

Military Humanitarianism: Syria Hasn't Killed It

Pundits claim that the war in Syria has sounded the death knell for humanitarian intervention and the Responsibility to Protect (R2P)—*resquiescat in pace*, according to David Rieff.¹ By failing to intercede in that country's brutal civil war, many believe the international community effectively turned its back on an important emerging international norm, one that over 150 heads of state endorsed at the UN's 2005 World Summit.²

But is this really the case? In December 2013, for example, the UN Security Council (UNSC) authorized military action to counter the Central African Republic's (CAR) genocidal chaos. Subsequently France, the ex-colonial power, joined forces with the post-colonial African Union (AU) to deploy troops to protect civilians. The UNSC also imposed an arms embargo on the country and warned the UN of the need for a possible peacekeeping mission. In another example, the UNSC in April 2013 approved action in Mali, led by France and the 15-nation Economic Community of West African States (ECOWAS), to counter Islamist extremists.

Of course, the most famous R2P example is when the UNSC approved the March 2011 international air war against Libya, led by Paris and London with Washington "leading from behind." This was the first-ever such authorization against a functioning *de jure* government, and the first such use of substantial humanitarian military muscle since the contested 1999 NATO operation in

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Kosovo. International action forestalled a massacre in Benghazi and led to the change of regime in Tripoli.

Predictably, Libya spurred many Third World countries to express a sort of buyer's remorse about R2P. Brazil took the lead in voicing these concerns: during the 66th session of the UN General Assembly in fall 2011, Brazil's UN representative wrote that "the international community, as it exercises its responsibility to protect, must demonstrate a high level of responsibility while protecting," a concept that has become known as RWP.³ Tautological, ambivalent, and ultimately mischievous, this framing nonetheless reflects R2P's perceived pertinence and power. A prominent member of the global South was compelled to communicate uneasiness about the use of military force for regime change, a sensitive topic for many developing countries. At the same time, an emerging Brazil was obliged to have a foreign policy unequivocally supportive of human rights; Brasilia thus could not be among R2P spoilers.

The earlier ideological fireworks characterizing R2P as a "Trojan horse" for a new brand of Western imperialism are not entirely squelched. Rhetorical flourishes from such usual suspects as Cuba, Nicaragua, Sudan, Venezuela, and Zimbabwe continue at high diplomatic decibel levels. For instance, the Nicaraguan president of the UN's 64th session of the General Assembly, the former Maryknoll priest Miguel d'Escoto Brockmann, opened the 2009 session by labeling R2P "redecorated colonialism."⁴

But if Western colonial powers are on the defensive and R2P truly is on the wane since Libya, how can one explain the enthusiasm for the 2013 interventions in the CAR and Mali? A middle ground has been broken for coming to the rescue of civilians—at least in some cases, there is the double-standard of inconsistency whereas formerly there had been only a single standard: do nothing. Historically there has *always* been too little deployment of military force for human protection. "There is nothing constant in this world but inconsistency," advised Jonathan Swift, and this bit of folk wisdom certainly applies to international politics and R2P. When reviewing R2P's rapid normative journey in the turmoil of the post-Cold War era, what stand out are the constant and ongoing trade-offs among legality, feasibility, and legitimacy.

R2P's Unfinished Journey

The birth of R2P came from a 2001 report, titled *The Responsibility to Protect*, by the International Commission on Intervention and State Sovereignty (ICISS).⁵ This report defended the idea that sovereignty is a responsibility, one that includes protecting internal populations. If a state actively commits mass atrocities, or even fails to protect against them, the international community of

states then has a responsibility to intervene, whether diplomatically, economically, or militarily.

The main tactical advantage of R2P is that state sovereignty is conditional, rather than absolute; it entails duties, not simply rights. Rather than placing the emphasis on the rights of interveners, the focus shifts dramatically to the rights of vulnerable people. Sovereignty is not diminished but redefined; as such, R2P permits a conversation about the limits of state power even with the most committed defenders of sovereign inviolability. After centuries of serving as a justification and shield for virtually any horror, sovereignty at least no longer provides a license for mass murder in the eyes of legitimate members of the international community of states.

