

CARNEGIE COUNCIL *for Ethics in International Affairs*

The Responsibility to Protect: A New International Norm?

Carnegie New Leaders

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Introduction

JULIA TAYLOR KENNEDY: Welcome, everyone. Thank you so much for joining us. We're very excited to have Ambassador Schaper with us tonight.

But before we get started, let me introduce our moderator for the evening. Robin van Puyenbroeck advises on strategic communications issues for Strategy 21 Partners. He is also active in several global affairs organizations here in New York, including but not limited to the UN Association and serving on our own Carnegie New Leaders Steering Committee.

We're very grateful that he brought Ambassador Schaper to us, and I look forward to their conversation. Thanks so much.

ROBIN VAN PUYENBROECK: Thank you, Julia.

Welcome to Carnegie, all of you, for our conversation tonight about a burning hot topic, I would say, which is the [responsibility to protect](#) [R2P].

First of all, I also would like to extend a warm welcome to Ambassador Schaper, our guest for tonight. Ambassador Schaper is the permanent representative of the Netherlands to the United Nations.

Previously he served as the permanent representative to NATO and also as deputy director general at the Dutch Foreign Ministry, and I believe also he spent some time in the Dutch Parliament.

HERMAN SCHAPER: Yes, one year. It's a usual thing also.

ROBIN VAN PUYENBROECK: It's a privilege to have you here, Ambassador.

When we talk about the responsibility to protect, what comes to mind immediately most of the time is military intervention. But it is important at the outset, before we start our conversation, to specify that R2P basically consists of three pillars: the first one is really the protection responsibility of the state; the second one is international assistance and capacity-building; and the third pillar is really what's

called in the UN jargon "a timely and decisive response," which is what mostly translates into what we know as a military intervention.

R2P is also limited to four particular crimes, which are: genocide, ethnic cleansing, war crimes, and crimes against humanity.

Ambassador Schaper will focus mainly on the third pillar tonight. The ambassador will speak for about 20-25 minutes and then we will open it up for questions.

Remarks

HERMAN SCHAPER: Thank you, Robin, and thank you for already having given a short introduction to the subject itself.

R2P is very much in the news nowadays. Let me sketch a little bit of the background of how things developed over the last couple of years

A very important moment was of course nearly a year ago. On March 17, 2011, the Security Council of the UN took one of the most important decisions it has taken in the 66 years of its existence. In [Resolution 1973](#) it affirmed very clearly and unequivocally the international community's determination to fulfill the so-called responsibility to protect the civilian population in Libya against violence from the side of their own government, [Gaddafi's](#) government. It also authorized the use of "all necessary means," as it was called, including military measures, in order to prevent further casualties and loss of innocent lives.

So here we have the Security Council authorizing the use of military force against a country, which had not attacked another country or had committed some other act of aggression, but a country in which the government was attacking its own population. In doing so it invoked the notion of the international community's responsibility to protect such a population against such a government—basically, a very fundamental decision here, which wasn't really taken, like I said, in all the history of the Security Council before.

Where did this come from? Basically, the notion of the international community's responsibility to protect a civilian population against its own government was officially recognized in the 2005 [summit](#) of heads of state and government, which took place on the occasion of the UN's 60th year of existence.

The direct reasons for the development of this norm of R2P, as we call it, were the [genocide](#) in Rwanda in 1994 and the mass [slaughter](#) of Bosnian civilians in Srebrenica in 1995. It is no coincidence of course that my Rwandan colleague and I are the two co-chairs of what is called the Group of Friends of R2P in the UN General Assembly.

Now, these two events have led to international discussion about what was then called "humanitarian intervention." This was not an esoteric debate about theoretical concepts, because in 1999 the failure of the Security Council to authorize strong measures against [Milosevic](#), the president of Serbia (Yugoslavia it was called at that time), strong measures to halt the Serbian government's [violence](#) against the Albanian population of Kosovo, which was at that time still a part of Serbia, led to the decision of NATO to start a [military air campaign](#), even without a Security Council mandate.

This deeply divided the international community, pitting those who denounced the intervention as illegal against others who argued that legality mattered less than the moral imperative to save lives.

To overcome this deadlock, the Canadian government established the International Commission on Intervention and State Sovereignty, which came up with the principle of responsibility to protect, which was subsequently adopted by the UN General Assembly in 2005 as part of the so-called [World Summit Outcome Document](#). It was a meeting of heads of state and government at the highest level one can imagine, so it was very important that at that level this document embraced the notion of responsibility to protect.

The focus of R2P as defined in this document is on four specific types of mass atrocities: genocide, war crimes, ethnic cleansing, and crimes against humanity. This focus on just these four crimes—so not any type of humanitarian emergency—is often called "narrow but deep." Narrow because it only applies to the extreme circumstances of these four mass atrocities and not to any humanitarian emergency, as I said. And why deep? Because the document makes clear that while the responsibility to protect populations against these four mass atrocities lies first of all with the governments of the individual states themselves, it also calls upon the international community to encourage and help states who exercise this responsibility.

And—this is the most sensitive part—if then the government still does not stop that kind of action or is preparing action against its own population in the area of these four mass atrocities, the international community, through the United Nations, has a responsibility to help protect the population against their own government. This can mean taking collective action in a timely and decisive manner, as you mentioned, Robin, through the Security Council, and it said explicitly in this outcome document "on the basis of Section 7 of the [charter](#)," which means it could include military action.

So Rwanda-Srebrenica-Libya—there is a very direct line from one to the other through this important decision taken in 2005 by the heads of state and government and laid down in this document on R2P.

