The Responsibility to Protect and the Problem of Regime Change

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ALEX J. BELLAMY, SEP 27 2011

The use of attack helicopters by the UN mission in Cote d'Ivoire to oust Laurent Gbagbo from power in April 2011 and NATO's decision to interpret UN Security Council Resolution 1973as permission for the use of airpower to assist the Transitional National Council of Libya to overthrow the Gaddafi regime provoked a strong response from several UN member states.[1] Long-standing critics of the Responsibility to Protect (RtoP), Nicaragua and Venezuela, used particularly blunt language to criticise what they saw as the UN's complicity in neo-imperialist interventionism dressed up in humanitarian garb.   Nicaragua complained: "Once again we have witnessed the shameful manipulation of the slogan "protection of civilians" for dishonourable political purposes, seeking unequivocally and blatantly to impose regime change, attacking the sovereignty of a State Member of the United Nations [Libya] and violating the Organization's Charter. Once again, the logic of interventionism and hegemony has prevailed through a disastrous decision with incalculable potential consequences for tens of millions of individuals worldwide."[2] Venezuela added that "It is regrettable that certain countries are seeking regime change in Libya, in violation of the Charter of the United Nations. Those actions contravene resolution 1973 (2011), which calls for respect for the sovereignty and territorial integrity of Libya."

More worryingly than these stark criticisms from two of the half a dozen or so unreconstructed opponents of RtoP, however, was the fact that three members of the emerging 'BRICS' (Brazil, Russia, India, China, South Africa) group – all of whom had moved over the past few years towards an accommodation with the new principle – also spoke out strongly against the UN's and NATO's actions in Cote d'Ivoire and Libya. China, a permanent member of the Security Council argued that:

 "The responsibility to protect civilians lies first and foremost with the Government of the country concerned. The international community and external organizations can provide constructive assistance, but they must observe the principles of objectivity and neutrality and fully respect the independence, sovereignty, unity and territorial integrity of the country concerned. *There must be no attempt at regime change or involvement in civil war by any party under the guise of protecting civilians.*"[4]

Brazil concurred:

"The protection of civilians is a humanitarian imperative. It is a distinct concept that must not be confused or conflated with threats to international peace and security, as described in the Charter, or with the responsibility to protect. We must avoid excessively broad interpretations of the protection of civilians, which could link it to the exacerbation of conflict, compromise the impartiality of the United Nations or create the perception that it is being used as a smokescreen for intervention or regime change. To that end, we must ensure that all efforts to protect civilians be strictly in keeping with the Charter and based on a rigorous and non-selective application of international humanitarian law."[5]

And South Africa noted that:

"We are concerned that the implementation of these resolutions [on Libya and Cote d'Ivoire] appears to go beyond

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their letter and spirit. It is important that, as international actors and external organizations provide constructive assistance, they should nonetheless comply with the provisions of the United Nations Charter, fully respect the will, sovereignty and territorial integrity of the country concerned, and refrain from advancing political agendas that go beyond the protection of civilian mandates, including regime change. In our view, such actions will undermine the gains made in this discourse and provide ammunition to those who have always been sceptical of the concept. In the final analysis, the implementation of these resolutions will determine whether our actions have yielded the intended result of protecting civilians."[6]

The relationship between RtoP and regime change has long been an uncomfortable one. The principal objections to the 2001 report of the International Commission on Intervention and State Sovereignty which coined the phrase *Responsibility to Protect* came from states and commentators worried about the widened potential for abuse that may accompany any relaxing of the general prohibition on force contained in Article 2(4) of the Charter. David Chandler, for instance, described the report as an argument for law-making and enforcment by the[SA1] West.[7] Amongst states, this view was most clearly expressed by Venezuela, which argued that the responsibility to protect would merely serve the interests of the powerful by granting them more freedom to intervene in the affairs of the weak without necessarily increasing global cooperation in response to humanitarian emergencies.[8]

