



# CAN R2P SURVIVE LIBYA AND SYRIA?

**Martha Hall Findlay** | November 2011

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Martha Hall Findlay is a graduate of the University of Toronto's International Relations Programme and then Osgoode Hall Law School. She is the former Liberal MP for Willowdale, Ontario, having held several shadow Cabinet positions in the Official Opposition: Associate Finance; Transport, Infrastructure and Communities; Public Works and Government Services; and, most recently, International Trade. In 2006, Martha was a candidate for the Leadership of the Liberal Party of Canada. Her "Big Red Bus" campaign was highly praised for substance and intelligence, and became a symbol of energy, renewal, and grassroots engagement in the Liberal Party. As a lawyer and businesswoman, she has been both a senior executive in large companies and a successful entrepreneur. She has also served as a Director and Executive in the community and non-profit sectors and has spoken and written extensively on both politics and significant policy issues facing Canada. She has recently joined the School of Public Policy at the University of Calgary as an Executive Fellow with a focus on global policy issues.

The opinions expressed in this paper are those of the author and do not necessarily reflect the views of the Canadian International Council, its Senate or its Board of Directors, or the views of the Canadian Defence & Foreign Affairs Institute.

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### EXECUTIVE SUMMARY

The very first time the Canadian-inspired concept of “Responsibility to Protect” was invoked by the UN Security Council was to support the no-fly zone in Libya. Ironically, it will be the events that subsequently transpired in Libya, together with corresponding inaction in Syria, which may put the future of R2P at risk.

Although the commentary by those in support focussed on the “measures to protect civilians under threat of attack”, it was clear almost immediately that international action in Libya was no longer about protecting innocent, unarmed civilians. Rightly or wrongly, this was regime change, and about supporting an armed insurgency to achieve it. That’s NOT R2P.

R2P is now at risk because those already hesitant to support it will say, “See? It was only used as an excuse to get into Libya—from the start it was to overthrow Gadhafi”. They wonder who will be next. The concern is magnified because of the **lack** of action by the UN in Syria. There have been far more examples of peaceful, unarmed protesters being killed by the Syrian government forces than in Libya where armed rebels were engaging in revolt, arguably making a **stronger** case for R2P in Syria. Yet R2P was not, apparently, even contemplated. Because of Libya and Syria, it may now be that much harder to rally international support the next time R2P is truly needed.

Canada has credibility on R2P and we should now work to ensure it survives. The original purpose: the desire—the responsibility—to prevent mass human tragedy remains.

### SOMMAIRE

La toute première fois que le concept d'inspiration canadienne, de « responsabilité de protéger » (R2P), fut invoqué au Conseil de sécurité de l'ONU, ce fut pour appuyer la création d'une zone d'exclusion aérienne en Libye. Ironiquement, ce seront les événements qui ont subséquentement transpiré en Libye, combinés à l'inaction en Syrie, qui peuvent mettre à risque l'avenir de la R2P.

Malgré que le discours de ceux qui étaient favorables au concept portait sur les « mesures prises en vue de protéger les civils menacés par des attaques », il a été presque immédiatement clair que l'action internationale en Libye n'était plus là pour protéger les civils innocents et non armés. À tort ou à raison, on était dans un changement de régime, et il s'agissait d'accorder un soutien à une insurrection armée pour en assurer la réussite. Ça, ce n'est pas de la R2P.

La R2P est maintenant à risque parce que ceux qui ont déjà des hésitations à l'appuyer vont dire : « Vous voyez ? On a seulement utilisé ça comme une excuse pour pénétrer en Libye—depuis le début, le but visé était de renverser Khadafi ». Ils se demandent ce qui va se produire ensuite. La préoccupation s'aggrave à cause du *manque* d'action en Syrie. Il y a eu beaucoup plus d'exemples de protestataires pacifiques et non armés qui ont été tués par les forces du gouvernement syrien qu'en Libye, où des rebelles armés étaient engagés dans une rébellion ; et cela, pourrait-on dire, plaide *plus fortement* la cause du recours à la R2P en Syrie. Et pourtant c'est une idée qu'on n'a apparemment même pas envisagée. À cause de la Libye et de la Syrie, il pourra maintenant être encore plus difficile de recueillir des appuis internationaux la prochaine fois que la R2P sera vraiment nécessaire.

Le Canada a de la crédibilité en matière de R2P et nous devrions travailler dès maintenant à en assurer la survivance. Le but d'origine, qui était le désir—la responsabilité—d'empêcher une tragédie humaine massive d'avoir lieu, reste pourtant bien présent.

