

Improving Mass Atrocities Prevention

Guidelines for Effective and Legitimate Implementation of the Responsibility to Protect

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The international community is divided over the proper interpretation and implementation of the responsibility to protect (R2P). This division contributes to the lack of collective action with respect to the situation in Syria, where mass atrocities are being committed regularly. In order to build a consensus about an appropriate prevention strategy, the concerns that were raised by some states about the illegitimate use of R2P in the case of Libya have to be addressed. These concerns focus on issues such as (1) the relation between R2P and regime change, (2) the need for enhanced accountability of the mandate-taker towards the mandate-giver and (3) the role of regional organisations. Improving the legitimacy and effectiveness of mass atrocities prevention requires a clear, consistent and convincing set of guidelines. These guidelines should be jointly developed with emerging democracies such as Brazil, India and South Africa.

In 2005 the United Nations (UN) agreed on the individual responsibility of every state to protect its population from certain mass atrocities. Failure to do so would invoke a collective responsibility to protect that would rest with the international community. This internationalised responsibility could be enforced against the will of the failing state after authorisation by the UN Security Council (UNSC), thereby penetrating constitutive norms of the state system such as sovereignty and non-interference.

Preserving the Political Integrity of the Security Council

In March 2011 troops of the Libyan leader Muammar Gaddafi advanced quickly

towards Benghazi – a stronghold of opposition forces – threatening to crush the rebellion and to punish the population. In response to the impending mass atrocities, the Security Council issued Resolution 1973, which authorised UN member states, acting unilaterally or through regional organisations, to take all necessary measures to protect civilians and civilian-populated areas under threat of attack. In support of this resolution, NATO started Operation Unified Protector, which included active assistance for the Libyan opposition. The death of Gaddafi in October 2011 marked the end of his regime.

The aim of Resolution 1973 was to protect the Libyan people from mass atrocities. The result was a new Libyan government.

This development shows that the conceptual and political implications of R2P are far from clear. Critics refer to norms such as sovereignty and non-interference that are violated by a military intervention based on humanitarian concerns. They fear that the implementation of the so-called third pillar of R2P – timely and decisive response of the international community if a state is not willing or able to meet its obligation to protect its population – may be misused to get rid of regimes that are disliked for political reasons.

So far, there is very little empirical evidence supporting the claim that past military interventions for humanitarian purposes have been planned with the goal of regime change in mind. Probably even more important is the finding that anti-regime forces virtually never incite mass atrocities in order to provoke intervention by the international community. Therefore, the claim that R2P encourages risk-taking (moral hazard) does not seem to hold.

However, NATO's intervention in Libya obviously resulted in regime change, and the Alliances' support for the anti-Gaddafi forces was crucial in this respect. The reason for this support was stated plainly in a joint letter by American President Barack Obama, British Prime Minister David Cameron and French President Nicolas Sarkozy in April 2011. They argued that the replacement of Gaddafi was inevitable in order to protect the Libyan people, because "[s]o long as Gaddafi is in power, NATO and its coalition partners must maintain their operations so that civilians remain protected and the pressure on the regime builds."

The problem with this line of argument is that Resolution 1973 did not explicitly endorse regime change. The letter thus raises a difficult conceptual as well as political question: What exactly authorises the Security Council when it approves all necessary measures in the context of R2P? Does this refer only to situations where genocide, war crimes, ethnic cleaning or crimes against humanity – the four mass atrocity crimes that are identified in paragraph 138

of the World Summit Outcome Document in 2005 – are imminent? To put the question somewhat differently: Does effective protection sometimes require, and thus legitimise, coercive regime change? Germany during the Holocaust or Cambodia under the Khmer Rouge may serve to illustrate the point that regime change is sometimes necessary to accomplish the goal of protecting a population.

A counterfactual argument may help to clarify the problem: if NATO had succeeded in preventing Gaddafi's troops from entering Benghazi, but then discontinued its military operations, there would have been the danger of massive regime retaliation in the following weeks, months or even years. The Gaddafi regime already had a long history of illegally killing dissidents at home and abroad, and it would have been easy for the security forces to identify oppositional groups in Benghazi as well as in the rest of the country.

It is unclear whether the Security Council would have authorised a second R2P mission under these circumstances – and it would have been even more questionable whether NATO or any other military coalition would have taken on this mission. Planning and executing a military operation the size of Unified Protector that involves a multitude of different national and international actors can hardly be done on an ad-hoc basis. Thus, stopping NATO's operations after Benghazi could not only have provoked additional mass atrocities. It would have also put the political integrity of the Security Council at risk.

Guidelines for Regime Changing Implementation of R2P's Third Pillar

Given the conceptual ambiguity and the fear about the misuse of R2P, it is not surprising that these events have raised considerable concerns. China and Russia constantly refer to "lessons learned" from Libya when justifying their unwillingness to approve UNSC draft resolutions that call for sanctions against the regime of Bashar

Assad in Syria. In order to accommodate these concerns, it could be helpful to discuss some guidelines regarding the intentions of countries that contemplate military intervention in order to prevent mass atrocities.

In such a case, several conditions must be met: (1) UNSC authorisation remains essential, (2) the stated goal of the mission should always be a change of regime behaviour, not of regime composition, (3) the case for intervention has to be justified only in terms of protecting a population, (4) force is used only for the purpose of protecting, and finally, (5) comprehensive assistance has to be offered for post-conflict reconstruction.

