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# Preventing Mass Atrocity Crime — Or Not: Libya, Syria and Central Africa

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In his recent, autobiography, the former Secretary-General of the UN, Kofi Annan addressed, as he had many times before, the challenge of preventing mass atrocity crimes. There is, he said:

a hard side to prevention in the global system: i.e. the deterrent effect created by ... the threat of an international military response to gross violations of human rights.

The credibility of the UN in the minds of citizens of poor and rich states will depend on where we stand on this issue of humanitarian intervention: the question of whether we are dedicated not to the power of states but to saving lives and defending the human rights of individuals.

If states bent on criminal behavior knew that frontiers were not the absolute defence — if they knew that the Security Council would take action to halt crimes against humanity, they would not embark upon such a course of action in expectation of sovereign immunity.

The core challenge to the Security Council in the 21st century, he said, was:

To forge unity behind the principle that massive and systematic violations of human rights — wherever they may take place — should not be allowed to stand.

The Secretary-General's call to action, first made in 1999 in wake of the genocides in Rwanda and Srebrenica, prompted the Canadian government, in a singular initiative, to form an international panel of experts, the International Commission on Intervention and State Sovereignty (ICISS) to address the issue. The Commission produced a final report, *The Responsibility to Protect*. The report did three things.

First, it cast the debate about the merits and demerits of humanitarian military action in ethical terms. The international community, it concluded, had a moral obligation to exercise a 'responsibility to protect' nations at risk of failure and descent into humanitarian catastrophe.

Second, it affirmed that the initial responsibility for taking action to prevent humanitarian strife should rest with the sovereign government of the nation in which occurred. Only if and when that responsibility had manifestly failed to be exercised would the larger global community's responsibility to intervene in the national and international interest be engaged.

Third, it argued that new rules of engagement should be developed to ensure that any such intervention would have the maximum possible opportunity for success, while inflicting the minimum possible harm.

The Commission recommended that military intervention should take place only pursuant to authorisation by the Security Council and only then after careful consideration of five criteria of legitimacy. These criteria, derived from philosophically and ethically founded 'just war' theory were that:

- The threatened harm must be serious, that is, it must consist of genocide, war crimes, crimes against humanity, or ethnic cleansing.
- The primary purpose of the intervention must be to halt the threatened humanitarian catastrophe.

- Military intervention must be adopted only as a measure of last resort.
- The proposed military action must be proportionate to the threat.
- The adverse consequences flowing from the military intervention must demonstrably be less than the consequences of taking no action at all.

Finally, the Commission developed its conceptual framework by providing that three different forms of the ‘responsibility to protect’ (R2P) may be engaged.

The ‘responsibility to protect’ should be exercised initially through prevention. This ‘responsibility to prevent’ would embrace soft measures such as the promotion of good governance and human rights, together with the provision of international aid.

Next, ‘the responsibility to react’ may come into play. This would involve the international community adopting intermediate measures of assistance that ranged from economic assistance, to capacity building and machinery of government reform, through to diplomatic negotiations and economic sanctions. As a last resort, however, it concluded that the international community must be willing to take targeted military action to protect civilians and end the commission of crimes against humanity.

Then, once a crisis had been averted, whether militarily or otherwise, a ‘responsibility to rebuild’ would be assumed. In this, the international community would collaborate with new governmental authorities in peacekeeping, economic and social reconstruction, democratic reform and the introduction of the rule of law.

The Commission’s overarching ethical framework, therefore, was well developed. The practical implementation of the international ‘responsibility to protect’, however, had yet to be tried.

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Early in 2011, the new doctrine faced the first, serious test of its application in the wake of the ‘Arab Spring’ uprisings in Libya and

Syria — and their savage repression by dictatorial regimes. Could and would the international community's in-principle commitment to prevent mass atrocities translate into practical, effective international action?

A military intervention in Libya in 2011 presented considerable dangers for the future of the 'responsibility to protect'. This was the first international military intervention, with an R2P focus. Its purpose was to protect the peoples of Benghazi against gross human rights abuses planned and commenced by the Gaddafi regime. The risks attached to failure were considerable. If the intervention were to fail, the entire idea of a 'responsibility to protect' could be called into question.

