

The Illusion of Progress: Libya and the Future of R2P

Written by Aidan Hehir

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AIDAN HEHIR, SEP 11 2011

The term “the Responsibility to Protect” (R2P) has, as its supporters seldom tire of stating, made a swift ascension from the periphery to the centre of international political discourse. The March 2011 intervention in Libya catalysed a further surge in the term’s currency and a renewed championing of its efficacy. If, however, the ubiquity of a term was indicative of its practical importance R2P would never have had to be contrived. Following the Holocaust “Never Again!” was an oft repeated refrain finding legal expression with the 1948 Genocide Convention. Unfortunately, “Never Again!” became little more than a tragically ironic shibboleth – a ‘dead letter’ according to Kofi Annan[i] – as mass atrocities occurred with depressing regularity.

The problem with R2P is precisely that which rendered “Never Again!” and the Genocide Convention impotent, namely that its enforcement is predicated on the assent of the Security Council.[ii] As per the 2005 World Summit Outcome Document and various General Assembly and Security Council resolutions since, the implementation of R2P is explicitly conditional on the support of the permanent five members of the Security Council (P5). Only the very naive imagine that the P5 honour Article 24.1 of the Charter and act on behalf of UN member states; each state’s respective national interest determines their position on a particular issue much more so than their commitment to legal or moral principles.

The emergence of R2P was, in fact, a function of this flawed system. On a number of occasions during the 1990’s the Security Council used its Chapter VII powers to sanction intervention for humanitarian purposes but many other cases – most notably Rwanda– were simply ignored.[iii] NATO’s intervention in Kosovo in 1999 occurred without Council sanction and the ensuing outcry was a causal factor in the creation of R2P.

What has R2P done to redress this structural barrier to effective action? The answer, sadly, is nothing. The laws governing the use of force and the structure of the UN are the same now as they were in 1991.[iv] For all the hype surrounding R2P it constitutes no more than a slogan which has served to embolden those convinced that eloquent appeals to behave responsibly influence world politics. Since R2P was officially recognised at the World Summit a number of mass atrocities have occurred which undeniably warranted external intervention. Yet, in the face of state-sponsored slaughter in Sri Lanka, Darfur and the DRC, the Security Council chose not to sanction effective action. If R2P meant something and had real influence, why was this? Supporters argue that R2P constitutes more than military intervention and such action is not always prudent. A more accurate explanation, however, is that the response of the “international community” remains dependant on the interests of the P5; in the absence of a *duty* to act R2P constitutes no more than a ‘discretionary entitlement’.[v] Hence inconsistency and inertia are inevitable.

Of course, the Security Council did sanction intervention against Libya in March 2011. It is worth noting, however, that the term “responsibility to protect” does not appear in either resolution 1970 or 1973. Likewise, President Obama’s landmark speech on the 28th March made no mention at all of R2P. While I supported the use of force against Libya – and support the principle of humanitarian intervention more generally – this cannot reasonably be said to constitute anymore than a welcome aberration consistent with resolutions passed in the 1990s before R2P.[vi] There have always been humanitarian activists and NGOs making impassioned appeals to “do something”.[vii] History suggests that the P5 are often willing, however, to ignore these calls.[viii] The mere fact that R2P exists and that the P5 sanctioned action against Libya does not mean there is a causal relationship between the two.

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For argument sake let's assume that David Cameron, Barak Obama, Nicholas Sarkozy pushed for action because of their desire to honour the commitments their predecessors made to R2P. Such a collective unity of purpose would of course be an interesting phenomenon in itself, but would it actually constitute evidence that R2P was likely to *continue* to make a difference? Action taken on the basis of a commitment to a principle derived from altruistic *individual impulses* cannot be reasonably cited as constituting a precedent or new norm. Rather, it is more accurately described as aberrant, albeit welcome, behaviour impelled by a unique constellation of necessarily temporal factors. More importantly, is it plausible that Russia and China considered R2P when determining their response? If not, the implementation of R2P in cases of mass atrocity in the future will necessarily be unlikely.

If we are to redress the depressing litany of inaction and the prevalence of inhumanitarian nonintervention we must accept that, catchy though "R2P" is, slogans are not enough. Substantial legal, political and institutional reform is required least those suffering egregious violence remain prey to the temporal whims of the P5. It is unfortunate that many R2P advocates resolutely fail to even engage with such considerations.

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[i] Annan, K. (2001) 'Message Honouring Raphael Lemkin', Press Release SG/SM/7842, 13 June, <http://www.un.org/News/Press/docs/2001/sgsm7842.doc.htm> [Accessed November 2010]

[ii] Stahn, C. (2007) 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', *American Journal of International Law*, 101/1, pp. 99-120

[iii] Chesterman, S. (2003) 'Hard Cases Make Bad Law' in A. Lang, (ed.) *Just Intervention* (Washington D.C., Georgetown University Press)

[iv] Hehir, A. (2009) 'NATO's Humanitarian Intervention in Kosovo: Precedent or Aberration?', *Journal of Human Rights*, 8/3, pp. 245-264

[v] Berman, F. (2007) 'Moral Versus Legal Legitimacy' in C. Reed and D. Ryall (eds.) *The Price of Peace* (Cambridge: Cambridge University Press), p. 161

[vi] Chesterman, S. (2011) "'Leading from Behind": The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya', *Ethics and International Affairs*, 25/3, pp. 1-2;

[vii] Bass, G. (2008) *Freedoms Battle: The Origins of Humanitarian Intervention* (New York: Vintage Books)

[viii] Hehir, A. (2008) *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society* (Hampshire: Palgrave), pp. 53-75

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