Every state has a responsibility to protect its own citizens against gross violations of human rights. If any state, however, is manifestly unable or unwilling to exercise that responsibility—or, as often is the case, actually perpetrates mass atrocities—its sovereignty is suspended. Meanwhile, the responsibility to protect civilians in distress devolves to other states, ideally acting through the UN Security Council. This notion of a dual responsibility—internal and external—drew upon South Sudan’s current UN ambassador Francis Deng’s and former U.S. official Roberta Cohen’s pioneering work at the Brookings Institution on “sovereignty as responsibility” to address how best to succor and protect internally-displaced persons—refugees in all but name, persons forcibly displaced within their countries of origin.⁶

But still, after 2001, R2P remained a broad concept with imprecise conditions for application. Then, in 2004, the UN’s High-Level Panel on Threats, Challenges, and Change issued its report, *A More Secure World: Our Shared Responsibility*, which endorsed “the emerging norm” of R2P.⁷ Shortly thereafter, then-UN Secretary-General Kofi Annan included it in his 2005 report, *In Larger Freedom*.⁸ The September 2005 World Summit then included R2P in its Outcome Document, giving R2P three basic pillars: first, a state has a “responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity”—or the shorthand “mass atrocities”; second, the international community is responsible in helping states achieve the first pillar; and third, if a state fails to protect its citizens from the above crimes, then the international community has the responsibility to intervene.⁹ Deploying military force remains an option of last resort after alternatives have been considered and failed.

The 2005 Outcome Document helped refine R2P from a broad to a narrower focus on preventing and halting mass-atrocity crimes. Indeed, the consistency of the norm’s interpretation was bolstered by restricting the number of justified reasons to trigger international responses. As such, the Responsibility to Protect provides a range of possible responses to the most egregious and systematic

violations of fundamental rights that deeply offend any sense of shared humanity. R2P, like human rights more generally, seeks to cross cultural boundaries and ultimately aspires to universal application. The bar is set low—after all, we are not aiming at peace on earth, but rather fewer mass atrocities. By restricting the norm to the most heinous and conscience-shocking crimes, the 2005 agreement clarified the norm and advanced its universal aspirations.

Since 2005, the United Nations has continued to firmly support R2P. Secretary-General Ban Ki-moon appointed a full-time special adviser for the prevention of genocide and another special adviser for promoting R2P. At the outset of his first term, in 2007, he also put forward his own version of R2P's three pillars—encompassing the protection responsibilities of individual states, international assistance and capacity-building for weak ones, and timely and decisive international responses to mass atrocities—and has publicly committed his administration to emphasizing it in his second term (2012–2016).¹⁰ Annually, informal interactive dialogues are followed by a ministerial gathering before the opening of the General Assembly. “Focal points”—or designated government institutions and individuals—exist in about 35 countries, including in the U.S. Atrocity Prevention Board. Perhaps most importantly, the Security Council subsequently has specifically referred to R2P at numerous junctures—seventeen as of December 2013—including on the Great Lakes Region (Resolution 1653), on protection of civilians (Resolutions 1674 and 1894), Darfur (1706), Libya (1973, 1973, 2016, 2040), Côte d'Ivoire (1975), South Sudan (1996, 2109), Yemen (2014), Mali (2085, 2100), small arms (2117), and the CAR (2121, 2127).¹¹ Indeed, it has invoked the norm three times more frequently in the three years *after* Libya than in the six before.

The ICISS coined “R2P” to move beyond the pitched battles of humanitarian intervention. The intergovernmental agreement in fall 2005 on the occasion of the UN's 60th anniversary is appropriately interpreted as a turning point in the norm's crystallization, although not quite “an international Magna Carta”—understandable hyperbole from the State Department's former director of policy planning, Anne-Marie Slaughter.¹²

Beginning with the international response in northern Iraq in 1991, the moniker of “humanitarian intervention” led to circular tirades about the agency, timing, legitimacy, means, circumstances, consistency, and advisability of deploying armed might to protect human beings caught in the crosshairs of armed conflicts. Reticence and even hostility are understandable for anyone familiar with the number of venial and mortal sins justified by colonial powers under a “humanitarian” rubric—for example, by France in Syria in 1860 to protect Christians, or European powers against the feeble Ottoman Empire in the nineteenth century, or by Britain in Kenya to save whites from the Mau-Mau. Countries that gained their independence in the second half of the

twentieth century are unlikely to welcome outside military intervention merely because of a qualifying adjective.