This is what happened in Libya, which was the first time that a military [intervention](#) was approved based on the principle of R2P since its adoption in 2005. The decision and the speed with which it was taken surprised many, including myself I must say, because until then the implementation of the 2005 decision had been rather slow and not always easy.

The first time the General Assembly had a real debate on R2P was only in 2009, four years after the decision of 2005, and it was based on a report by the secretary-general. "[Implementing Responsibility to Protect](#)," it was called.

Let me, by the way, underline the important role the Secretary-General [Ban Ki-moon](#) has played in the whole debate about R2P in the last three or four years. He himself has spoken out many times clearly and convincingly on the importance of this new norm and the necessity to support it, and his staff has provided the essential conceptual base for its implementation.

So the first real report on this implementation was in 2009, in which then the Secretary General made a distinction in the three pillars, as you mentioned, Robin:

- The first pillar—and it's important that this was put up front—is the responsibility of the state itself to protect its own population.
- The second pillar was that if a state was not able to do so, the international community could help it through assistance and capacity-building to exercise the responsibility.

- The third pillar deals with the situation in which a government does not exercise its responsibility, even while it has the capacity to do so, but, on the contrary, is taking action through measures—like ethnic cleansing or war crimes or one of the other four categories mentioned—takes measures against its own population.

What is new is that this document and the R2P doctrine clearly explain that the international community has a responsibility.

Such action can take many forms. We are talking mainly about military, because that is what is on the front page and on the TV screens. Of course, in a sense, it is the most extreme form of action.

But the third pillar, the international community taking action, is not only—and that is important to mention when we come back later on to [Syria](#)—it is not the only way the international community can take measures. It could be sending fact-finding missions, it could be economic sanctions, it could be an arms embargo, and many other ways in which pressure on a state can be brought to bear.

Now, after this general concept was presented, there was a general feeling that the third pillar, and particularly the military part, was so sensitive that it was better not to talk too much about it in the beginning. To build support for the notion, and because there was still some opposition, the idea was let's focus on the first pillar and the second pillar, which are as important in the long run as the third one and less sensitive.

Then suddenly, in March 2011, there was this decision of the Security Council to authorize military action against the government of Libya on the basis of the notion of responsibility to protect.

What were the reasons for this unexpected development? I can mention five.

First of all, there was the broad assessment that indeed this was a kind of R2P situation. The risk of mass atrocities in places like Benghazi and Misrata were clear. Gaddafi had announced that any Libyan who takes arms against Libya would be executed. And he had called the rebels "cockroaches," exactly the same term which was used in Rwanda during the genocide. So it was felt that inaction by the international community would most likely indeed result in a bloodbath.

Secondly, the regional organization of the Arab countries, the League of Arab States, had appealed for international action. This reflected that Gaddafi had made many enemies in the more than 40 years he had ruled over Libya, and he had hardly any friends left, and none among the federal Arabs. But it was important that not just the UN came to the conclusion that military action was necessary but also the region itself, the Arab countries.

The third element was the resolution which the Security Council had adopted a couple of weeks earlier, also implementing the third pillar of R2P through nonmilitary measures, like an asset freeze and travel bans and an arms embargo, along with referral to the International Criminal Court—supported by the United States, by the way, which refuses to join the ICC [International Criminal Court] even, but likes once in a while to support a referral to the ICC if it relates to a government it doesn't really like. But this earlier decision had not had any effect. So as Gaddafi's troops were nearing Benghazi, the stronghold of the rebels, the feeling was that decisive and timely action was indeed necessary.

The fourth point was that China and Russia, the two permanent members of the Security Council that consistently invoke the principles of sovereignty and nonintervention, did not veto but abstained.

This was perhaps as big a surprise as the fact itself that the notion came on the table of military intervention.

Why they did so I wouldn't be able to say with certainty, but maybe because they didn't want to be on the wrong side of history and expected that the conflict would be over anyhow in a couple of days, so why bet on a losing guy? Maybe they did not want to alienate the Arab states. Or maybe they also feared in this case a mass slaughter of the Libyan population if Gaddafi would not be stopped.

The final reason, which could also have played a large role influencing the Russian and Chinese vote, was that the Libyan ambassador to the United Nations, who is an old friend of Gaddafi and who had defended in him the weeks before, saying, "He makes mistakes but he's not really such a bad guy,"—at the end of February he came to the conclusion that Gaddafi had turned into some kind of a new [Hitler](#), and he openly declared that the Security Council should take action and that Gaddafi's actions were inexcusable.

As I heard from several colleagues on the Security Council—it really makes a difference if you're there with the 15 all the time and one of your fellow ambassadors comes in and tells you, "This has to stop. Even I, myself, in the past didn't think it was really necessary, but now I tell you this has to stop." In this UN bubble, in which we all live, it makes a difference if somebody talks to you in such a way, somebody as unexpected as the Libyan ambassador. So it could also be that that specific reason, even in hardheaded power politics, can play a role.

It's interesting that soon after the adoption of Resolution 1973 on Libya, the Security Council adopted another [resolution](#) on [Cote d'Ivoire](#) which used similar language on R2P. The UN mission, with the support of French troops, attacked the defeated President [Gbagbo](#) and arrested him in the presidential palace.

As a result of these two developments, R2P was back in the international spotlight and became a hotly debated subject in the media, in domestic political discussions, and at the UN. So in the second half of this introduction tonight, I would like to focus on some of the main themes of this debate in the UN but also in other places.

The main themes I think can be divided into two categories: (1) objections to the notion of R2P as such, and (2) criticisms, which specifically relate to the way R2P is implemented and was implemented in the case of Libya.

