

# DOES THE DOCTRINE OF “RESPONSIBILITY TO PROTECT” (R2P) APPLY IN SYRIA?

*As revolutions sweeping over the Arab world reshape geopolitical arrangements and foreign policy, the international community is debating the rules of a possible humanitarian intervention in Syria. They have been watching, mostly on the sidelines, as the conflict devolves into a confused mess of guerrilla fighting that has ripped the small country at its seams. Reports of rampant human rights abuses, use of chemical weapons, and massacres of civilians have forced the world to ask: is international military intervention needed to protect the people of Syria? Although it is a prime case for intervention under R2P, the situation in Syria is quickly moving away from one that can be easily fixed by any sort of intervention.*

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**A**s revolutions sweeping over the Arab world reshape geopolitical arrangements and foreign policy, the international community is debating the rules of a possible humanitarian intervention in Syria. Any debate on humanitarian intervention wrestles with a complex range of questions – legal, moral, operational, and political, and Syria highlights these contested terrains. The UN Charter under Article 2.4 guarantees that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>1</sup> There are two exceptions to this blanket prohibition. First, as provided by Article 51 of the Charter, states may act in self-defense. Second, under Articles 41 and 42, the Security Council can authorize enforcement actions and allows for the Security Council to take measures by air, sea, or land forces to maintain or restore peace and security.<sup>2</sup> A hallowed principle of the Geneva Convention Protocol I, additional to the Geneva Convention (1977), is the one pertaining to proportional means; whereby any planned military intervention should balance the protection of civilians.<sup>3</sup>

In 2000, former UN Secretary General Kofi Annan, in response to the atrocities in Rwanda and troubled by the “confusing legal justifications surrounding NATO’s intervention in Kosovo... asked the General Assembly the following: ‘If humanitarian intervention is, indeed an unacceptable assault on sovereignty, how should we respond... to gross and systematic violations of human rights that offend every precept of our common humanity.’”<sup>4</sup> The government of Canada, in response to Kofi Annan’s inquiry, brought together the International Commission on Intervention and State Sovereignty (ICISS) to develop a report on the a range of moral, political, and legal issues concerning humanitarian intervention.<sup>5</sup> The final report produced by the ICISS and endorsed by the UN Secretary General in 2005, introduced the concept now widely known as of “the Responsibility to Protect” (R2P) – a comprehensive framework for diplomatic and economic sanctions and finally military interventions as a last resort to prevent gross human rights violations.<sup>6</sup> The Secretary General’s own report entitled *In Larger Freedom* included a commitment to the basic principles of the ICISS report:

1 “Charter of the United Nations,” *United Nations*, <http://www.un.org/en/documents/charter/>

2 *Ibid.*

3 “International Humanitarian Law - Additional Protocol I 1977,” *International Committee of the Red Cross*, <http://www.icrc.org/ihl.nsf/full/470?opendocument>

4 Peter Stockburger, “The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm, or Just Wishful Thinking?,” *Intercultural Human Right Law Review* (2010), p. 373.

5 Gareth Evans and Mohamed Sahnoun, “The Responsibility to Protect,” *Foreign Affairs*, November/December 2002, <http://faculty.maxwell.syr.edu/rdenever/PPA-730-00/Evans.pdf>

6 Evans and Sahnoun (2002).

We are prepared to take collective action... through the Security Council, in accordance with the Charter, including Chapter VII... should peaceful means be inadequate and national authorities... manifestly [fail] to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity... each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.

The bedrock of R2P is the affirmation of this statement: “We accept that responsibility and will act in accordance with it.” This doctrine creates a critical benchmark to determine the grounds of intervention and reframes intervention as R2P once the state has abdicated its obligations to protect its citizens from gross human rights violations.

R2P is a clear shift from outmoded Westphalian conceptual definitions of sovereignty and is a move from state authority to state responsibility. Gareth Evans and Mohamed Sahnoun, the architects of the ICISS, argued in a recent essay in *Foreign Affairs* that some of the most complex issues in R2P were brought to light by the Kosovo intervention:

*“The international community has been watching, mostly on the sidelines, as the conflict devolves into a confused mess of guerrilla fighting that has ripped the small country at its seams.”*

The most difficult and controversial principle to apply is that of “right authority”. When it comes to authorizing military intervention for human protection purposes, the argument is compelling that the United Nations, and in particular its Security Council, should be the first port of call. The difficult question –starkly raised by the Kosovo war– is whether it should be the last... Nations regard collective intervention blessed by the UN as legitimate because it is self-interested. Those who challenge or evade the authority of the UN run the risk of eroding its authority in general and undermining the principle of a world order based on international law and universal norms.<sup>7</sup>

<sup>7</sup> Evans and Sahnoun (2002).

The emerging doctrine of R2P extends intervention to cover not just genocide, but other large scale killings and serious violations of international law.<sup>8</sup> However, this new international norm still demands fidelity to Security Council authorization of military intervention and that too only as a “last resort”.<sup>9</sup> In essence, the process for humanitarian intervention remains the same, while the areas of intervention have been broadened. In Libya, Security Council Resolution 1973 provided authorization of the use of military force only to “protect civilians and civilians populated under threat of attack.”<sup>10</sup>

The R2P doctrine provides the international community with a new global doctrine – protecting human rights and preventing atrocities around the world. The current crisis in Syria has meant that the R2P debate is now, more than ever, critical as both a topical and debatable norm.

