its apogee from 1997 with the extension of international protectorate powers over Bosnia following the election of nationalist parties in the post-war elections and its closure with the publication of Roland Paris’ *At War’s End* in 2004. In this book, Paris proposed the need for extended international rule in order to achieve ‘Institutionalization before Liberalization’. Paris argued that the road to liberal freedoms of democracy and the market could only come through international protectorates able to establish the institutional preconditions which would enable these freedoms to operate without destabilising these societies and reopening conflict. They could not be trusted with autonomy and the West was to take on the responsibilities of securing, democratising and developing these societies until they were capable of safely ruling themselves.

In the ‘real’ world, however, the discourses of intervention, of the teleology of global liberalism and the assumptions of Western global responsibility were already under challenge in the wake of the divisions caused by the Kosovo conflict. The interventions in Afghanistan and Iraq were much less ‘liberal’, with paid-up warlords and private security companies bearing the brunt of ‘peacekeeping’ on the ground and ‘light footprint’ international rule and rapid transitional governments, all too willing to hand responsibility back to internationally-engineered domestic regimes. Yet, even these interventions, legitimated under the rubric of the ‘Global War on Terror’, were bolstered by the tropes of humanitarian intervention: promising democracy; liberation for women; and the protection of human rights. There was still the assertion that the West was morally, even if not formally, responsible for their outcomes and for securing these societies in the future.

These promises – of Western responsibility, of the spreading global liberal ideal, and of the freeing of Iraqi and Afghan people under Western

tutelage – spectacularly failed to be delivered. Instead, it appeared that the ‘lessons learned’ from international intervention over the past two decades was that the global liberal order was not immanent, but rather that the world was as bifurcated as ever – not between a capitalist and a socialist world, but between a liberal and a non-liberal world. As the world became less liberal, so the discourses of liberal internationalism have been recast and rewritten. Whereas Roland Paris was half-right, in his view that they were unable to safely rule themselves, we have since discovered that he was half-wrong, in his assumption that the West had the capacity to direct and control a path to ‘enlightenment’ in a liberal internationalist teleology.

Without a liberal teleology, without a belief in an immanent liberal global order of harmony, law and human rights – without a belief in the transformative capacity of Western states – the right of intervention against the right of sovereignty no longer has any meaningful purchase. Today’s discourses of intervention therefore operate without a belief in the linearity of progress. There is no contraposition of sovereignty and intervention, no debate about the standing of international law or of the United Nations. We may have a global world instead of an internationalised one, but this is not a liberal world amenable to the interventions of an immanent global government exercising cosmopolitan rights. This is a complex, unstable world, where interventions are ad hoc and do not involve Western responsibility or transformative promise.<sup>2</sup>

Without Western responsibility for the outcome of the intervention in Libya and without any transformative promise, Western powers were strengthened morally and politically through their actions, whereas in Bosnia, Kosovo, Afghanistan and Iraq, they were humbled and often humiliated. Libya was an intervention freed from liberal internationalist baggage, where the West could gain vicarious credit and distance itself from any

consequences. Even Bosnia’s former colonial governor, Lord Ashdown, has argued that we should learn our lessons and not be tempted to impose our version of liberal peace.<sup>3</sup> As British MP Rory Stewart astutely notes, if Libya was a success, it was because ‘it was hardly an intervention at all’.<sup>4</sup>

<sup>1</sup> David Chandler, ‘Why the Bombing of Libya cannot Herald a Return to the 1990s Era of Humanitarian Intervention’, e-International Relations, April 4, 2011, <http://www.e-ir.info/?p=8056>

<sup>2</sup> See for a good example, the recent Berghof Peace Support publication *The Non-Linearity of Peace Processes* <http://www.berghof-peacesupport.org/resources/books/>.

<sup>3</sup> Times, 26 August 2011 <http://www.zcommunications.org/lord-ashdown-and-libya-triumphalism-an-important-lesson-by-joe-emersberger>.

<sup>4</sup> Guardian, 8 October 2011 <http://www.guardian.co.uk/world/2011/oct/08/libya-intervention-rory-stewart?INTCMP=SRCH>.

## R2P: Seeking Perfection in an Imperfect World

Rodger Shanahan | October 2011

During the early 1990s the international community engaged heavily in debating the pros and cons of humanitarian intervention. But for all its theoretical credibility it was a concept that ultimately came to have negative connotations for a number of reasons. There were issues during this period that cried out for international intervention to relieve widespread suffering from ethnic cleansing (as in the case of Rwanda), to the combination of natural disasters and the absence of the rule of law (as in Somalia). But in addressing the humanitarian emergencies the international community either failed to react quickly enough or in sufficient numbers to prevent the situation, or it found the situation too intractable to justify the kind of blood and treasure required to fix it. At the same time, to countries of the south, humanitarian intervention smacked of a neo-colonialist concept that permitted western countries to intervene militarily in the affairs of less-developed states.

For supporters of legally sanctioned humanitarian interventions, the new millennium ushered in the possibility of a more nuanced, but no less robust response from the international community. Sovereignty, so it was argued was no longer a case for the defence. Rather it carried with it responsibilities of the state towards its citizens and the inability or unwillingness to carry out those responsibilities could abrogate the protection that sovereignty had hitherto afforded. At the same time, in contrast to the concept of humanitarian intervention, the notion of R2P was always thought of as a multi-phased approach, with military intervention as a last resort in only the most extreme circumstances.

The outcomes of the 2005 World Summit and the 2006 UN Security Council Resolution 1674 were seen to enshrine the principles of R2P. But the fatal flaw of the R2P concept was apparent in the wording of the World Summit outcome, ‘...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 organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.’<sup>1</sup>

Fast forward to 2011 and the strengths and weaknesses of the concept have been on full display. There is perhaps no better way to illustrate this then by juxtaposing two similar situations in the same region:

Imagine two Arab cities of approximately 700,000 people, each surrounded by the military forces of autocratic regimes intent on crushing rebellions against its rule.

In one case, the West mounts an argument based on the concept of R2P and the UN authorises ‘all necessary measures’ to protect civilians in the city. The Arab League supports action and government forces are attacked by coalition warplanes, sparing the city and its inhabitants. In the other case, there are harsh words of condemnation from some Western countries and eventually from the Arab states and UN Security Council President, but only well after government forces enter the city and large numbers of people are killed.

The cities are of course Benghazi in Libya and Hama in Syria. And the different international reactions to events that exhibit tremendous similarities on the surface show why R2P is so laudable theoretically but practically unworkable. The problem remains the same as that of humanitarian interventions of the 1990s; while the lives of all human beings are worth saving, the willingness of states to intervene in other states and the ability of military force to save the people in danger differs significantly depending on the circumstances.

