How R2P failed Syria

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Ban Ki-moon, Secretary-General of the United Nations, called for 2012 to be the 'year of prevention'. He went on to note: 'Prevention does not mean looking the other way in times of crisis, vainly hoping that things will get better...'[1] These comments supported a newly adopted international norm - Responsibility to Protect, otherwise known as R2P. It's a new approach to addressing conflict allegedly applied with success in Libya in 2011.

2012 has proved to be anything but the 'year of prevention' for Syrians, however. At the time of writing the Syrian conflict continues to escalate well beyond the peaceful protests which began over 18 months ago; at a time when 'prevention' of the conflict would have been easier to manage. By now over 30 000 Syrians have been killed, over a million have sought refuge in neighbouring countries (300 000 of them registered in refugee camps), and over 3 million are internally displaced. Meanwhile systematic acts of brutality, including torture and arbitrary arrests by the Syrian military and civilian leadership, continue. The once peaceful tactics of the Syrian protestors have become equally violent. Frustration on the international diplomatic front continues to grow.

The failure to make headway in Syria is complex. Security and national interests are at stake for domestic, regional and foreign powers. *Real-politik* and power politics between emerging and established powers is the key. National interests are being pursued at the cost of ideological principles, international law and conventions, regional stability and peace. As they were nearly 100

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years ago, the great powers (US, Russia and China) are facing off in a contest for a new Middle East. Meanwhile they are happy for their proxies Iran and Syria on one side, and Turkey, Israel and Saudi Arabia on the other hand, to risk protracted conflict with each other. These nations are competing for access to the region's resources. Their national interests will manifest in many ways, including the shifting of alliances. For these reasons the application of R2P will fail where security and national interests of powers are at stake.

What is R2P?

R2P emerged from a human security framework which places the protection of human rights at the centre of international peace and security norms and practices. It is meant to be used as a preventative tool. The onus is placed on the international community to assist states in fulfilling their responsibility to protect their citizens. If a state fails, or is failing, then the responsibility falls on the international community. Since R2P was agreed to by the international community at the 2005 World Summit, the UN and its member states have sought to identify the precipitating factors that lead to violence, conflict and atrocities, and develop tools to address them – ideally before the situation reaches crisis point. As noted by Ban: 'Prevention means proactive, decisive and early action to stop violence before it begins'.[2]

R2P seeks to track the international response to imminent and developing crises within countries. The preventative tool delves into the actions of key regional actors/organisations, the UN and the ICC. The R2P tool has three active pillars. R2P stipulates that:

Pillar 1: Every state has the responsibility to protect its populations from the four mass atrocity crimes.

Pillar 2: The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility.

Pillar 3: If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

There is general consensus that Pillar 3 allows legitimate coercive measures to be adopted, as a last resort, to protect people from four mass atrocity crimes (conflict, genocide, war crimes and ethnic cleansing). These pillars are meant to be flexible in their application.

R2P: failure or success? The Libyan case

Proponents of R2P have listed a number of success stories where R2P has been invoked to varying degrees thus far: Kenya, Kyrgyzstan, Cote d'Ivoire, Guinea, Libya, South Sudan, Yemen and the Democratic Republic of the Congo.

Libya has often been touted as a successful case of the application of R2P. A number of non-military measures were adopted to protect Libyans and to stabilise the country in 2011. Diplomatic intervention, punitive sanctions and a no-fly zone were imposed on the Libyan regime. Yet when these measures failed to resolve the Libyan crisis, it led to broader interpretation and application of Pillar 3.

In the Libya case, Australia adopted a pro-intervention policy along with many other proponents of R2P. In fact Australia has always had a role in the creation and application of R2P. Former Foreign Minister, Gareth Evans helped formulate this concept, and Foreign Ministers Rudd and Carr have since endorsed, adopted and applied R2P when it suited Australia.

