SYRIAN CIVIL WAR

The Policy Positions of International Actors
Implications of the "Responsibility to Protect"

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Syrian Civil War:

The Policy Positions of International Actors
Implications of the "Responsibility to Protect"

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Syrian Civil War: The Policy Positions of Major International Actors

Alon Ben-Meir[1]

Russia's and China's Interests and Concerns in Syria

The Soviet Union was a major power capable of influence on a global scale. There is no doubt that Russia's power has diminished somewhat since the collapse of the Soviet Union. However, Russia will continue to project its power. We have seen this in recent years in Syria, for example. Russia is attempting to reestablish its power. This is necessary for them to compete economically. Russia only recently became a member of the G8. The country must complete a number of tasks to reestablish their position in Europe. In the Middle East, there is no doubt that Russia has striven to establish its power there and that Syria is particularly important in pursuit of this aim. Russia has

a naval base in Syria, good relations with Iran, and direct and indirect relationships with Hezbollah in Lebanon. For these reasons, maintaining support for Syria is critical for Russia. Even if the Assad regime collapses, the Russian government will nonetheless seek to exercise some influence because if it does not, it will lose a tremendous amount of influence in that region. This is why they continue to oppose anything that the United States (US) or the West does regarding Syria. Moreover, they wish to maintain their influence in Iran. From the Russian perspective, losing Syria would also precipitate a loss of influence in Iran. Contemporary Russian foreign policy is entirely based on oil. When the price of oil falls to 30 or 50 dollars, Russia will be the first country to be affected. Thus, a foreign policy based on oil is not sustainable. Putin must determine a viable and sustainable foreign policy.

One of Russia's concerns in Syria is that if the Assad regime collapses, Islamists will come to power. As someone who has been involved in Syrian politics, I do not agree with this concern. The Syrian population is divided into 4 major groups: Alawites, Sunnis, Christians, and Kurds, with Sunnis being the majority. However, Syria's Sunnis are not analogous to movements such as the Muslim Brotherhood in Egypt or Nahda in Tunisia. They are much weaker and smaller than those groups. Moreover, there is a tremendous amount of infighting within the groups. The claim that Islamists will come to power is exaggerated because Sunnis are not homogenous and are divided into different groups.

Russian and Chinese interests in the region differ. China imports nearly 20% of its oil from Iran. If China does not oppose direct intervention in Syria, its relationship with Iran will be damaged. Economic interests lie at the center of the China-Iran relationship. Russia's interest is more geostrategic. It has a naval base in Syria and wishes to maintain its influence from the Gulf to the Mediterranean. Another im-

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portant issue is that they both wish to assert leadership roles by opposing US policies, which can be understood as a residual Cold War mentality.

The United States' Approach to the Crisis

There are several points to be considered when analyzing the U.S. position in the crisis. First, when President Obama was elected, he inherited a terrible situation: war in Afghanistan and war in Iraq at the cost of hundreds of billions of dollars. The U.S. economy was on the verge of collapse, with the highest unemployment rate in decades. The Syrian crisis began just two years after his election. The American public does not have the stomach to begin another war or military campaign, especially in the Middle East.

The second point is that Syria is different from Libya or Egypt. Egypt is a very homogenous country in terms of the composition its population. Ninety percent of the citizens are Sunnis, and approximately 10% are Christians. Libya is also different because it has oil and is in very close proximity to Europe. Intervention in Libya could be explained by these characteristics. However, Syria is surrounded by several countries that have had conflicts with Israel. Iran, for example, has substantial influence in Syria. Syria has a close relationship with Hezbollah in Lebanon. Syria has also been in conflict with Turkey. Any incident in Syria not only affects Turkey but also Israel, Iraq, Iran, and Lebanon. This complicates the U.S. position in Syria.

The U.S. has fallen short of doing what is right. When we speak of military intervention, we do not mean sending tens of thousands of American troops into Syria. Military intervention can take different forms, for example, a no-fly zone. Such an intervention is necessary, and it is not too late to do so. It should be imposed as soon as possible to provide the Syrian opposition with an opportunity to regroup in Syrian territory, particularly near the Turkish border. This area should be covered by a no-fly zone. That will provide a place where Syrians will be internally displaced, not refugees.

Turkey has a significant role in this process. Without Turkey, it is impossible to impose a no-fly zone. Turkey has lacked the legal standing to intervene. However, they now also realize that many actors have already intervened. Iran is intervening by sending military advisors. Russia is intervening by sending weapons on a regular basis. Saudi Arabia and Qatar are intervening by sending money and weapons to the opposition groups. Additionally, the U.S. is intervening by sending communication equipment and, indirectly, weapons and money. It is cynical for the U.S. to argue against intervention when every interested party has been intervening.

On the Duration of the Assad Regime

Whether the Assad regime will collapse depends on what other powers will do and when they do it. If after the 2012 elections, the U.S. and Turkey decide that the time has come for Assad to leave, they will be able to accelerate his demise. If they continue to wait and see, hoping that the rebels and the Free Syrian Army will be able to create a secure zone of control, the collapse of the regime could take much longer. Nonetheless, Assad will eventually go; there is no question about it.