In the event, the immediate objective of protecting Libyan civilians from the grave human rights abuses threatened by the Gaddafi government was achieved. With the assistance of NATO bombardment, the country fell to Libyan rebels. The citizens of Benghazi were spared the massacre that in all likelihood had awaited them. The bombardment ensured that Colonel Gaddafi would not regain control and that, at least for the foreseeable future, the civilian population would be safe under the umbrella of the government of the former opposition National Transitional Council.

The fact of military victory on the ground was sufficient to justify the initial, but in hindsight premature, conclusion that the Libyan R2P operation had succeeded. This was despite strong protests as to its methods, lodged not without reason by those members of the Security Council who abstained from the vote on the UN Security Council resolution authorising NATO's military action.

It was not just the military win that seemed to secure R2P as an international political doctrine of considerable importance. Unlike preceding external military incursions, such as that in Kosovo, the Libyan one was founded explicitly upon a resolution of the UN Security Council, with explicit preambular reference to its

conformity with R2P. Importantly, too, success in Libya also came without the imposition of ‘boots on the ground’.

At the same time, however, the intervention revealed deficits in the manner of its implementation. The most severe criticism of the Libyan case related to ‘mission creep’. Those members of the Security Council who abstained from the vote on the resolution attacked forcefully what they saw as the abuse of the Council’s mandate. In their view there was no way in which the relevant resolution could have permitted the transformation of the mission from the protection of civilians to the objective of regime change. Consequently, reservations were expressed as to the legality of the action. Here, the argument was that Security Council Resolution 1973 could not be stretched to cover actions such as intervention in an intra-state civil war, the assassination of a government’s leadership, or the overthrow of the regime.

Nevertheless, considerable optimism surrounded the democratic election of the first Libyan government. It seemed as if the country could take a democratic turn, much as its neighbour Tunisia had done. Tragically, Libya has fallen instead into a state of semi-anarchy. Libya has not only failed to evolve into a democracy; it has devolved into a failed state. Violent deaths and human rights abuses have increased significantly. Rather than helping the West combat terrorism, Libya now serves as a safe haven for militias affiliated with both Al Qaeda and the Islamic State. The Libyan conflicts continue to fuel terrorism in Mali and Syria, and the NATO intervention chilled cooperation with Russia.

At least partly, this outcome occurred because the third element of the R2P’s conception was neglected. R2P specifically called for a ‘responsibility to rebuild’ following any humanitarian intervention. Instead, after the NATO coalition departed, the country was left to its own devices. Tribal warfare and warlordism then overwhelmed the nascent democratic movement, while Western eyes had turned elsewhere.

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It was substantially owing to reservations by Russia and the BRICS countries (Brazil, India, China, and South Africa) concerning the conduct of the Libyan intervention, that, in the first year of the Syrian conflict, three draft Security Council resolutions recommending various degrees of condemnation and international intervention in response to the worsening crisis were vetoed by Russia and China. In 2014, a fourth resolution, referring the Syrian situation to the International Criminal Court (ICC) for investigation, was also vetoed. The Russian foreign minister, Sergei Lavrov, explained that as a result of NATO over-reach, Russia ‘would never allow the Security Council to authorise something similar to what happened in Libya’.

A fundamental question that Security Council members had to address with respect to Syria was whether or not a direct military intervention of the kind undertaken in Libya was likely to achieve its objective — without causing more harm to the civilian population than would otherwise occur. At the time a decision to intervene had to be taken, the likely answer to that question would have been ‘yes’ in the Libyan case, but ‘no’ in relation to Syria.

In the early days of the Syrian civil conflict, the government of Bashar Al-Assad had substantial military resources; its military command and security intelligence services were, with the exception of some notable defections, cohesive and loyal to the government; and the President still retained the confidence of a substantial proportion of the population. Recruits and advisers from Palestine, Lebanon, Iran and Iraq bolstered government forces. A steady flow of weapons continued to arrive from Russia and Iran.

As the war widened throughout 2013, however, the Syrian rebellion strengthened. The opposition by then counted many thousands of fighters. Swathes of the north and central regions became no-go areas for Syrian government fighters. The rebels began to launch wave after wave of attacks upon suburban areas of Damascus and Aleppo. Government troops and shabbiha militia

respond in kind with aerial bombing, shelling and indiscriminate killing. Atrocities were committed on all sides. The Syrian conflict became, and remains, a war of attrition.

