

Responsibility to Protect (R2P):

Concept and Implementation, Opportunity and Misuse The R2P attempt failed in Libya

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In a few months the UN will be 67 years old. Initially, there were 51 states which had joined this new inter-governmental institution in 1945. Currently the United Nations includes 193 member states. Southern Sudan is its youngest member. This new state was admitted soon after its independence in 2011. Global powers of the day wanted South Sudan to join, Palestine, however has been waiting for decades to become a UN member state.

UN membership means acceptance of the UN Charter and a network of binding covenants, conventions and other international agreements. (1) UN Charter legislation was created with the aim of “maintaining global security,” “taking effective collective measures” and “settling international disputes by peaceful means”. (2) The Charter's call for “sovereign equality” has been of fundamental importance to the large number of colonies and territories which gained independence in the course of the last century. Countries have taken for granted that sovereignty constitutes the right to determine the course of political action within national boundaries without outside interference. The importance of this sovereignty status becomes evident when staff of foreign missions are declared *persona non grata* because they allegedly interfered in the internal affairs of their host country.

Until the end of the 20th century, the United Nations never seriously questioned that the responsibility for developments within countries rested solely with national authorities. UN Security Council resolutions, e.g., those for Saddam Hussein's Iraq during the years of military embargo and economic sanctions or in the final phases of Muammar Gaddafi's reign in Libya, have consistently confirmed the sovereignty of these two countries (3) while permanent members of the UN Security Council with equal consistency have continually violated the sovereignty of these two countries.

To this day state sovereignty has remained a carrying wall in international relations. Governments maintaining normal bi- and multilateral relations with other governments assume that the sovereignty of their state is not questioned. Those governments facing crises within their countries or are in conflict with other nations fear that their independence might be in danger and demand vociferously that their sovereignty be respected. One can find examples for this in all parts of the world: in Africa (Eritrea and Somalia), in Asia (West Irian and Pakistan), in Latin America (Peru and Venezuela) and in Europe (Macedonia and Ukraine) to name just a few.

The evolving debate in the UN Security Council still assumes that national sovereignty means governments have the first right of decision making within their own borders. Many states, especially those with complex ethnic structures and large disparities between rich and poor, insist that this remain so. They know of course that after the years of independence euphoria in the past century, conflicts between states have more and more given way to conflicts within states. (4)

Responsibility to protect (R2P), they argue, refers to “international” law (5) and therefore has to do only with “international” security. To them this means that national conflicts remain entirely internal affairs. Nevertheless as intra-national conflicts increased and inter-state confrontations decreased, the louder the calls became for new approaches in dealing with concepts such as 'sovereignty' and 'responsibility to protect' (R2P).

This is without question a positive and not even surprising development. The definition of sovereignty and national responsibility, accepted during the years of independence movements, began to be considered too restrictive in view of the emergence of 'failed states'. The international community began to think about its broader responsibilities for the welfare of fellow nations. In the early 1990s demands for change intensified when seeing that failed states posed serious dangers for international security. Many governments felt that this justified an international right to intervene in order to end the condition of state failure. References were made to 'negative sovereignty' (6) in cases where a failed state was no longer in a position to fulfil its basic duties of governance, justice, welfare and protection of its people. Somalia was cited as a country in which the UN Security Council felt it had a duty to intervene. (7)

It is important here to emphasize that the UN Security Council took this position based on article 41 of the UN Charter which provides for intervention across borders without resorting to the use of military force. According to UN Secretary General Boutros Boutros Ghali and his successor Kofi Annan, responsibility to protect should be carried out without military means because this responsibility had to do with people and the return of human rights. It was a complicated debate in both the UN Security Council as well as in the UN General Assembly. Many countries feared that outside intervention in sovereign states could have serious implications for their own intra-state developments.

Beginning of a new world order

At the end of the 20th century the number of UN member states had increased significantly. The global political landscape had become much more complex. Non-state actors using legal and illegal means became involved in national politics with increasing frequency. (8) The international response was immediate. There were power-political concerns in the western world, especially in the United States. Neo-conservative initiators of the so-called "Project for a New American Century" (PNAC) (9) observed with suspicion these intra-state developments in various parts of the world; the growing influence of Russia and China in international affairs and the emergence of new nuclear states such as India and Pakistan. At the same time, there were many governments who wanted to engage in a constructive debate about how the international community should respond to the proliferating intra-state crises.

