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THE RESPONSIBILITY TO PROTECT AND LIBYA INTERVENTION

Abstract:

The nature of armed conflict changed dramatically in the 1990s. Interstate wars were replaced by violent intrastate conflicts, which caused the casualties and death of many civilians. Due to the proliferation of internal conflicts which resulted in humanitarian crises, the international community has increasingly recognized the significance of international negotiation or intervention for crisis prevention and response. United Nations peace keeping and humanitarian missions are the major tools used for coping with these kinds of problems. International intervention that involves military action, has increased concerns about violations of the sovereignty of states. The responsibility to protect (R2P) was implemented in order to emphasize the relationship between the terms of state sovereignty and individual human rights. It has not been decided yet whether human rights and humanitarian issues are the subjects of security problems or not. However, some international organizations have been trying to develop new rules of protection to prevent atrocities and genocides like those in Rwanda and Bosnia.

□The responsibility to protect the set of principles which defines sovereignty as a responsibility indicates that a state has the responsibility to protect its population from the “four R2P crimes”: genocide, ethnic cleansing, war crimes, and crimes against humanity. It generated some controversies when the United Nations Security Council authorized the North Atlantic Treaty Organization to use military intervention in Libya in 2011, an intervention based on R2P.

The main purpose of this study is to investigate the development of the concept of the R2P and try to explain the limitations and controversies related to the notions and practices of the R2P. Second, the possibility of applying R2P both internationally endorsed R2P crimes and “non-R2P” crimes will be examined in cases concerning Libya and Syria.

Keywords:

The Responsibility to Protect, Humanitarian Intervention, Libya, Syria, United Nations,

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I-Rise of Complex Humanitarian Emergencies

Even after the horrors of the Holocaust and all the many developments in international human rights law and international humanitarian law that followed World War II, when it came to reacting to cases like Cambodia, East Pakistan, and Uganda in the 1970s and '80s, and Rwanda, Bosnia and Kosovo in the '90s, the world was almost in total disarray. (Evans 2012, p. 1)

What should be the response of the international community when faced with situations of catastrophic human rights violations within states, where the state in question claims immunity from intervention based on longstanding principles of national sovereignty? When, if ever, it is right for states to take coercive action, in particular military action, against another state for the purpose of protecting people at risk within it? (Evans 2006, p.703)

In order to reply to these questions we are supposed to analyze the United Nations system briefly at first. The United Nations (UN) is dedicated to respecting the territorial integrity and political sovereignty of its member states. The founders of the organization envisioned its vital role in preventing conflicts between states. It was believed that defending against external aggression would in turn guarantee the personal security of citizens within the respective states. (Lee 2012, p. 3) The majority of armed conflict today, however, stems from civil wars and communal conflicts within a single recognized state, rather than wars between states. Out of a total of 29 major armed conflicts over the past decade 2001-2010, only 2 were fought between states and the remaining 27 cases have been internal (SIPRI Yearbook 2011). These intrastate conflicts, which have become more prevalent since the end of the Cold War, have been based on ethnic, communal, and religious differences within a state. (Lee 2012, p. 3)

Moreover, today's armed conflicts are coupled with the "active and deliberate targeting of civilians, including humanitarian aid workers. The denial of civilian access to basic necessities, such as food, water and shelter, and limited international humanitarian access to crisis zones are also the main causes of widespread human afflictions, not to mention cases of ethnic cleansing or genocide which represent the worst forms of humanitarian crises in conflict areas (Lee 2004, p. 53).