While the UN Security Council grappled with the conflict, it became progressively clearer that a crucial barrier to an R2P intervention was that the Syrian political opposition and rebel military movements were both deeply divided. Any possibility of a Western or Arab incursion in favour of the rebels was set back by profound concern as to the composition and agenda of the many different military and militia factions of which the opposition was comprised.

At the heart of that concern was the fundamentalist, Salafist character of Syrian and foreign rebel groups alike. Principal among the latter were Jabhat al-Nusra, a jihadist element closely connected to Al-Qaeda and, more recently, its competitor and successor, ISIS. ISIS alone has killed more than 1,800 civilians and recruited 600 children since January 2015.

The problem for those advocating some form of humanitarian intervention, therefore, was that the armed opposition had become primarily jihadist in character. None of the countries who might participate, whether Western or Arabic, wished the outcome of a rebel victory to be hard-line Islamist rule.

The overarching concern, however, was that foreign military intervention, even if directed only to the protection of civilians, was likely to have severe, adverse effects on the stability of the entire Middle East. That consequence arises principally from Syria's geographical position, bordering five other nations almost all of which are volatile.

Western intervention would certainly have incited Syria's ally Hezbollah in Lebanon, thousands of whose members had already crossed the border to fight. Quite independently of any intervention, the Syrian conflict has fanned the flames of sectarianism in Lebanon, thereby destabilising the fragile Lebanese government and prompting clashes between Assad government supporters. The

tensions are made worse by the fact that the tiny state of Lebanon now houses 1.2 million Syrian refugees.

Syria's relations with Turkey had worsened substantially as a result of huge cross-border refugee flows from Syria's north. Presently, Turkey hosts more than more than 2.5 million Syrian refugees. Consequently, Turkey is now seriously considering the establishment of a buffer zone inside its border with Syria, to house the refugees and act as a barrier to Syrian fighting spilling into its territory. In response to the huge demands placed upon its economy and peoples, Turkey has now also restricted the flow of refugees from northern Syria across their joint border.

In Iraq, the advance of ISIS has emboldened the country's Sunni minority and exacerbated tensions with its Shia majority. Almost half the country is now declared as the jihadist group's Caliphate. The Iraqi government, Kurdish militias and ISIS are now at war, and partition has become a realistic possibility. Despite this, Iraq is home to 250,000 Syrian refugees.

Jordan has also been afflicted by the conflict. Its Syrian refugee population is more than a million. Poverty and deprivation among the refugees is endemic. Jordan has now been drawn into the military theatre. It has conducted dozens of airstrikes against ISIS targets in Raqqa in response to the murder by immolation of one of its pilots. Airstrikes have been also conducted in Hassakeh province, where hundreds of Assyrian Christians have been abducted.

Had there been a Western-led humanitarian intervention, the probability that Iran might engage in a Syrian war, whether indirectly through its Lebanese and Palestinian allies, or directly would have been high. Iran has much at stake in Syria. Should the Assad regime fall, its likely replacement by a Sunni-led government would mean that Syria could move away from Iran's orbit and into Saudi Arabia's sphere of influence. Iran's President, Hasan Rouhani, has said that Iran will stand by the Syrian government to the end and characterised Syria as the front line of defence against Sunni extremism.



Israel, too, is involved. Politically, it has maintained a neutral stance with respect to the Syrian civil war. Militarily, it continues to launch airstrikes within Syria with the aim of preventing the transport of military hardware through Syria to its Lebanese adversary, Hezbollah, and to destroy weapons facilities adjacent to its Syrian border.

In summary, any Western-led military intervention designed to stem the Syrian bloodshed faced two insurmountable obstacles. First, given the primarily jihadist nature of the Syrian rebel movement, and the severity of the fighting, European nations and North American ones have found themselves without any identifiable party to support. The government stands condemned of committing multiple atrocities against its people. The opposition is fractured, jihadist and equally murderous.

Every outcome of an external intervention therefore was, and is, likely to be bad, not only for the intra-state combatants and their civilian populations, but also because of the likelihood of large-scale loss of life, for the intervenors themselves.