“Failing states” and “new wars” became subjects that increasingly dominated the political discourse. As distrust among nations became stronger and stronger in the conduct of international relations, a uniform position on these developments was out of question. When is a state a “failing state”? What is new about the “new wars”? What is legitimate resistance and what is criminal terrorism? Who has the responsibility to protect (R2P)? The battle lines of the debate hardened as evidenced by the fact that governments could not even come to an understanding of what constituted “terrorism” (10).

The events of 11 September 2001 and the American response have intensified this debate considerably. International relations not only between the U.S. and the Islamic world, but world wide have been affected. Responsibility to Protect (R2P) has become an issue of prime significance – in politics as well as in public and academic discourse. Following the genocides in Cambodia, Rwanda and Srebrenica, everything had to be done, even with the help of military force, to prevent the recurrence of such crimes against humanity wherever they could possibly occur. International concern was no longer limited to responsibility to protect of populations living in failed states but included also those states in which fully functioning governments were led by brutal dictators. This constituted a considerably expanded remit for the UN Security Council.

National sovereignty and international protection

For Kofi Annan, the UN Secretary General during those years, the lesson of Rwanda was a trigger for the creation of a new international security architecture. Thus, he aimed at both a timely definition of the concept of collective security and a broader interpretation of Chapter VII, Article 51 of the UN Charter. (11) It should be recalled that in the first years after the founding of the United Nations the focus was on the protection of the state. At the end of the 20th Century, protecting people wherever they lived, had become central. In this regard the United Nations and individual member states had already done important preliminary work. The definition of human rights had been clarified, new international covenants to protect people (12) were adopted and in the framework of international cooperation, governance programmes had been introduced.

In the debate on sovereignty, internal conflicts and the responsibility to protect (R2P), a major milestone was set in 2001. At the initiative of the Canadian Government, an international Commission on Responsibility to Protect (R2P) was formed. The Commission presented its report in December of that year.(13) There we find important and up-to-date statements that were to have pivotal influence for the further debate on this issue. The Commission insisted that: i) state sovereignty included government responsibility, ii) government responsibility involved both an external and an internal responsibility, iii) external responsibility included respect for the sovereignty of other countries, iv) internal responsibility meant that the dignity and fundamental rights of all segments of the population had to be safeguarded. (14)

The report contains the basic premise that in international relations human rights ultimately are more important than national sovereignty. Since this must be so, the Canadian Commission argued, there could not be any national boundaries in the exercise of the international responsibility to protect (R2P). The Commission, in making this pronouncement, broke new conceptual and normative ground. National consent for international interventions in domestic affairs was declared as no longer valid. The report, however, noted that countries facing the danger of internal threats to human security initially carried the main responsibility for the restoration of human rights based conditions within their countries.

This report was received with great interest worldwide. Since 2001 the UN General Assembly, the UN Security Council, Secretary General Kofi Annan and his successor Ban Ki-moon, have been intensively involved in further developing the arguments for the protection of human security. Given the complex challenges of our time, it was also found, no country in the world could deal with this task on its own.(15) The importance of this point is underlined by the current global

economic and financial crises, the social changes, not only in the Arab world but globally, and by the dangers emanating from the spread of weapons of mass destruction and organised crime in the 21st century. (16)

UN Secretary General Kofi Annan warned that the UN Security Council “is not a stage on which national interests are on display. It (the UNSC) is the governing body of our evolving global security system.” (17) In his message on the occasion of the 60th anniversary of the UN on 24 October 2005, the Secretary-General called for “all states to confirm, at least in words, their responsibility to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity.” (18) His successor, Ban Ki-Moon, continued the R2P debate. In the years 2009 to 2011 three major reports (19) were presented by the UN Secretary General and the UN General Assembly to governments and the public.

The debate intensified, within the UN itself and outside. It henceforth included not only political and structural but also normative considerations. Good progress was made at the operational level, for example with regard to international assistance in capacity-building for the implementation of responsibility to protect (R2P) programmes; for faster operations in the prevention or suppression of genocide and other crimes against humanity; and the introduction of early warning systems. The role of regional and sub-regional organisations, as foreseen in the UN Charter (Chapter VIII), was also addressed. (20)

Kofi Annan’s call for the international community to liberate itself from the narrow definition of state sovereignty is not only testimony of the vision a UN Secretary-General can have. It once more points to the fact that global political change can also trigger innovative responses that are in the interest of the international community and multilateralism. Examples in recent decades are the Millennium Development Goals (MDGs), the demand for “structural adjustment with a human face” (21), the improvement of national administration (governance) and the call for development that is sustainable.