## INTRODUCTION

Less than a decade after being accepted by the United Nations, the concept of “Responsibility to Protect”, the promotion and acceptance of which many saw as a positive, significant development in international relations, may already be in danger. It was invoked by the United Nations Security Council for the first time in authorizing international actions to support a no-fly zone in Libya (UNSCR 1973).<sup>1</sup> Ironically, it will be the actions and events that subsequently transpired in Libya, together with corresponding *in*action in similar circumstances in Syria, which may put the future usefulness of R2P at risk.

## HISTORY OF R2P

In 1994, the world reeled from the reports and images of the atrocities and sheer scale of the slaughter in Rwanda. How could any of us have allowed this to happen? How could the international community NOT have intervened? There were United Nations personnel there, but despite loud warnings and appeals for help, not nearly enough. By many accounts the warnings simply went unheeded.<sup>2</sup>

Not long afterward, the world learned of the horrors of Srebrenica. Even worse for the reputation of the United Nations, it was the UN itself that, in April 1993, had declared the besieged area of Srebrenica in north-eastern Bosnia a “safe area” under UN protection,<sup>3</sup> but then failed to provide enough personnel to prevent the town’s capture and the subsequent massacre in July 1995.

There was a growing sense that a key part of state sovereignty was the responsibility to protect one’s own citizens, yet it was clear that certain states or governments had *not* only not protected their own citizens, but that in some cases governmental forces had participated in, or even authored, the violence. There was increasing condemnation of the international community’s inability to act effectively to protect people.

Then in 1999 came Kosovo. It appeared that similar circumstances were unfolding there. After Rwanda and Srebrenica, and the frustration with the UN’s inability to respond in an effective or timely way to these events, some members of the world community simply didn’t wait for the UN; instead, they took military action through NATO.

But where did this leave the international community? Certainly with big questions about what all this meant for the concept of sovereignty of states. A fundamental aspect of sovereignty is the right not to have one state ‘interfere’ in another state’s ‘internal’ affairs. This concept of non-interference has been key to the evolution of international law and fundamental to the creation of the United Nations.<sup>4</sup> The ‘unilateral’ action by NATO forces in Kosovo, without United Nations approval, was seen to have challenged this concept. With time many observers felt that, despite the lack of a full UN mandate, the intervention was truly aimed at protecting innocent people and was without ulterior political motives, rendering the action more acceptable. But then came the invasion of Iraq by the United States and others in 2003, similarly without United Nations approval. In that case, however, history suggests that the US’ intentions may not have been as first advertised, and many viewed the invasion as undertaken primarily for US political and business interests. As a result, the international community, particularly countries that tended to feel more vulnerable to US influence, reverted to placing pre-eminent importance on the integrity of territorial sovereignty and stated that it was wrong for another state to interfere in the internal affairs of other states.

1 UNSCR 1973, March 17 2011. For the full text of the Resolution, the UN press release as well as commentary from various UNSC Members, see <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm>.

2 Romeo D’Allaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Random House Canada, 2003).

3 UN Security Council 3199th Meeting Resolution S/RES/819, April 16, 1993.

4 UN Charter Chapter 1, Article 2, <http://www.un.org/en/documents/charter/chapter1.shtml>.

It was clear that international intervention would sometimes be needed for humanitarian reasons, but that there lacked a non-ideological, internationally accepted process. Efforts began in earnest to establish a truly international (i.e. through the UN) approach that would address both.

The Canadian inspired and created International Commission on Intervention and State Sovereignty (ICISS) went to work. It was initiated by Lloyd Axworthy, then Canadian Minister of Foreign Affairs, and carried through by his successor, John Manley. It was the ICISS Report, issued in 2001, which authored the concept of "Responsibility to Protect". The fundamental principles, set out in the Report, are:

*(A) State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself; and (B) Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.<sup>5</sup>*

The ICISS also advocated that any form of a military intervention initiated under the premise of Responsibility to Protect must fulfill the following six criteria in order to be justified as an extraordinary measure of intervention:

1. **Just Cause** (expressed as large scale loss of life or large scale ethnic cleansing);
2. **Right Intention** (the primary purpose being to halt or avert human suffering);
3. **Last Resort** (only when every non-military option for the prevention or peaceful resolution of the crisis has been explored);
4. **Proportional Means** (the minimum necessary means should be used to achieve the objective of human protection);
5. **Reasonable Prospects** (reasonable chance of halting or averting the suffering, with the consequences of inaction likely to be worse than those of action); and
6. **Right Authority** (the United Nations Security Council).<sup>6</sup>

Thanks in large part to Canadian efforts, the concept (although not necessarily the details of the ICISS Report) was adopted by the General Assembly of the United Nations in 2005<sup>7</sup> and subsequently endorsed by the Security Council in 2006.<sup>8</sup> Key to the concept is its focus first on the state's own responsibility toward its own citizens. Only when that responsibility is not upheld does there arise a responsibility for action on the part of other states, but only with United Nations support.