The Libyan case is a 'work in progress' when it comes to applying R2P. Supporters acknowledge that R2P had teething problems that need to be improved in application, or in 'operationalizing the concept'.[3]

There has been criticism of R2P since it was first conceived in the late 1990s, especially in recent times due to the experiences of Cote d'Iviore and Libya. Reflecting on the Libyan experience, Ban notes 'some innocent lives were lost in the name of R2P. That is why the use of force is never our first choice. Many more lives were saved, however.' But the criticism, especially in the Libyan case, wasn't just focused on the loss of lives. Rather it was deemed problematic on a number of fronts: first, the way the UN mandate was interpreted by NATO forces; and secondly, how the application of Pillar 3 had an impact on state sovereignty. State sovereignty has long been the cornerstone of the international system. R2P challenges this by suggesting an ethical value, protection of human rights, which transcends State borders and the right to territorial control. Sovereignty is now 'evolving into a concept based on a state's responsibilities to its citizens and the international community'.[4] This new basis for humanitarian intervention has been viewed by some as eroding the existing normative basis of the international political system, thus allowing major powers to intervene selectively in the domestic affairs of weaker states.[5]

In the case of Libya, United Nations Security Council (UNSC) Resolution 1973 drew on previous agreements and it takes them a step further. The standard language of previous UNSC resolutions often uses to 'protect civilians under imminent threat of physical violence'.[6] In contrast, Resolution 1973 uses the phrase 'Member State (...) to take all necessary measures to protect civilians and civilian populated areas under threat of attack', dropping the word 'imminent' and including a more expansive concept of 'civilian populated areas'. This concept therefore provided a reason to defend 'civilian populated areas' that were not necessarily in immediate danger. No explanation of 'all necessary means' was provided. The resolution has been interpreted both narrowly and broadly. Thus state sovereignty is called into question – when is it acceptable to infringe upon another country's territory in the name of human rights protection? A third of the Security Council abstained from Resolution 1973, highlighting the controversial nature of the wording and its potential application, although many of these same countries did not have a problem with earlier Resolution 1970 which imposed sanctions and referred the Qaddafi regime to the ICC. Germany and the BRIC nations (Brazil, Russia, India, China) abstained. The reasons cited for abstaining were based on interpretation of the Resolution, actual political intent of the remaining three permanent members, and the low chance of success of the mission.

The two permanent members (China and Russia) chose not to invoke their veto rights. They cited the Arab League's support of the no-fly zone as the key to their decision to abstain rather than veto. Thus overall one can argue that although these abstaining nations were concerned about the wording and potential implications of the Resolution they accepted the importance of protecting civilians in other countries but questioned the manner of

implementing R2P, as opposed to the appropriateness of the norm itself.[7] Advocates of R2P praised the international community for embracing this new international norm and were positive that a new era of international diplomacy had commenced.

Soon after the passing of Resolution 1973, events suggested that the initial optimism was misplaced: 'Indeed, NATO's activities over Libya in pursuit of UN Resolution 1973 have again raised questions over the timeliness, legitimacy, proportionality and effectiveness of military action...There is a need to analyse the consistency, legitimacy and effectiveness of pillar three tools such as economic sanctions, diplomacy and civilian and military responses, especially in terms of how they impact on and complement preventive and re-building strategies'.[8] Concerns have also arisen as to how military action sits alongside other Pillar Three tools such as preventive diplomacy, economic sanctions, and civilian protection missions. Not surprisingly, the issue of sovereignty arose again. The boundary between Pillar One (state responsibility) and Pillars Two and Three is a key issue when it comes to the issue of international responsibility 'requiring' infringement of state sovereignty. Many critics argued that NATO overstepped its mandate by launching a military campaign with the ultimate desire for regime change. The Libyan opposition took advantage of NATO air force support to halt Moammar Gaddafi's retreating convoy - which led to his capture and killing. This became a point of division for many nations, especially those who abstained from the earlier vote. In turn this has contributed to responses to the Syrian crisis.

After the Libyan intervention, India's Ambassador to the UN Hardeep Singh Puri began referring to NATO as the 'armed wing' of the Security Council. There was disquiet about NATO's actions

in Libya and how UNSC Resolution1973 was used to justify their actions. Some concerns were based on: the rejection of ceasefire offers which may have resulted in non-military compliance; indiscriminate attacks by NATO; targeting fleeing troops that posed no immediate threat to civilians; targeting of civilian locations; and openly supporting the opposition. The line was blurred between the objective of protecting Libyan civilians living in Benghazi and the objective of overthrowing the regime. Thus the issue of when, if ever, it is legitimate for the international community to enforce regime change has now come to the forefront of international relations.

