The Responsibility to Protect  
Development, Implementation and Prospects of a New Concept for the Protection of Human Rights

By Sven Gareis

Ever since the UN Security Council passed resolution 1973 on March 17, 2011, authorizing military measures to protect civilians in Libya against repressions by the Gaddafi regime, the concept of the responsibility to protect has sparked lively debates throughout the world. NATO’s military action, which had been decisive in overthrowing Muammar al-Gaddafi’s dictatorial regime, raises the issue of when, why, and to what extent the international community may become involved in human rights protection in a country and which collective measures it may take to protect the population from abuses. So basically the issue is about conflicting principles – state sovereignty on the one side and the international community’s interest in compliance with basic human rights norms on the other. But at the same time the question comes up why there is no outside intervention in similar situations of extreme violence against the civilian population – such as in the civil war in Syria, which started at about the same time.

Opponents of intervention legality argue that the regime change in Libya, largely a result of NATO’s intervention, proves that the responsibility to protect may be used as a smoke screen behind which Western States, and above all the United States, pursue power or their own interests. In this sense the debate about r2p is a continuation of the debate about the concept of humanitarian intervention, which came under severe criticism after NATO’s operation in Kosovo in 1999 or the Iraq war in 2003, which politicians tried to justify as an intervention in defense of human rights. (Cf. the author’s article in this volume). The refusal of Russia and China to support any UN Security Council resolution criticizing the situation in Syria and condemning the regime of Bashar al-Assad may be understood as a reaction to this – from those countries’ point of view – extremely broad interpretation of the responsibility to protect which NATO adhered to in Libya.

Although originally the concept of the responsibility to protect, presented in 2001 by the International Commission on Intervention and State Sovereignty (ICISS) stated explicitly that international human rights protection and state sovereignty were not to be seen as competing or opposing principles, but as complementary objectives: the responsibility of states, governments and societies to protect people from severe violations of their fundamental rights is an inherent attribute of sovereignty. So the main task of the international community in this respect would be to support states in taking up this responsibility.

At the same time the concept of the responsibility to protect was a reaction to an upsurge of violence completely unexpected after the end of the East-West confrontation, but which led to countless civil wars, large-scale human rights abuses, ethnic cleansings and genocide, the most notorious examples being the tragedies of Rwanda and Srebrenica. Therefore r2p had to develop a normative as well as procedural basis for international action in situations when a state is either unable or unwilling to put an end to extreme violations of human rights. Does that mean that forceful interventions by outside powers are permitted as a means of last resort and, if this is so, up to what extent? Evidently, in a worst case scenario the problems that arise under the concept of r2p are basically the same as under the concept of humanitarian intervention.
So how far did the concept of the responsibility to protect evolve twelve years after it was presented by the ICICC and eight years after being approved at the UN summit by the heads of state and government in September 2005? Were there any new approaches and new ways of protecting human rights developed on the basis of r2p? What are the challenges that make its global implementation so difficult? This paper is trying to shed some light on these issues. But before discussing the emergence, the scope and the prospects of r2p it seems appropriate to go into some detail about the conditions and difficulties that came up during previous humanitarian interventions and will remain relevant for the concept and the practical application of the responsibility to protect.

Humanitarian Interventions and the Relativization of State Sovereignty

The end of the East-West confrontation marks the starting point for international efforts to protect human rights. The ideological blockades which for many decades had doomed any coordinated global attempt to improve the human rights situation had disappeared and the idea of human rights experienced an unparalleled renaissance. At the same time the UN Security Council developed an unprecedented capability to act and started using it for the benefit of countries torn apart by conflicts and civil wars.

