

場次八：專題演講
Panel VIII: Speech

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(Vice President Yeong-Chin Su)

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國家保護責任的 10 年：對其過去、現在、未來的檢討

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壹、介紹

當聯合國會員國在 2005 年全體一致通過採用國家保護責任(R2P)時，在現實層面的適用上卻出現了不確定性，是否能成功將此概念從一個政治宣言轉化為一被各國承認的國際準則，並讓聯合國安理會授權軍事行動。

在 2005 年的全球高峰會上，R2P 的概念在大會中被全票通過，但在 40 頁的「結果文件」中，其僅僅只在兩頁被表達。

此高峰會與結果文件的平衡是用來處理多面向的主題，例如國際發展援助、反恐與安全、限武與防止武器擴散、建構和平、與聯合國的改革。在這些情況中，R2P 的概念很容易被認為是事後諸葛，或是空中樓閣：一種絕不可能被通過的概念，但之所以會被採用，原因是成員國被其他引起爭論的議題而分散注意力。

R2P 並不只是一持續性的概念，同時也是聯合國安理會作出應對利比亞危機的決議的基礎，其提供了一個對於國家主權以及保護人民避免由於政府無能而被暴露在生命危險之下新架構。

然而 R2P 的概念在利比亞事件的試用性上引出了一些困難的問題：

- ⊙ 在利比亞事件的處理中，R2P 是否被認為是一種成功？
- ⊙ 此教條的運用是否不是原先所意圖的行為？
- ⊙ 有什麼個案是暴行持續，並且沒有相關行動以應對？

貳、干預的個案：R2P 的起源

R2P 的起源來自於干預與國家主權委員會(ICISS)於 2001 年所提出的，此概念的提出是(透過加拿大政府的領導)因為對一些聯合國會員國的邊界出現了大規模暴行的強烈反應。其中又以盧安達和塞布忍尼卡的事件最令人無法忘記。

這些駭人聽聞事件包含了種族屠殺、種族清洗、以及違反人道罪等等，都震驚了全球。但各國並未採行「人道干預」，因為其認為一國的政府對自身的內政有主導權，即使其對自身人民進行屠殺，或是支持此種行為，都不能被干涉。這些反對者引用了聯合國憲章第二條第七款，意即對於「一國內部的司法管轄」各

國無權干涉。

ICISS 認為，面對這些事件的一個問題，在於國家主權的準則是否限制了國際社會，在面對一些國家的政府對人民進行大屠殺，或支持相關作為時，僅能當一名旁觀者。意即國家主權是否已成為防止所有外來介入的盾牌？對於上述令人髮指的事情，道德上的介入可輕易達成，然而是否可有法律上的支持？

在提及國家主權不僅僅代表權利，同時也代表義務後，ICISS 作出結論，其表示一國政府最根本的責任便是保障其人民不被大屠殺所侵害。若其無法，或沒有意願提供這類保護，導致許多生命喪失，此類責任便轉移到國際社會之上，此時國際社會便須採取行動，包含必要的軍事介入，以預防或停止相關暴行。

ICISS 提出了三個實行 R2P 根本的要素：預防—此是 R2P 最重要的要素，也是關注的重點、介入、與危機之後的重建。

預防的要素包含了國際發展援助、能力的建構、應對潛在危機的早期預警機制，以及其他措施以避免各種會激發大規模暴行的情況。

干預意指運用廣泛的手段以及連續的步驟，此包含了從政治抨擊到武器禁運，從政治斡旋到區域壓力以及面對特定目標的制裁行動的一連串措施，其目的在於阻止暴力，停止衝突升高，並保證對受害者的保護。軍事手段是各種可能行動中的最後選項，且僅能在依照嚴格的比例性準則之下才能行使，並使用適當的手法，同時要塑造更多的好處而不是傷害。

聯合國會員國通過 R2P 對全球而言是革命性的，因為此帶來了可以直接介入一個沒有能力或沒有意願保護其國民的國家內政的可能性。R2P 的採用，意指對我們迄今所熟知的國家權力提供了一些重要的例外觀念，為此改變了長久以來我們對國家主權的概念。

在 2007 年，身為歷史學家，同時也是邱吉爾傳記作者的 Sir Martin Gilbert 主張：

「自從 1648 年的西伐利亞和平以來，不介入一國內政—即使是最令人不滿的政府—已成為國際外交之金科玉律。加拿大所提出的「國家保護責任」概念代表此三百六十年以來對國家主權的一個重大的調整。」