The Chinese government had opposed the *Responsibility to Protect* throughout the ICISS (International Commission on Intervention and State Sovereignty) process, fearing that it might legitimise intervention not expressly authorised by the UN Security Council though it accepted that 'massive humanitarian' crises were 'the legitimate concern of the international community'.[9] Whilst Russia supported the rhetoric of the responsibility to protect, it shared China's belief that no action be taken without Security Council approval, arguing that the UN was already equipped to deal with humanitarian crises and suggesting that, by countenancing unauthorised intervention, the *Responsibility to Protect* risked undermining the Charter.[10] The Non-Aligned Movement (NAM) also initially rejected the concept on the same grounds. India, for example, argued that the Council was already sufficiently empowered to act in humanitarian emergencies and observed that the failure to act in the past was caused by a lack of political will, not a lack of authority.[11] Speaking on behalf of the NAM, the Malaysian government argued that the *Responsibility to Protect* potentially represented a reincarnation of humanitarian intervention for which there was no basis in international law.[12]

Attempts by some American and British leaders to justify the 2003 invasion of Iraq by reference to RtoP-type language served only to strengthen suspicions. ICISS co-chair Gareth Evans argued that the 'poorly and inconsistently' argued humanitarian justification for the war in Iraq 'almost choked at birth what many were hoping was an emerging new norm justifying intervention on the basis of the principle of "responsibility to protect"'.[13] This view was widely held: Ian Williams argued that the Iraq war brought 'humanitarian intervention into disrepute'; Richard Falk lamented that the war risked undermining consensus at the UN; Karl Kaiser insisted that 'Washington has lowered [consensus on] the humanitarian intervention approach to an unprecedented level'; John Kampfner suggested that 'there has been no better time for dictators to act with impunity', and a *Fund for Peace* project collating regional responses to humanitarian intervention found that in the one consultation conducted immediately before the Iraq war, in Europe, participants were reluctant to support humanitarian intervention for fear of tacitly legitimising the invasion of Iraq.[14] David Clark, a former Special Advisor to the British Foreign Office argued that 'Iraq has ruined our case for humanitarian wars. As long as US power remains in the hands of the Republican right, it will be impossible to build a consensus on the left behind the idea that it can be a power for good. Those who continue to insist that it can, risk discrediting the concept of humanitarian intervention'.[15]

In the light of these concerns, it is hardly surprising that the consensus that emerged on RtoP in 2005 depended to a great extent on efforts to distinguish it from the concept regime change. This was achieved in two principal ways. First, and most importantly, paragraph 139 of the World Summit Outcome Document stated quite categorically that any use of force must be expressly authorised by the UN Security Council acting under Chapter VII of the Charter. It reads: '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 peacefully means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity…[16]

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This provision squarely closed the door to the use of force or other means of coercion without the authorisation of the UN Security Council. Second, the agreement was just as emphatic on the scope of RtoP. Whilst ICISS had failed to pin down precisely what it was that RtoP referred to (listing all manner of different forms of human insecurity at different junctures of the report), the 2005 World Summit agreement was absolutely clear that the principle referred to the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. Because each of these crimes was already prohibited and because states committed to exercise their RtoP through the UN Charter, the principle emerged not as a new legal principle but rather as a political commitment to implement already existing law. Thus conceived, RtoP could only give rise to the use of force when the Security Council judged it necessary in order to prevent genocide, war crimes, ethnic cleansing and crimes against humanity or to protect populations from these four crimes.

Neither UNOCI (UN Operation in Cote d'Ivoire)'s activities in Cote d'Ivoire nor NATO's in Libya contravened the letter of this consensus. Both acted under Chapter VII resolutions which authorised the use of force to protect civilians. In the strictest sense, therefore, the problem was not so much the use of force to protect civilians from mass atrocities – in both cases this had been duly authorised by the Security Council – but the facts that this use of force resulted in regime change and that this result was *intended* by those responsible for implementing the Security Council's decisions even though the Council itself had not specifically authorised regime change. Given the sensitivities identified earlier, it is not surprising that the Special Advisor to the Secretary-General on RtoP, Edward Luck, responded to questions about the link between RtoP and regime change by insisting that the two were distinct. He told the Council on Foreign Relations, 'I should say that it isn't the goal of the responsibility to protect to change regimes. The goal is to protect populations. It may be in some cases that the only way to protect populations is to change the regime, but that certainly is not the goal of the R2P per se'.[17] But Luck's answer rightly points to a fundamental dilemma: *in situations where a state is responsible for committing genocide, war crimes, ethnic cleansing and/or crimes against humanity, how can the international community exercise its responsibility to protect populations without imposing regime change?*