The first in a series of resolutions to this effect was resolution 688 adopted on April 5, 1991, about the situation of Kurdish civilians in Northern Iraq. Since then the Security Council has taken a close look at the human rights and humanitarian situation in various countries, has demanded efforts to improve it and even sanctioned measures including the use of force to achieve this goal. While the situation in the Kurdish areas had an international dimension because of a possible involvement of Turkey in the war with Iraq, Somalia was a different case: in the following year the Security Council declared that the humanitarian catastrophe in the country had reached dimensions which did constitute a threat to international peace and security (res. 794, Dec. 3, 1992). The resolution was adopted unanimously and for the first time an internal process was qualified as a threat to the peace. The Security Council did not see any necessity to refer to the obvious international repercussions such as flows of refugees as a constituent element for its decision to see the situation as a threat to the peace. The ensuing military action UNITAF (Restore Hope) based on chapter VII of the UN charter represented the first UN military intervention for humanitarian reasons and a first important step in the ongoing process of enlarging the Security Council’s functional competencies, which led to further interventions such as in Haiti, East Timor, Sierra Leone, Liberia and elsewhere. As a result the principle of state sovereignty underwent a process of rapid relativization (Ipsen 1992), while at the same time the United Nations, particularly the Security Council, became authorized to intervene into countries for humanitarian reasons and to protect human rights. According to article 2 (7) of the UN charter, interventions into the internal affairs of a state are not permitted, but there is an exception: collective coercive action based on chapter VII of the charter, which is activated as soon as the Security Council determines – according to art. 39 – the existence of a threat to the peace, a breach of the peace, or an act of aggression. It is, above all, the term “threat to the peace” which gives the Security Council broad discretionary powers. (See Pape 1997: 128 for numerous examples) Even internal affairs, if qualified as a threat to the peace by the Security Council, may be taken out of a state’s domaine réservé. A broad interpretation of article 39 gives the Security Council a lot of leeway in decision making, up to a degree that makes Dieter Blumenwitz (1994: 7) refer to it as “the very hub, the most decisive element the UN has at its disposal for the protection of human rights”. Admittedly Bartl (1999: 133) is right when he states that resolution 794 mentions violations of international humanitarian law, but does not say anything about violations of human
rights. But, as Pape points out (1997: 44 et seqq.), human rights law and international humanitarian law serve the same purpose – the protection of the individual – and are built on the same normative foundations. Ebock (2000: 263 et seqq.) quotes six UN Security Council resolutions on humanitarian interventions in the 1990s to prove that they are largely based on human rights considerations. So in the area of human rights protection the Security Council pursues a policy of giving the term “peace” a broader sense: from disputes between states to matters previously considered as internal affairs. (Cf. Krieger 2006; Ghajati 2012: 176f.; Heinz/Litschke 2012: 9f.)

**Overstretched Capacities, Conflicts of Interests and Selective Interventions**

The dynamic development after the end of the East-West conflict, however, came to suffer severe setbacks and political as well as legal problems. The unwillingness of the Security Council to pass robust mandates and to use only well trained and well equipped troops in military operations led to the disasters of Rwanda (1994) and Srebrenica (1995), which not only discredited the whole concept of UN-led humanitarian interventions, but also put a question mark behind the global organization’s capability to carry out complex peace missions. The optimism of the early years after overcoming the paralysis due to the antagonism between the two blocks, the hope to promote the respect for human rights also through military interventions gave way to the realization that the United Nations was hopelessly overstretched and that there was a limit to the competencies and capabilities of its member states. Apart from conceptual problems and the difficulty of conducting large-scale military operations new questions came up: who carries the ethical responsibility for putting into danger or even sacrificing the lives of people in whose favor the intervention takes place? (Smith 1998) Mass casualties in Somalia, Rwanda and the former Yugoslavia have drastically reduced the readiness of states to engage in altruistic interventions for the sake of human rights. Democratic governments in particular need to justify their actions and inform the public about the interests at stake when they risk the lives and health of their soldiers and the civilians participating in a mission.