That is not to say that the architects of R2P are some sort of starry-eyed idealists. Nevertheless, while the development of R2P as a concept has been the preserve of international relations theoreticians (albeit ones with large amounts of practical experience), its implementation rests on the practitioners of the day. And these practitioners deal in the world of realpolitik with all of its inconsistencies, relativities and competing national interests. How else to explain the Australian Foreign Minister’s justification of Libya as a special case deserving of a military response

“...the reason why Libya so far falls within a different category is because of the mass use of the full armed forces, the full security forces against innocent civilians in mass levels of destruction right across the Libyan state.”<sup>2</sup>

At the same time those very conditions that were cited as the justification for a military response under R2P existed in Syria and yet the international community has only enacted sanctions and issued condemnations against the Assad government. The reason for this anomaly (some might say hypocrisy), of course lies in the UN World Summit outcome that noted R2P interventions would be dealt with on a case-by-case basis. Syria is a more complex country than Libya, and the impact of a change of government in Damascus has much greater ramifications regionally than the downfall of Ghaddafi’s regime in Tripoli. The problem with the real-world invocation of R2P is that those political leaders quickest to justify military action based on the principle never explain why they don’t call for it in apparently similar circumstances.

Another aspect of the R2P concept that may yet have negative repercussions is the way it was applied in Libya, particularly the degree to which the UN-authorized forces became partisan. Initially the no-fly zone was seen as a purely defensive measure to prevent the pro-government Libyan military forces from directly firing on civilian

population centres. Although NATO claimed that it did not provide close air support to the NTC forces, this was in reality a definitional distinction as it undertook offensive, if not necessarily close, air support. As a consequence, the subsequent conduct of NTC forces and of the future Libyan government will be intimately tied to the governments whose actions helped put them into place. And while any future government is likely to be a vast improvement on the Ghaddafi regime, if there is any hope for R2P to become part of the normative behaviour of the international community, then the Libyan intervention must not only work, it must be seen to work.

If a new government fails to deliver a better life to the Libyan people then R2P will likely be judged a failure. The selectivity of the concept’s application has already opened it up to criticism from those parts of the international community who see in R2P another justification for western interference in the developing world’s internal political affairs. The next few years will see whether R2P is likely to prosper or fade away as its practical limitations are judged against whatever successes it can claim. As Gareth Evans, one of the main proponents of the R2P concept, recently noted ‘The Libya case I think represents a high watermark of the application of this. It’s important that it not be the high watermark from which the tide now recedes.’<sup>3</sup>

<sup>1</sup> 2005 World Summit Outcome, dated 15 September 2005, p 31 [http://responsibilitytoprotect.org/world%20summit%20outcome%20doc%202005\(1\).pdf](http://responsibilitytoprotect.org/world%20summit%20outcome%20doc%202005(1).pdf) accessed 3 October 2011

<sup>2</sup> Interview with Foreign Minister Kevin Rudd, 27 March 2011 <http://tvnz.co.nz/q-and-a-news/kevin-rudd-interview-transcript-4088315>

<sup>3</sup> Interview with Gareth Evans, YaleGlobal, 15 April 2011 <http://yaleglobal.yale.edu/content/gareth-evans-responsibility-protect-transcript>, accessed 3 October 2011

# Prevention: Core to the Responsibility to Protect

Rachel Gerber | October 2011

All questions are leading questions. Yet, once asked, we tend to lose sight of the way a particular question shapes its answer. We find ourselves all the more bemused when that answer begs fresh questions of its own – many knottier than the one with which we started.

The International Commission on Intervention and State Sovereignty (ICISS), a collection of eminent political thinkers that outlined the concept known as the Responsibility to Protect (R2P), convened in 2001 with a very specific question in mind: “When, if ever, it is appropriate for states to take coercive action – and in particular military – action, against another state for the purpose of protecting people at risk in that other state.”<sup>1</sup>

At the close of a decade that seemed to approach mass violence in fits and starts, ICISS set itself to determine when and how the international community should respond to the gravest forms of human brutality. Their final report duly outlined these parameters, setting criteria for “humanitarian intervention” that fit squarely within the confines of pre-existing international law.

Yet, in answering their self-set query, something curious happened.

The crux of the humanitarian intervention debate had always been the tension between the moral impulse to stop widespread, systematic violence against civilians and the principles of “non interference” and “sovereign equality” that bind the contemporary world order. In a fundamental reframing of this debate, ICISS internalized the logic of “sovereignty as responsibility,” pioneered by noted Sudanese scholar and diplomat, Francis Deng, and inverted the premise of the intervention argument, advocating not for a “right to intervene,” but rather a “responsibility to protect.”

Notions of social contract and accountability to the governed have long defined sovereign rights at the

domestic level. “Sovereignty as responsibility” and this freshly conceived, “responsibility to protect” now invoked this relationship as the basis for a core set of rights and obligations between states. According to the logic of sovereign responsibility, neglecting the most basic forms of physical protection compels not only international attention, but also an obligation to act.

## Moving Upstream

In the final articulation of this Responsibility to Protect (R2P), another shift was made – one that opened the door to an entirely new set of questions, as well as a whole new set of tools for the global approach to mass atrocity crimes.

Motivated both by analytical rigor and political expediency, ICISS sandwiched its discussion of international response to atrocities between what it described as a “responsibility to prevent” and a “responsibility to rebuild.” Prevention and reconstruction were deemed more politically digestible than response, and many hoped the merger of responsibilities would make the prospect of intervention easier to swallow.

Once introduced, however, the logic of prevention as core to the global atrocity agenda was difficult to deny. Why wait to halt a massacre if early engagement might avert it entirely?

Political adoption of the Responsibility to Protect in paragraphs 138 and 139 of the 2005 World Summit Outcome Document thus emphasized peaceful, preventive means and made the novel commitment to “assist states under stress” and help them “build capacity to protect their populations.”<sup>2</sup>

The R2P consensus secured at the World Summit has been since summarized as incorporating three pillars of responsibility: 1) the primary responsibility of the state to protect its populations from four circumscribed mass atrocity crimes

(genocide, crimes against humanity, ethnic cleansing and war crimes), 2) the concurrent responsibility of the international community to assist states in their efforts to do so, and 3) the responsibility of the international community to take collective action should national authorities fail to protect their populations from imminent or unfolding atrocities.

With these three pillars, the balance of expected global efforts shifted even more heavily to prevention.

While some world leaders may have hoped in 2005 that phrases like “state responsibility” and “international assistance” would deflect the more invasive tendencies of the concept and shore up traditional notions of sovereignty, highlighting prevention has proven perversely revolutionary.