Now, on the first, objections to the notion of R2P as such, one of the recurring themes in the arguments of those who take that position is that it is a breach of the principle of sovereignty of states.

Now, R2P undoubtedly constitutes an important shift in the doctrine of sovereignty, which for a long time has governed the relations between states in Europe—the [Westphalian system](#) it is called, based on the [Peace of Westphalia](#) of 1648.

But even in the past, sovereignty has rarely been regarded as entirely unqualified. R2P reflects the growing acceptance of the doctrine which places the state at the service of individuals—"sovereignty as a responsibility," in the term coined by scholars and practitioners like [Francis Deng](#) and [Roberta Cohen](#).

Like the doctrine of the sovereignty of states, this other doctrine of sovereignty as a responsibility has a long history. To quote from my own history of the Netherlands, the [Act of Abjuration](#), as it is

called, in which the Dutch provinces declared their independence from the Spanish king which had ruled over them—this act was signed in The Hague in 1581, a kind of declaration of independence in the [Dutch revolt](#)—this act states:

"God did not create the subjects for the benefit of the prince but rather the prince for the sake of the subjects, without whom he would not be a prince, to govern them justly and wisely, to support and love them as a father does his children and a shepherd his flock, and even to protect them at the risk of his own life and limb."

Four hundred years later, UN Secretary-General [Kofi Annan](#) defended this idea in a speech in which he pointed out that the old orthodoxy of state sovereignty was never absolute: "After all," he said, "the charter was issued in the name of the peoples, not the governments, of the United Nations. Its aim is not only to preserve international peace, vitally important though that is, but also to reaffirm faith in fundamental human rights and the dignity and worth of the human person. The charter protects the sovereignty of peoples, but it was never meant as a license for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power."

So the notion of responsibility to protect is not really new. The core underlying idea, that states have an obligation to protect men and women from the worst atrocities, is well established. Basic human rights principles were already adopted in the United Nations Charter and the [Universal Declaration of Human Rights](#). And there is by now a substantial body of international human rights law. The UN adopted the [Convention on Genocide](#) already in 1948. And the protection of civilians during armed conflict is well established in international humanitarian law.

Now, what happened with the advent of R2P is that the international community accepted for the first time its collective responsibility to take action, and, if necessary, even military action, should states fail to protect citizens from genocide, ethnic cleansing, war crimes, and crimes against humanity. R2P thus imposes two obligations: the first upon each state individually; the second on the international community of states collectively. With the embrace of R2P, a long and unresolved debate over whether to act became instead a discussion on how and when to act.

Now, a second fundamental objection against R2P is that it is just a cover for large countries and great powers to intervene in the domestic affairs of smaller and less powerful countries. We need to take this concern seriously, especially as they are not entirely wrong, historically speaking. History gives us numerous examples of humanitarian arguments being used as cover for interventions with entirely different objectives.

But it is exactly for these reasons, however, that R2P already in 2005, when it was defined, had a specific focus not on any humanitarian crisis but on the four crimes which lead to mass atrocities.

Secondly, it was stressed that the use of force could only take place as a last resort.

Thirdly, and most importantly, it was agreed that a Security Council mandate is a precondition for any military action under R2P—so no repeat of Kosovo, where NATO took a decision on its own after the Security Council failed to come to a conclusion and went ahead without a Security Council mandate. That was defined as out of order in the decision taken in 2005.

One can see that, in fact, the opponents of R2P are steadily losing ground, as it becomes clear from the voting pattern in the General Assembly on successive proposals, which aimed at strengthening the Secretariat's capacity to handle effectively R2P issues.

In the most recent vote last December, the number of countries which voted against such proposals or abstained saw a significant decrease. Voting against went down from 17 to 10, while abstentions went down to 42 from 51. The roll call of the countries voting against includes Iran, Syria, Sudan, Cuba, Venezuela, and Zimbabwe. Maybe that record is telling enough.

The second group of criticisms of R2P focuses not so much on the principle itself but on the way it was implemented in Libya. The feeling that Libya has been mishandled by the intervening powers—that is, NATO—is voiced, first of all, by the countries who abstained on the vote mandating military action: Russian, China, Brazil, India, South Africa. So that would give you some hesitation to immediately take that criticism at face value. Perhaps they were simply trying to make the point that they were right from the beginning.

But also a number of African countries joined these five countries I mentioned, on the basis of the fact that the African Union was sidelined in its effort to broker a truce, to get a process of political consultation going between Gaddafi and the rebels.

One of the most outspoken critics has been India's permanent representative to the UN, Ambassador [Hardeep Puri](#), who stated recently, in his usual direct manner, "Libya has given R2P a bad name," and who criticized overenthusiastic members of the international community for misusing Resolution 1973. "Their only interest," in his view, "was to use unnecessary means to bomb the hell out of Libya in the pursuit of regime change."

Now, Ambassador Puri's criticism, although perhaps expressed in somewhat undiplomatic terms, touched on two important points, which also the proponents of R2P need to address. The first is the nature and wording of a mandate the Security Council gives for military action; a second, that NATO had a so-called secret agenda, regime change.

As far as the first point is concerned, the Security Council's mandate was overall rather vague. It did include the imposition of a no-fly zone and forbade troops on the ground. But it also allowed for the use of "all necessary means" in the execution of the mandate.

So what did this mean, "all necessary means"? The problem was, and still is, that there was no thorough military advice underlying the council's decisions. This is something which keeps on surprising me, having come from NATO, that sometimes the Security Council takes very far-reaching decisions in the military field on the basis of very thin, or even absent, military advice.

