

# WebMemo



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## Obama Wrongly Adopts U.N. “Responsibility to Protect” to Justify Libya Intervention

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On March 28, President Obama delivered a speech for the purpose of explaining his decision to use military force in Libya.<sup>1</sup> Although the President gave multiple justifications for the U.S. intervention, it appears more and more that his philosophical basis for ordering the use of force by the United States is based on a doctrine known as “the responsibility to protect” (R2P).

Relying on the R2P doctrine as a justification for the U.S. intervention was a mistake. It is inconsistent with a proper exercise of sovereignty, and any adoption of its principles is likely to constrain U.S. action in future situations.

**The Responsibility to Protect.** Military intervention by one sovereign nation into another for humanitarian purposes has long been a controversial topic. In the wake of the tragedies in Rwanda and Srebrenica, the Canadian government—at the urging of then-U.N. Secretary-General Kofi Annan—launched an initiative to develop principles for when and under what conditions such an intervention would be justified. Canada in turn formed the International Commission on Intervention and State Sovereignty (ICISS) in September 2000 to “foster a global political consensus” for preventing and responding to future incidents of mass killing and ethnic cleansing.

The philosophy of R2P, as formulated in the final report<sup>2</sup> issued by the ICISS, is fairly straightforward: A national government (in this case, Libya) is responsible for preventing large-scale loss of life and ethnic cleansing within its borders, but if that

government is either unwilling or unable to do so (or in this case actively engaged in the killing), the international community, acting under the auspices of the United Nations, has a *responsibility* to act for the protection of the aggrieved population, with or without the consent of the recalcitrant government.

The R2P doctrine quickly found a large following, attracting advocates who launched a worldwide effort to convince the international community to recognize R2P as a universally accepted doctrine. For example, a coalition of international nongovernmental organizations (NGOs) that includes Human Rights Watch and the World Federalist Movement teamed with George Soros’s Open Society Institute and the MacArthur Foundation to launch the Global Centre for the Responsibility to Protect at the City University of New York.<sup>3</sup>

**The President’s Justification for the Libyan Intervention.** While the President and members of his Cabinet have over the past several weeks offered various justifications for the actions taken by the U.S. against Libya, the President’s March 28 speech made it clear that the actions of Libya against its civilian population gave rise to a “responsibility” to take action. The President stated that “when our interests and values are at

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stake, *we have a responsibility to act*. That's what happened in Libya over the course of these last six weeks" (emphasis added). Moreover, in a March 26 speech, State Department Legal Adviser Harold Koh stated that Qadhafi "has forfeited his responsibility to protect his own citizens and created a serious need for immediate humanitarian assistance and protection, with any further delay only putting more civilians at risk."<sup>4</sup>

The general R2P principle of justified intervention is qualified by several conditions. The ICISS report lays out a number of steps that must be taken in order for a humanitarian intervention to be considered legitimate. Among the major R2P conditions are (1) that any military intervention must be for a just cause; (2) that the intervention should be authorized by the United Nations Security Council; (3) that the intervention should be carried out with the right intentions, through multilateral means; and (4) that the intervention must be conducted by proportional means.

In his March 28 speech, the President closely adhered to these R2P principles in explaining his justification for the Libyan intervention:

**1. The Military Intervention Must Have a Just Cause.** The ICISS report states that in order for a military intervention to be warranted, "there must be serious and irreparable harm occurring to human beings, or imminently likely to occur," such as large-scale loss of life or ethnic cleansing.

In his speech, the President made the case for just cause, stating that "we were faced with the prospect of violence on a horrific scale" in Libya. Qadhafi was engaged in a "campaign of killing" and his forces were "bearing down on the city of Benghazi," and if not stopped would perpetrate "a massacre

that would have reverberated across the region and stained the conscience of the world."

**2. The Intervention Should Be Authorized by the United Nations.** The ICISS report states, "There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes.... Security Council authorization should in all cases be sought prior to any military intervention action being carried out."

Prior to taking military action, the President sought and obtained a resolution from the Security Council, and during his speech stated that "after consulting the bipartisan leadership of Congress, I authorized military action to stop the killing and enforce U.N. Security Council Resolution 1973."

**3. The Intervention Should Be Carried Out with the Right Intentions through Multilateral Means.** The ICISS report states, "The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned."