Setting the sights of global policy to prevent rather than simply respond to mass atrocity threats has raised deeper questions about the internal dynamics that drive atrocity violence. It points openly to the internal governance approaches of individual states and asks how domestic choices might actively incite or enable the potential for genocide and other mass atrocities.

Claiming state ownership over the primary responsibility to protect opened space to consider a set of questions fundamentally more transformative for global policy – and more invasive – than ICISS’s initial query. First, “how must states structure their institutions and approach their own internal governance to ensure the greatest level of protection from the threat of civilian-targeted violence?” and “when and how should the international community exercise its responsibility to engage, assist, or (when necessary) confront sovereign states over the way they choose to guarantee the physical security of their own populations?”

## The Challenge Ahead

As R2P enters its second decade, we find ourselves facing questions even more complex than the one with which we started. The logic of prevention points us further upstream, where evidence tends to be fuzzy and qualitative. We grapple to identify the essence of atrocity violence – its root incentives and enablers – and seek to better understand when and why elites consider systematic civilian-targeting the best means to meet their objectives.

When it comes to pinpointing concrete policies for atrocity prevention, satisfying answers are few. Policy discussions on the topic often devolve into listings of measures that span the full spectrum of the conflict prevention, statebuilding, and development agendas. Vague nods are always given to the importance of “good governance,” “security sector reform,” and the “rule of law.”

To put it mildly, atrocity prevention remains an imprecise science. Moving forward, policy actors and experts must delve deeper and more deliberately into the dynamics of atrocity violence. We must develop a framework for prevention that at once targets these unique dynamics across the various phases of potential crisis and prioritizes atrocity-focused objectives within broader efforts to prevent conflict, promote security, and encourage economic development.

Developing such a framework requires first that we better understand the task at hand. Preventing mass atrocities, for example, shares much with (and benefits greatly from) efforts to prevent armed conflict. Yet the two objectives are not entirely synonymous, and can occasionally run at cross-purposes.

The decision to systematically target civilians is a strategic one made by elites, and can occur within or outside the context of armed struggle. The incentives that drive that choice can become so

# The Responsibility to Protect and Peacemaking

Abiodun Williams | August 2011

enmeshed in political and economic interest that its logic becomes almost inscrutable. Ongoing ethno-political violence in Karachi is case and point. While it rarely makes conventional lists of atrocity flashpoints, the city faces a slow-drip crisis in which political parties, allied with organized crime, routinely target largely non-political civilians to reinforce broader party allegiance and profit-driven networks.

There are many forms of conflict and struggle. Civilian targeting is driven by a unique logic – one we need to better isolate, understand, and devise policies to counter.

## A Framework for Prevention

Maximizing the policy potential to prevent atrocities requires active effort on behalf of individual states and the international community to target atrocity risks across all phases of potential crisis.

Before crises emerge, states must reflect on their own institutions and governance approaches. With international assistance as appropriate, they must proactively self-structure their security, justice, political, and economic sectors to provide a solid buffer between the people and the interests of potential perpetrators.

As crises appear on the horizon, global attention must shift to influencing the decision-making of elites and reducing any incentives to target civilians. In the course of ongoing atrocities, the international community must mobilize all means at its disposal to prevent escalation – countering potential perpetrators, determining how best to provide immediate protection, and planning for the needs of long term conflict resolution and reconstruction.

Following atrocities, ties must be reforged and institutions rebuilt in ways that not only better

protect, but reassure those scarred by violence. Folding this complex array into a single policy doctrine is far from simple, and many R2P advocates have balked at the attempt. The concept was first developed, remember, to rally political will to act in the most egregious cases. Some fear such an extensive broadening of actors, roles, and activities labeled “R2P” will dilute the concept and undermine its potential to mobilize. Others note the imprecision that currently frustrates implementation of this preventive framework, and are reassured by the relative clarity that comes from limiting R2P to crisis response.

One of the great lessons to be learned from the word genocide, however, is that a term’s potency is not the best measure of its power to shape behavior. The more consistently R2P seeps into our collective consciousness and informs our policy approaches across the crisis spectrum, the more it becomes a part of the DNA of global policy. As atrocity prevention becomes instinct, global leaders will be more – not less – likely act in the most severe cases.

We still lack concrete policy prescriptions for atrocity prevention and the few answers we have are muddled. But the questions we now face have brought us closer to the core of the true challenge: how to create a world in which mass violence is no longer seen as a viable means to achieve political ends.

If our answers are imprecise, they demand that we ask better questions – and then be willing to follow where those questions lead.

<sup>1</sup> “The Responsibility to Protect,” Report of the International Commission on Intervention and State Sovereignty, vii.

<sup>2</sup> 2005 World Summit Outcome Document, paragraphs 138-139.

Innovative ideas have played an important role in steering international responses to global threats and challenges, but no concept has moved faster in the area of global norms than the “Responsibility to Protect” (R2P). At the 2005 UN World Summit, world leaders unanimously accepted their responsibility to protect their own populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. They also expressed their readiness to take collective action, in a timely and decisive manner, through the Security Council, when peaceful means are inadequate and national authorities manifestly fail to protect their own populations. In a historic development, the United Nations Security Council invoked R2P in authorizing the international military intervention in Libya in its resolution 1973 adopted on 17 March 2011.

The R2P and peacemaking agendas are fundamentally intertwined. The most effective way to prevent mass atrocities is to stop wars, and peacemaking is a critical tool for the prevention of mass violence. From Cambodia to Rwanda, from the former Yugoslavia to Sudan, the complex process of peacemaking is made even more difficult when it is overlaid with the legacy of the four R2P crimes.

The end of the Cold War removed superpower constraints on local conflicts and opened the door to civil wars on a terrible scale. Genocide, ethnic cleansing, the bombardment of cities, atrocities against civilians, and other war crimes became the hallmarks of the last decade of the 20th century. The Rwandan genocide, ethnic cleansing in Bosnia-Herzegovina, and the controversial NATO operation in Kosovo dramatized the urgent need to develop a framework that, on the one hand, could help prevent or halt future atrocities in a legitimate and consistent manner, while, on the other hand, assuaging fears of sovereignty erosion through humanitarian intervention.

It was against this background that the Canadian government-sponsored International Commission on Intervention and State Sovereignty (ICISS) developed the concept of R2P in 2001. The Commission’s report argued that state sovereignty implies responsibility, and the primary responsibility for protection of people lies with the state itself; and when a state is unable or unwilling to exercise its sovereignty responsibly the international community has a responsibility to take action to protect vulnerable individuals. In the past decade, R2P has undergone conceptual changes in which action thresholds were raised; criteria for the use of force were gradually removed; and the applicable crimes were narrowed down to four. Nonetheless, the core tenets of R2P have remained intact.

