Clingendael Policy Brief

Who's afraid of the responsibility to protect?

Kees Homan
Marianne Ducasse-Rogier

2011 can be seen as a watershed year for the Responsibility to Protect (R2P) principle: while the first international interventions invoking R2P were launched by the UN Security Council, the same year also saw a growing international reluctance towards further implementing, or even referring to, the principle. This paper will analyse the reasons for this evolution and make proposals to address issues highlighted by the 2011 operations and to revitalize the Responsibility to Protect.

Introduction

The last few years have been marked by important developments regarding UN collective security and human rights protection regimes, with the emergence of the new principle of the 'Responsibility to Protect' (R2P). First enunciated in 2001 in the report of the International Commission on Intervention and State Sovereignty (ICISS), this principle was endorsed by the UN Member States at the General Assembly World Summit of 2005. That summit recognised that states have the primary responsibility to protect their citizens against crimes of genocide, ethnic cleansing, war crimes and crimes against humanity and that, if they manifestly fail to do so, the international community has a responsibility to act (with a UN Security Council mandate if military intervention was opted for). This statement was welcomed by a number of human rights organisations, which saw in this principle the emergence of a new international norm (and practice) that would mean the international community could not respond with inertia when faced with massive human rights violations (as, for example, during the Rwanda genocide of 1994). They were disappointed, however, when a number of serious violations over the subsequent years failed to trigger any reaction (even of a non-military nature) from the UN Security Council or any other international actor.

In 2011, though, for the first time, the Responsibility to Protect principle was used in UN Security Council resolutions as a basis for collective action under Chapter VII of the UN Charter, giving rise to renewed optimism regarding the principle's applicability. Euphoria was short-lived, however: the 2011 military interventions in Libya and Côte d'Ivoire were met with considerable criticism, including from some of the permanent members of the Security Council, which ultimately had a boomerang effect on the R2P principle. The association of R2P with military intervention led to growing reluctance on the part of many states (including China and Russia) to implement – or even to refer to – the principle as such.

The question that arises, therefore, is whether after 2011 there is a future for the principle of the Responsibility to Protect. In this paper, we will argue that R2P is more than military intervention and that it indeed has a future, provided some (influential) states consistently adhere to the principle. After recalling the events of 2011 and the criticism they provoked, this brief will highlight the various issues related to implementation of R2P, and various aspects that need to be further clarified to avoid misconceptions and to clear the way for future references to R2P. The paper will end with some recommendations aimed at revitalizing the Responsibility to Protect principle.

2011: the watershed year?

The first resolution referring to the Responsibility to Protect as a basis for international action (in Libya) was adopted unanimously by the UN Security Council on 26 February 2011, with the support of regional organisations such as the Arab League, the African Union and the Organization of the Islamic Conference[1]. This resolution established an arms embargo, targeted sanctions against designated individuals (assets freeze and travel bans) and referred the situation to the International Criminal Court (ICC). Resolution 1970 marked three significant steps that warrant attention:

- The UN Security Council was (finally) reclaiming its role as a major actor in the field of international peace and security (after years of stagnation following the interventions in Kosovo and in Iraq and then a degree of passivity, to say the least, in crises such as those in Darfur, Georgia and Kyrgyzstan).

- The Responsibility to Protect was used as a basis for action under Chapter VII of the UN Charter.

- The ICC was propelled into being a key actor in relation to R2P, and combating impunity became a concrete way of implementing R2P. The adoption of the resolution on Libya was the second time that the UN Security Council had made use of Article 13 of the Rome Statute to refer a situation involving a non-state party to the ICC under Chapter VII of the UN Charter. On the first

occasion (in connection with Darfur, Sudan), however, there had been no mention of the Responsibility to Protect.