儘管 R2P 的概念很重要，但其在 2005 年的全球高峰會之前，並未被認為會為各國所認可。其中一點是在於在 2001 年的 911 事件將各國的注意力從人道介入轉移至安全議題方面。再者，在 2003 年出兵伊拉克後，R2P 的概念便在當時的地緣政治環境中被辯論。美英兩國在伊拉克的軍事行動加深了許多發展中國家對其意圖的疑慮，其認為美國的行動是一種帝國主義的行為，且沒有合法授權，而英國則是幫助者與煽動者。

此種不信任造就了一種很難提出相關原則以介入其他國家的內政的氛圍，不論此目的有多高尚。

儘管有如此多的問題，R2P 的概念仍在高峰會上被全票通過，並有以下宣言：

「每個國家都有義務保障其人民不受種族屠殺、戰爭罪行、種族清洗、以及違反人道罪等罪行，包含預防這些罪行的產生。」

「國際社會與聯合國……都有責任……幫助人民免於種族屠殺、戰爭罪行、種族清洗、以及違反人道罪的迫害。在此背景之下，我們已經準備好在及時的以及決定性的態度之下，實行任何集體行動，並透過安理會與根據聯合國憲章以及憲章中的第七章所進行……此是在和平的手段不足以面對，以及一國當權者無法保障其人民免於種族屠殺、戰爭罪行、種族清洗、以及違反人道罪的迫害。」

R2P 與聯合國憲章第七條的關聯使安理會可將此概念與國際法相連結，若能順利，則可將軍事介入列為可能的集體行動選項的一環。

R2P 之所以被採用，最重要的一點是來自於 77 國集團(G77)的一些關鍵成員國的支持，特別是一些來自非洲的成員國。畢竟非洲聯盟(African Union)的規章與 R2P 的原則在理念上不謀而合，其都表達了在一個政府威脅到其人民的安全時，必須要有集體行動。

參、第二種想法

雖然 R2P 已在 2005 年的全球高峰會上被通過，但在高峰會之後，卻充斥著許多對 R2P 概念感到諷刺的言論。許多觀察家都想了解這種概念到底可持續多長時間，因為由西方國家領頭的介入伊拉克與阿富汗的行動已引起發展中國家不滿。

其他人則認為，無論在何種情況下，是否有足夠的政治意志來呼籲施行 R2P 乃是一問題。即使在此件事上，必須先克服中國與俄羅斯可能投下反對票，這兩個國家都不太支持聯合國「介入」成員國的內政。

而在高峰會之後，在發展中國家中廣泛流傳的「買家的懊悔」(buyers' remorse)報告也預測了 R2P 的概念將持續不長，而這些國家都採用了 R2P 的概念，但往往是不情願的。

因此，這些反對 R2P 的國家將會尋求方法，使聯合國大會重新考慮不通過 R2P。

但是，此兩頁的概念中所包含的偉大想法，使 R2P 可被持續。

在 R2P 被聯合國大會通過後的七個月內，此教條被聯合國安理會所重申，並在蘇丹西部的達佛所爆發的內戰中，被用來組織軍隊以保護當地人民。

在聯合國大會於 2009 年夏天提出要對 R2P 概念進行特別辯論後，反對 R2P

的國家藉此提出高峰會對 R2P 概念的背書不足以使此概念被通過，且意圖藉此使 R2P 被撤回。但在該場辯論中，有 94 個國家參與，且支持 R2P 的國家就占了絕對多數。而聯合國大會也從善如流。

在此場辯論開始前，一種想法已被提出，就是 R2P 已經成為了國際上的準則。

這個問題依然持續著，不論 R2P 是否可能被應用，並且繼續存活。

若 R2P 證明可以存活，則我們所要觀察的，就是其是否有潛力運作，這也是 R2P 的支持者所觀察的焦點。但在許多事件中，那些認為 R2P 是一種可以預防大規模屠殺的新手段的人們都失望了。

即使在 2005 年 9 月 R2P 的概念被正式採用，但在達佛、剛果民主共和國、辛巴威、或斯里蘭卡，人民仍然是大屠殺的目標。

事情真的有改變嗎？

肆、創造歷史：R2P 在利比亞

上述的問題於 2011 年三月得到解答。此時聯合國安理會通過決議案，對利比亞採用軍事行動以應對其領導人格達費對人民的抗議行動進行殘暴鎮壓，而 R2P 在此也從一種概念轉化為行動的準則。