In his speech, the President's language closely followed this principle when he stated that "The task that I assigned our forces—to protect the Libyan people from immediate danger, and to establish a no-fly zone—carries with it a U.N. mandate and international support. It's also what the Libyan opposition asked us to do." The President has also touted the support of the Arab League as part of his case for justification.

**4. The Intervention Must Be Conducted by Proportional Means.** The ICISS report states that only military force which is necessary to protect the civil-

1. President Barack Obama, "Remarks by the President in Address to the Nation on Libya," delivered at National Defense University, Washington, D.C., March 28, 2011, at <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya> (March 31, 2011).
2. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001, at <http://www.iciss.ca/pdf/Commission-Report.pdf> (March 31, 2011).
3. Steven Groves, "The U.S. Should Reject the U.N. 'Responsibility to Protect' Doctrine," Heritage Foundation *Backgrounders* No. 2130, May 1, 2008, at <http://www.heritage.org/Research/Reports/2008/05/The-US-Should-Reject-the-UN-Responsibility-to-Protect-Doctrine>.
4. Harold Hongju Koh, "Statement Regarding Use of Force in Libya," remarks delivered to American Society of International Law Meeting, March 26, 2011, at <http://www.state.gov/s/l/releases/remarks/159201.htm> (March 31, 2011).

ian population should be used: “The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.” The report further states that “The effect on the political system of the country targeted should be limited, again, to what is strictly necessary to accomplish the purpose of the intervention.”

In his speech, the President adhered to the proportionality principle, stating that he disagreed with “others who have suggested that we broaden our military mission beyond the task of protecting the Libyan people, and do whatever it takes to bring down Qaddafi and usher in a new government.... But broadening our military mission to include regime change would be a mistake.”

**R2P Constrains U.S. Decision Making.** Therefore it would appear that the Obama Administration has adopted both the basic philosophy and the operational characteristics of R2P. This should come as no surprise when the key decision makers regarding Libya included Samantha Power, who authored a Pulitzer Prize-winning book on genocide, and Secretary of State Hillary Clinton, who promised during her presidential campaign to “operationalize” the R2P doctrine and “adopt a policy that recognizes the prevention of mass atrocities as an important national security interest of the United States, not just a humanitarian goal” and “develop a government-wide strategy to support this policy, including a strategy for working with other leading democracies, the United Nations, and regional organizations.”<sup>5</sup>

But the Administration should renounce its flirtation with R2P and reject it as its philosophical basis for military intervention. Adhering to the R2P doctrine sets a dangerous precedent. The more nations that appear to follow the doctrine out of a sense of obligation, the more that the doctrine may be considered to have attained normative status—a step towards recognition of R2P as binding customary international law. If R2P is considered to have attained that status, its principles may be considered obligatory, rather than voluntary.

Such an occurrence is likely to constrain U.S. action in the future. Inevitably a time will come when the U.S. will want to intervene in a situation, perhaps to stop an atrocity, only to be criticized for not first receiving authorization from the U.N. Security Council. U.S. strikes against a nation’s leadership in some future intervention may be condemned as “disproportionate” to the humanitarian mission of protecting a civilian population. In short, by adopting the principles of R2P in the Libyan intervention, the President is legitimizing the doctrine and raising the bar for justification for future U.S. military actions.

**Congress Should Get to the Bottom of This.** Adopting a doctrine that compels the United States to satisfy a checklist before preventing atrocities occurring in other countries is imprudent. U.S. freedom of action would be compromised if the United States consented to be legally or morally bound by the R2P doctrine. The United States must instead preserve its national sovereignty by maintaining a monopoly over the decision to deploy its military forces.

Relevant committees in both houses of Congress should hold hearings to determine the purpose for the U.S. intervention in Libya. This is especially necessary as it appears that the intervention is not winding down but instead has the potential to escalate in the weeks and months ahead. Congress must determine whether this intervention is being pursued for the advancement of U.S. national interests in Libya and the region or to comply with a new “international norm” that was cooked up by a Canadian NGO in 2001 and christened “the responsibility to protect.”

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5. 2008 Presidential Candidate Questionnaire, “Response From: Hillary Clinton,” Citizens for Global Solutions, at <http://globalsolutions.org/08orbust/pcq/clinton> (March 31, 2011).