On the other hand, these states are willing to carry out humanitarian interventions as long as it is in their political interest: such as in 1999 when NATO intervened in Kosovo against the former Federal Republic of Yugoslavia. True, in resolution 1199 adopted on September 23, 1998, as well as in other documents, the Security Council qualified the humanitarian situation in Kosovo as a threat to the peace, the use of force, however, was not sanctioned because Russia and China had threatened to veto it. In an attempt to strike a balance between the respect for the fundamental human rights of the Kosovo Albanians and the general ban on the use of force, NATO opted for a *praeter legem* approach, i.e. an action not covered by formal international law. The ensuing global discussion about the legitimacy, the ethical responsibility and the political expediency of this approach is not a subject of this paper (refer among others to Nolte 1999, Merkel 2000, Chesterman 2001). But it is this intervention which shows most clearly how the legal, ethical and political core problems typical of military interventions for the protection of human rights merge into one enormous dilemma, and what the challenges of decision-making in humanitarian interventions are for the acting states as well as for intergovernmental bodies, and how unstable the normative basis remains, in legal terms but also in many other respects.

Decisions of the Security Council to intervene or not to intervene, as well as decisions by member states about how to support the United Nations are closely linked to national interests and caveats. This leads to a selective approach which is highly dubious in view of the inalienability and indivisibility of human rights (Schorlemer 2000: 47) and has severe
consequences for “forgotten regions” but also for the moral integrity of the intervening powers.

While the intervention in Kosovo in 1999 took place for humanitarian reasons, the tragedy in the region of Darfur in Western Sudan took its course. Although the Security Council had debated the situation in 2004 and although it had condemned the human rights abuses (S/RES/1591/2005 of March 29, 2005) and repeatedly pointed out that there was a breach of the peace (most recently in resolution S/RES/2035/2012 of February 17, 2012), no decision was made to intervene and put an end to the genocide-like crimes which were, to say the least, tolerated by the government in Khartoum. China and Russia, two of the permanent members of the Security Council, have close economic ties with Sudan and, as veto powers, they are able to prevent the adoption of harsh, effective measures. Instead, an arms embargo is imposed – a sanction not too difficult to get around –, as well as travel bans for political leaders and foreign accounts are blocked (res. 1591), an expert panel is set up (S/RES/1591/2005) and a relatively toothless hybrid peace mission is created: UNAMID (S/RES 1769/2007 of July 31, 2007) under the auspices of the UN and the African Union. In the Security Council Western states keep repeating how shocked they are about the massacres in the Darfur region, but they are unable and unwilling to put China and Russia under diplomatic pressure in favor of a stronger humanitarian engagement. An expensive and risky humanitarian intervention does not happen due to lack of interest and the desire to avoid a political conflict with Russia and China. Therefore the most important step the Security Council took with regard to Sudan/Darfur was putting the chief prosecutor of the International Court of Justice in charge of the investigation of the crimes against humanity committed in the region since 2002. (S/RES/1593/2005 of March 31, 2005) The results of these investigations convinced the court to issue international arrest warrants against head of state Omar al-Bashir and several of his top officials. They are still awaiting trial.

The Concept of the International Responsibility to Protect

In his report for the preparations of the millennium summit in 2000, former UN Secretary General Kofi Annan came straight to the point in his remarks about the sovereignty-intervention-dilemma und the resulting conflicts of interest among states and powers: “If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of common humanity?” (Annan 2000: 217)

In September of the same year the Canadian government, motivated by the statements of the Secretary General, decided to act and find an answer to the normative as well as conceptual issues relating to that question. Prime Minister Jean Chrétien created an international commission of twelve experts chaired by former Australian Foreign Minister Gareth Evans and the Algerian diplomat Mohamed Sahnoun (with former inspector general of the Bundeswehr General Klaus Naumann representing Germany), the International Commission on Intervention and State Sovereignty (ICISS), which presented its findings in its groundbreaking report entitled “The Responsibility to Protect” in December 2001. (ICISS 2001)

