Libya: The First Stand or the Last Post for the Responsibility to Protect?

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Until the twentieth century, state sovereignty included the right to go to war and an unchallengeable monopoly on the lawful use of force domestically. Gradually by the time of the creation of the United Nations in 1945 and more rapidly thereafter, the right to use force internationally was progressively restricted to self-defence against armed attack or under UN authorisation. Historically, individual states had also intervened inside sovereign jurisdictions to stop the slaughter of kith and kin or co-religionists. Under the impact of the Holocaust and starting with the Genocide Convention in 1948, the international community asserted the collective right to stop states killing large numbers of civilians inside their borders.

Even so, for 350 years – from the Treaty of Westphalia in 1648 until 1998 – sovereignty functioned as institutionalised indifference. International interventions in Kosovo and East Timor in 1999 broke that mould and were the backdrop to Kofi Annan's search for a new norm. Both the Rwanda genocide and the Srebrenica massacre happened on his watch as head of UN peacekeeping. After becoming Secretary-General, instead of collective gnashing and wailing during atrocities followed by a traumatic repeat afterwards, yet again, of promises of 'Never Again', he pushed for a new doctrine to take timely and effective action. With Canada's help, an international commission formulated the innovative principle of the responsibility to protect (R2P).

In 2005, world leaders unanimously agreed that where governments were manifestly failing in their sovereign duty, the international community, acting through the United Nations, would take 'timely and decisive' collective action to honour the international responsibility to protect people against atrocities. Describing R2P as one of his most precious achievements, Annan used its preventive pillar as a prism to mediate in the post-election violence in Kenya in 2008, our only successful R2P marker to date. Ban Ki-moon has put his full weight behind R2P.

The language of R2P refers to state inability or unwillingness as the catalyst to the international responsibility to protect being activated. But when security forces, meant to protect people, are instead let loose in a killing spree, the state itself becomes the prime perpetrator of atrocities. With precisely such an unfolding scenario, Libya today is the place and time to redeem or renege on R2P's solemn pledge. In the popular uprising against Colonel Muammar Gaddhafi, many civilians have already been killed and a carnage is feared. After 42 years of autocratic rule, Gadhafi is using deadly violence to crush and kill people rebelling against his harsh dictatorship. He and son Saif have vowed to fight to the last drop of their blood and deployed air, sea and land forces. Putting all options on the table as the riposte to planes, bombs and tanks seems a pusillanimous response.

R2P provides the normative and political cover to deal robustly, promptly, effectively and, if necessary, militarily with Gadhafi's threat to his people. Action will also help Africans, Westerners and the UN to cleanse the stain of having been passive spectators in Rwanda and Srebrenica, and of complicity in privileging stability over freedoms for the Arabs. In a lazy stereotype, Arabs were held unready for political modernity and the Arab world was in effect deemed a democracy- and human rights-free zone.

R2P is narrow – it applies only to the four crimes of ethnic cleansing, genocide, crimes against humanity, and war crimes – but deep: there are no limits to what can be done in responding to these atrocity crimes. Conversely, global

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support for R2P is broad but shallow. Libya is the golden opportunity to convert the noble sentiments and words of R2P into deeds whose import will resonate long and far.

The problem is atrocities committed by the regime in power. The twin challenge is to protect victims and punish the perpetrators. In response, the international community has used two relatively new instruments: the International Criminal Court (ICC) and R2P. Designed to grapple with the grave problem of mass killings, both give primacy to domestic means of redress but imply a fallback responsibility on outsiders.

The UN Security Council, Human Rights Council, and Ban and his special advisers on genocide prevention and R2P have called on Libya to respect its R2P, human rights and international humanitarian law obligations. When these early appeals were ignored, the Security Council imposed arms, financial and travel sanctions on Libya and referred Gadhafi to the ICC (Resolution 1970).

This could complicate efforts to persuade him to end the killings and leave Libya. Those who reject the ICC — China, India, Russia, the US — but refer others to it violate natural justice and are guilty of gross hypocrisy. Many of the most influential countries voting to refer Libya to the ICC refused to back the Goldstone Report into Israel's actions in Gaza with matching robustness.

The perception of hypocrisy is worsened by the widespread belief that Western leaders who may have committed aggression against Iraq, and Western commanders who may be guilty of war crimes in Iraq – cue Fallujah – and Afghanistan (drone strikes may violate international humanitarian law) are unlikely to be put in the international criminal dock. There is little prospect of those who sold arms to Gaddhafi – now trained on the people – being called to criminal account either.

Thus the ICC has been subverted into a tool of the powerful to be used only against the others. This is a perversion of the principle of justice and the rule of law that is meant to be impartially applied to all and put the weak and the strong, the rich and the poor, on equal footing.

In poignant testament to its tragic origins and normative power, R2P is the dominant discourse around the world – from Asia and Africa to Australia, Europe and North America – in debating what must, should and can be done in Libya. R2P is the mobiliser of last resort of the world's will to act to prevent and halt mass atrocities and mitigate the effects of sovereignty as organised hypocrisy, as Stephen Krasner famously put it. It is the normative instrument of choice to convert a shocked international conscience into timely and decisive collective action. It navigates the treacherous shoals between the Scylla of callous indifference to the plight of victims and the Charybdis of self-righteous interference in others' internal affairs.

Three sets of issues are involved: military capacity, legal authority, and political legitimacy.

Military operations would entail four activities: surveillance and monitoring, humanitarian assistance, enforcement of the arms embargo, and enforcement of a no-fly zone. Only the West has the military assets and operational capability for these tasks. But NATO would be ill-advised to take any military action on its own authority.

Calls have grown for a no-fly zone, not the least from rebels under aerial attack. Military analysts seem divided on its scale, complexity and feasibility. Some say it would require the prior destruction of the Libyan air force, others add anti-aircraft batteries, and still others warn of mission creep and the risk of being branded Western imperialists.

Yet a no-fly zone was successfully enforced over Iraq to protect the Kurds for twelve years until 2003. It did not lead to mission creep: the 2003 war was a deliberate policy choice for totally independent reasons. The quality of Libya's air force is suspect. A no-fly zone could tip the balance between Libyan air force officers' motivations to bomb fellow-citizens and defection to the rebels or the West. On 12 March Defense Secretary Robert Gates, clarifying earlier widely-quoted remarks on the risks of a no-fly zone, said that the US does have the capacity to enforce it.

The risks of mission creep – a deepening quagmire leading to nation-building – would arise only if ownership of the

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uprising was appropriated from the Libyans by the West, as would happen with ground troops. But no one is asking for foreign boots on the ground. Legal authorisation from the UN Security Council should be restricted to the four military tasks listed above.

If the Security Council dishonours the world's collective responsibility to protect, limited and legitimate action by NATO is still possible under clear mandate from the African Union and Arab League, backed by the Organization of Islamic Conference and the Gulf Cooperation Council. Absent that, NATO guns should stay silent.

Standing idly on the sidelines yet again will add to the shamefully long list of refusing to accept the responsibility of being our brothers' keepers across borders. Against the 'unknown unknowns' of the results and unintended-cum-perverse consequences of intervention are the 'known knowns' of no military action: the slaughter of people and victory for a ruthless tyrant. If and when Gadhafi re-enters a recaptured Benghazi in ceremonial triumph, the United Nations should sound the last post for R2P.

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