Second, a Western-led military intervention, even under a primarily humanitarian banner, was likely only to complicate and worsen the adverse, tragic effects the conflict is having upon every neighbouring country and government in the Middle East. There is a fully fledged proxy war under way in Syria between Hezbollah, Iran's Qud force and Shiite militias on the one hand, and Saudi Arabia, Qatar and Turkey, on the other.

Apart from the fact that, in all likelihood, it would have been unsuccessful, a Western-led intervention's primary contribution would have been to exacerbate that proxy sectarian war and magnify the scale of the killing, not just in Syria but across the Middle East.

There is one other critical factor. The strategic interests of the major global powers also played a critical role in blocking Security Council endorsed intervention in Syria. No member of the Council

on either side of the Syrian debate has neglected its self-interest entirely in order to assume a purely humanitarian stance.

To state the obvious, the closer a Security Council member's ties with the Al-Assad regime has been, the less likely it has been that that the state would favour an external intervention, particularly in the form either of sanctions, the imposition of no-fly zones or military invasion.

The clearest example in this instance has been Russia. From the outset of the conflict, Russia has been principal opponent of any direct international action against Syria.

Most often, its arguments against an R2P intervention have been delivered at the level of principle. It is not difficult, however, to discern the country's significant political, economic and strategic investment in Syria.

Syria has remained a major purchaser of exports of Russian arms and defence equipment. It hosts a strategically positioned Russian naval base at Tartus on the West coast, its only one outside the former Soviet Union. Russia's largest intelligence gathering organisation situated on foreign soil is located in Latakia, also on Syria's west coast. The Russian government has sent weapons to the Syrian regime throughout the period of the crisis.

It is unsurprising given these important connections that the Russians has not wished to see them disturbed by the replacement of the Assad regime. Its veto at the Security Council, exercised on four separate occasions, provided it with the political power it needed to forestall any such possibility.

Russia's blocking tactics have also been demonstrated in Security Council discussions concerning the Syrian regime's use of chemical weapons. While Russia supported Security Council resolutions demanding an end to the use of chemical weapons and their subsequent destruction, it has firmly resisted the Council's attempts to bring Syria's government to account for breaches of its agreement to forego the use of such weapons.

It is abundantly clear that the Syrian government has been dropping chlorine bombs from military helicopters upon military installations and civilian targets alike. On 6 March 2015, the Security Council passed Resolution 2209, which condemned the use of toxic chemicals such as chlorine and sarin and threatened sanctions.

Since that time, however, Russia has prevented any follow-up action by the Council by contradicting the findings of independent UN-sponsored investigations determining the fact of continuing breaches of relevant chemical weapons resolutions or agreements. It has also argued that further action in relation to alleged breaches should be referred to the Organisation for the Prohibition of Chemical Weapons (OPCW), rather than returning to the Security Council. The OPCW can investigate whether chlorine has been used as weapon but is prevented by its constitution from apportioning blame.

Having said all that, the Security Council still has several means available short of military action to deter the violence. These include imposing an arms embargo, or the imposition of targeted sanctions, referring Syria to the ICC, or authorising a no-fly zone to disable Syria's aerial capacity.

Despite overwhelming indications that various resolutions threatening consequences for lack of implementation have been breached, it has remained unlikely that that Security Council members will push for follow-up measures, such as targeted sanctions or referral to the ICC.

The assumption is that Russia will veto any measures adverse to the Syrian government, despite breathtaking levels of savagery, unrelenting aerial bombardment and indiscriminate shelling of areas populated by civilians. Not only that, but more recently Russia has deployed its own military forces on Syrian territory. It has used the pretext that its military is there to combat ISIS. The reality appears to be that Russian forces are attacking rebel groups that are fighting Syrian President Assad's armies. The Russian

presence has made decisive humanitarian focused action by the Security Council next to impossible.

The death toll in Syria has just passed 250,000 people.

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In December 2013, violent conflicts erupted in two countries in Central Africa: South Sudan and the Central African Republic (CAR). Both began as conflicts about power, fought between competing political leaders, both of whose careers had been forged in previous military battles. Soon after, however, the conflicts had metamorphosed into an inter-tribal war in South Sudan and an inter-religious war in CAR.

In South Sudan, a civil war began between members of the Dinka and Nuer tribes. In CAR, the civil war evolved into violence perpetrated by Christian and Muslim militias. The human cost of both conflicts has been immense. In South Sudan, the security situation is grave. The International Crisis Group has estimated that the death toll in the fighting during 2014 was close to 50,000 people. It is now closer to 100,000.

