

Gareth Evans on 'Responsibility to Protect' after Libya

Interview with Gareth Evans by Alan Philips for *The World Today*, Chatham House, October 2012

'Responsibility to Protect' is a doctrine endorsed in 2005 which aims to end impunity for the perpetrators of atrocities such as those being committed in Syria. Gareth Evans, the former Australian Foreign Minister and a prime mover behind the concept, explains why the UN is now powerless to stop the bloodshed, and offers ideas on restoring consensus

'Responsibility to Protect' was supposed to prevent a repetition of the horrors of Rwanda, Bosnia and Kosovo. How?

At the turn of the century there was a lack of international consensus about how to respond to genocide and other mass atrocity crimes, which had long led either to indefensible inaction or controversial military action taken without Security Council authority. The divisions came to a head in the 1990s with the debate about 'humanitarian intervention', with the global North often rallying to the cry of the 'right to intervene', but the global South reluctant to accept the idea that the big powers had any right to throw their weight around.

The 'Responsibility to Protect' (R2P) was an idea born in 2001. The intention was to recast the language and substance of the debate: to change prevailing mind sets, so the reaction to these catastrophic human rights violations taking place behind sovereign state walls would be that they are everyone's business. The emphasis was on prevention rather than reaction, and on coercive military action as a last resort, not a first. After some diplomatic arm-wrestling, the concept was endorsed unanimously by the UN General Assembly at the 2005 World Summit. Martin Gilbert, the historian, called the new norm 'the most significant adjustment to sovereignty in 360 years'.

But wasn't this just old 'humanitarian intervention' in a new guise?

Absolutely not! R2P is primarily about prevention, whereas humanitarian intervention is only about reaction.

R2P is about a continuum of responses by a whole range of actors, not just those able and willing to apply military force. R2P commits the different actors to three distinct 'pillars' of responsibility. The primary responsibility is for the sovereign state not to perpetrate or allow atrocity crimes on its territory. The second pillar is the responsibility of others in the international community to assist states in discharging that primary responsibility. The third pillar is the responsibility of the wider international community – if prevention fails, and a state is manifestly failing to protect its own people – to provide that protection by every means prescribed by the UN Charter.

Fine words, but what has it meant in practice?

From 2005 until March last year, steady progress was made – conceptually, in refining the scope of the new norm; institutionally, in building support mechanisms within governments and intergovernmental organizations; and politically, in consolidating UN member support and isolating the spoilers trying to undermine it.

As new atrocity crises arose, R2P increasingly became the reference point. It was, for example, the basis for Kofi Annan's successful defusing – through diplomatic mediation, not military threats – of the explosive outbreak of post-election ethnic violence in Kenya in early 2008. But it came of age with Security Council Resolutions 1970 and 1973 on Libya in February and March 2011, both specifically invoking R2P. The first condemned Gaddafi's attacks on civilians, and applied targeted sanctions and other late-stage prevention measures. When that failed to halt the violence, and civilians in Benghazi were at imminent risk of massacre, the second resolution, with no dissenting voices, authorized the use of 'all necessary measures' to protect them.

In the NATO-led airborne military operation that followed, many thousands of lives were saved. It all seemed at the outset a textbook example of R2P working as it was supposed to, using military force but only as a last resort, and decisively cutting across centuries of state practice treating sovereignty almost as a licence to kill. If the Security Council had acted as quickly and decisively in the 1990s, the lives of 8,000 others would have been saved in Srebrenica and 800,000 in Rwanda.

Why did that consensus so quickly evaporate? If Libya, why not Syria?

From the high point of that agreement there has been a rapid descent, with the Security Council remaining paralysed over Syria, even though it was clear from mid-2011 onwards that the situation was worse, and deteriorating faster, than had been the case for Libya.

Part of the reason is a very different geopolitical environment: complex internal sectarian divisions with potentially explosive regional implications; anxiety about the democratic credentials of many of those in opposition; no Arab League unanimity in favour of tough action; a long Russian commitment to the Assad regime; and strong Syrian armed forces with a credible air-defence system, meaning that any intervention would be difficult and bloody.

But there's more to it than that. Consensus has collapsed amid recrimination about how the NATO-led implementation of the Security Council's Libya mandate 'to protect civilians and civilian populated areas under threat of attack' was carried out. The BRICS countries (Brazil, Russia, India, China and South Africa), all of whom were sitting on the Security Council last year, have been very angry with the US, Britain and France over their management of that intervention, and that has infected their willingness to support even much less robust measures.