在軍事行動之前，聯合國安理會於 2011 年二月 26 日提出第一個決議案，將利比亞的情況傳達給國際刑事法院，同時對利比亞進行武器禁運。但除了大家一致表決將此事件轉交給國際刑事法院外(很不尋常，因為美國長期以來抵制國際刑事法院)，該決議並未有具體的成果。

是第二個利比亞決議創造了歷史。

在 2011 年三月 17 日，聯合國安理會通過了 1973 號決議，在利比亞上空設立禁航區，並授權在保護人民安全以及加強武器禁運上要採取「所有可能的行動」。此意味著可對利比亞進行軍事介入。此次表決在安理會以十比零通過，而有五國棄權，分別是巴西、中國、德國、印度、與俄羅斯。在常任理事國有否決權之下，若中國與俄羅斯投下反對票，則此決議將付諸東流。

該決議重申利比亞的當權者應在保護人民之上負起責任，並強調若利比亞政府對人民進行「廣泛與有系統的攻擊」將是違反人道的罪行。

此決議排除了用軍隊占領利比亞的想法，因此使阿拉伯世界與其他國家了解到此次軍事行動將不同於出兵伊拉克與阿富汗。

伍、利比亞的 R2P：為何發生於此？

在利比亞的案例中有什麼因素讓安理會如此快速且深入的執行 R2P？有一些要素的出現帶來此戲劇性的發展。

第一個是格達費政權將事件視為動亂處理，然後利比亞在 2011 的一月與二月捲入內戰。

隨著暴動初期幾週反抗軍一個接一個地掌握不同城鎮，利比亞官方以逐漸升高的暴力與侵略行動回應。不同於阿拉伯之春中突尼西亞與之後埃及的革命，專制君主面對大規模群眾抗議而流亡且軍隊拒絕攻擊民眾，利比亞軍隊(以及傭兵)將槍桿轉向異議人士。

當反抗軍掌握了東部大城班加拉，格達費威脅要攻擊並殺害他們且發誓「將毫不憐憫與留情」。他的言行--特別加上他過去的犯行與不理性--顯示出當殘暴的格達費面對不成比例的軍力與班加拉手無寸鐵的民兵時真的會有大屠殺出現的風險。對一個對過去的不作為仍深感羞恥的世界--在盧安達、塞爾維亞、以及其他地方--現在是行動的時候了。

第二個重要的原因是地區組織的鼓勵與支持。

安理會顯然注意到阿拉伯聯盟、非洲聯盟、以及伊斯蘭會議組織秘書長對利比亞違反人權以國際人道法律的譴責。

安理會特別受到阿拉伯國家聯盟在 2011 年 3 月 12 日要求設立利比亞戰機禁航區以及在炮擊地區建立安全區域以作為保護平民之預防措施的決議影響。

最後，一定要提到不同於其他 R2P 支持者未能成功擁護一強硬行動的案例(直接想到達佛)，利比亞的情況總體而言容許一個強力的回應。地理上來說，同時也是地緣政治的觀點，此行動是可行的。在其他地方可能阻礙此干預行動的自然因素，如距離遙遠或是地形，在利比亞都未成為阻礙。除此之外，空中軍力很特別地可以達到任務目標，因此組織及部署地面軍力的困難與分裂議題並未出現。這些情況的加總效果為擁護強硬行動者創造了一個有利的環境。

除此之外，當然安理會自己處理了此案例中的政治面向以避免了否決權的使用，並取得足夠的共識，因此得以允許此大膽的行動。

美國及英國提供了強而有力的領導。法國在推動 2011 年 3 月 17 日的決議案中扮演一個積極的角色，或許受先前未能提供初期的鼓勵給後來成功推翻暴政的突尼西亞而遭受批評的刺激使然。黎巴嫩持續地並執意擁護強而有力的行動有助於激勵地區國家的認可。南非與奈及利亞借予重要的支持力量：沒有他們的贊成投票，決議案無法達到通過所需的九票。

有些安理會會員對此決議案的立場令人訝異(如當德國棄權，雖然之後宣稱他們與任務目標的立場一致)。俄羅斯與中國沒有否決此決議案大概是因為評估

各界普遍對格達費失去耐心，以及國際間有強烈的共識認為應該中止格達費。

陸、利比亞的教訓

現在利比亞的行動已經結束，是時候反省此歷史事件並評估我們學習到的教訓。

一、保護還是改變政權？

首先，且或許是最急迫的，應指出許多聯合國違反其目的的干預措施此嚴重問題。我們應該討論分隔戰線，一方面有防禦性的行動保護人民不受屠殺式的攻擊(可能需要讓暴君的指揮與掌控能力失靈)，另一方面以攻擊性的行動以達到改變政體的結果(此超越了 R2P 保護委託任務)。

