

### The Responsibility to Protect (R2P) and Libya

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## Kurzanalyse

Juli 2011

# The Responsibility to Protect (R2P) and Libya

Heinz Gärtner

Der vorliegende Beitrag analysiert die im Bericht der unabhängigen International Commission on Intervention and State Sovereignty im Dezember 2001 definierten Verantwortung der internationalen Staatengemeinschaft, die Bevölkerung eines Staates vor schweren Menschenrechtsverletzungen zu schützen – der sog. **Responsibility to Protect** – und überprüft die vom Sicherheitsrat der Vereinten Nationen definierten Kriterien eines Eingreifens anhand des gegenwärtigen NATO-Einsatzes in Libyen.

Dieses Papier wurde bei der Stanford – Vienna Human Rights Conference, die von 20. bis 22. Juni 2011 unter dem Titel „US-American and European Approaches to Contemporary Human Rights Problems“ an der Universität Wien stattgefunden hat, präsentiert.

## **The report of the International Commission**

The “Responsibility to Protect” (R2P) is a set of principles that provides the international community with a framework for taking action to prevent or stop mass atrocities. These principles were developed in response to United Nations Secretary-General Kofi Annan’s report to the 2000 General Assembly in which he called on the international community to agree on a basis for collective action to intervene against vicious mass crimes, including genocide, war crimes, crimes against humanity and ethnic cleansing.

In response to Kofi Annan’s challenge, the Government of Canada established the independent International Commission on Intervention and State Sovereignty in September 2000, which issued its report, “The Responsibility to Protect,” in December 2001.<sup>1</sup>

The report was a response to three recent historical cases: the genocide in Rwanda in 1994, the massacre of 8,000 Bosnian civilians in Srebrenica in 1995, and the NATO air bombardment of Kosovo in 1999. In the first case, the United Nations did not act; in the second, the Dutch UN peacekeeping forces had too weak of a mandate according to Chapter VI of the United Nations Charter; and in the third case, NATO acted without the authorization of the UN Security Council.

R2P is about the responsibility to act. The primary responsibility lies with the state itself. If a state is unwilling or unable to protect its citizens from mass atrocities, the responsibility falls to the international community, first of all to the UN Security Council. If the Security Council fails to deal with the threat within a reasonable time, the responsibility to protect the people at risk may pass to the UN General Assembly or to regional or sub-regional organizations. This responsibility may include coercive measures and in extreme cases military intervention.

To prevent individual states from using the report as pretence for individual action, it refrains from mentioning “humanitarian intervention” specifically, but uses similar terminology: “military intervention” for “humanitarian protection purposes.” The real question, however, is what are the principles for military intervention. Under what conditions, when, and how should force be used? R2P calls for moving away from the right of the interveners toward the right of victims and the responsibility of states and the international community to protect people.

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<sup>1</sup> Report of the International Commission on Intervention and State Sovereignty: “The Responsibility To Protect”, December 2001.

## Just war

R2P uses the criteria of the just war theory, which has been debated by peace researchers for decades. According to R2P:

- There has to be a *just cause* for military intervention for human protection purposes. To be warranted, there must be a “large scale loss of life,” regardless of whether there is genocidal intent or not, or a “large scale ‘ethnic cleansing.’” The question remains open about who defines what is “just” and what is “large scale.”
- There also must be a *right intention*, which means that the primary purpose of the intervention must be to halt or avert human suffering, regardless of whatever other motives intervening states may have (e.g., to prevent huge refugee flows; geopolitical interests).
- Military intervention must be the *last resort* and can only be justified when every non-military option has been explored. This criterion would be consistent with the UN Charter, according to which the non-military measures provided for in Article 41 must be proven inadequate before actions involving the use of force according Article 42 can be taken.<sup>2</sup> Critics from the armed forces and NGOs both argue that action should be taken as early as possible to be successful. For example, this argument was used repeatedly by General Wesley Clark, Supreme Allied Commander Europe,<sup>3</sup> during the air campaign in Kosovo 1999. When civilians were killed during the rallies in Syria in early summer 2011, some NGOs requested an early intervention.
- Concerning the scale, duration, and intensity of the planned military intervention, the *means* must be *proportional*, using only the minimum necessary force.
- There must be *reasonable prospects* of success in halting or averting the suffering. At a certain point doubts may arise about whether the number of lives lost is not higher than those saved. In summer 2011, the air campaign in Libya seems to have reached a tipping point. We know that there were similar uncertainties during the air campaign in Kosovo in 1999.