It is as a result of the Libyan experience that Brazil introduced a variation on R2P: RwP – Responsibility while Protecting. RwP 'seeks to address concerns regarding the implementation of military measures to prevent and halt mass atrocities... it must be regularly monitored and periodically assessed so as to minimise the impact on civilians.'[9] RwP is meant as a clarifying principle, or supplement, to R2P rather than a new concept rivalling R2P. It maintains support for intervention and the Third Pillar while allowing timely and decisive action. Although yet to be implemented, the additional clarity promised by RwP does not provide answers to how R2P interventions should be conducted.

As a consequence of NATO actions (led by France, the UK and the US) the Libyan case has been cited as a reason for not applying R2P in the case of Syria. Supporters of R2P on the other hand argue that it needed to be applied long ago and it is the politicking of big powers which is delaying its application. So far, and at the time of writing, the anti-R2P argument regarding intervention in Syria is clearly prevailing.

Why R2P has failed Syria today

Although R2P is morally laudable, in reality it's not a tool which can be applied in a world that is heavily vested in politics. Whilst the world continues to be divided among big and small powers, and the division between the Global North and South widens, the principle of state sovereignty will continue to be highly valued by smaller, weaker, or threatened powers (which will more often be the countries subject to R2P interventions), as opposed to their stronger, wealthier and larger counterparts.

As the world has witnessed the downward spiral of Syria and the gradual spreading of the conflict, notable comments have been made by diplomats on how 'difficult' and 'different' the Syrian case is, despite in principle support of R2P. For instance, Australia's Foreign Minister, Bob Carr noted: 'This is a militarily strong regime. There isn't an appetite, and not a budget, in the Western world for the sort of intervention that would be involved here'.[10] Co-creator of R2P Gareth Evans said Syria has: '... a very different geopolitical environment ... no Arab League unanimity in favour of tough action; a long Russian commitment to the Assad regime; and strong Syrian armed forces with a credible air-defence system, meaning that any intervention would be difficult and bloody ... It's too late now for such renewed consensus to help much now in Syria.[11] Professor of Law, Errol Mendes, pointed out that 'Syria is a very hard case for current R2P intervention, due to the tri-level proxy war unfolding there'.[12]

Syria has presented a security dilemma for its immediate neighbours. Whilst the Assad regime fights for its survival (with the assistance of Russia, Iran and China) it is threatening the security of others (Turkey, Iraq, Saudi Arabia and Israel). What we are also witnessing is the adaptation to these changing

circumstances by different actors (state and non-state). They are responding to who rules in Syria, and how this impacts on their immediate security and (national) interests. The multi-ethnic and multi-religious makeup of Syria lends itself to cross-border interaction, its geostrategic position attracts big power interests, and the potential political vacuum that will arise post-Assad attracts the ambitions of regional powers. Therefore, there is a real threat of the conflict spreading beyond Syria's borders (as we have seen already with growing tensions within Lebanon and Turkey).

It is not just the Syrian population who face the devastation of a dragged out civil war, but the region itself will remain in a state of heightened threat, tension and uncertainty until the scrambling to fill the post-Assad political vacuum reaches an end point. These unsettled conditions, with rampant violence and arms transfer, raise a considerable risk of non-state actors using terrorism to advance their political objectives. The Assad regime may command Lebanon's Hezbollah, a powerful Shiite group and close ally of Syria and Iran, to distract attention from Syria by provoking conflict with Israel (as recent drone attacks demonstrated) or the anti-Syrian "March 14" movement in Lebanon. The recent assassination of Wissam al-Hassan, an anti-Assad Lebanese (Sunni) intelligence officer, may be a demonstration of such a tactic. On the other hand, Al-Qaeda operatives and other Islamic insurgent actors are increasing their involvement in countries such as Syria. Radicalised political Islamists also know that if countries in the Arab world turn to democracy, it delegitimises their theocratic political ideology.