R2P allows for a wide array of diplomatic, economic, legal, or military instruments under Chapter VI and VII of the UN Charter, as well as Chapter VIII operations undertaken by regional organizations. The focal point for responding to R2P situations remains the UN Security Council, while national governments are asked to act as good neighbors, generous donors, persuasive diplomats, and, if necessary, appliers of coercive pressure or military force. The R2P toolbox consists of instruments that, depending on the local context, non-sequentially but often simultaneously contribute to the prevention of mass atrocities, the protection of civilians during ongoing conflict, and the stabilization of countries emerging from conflict. Structural tools to prevent, react, or rebuild include the promotion of membership in international organizations, support of equitable development, and security sector reform; examples of direct tools are preventive diplomacy, criminal prosecution, and humanitarian engagement. Despite the emphasis on prevention and cooperative approaches, a flexible response through quick and decisive military action may be required when less coercive measures are unlikely to have a timely and decisive impact.

## From Three Responsibilities to Three Pillars

The ICISS introduced a framework with three responsibilities that follow the main stages of the conflict curve: the responsibility to prevent deadly conflict and other forms of man-made catastrophes; the responsibility to react to situations of compelling need of human protection; and the responsibility to rebuild durable peace. Following the 2005 World Summit, R2P was further refined through Special Reports by UN Secretary-General Ban Ki-Moon, as well as debates and interactive dialogues in the General Assembly. The Security Council endorsed R2P in Resolution 1674 on the Protection of Civilians and Resolution 1706 on the situation in Darfur, and in 2009 the General Assembly passed its own Resolution on R2P.

Secretary-General Ban Ki-Moon's 2009 report on implementing R2P set out a three-pillar approach: the responsibility of each state to protect its own population; the responsibility of the international community to assist states in exercising that responsibility through international assistance and capacity-building; and the responsibility of the international community to take collective action in a timely and decisive manner through the Security Council and in accordance with the UN Charter, when national authorities are manifestly failing to protect their populations.

## R2P's Current Role in Peacemaking

At present, R2P functions primarily as a political tool bolstering the necessary will within the international community to halt and reverse ongoing atrocities. Since 2005, R2P has been invoked a number of times in response to crisis situations, with mixed success and a disturbing level of inconsistency. The invocations can be categorized in four groups based on their appropriateness and the relative effectiveness of the international response. The first is Appropriate Invocation and Effective Action. An example of this was the case of Kenya following the violence in the wake of that country's disputed presidential election in December 2007. Although little action was taken in advance of the crisis, and R2P was only invoked after the violence had erupted, its invocation bolstered international efforts to resolve

the crisis and increased pressure on Kenya's leadership to find an acceptable solution through dialogue and negotiation.

The second is Appropriate Invocation and Ineffective Action. An example of this was the crisis and ethnic violence in Kyrgyzstan in the spring and summer of 2010. Key governments, international and regional organizations provided humanitarian relief and economic support, but were reluctant to take action to protect the civilian population and address security concerns. The Kyrgyzstan case demonstrated that neither early warning signs nor widespread ethnic violence automatically trigger a robust international response.

The third is Inappropriate Invocation, exemplified by the case of cyclone Nargis which struck Burma in May, 2008. The crisis the cyclone caused sparked an intense debate on whether this could be considered an R2P situation. French Foreign Minister Bernard Koucher invoked R2P and was supported by some politicians and commentators primarily in Europe and North America. However, this approach was rejected by China and Russia, and also evoked concern from the UK, as well as from senior UN and ASEAN officials who maintained that R2P did not apply to natural disasters. Linking R2P and the humanitarian crisis following Nargis is generally considered to be a misapplication of the principle.

The fourth is Non-Invocation. One of the most striking cases where R2P has not been invoked is in relation to the ongoing conflict in the Democratic Republic of the Congo (DRC), even though R2P crimes have clearly been committed against unarmed Congolese citizens. The conflict in the DRC remains one of the gravest humanitarian disasters of our time, and is arguably the world's deadliest conflict since World War II. As a principle aimed at protecting vulnerable populations from the most heinous crimes, R2P is certainly applicable to a country whose citizens are the victims of some of the worst atrocities we have seen in decades. The crimes that have terrorized the Congolese population for decades, including mass rape and the use of child soldiers, have certainly passed the R2P threshold.

## Persisting Challenges and R2P's Potential Role in Peacemaking

R2P still confronts a number of conceptual, operational, and political challenges that hamper its implementation and potential role in peacemaking. There are three critical ones: the first is the comprehensiveness of the responsibility to prevent which is one of the key remaining conceptual loopholes within the R2P framework. Advocates can be divided into two groups: minimalists and maximalists. The minimalists argue that R2P's prevention pillar refers to operational or direct prevention, and should apply primarily to the use of direct and short-term prevention efforts in situations where mass atrocities are imminent. The maximalists maintain that the responsibility to prevent includes structural or root cause prevention efforts, and requires taking effective action as early as possible. In addition, it also necessitates identifying situations at risk of deteriorating into mass atrocities.

The second challenge is the warning-response gap. A key operational challenge for the prevention of mass atrocities, as well as armed conflict more generally, is the disconnect between early warning and timely and decisive political action. New communication technologies allow us to detect and flag signs of instability at an early stage. The number of actors providing early warning has also risen rapidly over the past decade. Early warning is now produced by NGOs, state actors, regional organizations, and risk assessment firms, for a wide array of phenomena, including armed conflict, atrocities, political instability, and natural disasters. But so far, the multitude of information produced has had a limited impact on international and local prevention strategies.

The third challenge is the perceived incompatibility between civilian protection and national sovereignty. A number of UN member states are convinced that R2P undermines national sovereignty as enshrined in UN Charter Article 2(7) and fear R2P could be abused to legitimize unilateral invasions. Concerns about the potential erosion of national sovereignty lie at the heart of the persistent political opposition to R2P within the General Assembly. But states have

other motivations in opposing R2P, including a regime's own past or current human rights record, bad experiences with illegitimate interventions, or strategic behavior within multi-dimensional negotiations. But whether narrowly self-interested or legitimate, R2P rejectionism forms an important impediment to R2P's implementation.

The influence of R2P on peacemaking has been rather mixed. However, the principle is still in its formative phase, and the process of its institutionalization at the international and regional levels is still evolving. In the short term, R2P could act as an effective catalyst for action as the Libya case demonstrates. It has the potential to operate as a political rallying cry effectively reducing the frequency, intensity, and impact of atrocities. Until R2P has developed sufficient normative strength and resulted in more consistent state practice, the principle can only function as a catalyst, elevating certain issues above normal politics. Its short-term potential contribution to peacemaking lies in its relatively consistent use as a label applied to new and ongoing crises in order to generate political will, and warn or deter potentially irresponsible leaders. Yet some level of inconsistency and double standards will undoubtedly persist. International engagement to prevent or halt R2P crimes will remain conditional on a number of variables, including the complexity of the situation, the risks involved, the potential for success, the international financial and political climate, the geopolitical importance of the country, and host-state consent.