The extraordinary thing is how long it has taken to reach an international consensus to how to respond to these catastrophic crimes. In the '90s, 'humanitarian intervention' was only way to intervene. The options were 'Send in the Marines' or do nothing. The

global North often rallied to the 'right to intervene', but the global South was understandably deeply reluctant – after all its unhappy historical experience – to accept the idea. So we had all the division and inaction and despair that most of us here will remember all too vividly: saying each time 'never again', but then having to look back over again, and again. (Evans 2012, p. 1)

The good news is that a new international norm may ultimately become a new rule of customary international law. The bad news is that the story is incomplete. With the forces of resistance to the idea of the responsibility to protect is still quite strong in the international community, for a variety of reasons, however there is a critical need to maintain the momentum of this conceptual evolution. (Evans 2006, p.704)

II. Concepts and Critiques of Responsibility to Protect

1. Development of the Responsibility to Protect Concepts

In understanding how far we have come, the best place to begin is with the UN Charter of 1945. The UN founders were overwhelmingly preoccupied with the problem of states waging war against each other. Thus, the use of force became outlawed. The only exceptions are self-defense in terms of confronting an attack and authorization by the Security Council, a new international institution given unprecedented authority to act in cases of threats to international peace and security. However, with regards to external force being applied in response to an internal catastrophe, the charter pointed with a clear statement of the principle of non-interference in Article 2(7): "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state." (Evans 2006, p.704)

The tendency to interpret the charter was very limited not only because of the Cold War, but also the large increase of UN membership during the decolonization era. States, viewed the act of non-interference as a way of protecting themselves against threats and pressure from more powerful international actors seeking to promote their own economic and political interests. This act stood in the way of generating a sense of needed action towards human rights violations resulting from catastrophic internal conflicts.

One major exception that was agreed on, was the non-intervention principle concerning the Genocide Convention of 1948. The agreement reached from this convention was regarded as a major achievement in response to such conflicts;

nevertheless little was done throughout the Cold War years to implement the terms of the Genocide Convention itself.

Other relevant instruments emerged during the Cold War period, including the Universal Declaration of Human Rights and the 1966 conventions on civil and political rights as well as economic, social, and cultural rights. But in terms of practical implementation and commitment, the world refrained from taking active decisions to interfere in domestic affairs, opting instead to take a stance based on grandiloquent rhetoric. With the end of the Cold War, there was new hope for a newly active and effective international security system. The international involvement in Kuwait against Iraq's invasion in 1991 was a valid example of how the international system needs to function when reacting towards acts of interstate aggression. But this euphoria did not last long.

Furthermore, during the 1990s, intrastate conflicts became more prevalent since the end of the Cold War. The international community did react through the UN, it was too often erratic, incomplete, or counterproductive. So we had the debacle of the intervention in Somalia, Rwanda, Srebrenica, and also the Kosovo when the international community did in fact intervene, without the authority of the Security Council in the face of a threatened veto by Russia. (Evans 2006, p.706)

After comparing the case of Rwanda (too little and too late) and Kosovo (too much and too early), many voices of concern have been raised urging the development of a new international norm, an alternate way of thinking that would reconcile state sovereignty and international intervention for human rights purposes (Weiss 2007, p. 19). Thus, UN Secretary-General Kofi Annan brought the issue up to the General Assembly in 2000: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights?" His own initial solution to this problem was to say that in these situations national sovereignty had to be weighed and balanced against individual sovereignty. But, when exactly *did* individual sovereignty claims take primacy over state sovereignty? (Evans 2006, p.707)

The Independent International Commission on Kosovo, resolved their report in 2000 about the NATO intervention in 1999 that had not been authorized by the Security Council, the report described the intervention as "unavoidable" because "diplomatic options had been exhausted, and the conflict might have turned into humanitarian catastrophe." The commission concluded that "the intervention was legitimate, but not

legal.” They recognized the need “to close the gap between legality and legitimacy” and recommended that the General Assembly adopt a “principled framework for humanitarian intervention which could be used to guide future responses to imminent humanitarian catastrophes.” (Evans 2006, p.707)

In response to former UN Secretary-General Kofi Annan’s call for global consensus on effective and justified humanitarian intervention for the sake of protecting civilians, the International Commission on Intervention and State Sovereignty (ICISS), which was established by the Canadian government in September 2000, released the *Responsibility to Protect* report in December 2001. (Lee 2012, p. 9)

Responsibility to Protect (R2P) redefines collective security by emphasizing the importance of shared responsibility. The concept is largely indebted to the previous work of Francis Deng on conceptualizing “sovereignty as responsibility” (Cohen and Deng 1998, p.43), as well as Kofi Annan’s call for a new consensus on the competing ideas of “two sovereignties” (national and popular) and how to remedy the challenges facing humanitarian intervention (Annan 1999, p.18).