The concept of the international responsibility to protect introduced in this report is based on a different notion of sovereignty: to protect its citizens from severe violations of their human rights is a fundamental task of the state which goes hand in hand with its claim to sovereignty. (ib.: 12f) Sovereignty is no longer seen as a state’s right to ward off outside interference, but as a state’s duty to its citizens, and the performance of this duty is indeed monitored by the international community.
Accordingly the ICISS sees a **responsibility to prevent** as the starting point in its efforts to consolidate the concept of the responsibility to protect, as the first pillar of the concept. Prevention also implies an interest in the human rights situation in a country, an international involvement in the form of early warning mechanisms or measures to fight the root causes of conflicts (ib.: chapter 3). If, however, a state is unwilling or unable to fulfill its duty and protect its citizens in spite of offers of assistance, a second pillar is to provide the basis for international interventions ranging from economic or political sanctions to the use of military force in case of particularly gross human rights abuses (**responsibility to react**; ib.: 29f.). As a third pillar the commission suggests a responsibility to consolidate the peace after a successful intervention (**responsibility to rebuild**), making it clear that the international community - once it decides to intervene - may be entering a long term commitment as a result of the obligation to do post-conflict rehabilitation and rebuild the state and society of the country where the intervention took place. (ib.: chapter 5)

Although the ICISS did its best to structure its r2p concept in a way that would give the sovereignty of individual states and the assistance offered by the state community priority over possibly forceful intervention, the **responsibility to react** has been in the focus of international debate from the very beginning. The discussion of the complex question under which circumstances an international intervention in a domestic crisis situation would be justified was given ample space by the commission. It concentrated on six criteria which are to serve as guidelines for a decision to intervene:

- The most important “threshold value” introduced by the commission is the “just cause”, which is taken for a fact in cases of large-scale loss of human lives such as in ethnic cleansing, with or without genocidal intent.
- Another four guiding principles are “right intention”, “last resort”, “proportional means” and “reasonable prospects” for the efficacy of the intervention.
- The decision to intervene shall be made by the “right authority”, with the United Nations Security Council deemed to be the most appropriate body. (ib.: 32f)

Some terms and notions of the text evoke the traditional concept of a just war (bellum iustum), which gave rise to concern in many countries as to the legitimacy of (Western) interventions carried out under the pretext of humanitarian assistance. But the ICISS also triggered a lively debate about the question whether the UN Security Council, which according to the UN charter bears the primary responsibility for the maintenance of world peace, should indeed be the organization to have the final say in matters of intervention. In this respect the commission asks the same rhetorical question as in the case of a blockade in the Security Council: “It is a real question in these circumstances where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by.” (ib.:55) So the commission does not exclude the possibility that decisions are made outside the Security Council (as for instance in Kosovo in 1999) – with the above mentioned criteria serving as guidelines.

**Confirmation of r2p at the 2005 World Summit**

It was exactly this clause, perceived as an enabling clause, which initially led to a very cautious reception of the international responsibility to protect in many countries in Africa, Asia and Latin America. Matters were complicated further by the fact that r2p was pushed out of public awareness by the attacks of September 11, 2001 and their consequences. But the perception of the concept did change when an international panel of experts published a report at the end of 2004. In preparation for the 60th anniversary of the United Nations the
then Secretary General had set up a “high-level panel for threats, challenges and change” which in its report entitled “A more secure world: our shared responsibility” also analyzed r2p and came to the conclusion: “We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent”. (High-level panel 2004: par. 203)

The high-level panel, which included Gareth Evans, the co-chairperson in the ICISS, put the idea of an international responsibility to protect back on the global agenda. The panel, however, postulates that only the Security Council is in charge of the responsibility to protect, thereby excluding any authorization for international interventions outside the UN charter. At the same time the panel limits the number of elements of offenses for which the responsibility to protect becomes applicable to genocide, ethnic cleansings and gross violations of international humanitarian law. Thus the panel bridges the gap between the progressive originators of new norms around Gareth Evans and their r2p concept, and the skeptics concerned about an interventionism getting out of hand. All these efforts do not include any type of obligation to take international measures of protection in case of particularly gross violations of human rights. Such an obligation, it is true, might mitigate the selectivity problem, but – in view of the numerous human rights abuses more or less severe in character - it would also entail an overstretch of such dimensions that the whole effort would be doomed.