In the longer term, R2P has the potential to operate as a broader norm-based policy framework. Its concrete impact may not be restricted to crisis prevention and management. As its normative weight increases and its normalization advances, it could enhance local and international institutional capacities to assess and address the risk of atrocities at an earlier stage through primary prevention, ensure robust measures are taken to halt R2P crimes in a more consistent manner, and rebuild societies emerging from conflict.

## Interview: The R2P Balance Sheet After Libya

Gareth Evans | September 2011

*Why did it take so long after World War II for the international community to agree that they had the responsibility to protect civilians from genocide and mass atrocities? It seems like the world said “never again” a number of times before anyone took proactive steps to make this a reality.*

As we look back over the course of human history one of the most depressing, and distressing, realities we have to acknowledge has been our inability to prevent or halt the apparently endlessly recurring horror of mass atrocity crimes – the murder, torture, rape, starvation, expulsion, destruction of property and life opportunities of others for no other reason than their race, ethnicity, religion, nationality, class or ideology. The capacity of human beings to perpetrate – or to look the other way when others are perpetrating – the most appalling destruction of the lives, liberty and capacity for any kind of happiness of their fellow human beings seems to know no bounds.

No crime in history has been more grotesque than the Nazi Holocaust, with its comprehensively and meticulously organized extermination of six million Jews. Even if some other mass atrocity crimes, those of Stalin and Mao for a start, have involved even more unbelievably large numbers, none has more fundamentally demeaned our sense of common humanity.

What is in some ways hardest of all to believe is how little changed in the decades after World War II. One might have thought that Hitler’s atrocities, within Germany and in the states under Nazi occupation, would have laid to rest once and for all the notion – predominant in international law and practice since the emergence of modern nation states in the 17th century – that what happens within state borders is nobody else’s business: to put it starkly, that sovereignty is essentially a license to kill.

But even with the Nuremberg Tribunal Charter and

its recognition of “crimes against humanity” which could be committed by a government against its own people; even with the recognition of individual and group rights in the UN Charter, and more grandly in the Universal Declaration of Human Rights and the subsequent International Covenants; even with the new Geneva Conventions on the protection of civilians; and even after all Raphael Lemkin’s efforts, culminating in the Convention signed in 1948, to get recognition of the new crime of genocide – aimed at preventing and punishing the worst of all crimes against humanity, attempting to destroy whole groups simply on the basis of their race, ethnicity, religion or nationality – the killing still went on.

Why didn’t things fundamentally change? Essentially because the overwhelming preoccupation of those who founded the UN was not in fact human rights but the problem of states waging aggressive war against each other. What actually captured the mood of the time, and that which prevailed right through the Cold War years, was, more than any of the human rights provisions, Article 2(7) of the UN Charter: “Nothing should authorise intervention in matters essentially within the domestic jurisdiction of any State”.

The state of mind that even massive atrocity crimes like those of the Cambodian killing fields were just not the rest of the world’s business was dominant throughout the UN’s first half-century of existence: Vietnam’s invasion of Cambodia in 1978, which stopped the Khmer Rouge in its tracks, was universally attacked as a violation of state sovereignty, not applauded. And Tanzania had to justify its overthrow of Uganda’s Idi Amin in 1979 by invoking ‘self-defence’, not any larger human rights justification. The same had been true of India’s intervention in East Pakistan in 1971.

With the arrival of the 1990s, and the end of the Cold War, the prevailing complacent assumptions about non-intervention did at last come under

challenge as never before. The quintessential peace and security problem – before 9/11 came along to change the focus to terrorism – became not interstate war, but civil war and internal violence perpetrated on a massive scale. With the break-up of various Cold War state structures, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose, above all in the former Yugoslavia and in Africa.

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, as in the debacle of Somalia in 1993, the catastrophe of Rwandan genocide in 1994, and the almost unbelievable default in Srebrenica in Bosnia just a year later, in 1995.

Then the killing and ethnic cleansing started all over again in Kosovo in 1999. Not everyone, but certainly most people, and governments, accepted quite rapidly that external military intervention was the only way to stop it. But again the Security Council failed to act, this time in the face of a threatened veto by Russia. The action that needed to be taken was eventually taken, by a coalition of the willing, but without the authority of the Security Council, thus challenging the integrity of the whole international security system (just as did the invasion of Iraq four years later in far less defensible circumstances).

*What are the historical and theoretical roots of the concept of R2P?*

Throughout the decade of the 1990s a fierce doctrinal, and essentially ideological, argument raged over these issues. On the one hand, there were advocates, mostly in the global North, of “humanitarian intervention” – the doctrine that there was a “right to intervene” (“droit d’ingerence” in Bernard Kouchner’s influential

formulation) militarily, against the will of the government of the country in question, in these cases. On the other hand there were defenders of the traditional prerogatives of state sovereignty, who made the familiar case that internal events were none of the rest of the world’s business. It was very much a North-South debate, with the many new states born out of decolonization being very proud of their new won sovereignty, very conscious of their fragility, and all too conscious of the way in which they had been on the receiving end in the past of not very benign interventions from the imperial and colonial powers, and not very keen to acknowledge their right to do so again, whatever the circumstances. And it was a very bitter debate, with the trenches dug deep on both sides, and the verbal missiles flowing thick and fast, often in very ugly terms.

This was the environment which led Kofi Annan to issue his now famous challenge to the General Assembly in 1999, and again 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 that offend every precept of our common humanity?

And it was this challenge to which the Canadian-government responded by appointing the International Commission on Intervention and State Sovereignty (ICISS), which I was asked to co-chair with the Algerian diplomat and UN Africa adviser Mohamed Sahnoun. This Commission came up in 2001 with the idea of “the responsibility to protect”, in its report of that name, which took the whole debate in a new, and what is now acknowledged to be much more productive, direction.

The core idea of the responsibility to protect is very simple. Turn the notion of “right to intervene” upside down. Talk not about the “right” of big

states to do anything, but the responsibility of all states to protect their own people from atrocity crimes, and to help others to do so. Talk about the primary responsibility being that of individual states themselves – respecting their sovereignty – but make it absolutely clear that if they cannot meet that responsibility, through either ill-will or incapacity, it then shifts to the wider international community to take the appropriate action. Focus not on the notion of “intervention” but of protection: look at the whole issue from the perspective of the victims, the men being killed, the women being raped, the children dying of starvation; and look at the responsibility in question as being above all a responsibility to prevent, with the question of reaction – through diplomatic pressure, through sanctions, through international criminal prosecutions, and ultimately through military action – arising only if prevention failed. And accept coercive military intervention only as an absolute last resort, after a number of clearly defined criteria have been met, and the approval of the Security Council has been obtained.