考量地面任務可能出現的各種情況以及「戰爭迷霧」的複雜效應，這個重要的議題應在下次危機出現前由聯合國會員國辯論以辨認治理的原則並讓我們下次能更有準備以在適當使用武力上能更做出細微但重要的區別。

2011 年 3 月 17 日決議案與 NATO 行動的目標是為了保護平民。然而美國歐巴馬總統與英國首相卡麥隆一再地斷言格達費必須下台，型塑了一個北約主要行為者認為行動目標是為了改變政局的印象。選擇在黎波里攻擊目標，遠離危害班加里的民眾，增加了 NATO 的目標是領導者而不僅是軍隊的觀感。

未來 R2P 作為一種保護措施有其風險。

在這第一次依 R2P 原則的主要攻擊行動，R2P 的支持者被認為是超越了預防及保護措施且是在內戰中選邊站，特別加上如果他們被認為是以消滅國家領導人為目標，他們會讓政策反對者在下次類似的案例發生時有很強而有力的說法來抗拒行動。這些給過去幾年許多將 R2P 與西方帝國主義聯結的發展中國家人士表達憂慮者更好的立論基礎。

畢竟，嚴格來說對抗格達費武力的軍事成功不必然是 R2P 的成功。如果此政策真的是為了保護與預防，則當班加里避開了格達費威脅的大規模殺害時任務就算成功。如果僵局因此產生且需要其他政治提議來解決之--無論是透過談判來分割國家或是權力共享的安排，或是兩者，則就應該是如此。

二、敘利亞呢？

其次，這裡還有一致性的問題。有些人問到為什麼類似的決議案與行動在巴林、敘利亞、或是葉門這些壓迫政權對他們的人民進行屠殺式攻擊的地方沒有出現。

對於敘利亞情勢應有更有力道的回應的主張特別強大。根據聯合國估計，至今在敘利亞有超過 3400 個平民被政府的安全部隊殺害，隨著阿賽德政權持續訴

諸武力以鎮壓抗議者並完全不遵守他在 11 月初假裝接受的阿拉伯聯盟仲裁的協議，敘利亞的死傷持續增加中。

當然，對於這些實行 R2P 不一致的指控沒有一簡單的答案可以回答。可以確定的是，每一個案例都有一些情況可以解釋，雖然他們可能無法辯解，為何未能採取防禦人民的行動。但最終來說，當目標是保護人民不受人道侵犯時，我們很難對不同的對待方式自圓其說。

若阿拉伯聯盟在制裁外進一步要求安理會介入敘利亞，安理會沒有藉口阻擋他們在利比亞案例中施行的保護行動。

可以確定的是，我們不採取行動保護其他地方人民的原因並不是因為我們在利比亞沒辦法做到。

三、北非公約組織？

第三，現在當然是思考聯合國實行干預措施的方式之時候。NATO 為國際社群所作的是否恰當？

對於由世界各地區組合成的常設多邊武力有很強烈的爭論。雖然 NATO 在利比亞的軍事行動很有效，NATO 並不是為了這樣的目的而創立的。為了政治與實際的理由，歐洲和北美國家不應該被委託作這樣繁重的工作。歐巴馬政府似乎同意這樣的觀點。美國支持 R2P 但是他們樂見更廣泛的國家參與執行。

現在應該將精力放在創造一個各區域國家都能貢獻、且可以快速成軍以落實安理會保護行動的聯合國常設軍力。

四、重建

最後，我們別忘了 R2P 原則的第三個要素：國際社群在干預結束後應貢獻重建所需之力量。利比亞人民在修復、協商、以及建立民主制度的廣泛任務中將需要協助。這些工作也構成部份的「保護」。

若我們未能在一個已被一政治強人有效統治 40 年的國家其建立治理制度的過程中貢獻力量，則將留給利比亞人民極大的風險。

這並不是說我們自大的以為自己有權利決定利比亞應如何被統治：這應該是利比亞人民自己決定的。但我們應該以謙卑並尊重的方式來支持他們的努力，我們可以幫助建立能力、提供有用的模範並分享治理見解以供他們參考。