The bridge created by the panel was also used by the heads of state and government at the world summit in New York in September 2005. In chapter IV on “Human Rights and the Rule of Law” they agree on an international responsibility to protect which includes both the positions of the ICISS as well as the high-level panel: “Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.” (World Summit Outcome Document 2005: par. 138) Right after this commitment is accepted, the significance of the UN charter, the responsibility of the Security Council and – again – the precise elements of offenses with regard to a possible outside intervention are emphasized: “In this context, 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.” (ib.: par. 139)

At the world summit the heads of state reached a consensus on the responsibility to protect and issued the first international official political document relating to it. Even if, as Bellamy points out (2009: 66f.) the decisions at the summit were made by acclamation which helped smooth over existing differences and the concerns of many states over external interventions, and even if critics of the responsibility to protect claim that the outcome document narrows down the concept to a “R2P-lite” version (Weiss 2006: 750), one thing is certain: ever since September 2005 severe abuses of human rights are no longer considered the internal affair of a state, and national sovereignty can no longer be misinterpreted as a “license to kill” (Evans 2009).

A New Norm?
Does that mean that r2p has already become a new norm in international law ensuring that in case of the most severe violations of human rights “the individual state’s sovereignty (is) suspended and the responsibility for the protection of foreign nationals (...) is taken over by the international community as a whole”, as Christopher Verlage states (2009: 404). This is unlikely, because in the outcome document the states have set high standards for applying the responsibility to protect – and pointed out that they will and intend to intervene on a case-by-case basis only, and only under chapter VII of the UN charter. So there are no new approaches to be found in the world summit outcome document, neither to the legitimacy of the use of military force nor to actions beyond those listed in the charter or those that have become current practice in the Security Council. Most importantly, the understanding of this document is that no decision on interventions under international law shall be possible by by-passing the Security Council.

That r2p is at best seen as a norm in the making becomes evident when looking at its development after the world summit. In 2009 the UN Secretary General presented a report “Implementing the responsibility to protect” (Ban 2009) – co-authored by r2p special advisor Edward C. Luck – which attracted much attention. In this report Ban emphasizes that for him the outcome document and everything it says on the responsibility to protect is not merely a non-binding declaration of intent, but – as explained in par. 140 of the document – an explicit mandate for the implementation of r2p. But at the same time he adheres to the narrow interpretation of the concept of r2p, which is also based on three pillars, but differs from the ICISS’ suggestions in terms of content (Ban 2009: par.11):

- Pillar 1: The protection responsibilities of the state, which derives from the nature of state sovereignty and from general legal obligations of the state;
- Pillar 2: International assistance and capacity-building, which he defines as the commitment of the international community to assist states in meeting these obligations;
- Pillar 3: Timely and decisive response, which may include pacific measures under chapter VI of the charter as well as coercive ones under chapter VII if so authorized by the Security Council.