As many blue-ribbon commissions and panels have discovered over the years, however, it is one thing to labour mightily and produce what looks like a major new contribution to some policy debate, but quite another to get any policymaker to take any notice of it. But the extraordinary thing is that governments did take notice of the idea: within four years – after two further reports (by a High Level Panel appointed by the UN Secretary General, and by Secretary-General Annan himself) the responsibility to protect had won unanimous endorsement by the more than 150 heads of state and government meeting as the UN General Assembly at the 2005 World Summit, and within another year had been embraced in a Security Council resolution.

The language of the relevant paragraphs, 138 and 139, of the World Summit Outcome Document, the product of protracted and difficult lead-up negotiations, did not contain all the elements in the original Commission report – a notable omission was agreement on criteria for the use of military force – and it did contain some changes in the language of some of the original proposals in the Canadian and other reports which preceded

the 2005 Summit. But they were essentially presentational. The core underlying ideas remained absolutely unchanged.

So in 2005, with this unanimous General Assembly resolution, we did achieve the long-dreamed of international consensus. It was not a matter of the North pushing something down the throats of the South: there was strong support in the debate from many countries across the developing world, and from sub-Saharan Africa in particular, with many references to antecedents for the new principle in the Constitutive Act of the African Union, and the AU’s insistence that the real issue was not “non-intervention” but “non-indifference”. And there was certainly a recognition that mass atrocity crimes had occurred as terribly in the North – most recently in the Balkans – as they ever had in the South: this was a universal problem demanding a universal solution.

Getting so far so fast on so fundamental a conceptual issue, involving so fundamental a rethink of long entrenched beliefs about the nature of state sovereignty, was on the face of it a huge achievement, and one almost unprecedented in the history of ideas. For the lawyers among you, let me acknowledge that it would have been premature in 2005, and still is now, to describe the responsibility to protect as a new rule of customary law. It may become one, but that will depend on how comprehensively this new concept is implemented and applied in practice, as well as recognised in principle, in the years ahead. But with the weight behind it of a unanimous General Assembly resolution at head of state and government level, the responsibility to protect could already in 2005 properly be described as a new international norm, not just an emerging norm: a new standard of behaviour, and a new guide to behaviour, for every state.

*What has happened since 2005? How would you rate R2P’s progress as an international norm since then?*

If I had been talking to you at the end of last year, my report card would have been “making progress – but slowly”. Let me explain that evaluation – and leave dangling for the moment

the question of what my report card would be right now, in light of the events unfolding during the course of this year in Libya and the wider Middle East.

For all the remarkable achievement in 2005, those of us passionate about ending mass atrocity crimes once and for all knew that it was premature to celebrate too joyously. There were three big challenges we knew had to be met if all the new rhetoric was going to be translated into effective action, and if we really were going to be able to say “never again” and believe it to be true:

The first was conceptual, to ensure that the scope and limits of the responsibility to protect were universally understood, and that there would be no confusion about what kinds of cases to which the principle applied.

The second was institutional, to ensure that the systems would be in place and the resources at hand for governments, the UN and other international organisations, regional and global, to be able in practice to act in the way the new norm demanded.

And the third was – as always – political, to ensure that even if there was universal understanding of what needed to be done, and the systems and resources available to do it, there would also be the political will to actually do it.

As to the conceptual challenge, I think one could reasonably say by the end of last year that it had been met, though not without a few bumps and grinds along the way. It now seems generally understood that mass atrocity crimes should not be confused with human rights violations more generally, conflict situations more generally, or human security situations more generally: they are more confined, defined essentially as genocide, ethnic cleansing and other large scale crimes against humanity.

One way of putting this in perspective is to think in terms of there being, at any given time, maybe 100 country situations of human rights abuse justifying some kind of international attention and condemnatory response, and maybe 70 situations

at any given time where conflict between or within states is occurring or feared. But when it comes to mass atrocity crimes, there are probably likely to be, at any given time, no more than ten or a dozen country situations where such atrocities are actually occurring, feared imminently likely to occur, or where there are early warning signs (like the appearance of hate propaganda on the radio) that they may occur within the not too distant future unless some fast preventive action is taken.

There certainly may be many cases – overlapping with the general human rights and conflict situations I have mentioned – where some kind of long-term preventive effort, aimed for example at achieving better inter-communal relations and at remedying economic and political grievance, may be necessary to stave off disaster at some time in the future. But it avoids confusion – and helps focus attention on the cases most urgently crying out for action – to confine so far as possible the “responsibility to protect” label to the small core of cases I have described.

*Given these conditions, which recent cases properly qualify as cases of R2P in action?*

Viewed through these lenses, there is now less confusion than there was a few years ago as to what are and are not “RtoP” cases. Of the cases most debated, it would now be generally agreed that:

- the coalition invasion of Iraq in 2003 and Russia’s invasion of Georgia in 2008 were not justified in responsibility to protect terms (despite the views of Tony Blair and Vladimir Putin, respectively);
- the Burma-Myanmar cyclone in 2008, after which the military regime badly dragged its feet for a time in allowing international assistance, was not a responsibility to protect case (contrary to the views of then French Foreign Minister Bernard Kouchner), but could have been if the generals’ behaviour had continued long enough, which in the event it did not, to be characterisable as so recklessly indifferent to human life as to amount to a crime against humanity;

- Somalia and the Congo for many years, Darfur certainly in 2003-04 though more ambiguously since, and Sri Lanka in the horrific final military confrontation in 2009 between government forces and Tamil Tigers, in which so many civilians perished, have been properly characterised as responsibility to protect cases, albeit ones where the international community's response has been, for one reason or another, unhappily inadequate, a point I will come back to in a moment ; and
- Kenya in early 2008 is the clearest case we have had before this year of an exploding situation being widely, and properly, characterised as a responsibility to protect one: in this case, one where – as I will again come back to in a moment – the international community's response did prove to be adequate to bring it under control.

There is one major piece of unfinished conceptual business which I will refer to only in passing, though as recent events in Libya and elsewhere in the Middle East have reminded us, it is crucially important to get this right. That is reaching some kind of agreement on the specific criteria that should govern any decision, by the UN Security Council or anyone else, to use coercive military force. Such criteria were spelled out in the Canadian Commission and later reports, but their adoption has been resisted in particular by the U.S., which resists the idea of any possible restriction on its preferred ad hoc decision-making, and a number of developing countries, who obdurately take the precisely opposite view, viz. that to spell out limiting conditions is to recognize the basic legitimacy of such force, and thus to encourage it! I suspect we will be having this argument for a long time yet.