Two million people have been displaced. One and a half million are internally displaced and more than 500,000 people have become refugees in neighbouring countries. The UN Office for the Co-ordination of Humanitarian Affairs (OCHA) estimates that approximately 2.5 million people are currently facing food insecurity at emergency levels.

In CAR, the death toll is more than 5,000 and rising. Violence escalated dramatically throughout 2014. Gross human rights violations have been perpetrated by the Seleka (Muslim) militias and by the anti-balaka (Christian) militias. At the end of last year, more than 2 million people (about half the country's population) were in need of urgent humanitarian assistance. Out of 436 mosques in CAR, 417 have been destroyed. Eighty per cent of the population of the capital, Bangui, has been forcibly displaced or killed.

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So, as the civil war in Syria raged and Libya began to unravel, in December 2013 the ethnic and sectarian conflicts in South Sudan and CAR intensified dramatically.

At the same time, however, unlike the political and military complexities that beset the Libyan and Syrian conflicts, these two internecine wars appeared to be ideal candidates for the application of R2P. There were three reasons for this.

First, early in each conflict, it became clear that mass atrocities were occurring. Moreover, state authorities were manifestly failing to exercise their responsibility to protect their own citizens. Pursuant to the doctrine, therefore, the international community assumed a moral and political responsibility to take collective action to protect civilian populations from war crimes and crimes against humanity.

Second, in contrast to Libya and Syria, neither in South Sudan nor CAR was a dangerous proxy war among regional rivals likely to develop. The two conflicts have been relatively self-contained. Further, unlike the Libyan and Syrian cases, none of the P-5 had a substantial strategic interest in the outcomes of these faraway African conflicts. It was far less likely the veto would be wielded.

Third, both countries are poor. They have neither the military nor civil institutions or resources to resist any substantial, external, protective intervention, whether economic or military.

Nevertheless, even given these positive indicators, the international community has not managed to prevent a dramatic escalation in the commission of mass atrocity crimes in either country in the last eighteen months. Security Council action was too little and too late. The question is, why?

## **The Africa factor**

Geographical distance played a significant part in the failure to attract international diplomatic and political attention to the unfolding crises in Central Africa. Even in the corridors of UN

headquarters in New York, informed diplomats had paid very little attention to developments in CAR prior to mid 2014.

In a sense, this was not surprising. Many other hotspots in Africa had preoccupied them. Terrorist acts and rebellions in Mali, the DRC, Kenya and Nigeria ranked more highly. By comparison, CAR was low priority. What happened there was of little, serious diplomatic concern. As one senior European Ambassador to the UN told me:

Almost no one could place CAR on a map. Who cared about the country? The general impression is that it is a hopeless kind of place. The Security Council's initial reaction to it was that it was a bit of mess, but not worth taking any significant action about. Slowly, however, it became more apparent that its civilian population might need international assistance.

The situation was somewhat different with South Sudan. It was the world's newest independent state. Its independence followed a protracted, violent civil war with its northern neighbour Sudan. The United States, in particular, had played a significant role in effecting its separation from Sudan.

Once the new nation was formed, however, global attention turned elsewhere. The country's inexperienced former military leaders Salva Kiir and Rich Machar were left to their own political devices in establishing the political and institutional foundations for a more or less democratic state. They have not proven equal to the task.

In both South Sudan and CAR, the lack of any established, effective, political, economic and legal institutions meant that once conflicts broke out, governance rapidly disintegrated into rule by military might, religious or ethnic affiliation, or charismatic leadership.

The Security Council's members, having witnessed similar institutional breakdowns in Somalia and DRC, were disinclined to plunge into two more. That is, until the rising death toll and the

gravity of international crimes being committed eventually attracted their attention.

One of the first casualties of the violence in both nations was the rule of law. By any account, their legal, judicial and criminal justice systems were fragile at best. This meant that as crimes against humanity and war crimes became more prevalent, neither country had the institutional means to bring perpetrators to account. Atrocities could be committed with impunity. Nor were state institutions sufficiently strong or resilient to be capable of imposing any political or legal authority upon the warring parties. The state collapsed, and with it, the rule of law dissolved. Another European Ambassador remarked that:

Part of the problem in CAR is that there is no institutional mechanism for the enforcement of any settlement of the conflict. There have been no arrests of the perpetrators, there are no prisons, there is an almost complete absence of state structures, there is no moderate middle class, there is no information, so that no one knows how many people have died, the people speak different tribal languages, allegations are no more than hearsay. There is a chronic lack of education which means that the people cannot express their concerns in political terms. The entire country operates on rumour and fear.