Most observers agree that R2P's potential strength, like all norms, is demonstrated by its legitimate use; but its misuse also demonstrates potential power. As such, abusing the norm—for instance, the United States and the United Kingdom for Iraq in 2003, Russia for Georgia in 2008, and France for Burma in 2008—also helped to clarify what it was *not*.¹³ R2P was not an acceptable rationalization for the war in Iraq after the original justifications (links to al-Qaeda and weapons of mass destruction) evaporated; nor for Moscow's imperial aims in its weaker neighbor; nor for intervention after a hurricane when the local government was dragging its feet but not murdering its population. Such examples demonstrate why many countries fear R2P as a mask for imperialism. The General Assembly's 2009 president Miguel d'Escoto Brockmann invited Noam Chomsky as his special guest to harangue delegates. Meanwhile, *The Economist* described opponents as "busily sharpening their knives."¹⁴

Critics conveniently overlook the most noteworthy previous regime changes resulting from military interventions with dramatic positive humanitarian consequences in 1978 and 1979: the elimination of the Khmer Rouge in Kampuchea and of Idi Amin in Uganda after military interventions by Vietnam and Tanzania, respectively. The potential for normative backpedalling has always been present—all states, and especially former colonies, are jealous of their sovereign prerogatives and fearful of outside meddling. But to date, acquired normative territory has been successfully defended. In addition, the R2P norm has substantial potential to evolve *further* in customary international law. Despite dissent and contestation, R2P's normative agenda has continued to advance, and doubts about the transnational resonance of the Responsibility to Protect have continued to diminish, although not disappear.¹⁵

Grumbling after the Security Council's authorization in 2011 to take action in Libya—especially the theatrical huffing and puffing about "regime change" not having been authorized by the no-flight zone—was reminiscent of high-voltage criticisms that greeted R2P's emergence a decade earlier. International sanctions are supposed to alter behavior away from abhorrent practices by a pariah regime like Tripoli's—that is, causing Muammar Gaddafi to halt abuse and negotiate an end to repression and violence. However, if no such change in behavior occurs, and in Libya it clearly did not, a change in regime should not come as a surprise but as the logical outcome of deploying R2P military force. The justification for intervention was to protect people; and regime change was a by-product of the strongman's refusal to halt his ugly behavior.

The ICISS's original contention was that R2P was an "emerging" norm. Would the journey since 2001, albeit unfinished, permit us to say that it has

“emerged”? The consensus appears to be widening and deepening across both the North and the global South that it has.¹⁶ Yet, R2P’s improved resonance among states and its less acrimonious political tone is scant solace to the casualties and the forcibly displaced in Darfur, Sri Lanka, and Syria. And reluctance, skepticism, and hostility continue to characterize the positions of numerous naysayers.

Hence, we still face the challenge of moving R2P from the soothing statements of advocates to more consistent state practice. Seeking to make “never again” more than a slogan will prove tough work.

Legality, Feasibility, Legitimacy

Contemporary controversies about military humanitarianism typically vacillate between two genuine concerns: the international legality of a humanitarian intervention, on one hand, and its feasibility on the other. Since the signing of the UN Charter in 1945, legality is usually interpreted as spelled out by Article 2 of the UN Charter’s first Chapter (the sovereign equality of states and the principle of non-intervention) and by Chapter VII that non-forcible or forcible sanctions are to be used—with or without humanitarian justifications—only in the cases of self-defense, or of threats to international peace and security when the Security Council so decides. Feasibility takes into account the measure of political will and military capacity. But contemporary debates often bring in a third component, that of moral legitimacy: Is an intervention justifiable?

These debates about military humanitarianism thus are contested for fairly obvious reasons. They also have a ring of *déjà vu*. Advocates often point to moral imperatives, whereas diplomatic debates continue to revolve around the trade-offs between legality and feasibility, but UN mandates too rarely are associated with the physical capacity to deliver. The five permanent members

F Feasibility (measured by sufficient political will and military capacity) is the essential variable.

can block resolutions before they are tested for efficacy, and important powers can readily ignore even categorical language. At the same time, states that are able and willing to intervene do not necessarily garner international support and UN approval before acting. Importantly, there often is an inverse relation between the feasibility of an intervention and its legality.