柒、結論

當被要求在國際法與治理下解釋 R2P 的現狀時，安南回答這些一個「新興的規範」。他的出現是快速的、也是戲劇化的。在短短 10 年間，R2P 已由單純的政策提案成為安理會在授權軍事干預時的基礎。但隨著他快速的浮現，他的解讀與實行也引發了深刻的及具爭議的問題。

透過令人信服的案例，利比亞的行動讓這些問題成為焦點。那些相信要以集體行動保護在殘酷暴君手下受到極可能使用大規模武力威脅的人民的人現在必須以誠實與嚴厲的角度來看待這些問題。只有透過展現 R2P 保有其初衷，我們才可以在這個重要且具歷史意義概念上保持我們對國際社群的信心。

THE RESPONSIBILITY TO PROTECT 10 YEARS ON : REFLECTIONS ON ITS PAST, PRESENT AND FUTURE¹

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I. Introduction

When UN member states in 2005 unanimously adopted the bundle of principles known as “the Responsibility to Protect” (or R2P), there was real uncertainty whether the concept would ever succeed in moving from mere political declaration to a recognised international norm, let alone a basis for the Security Council to authorize military action.

The adoption of R2P was expressed in just two paragraphs of the 40 page “outcome document” following the 2005 Global Summit that was adopted by a unanimous vote of the General Assembly.

The Summit, and the balance of the outcome document, dealt with subjects as diverse as international development assistance, counterterrorism and security, disarmament and nonproliferation, peacebuilding and UN management reform. In those circumstances, it was easy to allege (as many did) that R2P was either an after-thought or an oversight: a radical notion that many believed would never have been approved as a standalone proposal, but that had survived the final cut only because member states were too distracted by larger and more controversial issues to pay sufficient attention.

R2P has not only endured, but by serving as a foundation for a Security Council resolution adopted in response to the crisis in Libya, it has provided a framework for an entirely new approach to national sovereignty and an instrument of unique value for the protection of populations when the failures of their own governments expose them to mortal risk.

But its dramatic application in Libya has given rise to difficult questions:

- ω In the wake of the Libyan mission, can R2P be judged a success?

¹ Notes for a Presentation¹ by Allan Rock at the Human Rights Symposium, Soochow University, Taipei, Taiwan. December, 2011

- ω Is the doctrine being applied in ways that were not intended?
- ω What of the cases where atrocities continue and no action has been taken?

II. The Case for Intervention: the Origins of R2P

R2P has elicited strong reactions from the moment it was first proposed in 2001 by the International Commission on Intervention and State Sovereignty (“ICISS”) appointed (through the leadership of the government of Canada) in the wake of several mass atrocities within the borders of UN members. Massacres in Rwanda and Srebrenica are only the most prominent that come to mind.

Those appalling incidents of genocide, ethnic cleansing and crimes against humanity shocked the world’s conscience. Calls for “humanitarian intervention” as these awful events unfolded were met with the objection that each country’s government is master of its own affairs, even, it seems, when that involves slaughtering its own people, or standing by as others do so. Those who resisted action referred to the UN Charter’s Article 2 (7) which expressly prohibits intervention “in matters which are essentially within the domestic jurisdiction of any state”.

ICISS grappled with the question whether the principle of national sovereignty confines the international community to the role of bystander when civilian populations face mass murder carried out or enabled by their own governments. Is sovereignty a shield to prevent all outside interference? The moral case for intervention in such cases is easily made, but can there be a legal justification for doing so?

Reasoning that sovereignty entails not only rights but responsibilities, ICISS concluded that each government’s most fundamental responsibility is to protect its citizenry from mass murder. If the government is unwilling or unable to provide that protection with the result that there is a real risk of significant loss of life, the responsibility shifts to the international community to take steps—including military intervention if necessary to prevent or stop the mass atrocity.

ICISS set out three fundamental components of R2P: prevention—by far the most important and the greatest focus of its work—intervention and rebuilding once the crisis has passed.

Prevention includes international development assistance, capacity building, early warning systems to pick up potential crises and many other efforts to avoid circumstances that can give rise to mass atrocity.

Intervention means a vast range of measures on a broad continuum of possible steps, from political denunciation to arms embargoes, from mediation to regional pressure and targeted sanctions, all with the purpose of dissuading violence, stopping escalation and ensuring protection. Military means are truly the last resort in that long list of potential actions, and then only to be used in accordance with strict principles of proportionality, proper purpose and when reasonably capable of producing greater good than harm.