To my mind this is one of the crucial weaknesses in the process of decision-making in the Council on military matters. Such decision-making would benefit from enhanced military advice on complex operations, like the one in Libya; also, to ensure that afterwards no disagreements will surface on the exact meaning of the language in the mandate.

The Department of Peacekeeping Operations could play this advisory role with support from military experts from Member States. And for R2P situations in particular, or specifically, it would be useful to articulate more clearly how R2P will impact military doctrine and strategic concepts.

Now, as far as the accusation that regime change was NATO's real agenda, in my view the relationship between R2P and regime change was not that the real objective was regime change and that this led to invoking R2P to provide a kind of cover for that, but that exactly the opposite happened, that implementing the responsibility to protect led to the conclusion that there was no other outcome than regime change possible.

Take, for instance, the government-inspired genocide in Rwanda. Would anybody seriously consider that this regime would stay in power after military intervention would have taken place from abroad to stop the genocide? The central element, the major part of the problem, was the regime itself. So, by definition, if one then implements a responsibility to protect, the consequence of that is that the regime would go.

A third complaint one often hears from some of the countries that abstained on the Council's decision to give a mandate in Libya for military action was that the Council was not able to play its monitoring role in the implementation of Resolution 1973 because NATO did not give enough feedback.

First of all, a clear military mandate would help in this respect. But one also needs to be realistic. If you outsource implementation of Security Council mandates to other organizations or coalitions of the willing—for example, NATO in the case of Libya—one's expectations of monitoring should be realistic, and that means limited.

I must add that in general I find it somewhat peculiar that countries, which have shown a willingness to execute a mandate of the Security Council—and in this case it was a very complex military operation—that those countries are criticized by countries who decided not to contribute to the implementation of the mandate of the Security Council but are at the same time demanding a rigorous monitoring regime.

Anyway, micromanagement from the Council, in particular by countries who did not support the decision to provide a mandate for military action, will undoubtedly result in a decreased appetite to implement Security Council mandates. After the lessons learned in Bosnia in the early 1990s, it is now a firm rule for all Western military: "no double key," meaning no UN [inaudible; say-so?] on the day-to-day management of a military operation run by another organization or a group of countries.

The Brazilian government has recently made a constructive contribution to the debate by introducing the notion of "responsibility *while* protecting," which is important. Once the mandate has been given, it doesn't simply mean that those who execute the mandate can do it in any way they want or that they think is the most useful to reach the objective. There are certain rules and regulations which should be applied on the manner in which a military response is implemented to protect civilians.

This concept of "responsibility while protecting" has attracted considerable international interest. It was discussed for the first time at the UN two weeks ago. While further discussions on many of the suggestions made by Brazil will be necessary—and there are quite a few of them with which the Netherlands and perhaps Belgium and others do not agree—but this paper is still a welcome contribution, we think, because it can perhaps clear the debate on R2P, which has become rather polarized because of Libya, in a more consensual direction.

This is also important in relation to the current debate on Syria—and let me end with that—which in my view is a case in which the principle of R2P, which like I said includes much more than just military matters, could be applied and should be applied. But as we all know, Russia and China have, however, twice vetoed a resolution on the crisis in Syria in the Security Council. One of their main arguments is that any resolution, even without a mandate for military action but with strong language on the inadmissibility of the behavior of the Syrian regime, would open the door for military action against Syria.

I am not in a position to judge whether this is truly the main reason for their vetoes. Probably there are other political, strategic, and economic considerations also in play. But the only way to find out and to try to build a new consensus around the notion of R2P is to face the issue head-on and to

engage with Russia and China in a debate on the implementation of the principle of R2P.

So I am sure that tonight's discussion will not be the last one I will participate in. I would like to thank the Carnegie Council for having given me the opportunity to present my thoughts on this to this august audience. Thank you.

Discussion

ROBIN VAN PUYENBROECK: Thank you, Ambassador. That was very comprehensive.

I'll ask the first question. Ambassador, can you talk a bit about what the role of the Netherlands was in the development of the concept and what the impact of the experiences in Srebrenica was?

HERMAN SCHAPER: Yes. The first direct consequence of Srebrenica was what I mentioned somewhat at the end, that if a country takes on a responsibility to implement a certain mandate and they send the soldiers in the field, there should never be something like what was the case in [Bosnia](#) with the double key system.

You know perhaps the story about Srebrenica, that the Serbs were coming in. There were a couple of hundred Dutch military lightly armed. They at a certain moment decided to resist this and prepare defensive positions and had thought that the UN had agreed for NATO airplanes coming in to help them by bombarding the enemy. But then in the end, for reasons still not 100 percent clear how the process went, those planes never appeared.

As far as we can ascertain, it was because there was no agreement from the UN side, which simply had at that time certainly, a different approach towards peacekeeping. Basically, in the UN doctrine, which is changing a little bit over time, UN peacekeepers are neutral. They monitor cease-fires, they help to provide stability, and so on, but they are not a fighting body.

That in the end became impossible to maintain in Bosnia. But the reflexes were still that they didn't like the UN taking sides against whatever party—in this case it was then against the Serbians, of course. So they did not agree to NATO using the planes—well, they were in the air already. So that was one element. It was the most direct conclusion we drew.

From that we came to the conclusion that—and that was, in particular, after Kosovo, because NATO then had the very clever formula; there was no agreement on a legal basis to intervene militarily in Kosovo.