Formation of a Representative Government

The disintegration of Syria will create a major problem for the Syrian people. If Syrian territory is divided and controlled by separate groups, these groups may start fighting each other for obvious reasons. If Turkey and the U.S. manage to jointly strengthen the Syrian National Council and create a shadow government representative of all segments of the Syrian people, including Alawites, Sunnis, Kurds and Christians, such a government will have legitimacy. The government must include Syrian people in Syria, not only those in exile. The Syrian

people will not accept a government that is composed of exiles who have lived comfortable lives outside Syria and then come to govern them. Thus, the preconditions for such a government to succeed are a) it has to represent all segments of the population and b) it has to include both people from Syria and Syrians in exile. The formation of such a government is possible with the support of the U.S. and Turkey and other countries. It would be relatively easier to form a representative government at the earlier stages of the conflict. The longer this crisis continues, the probability of disintegration will increase, and eventually it will be extremely difficult to create a representative government. The U.S. and Turkey are aware of the possibility of disintegration if such a government is not formed. According to Turkish officials, Turkey will not allow this to occur and this is why Turkey hosts the Syrian National Council and supports the Free Syrian Army.

Turkey's Interests

Turkey, which has a long border with Syria, has significant interests in the country. Syrian domestic issues, particularly internal conflicts, directly affect Turkey. One of the major issues is the Kurdish population in Syria, which numbers approximately 2 million. Turkey itself has approximately 15 million Kurds, and the issue of the PKK remains unresolved. Among Turkey's primary concerns is what will happen should Syria unravel. There is an issue of autonomous rule within Syria, and the recreation of Kurdistan is being discussed. Kurdistan existed for one and a half years between 1921 and 1923 and was then arbitrarily divided among four countries: Syria, Iran, Iraq, and Turkey. Many Kurds continue to dream of the possibility of recreating Kurdistan and regard the Arab Spring as affording such a possibility. Such an outcome is unacceptable to Turkey under any circumstances. It is well known that no Turkish government will allow the Kurds to establish autonomous rule in Turkey, let alone cede any territory for the establishment of Kurdistan.

The second issue concerns bilateral relations between Syria and Turkey. For neighboring countries, the choice is between being enemies, which is a costly relationship, and being friends. Turkish Foreign Minister Davutoglu has suggested that a "no-fly zone" be put in effect and has asked the West to support the rebels. I spoke to top Turkish officials, who stated that they did not initially have any legitimacy to interfere in the Syrian crisis. However, this situation began to change because the number of refugees increased. In October 2012, Turkey hosted over 100,000 refugees and the death toll in Syria stood at 30,000 people. Turkey had no choice but to change its approach towards Syria. If there is no interference from the outside, Syria will disintegrate, which will create the worst outcome for Turkey.

Interests of Israel and Turkey

Israel and Turkey share similar concerns regarding the conflict in Syria. Israel's concerns are primarily the following: What sort of government will come to power? Will it provoke Israel? Israelis contend that Assad and his father maintained peaceful relations with Israel, committed themselves to the 1974 agreement and have never broken it. Coexisting with Bashar al-Assad and his father Hafez al-Assad was comfortable because of their contentious but peaceful relationship. Israel continued to build settlement in Golan Heights. It was an acceptable arrangement.

After years of enmity between Turkey and Syria, Turkish Prime Minister Erdogan developed an excellent relationship with Syria and resolved water concerns and some issues regarding the Kurds. However, he could not support a government that has been so oppressive and willing to slaughter its own people.

There is a geostrategic connection between Israel and Turkey. They have to cooperate because what happens in Syria will affect both countries. Relations between the two countries have worsened since the Mavi

Marmara incident. However, trade between Israel and Turkey remains the highest compared to months before. Therefore, Turkey has unique interest in improving relations with Israel, which has similar interests.

The Responsibility to Protect

Roy S. Lee[2]

During the discussion of the implications of the Responsibility to Protect (RtoP) for the Syrian crisis, there are at least six salient points that should be kept in mind.

The first point concerns the casualties and civilians in need in Syria. Approximately 60,000 people, including civilians, have been killed, 4 million people have been internally displaced within Syria and there are approximately 650,000 refugees in the neighboring countries. These figures are important in the context of RtoP.

The second point is that the United Nations (UN) has dispatched two special envoys to Syria to develop political solutions to end the conflict. Kofi Annan, the former Secretary-General, was appointed as the first envoy to arrange a peace plan. Six months later, he resigned when he found that there is no consensus among the parties involved. The second envoy is Lakhdar Brahimi, Joint Special Representative of the UN and the League of Arab States, who has attempted to craft a peace pact.

The third point is that there have been attempts in the Security Council, introduced by several countries, requesting that the Security Council refer the Syrian case to the International Criminal Court (ICC). These attempts have failed, primarily because of the disagreement within the P5s and particularly because of the objections of certain countries.

The fourth point is that strong draft resolutions were introduced in the Security Council that were vetoed and hence not adopted. These resolutions proposed taking certain measures that would be applicable and similar to Chapter VII actions.