There were, and remain, crucial differences between R2P and the ‘right of humanitarian intervention’, and it is a fundamental mistake to maintain, as some still do, that R2P is no more than old humanitarian intervention wine in a new bottle. In the first place, R2P is primarily about prevention, whereas humanitarian intervention is only about reaction. Secondly, R2P is about a whole continuum of reactive responses – from diplomatic persuasion, to pressure, to non-military measures like sanctions and International Criminal Court process, and only in extreme, exceptional and last resort cases military action, whereas humanitarian intervention is only about military reaction. And thirdly, R2P is about a wide range of actors, whereas humanitarian intervention focuses only on the role of those capable of applying coercive military force. (Evans 2012, p. 1)

After clarifying the difference between humanitarian intervention and the R2P, it is time to discuss about content of the R2P concept. The R2P champions the “three-pillar approach”: (i) States have the primary responsibility to protect their own people; (ii) the international community has the commitment to provide assistance to states in building capacity to protect their people; and (iii) in case that the state is incapable or unwilling to meet that responsibility, the international community has the responsibility to take timely and decisive action to prevent violence and atrocious crimes. Here, the international responsibility must first exert all diplomatic, legal, and other peaceful

measures, deploying military force only as a last resort. (Lee 2012, p. 9) On the basis of these principles, the practice of R2P is broken down into three phases: (i) “the responsibility to prevent” root and immediate causes of civil war and other human-induced crisis putting people at risk; (ii) “the responsibility to react” to situations of compelling human suffering through appropriate measures, preferably via peaceful means including diplomatic pressures and sanctions, but with no military intervention; and (iii) “the responsibility to rebuild”, to offer full assistance with rebuilding and reconciliation efforts, particularly after military intervention. (ICISS 2001)

This multi-phased notion of responsibility underscores that a successful response to gross atrocities requires not only reaction, but continued engagement to prevent conflict from reoccurring and to facilitate post-crisis rebuilding efforts. In particular, the ICISS report identifies prevention as the most important dimension of the R2P. (Thakur 2006, p. 57) It also emphasizes a balance between prevention and utilizing coercive measures, reiterating that the least intrusive measure should be applied first. (Lee 2012, p. 10) Upon this premise, the R2P has gathered broad support from states, the UN, and academia.

R2P was first announced in December 2001, an unfortunate time in the wake of the September 11 terrorist attacks. At that time, the international community was concerned about preventing terrorism and the proliferation of weapons of mass destruction. Due to this, other discussions hadly made it on the international agenda as cases of high importance guidance and practice of R2P. Furthermore, the US-led invasion of Iraq in 2003, termed “Operation Iraqi Freedom,” which was aimed at human protection, led to negative repercussions against the R2P concept, as the Iraqi invasion aroused suspicion among many states, particularly smaller non-Western developing countries. Soon after, the R2P was regarded as a strategy made by western nations to justify using excessive force against hostile nations fort he purpose of imposing their geopolitical and economic interests on the weak and systematically impinging on the latter’s sovereignty under the pretext of human rights. (Lee 2012, p. 10)

After a long complicated diplomatic process, R2P was endorsed by the UN General Assembly at the 2005 World Summit, which was based on the 2004 report of the UN High-Level Panel on Threats, Challenges and Changes, and reaffirmed by the Security Council in April 2006. This report put a high level of importance on the need

to reach a comprehensive and collective security measures towards states that are incapable of preventing mass atrocities or negligent about man-made catastrophes.