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<sup>2</sup> M. Roscini, “The United Nations Security Council and the Enforcement of International Humanitarian Law,” in *Israel Law Review*, Vol. 43, 330-359 (2011).

<sup>3</sup> W. Clark, *Waging Modern War: Bosnia, Kosovo, and the Future of Combat* (2002).

- The critical criterion turns out to be the *right authority*. Who decides what is a “conscience-shocking situation,” what is “just,” what is “right,” “proportional,” when is the “last resort” and what is a “reasonable prospect”?

## Competent authority

The R2P criteria themselves are somewhat ambiguous and leave room for interpretation. Therefore, there is a hidden tension over what is more important: the criteria or the competent and enduring authority. The main challenge is how to reconcile these two approaches.

The United Nations Secretary-General Kofi Annan<sup>4</sup> made several attempts to do this. His reports defined guiding principles on whether and when to authorize, endorse and mandate the use of force. They identified a set of guidelines and criteria for legitimacy that the competent authority (i.e., the Security Council) should always address in considering whether to authorize or apply military force. The adoption of these guidelines (seriousness of threat, proper purpose, last resort, proportional means and balance of consequences) should not produce agreed conclusions but “improve the chances of reaching international consensus.” The reports argue that in exercising the responsibility to protect, “Chapter VII fully empowers the Security Council to deal with every kind of threat that States may confront. The task is not to find alternatives to the Security Council as a source of authority but to make it work better than it has.”

R2P does not endorse unilateral action but leaves open the possibility that action does not have to be entirely dependent on Security Council authorization. If the Security Council “fails to discharge its responsibility to protect in “conscience-shocking situations” crying out for action, concerned states may not rule out other means ....” However, in such a case the United Nations may suffer, the report warns. What would be the alternative to the Security Council—the United States, Russia, the European Union, the African Union, the Organization of American States, the Commonwealth of Independent States, the Collective Security Organization, the Shanghai Cooperation Organization, or....? Allowing any one state or organization to act alone is allowing all! R2P is not the “right to intervene” of any state, but the “responsibility to protect of every state.” The United Nations (preferably the Security Council) turns out to be the competent enduring authority to allow the use of force without an adequate alternative. This is indispensable to avoid the pitfalls and loopholes of the R2P criteria.

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<sup>4</sup> Report of the High-level Panel on Threats, Challenges and Change, “A more secure world: our shared responsibility,” (2 December 2004). Report of the Secretary-General, “In larger freedom: towards development, security and human rights for all” (21 March 2005).

The R2P criteria might intend to make it more difficult for states to put a humanitarian label on self-interested interventionism, but they also could be seen as opening the door to a general pattern of intervention. If there is no internationally recognized competent authority, any state could maintain the “right to intervene” for itself. To declare the U.S. intervention in Iraq in 2003 as a R2P case would be a case in point since human rights violations by Saddam Hussein were a minor factor in the decision to use force. Even preventive wars could be justified; the R2P report explicitly allows “anticipatory measures.” The R2P criteria cannot stand alone without defining the “right authority.”

Since the 2005 World Summit, several Security Council resolutions have made reference to the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Resolution 1674 of 2006,<sup>5</sup> for example, commits the Security Council to take action to protect civilians in armed conflict; so does Resolution 1894 of 2009. Resolution 1674 stresses that collective action should be taken through the Security Council, in accordance with the UN Charter, including Chapter VII. Resolution 1706 of August 2006 authorizes the deployment of UN peacekeepers to Sudan. Resolution 1973 of March 2011<sup>6</sup> emphasizes the responsibility of the Libyan authorities to protect the Libyan population and of the parties to armed conflicts “to take all feasible steps to ensure the protection of civilians.”

## **The Libyan case**

Before the states of the coalition of the willing decided to use force to protect Libyan civilians against armed attacks by the Libyan regime, they had to take into consideration several factors:

1. What is the *political goal*? In the wake of the successful anti-regime movements in Tunisia und Egypt, most of the governments involved and other observers expected that it was only a matter of time before Colonel Muammar al-Gaddafi would be removed from power. The political goal — explicit or not — was regime change! In itself regime change does not meet the R2P criterion of the *right intention* unless the *just cause* cannot be achieved otherwise. The purpose of the use of force could be other than humanitarian. Another objective has been to demonstrate solidarity within the NATO alliance, certainly not a R2P criterion, but it put pressure on alliance members to join the coalition. Germany has been criticized heavily for lacking alliance solidarity because it abstained from the Security Council vote — although its concerns about the military success of the campaign might have been legitimate (see point 3).