*What about institutional challenges? What kinds of institutions are needed to protect civilians, and what gaps still exist?*

The institutional challenges are essentially threefold:

First, to ensure that there are early warning and

response “focal points” established within all the key governments and intergovernmental organizations, with people whose day job it is to worry about these issues. On this some significant progress has been made recently with the establishment within the UN system, close to the Secretary-General, of a Joint Office of his Special Advisers on the Prevention of Genocide, and for the Responsibility to Protect, and their staffs; within the US National Security Council, next to the President, of a Director for War Crimes and Atrocities; within the Swiss Government of a small group of full-time officials performing this function; and within a number of other governments, including our own, the identification of specific officials with specific oversight responsibilities in this area.

Second, to have in place civilian capability able to be utilized, as occasion arises, for diplomatic mediation, civilian policing and other critical administrative support for countries at risk of atrocity crimes occurring or recurring. Things are moving here, especially on the mediation resources front, but not fast enough. One area where dramatic advances have been made over the last decade and a half, with a separate dynamic of its own but in parallel with the development of the responsibility to protect, has been in establishing the machinery of international criminal justice, first with a series of ad hoc tribunals and courts for the former Yugoslavia and Rwanda, Sierra Leone and Cambodia, and now with the permanent International Criminal Court (ICC) in The Hague.

Third, to have in place capable military resources, available both for rapid “fire-brigade” deployment in the most extreme cases which cannot be otherwise addressed (like Rwanda in 1994), and for longer-haul stabilization operations (like those in Sudan and the Congo). A great deal of progress has been made in recent years in rethinking the kind of force configurations, training, military doctrine and rules of engagement on the ground that are consistent with civilian protection and atrocity response operations as distinct from traditional war-fighting. But there is real distance yet to travel before we have in place, actually ready within national systems or regional organisations, the kind of rapid reaction capability that has long been

talked about as necessary.

Part of the utility of having institutional machinery in place is that it doesn't necessarily have to be fully deployed to be effective: the prospect of that may be enough. That the threat of indictment and punishment would be a significant deterrent to wrongful behaviour occurring has always been a significant part of the rationale for developing a proper international criminal justice system (just as it has always been with domestic systems). A good but largely unnoticed example of how all this can work occurred during the visit to Sierra Leone in 2004 of the then UN Special Adviser on the Prevention of Genocide, Juan Mendez. When he became aware that hate speech was beginning to be heard on certain media outlets (reminiscent of that which had been spread to devastating effect by Radio Milles Collines in Rwanda ten years earlier), he issued a statement making clear that such behaviour was potentially subject to prosecution in the new ICC and calling upon the national authorities to put an end to it, which they did.

*What have been the political challenges since 2005? Has the international community been able to overcome the problem of political will?*

The political challenge since 2005 has been two-fold, first to hold the line against possible backsliding on the World Summit consensus in the UN General Assembly, and secondly to create an environment whereby the key member states would actually have the political will to implement the appropriate response – whatever that might be across the spectrum from assistance, to persuasion, to coercion – at each stage of the emergence of a clear mass atrocity crime/responsibility to protect situation.

On the first point, the news by the end of last year was encouraging. Successive major debates in the UN General Assembly in 2009 and 2010, revisiting the 2005 resolution, and another late last year in the context of establishing the Joint Office I mentioned, all saw attempts by small groups of spoilers to derail the 2005 consensus – and each time those attempts were rebuffed by the great, and indeed overwhelming, majority of other member states. I was something of a warm-up act for the 2009

debate, arguing before the assembled delegates in the Trusteeship Council chamber for RtoP against my old nemesis Noam Chomsky (who of course saw it as just a new excuse for the great powers to get up to their old imperialist interventionary tricks) In the debate which followed, of the 94 delegates who spoke (representing between them some 180 member states, because some of the presentations were on behalf of regional or other groups), there were only four – Venezuela, Cuba, Nicaragua and Sudan – who sought to directly roll back 2005 in the interests of unqualified state sovereignty. Others had reservations and qualifications, mainly to do with the Security Council and the double standards inherent, here as elsewhere, in the Permanent Five's veto rights when it came to implementing the coercive elements of the doctrine, but UN members from all regions were overwhelmingly positive and supportive of its basic elements. And that pattern was sustained last year. I'll come to what happened this year, in Cote d'Ivoire and Libya, in a moment

*How well had R2P actually worked in practice before this year?*

At the end of last year the evidence was mixed. Although increasingly invoked by key figures, including Secretary-General Ban Ki-Moon, obvious successes in its application were thin on the ground, with Kenya in early 2008 being the only really clear example of the responsibility to protect playing an important energizing role in stimulating an effective response to a rapidly emerging large-scale atrocity crime situation – with that response, interestingly, coming here in the form of a diplomatic rather than military solution.

Failures or weaknesses were easier to identify. Darfur is a case where the international community's response has been from the outset, and remains, much less focused and effective than it could and should have been (although it was only in 2005 that RtoP emerged as an accepted international principle, whereas most of the damage in Darfur was done earlier, in 2003 and 2004). Sri Lanka in 2009 was another case where the international community largely dropped the ball – as has now been abundantly demonstrated with the recently released Report of the Secretary-General's

Panel of Experts on Accountability in Sri Lanka, which is a devastating indictment of the Colombo government's callous irresponsibility in the conduct of its final military operation against the LTTE, and by extension of the failure of the international community to respond effectively while there were still innocent lives to save.

The Democratic Republic of Congo can perhaps be regarded as another, although the UN, EU and African Union have made large-scale efforts to halt the slide into further violent chaos, and the problems in that continent-sized country are nightmarishly intractable. And another, more controversial, example might be thought to be Israel's treatment of the people under its control in the occupied Palestinian territories, especially in the context of its assault on Gaza in 2008-09.

The lesson I for one drew from the cases of non-application or ineffective application of the RtoP norm was not that the norm itself was inherently ineffective, or irrelevant. Rather it was that we just had to do much better in applying it in the future.

*So what about the recent events in Cote d'Ivoire and Libya? Is NATO's military involvement in Libya a step forward or a step backwards for the concept of RtoP?*

On the face of it these cases were spectacular steps forward. Both involved Security Council resolutions – the first of their kind specifically invoking the responsibility to protect in a particular country situation – approving “all necessary measures” (which in UN-speak means military force) to secure civilian protection objectives in the context of atrocity crimes being committed and feared. But there has certainly been a negative reaction to the very broad way in which NATO interpreted its mandate in Libya, and the question we have to address is whether we now have a new benchmark for how to handle extreme cases in the future, or whether this year will rather prove to be the high water mark from which the tide will subsequently recede.