It may well be that Luck is right to argue that in some situations only regime change will do – I think he is. But because of the deep concern on the part of many member states that RtoP could give rise to a regime change agenda and the equally deep global opposition to such an agenda, it is incumbent on us to explore the relationship more deeply in order to ascertain whether there are ways of maintaining a clear distinction between RtoP and regime change without sacrificing the protection of civilians. This is particularly urgent given the evidence that among other factors, the perception among the BRICS that the UN and NATO went too far in Cote d'Ivoire and Libya has encouraged them to block a timely, decisive and united response to the killing of civilians by the governments in Syria and Yemen.

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[1] For an overview, see Alex J. Bellamy and Paul D. Williams, 'The New Politics of Protection: Cote d'Ivoire, Libya and the Responsibility to Protect', *International Affairs*, 87 (4) 2011.

[2] These four quotes from S/PV.6531, 10 May 2011.

[3] S/PV.6531 (resumption 1), 10 May 2011.

[4] S/PV.6531, 10 May 2011.

[5] S/PV.6531, 10 May 2011.

[6] S/PV.6531, 10 May 2011.

[7] David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto, 2002), p. 135.

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[8] Speech by President Hugo Chavez to the 60th General Assembly, 15 September 2005. Text available at http://www.embavenez-us.org/news.php?nid=1745

[9] Position Paper of the People's Republic of China, pp. 10-12.

[10] See Yevgeny Primakov, UN Process, not Humanitarian Intervention, is World's Best Hope', *New Perspectives Quarterly,* 2 September 2004, at http://www.digitalnpq.org/global_services/global%20viewpoint/02-09-04primakov.html.

[11] Anita Inder Singh, 'UN at Sixty: New Strategies a Must for Effectiveness', *The Tribune: On-Line Edition* (Chandigarh, India), 30 September 2005. Available at http://www.tribuneindia.com/2005/20050930/edit.htm#4

[12] See Statement by the Chairman of the Coordinating Bureau [Malaysia] of the Non-Aligned Movement on Behalf of the Non-Aligned Movement at the Informal Meeting of the Plenary of the General Assembly Concerning the Draft Outcome Document of the High-Level Plenary Meeting of the General Assembly Delivered by H. E. Ambassador Radzi Rahman, Charge's D'Affaires A. I. Of the Permanent Mission Malaysia to the United Nations, New York. 21 June 2005.

[13] Gareth Evans, 'When is it Right to Fight?', *Survival*, 46 (3) 2004, pp. 59-82.

[14] Respectively, Ian Williams, 'Intervene with Caution', *In These Times*, 28 July 2003, Falk 'Humanitarian Intervention', p. 2, Karl Kaiser, 'A European Perspective on the Post Iraq New International Order', paper presented at the Center for Strategic and International Studies, Jakarta, 29 July 2003, John Kampfner interviewed by Tim Dunne at www.ex.ac.uk/ships/news/kampfner.htm accessed 15 March 2004, and The Fund for Peace, *Neighbours on Alert: Regional Views on Humanitarian Intervention*, Summary Report of the Regional Responses to Internal War Program, October 2003, p. 6.

[15] David Clark, 'Iraq Has Wrecked Our Case for Humanitarian Wars', *The Guardian*, 12 August 2003.

[16] United Nations General Assembly, '2005 Summit Outcome', A/60/L.1, 20 September 2005, paras. 138-9.

[17] Edward Luck, interview with Bernard Gwertzman, Council on Foreign Relations, 1 September 2011, at http://www.cfr.org/syria/syria-follow-libya/p25745.

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