**Improving R2P: Some Modest Proposals**

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In November 2011, shortly after the downfall of Muammar Gaddafi, at a small gathering of Ottawa peace activists, I took a poll to assess attitudes towards the Libya intervention and Responsibility to Protect (R2P). Those present were asked to check off as many of the survey questions they wished.

Within this small sample -- eleven well-informed, long-time peace activists -- there was a great deal of suspicion about the Libya mission (this was a few months after it had begun) and similar concerns about R2P implementation. There was a split over what should have been done (military or non-military, or unsure), but there was very strong agreement that things didn't go well.[[1]](#endnote-1)

The meeting, however, was actually organized to discuss a different topic -- the idea of a UN Emergency Peace Service (UNEPS). The UNEPS proposal[[2]](#endnote-2) is to create a permanent, integrated and multidimensional (military, police and civilian), first in/first out United Nations standing capability of about 13,500 UN-hired and trained dedicated volunteers that arrive early to curtail crises before they fester and get out of hand. A UNEPS is not designed for war fighting, and would within six months "hand off" to peacekeepers, regional or national services, depending on the character of the mission.

Unlike for R2P, there was near unanimous support for the idea of a UN capacity to respond early to atrocities (such as in Rwanda, or in Libya). The linkage between the two concepts (R2P and UNEPS) is self-evident, and this was not lost on those attending the meeting. When it was made clear that UNEPS included a significant military component, there was some reticence, but as it was laid out, most were won over.[[3]](#endnote-3) One person said she couldn't believe UNEPS wasn't in existence already -- "it made perfect sense". The peace activists strongly felt the Security Council Permanent Five members should not be able to veto a UNEPS response to a threat of mass atrocity.

**Being Honest About Libya**

Advocates of Responsibility to Protect (R2P) may be reluctant to criticize the 2011 UN-authorized but NATO-led intervention in Libya. Understandably they fear that admitting to flawed process and outcomes could undermine support for a vulnerable, evolving norm.

But ‘ever since Libya’, endorsements of R2P in the UN Security Council and the UN Human Rights Council have been on an upswing.[[4]](#endnote-4) The primary co-authors of the ICISS[[5]](#endnote-5) 2001 R2P report have been critical of what happened in Libya but remain unrepentant champions of the norm.[[6]](#endnote-6) And if it is true that imitation is the sincerest form of flattery, R2P detractors co-opting its language to advance their own agendas is another indicator of mainstreaming.[[7]](#endnote-7)

Before the controversy over the effects of the 2011 "R2P intervention" in Libya, and the divisions within the Security Council, and among the BRICS states that would follow,[[8]](#endnote-8) the wider implications of intervention were being considered. Indeed, the likelihood that Libya would decay into civil war if NATO forces backed the rebel groups was not unknown to participating militaries at the time.[[9]](#endnote-9)

Criticism of the intervention in Libya, or failure to respond effectively to Syrian atrocities[[10]](#endnote-10), does not mean the Westphalians have triumphed and the status of R2P is in serious doubt.

To underline that point, we can call on Maggie Powers' comprehensive 2014 study of UN attitudes towards R2P after Libya.[[11]](#endnote-11) “All UN Security Council resolutions, presidential statements (PRSTs), and open meeting records from 14 September 2005 until 28 February 2014 were collected; all Human Rights Council (HRC) resolutions from 2006 through 2013 were collected. In total 3,159 documents were collected and analyzed…” She found that "the empirical record reveals a strong and growing acceptance of R2P language".

When the Security Council became conflicted over what to do in Syria, “the HRC took up the mantle of strong RtoP language condemning those responsible for mass atrocities. RtoP language has, thus, been increasingly mainstreamed in Geneva by the HRC, and this positive trend reveals further internalization of RtoP by member states across intergovernmental bodies.”

In the period after the Libya intervention through to February 2014, of the 341 explicit references to R2P at UNSC Open Meetings, 82% were affirming and only 7% were negative. Among P5 and BRICS states[[12]](#endnote-12) -- critical states in terms of norm-setting -- only Russia was a "notable outlier" and either commented negatively or focussed only on “pillar 1” applications of R2P.[[13]](#endnote-13) That is significant because all BRICS states expressed much opposition to an armed force and regime change interpretation of UNSCR 1973 from the beginning. Yet, the case history and textual analysis of the Powers study “reveals the continuing and increasing prominent role of the responsibility to protect in the decisions and deliberations of the UN Security Council and Human Rights Council."

**Improving R2P**

Even with its controversies, Responsibility to Protect is the best legal response and prevention framework we may ever have to stop mass atrocities through the United Nations. Early criticism of its application to Libya has apparently not undermined that.