Much ink and toner customarily are devoted to parsing legality and moral legitimacy, but feasibility is the essential variable, which is measured by the existence of sufficient political will and military capacity to make a difference. Together, they ultimately determine whether, when, and

where to protect and assist vulnerable populations. However shocking to the conscience a particular emergency, and however hard or soft the applicable public international law, when adequate political will and a military capacity exist, humanitarian space will open and civilians will receive assistance and protection.

Libya was unusual: the legal, moral, and political/military dimensions all merged to create the perfect conditions for intervention under the Responsibility to Protect. Rather than speaking truth to power, R2P's value-added in Libya was speaking truth *with* power. The Security Council weighed in, so the action was legal. The West and eventually NATO military action, along with support from the region, meant that political will and military capacity were in evidence. And Gaddafi's intention to eliminate "rats" and "cockroaches"—language also used by Rwanda's regime in its 1994 genocide—indicated the moral imperative.

Syria is different. In that country, mainly the moral dimensions of R2P have to date been apparent. As a result, unlucky civilians are slaughtered while the lucky ones flee. The bloodshed and suffering inflicted by the Bashar al-Assad regime are far worse than Gaddafi's—we are still counting, with upwards of 130,000 dead and 5 million displaced (inside and outside the country). But Moscow's and Beijing's threatened or actual vetoes have paralyzed the Security Council. A combination of urban areas and a patchwork of territories under government or rebel control mean that the military situation does not lend itself to surgical airstrikes. Hence, legality, political will, and military feasibility are clearly absent, which makes a moral appeal feeble.

It was not the R2P norm that explained action in Libya and inaction in Syria, but rather geopolitics and collective spinelessness combined with a difficult military situation on the ground. In addition to the politics in the Security Council, Syria confounded easy generalizations and looked distinctly more complicated, chancy, and confused than Libya. Whereas Libya's relatively cohesive opposition movement was run from inside and spoke with one voice, Syria's was split, based both outside and inside the country, dispersed geographically, and divided politically. The visible but fractious central opposition group in exile, the Syrian National Council, was divided among the Muslim Brotherhood (itself split into more and less tolerant factions) and two other Islamist organizations, the National Action Group and

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the Syria National Movement. Indeed, successive attempts to cobble together a more unified opposition invariably ended in acrimony and failure, while the increasing strength of Islamists has dampened support for “anything except Assad.”

Inside Syria, some 100 rag-tag groups of fighters and unarmed protesters agree on little except that Assad must go. Inchoate and unable to coalesce into a unified force, they have no common ideology; they also lack a clear chain of command to coordinate operations, protests, or arms supplies. It was not until September 2012, in fact, that the Free Syrian Army moved its headquarters from Turkey. Whereas three-quarters of the Libyan population lived in areas that had broken away from the regime and fallen immediately under rebel control, in Syria the opposition is unable to maintain control over major population concentrations. In fact, the opposition is incapable even of exerting control over fighters who increasingly are committing crimes comparable to the regime’s, in particular by the al-Nusra Front and by the Islamic State of Iraq and Syria, but certainly not only by them.¹⁷

In January 2014, a gruesome trove of 55,000 photographs taken by an anonymous defector—a military policeman called “Caesar”—surfaced with numbers inscribed on 11,000 bodies on the eve of “Geneva II.” They were verified by three distinguished international lawyers commissioned by the Qatari government. The actual rather than merely the moral costs of inaction became clear with Nuremberg-like evidence of war crimes. Yet with the government’s having a military edge, what was the likelihood of the regime’s negotiating its own departure?

Whereas Libya’s opposition movement spoke relatively with one voice, Syria’s was split.