The Secretary General points out that all three pillars are equally important and complement one another. Even if he places special emphasis on the aspects of prevention and support, the instruments available in the individual pillars are meant to be implemented depending on the situation. Even if in his explanations about the third pillar Ban highlights the unconditional priority of the Security Council in the implementation of the responsibility to protect, he is also courageous and energetic when addressing or rather admonishing the permanent five members to be aware of their particular responsibility and to waive their right of veto, if there is a requirement to act as laid down in par. 139 of the outcome document. (ib.: par. 61)

**Cautious Implementation**

After the report came out there was a large debate in the General Assembly (July 23 – 28, 2009) during which a general consent took shape: a vast majority of the member states approved of the international responsibility to protect according to the interpretation of the outcome document. So in July 2010 Secretary General Ban Ki-moon presented another report with a focus on early warning, the assessment of r2p relevant situations (Ban 2010) and suggestions for the improvement of existing UN capacities, such as pooling the tasks of the special advisor on the prevention of genocide and the one for r2p implementation in a joint office to ensure more coherence. (ib.: par 15f.) Both advisors are to work out a new early warning mechanism at the level of the relevant Under-Secretary Generals in order to
be able – if a situation deteriorates - to discuss appropriate measures in time and present options to the Secretary General. (ib.: par. 18)

The next report entitled “Timely and Decisive Response” (Ban 2012), published two years later, continues this line of thought: the Secretary General confirms the above mentioned three-pillar concept and highlights the links between these pillars. “Effective action under pillars one and two may make action under pillar three unnecessary. Pillar three action should also contribute to the future achievement of pillar one goals. Putting an end to the four specified crimes and violations in a particular situation should be the beginning of a period of social renewal and institutional capacity-building aimed at making future violence less likely.” (Ban 2012: par. 15) In part II of the report Ban elaborates on the wide range of instruments that the international community made available for the implementation of its responsibility to protect: cooperative approaches based on chapter VI of the charter, notably negotiations, mediation, arbitrage or legal conflict resolution, preventive diplomacy, monitoring or fact-finding missions, initiatives of the Human Rights Council up to coercive measures that may only be authorized by the Security Council according to chapter VII of the charter. (ib.: par.32) In doing so the Secretary General calls upon the member states to focus more on strategic thinking and to start applying cooperative measures for the prevention of large-scale human rights abuses as early as possible (ib.: par.37) After all clarifications and appeals made by the Secretary General as well as the member states which had asked to be given the floor during the debates in the General Assembly the final outcome was: there were no new mechanisms and instruments created in the process of implementing r2p, but at least worldwide public interest was focused on the problems likely to arise during implementation, and on the means available to solve these problems.

So although the conceptual and normative arrangements of the international responsibility to protect remained somewhat hesitant, the first tentative steps towards its implementation were taken and the concept became part of the United Nations’ political practice. Particularly in the Security Council which referred to the responsibility to protect in several of its decisions. After lengthy discussions, the Security Council confirmed in resolution 1674 passed on April 28, 2006, “the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” (par. 4); this is the phrasing the Security Council referred to in the preamble of resolution 1706 which was meant to turn the AMIS peace mission of the African Union into a UN operation on August 31, 2006. Sudan refused to accept the resolution, China and Russian did not support it, because they did not want to accept any restrictions of Sudan’s sovereignty. Resolution 1769 of July 31, 2007, which led to the creation of the UN/AU hybrid mission UNAMID, mentions resolution 1674, but no longer refers to paragraphs 138 and 139 of the final outcome document. So although r2p gets mentioned a few times it has definitely not turned into a new norm decisive for decision making in the Security Council.

A Controversial Case: Libya 2011

In February 2011 the international responsibility to protect became the focus of global attention when the Security Council started addressing the civil war about to erupt in Libya. As a response to the large-scale violence used by dictator Muammar al-Gaddafi’s militias and security forces against rebels and civilians, the Security Council not only unanimously approved resolution 1970 on February 26, 2011, containing sanctions such as an arms embargo, travel bans for Gaddafi and representatives of his regime, and the freezing of assets, but also assigned the situation in Libya to the jurisdiction of the International
In the preamble of this resolution the Security Council refers to r2p by stressing the Libyan authorities’ responsibility to protect the population. When the resolution did not put an end to the violence and the situation of the population particularly in the encircled city of Bengasi became increasingly threatening, the Security Council adopted resolution 1973 on March 17, 2011, which was backed by, among others, the Arabic states of Lebanon and Qatar. The resolution

- authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, ... to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi
- decides to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians
- decides the enforcement of the arms embargo imposed by resolution 1970 by all necessary means
- confirms and further specifies the freeze of assets as well as travel bans.