Given these conditions, for many diplomatic missions surrounding the UN the question was: why should we intervene given that the problems besetting the country appear so intractable? The immediate thought that occurred naturally in response was: this is an African problem, so it might be best if it were left to Africa to sort out. That was exactly America's argument in Rwanda.

### **The peacekeeping factor**

The next major retardant to decisive international action to stop mass atrocities in Central Africa was the complexity and difficulty

involved in the effective deployment of peacekeeping troops. To make a decision to deploy peacekeepers is one thing. The politics and logistics of doing so quickly and effectively are quite another.

Developed nations, with the notable recent exception of France, have largely deserted the peacekeeping arena. Rich countries have become averse to the loss of life in foreign military ventures. This aversion is magnified when nations to which peacekeepers are to be sent seem of distant relevance to countries' domestic, political concerns.

The large-scale military interventions in Afghanistan and Iraq had burnt the United States badly at home and abroad. European nations have demonstrated a distinct reluctance to fill the void that the withdrawal of American troops and resources have left. With the flight of rich nations from peacekeeping, the burden of assuming them has fallen on poorer nations. In South Sudan, surge peacekeepers have arrived from Ethiopia, Ghana, Kenya, Rwanda, Tanzania, Pakistan, Bangladesh, Nigeria and Nepal.

There is an inherent unfairness in these arrangements. Western countries, with highly effective, well-organised, well-armed, well-resourced and battle-ready battalions no longer provide them. It is developing countries, with modestly effective, minimally armed, moderately trained, relatively inexperienced and substantially under-resourced battalions that meet the call for peacekeeping operations.

One serious consequence of this contributory imbalance is that it takes considerably longer to deploy troops for peacekeeping from developing nations than it does from developed ones. The UN Security Council authorised the establishment of a peacekeeping force of 12,500 in South Sudan in May 2014. In April 2015 that number had still not been reached.

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The Security Council is responsible for authorising peacekeeping operations. Yet there are divisions within it as to the appropriate



scope and rules of engagement that should be set down in the relevant mandates.

Western member states of the Security Council have become seriously concerned about the passivity of peacekeepers in the face of attacks on civilians. For this reason, Britain and France have argued that peacekeeping mandates should be framed more assertively to authorise the use of force, and be more explicit as to the circumstances in which armed force can be used to repel the attackers.

Other member states, in particular Russia and China, are more cautious about legitimating the use of force by peacekeepers. They express a preference for prevention and robust political negotiation as the more desirable course. The use of force, therefore, should be authorised solely for the protection of UN missions and civilians sheltering within UN facilities. The great weakness of the latter course is that it produces situations in which peacekeepers stand by as civilians to whom they have a clear responsibility are killed, maimed or violated. This has been a particular problem in South Sudan.

For example, in July 2014, more than 300 people were killed in several locations in Pibor County while peacekeepers refrained from forcible intervention. Overall, peacekeeping forces in South Sudan took immediate action to protect civilians under attack in only 10% of cases.

The question therefore remains the same as it implicitly appeared after the Security Council adopted the first protection of civilians mandate in 1999: whether the UN, an organisation founded for the fundamental purpose of promoting peace, will protect civilians only through peaceful means, or whether it is ready and willing to use violence, even on rare occasions and as a last resort to come to their assistance.

Partly in response to such passivity, in 2013 the Security Council framed a new, more assertive resolution for the Democratic Republic of the Congo, specifically entitling peacekeepers there to

use force to separate combatants and quell violence against innocent citizens. In doing so, peacekeepers would take on the character of ‘intervention brigades’. The Council authorised such ‘brigades’ to engage in targeted offensive operations against armed groups as one element of a comprehensive approach to addressing the root causes of the conflict.