Moreover, instead of virtually an entire country mobilizing against Gaddafi (other than those on his payroll), a substantial number of Syrians either support the regime or are sitting on the fence

waiting to see who will prevail. The Assad government has sufficient firepower and support among minorities to keep fighting and maintain control over the central government. Instead of Libya with virtually a single ethnic group (Arabized Berbers, virtually all Sunni Muslims), Syria’s diversity is striking: Arabs constitute 90 percent of the population, but there are substantial numbers of Kurds, Armenians, and others. In terms of religion, Sunni Muslims are about three-quarters of the population, and another 15 percent are Alawites (an offshoot

of Shiite Islam), Druze, and other Muslim sects. In addition to possible inter-Muslim divides, there is a possible cleavage with the Christian 10 percent of the population. Unlike the largely desert-like Libya with a few isolated cities, Syria's numerous urban areas mean that surgical airstrikes are implausible, and that significant civilian deaths from military action are virtually guaranteed. Rather than Libya's small mercenary army that quickly defected or departed, the Syrian armed forces for the most part remain well equipped, disciplined, and loyal.

The specific provisions of the 2005 World Summit Outcome actually can be considered "R2P lite" because they are distinct from the original ICISS conception. The September 2005 summit made Security Council approval a *sine qua non* rather than merely the most desirable outcome in the preferred decision-making process. As a result, the baby of potential international action was tossed out with the muddy bathwater of legality.

We should recall that Canada had originally convened the ICISS precisely because Rwanda and Kosovo, in polar opposite ways, had demonstrated the futility of being held hostage to Security Council vetoes in the face of mass atrocities.¹⁸ Instead of doing too little, too late (in Rwanda) or too much, too early (according to some, in Kosovo, where sanctions were not allowed to run their course and NATO literally jumped the gun), an alternative concept was required. How could the international community of states finesse stooping to the lowest-common-denominator in the Security Council?

The ICISS, of course, stressed the central role of the UN Charter and urged the one entity in the world organization where decisions are made, the Security Council, to act swiftly and authoritatively to halt mass atrocities. But when it does not, or cannot—as has been the case in Syria from the outset—the World Summit decision leaves humanitarians and victims exactly where former UN secretary-general Kofi Annan was in September 1999 when he revisited Rwanda in an address to the General Assembly. He could not lightly dismiss the UN's constitutional provisions, but he also could not justify legalism and doing nothing in the face of mass murder in Rwanda. This compelled him to probe state self-satisfaction. He shocked his diplomatic audience in the General Assembly Hall when he wondered aloud about a dramatic counter-factual: what if there had actually been a state or a group of states willing to act without the Security Council's blessing? "Should such a coalition have stood aside," he asked rhetorically, "and allowed the horror to unfold?"¹⁹ In UN diplomatic circles, answers to that bone-chilling inquiry remain equivocal. However, a resounding affirmative answer would have come from any of the 800,000 dead Rwandans—or similarly by millions of murdered Sudanese or Sri Lankans, Syrians, or Congolese.

The Responsibility to Protect is a principle, not a tactic. Friends and foes both point to the commission's central conceptual contribution and value:

reframing sovereignty as contingent rather than absolute. That principle remains intact in Syria even if international action is woefully absent.²⁰

In fact, the transformation of international attitudes and the ascent of the principle within international diplomatic circles is nothing short of remarkable

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if we contrast the deafening silence that greeted the 1982 massacre by Hafez al-Assad (of some 40,000 people in an artillery barrage of Hama) with the steady stream of hostile condemnations and actions against his son's ongoing murderous machinations. The UN's Joint Office on the Prevention of Genocide and R2P noted the scale and gravity of violations, and indicated what was

tantamount to crimes against humanity.²¹ The Human Rights Council established an Independent Commission of Enquiry, which documented "patterns of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of children's rights," and subsequently condemned the Assad regime by a crushing vote in numerous resolutions, beginning with S-18/1 in December 2011.²² The United States, the European Union, and other states have imposed sanctions. The Arab League condemned Syrian actions, formulated a peace plan, and originally sent human rights monitors. And even the usually supine UN General Assembly condemned the violence and supported the Arab League's peace proposal with a two-thirds majority. On three subsequent occasions, it even more overwhelmingly condemned Assad's unbridled crackdown and mass atrocities and specifically called for his resignation (only 12 of 193 states voted against the resolutions). There was no legally binding decision—only the Security Council can do that—but the overwhelming negative sentiments of the international community of states were very much in evidence.

