

R2P AFTER LIBYA: THE STATE OF PLAY – AND NEXT STEPS

Notes of Presentation by Gareth Evans, Co-Chair of International Advisory Board of the Global Centre for the Responsibility to Protect (GCR2P), at Group of Friends of R2P Lunch Meeting, Netherlands Mission, 19 January 2012

The Good News

- Support for the general principles of R2P – the four crimes and three pillars - is effectively complete, as evidenced in successive UNGA debates. Issues remain about the proper scope and limits of implementation strategies under Pillar III, but not the Pillar itself.
- Institutional capacity to apply R2P operationally is steadily developing, most visibly with the ‘focal points’ being established within national governments and intergovernmental organizations.
- We have now had textbook examples of the invocation and application of R2P – all the way through to the sharp end – with the UNSC Resolutions on Cote d’Ivoire and Libya.
- Lives have been saved; the doctrine has made a difference; and it’s here to stay.

The Less Good News

- There has been a backlash, led by the BRICS, against the way the Libyan mandate was implemented (at least after the initial implementation of the no-fly-zone and aversion of the Gaddafi attack on Benghazi).
- The backlash is serious, and unless the issues of concern are addressed UNSC agreement to any future coercive military action is going to be impossible.
- Just as bad, this issue has poisoned the atmosphere for lesser coercive measures, as evidenced by the current UNSC paralysis over Syria.

Implementation of the Libyan Mandate: The Critique

There are a number of dimensions to the critique of the implementation of UNSC 1973 on Libya which have *prima facie* credibility:

- The explicit terms of the arms embargo were manifestly breached in the supply of arms to the rebels by some members of the NATO-led coalition.
- The possibility of achieving a genuine and sustainable ceasefire and accompanying political negotiation process was not taken seriously at any stage.

- Air attacks were mounted on fleeing personnel posing no immediate threat to civilians .
- Air attacks were mounted on some targets of no obvious military significance, e.g. the compound at which Gaddafi relatives were killed.
- More generally, the international coalition comprehensively supported the rebel side in what rapidly became a civil war: whatever it might have been at the outset, the objective quickly became not civilian protection but regime change.

To these objections, the P3 have mounted the following responses:

- Protecting civilians in areas like Tripoli that were under Gaddafi's direct control – and where the threat did not depend on troop concentrations attackable by air as in Benghazi – could not have been accomplished by any other means than overturning his regime.
- If one side was supported in a civil war, this was because (as subsequently seen in Syria) a regime's one-sided killing sometimes leads initially-unarmed civilians to seek arms to fight back – and to recruit army defectors.
- The concept in the original ICISS report of R2P military operations as involving more than traditional peacekeeping but less than traditional 'war-fighting' (where the object is to defeat an enemy, not just halt or avert harm to civilians) may have been a good description of what was required in the talismanic Rwanda, Srebrenica and Kosovo cases (and e.g. in the UK Operation Palliser in Sierra Leone, and the French-led EU Operation Artemis in the DRC) – but may not be sustainable in cases like Libya.
- To a considerable extent military operations have to be left to professional military personnel – and not sought to be micro-managed with a '1.000 kilometre screwdriver'.
- Political realities in Europe and the US meant that there was no practical role for a different concept of operations: a 'monitor and swoop' approach would have been hard to sustain with Western political constituencies demanding a quick end to the Gaddafi regime – and would have resulted in a more protracted and messy conflict with even more civilian casualties.

These responses all have real weight. But – apart from not directly addressing very specific issues like the evident breach of the UNSC's very explicit arms embargo – they do not meet the concerns about Council process which are at the heart of the BRICS (and especially Brazilian) critique, viz.

- Whatever substance these arguments might have, they were not discussed in these terms in the Security Council. The P3 was unwilling to debate not only criteria for the use of military force and how they might apply to this case, but the detailed scope of the specific mandate here given, and the kind of circumstances that might have justified particular tough military responses.

- Other members of the Security Council were not given, through the course of the campaign, the kind of detailed information about the extent of threats to civilians or the military realities on the ground that would have enabled them to make intelligent judgments about the real needs of the situation and whether the UNSCR 1973 mandate remained appropriately crafted to meet them.

A New Dimension to the Debate: RWP

Friends of R2P cannot be in denial about the force of these criticisms, and have to focus now on a strategy for dealing with them. The best available vehicle to hand is the Brazilian ‘Responsibility While Protecting’ (RWP) initiative, which is rapidly gaining momentum and is likely to be a central component of the next UNGA Interactive Dialogue, expected to be around mid-year. This initiative has two crucial elements:

- The need to give serious attention to key prudential criteria before the UNSC agrees to any use of coercive military force, especially last resort, proportionality and balance of consequences.
- The need for a monitoring and review mechanism by which the UNSC can be properly informed about, and maintain effective scrutiny of, the way in which use-of-force mandates are actually implemented.

Next Steps

Over the period immediately ahead a major effort should be made to give practical applicability to the Brazilian ‘RWP’ proposals as initially outlined in the Concept Paper circulated in November 2011, in particular – in the likely context of developing a resolution for debate by the UNGA in the context of the next scheduled Interactive Dialogue – by:

- Removing any reference, express or implied, to the ‘chronological sequencing’ of the Pillars: ‘prevention’ is not just the role of Pillars I and II, but III as well – ‘prevention of outbreak’, ‘prevention of escalation’ and ‘prevention of recurrence’ are strategies applicable in all three contexts (i.e. by the sovereign state itself, those assisting it, and those exercising their responsibility to react in a ‘timely and decisive’ manner to feared breaches).
- Making clear that the application of the ‘last resort’ prudential criterion does not have to mean physically testing and exhausting lesser options – like sanctions, or ICC prosecution – before resorting to coercive military force: it is a matter rather of making a reasonable, objective, judgement on all the available evidence that no lesser measures could succeed in halting or averting the harm in question. Any different approach would unduly tie the hands of the Council in cases where action might be desperately urgently needed.
- Finding a way of bringing relevant prudential criteria (of the kind spelt out in the ICISS report in 2001, the High Level Panel Report in 2004 and the

Secretary-General's *In Larger Freedom* report in 2004) into the Council debates of specific cases. It would be helpful if there could be prior agreement reached in the General Assembly, and especially Security Council, on a specific set of criteria or guidelines for the use of force (and not just in R2P situations) – but not at the expense of having an endlessly protracted and divisive debate about abstractions. What matters is that there be comprehensive debate on all relevant issues in each practical situation as it arises.

- Establishing a monitoring and review mechanism that strikes a balance between, on the one hand, the real and legitimate need of UNSC members to be properly informed and able to debate all relevant issues and, on the other, legitimate military needs and realities and the limits of micro-management.

What is needed is a constructive and cooperative spirit by those on both sides of the Libya debate, and an attempt – which should not be impossible – to again find common ground.

Renewed Security Council consensus on how to implement R2P in hard cases may come too late to help in Syria. But the alternative to such cooperation is a return to the bad old days of Rwanda, Srebrenica and Kosovo: either total inaction in the face of mass atrocity crimes, or international action which is outlawed by the UN Charter. And after all that has been achieved in the last decade, that would be heartbreaking.

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