

Center for Global Affairs Panel discussion on Responsibility to Protect to the crises in Syria and other nations.

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The Centre for Global Affairs held a panel discussion featuring Herman Schaper, Permanent Representative of the Netherlands to the United Nations, Professor Michael Doyle, Columbia University School of Law and moderated by Professor Roy S. Lee, Columbia Law School discussion the implications of the origin and scope of the norm, the threshold for military intervention and the challenges of using RtoP as an international policy tool amongst other debates.

Statement by Ambassador Herman Schaper for Peace Islands Institute

Nearly two years ago, on March 17 2011, the Security Council of the UN took one of the most important decisions of its 66 years existence. In resolution 1973 it affirmed, clearly and unequivocally the international community's determination to fulfill its responsibility to protect the civilian population in Libya from the violence against them by their own government. It also authorized the use of all necessary measures in order to protect civilians and civilian populated areas. And all necessary measures do includes military action.

In contrast, the UN Security Council has hardly been able to act with regard to Syria since May 2011. Syria is clearly a R2P-situation with 70,000 deaths, 4 mln. people in need, including 2 mln. internally displaced and 936.700 registered refugees in neighboring countries, as Valerie Amos declared in the UN Security Council yesterday. But various attempts to adopt a resolution in the Security Council stranded on vetoes by Russia and China.

This difference between the international community's decisive action in Libya and its inaction in Syria is indeed stark. I am therefore pleased that the Peace Islands Institute invited me to contribute to this panel on Responsibility to Protect: Implications to the Crises in Syria and other Nations.(...)

Development of Responsibility to Protect

The direct reason for the development of this new principle of the Responsibility to Protect were two tragedies in which the international community did not act; the genocide in Rwanda in 1994, and the mass slaughter of Bosnian civilians in Srebrenica in 1995. This led to an international discussion about what was then called humanitarian interventions. This was not an esoteric debate about theoretical concepts; in 1999 the failure of the Security Council to authorize strong measures to halt the Serbian government's violence against the Albanian population of Kosovo, at that time still part of Republic of Serbia, led to the decision of NATO to start a military air campaign, even without a SC mandate, which after three months of aerial bombardments forced Belgrade to give up control of Kosovo.(...)

The international community also honored in paragraph 139 the UN Charter by giving a decisive role to the UN Security Council in the decision making with regard to collective action in R2P-situations, and the UN member states have accepted the central role of the Council, although the Council is not without its critics. Some suggestions by the ICISS-report to address some of these criticism by establishing criteria for military intervention or to request the permanent members of UNSC to refrain from using their veto power in cases of mass atrocities, were not included in these paragraphs.

Three pillars

I want to stress however that the Responsibility to Protect is much more than military intervention. The SG's 2009 Report introduced a three pillar strategy for R2P implementation;

- Pillar 1: The responsibility of the state to protect its own population
- Pillar 2: International assistance and capacity building to enable states to exercise this responsibility
- Pillar 3: The responsibility of the international community to take timely and decisive measures, if a state fails to exercise this responsibility.

(...)

Sovereignty The Netherlands sees Responsibility to Protect as an emerging norm, and as one of the most important recent developments in international relations together with the establishment of the International Criminal Court. R2P is a fundamental shift in the doctrine of sovereignty, which for a long term governed the relations between states. It reflects the growing acceptance of the doctrine which places the state at the service of the individual citizen— “sovereignty as responsibility,” in the term coined by scholars and practitioners Francis Deng and Roberta Cohen.

But even in the past sovereignty has rarely been regarded as entirely unqualified. Just like the doctrine of the sovereignty of states, this other doctrine, of sovereignty as responsibility, has a long history.(...)

R2P thus imposes two obligations—the first upon each state individually, the second on the international community of states collectively. With the embrace of the responsibility to protect, a long and unresolved debate over whether to act became, instead, a discussion about how and when to act.

Application of R2P

Let me now turn to its application in real life politics, because a discussion on how and when to act is not necessarily easier than whether to act. This is exactly what we see today in the case

of Syria. Syria is on the agenda of the Council and debates continue on how to act and which measure to adopt, but deep divisions exist and the suffering continues.

We have also seen however the more successful application of Responsibility to Protect in recent years, especially in less-known situations, for example Guinea or Kenya, which prevented further mass atrocities.(...)