These conditions are not easy to fulfil. They thus guarantee that the misuse of R2P for regime change will not happen frequently, if at all. But if regime change happens when these conditions are met, it is probably fair to argue that this is the only option for effective protection. Testing NATO's behaviour in Libya against these standards reveals that the organisation did not comply with all of them – as the letter by the three democratic leaders shows. Therefore, some criticism is warranted. However, even without targeting Gaddafi verbally or physically, the military operations essentially could have been the same.

Improving Accountability

A second problem related to the operational implementation of R2P concerns accountability. The unwillingness of France, the United Kingdom and the United States – the leading nations in Operation Unified Protector – to share information with the other members of the Security Council generated suspicions about their intentions. The coordination between the mandate-giver and the mandate-taker clearly has to improve in order to maximise support for international intervention in future situations of mass atrocity crimes.

Unless an effective UN military headquarters is created, a military operation the

size of NATO's Unified Protector can, of course, not be run out of New York – probably no military organisation would agree to this. But ignoring the mandate-giver's demand for improved accountability for weeks or even months is not a good strategy. It should be in the interest of the mandate-taker to report back to the UN system as soon as – and as frequently as – possible. If this does not happen, support for a specific R2P mission as well as for issuing future mandates may fade away quickly. It would be somewhat unfair to argue that the people in Syria are paying the price for NATO's under-reporting on Libya, since the two situations are hardly comparable. But it is probably fair to ask for better reporting standards in order to avoid any such criticism.

Improvement does not necessarily mean a higher degree of formalisation of the reporting process. Following a predetermined sequence of political consultations could prove to be inadequate in a situation of clear and present danger, as demonstrated by Benghazi in March 2011. Better coordination and improved accountability rather refers to proper reporting to and consultation with the political authorities responsible for legitimising an R2P-based intervention. The mandate-giver could specify reporting requirements in more detail within a Security Council resolution. The mandate-taker could divert suspicions by voluntarily sharing information and giving frequent and detailed high-level briefings inside or – if appropriate – outside of the UN system. Additionally, independent investigations should be welcomed.

The Role of Regional Organisations

The third important conceptual and political question concerns cooperation with relevant organisations besides the mandate-giver and the mandate-taker. It has been rightly noted that regional security and political organisations such as the League of Arab States and the African Union (AU) played a crucial role in convincing the

Security Council to issue Resolution 1973. However, once the resolution was adopted, both organisations almost immediately started to complain about their marginalisation.

In order to secure the support of regional organisations, it is necessary to improve communication and interaction with them. Failure to do so very likely increases the risk that these organisations become alienated. Improving cooperation also paves the way for a possible engagement of regional organisations once the military mission is completed. The rebuilding of political institutions is a crucial task after the collapse of an authoritarian regime. In such a situation, regional organisations may be better positioned to offer assistance than outside powers.

However, bringing in regional organisations may create additional problems when a country holds several memberships. Libya's roles in the AU and in the League of Arab States differed considerably under Gaddafi. Whereas the AU relied heavily on financial contributions from Libya, Gaddafi's influence in the League of Arab States was much weaker. Unsurprisingly, the AU's position on Libya was considerably softer, as demonstrated by its request for political negotiations between Gaddafi and the opposition throughout the military campaign.

Future situations of mass atrocities prevention might replay a scenario of overlapping memberships and contradicting loyalties. The outcome of such conflicts will most likely be determined by political bargaining. Any mass atrocities prevention strategy should aim at securing the support of regional organisations without overlooking the problems this might create.

Engaging Critics, Winning Partners

The successful development of guidelines for a mass atrocities prevention strategy requires broad-based support by the international community. Therefore, it is necessary to engage in discussions with the critics. There are two main groups: on the

one hand the states that claim principled objections, on the other hand the nations that raise procedural questions. China, Russia and some other countries such as Cuba, Nicaragua and Venezuela belong to the first group; Brazil, India and South Africa – the IBSA countries – belong to the second.

The first group fundamentally rejects coercive mass atrocities prevention because of violations of constitutive international norms such as non-interference or sovereignty. However, the rejectionists' case for strict non-interference is not convincing, as they frequently apply double standards themselves. China's intervention in Vietnam in 1979 was an obvious violation of the principle of non-militarised non-interference, as is Russia's support for some would-be states in Eastern Europe or the Caucasus. The best way to deal with these principled rejectionists is probably to, first, recall these inconsistencies, and second, to continually point out the support of the vast majority of the international community for the responsibility of any state to effectively protect its population from mass atrocities.

The second group accepts the concept of R2P, including the use of military force in exceptional and rare circumstances. They criticise, however, how R2P has been implemented in Libya, concentrating on the outcome – regime change – and the lack of accountability. These critics do not question the substance of R2P. Accordingly, supporters of R2P can and should work with them in order to improve the concept. Even more important would be a constructive approach towards ideas that are circulated by these critics, as demonstrated by Brazil's concept note on "Responsibility while Protecting".

Winning the IBSA countries – and preferably all other emerging democracies in the G20 – for cooperative implementation of R2P could prove to be a major breakthrough for effective and legitimate mass atrocities prevention.

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