Truthfully, the secretary-general could say that each individual member state of NATO thought there was a legal basis. But nobody wanted to enter into the discussion because everybody had a different view on what that legal basis was. So there was no Security Council mandate, but the Brits said, "This is an international law," and the French said something else, and the Dutch said something else. Anyway, everybody had his own line of argument to his own parliament. A very pragmatic approach, but they all agreed that there wasn't a legal basis.

Most—many, probably most—international lawyers and experts say, "No, you can't really say." So this was over-interpreting, this was stretching international humanitarian law, and you would have needed a Security Council mandate. So that became one of the lessons of Kosovo.

But, in a general sense—and the Netherlands participated in that; we were the third or fourth largest contributor to the Kosovo air convoy—but there was a general view now that we need to really

deepen our understanding of what is a humanitarian intervention, when do you do it, and how do you do it, and the role of the UN, and so on.

So we had several brainstormings and even produced some papers. But the Canadians simply went faster and they were quicker off the mark, so they produced a report before we, in our usual thorough Dutch way, had put anything interesting on paper. And that was a very good report that the Canadians produced, so we had no problem with that. That was in 2001-2002, that time, I think.

Then, that took a while before it was really sold to the most important people. The former Australian foreign minister, [Gareth Evans](#), was chairing this commission, which was set up by the Canadians but he was the spokesman. He convinced the right people.

What happened then was, in a very good decision, it was decided not to send the papers on this issue through the usual General Assembly channels, where they would get stuck in endless debates between 190 countries, but to immediately lift it to the level of heads of state of government. And Kofi Annan put his full weight behind this. And one cannot be sure whether all the 189 at that time, I think, heads of state and government exactly realized what they were signing off to when they accepted the document. But it was an important step.

It's very difficult to oppose in principle the notion that if you see mass murder you should do something. And in the case of genocide there is even a legal obligation for the international community to do so.

But then after it was adopted—and in the Netherlands I should say we very much supported this whole trend—but then we were rather disappointed that after its adoption in 2005 there was a kind of pause and everybody was scratching behind their ears and saying, "What have we done here and what do we do with it?"

But then the important thing was that Ban Ki-moon put his weight behind it and put some very good people working on it. They started to produce these papers slowly, filling in the details of the approach. Then the Canadians asked us to take over as co-chair from the group. So we, together with Rwanda, very much tried to push it ahead.

But, like I said, our inclination was not to focus too much on the military aspect, but more on mainstreaming the notion of R2P within the UN family, focusing on prevention and supporting states to execute this responsibility when they did not have the capacity to do so.

Then perhaps, if you talk about the third pillar, issues like arms embargo and economic sanctions, but not bombing. That made people nervous.

ROBIN VAN PUYENBROECK: An embargo is also a decisive action.

HERMAN SCHAPER: Exactly.

But things never go as you think they will go. And so suddenly this development—and like I said, everybody was a bit surprised how, even a no-fly zone—I talked to members of the Security Council two or three weeks before the decision was taken and "No, no no-fly zone, far too radical, the Security Council will never agree to that." Then, a couple of weeks later, we suddenly say, "Go ahead, attack Libya."

Of course, then the question was, "How do you protect civilians by an air bombardment?" That was

the problem NATO had. NATO, by the way, didn't have any ambition to go and send in troops on the ground. So the fact that it was decided not to send troops on the ground was very much something NATO agreed with.

But it is a very complex operation to protect a civilian population from the air. There aren't that many ways to do it. Basically, you bomb or you attack troops on the ground, but you cannot build a kind of defensive perimeter around a certain place where you've stationed your troops so that the population within that perimeter is safe, and so on. So, by definition, it is more brutal and less nuanced.

But compared to Kosovo it went already a lot better in a sense. In Kosovo, for instance, I assume by mistake, the Americans bombed the Chinese Embassy in Belgrade, which was not helpful, of course, but also some other targets which were—for instance, a train with many civilians in it, with quite a large number of people dead. There was a long debate in NATO at that time on the targeting policy.

All that went a lot better in Libya, also because it's easier, not as much vegetation and all that kind of thing. But still, what kind of targets do you select?

Until now NATO had a feeling that they had done rather well as far as civilian casualties were concerned, but now the latest report said that 60 civilians were killed in one specific attack when they bombed a location they thought was also used by Gaddafi's units and that was not the case—by the way, a bit of the same debate you have in [Afghanistan](#), of course, when you fight a war not against a regular army but against some kind of guerrilla movement or resistance movement.

Sorry for the long answer.

QUESTION: Masha Feiginova, Open Society Foundation.

Ambassador, thank you for a very thorough overview. The cases where responsibility to protect is enacted usually seem to be fairly clear-cut that they fit some of the criteria, one or more. But for me it's rather the cases where the responsibility to protect was not enacted that raise a question mark or a red flag that this mechanism is to an extent a mechanism for the superpowers that make up the Security Council to promote their economic or geopolitical objectives.

It seems to me that there is a strong parallel between the countries where the mechanism is used being either strategically important countries or resource-rich countries, and where the mechanism is not used, countries that are tier B or lower. This is my assessment as a layman, and I am using the most obvious examples of Rwanda, that clearly met the criteria; Kosovo; and perhaps in some ways even [Tunisia](#) in the wave of the [Arab Spring](#).

I just wanted to get your feedback on that and to kind of adjust my thinking on this.

HERMAN SCHAPER: Well, I'm not sure I would agree with that. Of course, in the case of [Iraq](#) there was from the beginning the argument that the real purpose of the American government was to get control of the oil fields. But Iraq is clearly a very different case. That had nothing to do with R2P so much, and that argument was only used to a very limited degree by President [Bush](#) and his people, that there was a humanitarian reason to act there. The emphasis was much more on the threat which was supposedly emanating from Iraq. So Iraq is not a good example, I think.