The fifth point is that chemical weapons were mobilized. For example, last September it was reported that these chemical weapons were going to be used on the civilians. Unfortunately, due to interventions from various capitals, no action was taken and Syria retains chemical weapons capacity.

The sixth point is that the Syrian opposition groups have been recognized by approximately a dozen countries including the U.S., UK, France, Turkey and the Gulf Cooperation Council countries. At present, substantial concerns have been expressed by human rights groups and other NGOs, some of which believe that more than just financial assistance is required. The U.S. has announced that $60 million has been pledged to assist opposition groups in Syria.

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The Responsibility to Protect: Implications to the Crises in Syria and Other Nations

Herman Schaper[3] and Martijn Dadema[4]

Nearly two years ago, on March 17, 2011, the UN Security Council made one of the most important decisions in its 66 years of existence. In resolution 1973, it clearly and unequivocally affirmed the international community's determination to fulfill its responsibility to protect the civilian population in Libya from the violence they faced from their own government. It also authorized the use of all necessary measures to protect civilians and civilian populated areas. "All necessary measures" includes military action.

In contrast, the UN Security Council has done little with respect to Syria since May 2011. Syria is clearly an RtoP-situation

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with 70,000 deaths, 4 million people in need, including 2 million internally displaced and 936,700 registered refugees in neighboring countries, as Valerie Amos declared in the UN Security Council yesterday. However, various attempts to adopt a resolution in the Security Council have been stymied by vetoes from Russia and China. This difference between the international community's decisive action in Libya and its inaction in Syria is stark.

In the introduction, we will address the Netherlands' perspective on RtoP principle and its application in concrete cases, including Libya and Syria.

Development of the Responsibility to Protect

The direct reason for the development of the principle of the Responsibility to Protect were two tragedies in which the international community did not act: the genocide in Rwanda in 1994 and the mass slaughter of Bosnian civilians in Srebrenica in 1995. This led to an international discussion regarding what were then called humanitarian interventions. This was not an esoteric debate about theoretical concepts; in 1999, the failure of the Security Council to authorize strong measures to halt the Serbian government's violence against the Albanian population of Kosovo, at that time still part of the Republic of Serbia, led to NATO's decision to begin a military air campaign, even without a Security Council mandate, which after three months of aerial bombardments forced Belgrade to abandon control of Kosovo.

This deeply divided the international community, pitting those who denounced the intervention as illegal against others who argued that the moral imperative to prevent or put an end to mass atrocities trumped the principle of legality. To explore the possibility of reconciling these two positions, the Canadian government established the International Commission on Intervention and State Sovereignty, which developed the principle of Responsibility to Pro-

tect, which was adopted by the UN General Assembly in 2005 in paragraphs 138 and 139 of the Outcome Document of the so-called World Summit of Heads of State and Government.

The text of these two paragraphs was carefully drafted. It limited the international community's focus on RtoP to four specific types of mass atrocities: genocide, war crimes, ethnic cleansing and crimes against humanity. This focus on these four crimes is often described as "narrow" but "deep": narrow because it only applies to the extreme circumstances of these four mass atrocities, not to any humanitarian emergency.

Why deep? Paragraph 138 makes it clear that the responsibility to protect populations against these four types of mass atrocities primarily lies with each individual state, and it calls upon the international community to encourage and help states exercise this responsibility. However, the following paragraph 139 also recognizes the responsibility of the international community, through the UN, to assist in protecting populations, should national authorities manifestly fail to protect their own populations against the four types of crimes. Moreover, it adds that this can mean taking collective action, in a timely and decisive manner, through the Security Council on the basis of Chapter VII of the Charter, which includes military action.

The international community also honored the UN Charter in paragraph 139 by awarding a decisive role to the UN Security Council in the decision making in collective action in RtoP-situations, and UN member states have accepted the central role of the Council; although the Council is not without its critics. Certain suggestions included in the ICISS-report to address some of these criticisms by establishing criteria for military intervention or requesting that the permanent members of UNSC refrain from using their veto power in cases of mass atrocities were not included in these paragraphs.

Three Pillars of the Responsibility to Protect

However, I wish to stress that the Responsibility to Protect involves much more than military intervention. The Secretary-General's 2009 Report introduced a three-pillar strategy for RtoP implementation:

Pillar 1: The responsibility of the state to protect its own population

Pillar 2: International assistance and capacity building to enable states to exercise this responsibility

Pillar 3: The responsibility of the international community to take timely and decisive measures, if a state fails to exercise this responsibility

Such action can take many forms – fact-finding, suspension from international organizations, arms embargoes, targeted sanctions, and as a last resort, military action. Thus, even Pillar 3 concerns much more than military intervention. However, military measures are the most sensitive – the UN authorizing military measures against one of its members because of the way a government treats its own population.

Sovereignty and RtoP

The Netherlands perceives the Responsibility to Protect as an emerging norm and one of the most important recent developments in international relations, together with the establishment of the International Criminal Court. RtoP is a fundamental shift in the doctrine of sovereignty, which has long governed the relations between states. It reflects the growing acceptance of a doctrine that places the state at the service of the individual citizen— "sovereignty as responsibility," to employ a term coined by scholars and practitioners Francis Deng and Roberta Cohen.