The Cote d'Ivoire intervention, which came to a more or less successful conclusion with the defeat and apprehension of the resisting Gbagbo forces in

April, has been the less controversial of the two, but it was also a less clear-cut RtoP case: it was complicated by a number of legitimate agendas running simultaneously – regional organization action to enforce a democratic election outcome and a UN mandate extending to force protection rather than just civilian protection. But the Libyan case was, at least at the outset, a textbook case of the RtoP norm working exactly as it was supposed to, with nothing else in issue but stopping continuing and imminent mass atrocity crimes.

It is worthwhile briefly recapping the sequence of events. In February this year, Muammer Gaddafi's forces responded to the initial peaceful protests against the excesses of his regime, inspired by the Arab Spring revolutions in Tunisia and Egypt, by massacring, on the ground and from the sky, perhaps more than a thousand of his own people. That led to the first UN Security Council Resolution 1970 of February 26, which specifically invoked “the Libyan authorities' responsibility to protect its population”, condemned its violence against civilians, demanded that this stop and sought to concentrate Gaddafi's mind by applying targeted sanctions, an arms embargo and the threat of International Criminal Court prosecution for crimes against humanity.

Then, as it became apparent that Gaddafi was not only ignoring that resolution but planning a major assault on Benghazi in which no mercy whatever would be shown to perceived opponents, armed or otherwise – his earlier reference to “cockroaches” having a special resonance for those who remembered how Tutsis were being described before the 1994 genocide in Rwanda – the Security Council followed up with Resolution 1973 of 17 March. This also invoked the responsibility to protect principle, reasserted a determination to ensure the protection of civilians, deplored the failure to comply with the first resolution, called for an immediate ceasefire and a complete end to violent attacks against and abuses of civilians, and explicitly authorised military intervention by member states to achieve these objectives.

That coercive military action was allowed to take two forms: “all necessary measures” to enforce a no-fly zone, and “all necessary measures...to

protect civilians and civilian populated areas under threat of attack”. Only “a foreign occupation force” was expressly excluded. Ground troops were just a bridge too far for the Arab League to contemplate, and its political support was absolutely crucial in ensuring that there was both a majority on the Council and no exercise of the veto by Russia or China. That regional support was also, politically, an absolute precondition for the U.S. to be able to act without laying itself open to the allegation throughout the Arab-Islamic world of being up to its old Iraq-invading, crusading tricks.

NATO action commenced immediately, and can certainly be credited with stopping a major catastrophe in Benghazi. Some sceptics are now suggesting, inevitably, that this threat was always exaggerated, but the short answer is it is inconceivable that Arab League support for the Security Council would have been forthcoming if it was not, and had not been perceived to be, very real. The NATO intervention has also been crucial in securing what seems now to be – as at the end of August 2011 – the overthrow of the Gaddafi regime by the rebel forces. Although NATO observed some constraints in its engagement, including the obvious one of not putting fighting troops on the ground, and the struggle was more prolonged than would have been the case had it been in full warfighting mode, there is little doubt that its role was decisive. It was unequivocally committed to the rebel side, and to securing regime change, and acted accordingly military – although arguing that removal of the Gaddafi regime is not for any other reason than that this is the only way that civilians can be protected from atrocities in the areas under that regime's control. All this has resulted in a widespread perception – not only among the familiar cynics, sceptics and spoilers – that NATO in Libya stretched its “responsibility to protect” mandate to the absolute limit, and maybe beyond it. Many of us would have been much more comfortable if NATO had confined its role, after neutralising the Libyan air force and halting the ground forces moving on Benghazi, confined itself essentially to a watching-brief role: maintaining the no-fly zone and being prepared to attack whenever civilians or civilian areas were being put at risk by reachable targets, but stopping short of moving into full war-fighting, regime-change

mode, and being prepared to wait for rebel military pressure, regional and international diplomatic pressure, targeted sanctions and the threat of ICC prosecution, to take their course. It may have taken longer to get a result, but it would have placed much less stress on RtoP

The key non-Western Security Council members whose non-opposition to the March resolution was crucial to its passage – Russia, China, India and Brazil – have all expressed concern about NATO's perceived military overreach, as has the Arab League, and all have made it clear that they would not contemplate any similar action in Syria even though the violence directed by the Assad regime against its civilian opponents has been if anything even worse than Gaddafi's.

The question on many minds, not least my own, has been whether this represents a serious setback for the responsibility to protect norm, giving new traction to those who would seek to not only undermine but reverse everything that has been achieved over the last decade. Or does it just reflect the degree of difficulty and controversy that is absolutely bound to be present – as I for one have always acknowledged – whenever the hardest and sharpest instrument in the RtoP response toolbox, coercive military action, is called in aid.

I think we now have our answer, following another general debate in the UN General Assembly in July on the whole RtoP concept – this time focused on the role of regional organizations in its implementation. And it's a good one. A backlash had been widely anticipated, but although there were a number of comments about NATO going too far in interpreting Resolution 1973, it just didn't come. As in the earlier debates in 2009 and 2010, there was a certainly evident a greater degree of comfort with measures at the less intrusive end of the spectrum – going to individual states' own responsibility (the so-called “Pillar One” of the 2005 Resolution), and other states' responsibility to assist them (“Pillar Two”) – than there was with the rather more robust forms of engagement, and ultimately intervention, envisaged when a state is “manifestly failing” to protect its own people (“Pillar Three”). But there was overwhelming support for the basic concept, and absolutely no

move to overturn it. Cuba, Venezuela and Iran were the most negative, but if anything their voices were less harsh than they had been in the past.

*What is the final takeaway on R2P? Are you optimistic or pessimistic that this norm will survive in a useful form?*

As I have often been heard to say, there is a well-established view that anyone who approaches anything in international relations with an optimistic frame of mind – as I have always done– must be plain ignorant, incorrigibly naive, or outright demented. But for all the difficulties of application that lie ahead case by case, I do believe that the responsibility to protect is an idea whose time has come, that it is here to stay, and that it really will make a difference in the years and decades to come.

We have seen in just a few short years a fundamental shift in attitudes on the scope and limits of state sovereignty. The notion that the state could do no wrong in dealing with its own people has meant that for centuries human rights catastrophes have gone unprevented, unchallenged and even unremarked. The emergence and consolidation, and implementation to the extent we have seen, of the new responsibility to protect norm may not in itself guarantee that the world has seen the end of mass atrocity crimes once and for all. But it is not unreasonable to claim that it certainly gives us a better chance of getting there than we have ever had before.

Maybe, just maybe, we'll be able to say “never again” in the future without having to periodically look back, as has so often been the case in the past, asking ourselves, with a mixture of anger, incomprehension and shame, how did it happen again.

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