If you look at the cases where indeed NATO—

QUESTIONER: Tunisia, not Iraq.

HERMAN SCHAPER: Some people are saying Iraq.

Now, if you look at the cases where some Western countries or NATO also intervened, it's Bosnia, it's Kosovo, it's Afghanistan. Afghanistan, of course, again is a somewhat different category; it was again more in self-defense.

But take Bosnia and Kosovo, which were mainly humanitarian. You can't really say, I think, that those were of great strategic or economic interest.

Another example perhaps is [Somalia](#), where certainly the Americans in the beginning and many other countries got involved. That was quite a failure and they withdrew later on, and now there is a new effort. There was very little real economic or strategic interest involved there.

So I don't really think it's true simply that—of course it's not absent, in the sense that there is a mixture of considerations. It's not purely humanitarian by definition. Bosnia and Kosovo were neighboring countries to the EU. There are very many refugees in Europe and so on.

But my experience is that the driving force was moral indignation and the role of the press and public opinion.

Of course the question which came afterwards was: How many soldiers are you willing to have been killed because of such a moral enterprise? Do you have the capacity—once you go in that direction, once you take moral judgment as the defining element for a decision, how often do you want to follow up on that? What are your capacities to really implement such an agenda? Are you not going to be selective by definition, that you do something in certain countries and not something in some other countries?

So you get all kinds of practical considerations once you have come to the conclusion that perhaps you should act. But that is a different nature from what you are saying.

Kosovo had a little bit of mines in the north. For the rest—

QUESTIONER: But that was never approved by the Security Council, right?

HERMAN SCHAPER: No. But I may have misunderstood your argument. I thought you said that when something happened it was because of mainly economic or strategic interest.

QUESTIONER: Maybe I misunderstood. The mechanisms of the UN are, I think, a mystery to anyone outside the Secretariat. But I thought you meant that the Security Council had to approve the measure before it goes forward.

HERMAN SCHAPER: Yes.

QUESTIONER: The Security Council is in a sense made up by five of the key superpowers. But they never approved the measure to intervene in Bosnia, in Kosovo.

HERMAN SCHAPER: In Bosnia they did. In Kosovo they did not.

I would rather draw the opposite conclusion, but it's partially on the same arguments you have. You see that in Syria now that in the end the Security Council has to decide, and the Security Council is a fundamentally political structure. So political considerations play a major role in any decision-making process, even while it's on issues like protecting a civilian population against its own government for

moral reasons.

If people ask, "Why does the UN not take action in Syria and did take action in Libya?" it is because certain big powers with a veto right have certain interests.

But that does not mean that there will be agreement to take a lot of military action in other cases. On the whole, I think the risk is much more that there will not be decisions taken to do what is necessary instead of that too many decisions will be taken to intervene, looking at Syria now.

QUESTION: Thanks very much, Ambassador. My name is Angela Dean. I actually work with the Global Center for the Responsibility to Protect right now, so I am slightly biased on this issue.

I'm curious about your take on the relationship and the future relationship of R2P and the ICC, what that might look like. I know you mentioned you co-chair the Group of Friends with Rwanda. Rwanda is not a party to the ICC. I wonder if there are any conversations about that.

And then one of the things that I struggle with with R2P, being a strong R2P advocate, is how do you—I think it was Tunisia that put on the table last week potentially offering [Assad](#) amnesty. Is that correct, was it Tunisia? I think it was.

HERMAN SCHAPER: Yes.

QUESTIONER: Anyway, how do you justify, as an R2P advocate, when your primary goal is to protect civilians but also want to square it with not granting impunity to people who carry out war crimes and crimes against humanity? I would just be curious to get your take on that.

HERMAN SCHAPER: This is one of the things over which many people are still scratching their heads, in the sense that one of the instruments of pressure which has been brought to bear—for instance, on Libya there was a Security Council resolution referring the case referring the case to the ICC.

The nature of the decision-taking in the Security Council, like I said, is essentially political of course. So what does one think of politicians using for political purpose a legal instrument—because, by definition, then you get—I would think at least—you enter a next phase in which the political conclusion is: "Well, for the moment, for the peace process, it is better not to have the ICC in the way, because the guy will never sign a deal if he knows he can be brought to court later on. So we have to give him impunity to get an outcome."

So I have my doubts about the Security Council referring cases to the ICC, because it is essentially a political decision.

If the International Criminal Court, the prosecutor himself, comes to the conclusion that he wants to start a procedure against a person, whomever, because of what is happening on the ground, it should be to my mind an independent decision of him himself.

The [Statute of Rome](#) already has included the possibility of referral by the Security Council. But I think it is a dangerous one. I am also part of a small group of Friends of the ICC, because it is headquartered in the Netherlands. This is a continuous debate.

Some colleagues say, "This is very dangerous now that perhaps there will be a deal and he"—whatever, whoever, the "he" is, Assad or Gaddafi—"will be granted impunity because this will undermine the ICC." The others say—usually not in this group but in other groups—"But if we don't

give him impunity he has no reason to come to an agreement and to leave the country," and so on.

My answer is perhaps a simple one: Simply do not use the possibility of referring to the ICC, the Security Council not referring to the ICC.

But that is certainly not an agreed position as yet. And the fact is that in the case of Gaddafi it has been already applied, and also in other cases by the way—in Gbagbo, the president of Ivory Coast, also.

