No. 34/2011 dated 4 March 2011

Libya and the UN:
Whose Responsibility to Protect?

By Iftekhar Ahmed Chowdhury & Yang Razali Kassim

Synopsis

As the blood-letting in Libya continues, and the hapless protesters battle a repressive regime that has shown no qualms to slaughter its own people, the eyes of the world are focused on the United Nations. To its credit the Security Council has acted in strong terms. Is this enough?

Commentary

THE HUMANITARIAN tragedy in Libya triggered by the harsh response of the Gaddafi regime to the people's revolt has provoked international moral outrage. While the United Nations has to respect the sovereignty of its member states, the question increasingly being asked is where sovereignty ends and international intervention begins.

Notwithstanding this dilemma, the UN Security Council voted unanimously on 26 February 2011 to impose sanctions on the Libyan strongman Muammar Gaddafi and his inner circle, including his family. The UNSC also called for an international "war crimes" investigation into "widespread and systematic attacks" against the Libyan people and referred the case to the International Criminal Court. As if this is not enough, the Council further imposed an arms embargo against Libya, an international travel ban against relevant Libyan officials, and froze the Gaddafi family's assets. In an action almost equally significant, United States President Barack Obama, in a telephone call to German Chancellor Angela Merkel, said Gaddafi had lost the "legitimacy to rule" and should "leave".

Responsibility to Protect

Not unexpectedly, the draft resolution was hotly debated. The referral to the International Criminal Court attracted some hesitation, in particular from China, known to be circumspect on such issues. But Beijing ultimately relented, wanting, no doubt, to also be on the right side of history. The Turkish prime minister Recep Erdogan did take the position that sanctions would do the Libyan people rather than Gaddafi more harm. But the tipping point came when Libyan diplomats themselves enthusiastically backed the draft and appealed for international intervention. But will this resolution be enough to arrest the slide in Libya towards a full-fledged humanitarian crisis?

With each passing hour, more blood is being shed in the streets of Tripoli and elsewhere in Libya. The cry of anguish in Libya grows more shrill and more painful. Is there something more that the UN and the Security Council can do to bring succour and comfort to the Libyan people? The answer to this is, yes.

This brings us to the UN doctrine of the "Responsibility to Protect", or "RtoP" as it is generally known. It was adopted by world leaders at the UN World Summit in 2005 and is contained in paragraphs 138 and 139 of the "Outcome Document" adopted as a "reforms package". RtoP rests on three principles: Firstly, each individual state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity. (These four elements are important and each was chosen after much careful debate and consideration). Secondly, 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 UN Charter) to protect the population (from the four catastrophies).

Thirdly, however, "should peaceful means be inadequate, and the national authorities manifestly fail (to act), then the international community can take collective action in a timely and decisive manner, through the Security Council, in accordance with the (UN) Charter, including Chapter VII, on a case-by-case basis, in cooperation with relevant regional organisations as appropriate". Here, military intervention sanctioned by the UN is not precluded, but only as a last resort.

Since its adoption, RtoP as a doctrine has never been implemented through any Security Council resolution. Critical to this concept is the fact that the international community also has the responsibility to prevent such a situation from occurring in the first place that would warrant external military intervention. In 2008, when the Myanmar government appeared inactive despite Cyclone Nargis devastating parts of the country, the then French Foreign Minister Bernard Kouchner pushed for a hardline RtoP calling for some form of international intervention. But it seemed too much like a back-door attempt at regime change. His call failed to generate any significant support.

RtoP on Libya?

But the Libyan case is different. The efforts to bring about 'regime change' here need not be a 'back–door' endeavour. There is a crying need to do it now to end the excruciating human sufferings of the Libyan people. The Security Council has already agreed that war crimes are being committed in Libya by the ruling group. It is obvious that all peaceful means to resolve the crisis have proved futile, and the domestic authorities have manifestly failed in their responsibilities. If there ever was a time for collective action through the Security Council legally, morally, and in practical terms, it is now. If there ever was a situation ripe for the application of the principle of the RtoP, it is Libya.

In fact by adopting the UNSC resolution on 26 February, the implementation of the RtoP principle in its "hardcore" form has already begun. Significantly, however, the resolution did not skirt around this but explicitly invoked RtoP to justify the punitive actions on Gaddafi, his family and his coterie of key supporters. The resolution cited the Libyan regime's "responsibility to protect its own population".

What is required now is another back-to-back resolution. This one could include two things. The first is the proclamation of a 'no-fly zone' to prevent Gaddafi's air force from striking at a protesters' march upon Tripoli. The second is the issuance of "arrest warrants" against "war criminals" as the key personalities in the Gaddafi regime have been labeled.

But given the obvious sensitivity of all these punitive moves, especially over military intervention in the air or on the ground, the UN must be mindful of its limits. Nothing must be done to open itself up to accusations that it is taking Libyan sovereignty lightly -- notwithstanding RtoP -- or worse, it is promoting a neo-colonialist project. The UN has rightly taken upon itself the mantle of protector of the helpless, for that body alone represents the aspirations of the entirety of humanity. If the UN fails, it will also signal the failure of the international community.

Iftekhar Ahmad Chowdury is Senior Research Fellow at the Institute of South Asian Studies (ISAS). He was formerly foreign minister of Bangladesh and ambassador to the UN. Yang Razali Kassim is Senior Fellow with the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University.