In the preamble of resolution 1973, which is very detailed, the Security Council refers three times to the responsibility to protect by “reiterating the responsibility of the Libyan authorities to protect the Libyan population”, by “considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity”, and by “expressing its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel”.

Resolution 1973 was adopted with ten votes in favor and five abstentions: Germany, India, Brazil as well as the two veto powers China and Russia. So the resolution could take effect. This is all the more remarkable since China and Russia are traditionally very skeptical about any kind of external intervention into the internal affairs of a state and have from the very beginning been rather suspicious of r2p.

The initial consensus in the Security Council – which was not very stable due to the abstentions of important powers – to protect the Libyan civilian population also by military means, started to erode rather quickly. The air attacks on Libya which started on March 19, 2011 and were mainly carried out by the French air force were soon turned into NATO-led Operation Unified Protector with Qatar and the United Arab Emirates participating in the combat actions. When it became clear that the Western alliance - even after warding off the imminent danger for civilians in Bengasi and the forceful implementation of the no-fly zone and the arms embargo - started to support the rebels who were gaining ground against Gaddafi’s forces, China and Russia raised vehement protest against this highly “elastic” interpretation of par. 4 in resolution 1973 about the authorization of military force. And indeed, the alliance seemed to turn into the rebels’ air force with some NATO states unofficially supporting the rebels through special forces operating in the country. Obviously the alliance started working towards a forced regime change in Libya, which indeed came into effect when the National Transitional Council took power in August 2011 (recognized by the UN General Assembly on September 16, 2011, and by the African Union on September 20, 2011) and Muammar Al-Gaddafi was arrested and killed on October 20, 2011.

Soon after it had started, NATO’s military intervention became very controversial, because NATO was openly taking the Libyan opposition’s side. Consequently the assessment of Operation Unified Protector was just as controversial. According to NATO Secretary General Anders Fogh Rasmussen it qualifies as a success, all requirements of the mandate were met: “We have fully complied with the historic mandate of the United Nations to protect the
people of Libya, to enforce the no-fly zone and the arms embargo. Operation Unified Protector is one of the most successful in NATO history.” (Rasmussen 2011) But South African president Jakob Zuma complains in a speech before parliament about the abuse of the originally positive intentions of resolution 1973: “We strongly believe that the resolution is being abused for regime change, political assassinations and foreign military occupation.” (Mail&Guardian 2011) In September 2011, Brazilian president Dilma Rousseff states during the general debates at the opening of the 66th General Assembly that “much is said about the responsibility to protect; yet we hear little about responsibility in protecting. These are concepts that we must develop together” (Rousseff 2011) which leads to a diplomatic initiative for a “responsibility while protecting” concentrating on the obligations of intervening states, something which may well be interpreted as direct criticism of NATO’s action. Article 10 of the document presented on November 11, 2011, to the General Assembly and the Security Council is direct and straightforward: “There is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change. This perception may make it even more difficult to attain the protection objectives pursued by the international community.” (Brazil 2011) Even though Brazil’s advance lost much of its momentum over the following year (Benner 2012:256), the responsibility while protecting highlights the basic mistrust felt in many countries about restricting a state’s sovereignty. NATO’s Libya mission was dominated by r2p, but in the end it did more harm than good to the concept.