Then, on 17 March 2011, a second resolution was adopted by the UN Security Council, authorising the use of force referring to, inter alia, 'the responsibility of the Libyan authorities to protect the Libyan population'. Resolution 1973 encountered more resistance than resolution 1970, however, and was not adopted unanimously, despite the support of Arab states and regional organisations for the imposition of a no-fly zone and the creation of 'safe areas'.[2] The subsequent military intervention provoked further resistance from Security Council members, including Russia and China, especially when NATO took the lead in the operation. Growing concern was then expressed regarding the real motives for the intervention, and NATO and Western states were accused of seeking 'regime change' rather than protecting civilians, in particular through the support being given to the opposition forces fighting the Gaddafi regime.[3] A further blow was inflicted on the intervention when NATO was accused of deliberately targeting civilians after bombings led to a number of civilian casualties.[4] Even if that latter accusation was ultimately dismissed by the International Commission of Inquiry and by the ICC Prosecutor, these allegations served to reinforce the position taken by opponents to the intervention as well as that of detractors of R2P.[5]

---

1. S/RES/1970 (2011).
2. Five states abstained from voting on the resolution: Russia, China, Germany, Brazil and India. All of them stated that they were not in favour of the use of force in that situation; see their declarations in SC/10200.
3. Suspicions regarding regime change were fed by a letter signed by Barack Obama, David Cameron and Nicolas Sarkozy: 'Libya's Pathway to Peace', International *Herald Tribune* Op-Ed, 14 April 2011.
4. A/HRC/19/68, 2 March 2012, *Report of the International Commission of Inquiry on Libya*, para. 84-89.
5. A/HRC/18/68, para. 89, and *Third Report of The Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1970 (2011),* para. 55.

In spite of these growing concerns, R2P still seemed to be in vogue in the Security Council when resolution 1975 was unanimously adopted on 30 March 2011, once again linking R2P, Chapter VII and the use of force in the context of the post-electoral stalemate in Côte d'Ivoire. This resolution was very different, however, from resolution 1973. In particular, it did not establish a base for a military intervention, but reiterated the authorisation for an (existing) peacekeeping force to use 'all necessary means' to implement its (existing) mandate to protect civilians.[6] Resolution 1975 went a bit further, though by explicitly restating the responsibility of each state to protect civilians. Moreover, the resolution explicitly recognised Alassane Ouattara as the winner of the elections and urged his challenger Laurent Gbagbo to step aside, also mentioning him (with his supporters and forces) as the main threat for UNOCI personnel and the civilian population of Côte d'Ivoire.[7] The subsequent military operations, leading to Gbagbo's stepping down and being arrested, therefore again raised questions about the actual goal of the intervention: self-defence (UN peace-keeping forces), protection of civilians, or regime change? The fact that UN troops, claiming to react both to protect civilians and in self-defence, failed to take action against the alleged human rights violations by Ouattara's supporters, fuelled criticism concerning the UN's lack of impartiality and the exploitation of R2P in order to push forward other agendas.

While a number of other resolutions mentioned the responsibility to protect during 2011 and even in the first months of 2012, none linked it to international intervention.[8] Furthermore, in spite of the rapidly deteriorating situation in Syria, no resolution was passed regarding that country. Since the main argument of opponents of any form of action towards Syria was that R2P had been misused in Libya, the resulting impression was that R2P had indeed been weakened by the 2011 interventions in Libya and Côte d'Ivoire.

Problems and prospects

What the debate on Libya, Côte d'Ivoire (and Syria) actually highlights is the difficulty associated with the 'reaction pillar' of the R2P principle which gives the international community the responsibility to intervene. In this respect, 2011 served to crystallize a number of issues related to the use of force through the UN's collective security system, and to the limited potential for implementing R2P. It could be argued, however, that the issues at stake relate less to the validity of the concept than to the decade-old debate about the use of force under Chapter VII of the UN charter and the role of the UN Security Council in this respect.

But R2P is not only about military intervention and the use of force; it is first and foremost about the recognition of an obligation incumbent on states to protect their citizens and the responsibility of the international community to remind them of that obligation. It is about human rights and the protection of (civilian) populations. As stated in the ICISS report of 2001, it is not only about reaction, but also about prevention (of crimes) and development (of norms and tools). Lately, these aspects have tended to disappear from the debate, which instead focuses mainly on the 'reaction pillar' and the conduct of military interventions in the name of R2P.[9] In order to move forward with putting the principle into practice, four main questions need to be asked:

When? When does a situation qualify for R2P – by what criteria? What will trigger an international intervention? Although a certain basis has been laid down by the ICISS, there is still considerable leeway for interpretation. In this area, concrete lessons can be learned from the interventions in Libya and Côte d'Ivoire, especially regarding the crimes triggering intervention.