The adoption of R2P by the UN membership was truly revolutionary, given the prospect that it raises of direct interference by outside actors in the domestic affairs of a state that is unwilling or unable to protect its own citizens. Its adoption changed forever the notion of national sovereignty by introducing an important exception to the hitherto absolute nature of a country's prerogatives.

In 2007, historian and Churchill biographer Sir Martin Gilbert asserted that,

“Since the Peace of Westphalia in 1648, noninterference in the internal policies even of the most repressive governments was the golden rule of international diplomacy. The Canadian-sponsored concept of ‘responsibility to protect’ proposed the most significant adjustment to national sovereignty in 360 years.”

Despite its significance, R2P had seemed an unlikely candidate for approval in the runup to the 2005 global summit.

For one thing, the focus of the world's attention had, on Sept. 11, 2001, shifted away from humanitarian intervention to issues of security.

Furthermore, R2P was being debated in the toxic geopolitical environment created by the 2003 invasion of Iraq. Seen by many as an illegal and illegitimate means of regime change by an imperialistic Pentagon, aided and abetted by the United Kingdom, the Iraq invasion deepened longstanding suspicions among developing countries about the motivations of the U.S. and the UK.

The resulting distrust created an atmosphere that was hardly conducive to the adoption of a principle calling for outside intervention in countries' domestic affairs, no matter how noble the alleged purpose.

Despite these long odds, the summit's declaration recorded unanimous agreement in these terms:

ω *“Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity [including] the prevention of such crimes.”*

ω “*The international community, through the United Nations, also has the responsibility...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...should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.*”

The reference to the UN Charter’s Chapter VII opens the way for the Security Council to make its demands binding under international law, if it chooses to, adding military intervention to the list of possible collective actions.

Critical to R2P’s adoption was the active support of some key members of the G77, particularly among the African member states. After all, the African Union constitution itself contains language very similar to the R2P principles, recognising a collective role when a rogue government threatens its own population.²

III. Second Thoughts

Notwithstanding the apparent clarity of the 2005 commitments, the postSummit commentary about R2P’s prospects was highly cynical. Many observers wondered how long such a decision could stand, given the allergic reaction among developing countries to Western-led interventions following Iraq and Afghanistan.

Others questioned whether the political will to invoke R2P could ever be generated, no matter what the circumstances. Even in such a case, it would of course be necessary to overcome the potential veto of China and Russia, each notoriously reluctant to countenance UN “interference” in the affairs of member states.

Predictions of a short lifespan for R2P following the Summit acquired greater currency from widespread reports of “buyers’ remorse” among developing nations who had gone along (in some cases very reluctantly) with R2P rather than stand apart from the crowd.

And so, the expectation grew that its opponents would find ways to have the General Assembly reconsider if not reverse the adoption of R2P.

But the two paragraphs and their powerful idea proved remarkably durable.

² See AU Constitutive Act, Article 4, which sets out principles by which the AU will act, including: *the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.*

Within seven months of its adoption by the General Assembly, the doctrine had been reaffirmed by the Security Council and then invoked by the Council in creating a protection force for civilians caught up in a civil war in Darfur in western Sudan.

When the General Assembly scheduled a special debate on R2P in the summer of 2009, the doctrine's opponents seemed to have found their moment: an opportunity to roll back the summit's unqualified endorsement and to narrow or revoke the broad and unanimous commitment. But of the 94 nations that participated in the debate, the clear majority were generally very supportive. The resulting General Assembly resolution was benign.

In the wake of that debate, there finally arose a cautious sentiment that perhaps R2P had indeed taken root: that it was here to stay, as an emerging standard of international conduct.

The question remained, however, whether it would ever be applied and brought to life.

If R2P proved hardy enough to survive a difficult infancy, even its strongest supporters were left to wonder whether it would ever fulfill its potential. In case after case, those who saw it as a new and effective instrument to prevent or stop mass killings were disappointed.

Whether in Darfur or Democratic Republic of Congo, Zimbabwe or Sri Lanka, the targeting of civilian populations continued unabated despite the ringing declaration of September 2005.

Had anything really changed?

IV. Making History: R2P in Libya

That question was answered with the transformation of R2P from emerging concept to operational principle through the adoption in March, 2011 by the Security Council of the second of two resolutions dealing with the crisis in Libya after the brutal response of its leader, Col. Muammar elQaddafi, to peaceful protests that had surfaced in his country.