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<sup>5</sup> United Nations Security Council Resolution 1674, adopted on 28 April 2006.

<sup>6</sup> United Nations Security Council Resolution 1973, adopted on 17 March 2011.

2. In the framework of the concept of *human security*, the *just cause* would be met if the primary purpose of the intervention were the protection of civilians from grave and systematic violations of human rights. For the U.S. State Department, humanitarian reasons were the decisive factor, not potential military hazards, and it overruled the Pentagon, which had doubts about the military feasibility (see point 3).
3. The decision for a *military intervention* was characterized by the somewhat contradictory criteria of *last resort* and *proportionality*. On the one hand, there was agreement among the major states that the Libyan opposition forces had to be supported by military means. For several reasons the deployment of “occupation forces” on the ground was seen as disproportionate, on the other hand. Some (e.g., the Pentagon, Germany) warned that a ban on flights and an air campaign would not be sufficient and would lead to “mission creep” requiring more and heavier military means. In the past, no-fly-zones and air campaigns have proven insufficient. The no-fly-zone in Iraq was already in place when Saddam Hussein liquidated tens of thousands of Shiites during the uprisings in 1991; the killings in Srebrenica happened when flights by the Yugoslav army had already been banned; during the NATO air campaign in Kosovo, ethnic cleansing actually increased. Yet in all these cases, military concerns, leaving aside the humanitarian aspects, have been valid.
4. Security Council Resolution 1973 met the criteria of the *right authority*. This resolution authorizes the participating states “to take all necessary measures ... to protect civilians and civilian populated areas under threat of attack.” The resolution definitely was consistent with the other R2P criteria such as the *just cause* threshold and the *right intention*. At the beginning of the operation it contradicted the political goal of removing Gaddafi from power, however (unless Gaddafi euphemistically is defined as a militarily relevant target). During the protracted air campaign the question arose whether R2P can be successfully implemented without regime change. In this case, regime change became a *right intention* (see point 1).
5. Geopolitical considerations can be ignored. Libya is a small country with six million inhabitants and in contrast to Egypt, it has no geopolitical significance. Libya’s two percent of global oil reserves could easily be replaced by other sources; after all, Gaddafi would have been eager to sell his oil. Had geopolitics or “vital interests” been a main purpose for the intervention, it would have been in sharp contrast to the R2P *right intention*.

6. The R2P report states that “*right intention* is better assured with *multilateral operations*, clearly supported by regional opinion and the victims concerned.” In contrast to the Iraq war, the Libyan operation is clearly multilateral. There is a Security Council mandate that is being implemented by a coalition of NATO states. In addition, the resolution has been endorsed by the Arab League. The United States in particular signaled that this time it renounced a unilateral approach. France tried to take the lead; if it had done so for the sake of leadership, it would not be a right intention, however.

In sum, one could argue that the Libyan case could be seen as an R2P case, although Resolution 1973 also refers to the UN Charter in that the situation in Libya constitutes “a threat to international peace and security.” There are tensions between some of the R2P criteria. The political goal of regime change and the limited mandate of the Security Council to protect civilians are not necessarily congruent. Also, the possibility of implementing humanitarian goals by military means remains questionable as the differences between the Pentagon and the State Department, and between France and Germany, demonstrate.

## Outlook

R2P is an expression of change in the norms of state sovereignty. They have given way to the human rights revolution and new ideas about a more complex array of norms concerning legitimacy and authority. Opposition to Bush’s Iraq war was not about the use of force as such, but rather about the principles and procedures for using military power.<sup>7</sup> If there were no legitimate international competent and enduring authority, liberals in both governments and NGOs might want to decide for themselves if and when human rights were violated, and neoconservative nationalists might want to determine whether and where to promote democracy (with or without the use of force). Instead, both camps feel constrained by multilateral institutions, and may even benefit from unipolar structures. There is no alternative to an international order based on rules, principles and institutions.

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<sup>7</sup> G. J. Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (2011), 270-277.



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