---

6. On the original mandate, see UN Security Council resolution 1528 (2004), para 6. i). See also S/RES/1975 (2011), preamble and para. 6.
7. Ibid., Preamble and para. 3,4 and 9.
8. Among the most important: resolutions 1996 on South Sudan, 2014 on the situation in Yemen, 2012 on the Democratic Republic of Congo (DRC) and the most recent to date, 2040 (2012) on Libya.
9. See, for instance, Brazil's proposal to develop a 'Responsibility while protecting', first presented at the UN General Assembly in September 2011 (see A/66/551–S/2011/701, 11 November 2011).

The first of the four principles put forward by the ICISS, 'the just cause threshold' undoubtedly needs to be elucidated. What criteria should be used to assess whether crimes fit any of the four categories that relate to R2P? In this regard, contributions from the Human Rights Council, the International Committee of the Red Cross (ICRC) and the ICC, all of which bodies are concerned with scrutinising such crimes, could be helpful.

Why? What are the motives or triggers behind action in the name of R2P? This question directly leads to the debate about a perceived relationship between R2P and regime change. In this respect, a straightforward answer is needed; the only possible justification for intervention in the name of R2P is massive human rights violations. However, it is naive, confusing and counterproductive to deny any connection with 'regime change'. If a regime/state/ government is neglecting its responsibility to protect its population to such an extent that others are required to assume this responsibility, can this regime legitimately remain in place? Recognising that potential consequences of intervention might be regime change does not mean that this is the ultimate goal of the intervention. Regime change cannot be the motivation for, nor the aim of, the intervention – but it may well be (and most probably will be) a consequence of it. In order to avoid confusion and perceived hypocrisy, Western states supporting R2P will have to admit and explain this fact.

Who? The third essential question, arising frequently when possible international intervention is debated, and painfully illustrated by the Syrian situation, concerns the 'right authority' to decide on action and ultimately to authorize (military) interventions. If the UN Security Council is the unchallenged legitimate body to do so, as the 2005 World Summit declaration states, problems arise when the Council is blocked by one or more of its veto-holding members (as was the case in 1999 for Kosovo and as is currently the case for Syria). To find a way out of such a situation, the ICISS report mentioned the possibility (much debated in 1999) of resorting to the UN General Assembly on the model of the 'Uniting for peace' resolution.[10] Another interesting suggestion is to invoke a 'responsibility not to veto', a self-imposed obligation to refrain from vetoing

resolutions dealing with crimes against humanity, genocide and war crimes.[11] Although the case of Syria illustrates the complexity of such a proposal, one could also optimistically view resolution 1973 as an actual illustration of that principle (China and Russia abstaining instead of vetoing).

How? The fourth and final question refers to the type of reaction and how it is put into practice. First, military intervention does not have to be the sole action to be taken in the name of R2P. Prevention actions and capacity-building efforts should be prioritised, following the 'responsibility to prevent' and the 'responsibility to rebuild' elements highlighted in the ICISS report. Even when (and if) reaction is needed, a number of non-military measures (political, economic, judicial) can be decided under Chapter VII, as illustrated by resolution 1970. And if military intervention is to be considered, two of the four 'precautionary principles' (right intention, last resort, proportional means and reasonable prospects) mentioned in the ICISS report also deserve further reflection. What are 'proportional means' (for instance, what are the rules of engagement) in the framework of military intervention meant to protect civilians? Although the debate has been raging for years, since the first peacekeeping force mandates included 'the protection of civilians', there is still some difficulty in the very idea of using military force to protect civilians.

---

10. 'Uniting for peace' refers to resolution 377 adopted by the UN General Assembly in November 1950 while the Security Council was blocked because of the boycott by the USSR. Since then, it has become a point of (legal) debate as to whether the General Assembly has a responsibility to contribute to the maintenance of international peace and security when the Security Council fails to do so. On applying this model in R2P situations, see A/63/77, Report of the UN Secretary-General, 'Implementing the responsibility to protect', para. 11 c.

11. See *inter alia* ICISS report, para. 6.8, Brazil proposal, A/66/551–S/2011/701, para. 11 c and A/63/77, Report of the UN Secretary-General, *'Implementing the responsibility to protect',* para. 61.