Dilemmas remain all too palpable as Libya—a weak state with no history of democracy and plenty of evidence of feuds and bitterness, in addition to some 200,000 militia—hurtles headlong into a new era without the kind of post-intervention support for peace-building that the West handsomely financed in Kosovo. We should be perfectly clear: military force is not a panacea, and its use is not a cause for celebration. That said, and despite substantial ongoing transitional problems in Libya, at least concerted international action in 2011 halted Gaddafi's campaign of mass atrocities.

Meanwhile, Syria has continued to hemorrhage. However, the regime's use of chemical weapons in August 2013 led to threats of force and ultimately accelerated international diplomacy to dismantle them. Assad's deployment was a tactical blunder and may have been a game-changer. The resulting threat of U.S. air strikes—despite the lack of support worldwide among populations and

parliaments—seems to have catalyzed a frenzy of diplomacy, Russian engagement, and a hasty but seemingly successful agreement to dismantle Syria's particular stock of weapons of mass destruction (WMDs) under the auspices of the UN and the Organization for the Prohibition of Chemical Weapons (OPCW). Just how far international pressure had pushed the regime became obvious, as the transport of WMDs through rebel territory became the major concern, rather than Assad's intransigence or obfuscation.

In terms of crimes against humanity and war crimes, what could be more abhorrent and less discriminating than the use of chemical weapons? While they could and should have justified an R2P response, they did not. Again, geopolitical calculations trumped the protection of civilians.

The value of a functioning Security Council was demonstrated in legitimizing and authorizing action to halt Colonel Gaddafi's murderous designs on Benghazi. The reverse could be said about Syria—namely, that the costs of having a malfunctioning Security Council were evident. But even here, when the politics were right and the need arose for a face-saving way to dispose of Assad's chemical weapons, the universal UN was called upon to authorize and work with the OPCW.

While of little solace to Syria's victims and their families, clarion calls have reaffirmed the R2P principle. Or as Ramesh Thakur wrote in these pages, "it would be premature to conclude that R2P can be branded 'RIP.'"²³ In comparison with Libya, the "why not" in Syria was clear: the politics in the country and at the United Nations were totally different—demonstrated by three actual or threatened double vetoes from Russian and China—as well as the geography and the demography; the military challenge was far tougher; and the potential costs by 2013 appeared to outweigh the benefits of coercion as insurgent atrocities gradually replicated the regime's. In short, it was only possible normatively to condemn Syria until the use of chemical weapons created a momentum and the political conditions that moral opprobrium had not.

What Next?

We most definitely have not heard the death knell of R2P. When the conditions are right—when legality, feasibility, and legitimacy all merge—humanitarian intervention happens. But R2P is complicated, and states only exercise it in particular circumstances. Double standards, properly understood, relate to dissimilar treatment of similar cases; but cases are inevitably different: Syria is not Libya, Côte d'Ivoire is not Sri Lanka, and the Central African Republic is not Burma. Selective responses are inevitable.²⁴

In case anyone had any doubts, Syria demonstrates that robust R2P rhetoric is automatic, even if actual responses are not. Widespread diplomatic and public lamentations are more prevalent and audible than in the past, but so too unfortunately are loud rejections of infeasible actions against Damascus to counter government-deployed tanks, warships, and heavy weapons against civilians.

That said, Libya was not an aberration, nor is the Central African Republic. Indeed, we should hope that NATO's precedent-setting action in Kosovo was not the last of its kind either. The Independent International Commission on Kosovo appropriately characterized it as "illegal but legitimate."²⁵ It was a justified departure from the Charter regime because the Security Council confronted then what it has in Syria: predictable paralysis and big-power vetoes, mixed with a growing unease because of the nature of the Syrian opposition, mixed with the reluctance of Western publics to wade into another quagmire. Both Kosovo and Libya were feasible, and both were morally justified, although Kosovo suffered from the lack of the Security Council's legal imprimatur.

The pursuit of the normative ideal should not be the enemy of the occasional robust defense of civilians. Human abattoirs are not inevitable. We are capable of uttering no more Holocausts, Cambodias, and Rwandas—and occasionally mean it.

Notes

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