Now, one argument and then I'll finish on this. It does have perhaps not a bad effect on the number one guy, that he sees no advantage in striking a deal. But it can have a positive effect in the sense that it will weaken his position on the people surrounding him, who say, "Okay, if we are not very careful now, we will also be indicted."

Through either the threat or at least focusing on the number one guy, by starting an indictment procedure, you can get other people who are supporting him and you can make them very nervous about what can happen to them, because in this line of argument even when a deal is struck, they could still be brought to justice. So perhaps that for them is a good argument to say good-bye to their former boss and to switch sides. So that is another argument, the effect it can have on the morale of the supporters of the regime.

QUESTION: Good evening, Ambassador. Thank you. My name is Marc Jacquand. I actually just came back from Libya where I was with UNSMIL [United Nations Support Mission in Libya], the political mission.

My question is what happens after the responsibility to protect is enacted? What happens to those who go in to pick up the pieces? As you said, it's a political decision that not everyone agrees to, even on the ground. So is there any thinking on what happens after? Also, I think the responsibility to protect is based on a number of ethical assumptions that don't go away after a campaign such as the one that NATO waged in Libya.

So, again, what happens after it's enacted? Where does it end? Because I think in Libya you could make the case that—I mean the jury is still out—maybe the government won't be interested in promoting or protecting the interests of the minorities, the [Tuaregs](#) and others.

So I'm just interested in getting your thoughts on when and where it ends, especially because I do think that some of the ethical assumptions do not go away or the ethical conditions that trigger responsibility to protect do not go away after an intervention. Thank you.

QUESTION: Good evening, Mr. Ambassador. My name is Ivan Rebolledo. I'm with a geostrategic advisory firm that focuses on Latin America.

I wanted to ask you to comment on the evolution, or lack thereof, of the U.S. administration's position on responsibility to protect as a foreign policy principle. Thank you.

HERMAN SCHAPER: I think the strength of R2P—and I tried to make that point in my introductory remarks—is that there was a very conscious decision to limit R2P to these four categories. So where does it end? To put it in simple terms, it ends with those four categories.

For instance, treatment of minorities, that's not R2P. There are perhaps other international covenants or agreements that you could say should apply to that. But R2P is only mass murder basically

—crimes against humanity, war crimes, genocide, ethnic cleansing—and exactly for the reason you mentioned, in a way. If you start to define it in a more broad way, where does it end then? There is no good answer to it.

If you then connect this possibility of a continuously expanding area to which responsibility to protect applies with the possibility of military intervention by outsiders, you get into a very difficult terrain, in the sense that you, first of all, probably in the end will not be able to fulfill these mandates or to implement that responsibility as the international community because you simply don't have the means for that.

Secondly, quite often the military instrument is not the best instrument. In many cases you have many other ways. For instance, in Europe we have the High Commissioner for National Minorities, which, through procedures of silent, behind-the-screen negotiations and advice, tries to resolve the issue of tensions between minorities.

But really R2P is extreme situations ask for, in the end, extreme measures, like military intervention. There are all kinds of steps before you get there, like nonmilitary measures of pressure, and helping the government to solve issues before they escalate, and looking at the government to stimulate them to exercise this responsibility. But I would hesitate to enlarge the area of application after R2P.

That is not an answer to your point of what will happen in Libya. It could very well go wrong. I don't know. One reads different reports on that. But for the moment I think one can fairly say a situation in which one should start to implement R2P is not a situation which is at the moment characterizing Libya. It's not that bad in a sense.

The second was evolution of the U.S. government. Well, the interesting thing is that the U.S. government recently issued a directive to establish an [Atrocities Prevention Board](#). This is basically a translation of how the United States itself wants to deal with these issues, but focusing on the same types of major crimes, including the same types of answers—except that they don't put it so much in a UN framework; they put it in an American framework.

But I don't know. They don't say, I think, that you need by definition a Security Council mandate to do what is necessary in certain cases or to take military action in certain cases. Even the Obama administration—or perhaps wisely so, given the Congress.

But anyhow, there is conceptually an overlap, but a more American focus, so to speak, and less dependence on UN agreement.

QUESTION: My name is Erik Brattberg. I'm a researcher at Johns Hopkins University.

Mr. Ambassador, you referred to this trend of outsourcing UN missions to other organizations, such as NATO. I just wondered whether, in the event of a large-scale humanitarian emergency requiring swift international action and in a case where it would simply take too long for the UN to intervene, whether it's not better to actually outsource it, to give the operation to a more capable partner, such as NATO.

Do you see a problem with that? I'd just like to hear your views on that.

HERMAN SCHAPER: No. I'm a lone defender of the notion that NATO could play a very useful supporting role in executing UN mandates and the responsibilities. But I'm saying I'm a lone defender of that notion because NATO is still a little bit taboo for many in the UN. Some see it simply

as a residue of the [Cold War](#).

I think by now it is more and more accepted that it has a *raison d'être* even apart from the Cold War. But it is so much, in the thinking of many, dominated by the United States and simply a Western military organization that, if possible, one would not like to ask NATO to execute it because then it will follow its own agenda. That is a bit what the Indian ambassador and certainly the Russians are now saying also, which I simply think it is not really true.

But NATO, if you would have been in NATO at the time the decisions were taken, there were quite a couple of hesitations because they had other things on other mind. They have Afghanistan, the defense budgets are shrinking, the United States said, "We will not participate."

All these things also come back if all kinds of scenarios concerning Syria are being discussed. There is no appetite at all on the NATO side to go into Syria. That's why some of these arguments by the Russians that any resolution on Syria with strong language will immediately lead to NATO starting to intervene are really rather nonsense. I think they really have some other arguments, but they like to use this one.

