

R2P in Syria — How to surmount the inaction of the UN Security Council?

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The treatment of the gross violations of human rights – including the direct killing of civilians – in Libya and in Syria by the UN Security Council has been markedly different. Following the death of Muammar Gaddafi and the ‘Declaration of Liberation’ issued by the Libyan National Transitional Council on 23 October, the UN Security Council ended NATO’s six-month intervention in Libya, authorised by Resolution 1973 (2011). [1] The crimes against humanity being committed by Gaddafi’s regime before the intervention presented legal grounds, if only belatedly, for implementing the principle of the Responsibility to Protect (R2P), even if the armed intervention – allegedly aimed at protecting civilians – overlapped with a civil war situation. There are, however, no signs of the Security Council making a decision to apply R2P regarding crimes against humanity being committed by the Assad regime in Syria.

The Syrian President, Bashar Assad, recently provided new grounds for acting on Chapter VII of the UN Charter. By declaring that external intervention in Syria will provoke an “earthquake” that “will burn the whole region”[2], he has openly acknowledged that the situation in Syria seriously and directly affects regional – and thus international – security. The risk of fragmentation and instability that his regime has brought about does indeed warrant immediate action by the Security Council, and not only in the context of R2P.

The arguments put forward by those members of the Security Council opposing sanctions on the Syrian regime are generally at odds with international law. There is, however, one exception which relates to the way in which the Security Council’s authorisation to use force was implemented in Libya: in spite of the triumphant mood prevailing in NATO headquarters following the outcome of the intervention, the armed operations in Libya did not respect the consensus that emerged from the series of armed interventions undertaken by the international community since 1991. The question thus remains: what can be done under the present circumstances to protect victims of the heinous crimes being committed in Syria?

UN action and debates at the Security Council concerning Syria

On 3 August 2011, the Presidency of the UN Security Council delivered a statement on behalf of its members which acknowledged the existence of ‘widespread violations of human rights’ in Syria, and voiced regret over the lack of progress on the implementation of the commitments to reform made by the Syrian authorities. It also stated that those responsible for the violence should be held accountable. The Council requested the Syrian government, in particular, to ‘fully respect human rights under applicable international law’, and to ‘alleviate the humanitarian situation in crisis areas by ceasing the use of force against affected towns, to allow expeditious and unhindered access for international humanitarian agencies and workers, and cooperate fully with the office of the High Commissioner for Human rights.

The Syrian Government completely ignored the statement, not even offering minimum cooperation with UN human rights structures. On 14 October, UN High Commissioner for Human Rights, Navi Pillay, confirmed that the Syrian government had ‘manifestly failed to

protect its population’, and – indeed taking into account the inaction of the Security Council – added that ‘the onus is on all members of the international community to take protective action in a collective and decisive manner, before the continual ruthless repression and killings drive the country into a full-blown civil war. The UN Human Rights Council, for its part, had already condemned the continued grave and systematic human rights violations committed by the Syrian authorities and called upon them to protect their population and fully comply with their obligations. A resolution was adopted during a special session on 22-23 August, and also provided for the establishment of an Independent Commission of Inquiry, with the task of determining the facts and circumstances of reported human rights violations and identifying those responsible so that they are held accountable. The resolution was adopted by 33 votes in favor, although there were four votes against (China, Cuba, Ecuador, and the Russian Federation) and nine abstentions. However, despite the adoption of this resolution over three months ago, the Commission of Inquiry has not yet been able to travel to Syria due to the lack of cooperation of the Syrian authorities.

(...) The roots of the problem

The lack of consensus on how to implement R2P among the permanent members of the Security Council, but more generally between most Western democracies and the so-called emerging powers together with Russia, may thus affect future decisions of the Council concerning the identification of R2P situations. This disagreement on how to respond to crimes may in the end block any recognition of crimes. The problem is as crucial as it is extremely difficult to address. Consensus on how to operationalise the protection of populations at risk – or rather, the protection of humanitarian agents and goods alleviating their plight – was in fact built during the 1990s but has not practically been applied during the first decade of the present century due to a daunting emphasis on the ‘war against terror’. Stemming from UN-mandated armed operations during the 1990s, the current standard for military operations being considered legitimate was – and still is, in my view – to respect protection requirements directly expressed by UN civilian agencies deployed on the ground. The use of armed force was authorised by the Security Council only to the extent that it created the conditions in which international humanitarian action of UN civilian agencies – as well as of those NGOs working in cooperation with them – could immediately operate. From a practical point of view, it was not the military who dictated the strategy in the field, but UN civilian agencies who specifically asked them to escort their convoys or protect their facilities. Thus, in Bosnia, NATO was authorised to protect the UN peacekeeping operation, UNPROFOR, which was in turn authorised to protect the agencies providing for the basic needs of civilians, so that any ‘direct’ use of force – i.e. not requested by international civilian agencies – would have been considered ‘disproportionate’ and thus ‘illegitimate’. Such criteria allowed for adopting very quick decisions of the Council as soon as states volunteered to enforce the creation of conditions for humanitarian action. This was indeed confirmed by the creation of temporary UN civil administrations in East Timor (UNTAET) and Kosovo (UNMIK) in 1999.

According to the consensus on the use of force to protect humanitarian action, it is the complete subordination of military force to international civilian authorities and actors which provides legitimacy under international law, even to interventions authorised by the Security Council. The underlying assumption is that military structures are not adequate for implementing

human rights principles, so that armed intervention authorised by the Council (*ius ad bellum*) does not mean that all armed strikes are legitimate (*ius in bello*).

Such consensus seems practically wrecked nowadays due to the US embracing unilateralism over the past decade and a progressive disregard of the UN civilian structures as *primus inter pares* – which of course requires providing the necessary resources on the ground. Even the EU, which was perhaps its most enthusiastic advocate, is cutting down its ambitions to strengthen the civilian dimension of crisis management. It is only natural, then, that NATO attempts to take over in leading operations for the protection of civilians, but the result will be devastating for the international consensus painfully built during the 90s.

There have not been, however, any alternative proposals made to effectively protect the Syrian population by the states either vetoing or abstaining in the vote of the draft resolution, or from any other members of the international community. The Security Council has not even honoured its plea that all those responsible for the violations of human rights in Syria should be held accountable by deferring the case to the International Criminal Court (ICC). Does the Council expect that a regime responsible for such wicked crimes will comply with such pleas as an exercise of self-accountability? The question regarding Syria and similar future cases remains wide open. As recalled by the UNHCHR, the onus is now on all members of the international community, and responsibilities cannot be ignored merely by criticising previous armed interventions led by others.

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