It is true that there are many differences between Syria and Qaddafi's Libya. Syria's complex ethnic, tribal and geographic makeup is very different to that of Libya. Libya is 93% Sunni Muslim while Syria has a majority Sunni population of 68% and

the remainder are of diverse Muslim and non-Muslim sects. Syria's geographic position is also of immense strategic significance, situated amidst oil-rich nations and at the crossroads of the West (Israel), Sunni interests (Turkey, Jordan, Saudi Arabia) and Shia interests (Iran, South Lebanon). Unlike Libya, Syria is militarily stronger, especially in ground-to-air and air defences. The Syrian army is five times larger than the former Libyan army under Qaddafi. Syria has the support of Russia, China, Iran and some Iraqi government officials while Libya was much more diplomatically isolated. Unlike Libya's Qaddafi who was for many years pictured as a madman, Assad seemed rational and (Western) educated. Unlike Libya, Syria has always had a key role in the 65 year old Arab-Israeli conflict; Israel continues to occupy the Syrian Golan Height. The underpinnings of the Libyan uprising were regional and tribal in nature; the Syrian uprising on the other hand began with calls for real democratic and civil rights reform. It was only later that the Syrian civil war developed into a sectarian conflict with a degree of surreptitious involvement of arms suppliers and fighters from outside the country. In Libya, Qaddafi lost the eastern half of his country within days of the start of the uprising. Syria on the other hand is experiencing fighting throughout the country in major population centres. Syria's population (21 million) is almost four times greater than that of Libya (6.5 million), and largely based in high density urban centres.

The international community has been much more divided in the Syrian case. The EU, US, and most fellow Arab countries have called on Assad to step down. China, Russia, Iran and some Latin American countries continue to see this as interference. Neighbouring countries are actively arming the two sides – the Russians and Iranians have provided the Syrian regime with arms and military expertise. The Gulf States are funnelling weapons to

the Sunni insurgents via Lebanon, Turkey, Iraq and Jordan. The CIA are providing weapons and training to the Syrian opposition. The US wants to protect its own security and national interest. By extension this means enforcing the position of their long standing allies in the region – Israel and Saudi Arabia. Russia is trying to retain and rebuild its existing alliances in the region. Support of the Assad regimes goes back to the 1950s, and Russia still maintains a naval base in Tartar. Importantly, it has commercial interests in Syria, having invested almost $20 billion in Syria's infrastructure, energy and tourism sectors in 2009 alone. Currently Russia has approximately $5 billion in arms contracts with Syria. Having lost billions of dollars due to the sanctions on Iran and Libya its defence industry needs these contracts to be delivered.

An additional layer to this conflict is the war being fought over Iran. The US and its allies feel threatened by the resurgence of Iran on two fronts: Iran's nuclear ambitions and the spread of Iranian sponsored Shi'ism in the Muslim world. Russia has helped Iran build its nuclear program and China needs Iranian oil, so both are willing to support Iran's policies to secure their own interests. The US wants to ensure its own interests in the region including the need to assist its Sunni allies (Saudi Arabia, Bahrain, Turkey etc.) from the spread of Shi'ism and Iranian influence.

The real-politik of US foreign policy is illustrated in the double standards adopted by US support for the Arab uprisings in Egypt, Tunisia, Libya and Syria but not in Bahrain; the latter is ruled by a Sunni minority monarch over a Shiite majority population. Thus in light of the demise of Sunni governed Iraq (which once held the position of being the bulwark against the spread of Shi'ism in the region) renewed security competition between the Sunni Arab rulers and Shia Persians (Iran) deepens. Iran's nuclear ambitions

also ensure a sense of deep insecurity to its neighbours, particularly Israel, which has been beating the war drums on this front.

Western intervention in the Syrian conflict is also linked to Israel's agenda to destroy Iran's nuclear facilities. With Iran's refusal to comply with UN resolutions to open up its nuclear facilities and intentions it has been subject to harsh UN imposed sanctions. The US administration has refused to approve Israeli airstrikes on Iran in the lead-up to a US Presidential election, against the background of war fatigue, a mammoth budget deficit and significant risks to oil supplies in the event of retaliation by Iran. Whether the post-election US approves an Israeli strike on Iran will also have a huge impact on the war in Syria. A weakened Iranian regime could spell the imminent demise of the Syrian regime; but an enraged Iran could seek to use the Syrian conflict as another front on which to attack pro-Western targets in Israel, Lebanon and Turkey. The warning issued by Lakhdar Ibrahimi, the UN peace envoy to Syria in October - "you cannot expect the Syrian crisis to remain within Syrian borders" - equally applies to a strike on Iran.