The first resolution, adopted February 26, 2011, referred the situation to the International Criminal Court and imposed an arms embargo on the country. Apart from the unanimity of the vote in favour of referral to the International Criminal Court (unusual because of longstanding U.S. opposition to the court), the resolution was hardly groundbreaking.

It was the second Libya resolution that made history.

Resolution 1973, adopted March 17, 2011, imposed a no-fly zone over Libya and authorised “all necessary measures” to protect civilians and enforce the arms embargo. Taken in its entirety, the measure clearly gave a green light to military intervention. The vote was 100 with five abstentions: Brazil, China, Germany, India and Russia. Since permanent members have veto power, a “no” vote by China or Russia would have killed the measure.

The resolution expressly reiterated the responsibility of the Libyan authorities to protect the population and took into account that the “widespread and systematic attacks” being carried out by the government against its own citizens might amount to crimes against humanity.

The resolution did, however, expressly rule out an occupying force, thus reassuring the Arab world and others that this operation would be very different from either Iraq or Afghanistan.

V. R2P in Libya: Why There?

What was it about the case of Libya that impelled the Security Council to move so fast and so far in applying R2P? A number of factors set the stage for these dramatic developments.

The first was the nature of the Qaddafi regime’s response as unrest and then civil war engulfed Libya in January and February of 2011.

Authorities in Libya responded with increasing violence and aggressiveness as rebels seized control of one town after another in the early weeks of the uprising. In contrast to the Arab Spring revolutions in Tunisia and then Egypt, where the despots fled in the face of massive popular demonstrations and the armed forces refused to attack the population, the Libyan military (and paid mercenaries) turned their guns on the dissidents.

When the rebel forces took control of the eastern city of Benghazi, Qaddafi threatened to attack and kill them and vowed that “there would be no mercy or compassion.” His words and deeds—especially given his history of criminality and irrationality demonstrated a real risk of mass atrocity as the ruthless Qaddafi forces bore down on the militarily overmatched rebels and the vulnerable civilian population of Benghazi. To a world still feeling the shame of inaction in Rwanda, in Srebrenica and elsewhere—the time had come to act.

A second crucial factor was the encouragement and support of regional organizations.

The Security Council expressly took note of the condemnation by the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law in Libya.

The Security Council was especially influenced by the decision of the Council of the League of Arab States on March 12, 2011 to call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure for the protection of civilians.

Finally, it must be said that in contrast to other cases in which supporters of R2P had unsuccessfully advocated strong action (here, Darfur comes to mind), circumstances in Libya overall permitted a robust response. Geographically as well as geopolitically, the operation was feasible. Physical factors that may have inhibited such an intervention elsewhere such as remoteness and terrain did not present obstacles in Libya. Furthermore, air power was uniquely capable of achieving the mission's stated objectives, so that the difficult and divisive issue of organizing and deploying ground forces did not arise. The cumulative effect of these circumstances created a propitious environment for those who advocated strong action.

In addition, of course, the Security Council itself managed the political dimension of the case so as to avoid the exercise of a veto and achieve sufficient consensus to permit bold action.

The Americans and the British provided strong leadership. France played an active role in the process leading to the March 17, 2011 resolution, perhaps stung by criticism that it had failed to provide early encouragement to the successful revolt against tyranny in Tunisia. Lebanon's continuous and insistent advocacy for vigorous action helped motivate regional approval. South Africa and Nigeria lent crucial support: without their votes in favor, the resolution would have failed to achieve the 9 votes needed for adoption.

Some of the Security Council members' positions on the resolution elicited surprise (as when Germany abstained, while afterwards claiming solidarity with the mission's aims). The fact that Russia and China did not veto the resolution is perhaps a measure of the widespread impatience with Qaddafi and of the strong international consensus that he should be stopped.

VI. Lessons Learned in Libya

Now that the Libyan mission has ended, it is time for reflection on that historic episode and to take stock of what we have learned.

1. Protection or Regime Change?

First, and perhaps most urgently, there are serious questions to be addressed about the nature of the UN intervention measured against its purpose. We need to discuss the line separating, on the one hand, defensive military action to protect populations from murderous attacks (potentially requiring the disabling of a tyrant's command and control capacity), and on the other, going on the offense to effect regime change (which is beyond the R2P protection mandate).

Given the infinite variety of circumstances that can arise on the ground and the complicating effect of the "fog of war", this crucial issue should be debated by UN member states before the next crisis arises, to identify governing principles and better prepare us the next time to make subtle but important distinctions in the proper use of force.