It has also become clearer that the relevant debate is no longer: R2P or non-intervention?[[14]](#endnote-14) But if the concept itself is so solid, what’s left to fix? There are gaps. They relate to the delivery of protection through right authority, and with reliable oversight and transparency, as well as the need for enhanced, timely capacity.

A “UN” R2P will continue to acquire its authority from a UN Security Council mandate (and reference to the UN Charter’s Chapter 7) as was agreed in the UN Global Summit Outcome Document in 2005. The unanimous statement reads in part:

“…[We] are prepared to take collective action, in a timely and decisive manner, **through the Security Council, in accordance with the Charter, including Chapter VII**, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, **should peaceful means be inadequate and national authorities manifestly fail to protect** their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

Security Council members retain the option of abstaining on R2P votes related to mass atrocity crimes where they perceive their national interests are at odds, and they can also agree not to block by veto where their interests *are not* directly impinged.[[15]](#endnote-15) It is emphasized, though, that “an R2P mandate” need not include authority for military intervention when it is not warranted. An R2P mandate could explicitly exclude military intervention.

In that tone, Brazil responded to the controversy in Libya regarding “overstepping” the UN Resolution (1973) by recommending there be a “Responsibility While Protecting” (RWP) commitment as a complement to R2P. Coercive military force would be given more formal guidelines, but also implementation and interpretation should be monitored and re-assessed as the intervention proceeded. Gareth Evans has argued[[16]](#endnote-16) that the five guidelines, based on “Just War” theory, and listed within the original 2001 ICISS Report, should be applied for Responsibility While Protecting (seriousness of risk, primary purpose is averting atrocity, last resort, proportionality and balance of consequences.)

But in addition, Evans advises intervening states reluctant to be constrained by a UN mandate that they

“should be prepared to accept, at least informally, the obligation to report back to the Council at regular intervals, describing fully how the mandate in question is being interpreted and applied, and the progress of the situation on the ground, allowing full debate in the process on whether the continuance of the mandate in its present form is justified, and whether its terms require modification in some way.”

Abstentions replacing P5 vetoes, combined with “Responsibility While Protecting” oversight (the Brazilian proposal),[[17]](#endnote-17) could achieve sufficient clarity (and the necessary 9 UNSC votes) to proceed with an R2P mandate. If so, that formulation would obviate any immediate requirement for more difficult amendments to the Charter, or changes in the composition of the Security Council and its permanent membership.

R2P is, in the end, uncontroversial except when states are unwilling or unable to protect their citizens from mass atrocity crimes ("pillar 3"), and military intervention is considered. The "pillar 3" interventions which avoid a military component are not particularly controversial. In Libya what was disputed was not the UN authorizing or justifying military intervention per se (the UNSC resolution did pass with ten yeas, five abstentions, and zero nays). Rather, disagreement was over the implementation that followed, the lack of oversight, the perceived over-reach towards regime change and overt support for rebel groups by the NATO coalition. That’s politics. Are there solutions?

**The Urgent Need for UNEPS**

Potentially the most promising and interesting practical addition to the R2P toolkit is currently discussed only at the margins and has not yet been endorsed by UN member states: A permanent standing, rapidly-deployed UNEPS would provide the UN with several of the currently missing pieces.

UN-hired, paid and trained, this integrated (military, police and civilian) capability would avoid the drawbacks of national or regional forces and their compromised national and regional priorities.

A UNEPS would retain both the *perception and likelihood* of neutrality. It is authorized by the UN Security Council, which would control strategic direction together with the Secretary-General.[[18]](#endnote-18) Collective UN Security Council decisions do not share the hegemonic, and often competing, positions held by individual P5 members.

A UNEPS would be comprised of committed personnel specifically trained for mass atrocity responses. While some large militaries and regional forces may be able to deploy early (US, France, NATO, “coalitions of the willing”), people will inevitably suspect narrow motivations based on past performance.

UNEPS would complement Peacekeeping operations but would reduce the need to rely on (and pay for) 190+ redundant national armed forces. If some states were to argue against an R2P intervention because NATO is the intervening force, which ones would be against a UNEPS? What would their arguments be? Can their concerns be addressed?

Louise Arbour has raised important questions about the *contention* between achieving peace, human rights and justice, when striving for all at the same time. Such is the dilemma of negotiating a ceasefire, stopping atrocities and bringing accused perpetrators to trial.[[19]](#endnote-19) Although we have several moral and legal obligations embedded within our international Conventions and agreements, sometimes their legitimacy depends on strategizing, choices, and timing. Or they hinge on the effectiveness of the tools that are *- or are not -* available.