Nevertheless, Russia and China have continued to express reservations about such an approach. Their view remains that peacekeepers should focus on prevention and pre-emption rather than extending their remit to enforcement. As long as the Council remains divided on these questions, the negotiation of peacekeeping mandates is likely to be protracted. Because of that, many lives may be lost as deadly conflicts burn out of control pending the outcome of the Council’s politically complex and contentious deliberations.

### **International factors**

None of the major global powers have significant strategic interests in either South Sudan or CAR. Consequently, the member states of the Security Council have largely converged as to their perspectives and actions with respect to the South Sudanese and CAR conflicts. Security Council resolutions have been adopted without dissent and members across the board have expressed continuous frustration with the disingenuous and erratic behaviour of political leaders in both places.

Nevertheless, obvious cleavages remain. As noted before, Council members have been divided about the appropriateness of the use of force by peacekeepers. A similar disagreement exists as to what sanctions, if any, should be taken against political and military leaders who fan the flames of conflict and preside over the commission of crimes against humanity.

The Security Council has discussed the imposition of targeted sanctions against identifiable individuals in South Sudan, but none

have yet been imposed because Russia and China have signalled their opposition. Western nations, in contrast, have been more inclined to support stronger action in this regard. So, too, there have been suggestions that the leaders of South Sudan should be referred to the ICC to determine whether a case exists for their prosecution for crimes against humanity. Again, Russia and China have signalled their opposition to this course. In this they have been joined by a handful of other Council members who are not parties to the ICC and who share the African Union position that the ICC is a political body that unjustifiably targets African leaders.

It has been most unfortunate, finally, that Security Council resolutions concerning Central Africa have taken place in the shadow of the serious political and military upheavals in Ukraine. The conflict, and subsequent imposition of Western sanctions there, has hardened the contending positions of Russia and the US/European alliance in relation to a host of contentious global issues.

That fallout has been felt as far as Central Africa, where the means and methods of international intervention to halt mass atrocity crimes have fallen for discussion. As a result of the political deadlock concerning the Ukrainian conflict, Russia, China and the West have been far less inclined to compromise on any issues that divide them, including those just described, so reducing significantly the range of measures that might be taken by the Security Council to halt the commission of grave international crimes elsewhere across the globe.

## Conclusion

On any interpretation, international intervention to prevent mass atrocity crimes has thus far been a failure in Libya and Syria, and in South Sudan and CAR. Crimes against humanity and war crimes continue to be committed extensively in all four countries.

Should one conclude, therefore, that the doctrine of the 'Responsibility to Protect' has failed? After all, if it has not been

applied effectively in poverty stricken, militarily weak, politically chaotic, and strategically inconsequential nations such as those in Central Africa, are there any conditions or locations in which its success might realistically be anticipated? Before responding, let me summarise what we appear to have learnt so far.

First, intra-nationally:

- Intervention, whether through sanctions, no-fly zones, aerial bombardment or military force, becomes next to impossible where both, or all parties, to a conflict have no interest in concluding it except through force or violence.
- Next, deeply regrettably, the scale of genocide, crimes against humanity and war crimes being committed within a nation remains an insufficient condition or incentive for the international community, through the UN Security Council, to engage in collective, coercive action to stop the carnage.
- Mass atrocity crimes are more likely to commence and continue where there has been a breakdown in the rule of law and associated law enforcement and judicial institutions, such as to create a situation in which international crimes may be committed with impunity.
- Peacekeeping operations are unlikely to prevent the commission of mass atrocity crimes, unless they are undertaken early in a conflict and where the number of peacekeepers deployed is sufficient to the scale of the task.
- International incursion, even when limited to the deployment of peacekeepers, is unlikely to be successful unless rules of engagement are clear and agreed between troop-contributing nations, and where peacekeepers are authorised to use force to prevent or cease the indiscriminate killing and maiming of civilians.

- International intervention is more likely to be contemplated where it is limited to the protection of civilians and the provision of humanitarian assistance.