However, even in the past, sovereignty was rarely considered entirely unqualified. As with the doctrine of state sovereignty,

this other doctrine, sovereignty as responsibility, has a long history.

The Act of Abjuration, which was signed at The Hague in 1581 and which was a kind of Declaration of Independence in the Netherlands' revolt against the King of Spain, states: "… that God did not create the subjects for the benefit of the Prince … but rather the Prince for the sake of the subjects, without whom he would not be a Prince, to govern them justly and wisely, to support and love them as a father does his children and a shepherd his flock, and even to protect them at the risk of his own life and limb."

Four hundred years later, UN Secretary-General Kofi Annan defended this notion in a speech in which he noted that the old orthodoxy of state sovereignty was never absolute. "After all", he said, "the Charter was issued in the name of the peoples, not the governments, of the UN. Its aim is not only to preserve international peace – vitally important though that is – but also to reaffirm faith in fundamental human rights, in the dignity and worth of the human person. The Charter protects the sovereignty of peoples. It was never meant as a license for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power."

RtoP is therefore not truly new. The core underlying concept that states have an obligation to protect men and women from the worst atrocities is well established. Basic human rights principles were adopted in the UN Charter and the Universal Declaration of Human Rights, and there is at present a substantial body of international human rights law. The UN adopted the Convention on Genocide in 1948, which stated that persons committing genocide shall be punished whether they are constitutionally responsible rulers, public officials or private individuals. Moreover, the protection of civilians during armed conflict is well established in international humanitarian law. The importance of the advent of RtoP is that the

international community for the first time accepted its collective responsibility to take action, and if necessary even military action, should states fail to protect citizens from genocide, ethnic cleansing, war crimes, or crimes against humanity.

RtoP thus imposes two obligations—the first upon each state individually and second on the international community of states collectively. By embracing the responsibility to protect, a long and unresolved debate over whether to act became, instead, a discussion of how and when to act.

Application of the RtoP

The application of RtoP in real world politics is worth discussing because a discussion of how and when to act is not necessarily easier than one concerning whether to act. This is precisely what we observe today in the case of Syria. Syria is on the Council's agenda and debates continue on how to act and which measure to adopt, but deep divisions exist and the suffering continues.

However, we have also witnessed more successful applications of Responsibility to Protect in recent years, especially in less well-known situations such as Guinea or Kenya, which prevented further mass atrocities.

Guinea

On 28 September 2009, government forces in Guinea interrupted a peaceful political protest in a stadium in Conakry and opened fire on civilians. According to an investigation by Human Rights Watch, the violence resulted in over 150 civilian deaths, at least 1400 wounded, and reports of widespread sexual violence and rape. The international community responded rapidly to the crisis by increasing the pressure on the junta using a variety of tools, including condemnation, mediation, arms embargoes, sanctions and threats of coercive measures. Elections were held, and the crisis ebbed.

Kenya

Kenya is another example where an emerging risk of mass atrocities was halted. In 2007, the results of presidential elections triggered widespread and systematic violence, resulting in more than 1,000 deaths and the displacement of over 500,000 civilians. The clashes were characterized by ethnically targeted killings. The international community responded swiftly. In this instance, the African Union occupied the leading role based on article 4(h) of its Charter, which gives the Union the right to intervene in the affairs of a Member State in the case of grave circumstances, namely: war crimes, genocide and crimes against humanity. The Charter of the AU was adopted in 2002, several years before the UN embraced RtoP.

Former UN Secretary-General Kofi Annan – heading the African Union Panel of Eminent Personalities – was accepted by both opposing political parties in Kenya. The mediation efforts led to the signing of a power-sharing agreement on 28 February 2008. Subsequently, the international community continued to collaborate with Kenya on issues such as a new constitution, judicial and police reforms, reconciliation, and early warning systems. The next election will be on March 4, 2013; hopefully, similar violence will not occur because the situation is certainly not yet stable.

These are, therefore, two examples of more or less preventive measures that halted RtoP-situations and avoided potential large-scale killings and other mass atrocities. We have also witnessed examples of more coercive efforts by the international community in employing the Responsibility to Protect in the case of Libya and Cote d'Ivoire in 2011.

Libya

Protests that began in the capital of Tripoli spread across the country within weeks to the city of Benghazi, which became the opposition's stronghold and was soon subject to shocking brutality as Gaddafi dispatched the national army to crush the unrest. The Libyan leader expressed a clear intent to continue committing massive human rights violations by announcing to Benghazi residents that his forces would show "no mercy" to the rebels. Gaddafi's intentions were clear in his speech of 22 February, when he used language reminiscent of the genocide in Rwanda and stated that he would rather die a martyr than step down. He also called on his supporters to attack the protesting "cockroaches" and "cleanse Libya house by house" until all protestors had surrendered.

Faced with Gaddafi's imminent intention to massacre the city's population, it was clear that stringent international action in response to the Libyan government's manifest failure to uphold its responsibility to protect was necessary to halt ongoing crimes and prevent a bloodbath. The Arab League played an important role in setting the stage for international action by calling for measures by the Security Council.