If the aim is to create a community of states that in fact thinks “commonly”, then collective security has to be an integral part of the international agenda. The responsibility to protect (R2P) is thus becoming both an intra- as well as an inter-governmental obligation. This is now widely recognised. However, the decisions in 2005 of the UN General Assembly ((22) are not yet binding and the extended application of the responsibility to protect (R2P) has so far not been made an integral part of international law. (23) The R2P theory is called into question

In the spring of 2012 the state of affairs is as follows: A new concept exists to protect humanity and the international community has accepted it. Proposals to operationalize that commitment have been made but have still to lead to reform of international law. The argument that Chapter VI and VII of the UN Charter, particularly Article 51, are sufficient to implement the intra-state collective responsibility to protect, has yet to find worldwide acceptance. The United Nations’ position is that the question is not “whether” but “when” and “how” the international community should apply the responsibility to protect (R2P). (24) Distrust of the introduction of collective responsibility to protect has remained and been reinforced after the NATO operations in Libya. The debate continues.

The gap between the rhetoric of nations on one side and the actual use of power politics on the other has always been wide. Accordingly, the consequences for human security have been disastrous. The crises in recent decades in the Middle East, Central and South Asia and in Europe clearly show that protecting the civilian population, despite assertions to the contrary, has always been of secondary consideration. The domestic and external interests of individual UN member states or military alliances invariably were more important. Responsibility to protect (R2P), as proposed at the UN Summit in 2005, ultimately turned into 'irresponsibility to protect' – Iraq, Libya and Syria are good examples. The dishonest use of responsibility to protect (R2P) in the case of Libya illustrates why the international R2P distrust has remained so strong. In early 2011 the UN Security Council decided that the government in Tripoli did not comply with its internal responsibility to protect and that the conditions in Libya constituted a threat to the international community. (25) UN Security Council Resolution 1973 was adopted on 17 March 2011 thereby legitimizing international military action. Specifically, the resolution demanded: i) a flight ban for Libyan air space with the exception of relief flights, ii) the prohibition of foreign troops on Libyan soil, iii) an arms embargo and iv) freezing the financial assets of the Libyan government. In addition, resolution 1973 authorised “all measures taken” at national and regional levels to ensure compliance with the ban on flights. (26) The UN Security Council and its oversight mandate

“Operation Unified Protector”, the R2P operation of 5 of the 28 NATO countries plus Qatar, Jordan and the United Arab Emirates, is over. It was meant to protect the Libyan population, but in fact was aimed at regime change. The UN arms embargo affected the government army. At the same time, the opposition militias were armed with weapons. Government mercenaries were forbidden, but members of foreign special military forces (in civilian clothes) from NATO and other countries were infiltrated and took part on the side of the opposition forces. NATO aircraft fought government forces while supporting the resistance. The foreign accounts of the government were frozen and funds from abroad flowed to opposition forces.

NATO sees this differently, and concludes that the United Nations mandate has been implemented in all respects. UN Secretary General Ban Ki-Moon agrees with this assessment: “The NATO military actions have strictly adhered to UN Security Council Resolution 1973.” (27) Such misrepresentations are disturbing and give rise to serious concern. By authorising member states “to take all necessary measures” in the Libyan crisis, the UN Security Council discharged itself from the responsibility to ensure that the conditions of the resolution were met.

London, Paris and Washington as well as NATO headquarters in Brussels speak of the “big success” of the R2P mission in Libya. If this refers to the removal of the Gaddafi Government, then this claim is justified. But that was not the stated goal of resolution 1973. The R2P test in Libya has failed miserably. To argue otherwise is simply dishonest. In addition it should be pointed out that, as in Iraq and Afghanistan, it was only in the course of NATO's military intervention that participating governments realised that the “National Transitional Council of Libya” to whom they wanted to express their sense of responsibility to protect, consisted of a heterogeneous assortment of groups. Many of these had dubious backgrounds.

The failed R2P application in Libya represents a significant setback for the international protection debate. It can be said with confidence that the UN Security Council will be reluctant in the future to apply R2P. The Syria debate of 31 January 2012 in the UN Security Council has made this clear. The Russian Foreign Minister Serge Lavrov, on 4 February 2012 speaking at the 48th Munich Security Conference, pointed out that the Russian Government fully supported the Arab League

initiative for a solution to the conflict in Syria. He added that “regime change cannot be a matter for the UN Security Council.” (28) A few hours later, as the consultations continued in the UN Security Council for a resolution text on the Syria conflict, the President of the Council abruptly called for a vote – a surprise for Russia and China. They vetoed the draft resolution.