Similarly, identification of 'reasonable prospects' for 'halting or averting the suffering' of populations must not be glossed over: it is intrinsically linked with the strategic direction of the military operations. In this regard, the military and civilians have to work together to identify the objectives of an operation (the aim of which is not to destroy an enemy army, but to protect civilians), to determine how to attain these objectives, and to decide when to cease operations. Finally, the relationship between the mandating body (to date, the UN Security Council) and implementing organisations (such as NATO) has to be clarified, in particular regarding potential interpretations of the mandate. Bosnia and the infamous dual key mechanism showed that a too-rigid framework ultimately hinders implementation, whereas the case of Libya seems to indicate that too much leeway for different interpretations raises questions about military actors exceeding their mandate.[12] The Libya operation taught us that disentangling humanitarian, military and political objectives in such interventions is not always easy. However, without further reflection on this, the Responsibility to Protect will remain an ever-contested principle.

Conclusions and recommendations

In 2005, for the first time, the UN Members recognised the existence of a specific protection relationship between a state and its citizens, based on the rights of the latter. Despite this ground-breaking agreement, the following years highlighted the remaining difficulties in putting the concept into practice. Most recently, the crisis in Syria and the inability of the Security Council to act despite strong indications that the regime is indeed failing in its responsibility to protect, could prove to be a further blow to the principle, leading to scepticism regarding the international community's capacity to really do anything to prevent and halt genocide, crimes against humanity, war crimes and ethnic cleansing. In order to maintain the momentum and revive the spirit of 2005 by addressing the four above-mentioned questions, the following recommend-dations are made, specifically to European Union (EU) member states and the Dutch government:

- The principle of R2P should not be reduced to a matter of international military intervention. The inherent human rights dimension, which is part of the foreign policy of the EU and its members, should be highlighted and constantly promoted (in contrast to those states using the military intervention debate to discredit R2P).

- The sterile debate about regime change should be brought to an end with a clear statement of the facts. R2P is not about regime change: it may lead to regime change, but so do democratisation and development. However, in tackling this issue, EU members should resist any temptation to make use of R2P to push forward other agendas.

- Prevention should be further advocated as the most important dimension of R2P, and the work of the UN Special Advisers and their office supported. Possibilities for involving the Office of the High Commissioner for Human Rights (OHCHR) and the ICC in that process should be explored.

- The potential for non-military means of reacting should be explored, as well as the role of the ICC in this regard.

- More attention and means should be devoted to implementation of the most under-developed dimension of R2P, the 'Responsibility to rebuild' (in the broader sense). Libya should be a test case for this.

- The (legal) criteria for determining the crimes that would trigger a reaction should be developed, with the involvement of the ICRC, the OHCHR and the Council of Human Rights as well as the ICC.

---

12. The 'dual key mechanism' applied in Bosnia in 1993–95 required double authorisation – by both NATO and UN authorities – before any military action could be taken by NATO. It led to inter alia the fall of Srebrenica.

- The permanent members of the UN Security Council should be urged to abide by their 'responsibility not to veto' resolutions regarding crimes such as genocide, crimes against humanity, war crimes and ethnic cleansing, as recommended by the ICISS, the UN Secretary-General and, more recently, Brazil.

- The debate on the role of the General Assembly when the Security Council is unable to take action because of the veto of a permanent member should be relaunched, on the model of UN General Assembly resolution 377.

- National military staff, as well as police and civilian actors, should receive training so that they have a better understanding of the R2P principle and their role in potential R2P operations; all actors should be involved in designing new guidelines for these types of intervention, resulting in the development of a common approach. In this respect, the 'US Atrocities Prevention Board' (a high-level interagency body), set up in April 2012, is an interesting initiative that could provide a model to follow.

About Clingendael

Clingendael is the Netherlands Institute of International Relations. We operate as a think-tank, as well as a diplomatic academy, and always maintain a strong international perspective. Our objective is to explore the continuously changing global environment in order to identify and analyse emerging political and social developments for the benefit of government and the general public.

The authors

Maj. Gen. (ret.) RNLMC Kees Homan (MA/ LL M) is former director of the Netherlands Defence College. His research at the Clingendael Institute focuses on international security issues and a wide range of strategic and military studies

Marianne Ducasse-Rogier is a Senior Training and Research Fellow at the Netherlands Institute of International Studies 'Clingendael'. She holds a Ph.D. in international relations obtained from the Graduate Institute of International Studies in Geneva and has conducted intensive research into peace and security issues, international interventions and post-conflict situations.