Syria

The situation in Syria is clearly an R2P-situation. The regime, but also some of the opposing voices are committing crimes against humanity according to the various reports of the Commission of Inquiry established by the Human Rights Council, and we can see it on the news on a daily basis.(...)

It is clear that the Government of Syria is manifestly failing in its responsibility to protect its population. Unfortunately, however, the UN has until now not been able to act on the commitment made by all Heads of State and Government at the 2005 World Summit to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, including their incitement.(...)

The argument one hears is that strong measures by the international community would mean foreign intervention which would only lead to chaos. But in reality, the opposite is true. An early strong involvement by the UN backed by appropriate Security Council resolutions and a united international community could perhaps have prevented the situation of total chaos, which is now the reality in Syria.

In other words: the scenario of chaos that some countries predicted if the UN would have been taking early action along the lines of resolution 1970 and 1973, has emerged due to this inaction. This reminds us that both action and inaction entail serious risks and costs, and the cost of the inaction by the Security Council in relation to Syria keeps on rising every day.

Second, taking first steps by adopting a 1970-type of resolution authorizing a weapons embargo, asset freeze and other sanctions would in no means result automatically in military intervention. Russia and China continue to have their veto power for a 1973-type of resolution authorizing military action. Also the region is not calling for military action as it was in the case of Libya. This argument that taking non-military actions by the Security Council will inevitably lead to military intervention would in fact completely paralyze any Council action in any country if applied consistently.(...)

Due to this inaction of the Security Council and the unwillingness by some to use serious

pressure to achieve a political solution, the call for military action is increasing heardly in societies around the world. Is this a possibility on the basis of the principle of R2P, without a Security Council mandate? The answer is: not with an appropriate legal basis. The Heads of State and Government have clearly agreed in 2005 that any collective action should be, on a case-by-case basis, agreed by the UN Security Council. So, we have no legal basis to intervene militarily without a Security Council mandate. That's how it is, and one cannot help thinking that it is a pity that the decision of the World Summit did not include an agreement that the permanent members of the Security Council would not use their veto in cases of mass atrocities.

“A new 1970”

For Syria, we therefore need to continue to work along the political tracks. From an R2P-perspective, we need to aim again for a a resolution with a strong focus on a political transition in line with the Geneva Communiqué agreed by the Action Group for Syria in July 2012 which outlines a framework for political transition that meets the legitimate aspirations of the Syrian people.

A recommitment to this communiqué and its implementation is necessary and will also require unified pressure on the regime as well as other armed groups. Unified pressure could come from a weapon embargo ensuring that the conflict is not further fuelled by arms. An asset freeze by all members of the United Nations would deplete the resources which enable the continuation of the fighting and killing. And accountability is necessary, which could be achieved through a referral to the ICC.

However, agreement on such a resolution seems not realistic in the short term, because of opposition of Russia and China. In the short term, there is therefore unfortunately not much we can do except to continue what the friends of Syria are doing by providing humanitarian aid, support the opposition and engaging with Mr. Brahimi. This is highly unsatisfactory, but the commitment to the Responsibility to Protect is unfortunately not strong enough for some countries to take decisive action, so it seems, notwithstanding their signature under the 2005 Outcome document.

In conclusion

R2P has made considerable conceptual progress and further operationalization is crucial. The implementation of the Pillar 3 through the UNSC has been far less satisfactory. The UNSC is a very political body and national interests often dominate decision-making, which often results in inconsistencies in policy and practice. The arguments used by Russia and China have to be understood in the context of national interest and the primacy of the principle of national

sovereignty. The doctrine of sovereignty as responsibility has not yet taken root sufficiently.

It would be also naive to believe that humanitarian motives are the only motives for countries to intervene politically or militarily. Often a mixture of interest and others motives are at play, of which some are value driven and others are inspired by self-interest. The principle of R2P enhances the value driven argument within these complex considerations.

The decisions of the World Summit of 2005 have increased tremendously the moral and political pressure on members of the Security Council and the international community at large, to refuse to accept the recurrence of mass atrocities, and to feel a responsibility to prevent or deal with them when they occur. This remains a major step forward since Rwanda and Srebrenica.

See the video of Professor Michael Doyle's statement

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See Herman Schaper's full statement

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