It is important, therefore, that advocates are not afraid to acknowledge bad practice and faulty implementation of Responsibility to Protect. That includes the failings that were revealed in Libya.[[20]](#endnote-20) What if there had been a UNEPS capability available early on for Libya, instead of NATO? What if negotiations proceeded with Gaddafi instead of arming the rebels against him? Would a UNEPS alongside the threat of an ICC indictment have deterred what happened in Benghazi before it started its downward slide?

R2P is here to stay because this idea also makes “perfect sense". Not using an atrocity prevention tool to its full potential is a delay that benefits no one.

**END NOTES:**

1. Survey regarding Libya and the R2P intervention (November 2011, Ottawa)

   Check off which items you think are true:

   1. I think an intervention involving the military should have taken place if other means had failed. [4 votes]

   2. I think things went badly. [8 votes]

   3. I think things went well enough, even with flaws. [0 votes]

   4. I think a military intervention should not have been considered. Other measures were possible. [5 votes]

   5. I don't know what to think. [2 votes]

   There was a strong correlation between choosing #2 and #4 (five people chose both).

   Two people chose both #1 and #2. Two people chose #1 only. [↑](#endnote-ref-1)
2. See [Preparing for a UN Emergency Peace Service](http://www.fes-globalization.org/new_york/new-publication-preparing-for-a-un-emergency-peace-service/) [by H. Peter Langille, FES Perspective, August 2012](http://www.fes-globalization.org/new_york/new-publication-preparing-for-a-un-emergency-peace-service/), H. Peter Langille, “Improving United Nations Capacity for Rapid Deployment”, New York: International Peace Institute, October 2014; GP Responses: Shouldn’t UNEPS Advocacy be Front and Centre? by Robin Collins - 13th November 2013; A UN emergency peace service? H. Peter Langille, 14 May 2012, online at OpenDemocracy.net, and World Federalist Movement - Canada UNEPS page: http://www.worldfederalistscanada.org/programs1uneps.html] [↑](#endnote-ref-2)
3. Those present supported peacekeeping, and they understood the concept and need for robust use of force, depending on circumstances. [↑](#endnote-ref-3)
4. For example, “Between January 2006 and October 2011, the UN Security Council referenced R2P 10 times in its official resolutions. Since then, the Council has [referenced R2P 21 times](http://s156658.gridserver.com/media/files/unsc-resolutions-and-statements-with-r2p-table-as-of-march-2015.pdf). These include resolutions on Syria, South Sudan, and an [historic resolution](http://www.globalr2p.org/media/files/resolution-2150.pdf) of the Prevention of Genocide.” See: “[In support of R2P: No need to reinvent the wheel](http://opencanada.org/features/in-support-of-r2p-no-need-to-reinvent-the-wheel/)”, by [Evan Cinq-Mars](http://opencanada.org/author/ecinqmars/), OpenCanada.org, March 18, 2015. Maggie Powers studied references to R2P in the UNSC and HRC because: “As the primary body responsible for international peace and security and intergovernmental body with the legal mandate to authorize coercive measures (including military intervention) against a sovereign state, the UNSC is one of the most influential bodies by which to gauge acceptance and operationalization of RtoP […] As the main intergovernmental body delegated to deal specifically with human rights abuses, analysis of HRC resolutions contextualizes the UNSC data and reveals how other global, intergovernmental bodies interact with RtoP.” Maggie Powers (as yet unpublished M.A. thesis): “Responsibility to Protect: Dead, Dying or Thriving?”: May 2014. [↑](#endnote-ref-4)
5. ICISS: The International Commission on Intervention and State Sovereignty was co-chaired by Gareth Evans and Mohamed Sahnoun, and sponsored by Canada. Its report on Responsibility to Protect was released in 2001. [↑](#endnote-ref-5)
6. Gareth Evans writes: “With Libya there was no problem at the outset. But a major one did arise when it became rapidly apparent that the three permanent Council-member states driving the intervention (the US, UK and France, or “P3”) would settle for nothing less than regime change, and do whatever it took to achieve that. The BRICS countries—Brazil, Russia, India, China and South Africa, all then represented on the Council—argued fiercely that a narrow civilian protection mandate was being exceeded (in particular when the P3 dismissed without serious exploration various Gaddafi peace overtures). And they had a strong case.” <https://www.opendemocracy.net/openglobalrights/gareth-evans/r2p-down-but-not-out-after-libya-and-syria> Ramesh Thakur writes: “But the insistence by some NATO powers that they fully adhered to UN-authorized ‘all necessary measures’ to protect civilians and civilian-populated areas is not credible. Their denials rest on ‘legal sophistries’. All the BRICS countries objected strongly to the shift from the politically neutral posture of civilian protection to the partial goal of assisting the rebels and pursuing regime change. Libya did highlight tensions inherent in any international use of force, including for implementing R2P. I agree that post-Gaddafi violence, killings and anarchy have retroactively delegitimized the NATO intervention under Resolution 1973.” In Ramesh Thakur (2015) R2P's ‘Structural’ Problems: A Response to Roland Paris, International Peacekeeping, 22:1, 11-25. [↑](#endnote-ref-6)