On 26 February, the UN Security Council adopted resolution 1970. This resolution was adopted by consensus and affirmed the government of Libya's 'responsibility to protect'. It called for a ceasefire and steps to fulfill the legitimate demands of the population. It also referred the situation to the Prosecutor of the International Criminal Court and imposed an arms embargo, a travel ban and an asset freeze. However, this did not stop Colonel Gaddafi. Threats against civilians in Benghazi became even more grave, and the Security Council decided to swiftly adopt resolution 1973 on 17 March 2011, authorizing the use of military force not against a country that had attacked another country or committed some other act of aggression, but against a government that was attacking its own population. In doing so, it invoked the international community's responsibility to protect civilians.

Soon after the adoption of Resolution 1973 on Libya, the Security Council also adopted a resolution on Cote d'Ivoire that used similar language on the RtoP. Subsequently, the forces of the new President Ouattarra, with the support of the French troops stationed in the country, attacked the defeated president Gbagbo and arrested him in the presidential palace.

Unfortunately, in recent years, we have also witnessed far less effective responses by the international community with regard to RtoP-situations, for example in Darfur, or a failure to take any real action at all, as was the case in Sri Lanka, despite the mass atrocities that were committed in both situations, which brings me to Syria.

Syria

The situation in Syria is clearly an RtoP-situation. The regime, but also some members of the opposition, are committing crimes against humanity according to various reports of the Commission of Inquiry established by the Human Rights Council, and such behavior is reported in the news on a daily basis. Senior UN-leadership, including the Secretary-General, the High Commissioner for Human Rights and the UN's Special Advisers on the Prevention of Genocide and the Responsibility to Protect, have called the situation in Syria an RtoP-situation. In multiple statements, the UN leadership has made clear that it was alarmed by reports of the use of indiscriminate fire by Syrian security forces and associated militias against densely populated areas in several cities, resulting in high numbers of deaths and injuries.

Mr. Adama Dieng, the UN's new Special Advisor for the Prevention of Genocide, expressed particular concern in his most recent statements that as the situation in Syria deteriorates further, there is a growing risk that civilian communities, including Alawites and other minorities perceived to be associated with the Government, its security forces and its militias, could be subject to large-scale reprisal attacks. He also called

on all actors to condemn hate speech that could constitute incitements to violence against communities based on their religious affiliation.

It is clear that the Government of Syria is manifestly failing in its responsibility to protect its population. Unfortunately, however, the UN has not yet been able to act on the commitment made by all Heads of State and Government at the 2005 World Summit to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, including their incitement. Only small steps have been possible, such as the appointment of a Joint Envoy, first Mr. Annan and now Mr. Brahimi, to attempt to find a political solution. However, the UN Security Council has not applied any serious pressure due to multiple vetoes by China and Russia.

The argument one hears is that strong measures by the international community would entail foreign intervention, which would only lead to chaos. However, in reality, the opposite is the case. Early and strong involvement by the UN, backed by appropriate Security Council resolutions and a united international community, could perhaps have prevented the total chaos that is now the reality in Syria. In other words, the chaos scenario that some countries predicted if the UN had taken early action along the lines of resolutions 1970 and 1973 has emerged due to this inaction. This reminds us that both action and inaction entail serious risks and costs, and the cost of the Security Council's inaction regarding Syria increases on a daily basis.

Second, taking initial steps by adopting a 1970-type of resolution authorizing a weapons embargo, asset freeze and other sanctions would in no means automatically result in military intervention. Russia and China retain veto power over a 1973-type of resolution authorizing military action. Moreover, regional actors are not calling for military action as in the case of Libya. This argument that the Security Council taking

non-military actions will inevitably lead to military intervention would in fact completely paralyze any Council action in any country if applied consistently.

Moreover, when this argument was mobilized on a number of other occasions in recent years (for example when sanctions were applied against Iran and North Korea), a solution was found by referring explicitly to Article 41 of the UN Charter in the relevant Security Council resolution. Article 41 only covers "measures not involving the use of armed force", which forms an additional guarantee that these resolutions could not be used as a legal basis for military action.

Due to this inaction on the part of the Security Council and the unwillingness by some to exert serious pressure to achieve a political solution, the call for military action is increasing in societies around the world. Is this a possibility on the basis of the principle of RtoP, without a Security Council mandate? The answer is: not with an appropriate legal basis. The Heads of State and Government clearly agreed in 2005 that any collective action should be, on a case-by-case basis, sanctioned the UN Security Council. Therefore, we have no legal basis to intervene militarily without a Security Council mandate. This is the state of affairs, and one cannot help but think that it is a pity that the decision of the World Summit did not include an agreement that the permanent members of the Security Council would not use their vetoes in cases of mass atrocities.

"A new 1970"

For Syria, we therefore need to continue to work through political means. From an RtoP perspective, we need to again seek a resolution with an emphasis on a political transition in line with the Geneva Communiqué agreed to by the Action Group for Syria in July 2012, which outlines a framework for political transition that meets the legitimate aspirations of the Syrian people.