But I would like to think of NATO as an evolving international public good, as the only effective military organization in the world, which is slowly opening up to all kinds of partnerships with non-member states, including now, because of Afghanistan, with Afghanistan itself, but also with countries like Singapore and Japan and the African Union. All of this has to be done very carefully because, like I said, it is seen as an instrument of Western dominance.

But I would like to emphasize the other side, that it is the only effective military multilateral structure in the world. There are only two major organizations which can run a complex multilateral international military operation. There's the Pentagon and there's NATO. So you have a choice between those two. Or you do it on a smaller scale by ad hoc coalitions. But those usually are much more, by definition, less prepared and cannot undertake such major operations as NATO is now doing, with more than 100,000 troops in Afghanistan and has done in the past in Kosovo and Bosnia and so on.

By the way, the Americans are quite good in building relationships with countries. I don't know if you have ever been in Norfolk, where you have the American headquarters of the Transformation Command. They do all kind of exercises on stabilization operations, as it is called, [inaudible] warfare, like the kind of thing in Afghanistan, where you see all kind of even non-NATO countries and countries from the third world participating.

So I'm not saying that the Pentagon is not capable of doing a multilateral, multinational military operation. But this is simply a choice you want to make. Do you want to have a Pentagon command or do you want to have a multinational command, which NATO offers? Then NATO would still need the support of the United States to do what it has to do, because of course the United States is—that's something which surprises me somewhat—the United States is the major ally in NATO.

Sometimes one hears a line of argument that you have the United States and then you have NATO. NATO is the United States. So the United States is doing something and NATO should be doing something. But a certain kind of mentally saying good-bye to NATO in a certain way—I find that sometimes being said in American circles. But, anyhow, I am digressing a little bit.

I don't have any problems. On the contrary, I would like to see more practical cooperation between NATO and the UN.

By the way, Ban Ki-moon understands that. There are quite a number of consultations going on. But the majority of the membership is extremely cautious, as a positive term—reluctant, that's the word.

QUESTION: Eddie Mandhry with Global Kids.

My question is kind of connected to what was just asked. It has to do with the imperative for decisive and timely action and the fact that the Security Council is a political institution, like you said, held hostage sometimes by China and Russia.

What is the role of regional institutions, such as the Arab League, the African Union, trying to build a case for either of those two countries to abstain or for a different institution to bring people together for action, especially in the case of Syria, where we are seeing so many things happening right now?

HERMAN SCHAPER: That is a very good point. In general, regional organizations play more and more of a role, certainly in Africa, and there is even a little bit of competition between the African Union and the UN in a way.

The Africans say: "African solutions for African problems. Let us deal with it. If it becomes very expensive, why don't you pay the bill? But basically let us do the job."

You see that in Somalia with AMISOM [African Union Mission in Somalia]. They do not really see themselves as second in line with the UN. Fundamentally that is not bad, if they can indeed find answers to the problems in their own continent.

But there is the legal issue, of course. The Security Council has a unique legal status. If you look at the charter, if military action is taken, a mandate from the Security Council is necessary.

On R2P—I'm not a lawyer myself; I'm a historian—but there is also, of course, always the principle that you don't need agreement of the Security Council if a country itself agrees to work together with another country for self-defense or whatever reason. NATO allies don't need agreement with the Security Council if they are attacked to defend themselves. So for self-defense you can always have military arrangements with other countries on a voluntary basis.

Now, imagine that in the African Union they would agree—and they already have done so to a certain measure—on a principle that if something goes terribly wrong in a country in the area of mass atrocities or the four crimes, other countries of the African Union would have the right to intervene. I don't know if you then would need a Security Council mandate for that, if the country itself signs a document in which it says that "in certain cases we accept that this will happen" and then later the government takes such measures that indeed the idea is we should intervene as the African Union.

I don't know. That is a kind of theoretical, and perhaps in the long run practical, way out of not being dependent on Security Council mandates.

The Arab League doesn't have that ambition or that capacity. The African Union has a headquarters and they do undertake military actions, like AMISOM in Somalia. The Arab League doesn't have that capacity.

But it is interesting that the Arab League has twice now, in the case of Libya and Syria, called upon the Security Council to take measures. That is new.

And there are some colleagues—recently I was at a kind of brainstorming about where is the UN

going and what do we think of the future. One of my colleagues who sits on the Security Council said, "The greatest danger in the long term for the continual relevance of the UN and the Security Council in particular are the regional organizations." I found that an interesting remark. He was talking long term.

But you see it already in Africa, like I said. Former President Mbeki of South Africa was appointed by the African Union as sort of the negotiator for the Sudan, the problems there, and Darfur. The Security Council said, "Could you please tell us—why don't you come by and tell us how things are going and what you're doing?"

He at first refused. He said, "I'm appointed by the security council for the African Union and I tell those people what I'm doing and from them I get my orders, not from you."

After long negotiations, in the end he came to New York only to give a "briefing," it was called. So that was acceptable, to prevent any idea that he had to get the agreement of the Security Council.

But that's a very good point. Regional organizations are becoming more and more relevant.

ROBIN VAN PUYENBROECK: Thank you, Ambassador. I'm very pleased to see that we started off with R2P and ended up with finding a new role for NATO going forward. Thank you again for your time and for sharing your thoughts with us tonight.

HERMAN SCHAPER: Thank you.

Video Clip

What is Responsibility to Protect exactly? Dutch Ambassador Herman Schaper gives an expert talk on how it developed, how it is defined, how it was implemented in Libya, and what are the implications for the future.

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