### *The Theatre of War in Syria: Applying the R2P Doctrine*

Sparked by the embers of the Arab Spring in 2011, opposition forces are trying to oust President Bashar al-Assad’s Baathist government and forces loyal to Assad are attempting to squash the rebellion in this theatre of war in the Middle East. The international community has been watching, mostly on the sidelines, as the conflict devolves into a confused mess of guerrilla fighting that has ripped the small country at its seams. Reports of rampant human rights abuses, use of chemical weapons, and massacres of civilians have forced the world to ask: is international military intervention needed to protect the people of Syria?

John Stuart Mill argued the following on intervention:

To go to war for an idea, if the war is aggressive, not defensive, is as criminal as to go to war for territory or revenue; for it is as little justifiable to force our ideas on other people, as to compel them to submit to our will in any other respect. But there assuredly are cases in which it is allowable to go to war, without having been ourselves attacked, or threatened with attack; and it is very important that nations should make up their minds in time, as to what these cases are.<sup>11</sup>

8 Evans and Sahnoun (2002).

9 Stockburger (2010), p. 376.

10 Eric Posner, “Outside the Law,” *Foreign Policy*, October 2011, [http://www.foreignpolicy.com/articles/2011/10/25/libya\\_international\\_law\\_qaddafi\\_nato](http://www.foreignpolicy.com/articles/2011/10/25/libya_international_law_qaddafi_nato)

11 John Stuart Mill, “A Few Words on Non-Intervention 1859,” *The Collected Works of John Stuart Mill, Volume XXI - Essays on Equality, Law, and Education*, John M. Robson ed., (Toronto: University of Toronto Press, London: Routledge and Kegan Paul, 1984).

Although Mill wrote this in 1865, his words are as relevant today as they were then. He presents the touchstone about intervention: foreign nations with a different set of cultures submitting to the will of others. The Westphalian ideal of every nation being free of external agents is being redefined in both the global South and the global North.

The ICISS in 2001, had to grapple with the concept of the universality of human rights norms. How can the world agree to basic universal principles of human rights when some countries like Iran and Saudi Arabia regard the Universal

Declaration of Human Rights (UDHR) as incompatible with their own cultural laws? The ICISS’s litmus test was whether the sovereign state is fulfilling its responsibility to the people. By committing mass killings, a state is rendering the contract between itself and its citizen’s void and therefore its sovereignty is not legitimate.

However, R2P is not law: there is nothing binding states to intervene in other nations. Instead, it is a norm – and a sort of litmus test to gauge whether intervention is necessary. There are six criteria for R2P that cover what the ICISS felt was the proper justification of intervention: just cause, right intention, final resort, legitimate authority, proportional means, and reasonable prospect.

As the UN continues to report death tolls in Syria that range from 72,000 to 90,000 civilians, there is little doubt that mass killings are occurring. Whether or not the killings are deliberate acts of genocide or cleansing, or collateral damage to the war is irrelevant. The recent discovery of the use of chemical weapons by the government forces has confirmed that there is a just cause for intervention.

When the crisis in Syria first developed, the immediate question that was raised was “what makes Syria so different from Libya that it does not warrant an intervention.” Now that the United States is considering intervention after two years into the conflict, it is clear that the humanitarian toll is a stronger driving factor for the call for intervention, rather than strategic or economic goals. In the context of R2P, any potential intervention fulfills the criteria of “right intention”.

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Four of the criteria (final resort, legitimate authority, proportional means, and reasonable prospect) are still to be met in their application to Syria. In order for the intervention to have legitimate authority, an intervention must be approved by the Security Council, which is yet to happen because of the probability of a veto by Russia and China. However, if most criteria are fulfilled, the U.S. or NATO could define intervention in Syria a “moral imperative”.

Another similarly ambiguous criterion is “final resort” which calls for all other options to be exhausted before any intervention. While other options do not necessarily need to be tested, there must be reasonable grounds that indicate that military intervention is the only option. With the Assad government being backed by Russia, Iran, and Hezbollah and the rebels now being supported by the U.S., Turkey, some Gulf States, and the European Union, it seems that neither side will heed diplomatic options. However, no nation is yet to claim that diplomacy is off the table.

Of the six criteria, the final two are the most pragmatic in nature and refer to the effectiveness of an intervention. When proportional means are applied in an intervention, only minimum military force can be used to counter opposition. Many analysts have recommended no-fly zones as the prime method of proportional means without the use of more destructive land forces.

One of the most important, but often overlooked aspects of R2P is “reasonable prospect”. Will military action succeed in preventing loss of life, or will it exacerbate the situation and lead to greater loss of life? Although the NATO bombings of Yugoslavia successfully ended the war in Kosovo in 1999, most of the civilian casualties were due to collateral damage from bombing or retaliation to NATO bombings. An actual humanitarian intervention must be designed around preventing collateral damage and retaliatory killings. In the case of Syria, the murky nature of the guerrilla fighting and the growing sectarian ties of both the rebels and government forces make a potential military intervention extremely difficult. The urban nature of most of the fighting lends itself to collateral damage if either air-based-intervention or land-based-intervention is used. Although Syria is a prime case for intervention under R2P, the situation in Syria is quickly moving away from one that can be easily fixed by any sort of intervention.





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