UN Special Envoys Kofi Annan and his successor Ibrahimi have worked hard to resolve the Syrian conflict. So far they have had little success. Other than the UN Special Envoys, regional organisations (EU, Arab League, GCC), other arms of the UN (Special advisers on the Prevention of Genocide to R2P, Human Rights Council, High Commissioner for Human Rights, Under-Secretary on Humanitarian Affairs) and governments have also put forward peace proposals and diplomatic remedies to the current conflict. Egyptian President Mohamed Morsi created a diplomatic group composed of Egypt, Saudi Arabia, Iran and Turkey. He opposes intervention but whether he can constrain Turkey and Saudi from directly intervening is yet to be seen. Like Annan and Ibrahimi, Morsi also insists that a resolution to this conflict cannot

be resolved without the inclusion of Iran. The IBSA (India, Brazil, South Africa) political bloc of emerging powers sent a high level delegation to Damascus to plead with the President to stop the killing, and in October 2011 IBSA abstained from the Security Council (SC) Resolution seeking to curtail civilian massacre by the Syrian Government. Other proposals have ranged from establishing no-fly zones, buffer zones, "no-kill zones," safe-havens, protected humanitarian corridors, arming the Free Syrian Army to fight Assad's regime, to outright invasion to overthrow the Assad regime. Thus despite various United Nations General Assembly (UNGA) and UNSC Resolutions condemning the violence in Syria, divisions among SC members (ie disparate national interests) remain a barrier to the implementation R2P in Syria.

Concluding Thoughts

R2P faces the same problems as previous humanitarian intervention tools – the lack of resources and political will. R2P advocates have suggested that one way of overcoming this is to co-op the involvement and assistance of regional organisations. Although regional organisations may be better placed to intervene in a timely manner there is nothing to suggest – historically or otherwise – that the same problems that arise within the UN system will not reoccur at the regional level. This has recently been demonstrated in the Arab League's role in the cases of Libya and Syria, where in the latter case they have been divided. Neither the United Nations nor regional fora have been united enough or empowered to overcome the self-interest of separate nations. Thus there has never been consistency in the application of humanitarian interventions, especially those requiring the backing of force.

Who decides when and where to intervene, especially if it is outside a UN Mandate? Fiot et al articulately noted the following

problem faced by R2P proponents: 'The danger is that those states deciding on when and where to intervene are not those in danger of being intervened in ... Without a world body viewed as legitimate by all members of the international system there is little hope of a successful implementation of the concept'.[13] The Syrian case shows R2P is purely a 'theoretical construct' which has 'little practical utility',[14] especially when there will be winners and losers in terms of national self-interest when regime change occurs. Meanwhile hardship will persist for ordinary Syrians. Unfortunately, Ban's warning has gone unheard: 'Yet let us also remember: historically, our chief failing as an international community has been the reluctance to act in the face of serious threats. The result, too often, has been a loss of lives and credibility that haunt us ever after.' Sadly, the Syrian case will further damage the credibility of the UN and those who yearn for it to play an effective role in the protection of human rights.

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[2] Ban Ki-moon, Secretary-General of the United Nations, Address to the Stanley Foundation Conference on the Responsibility to Protect, New York, 18 January 2012

[3] Kate Seaman, 'The Regionalization of the Responsibility to Protect' in *The Responsibility to Protect A Contribution to the Third Pillar Approach* Edited by Daniel Fiott, Robert Zuber and Joachim Koops, Madariaga, Brussels 2012

[4] Kate Seaman, 'The Regionalization of the Responsibility to Protect' in *The Responsibility to Protect A Contribution to the Third Pillar Approach* Edited by Daniel Fiott, Robert Zuber and Joachim Koops, Madariaga, Brussels 2012

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