The African Union (AU) also supported the concept of R2P and enshrined the principles of R2P within its founding Charter. They also recognized the authority of the Security Council to decide on the use of force for the prevention of mass atrocities with adoption of Ezulwini Consensus in March 2005. The scope of R2P is specified into four specific crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. (Lee 2012, p. 11)

Since 2005, there has been a long period of international discussion and argument about the meaning, scope and limits of R2P, in a variety of contexts. The process has also faced setbacks. In January 2007, China and Russia, two UNSC permanent members, vetoed a resolution that called for Myanmar to release all political prisoners and stop human rights abuses against ethnic minorities. However, Secretary-General Ban Ki-moon has been eager to advocate the R2P. He first raised the issue in his Berlin speech in July 2008, reaffirming its principles and highlighting sovereign responsibility and international capacity building with regards to the three pillars of R2P. He also confirmed the scope of R2P as limited to the four crimes. (Lee 2012, p. 12) In addition to Ban Ki-Moon's support, R2P has won a remarkable degree of acceptance in the UN General Assembly in 2009, 2010 and 2011. Secretary General Ban Ki-Moon was not exaggerating when he said in September 2011, 'Our debates are about how, not whether to implement the Responsibility to Protect. No government questions the principle'. (Evans 2012, p. 2)

2. Criticisms About Responsibility to Protect

While R2P doctrines are widely accepted, there have been several criticisms and limitations. Some nations argue that it is a threat to state sovereignty under the guise of human rights protection and blame it as a new form of colonialism (Evans 2007, p.2). Also, since the agreement in the UN General Assembly carries no legal binding force, substantive implementation of R2P may be unfeasible. Moreover, even if the UNSC is considered a legitimate decision maker for an international responsibility to protect, there still remains the potential problem of selectivity that comes from the realpolitik of its permanent members.

Another criticism of R2P, for which only four crimes are applicable. At first, critics claimed that the current R2P crimes, except ethnic cleansing, are already considered as serious crimes in the Rome Statute of the Criminal Court and can be punished by

the international criminal court so R2P itself seems to be just a reaffirmation of the Rome Statute. (Lee 2012, p. 13) In fact, only four crimes are included in R2P since it was easier to reach an agreement on these terms. Also, it was conceived that the international society would need to focus on these four crimes to enable the establishment of the new principle. (Chandler 2010, p. 162)

However, the current R2P with only four R2P crimes is limited in its potential to handle the complexities of contemporary humanitarian crises. Furthermore, the narrow scope of R2P lacks the ability to prevent crises. If the prevention element becomes ineffective or unimportant, there is no practical or substantive difference between the concepts of R2P humanitarian intervention. (Lee 2012, p. 13)

III. Responsibility to Protect Crimes and Different Responses: Libya vs. Syria

1. Libya and Responsibility to Protect

Mass protests and civil uprisings began in Libya, February 2011. Libya's ruler, Muammar Gaddafi, responded to these mass protests by dispatching government troops in an attempt to forcefully suppress the peaceful civilian protests.

Gaddafi's plan was to use excessive force at any cost to repress civilians until he gained full control of the country. In February 2011, the Transitional National Council (TNC), the interim opposition government to Gaddafi was established and officially recognized by a large number of states, the EU and the Arab League. Gaddafi, was unshaken by the pressure of the international community to relinquish his position and stop the violence against his own people. However, the uprising caused a humanitarian crisis both domestically and regionally. There were growing reports of indiscriminate killing of civilians as well as a massive influx of refugees fleeing to neighboring states numbering over 650,000 people (Barker 2011).

In response to Gaddafi, the UN passed a number of resolutions that precipitated the military involvement of NATO. After the UN reminded Libya of its responsibility to protect its civilian population and called for an end to the violence on February 22, 2011. There were several efforts at the UN to implement R2P. The UN Human Rights Council adopted Resolution S-15/2, calling for the end of human rights violations, while the UNGA suspended Libya's membership on the council. The UNSC Resolution 1970 was adopted on 26 February, imposing financial sanctions in addition to an embargo and the Resolution 1973 on March 17 (with Russian and China

abstaining), calling for a no-fly zone and a cease-fire. Two days later, NATO began its military attacks against Gaddafi forces with the objective of protecting civilians in Libya. UN Secretary-General Ban Ki-moon stated that the justification for the use of force in Libya was based on humanitarian grounds and this case was the first application of R2P to validate military intervention. (Lee 2012, p. 21) NATO officially ended its mission on October 31, 2011 with the death of Gaddafi on 20 October. (Barker 2011)