Prospects

It is to be expected that the way r2p was implemented in the Libya crisis will slow down the further development of r2p from a predominantly political concept to a new norm in international law – particularly in respect to the third pillar, the timely and decisive response or – as it is called in the ICISS draft – the responsibility to react. The situation in Syria, which developed in parallel to the Libya scenario, makes this very clear. Since the beginning of the civil war in Syria in spring 2011, there seems to be no end to the sufferings of the civilian population, but neither the United Nations nor the international community knows what to do about it. True, there was a (legally non-binding) presidential statement condemning human rights abuses and the use of violence against civilians (S/PRST/2011/16 August 3, 2011), but all three draft resolutions dated October 2011, February 2012 and July 2012 condemning the repressions by the Syrian government against the civilian population failed because of Russia’s and China’s veto. It may well be that both countries were deeply disappointed with the - from their point of view – incorrect interpretation of resolution 1973 and upset about what they saw as an instrumentalization of their concessions by the West. With their constructive abstentions Russian and China had indeed accommodated the other three of the Permanent Five who were ready to intervene. This is still true when taking into account that Russia’s and China’s voting behavior was also influenced by their partners in the African Union or in the Arab League, who were very much in favor of taking decisive steps against Gaddafi. How deep the mistrust against Western interventionism caused by the mission in Libya actually runs and how cautious (not only) Russia and China have become not to sign up to any resolution condemning the regime in Syria only to find out that they consented to an intervention, became clear when Russian prime minister Dmitry Medvedev said in an interview in August 2012: “When the resolution on Libya was adopted, we thought our countries would hold consultations and talks and at the same time we would send a serious signal to the Libyan leader. But unfortunately it ended up the way it did. They kept telling us there would be no military operation, no intervention, but eventually they started a
full-blown war that claimed many lives. (…) So, what happened with Libya has definitely affected my position and continues influencing Russia’s position on the Syrian conflict.” (Medvedev 2012) How can the concept of the responsibility to protect be developed any further in view of these events? First, there would have to be an end to the controversy among the permanent members of the Security Council, confidence would have to be rebuilt to reach an agreement about the future of r2p. After showing a lot of skepticism, Russia and China have, after all, moved towards acceptance of the concept of the responsibility to protect, and even participated in a military intervention. There certainly was some common ground on the idea of an international responsibility to protect before the intervention in Libya, and maybe things can be taken up again from that point. The odds are, after all, not bad, all the more so since the Permanent Five constantly need one another when pursuing their political interests. The bigger the overlaps in different policy areas, the easier the interaction becomes. Finding a common denominator – even a small one – is important, but not first and foremost for future interventions, but rather for the improved prevention of gross human rights abuses and for better support of states and societies by the international community. Evident unanimity in the Security Council in case of severe violations of human rights would be a clear signal to potential perpetrators of violence that the international body in charge of world peace will be determined to oppose them and not tolerate that its members be set up against each other. Concerning the instruments required, there are quite a few very workable suggestions contained in the report by the General Secretary mentioned above (Ban 2012).

Military intervention will always have to be the ultima ratio. But there is close cooperation and coordination required before a resolution is passed and, most of all, during its implementation in order to avoid such contradictory interpretations as in the case of the Libyan crisis. An agreement among the members of the Security Council is all the more important since r2p has not yet evolved into a norm of international law which would allow for military action to be taken even without a Security Council mandate. In all likelihood r2p will never become such a norm, and it will not necessarily have to. We owe it to pioneers such as Kofi Annan, Gareth Evans and the members of the high-level panel, who tried to give shape to an emerging norm, that large-scale violations of human rights are seen as not acceptable, neither for the international community nor for humanity as a whole. As a result the responsibility to protect has become a globally accepted benchmark for various measures taken by the international community on the basis of existing international law. This falls behind the vision of an instrument to eliminate all evil in the world, – in a complex international system a utopian idea to begin with - but offers a concept whose further development and implementation deserve the long-term support of governments and societies.
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**Food for Thought:**
What are the preconditions for an agreement between states and powers on the implementation of an international responsibility to protect?
What measures can be used to prevent severe violations of human rights? What makes this so difficult?
Can force help prevent violence in the long run? What are the pros, what are the cons?