<sup>5</sup> ICISS Report, <http://www.iciss.ca/pdf/Commission-Report.pdf>.

<sup>6</sup> ICISS Report, <http://www.iciss.ca/pdf/Commission-Report.pdf>.

<sup>7</sup> UN 2005 World Summit Outcome Document, <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>. "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity:

*138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.*

*139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out."*

<sup>8</sup> As adopted by the Security Council at its 5430th meeting, on 28 April 2006. The full text of resolution 1674 (2006) reads: "4. Reaffirms 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." At <http://www.un.org/News/Press/docs/2006/sc8710.doc.htm>.

Despite general agreement that the world cannot sit by and let states or governments either allow or engage in large scale murder or ethnic cleansing, there have been sceptics. Their support is qualified by a long-standing worry that this concept is a grand ideal, but too easy to be abused for political purposes. Evidence of this happening will only reinforce those concerns, render the sceptical even more so, and reduce the chances of garnering enough support for UN action the next time it really is needed. This is why events in Libya and elsewhere may put R2P in danger.

### THE PROBLEMS CAUSED BY LIBYA AND SYRIA

UNSCR 1973 was passed with 10 in favour, none against, and five abstentions by Brazil, China, Germany, India, and the Russian Federation.<sup>9</sup> It "authorized Member States, acting nationally or through regional organizations or arrangements, to take all necessary measures to protect civilians under threat of attack in the country ... while excluding a foreign occupation force of any form on any part of Libyan territory"<sup>10</sup> and was passed after Gadhafi ignored an earlier Security Council Resolution urging him to stop using violence against civilians.<sup>11</sup> Although the commentary by those who voted for it focussed on the "measures to protect civilians under threat of attack", it took only a matter of weeks before international efforts in Libya shifted from military enforcement of the no-fly zone to significant international support for ousting Gadhafi. Hence, almost immediately the mission changed from an international effort to protect innocent, unarmed civilians peacefully protesting to regime change. Unfortunately, there seemed to be little, if any, criteria to distinguish between preventing the massacre of innocent civilians, which is what R2P is for, and offensive support for Libyan rebels, which R2P is not intended to provide. Some have defended the offensive nature of the effort, saying that given Gadhafi's threats, getting rid of him would be the only way to effectively protect civilians. There are, however, many examples of inflammatory, violent and threatening statements made by world leaders that have been ignored by the international community. Action must be based on action.

Much of the rhetoric, particularly from the West, has also focussed on 'democracy' and support for the rebels in anticipation of a move toward more democratic processes. R2P, however, was envisioned neither as pro-democracy nor anti-democracy. Nor is this article about the merits of overthrowing ruthless and oppressive dictators. It is, however, about the risks to an ideologically generic concept when it is used to pursue goals which, to many, may seem like interfering in another state's internal affairs and therefore contrary to the traditional concepts of sovereignty. It is clear through the language used that the UNSCR wanted to avoid foreign 'boots on the ground': "... while excluding a foreign occupation force of any form on any part of Libyan territory ...". Nevertheless, warfare, insurgency and the ability of states to involve themselves in the affairs of others have changed dramatically; in 2011, the concept of physical "occupation on territory" is no longer simple. Where does one draw the line between foreign "occupation" and foreign provision of funding, supplies, intelligence and weaponry to people, now no longer "innocent civilians", using force to overthrow a sitting government?

Given recent events in Libya, many have questioned whether the concept of R2P was used not only to protect civilians, but also to fulfill a desire, from the beginning of the mission, for regime change. As it was, UNSCR 1973 passed with only 10 votes and 5 abstentions. No Permanent Member used its veto, but the commentary surrounding the resolution's enactment suggests significant worry about the potential abuse of military force for just this kind of greater political purpose. Why is R2P now at risk because of Libya? Because those already hesitant to support it will say, "See? It was used as an excuse to get into Libya, only to then overthrow Gadhafi", and they will wonder who will be next. The ability to rally international support the next time R2P is truly needed be diminished.

<sup>9</sup> For full text of the UN press release, including full text of the resolution and commentary (both for and against) by UNSC members' representatives, see <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm>.

<sup>10</sup> UN Press Release for UNSCR 1973.

<sup>11</sup> UNSCR 1970 February 26, 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf?OpenElement>.