A recommitment to this communiqué and its implementation is necessary and will also require unified pressure on the regime and other armed groups. Unified pressure could come in the form of an arms embargo, ensuring that the conflict is not further fuelled by additional arms. An asset freeze by all members of the UN would deplete the resources that enable the continuation of the fighting and killing. Moreover, accountability is necessary, which could be achieved through a referral to the ICC.

However, reaching an agreement on such a resolution does not seem realistic in the short term because of opposition from Russia and China. In the short term, there is therefore unfortunately little to be done except to continue what the friends of Syria are doing by providing humanitarian aid, support for the opposition and engaging with Mr. Brahimi. This is highly unsatisfactory, but the commitment to the Responsibility to Protect is unfortunately not strong enough for certain countries to take decisive action, so it seems, notwithstanding their having signed the 2005 Outcome document.

Conclusion

RtoP has made considerable conceptual progress, but further operationalization is crucial. The implementation of Pillar 3 by the UNSC has been far less satisfactory. The UNSC is a highly politicized body, and national interests often dominate decision making, which often results in inconsistencies in policy and practice. The arguments advanced by Russia and China have to be understood in the context of national interests and the primacy of the principle of national sovereignty. The doctrine of sovereignty as responsibility has yet to take sufficient root.

It would also be naive to believe that humanitarian motives are the only motives for countries to intervene politically or militarily. Often, a mixture of interests and others motives are at play, of which some are value driven and others inspired by self-interest. The principle of the RtoP enhances

the value driven argument within these complex considerations.

The decisions of the World Summit of 2005 have tremendously increased the moral and political pressure faced by members of the Security Council, and the international community at large, to refuse to accept the recurrence of mass atrocities and feel a responsibility to prevent or address them when they occur. This remains a major step forward since Rwanda and Srebrenica.

The Responsibility to Protect: Origin, Content and Implications

Michael Doyle[5]

RtoP is a landmark development in the international normative structure of collective security. Here, collective security not only applies to states but also to people, which can be called collective human security.

This concept gives license to exert pressure if countries fail to protect their own people through certain measures that go beyond the standard international legal provisions such as those in the UN charter. It allows more than a simple reading of the charter or traditional, customary international law. It allows the use of residual pressure if governments fail to protect their own people. Equally important is that this concept restricts the use of pressure or force to four types of crimes: war crimes, crimes against humanity, ethnic cleansing and genocide. The decision to use pressure or force rests with the Security Council. The essence of this doctrine is that we would not have one without the other, and we have to understand that this combination of being a license and restriction makes RtoP revolutionary.

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International law is highly contradictory. Article 24 of the UN Charter prohibits the use of force to interfere with the territorial integrity of sovereign states. Article 51 makes an exception for individual or collective self-defense. A state can use military force against another state if it has been attacked individually or collectively. A state can also use a military force unilaterally if it has been invited to do so by another state, as in the example of the states that came to the assistance of Kuwait in 1991 when it was attacked by Iraq. Article 39 of Chapter VII provides the Security Council with broad discretion to authorize the use of force not only for self-defense but also for prevention, addressing threats to the peace, breaches of the peace, and acts of aggression.

Therefore, a state can use military force if invited, in self-defense or with the authorization of the Security Council. However, in international law, one of the most deeply held norms relates to genocide. In the genocide treaty, all states have pledged to prevent, stop and punish the crime of genocide. Genocide occurs within state borders that are otherwise respected in such domestic issues, which has been declared a deeply held fundamental norm in international law.

Practical experience has shown that the phrasing of Article 39 provides nearly unlimited discretion to the Security Council to determine what in its view constitutes threats to international peace and security. During the 1990s, the Security Council authorized interventions, for example in Haiti in 1994, to restore a democratic government. There is nothing in the Charter regarding interventions to restore democracy, but nonetheless the Security Council authorized them. It then found an international rationale for the intervention, but who believes that the State of Florida was threatened by desperate Haitians arriving in boats? The real rationale for the intervention was humanitarian concerns and the restoration of democracy in the sense that America believed that this was legitimate. The Security Council operates with very little con-

straint. Libya appealed the Haitian case to the International Court of Justice. In this famous case, the International Court of Justice stated that it would not review Security Council decisions regarding Chapter VII, affirming that the Security Council has license to decide what it regards as international peace and security.

On the one hand, the Charter limits the use of force to self-defense and invitation and guarantees states' domestic sovereignty. On the other hand, however, there are powerful norms on genocide and the Security Council's substantial discretion that, in the 1990s, was used for numerous purposes such as humanitarian concerns, local and regional security and democracy, as I mentioned regarding Haiti and elsewhere. The International Court of Justice has no ability to challenge such decisions.