7. See Powers (“Responsibility to Protect: Dead, Dying or Thriving? Research being published in 2015): “The Nicaragua reference asserts they are “firm believers that Governments have the main duty and responsibility to protect their citizens without the intervention of third parties or entities.” Thus, they are coopting RtoP pillar one language to legitimize their national position even as that position negates pillar three of RtoP – revealing just how strongly internalized the pillar one language has become.” Russia as also referenced “responsibility to protect” during its conflict with Georgia/South Ossetia; see Gareth Evans: http://amsterdamlawforum.org/article/view/58/115 [↑](#endnote-ref-7)
8. As Powers writes: "Concern about the Libya intervention was not publicly raised in the UNSC until the 10 May 2011 Protection of Civilians thematic debate. During that meeting, Russia, China, India, and Brazil all raised concerns about the implementation of Resolution 1973 and the actions of NATO." [↑](#endnote-ref-8)
9. Ottawa Citizen, March 2, 2015: "Military Predicted Libya Chaos With the Overthrow of Gadhafi" [↑](#endnote-ref-9)
10. Jonathan Gilmore made the poignant remark that: "Although the international response to Syria has been lacklustre, reducing the responsibility to protect vulnerable civilians to arming a side in a civil war is a disappointing development." online: <http://www.huffingtonpost.co.uk/dr-jonathan-gilmore/a-humanitarian-proxy-war-_b_3352830.html> [↑](#endnote-ref-10)
11. Maggie Powers (her thesis research to be published in 2015): “Responsibility to Protect: Dead, Dying or Thriving?, 2014. A summary is available online at OpenDemocracy. See also an earlier 2011 study by Jonah Eaton: “An Emerging Norm - Determining the Meaning and Legal Status of the Responsibility to Protect”, Michigan Journal of International Law, Vol 32/4. [↑](#endnote-ref-11)
12. P5 are the permanent members of the UN Security Council: USA, Russia, China, Britain, France. BRICS states are: Brazil, Russia, India, China and South Africa. [↑](#endnote-ref-12)
13. Also noteworthy is that the African Union (comprised of 54 states) which replaced the OAS in 2002, supports an interventionist approach in its Constitutive Act principles (drafted in 2000). The Act accepts "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity." In 2003 this section (4d) was amended, and to it was added “… as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council.” [↑](#endnote-ref-13)
14. See Robin Collins: “R2P and the Anti-Intervetnionists” [↑](#endnote-ref-14)
15. See “Can France succeed in limiting the veto in cases of mass atrocities?” by Oliver Stuenkel. See also Gareth Evans: “The French Veto Restraint Proposal: Making it Work.” [↑](#endnote-ref-15)
16. Responsibility While Protecting: What’s Next?, Rio de Janeiro, 23 August 2012 online at: http://www.gevans.org/speeches/speech485.html [↑](#endnote-ref-16)
17. See Welsh et al.: “Brazil’s ‘Responsibility While Protecting’ Proposal: A Canadian Perspective”, online at: http://ccr2p.org/?p=616 [↑](#endnote-ref-17)
18. Under-Secretaries-General for DPKO (Department of Peacekeeping Operations) and DFS (Department of Field Support) would share the work and operational direction. Heads of mission would manage specific operations in cooperation with force and police commanders. [↑](#endnote-ref-18)
19. Doug Saunders, “Why Louise Arbour is Thinking Twice”, Globe and Mail, March 28, 2015. [↑](#endnote-ref-19)
20. It is true that UN Security Council Resolution 1973 did not rule out regime change in Libya in the effort to protect civilians. But neither did the sanctions committee engage in that discussion -- as far as we know -- nor did it inform the UN membership that regime change and support for the rebels, including a skewed arms embargo -- was now the "necessary measure" they'd agreed to. Indeed, only three days after NATO air strikes had begun in March 2011, China, India and Russia were all calling for a ceasefire and insisting the intervention was exceeding the UN mandate. And so we ask ourselves: Why were Security Council members not engaging in these decisions as they were authorized to do in the resolution? Why did they instead hand everything over to NATO to implement? How might that have been avoided? See also: O'Brien and Sinclair, 'The Libyan War' referenced in "The BRICS and The Future of R2P: Was Syria or Libya the Exception?" by Oliver Stuenkel, Global R2P, Volume 6/1. [↑](#endnote-ref-20)