And why is R2P at risk because of Syria? Because of the *lack* of action by the UN in what appears to the world as very similar circumstances. Similar crackdowns and violence by the Syrian government against protesters in Syria have not (as of time of writing) elicited the same level of international condemnation or action. Indeed, there have been far more examples of peaceful, unarmed civilians being killed by government forces in Syria than in Libya, arguably making a *stronger* case for R2P. Yet R2P was not invoked or otherwise used and not, apparently, even contemplated. Why? Is R2P just another nice-sounding concept that will be used only when politically expedient to do so? The world at large, or at least those who supported UNSCR 1973, seemed keen to overthrow Gadhafi, but apparently not Bashar al-Assad. This only serves to reinforce the view that action in Libya was not meant for the protection of civilians, but for regime change.

### WHAT CAN CANADA DO?

The world must not allow another massacre like Rwanda or Srebrenica—that much we know. It would be distressing if these recent challenges to the R2P concept prevent its use in future circumstances when there really is a need. States **DO** have a responsibility to protect their own citizens, and the international community **DOES** have a responsibility to step in to protect innocents if their own governments will not; however, the effectiveness of R2P will be diminished if we do not strongly address the worry that it is only a nice-sounding concept that is almost right away abused for political ends.

Canada stepped up with the creation of the ICISS, but once it issued its R2P report, the group as a whole disbanded.<sup>12</sup> There are other organizations that have kept up the effort,<sup>13</sup> but where Canada initially helped lead the charge, it has all but disappeared from the stage. It is time to step up once again.

The current Canadian government wants a more “muscular” foreign policy, but “soft” diplomacy can be plenty muscular. Canada punched above its weight internationally in the initial creation of the United Nations, the creation and operation of peacekeeping efforts around the world, in pushing for the Land Mines Treaty<sup>14</sup> and, of course, with the initial R2P effort. One can be tough, firm and respected for working hard to achieve something good for the world. Because we already have that credibility in establishing the R2P concept and in pushing for its adoption at the UN, we are now well-placed to push for its refinement for greater pragmatic effectiveness, not to give up in the face of challenges.

So what specifically is needed?

Canada could lead again by reviving the ICISS, or establishing a successor to: (i) analyze where R2P is now; and (ii) make recommendations that can address some of these concerns, not only to ensure R2P’s survival, but to make it more useful. Among the recommendations to be considered:

- i. Using the experience of Libya, Syria and other recent events, elaborate on the five key principles articulated in the 2001 ICISS Report to clarify what situations call for R2P, and which ones do not. For example, armed uprisings, regardless of international support, should not, absent other R2P criteria, qualify. If R2P criteria are present, intervention should not go beyond the protection of innocents.
- ii. Be clear about the goals to be achieved by an intervention. An authorizing UN Security Council resolution must not only clearly outline what the specific goals are, but also clarify what they are *not*.

<sup>12</sup> Gareth Evans, former Australian Foreign Minister and co-chair of the group, has continued to be active in promoting R2P.

<sup>13</sup> Among others, the *Asia-Pacific Centre for the Responsibility to Protect* (see <http://www.r2pasiapacific.org/>), the *International Coalition for the Responsibility to Protect (ICRTP)* (see <http://www.responsibilitytoprotect.org/>), and the *Global Centre for the Responsibility to Protect* (see <http://globalr2p.org/>).

<sup>14</sup> *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* came into force on March 1, 1999. The treaty came eventually about due to the leadership of the Government of Canada working with the International Campaign to Ban Landmines, started in 1992.



- iii. Detail the parameters of involvement. An authorizing resolution should clarify what actions are and, importantly, what are **not** permitted. Simply drawing a line at “no foreign occupation on territory” does not address the 21st century realities of political and armed conflict, and potential forms of intervention that otherwise contravene the sovereignty of a state.
- iv. Finally, the promoters of R2P must get away from the rhetoric of ‘democracy’ versus ‘dictators’. R2P is not about the pros and cons of different governance structures; it is about the prevention of human tragedy, regardless of political ideology. Many non-democratic states want to support the concept, but such terminology creates an unnecessarily political and ideological environment. Indeed, it reinforces some of the concerns about ulterior motives.

Canada is well-placed in this regard because it has credibility on this issue. We should now work on articulating the lessons of Libya and Syria, and on using those lessons to develop an improved How, When, and Who of R2P. We already know the “Why” — Libya and Syria haven’t changed that. The original reason, the desire—the responsibility—to protect innocent people, remains.

## STRATEGIC STUDIES WORKING GROUP

The Strategic Studies Working Group (SSWG) is a partnership between the Canadian International Council (CIC) and the Canadian Defence and Foreign Affairs Institute (CDFAI). The CIC absorbed the former Canadian Institute of Strategic Studies (CISS) upon the CIC's formation in 2008, and the CISS's original focus is now executed by the SSWG.