In summary, it must be said that international acceptance of a concept such as the Responsibility to Protect (R2P) does not imply that this automatically translates into a normative adjustment of the UN Charter. Distrust will only be replaced by trust if “Responsibility to Protect” is unequivocally linked to “accountability “. The important step of adding “Responsibility to Protect” as a norm to the UN Charter has still to be taken. This will require time. Confirmation of accountability in international policy-making must be a concurrent objective. It can not be that decisions of the UN Security Council (see Iraq and Libya) continue to be taken with serious consequences for the welfare of people while those who take these decisions enjoy impunity.

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Sources: 1 see, for example, UN Covenants on Civil, Political, Economic, Social and Cultural Rights, and UN conventions on Women, Children, Torture, Land Mines, etc. 2 UN Charter, Chapter 1 (1). 3 see Iraq resolutions 687 (1991), 1284 (1999), 1441 (2002) and Libya resolutions (2011) and 1973 (2011). 4 Since the early 50s to mid 90s, the number of internal conflicts increased sharply – see Table “Wars 1946-2002,” Department of Peace and Conflict Research, Uppsala University and International Peace Research Institute, Oslo (UN/A59/565, page 17) December 2004. 5 See United Nations Charter, Chapter V, Article 24 (1). 6 see Robert Jackson: Qasi States – Sovereignty, International Relations and the Third World. Cambridge University, 1990. 7 see United Nations Operations in Somalia (UNOSOM I/II) 8 Examples: Asia – Myanmar (Karen, Kachin, Shan groups against the central government), South America – Colombia (Revolutionary Armed Forces (FARC) against the government), Africa – Mozambique (Frelimo against Renamo). 9 “Project for a New American Century”. 10 In October 2011 the UN General Assembly failed again to adopt a “convention against international terrorism”. 11 UN Charter, Chapter VII, Article 51 confirms the “inherent right of individual or collective self-defense,” but points to the requirement that the UN Security Council must be notified immediately of measures taken, and it has the monopoly right to decide whether these measures were justified and hence legalized so that by international law. 12 See footnote 1. 13 See “The R2P: Report of the International Commission on Intervention and State Sovereignty (ICISS)”, IDRC, Ottawa, December 2001. 14 ICISS, page 8. 15 See also: i) “A More Secure World: Our Shared Responsibility, Report of the UN High Panel on Threats, Challenges and Change,” A/59/565, December 2004, ii) 2005 World Summit Outcome Document, A/Res/60/1, October 2005. 16 See: A/59/565, December 2004. 17 See Washington Post, 11 December 2006 interview with UN Secretary General Kofi Annan. 18 Translation by the author. 19 See: i) Ban Ki-moon: “Implementing the Responsibility to Protect” (2009), ii) A/64/864: “Early Warning Assessment and the Responsibility to Protect” (July 17, 2010), iii) A / 65/877 & S/2011/393, “The Role of Regional and subregional arrangements in Implementing the Responsibility to Protect” (June 28, 2011). 20 Since 2004 there has been a consultant post for Genocide Prevention, in 2008, a second consultant post for conceptual, political and institutional development for the Responsibility to Protect was created. 21 For the World Bank an economically-oriented structural adjustment of national economies would be sufficient. UNICEF pointed out the great damage which such a policy had caused in all developing countries and insisted that only a structural adjustment justified by the

inclusion of the needs of people was acceptable (UNICEF, “structural adjustment with a human face”). 22 See World Summit Outcome, A/Res/60 (1), 24 October 2005. 23 Edward C. Luck, UN Secretary-General’s Special Advisor on the responsibility to protect does not agree. See “United Nations” 2/2008: “The responsible sovereign, and the responsibility to protect. On the way from a concept to standard.” 24 Basic facts about the United Nations (2011), page 63 25 See S/Res/1973 (2011), 17 March 2011, page 1 26 See S/Res/1973 (2011), page 3, para 8; see S/Res/688 (1991). 27 NATO Secretary General’s Annual report 2011, page 8 28 The author was present at the 48th Munich Security Conference (3 to 5 February 2012) as an observer. (Translation: Current Concerns/author)