Second, as to international action:

- A necessary condition for humanitarian intervention is that early warning signs of impending mass atrocities are recognised by the international community, through the Security Council, and that the community's sympathy and attention is engaged.
- International incursion is less likely to be successful where it is borne upon the shoulders of, and conducted by the soldiers of, nations whose military forces and police are themselves minimally trained and equipped.
- International intervention is highly unlikely where internecine fighting has metamorphosed into proxy war among neighbouring or regional powers.
- The R2P will not be implemented successfully unless, after coercive action has been taken, the UN, rich nations and foreign donors, commit to long-term political and economic rebuilding in the nation that has been damaged.
- Perhaps the decisive criterion for determining the appropriateness of concerted international humanitarian intervention to prevent mass atrocities is that concerned with the balance of consequences. That is, on balance, the UN Security Council must be of the opinion that a military intervention will cause significantly less harm to civilian populations than that which is likely to occur if nothing is done.

The factors I have just outlined do constitute a daunting catalogue of obstacles to the prospect of effective and successful humanitarian, moral action by the international community to prevent mass atrocity crime.

But, rather than admit defeat, let me in conclusion think on what might be done to increase the chances that the ethical commitment that lay behind the advent of the ‘responsibility to protect’ might be made more real.

- Early warning is critical. In this respect, recent work done by the UN Office for the Prevention of Genocide may prove valuable. The Office has produced a detailed framework for the analysis for mass atrocity crime. This identifies critical risk factors that might signal impending sectarian, ethnic or inter-tribal violence. Armed with such systematic analysis, the Security Council and other relevant inter-governmental organisations should be placed in a better position to act early, decisively and, therefore, effectively.
- To a much greater extent than at present, the Security Council must found its decisions upon practical experience of what is happening on the ground. The Council’s recent visit to the Central African Republic provides one concrete example of how this may be done. Sending fact-finding missions is another.
- Next, however difficult it may be to persuade them, developed nations must once again assume responsibility for, and take the lead in, peacekeeping and peace enforcement action. The willingness of developing nations to contribute is commendable. But it is primarily the developed nations of North America, Europe, and Asia — including Australia and Japan — that have the strategic and military sophistication, skill and resources to take on the complex and difficult tasks that any humanitarian intervention necessarily entails. The recent French intervention in Mali and the Australian peace enforcement action in East Timor provide relevant, successful examples. Naturally, developed countries do not wish to lose soldiers’ lives in far-distant conflicts. As Professor Michael Ignatieff observed recently,

however, risk-less warfare in pursuit of human rights is a moral contradiction.

- The UN should take action immediately to create and aggregate a rapid reaction military force ready, at short notice, to be deployed in a peace-enforcement capacity in any zone in which the probability of the commission of mass atrocity crime has been identified. In fact, action has recently commenced at the UN to work through the logistics of establishing such a force.
- The problem of the Security Council veto must be addressed. There is now a concerted movement, initiated by civil society organisations and adopted by a substantial and increasing number of members of the UN General Assembly to implement a new Security Council code. Pursuant to this, member states of the United Nations would agree, voluntarily, not to exercise the veto in situations where the commission of genocide, crimes against humanity or war crimes are to be considered. Encouragingly, as at May 2016, 106 nations have signed on to the code.
- Failing that, the UN General Assembly should make greater use of the Uniting for Peace formula. This formula, embodied in a General Assembly resolution passed in 1950, provides that if the Security Council, because of a lack of unanimity, fails to exercise its responsibility to maintain international peace and security — in any case where there appears to be a threat to peace or an act of aggression — the General Assembly should consider the matter and make recommendations, including for the use of armed force, to restore peace and security.
- Finally, we should not give up. The ethical challenge facing the international community to prevent the commission of genocide, crimes against humanity, war crimes and ethnic

cleansing is significant and substantial. As will have become apparent, making this work involves immensely complex and variegated problems in highly divergent contexts. It is too much to expect that one overarching framework or mechanism, like R2P, could ever meet that challenge. This does not mean, however, that within that framework, incremental advances in mass atrocity prevention are unachievable.

So, the more that is learnt about R2P's failures and successes; about its plans and their misconceptions; about implementation and its errors; about its politics and conflicting interests; about national, regional, political, economic and cultural differences in its spheres of application, the better the chance will be that practical experience of innovative, astute and diverse forms of international intervention to protect civilian life will in time develop.

These innovations should inform a more intricate and dynamic conception of how the international community in general, and the UN in particular, might best tackle people's and nations' evils.

Recently I came across the following quotation:

We must recognize that if we feel helpless in the face of the record of human depravity, there was always a point at which any particular scene of madness could have been stopped.

I think that's right. Our task, and our obligation, is to learn how.