2. Syria and Responsibility to Protect

In May 2011, the Syrian people began to rally against its government's dictatorial rule by engaging in protests throughout the country. President al-Assad brutally oppressed the protestors, thousands civilians died and thousands more injured. The government also deprived civilians of the essentials, such as access to food, water, and medical supplies. As the violence continued, millions of Syrians fled into neighbour countries. However, unlike Libya, no international intervention has been made against the al-Assad regime (ICRtoP 2011).

Secretary-General Ban Ki-Moon demanded an end to the use of force against its civilian population and calling for further investigation in the alleged crimes in Syria. (Lee 2012, p. 22) Despite these warnings, Syrian forces continued their brutal tactics of targeting civilians. A draft of a UNSC resolution endorsed by Secretary-General Ban on April 22 and October 4 would have enforced sanctions and an embargo on Syria, was flatly rejected by Russia and China. They claimed that the Syrian crisis did not meet the threshold of a threat to global peace and security.

Although in the beginning, the Arab League was reluctant to condemn Syria, on July 21, the Arab League finally addressed the issue of Syria and called for an end to violence against innocent civilians. The Arab League suspended Syria's organizational membership on the 12th of November and adopted a number of sanctions on the repressive regime on the 27th of November (Peral 2011).

The humanitarian crisis in Syria, although receiving similar condemnation from a majority of the international community has resulted in a completely different response, compared to that of Libya. Whereas the UNSC failed to sanction the Syrian regime, there has been an increasing role for the Arab League in initiating a number of measures to (Lee 2012, p. 23) work diplomatically with Syria and impose sanctions on the regime only if all their diplomatic efforts failed (Peral 2011).

International community has many reasons to hesitate when it comes to the involvement in the Syrian crisis, such as: complex internal sectarian divisions with potentially explosive regional implications, anxiety about the democratic credentials of many of those in opposition especially fundamentalist islamic groups such as ISIS, and Al-Nusra. No Arab League member was in favour of tough action, due to a long Russian commitment to the Assad regime. In addition to these reasons the US, the UK and France drove the Libya intervention (the US, UK and France), and other United Nations Security Council members were never given sufficient information to enable them to be evaluated. (Evans 2012, p. 3) Thus there has been no consensus even about non-military coercive measures about Syria.

Conclusion

We have to accept that a good part of the debate about how to implement R2P in practice is still very fierce and very divisive. In the Security Council in February and March 2011, there was real consensus both about the steps that had to be taken to stop atrocity crimes that were happening in Libya. A NATO-led airborne military operation immediately followed, and thousands of lives were saved. Many scholars considered these resolutions as the coming of age of R2P. (Evans 2012, p. 2) But now, over Syria, despite a rapidly climbing numbers of deaths and casualties, the Security Council remains almost completely paralysed, barely able to agree on condemnation of the violence.

The better news is that Brazil has proposed making some changes to the R2P concept, *supplementing* it a complementary set of principles and procedures which it has labeled as 'responsibility while protecting' ('RWP'). Its two key proposals are for a set of criteria to be fully debated and taken into account before the Security Council mandates any use of military force, and for some kind of enhanced monitoring and review processes which would enable such mandates to be seriously debated by all Council members during their implementation phase. One way of approaching the criteria issue that the Security Council apply specific prudential guidelines whenever considering any authorization of coercive military action under Chapter VII of the Charter. (Evans 2012, p. 4).

The completely effective implementation of R2P is going to be work in progress for some time. How to implement it in future is going to be hard to achieve, and will take time. But if the Security Council does *not* find a way of actually cooperating to resolve

these cases, working within the framework of the R2P principle, the alternative is a return to the bad old days of the 1990s.

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