The origins of RtoP go back to the tragedies that occurred in Rwanda and in Bosnia in the 1990s. It was also a focus for the international community during the events in Kosovo in 1999. The Goldstone Commission reported that what took place in Kosovo was illegal because it was not an act of self-defense nor was Kosovo a part of NATO. There was no invitation from Serbia, and there was no Security Council authorization because Russia was not prepared to allow it. The case was illegal but legitimate in the view of the commission that examined the situation afterwards. It was legitimate because the Kosovars faced extreme threats in terms of not only casualties being suffered but also the massive ethnic expulsion that the Milosevic government seemed to be planning. The circumstances "when there are severe violations of human rights or humanitarian law and there is a failure of the state" seemed to legitimate intervention without Security Council authorization. The definition of the circumstances might be reasonable, but it is incredibly broad and indistinct. Do we wish to have that as a legitimate trigger? According to this definition, when a state has a firm conviction that se-

vere human rights violations are taking place, it can use force across the borders.

The fierce pushback expected by many took place. The group of 77 condemned the notion of humanitarian intervention in their Ministerial declaration of September 1999. The international community was divided: NATO members defended the Kosovo intervention as legitimate; and a very large part of the rest of the international community, at least through the voice of the G77, condemned it and overwhelmed the NATO members.

These debates inspired then Secretary-General Annan, with the strong and full support of the government of Canada, to form the International Commission on Intervention and State Sovereignty (ICISS) under the important chairmanship of Mohamed Sahnoun and Gareth Evans. A group of eminent commissioners performed a very thorough investigation of this question. They decided to devise a different standard for when force can be used for humanitarian purposes: only when there is a large-scale loss of life, "not just human rights violations". When a state fails to stop a large-scale loss of life, through action or inaction, the Security Council is the proper authority to intervene. However, it is not the only authority: if the Security Council does not act, others will, and this conclusion is contained in the Evans report.

The ICISS's report was then presented to the Secretary-General in the spring of 2001. I worked for then Secretary-General Kofi Annan at the time. He asked me to arrange a room in the UN where the ICISS would present the report and discuss it with the member states. I approached then Chef de Cabinet Mr. Ban Ki-moon and then President of General Assembly Minister Han from South Korea. Mr. Ban Ki-moon replied that there was no way this report could be discussed within the UN framework because of its controversial nature. The report was then presented at a hotel across from the UN. There was not enough agreement

in the UN to adopt the report in any formal or meaningful sense in 2001. The Security Council then held its annual retreat some months later, and the theme was RtoP. Evans and Sahnoun presented the report at this confidential meeting of the Security Council. There was a very extensive discussion among the members, and unusually for the Security Council, they were perfectly unanimous and able to achieve consensus. They decided that RtoP was within the purview of the Security Council's discretion. That is, they could adopt this report and act on the basis of it, and every state agreed upon this point. Syria was a member of the council at the time, and the Syrian Permanent Representative cabled Damascus for confirmation and received it. They all agreed that RtoP was within the purview of the Security Council, but they also unanimously agreed that they had no obligation to act. On the one hand, they argued that they had the right to act on the basis of RtoP, but on the other hand, they were unwilling to enunciate it as a matter of pubic principle and be morally or normatively obligated to act. It then took four additional years of excellent diplomatic work by Evans and Sahnoun and their colleagues to persuade the international community that this should be embodied in the 2005 summit document.

What happened to make that possible? First, they narrowed the triggers for the use of coercive force and responsibility that would be enforced internationally, if necessary, to four crimes: genocide, crimes against humanity, ethnic cleansing and war crimes. Neither broad human rights violations nor large losses of life, but only those four specific crimes constituted the case for RtoP. The four crimes were written five times in the paragraphs of the outcome document of the World Summit. The other important element of the document is that it gives license to the international community and the Security Council to protect individuals. The restriction is that none of this be done through unilateral action. Exclusive purview is attached to the Security Council

to authorize coercive measures if necessary, should the member state fail to protect its own population.

There have been several cases where RtoP has been considered. In May of 2008, a cyclone struck Myanmar and had devastating effects across the country. Myanmar's military government was not adequately assisting its population. There were reliable reports circulating that numerous people were subject to waterborne diseases and were not receiving adequate food. This was a serious emergency case, and therefore, a number of international commentators argued this was an RtoP situation. There was immediate pushback, including from the UN, the Secretary-General, and the Security Council, that this was not truly an RtoP case. The situation in Myanmar was horrific, and assistance was urgently required. However, the circumstance did not justify applying RtoP pressure on the government of Myanmar, despite their lack of haste in providing assistance to their population. The reason was that the situation in Myanmar was not a crime against humanity. For crime to be a crime against humanity, there must be a systematic pattern of abuses that reflect planning and intentionality on the part of the government. There was no evidence of intentional and planned abuses. The Secretary-General and the UN community backed off and argued that this was not an RtoP case.

When we examine the election-related violence in Kenya in 2007-2008, it is clear that RtoP played a significant background role. Kofi Annan, after returning from mediation efforts in Kenya, told me that he never used the phrase RtoP. Behind the scenes, he and the Kenyan government and opposition knew very well that if adequate actions were not taken to protect the citizens, who suffered greatly, coercive measures could be adopted by the international community. Kofi Annan said that this was quite important to the negotiations.

In Guinea, the words RtoP were used, and this was helpful in producing the transition to a legitimate civilian government and halting some of the nuisance that occurred there in 2009.