So who was right?

The BRICS complaints were not about the initial military response, but what came shortly after, when it became clear that the US, Britain and France were set on regime change. Their argument

is that the intervening powers rejected ceasefire offers that may have been serious, attacked fleeing troops that posed no immediate risk to civilians, targeted locations that had no obvious military significance (such as the compound in which Gaddafi relatives were killed) and supported the rebel side in what rapidly became a civil war, ignoring the explicit arms embargo in the process.

The United States, Britain and France have some answers. If civilians were to be protected house-to-house in areas such as Tripoli under Gaddafi's direct control, they say, that could only be achieved by overturning his whole regime.

If one side was taken in a civil war, it was because one-sided regime killing sometimes leads – as now in Syria – to civilians acquiring arms to fight back and recruiting army defectors. Military operations can-not be micro-managed with a '1,000-mile screwdriver'. And a more limited 'monitor and swoop' concept of operations would have led to longer and messier conflict, politically impossible to sustain in the US and Europe, and likely to have produced many more civilian casualties.

Are you convinced?

These arguments all have force, but the US, Britain and France resisted debate on them in the Security Council, and other Council members were never given sufficient information to enable them to be evaluated. Maybe not all the BRICS are to be believed when they say that, if better process been followed, more common ground could have been achieved. But they can be when they say they feel bruised by the dismissiveness of the US, Britain and France during the Libyan campaign – and that those bruises will have to heal before any consensus can be expected on tough responses to future situations.

Is there any way to rescue consensus?

There is a way forward, and it has been offered by Brazil. The proposal is that the R2P concept needs supplementing – not replacing – by a set of principles and procedures that it labels 'responsibility while protecting' (RWP). The two key proposals are for a set of criteria to be fully debated before the Security Council approves any use of military force, and for some kind of enhanced monitoring and review process that would enable such mandates to be seriously debated by all Council members during their implementation.

The criteria on the table include: Last Resort – has every non-military option been fully explored and the judgment reasonably made that nothing less than military force could halt or avert the harm in question? Proportionality – are the scale, duration and intensity of the proposed action the minimum necessary to meet the threat? Balance of Consequences – will those at risk ultimately be better or worse off, and the scale of suffering greater or less?

Such criteria were proposed a decade ago by my own International Commission on Intervention and State Sovereignty, which gave birth to the concept of R2P in 2001. They need not be straitjackets – just inherently rational guidelines. If such criteria – all setting quite high hurdles – were visible and consistently applied, it should be a lot easier to avoid the 'slippery slope' argument which has contributed to the Security Council paralysis on Syria, making some

countries unwilling to even foreshadow non-military measures such as targeted sanctions or International Criminal Court investigation because of their concern that military coercion would be the inevitable next step if lesser measures failed.

Surely the Libya backlash is so powerful that it has set your agenda back to 2001?

I don't accept that. Even at the height of the concern about perceived over-reach in the implementation of the Libyan mandate, there was still overwhelming support evident for the R2P norm, in all its dimensions, in the General Assembly debate last year and again this year. So much so that UN Secretary-General Ban Ki-moon was able to say last year, 'Our debates are about how, not whether, to implement the responsibility to protect. No government questions the principle.' The UN Security Council itself has continued to invoke R2P on Yemen, the Democratic Republic of the Congo and South Sudan.

It's true that there is a long way to go to re-establish consensus at the sharp end of the R2P response continuum: the hard cases where tough measures have to be considered. The initial response of the US, Britain and France to the Brazilian 'RWP' proposal was dismissive – 'they would want all these delaying and spoiling options, wouldn't they' – but it has begun to soften, as it must. It is beginning to dawn on the Western powers that if an un-vetoed majority vote is ever going to be secured again for strong action, the issues at the heart of the backlash against the implementation of the Libyan mandate simply have to be seriously addressed.

So what hope for Syria?

It's too late now for such renewed consensus to help much now in Syria. But I don't think there is any policymaker in the world who fails to understand that if the Security Council does not find a way of genuinely co-operating to resolve these cases, working within the nuanced and multidimensional framework of the R2P principle, the alternative is a return to the days of Rwanda, Srebrenica and Kosovo, with either no action at all or action being taken in defiance of every principle of a rule-based international order. And, congenital optimist that I am, I don't think anyone really wants that.

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