The stated purpose of the March 17, 2011 resolution and the NATO operation that followed was to protect civilians. Repeated assertions by U.S. President Barack Obama and British Prime Minister David Cameron however that Qaddafi must leave office created the impression that key NATO actors saw the objective as regime change. The selection of bombing targets in Tripoli, far from the endangered Benghazi population, added to the sense that NATO was aiming at the leadership and not just the military.

There is risk here for the future of R2P as an instrument of protection.

If in this first major foray under the R2P principles, its proponents are seen to have gone beyond prevention and protection and to have actually taken sides in a civil war, and especially if they are seen to have targeted the country's leader for elimination, they will give the doctrine's opponents very powerful arguments for resisting action the next time such a case arises. The concerns expressed for years by many in the developing world linking R2P with Western imperialism will be seen to have been wellfounded.

After all, a military victory over the Qaddafi forces was not, strictly speaking, necessary to R2P's success. If the doctrine is truly about protection and prevention, the mission arguably succeeded when the mass murder threatened by Qaddafi in Benghazi was avoided. If a stalemate had thereafter resulted and other political initiatives had been required to resolve it—whether through negotiating partition, or a

powersharing arrangement, or both then so be it.

2. What About Syria?

Second, there is the question of consistency. Some are asking why similar resolutions and operations were not undertaken in Bahrain, Syria or Yemen, where oppressive regimes have launched deadly attacks on their civilian populations.

The argument for a more muscular response is particularly strong in Syria where, by UN estimates, over 3400 civilians have been killed to date by government security forces, and where casualties continue to mount as the Assad regime repeatedly resorts to force to quell protests and fails utterly to abide by the Arab League–brokered agreement that it pretended to accept in early November.

There is, of course, no easy answer to these charges of inconsistency in the application of R2P. To be sure, each of the other cases involves circumstances that explain, even if they do not excuse, the failure to act in defence of their vulnerable populations. But ultimately, it is very difficult to justify differential treatment when the objective is the protection of civilians from crimes against humanity.

Should the Arab League move beyond sanctions to call upon the Security Council to intervene in Syria, there will surely be no excuse for the Council to withhold the protection it afforded in Libya.

What can be said is that the mere fact that we are not acting to protect populations elsewhere is not a reason for failing to do so in Libya.

3. The North African Treaty Organisation?

Third, the time has surely come to consider the means by which UN interventions are carried out. Is it really appropriate for NATO to act on behalf of the international community?

There are strong arguments for a standing multilateral force, drawing from all the world's regions. While NATO was effective in carrying out the military operations in Libya, it was not created for such a purpose. For political and practical reasons, European and North American countries should not be left to do the heavy lifting. The Obama administration seems to agree. The Americans support R2P but they would also like to see a broader base of countries involved in its enforcement.

Efforts should now be devoted to the creation of a standby UN military capacity to which states from all regions would contribute, and which would be available quickly to act on Security Council protection mandates.

4. Rebuilding

Finally, let's not forget the third element in the R2P principle: the international community must contribute to the effort required to rebuild now that the intervention has ended. The people of Libya will need help with the massive task of repair, reconciliation and establishing democratic institutions.

This effort too forms part of "protection".

It would leave the Libyan population at great risk to fail in our duty to contribute to the process of establishing institutions of governance in a nation that has been effectively under oneman rule for over 40 years.

This is not to say that we are to arrogate to ourselves the right to decide how Libyans will be governed: that is to be determined by the Libyan people themselves. But we must work with humility and respect to support their efforts, making available such means as we can to help build capacity, provide useful models and share insights about governance for their consideration.

VII. Conclusion

When asked recently to explain the current status of R2P in the context of international law and governance, Kofi Annan replied that it is "an emerging norm".³ Its emergence has been both rapid and dramatic. R2P has moved from a mere policy proposal to the basis for Security Council authorized military intervention in just 10 years. But as quickly as it has emerged, it has engendered profound and unsettled questions about its interpretation and application.

The Libyan mission has brought these questions into sharp focus through a compelling case in point. Those who believe in collective action to protect civilian populations imperilled by credible threats of mass violence at the hands of ruthless tyrants must now address those questions with honesty and rigour. It is only by showing that R2P will remain true to its original purpose that we can maintain the confidence of the international community in this vital and historic concept.

³ Kofi Annan, Panel Discussion presented in Ottawa, Canada by the Centre for International Policy Studies, University of Ottawa, Friday November 4, 2011.