In Libya, Security Council resolutions 1970 and 1973 were very important. These were the second and third times that coercive measures under Chapter VII were authorized with specific reference to RtoP. The support of the Arab League was important in this case. This regional endorsement was quite influential in leading China and Russia to abstain rather than exercise their vetoes. One can argue that a regional escalation was avoided. One can also argue that there was a pattern of war crimes that was increasingly well-known and well-documented. As President Obama noted, there was a danger of a massacre in Benghazi that spurred action on the part of NATO and created pressure for the resolution to pass. The intervention had one very good outcome in that it certainly helped Libyans to survive who otherwise would not have. If they faced Gaddafi's forces alone, they would not have been able to succeed. They would have been destroyed.

However, there has been some buyer's remorse on the part of certain countries, which regard this as a move towards regime change authorized by the UN. There have been complaints, including from Russia and China, that that was not what they thought that they had agreed to. They believed that they had agreed to apply pressure through negotiations to determine future outcomes and that this would be the extent of protection, not a general air campaign against Libya.

Ambassador Rice contends that she carefully briefed her colleagues on the Security Council that there was no way to protect Libyans on a case-by-case basis. If there were to be a no-fly zone and NATO aircraft over Libya, they would have to attack the command and control centers and all logistical bases of the Libyan air force.

Nonetheless, we must mention that they were covert measures to assist the rebels that were not covered by resolution 1973. Some gulf states provided direct military aid to the rebels. At present, we are suffering from this decision. Russia and China are refusing resolutions that would place symmetrical pressure on the rebels and on the government in Syria such that it would hopefully bring them to the negotiating table. Kofi Annan, when he returned, frustrated that his mission to attempt to reach a mediated solution did not succeed, said that he was sent to Syria completely disarmed to attempt to negotiate with these powerful actors. He did not have the united support of the Security Council that would send a message to Mr. Assad that negotiations were essential, and in the absence of such support negotiations could go nowhere.

Two points are worth mentioning. One is that we must have additional conversations and another Secretary-General's report on the circumstances under which RtoP should be exercised. The three pillars doctrine is a good approach. We need to refine the specifics of the third pillar: when it is used to pressure a regime, when it is used to mediate, and when it is used in certain extreme circumstances. We need to have a strategic discussion on this issue. The Security Council needs to accept the notion that they could establish a sub-committee to help ensure that when any license is given, all parties would feel assured that they were not writing a blank check. That said, this committee cannot micromanage military operations from New York or elsewhere, but it should monitor and follow up on the implementation of any RtoP resolution.

The alternative of not finding a new common ground for RtoP, which we face today, represents a stalemate where RtoP is not available to assist Brahimi's mediation efforts. However, we have workarounds: states that are beginning to recognize the rebels, as are certain Gulf States that are also sending weapons, and there are many

other states sending non-lethal weapons. The efforts of rebels will be strengthened. A total of $60 million has been sent to be used for numerous purposes.

This war has yet to be halted and will continue to escalate. The only truly effective solution is a united approach, and as Mr. Kerry mentioned in Rome, the additional assistance for the rebels is not intended to fight the war but to persuade Mr. Assad that it is really time to come to the negotiating table. For that strategy to succeed Russia and China and the other members of the Security Council will need to collaborate with their colleagues to develop a united approach.

Appendix

United Nations 2005 World Summit Outcome Document

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. 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 from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

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Mission

Peace Islands Institute (PII) aspires to facilitate a forum of mutual respect and collaboration, both welcoming and accepting varied viewpoints and voices with the intent to develop original and alternative perspectives on vital issues that our society is facing, generate solutions to these issues, support successful practices, thus promoting education, friendship and harmony and acting as an island of peace for all peoples in a society of different ethnic, cultural and religious backgrounds.

Vision

In a diverse world, where even the farthest point is a click away, every culture, race, religion, tradition and nation become neighbors. We have to live and interact together in this "global island" we call Earth. Peace Islands Institute (PII) serves to act as the soil for fruitful dialogue, peace, and civil service just as the soil on this "global island" gives forth flowers of different colors, scents and shapes. PII envisions a world becoming an island of peace in the ocean of our universe; a community in which people from all walks of life interact with each other and cooperate to serve their communities, thereby strengthening civil society and promoting the development of human values.

Goals

- Facilitate unity for building peace, education to eradicate ignorance, welfare to fight against poverty and hunger, progress to promote development
- To develop original and alternative perspectives on global and social issues as they relate to our lives, as well as present explanations and solutions.
- Support successful practices in peace building.
- Build relationships among diverse cultures and traditions.
- Unite different point of views on common global issues
- Provide educational platforms for global and social challenges.
- Encourage people to actively engage in solving social and global problems of humanity.
- Encourage business owners to be part of a philanthropic economy to end problems like poverty and hunger.
- Provide an atmosphere of peace and understanding for all people, regardless of race and cultural tradition.
- Prepare annual reports for both non-governmental agencies (NGOs) and governmental agencies on social issues.

SYRIAN CIVIL WAR

The Policy Positions of International Actors

Implications of the "Responsibility to Protect"

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