The application of this mandate by the American- and European-led coalition in Operation Odyssey Dawn has exposed R2P to attack as a cover for regime change. The perceived indifference of the United States to the violent suppression of protest by other Middle East rulers also undermines the effectiveness of the doctrine.

The 2005 UN World Summit agreed that ‘we are prepared to take collective action …, through the Security Council…[when] national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity [collectively referred to as ‘mass atrocity crimes’].’

Resolution 1973 invoked this doctrine in ‘reiterating the responsibility of the Libyan authorities to protect the Libyan population.’ President Obama referred obliquely to this concept in his address about the Libya operation on 28 March when he referred to the international community’s ‘responsibilities to defend the Libyan people.’

Operation Odyssey Dawn has so far been successful. But the effect of the military operation has not been merely to protect Libyan civilians. *The New York Times reported* that the westward advance of the rebels toward the Libyan capital of Tripoli ‘underscored the essential role of Western airstrikes, now focused mainly on Colonel Qadhafy’s ground troops, in reversing the rebels’ fortunes.’ This provoked criticism by Russian Foreign Minister Sergei Lavrov on 27 March that the military operation has been extended beyond the authorisation in Resolution 1973 to ‘intervention in a civil war.’
The coalition military operation was bound to have the effect of helping the rebels militarily. This assistance is also essential to its mission. The rebels will have to overthrow Qadhafy. If he remains in power he will be able to go on oppressing his people and destabilising the region, an argument convincingly put by Dirk Vanderwalle, an American academic expert on Libya, in an online comment on 21 March for Foreign Affairs. No one who sympathises with the plight of the Libyan people under Qadhafy’s rule should shrink from this conclusion. But this will be the likely result of any application of R2P: if a regime is committing mass atrocity crimes against its own population, it can hardly be left in control of them after an intervention brings the immediate commission of those crimes to a halt.

Many states in our own region are uneasy about R2P. During a UN General Assembly debate on R2P in July 2009, China said that ‘[i]t was important that R2P not contravene principles of sovereignty and non interference in external affairs. There must be no wavering on any of these principles.’ India, Pakistan and Vietnam spoke along similar lines.

R2P was last invoked in relation to our region when in May 2008 Cyclone Nargis ripped through Myanmar. Nearly 85,000 people died. During the initial failure of the governing junta to allow international assistance to victims, it was suggested that the junta’s indifference to the plight of its own people amounted to a crime against humanity, which justified the international community intervening under R2P.

These suggestions that R2P applied to a situation of a natural disaster reinforced the fears that R2P was a broad threat to sovereignty. The inevitable mutation of Operation Odyssey Dawn into a vehicle for regime change will aggravate these fears.

The critical scrutiny of the way R2P has applied to Libya is aggravated by the milder response of the US administration to the other outbreaks of protest of the Arab Spring. The violent suppression of minority Shiite protests in Bahrain on 16 March, accompanied by refusal of medical attention to those injured and the detention of scores of people, amounted to a crime against humanity. But the US administration refuses to recognise that the situation in Bahrain is comparable to the suppression of the rebel movement in Libya. US Secretary of State Hillary Clinton has also denied that there are parallels in the current violent suppression of protests in Syria.

There is a danger that the probable, even desirable, effect of the Security Council’s Libya mandate to bring about regime change on Libya, and the apparent selective application of R2P by the United States will undermine the effectiveness of the doctrine as a response to future mass atrocity crimes.

Kevin Boreham is a lecturer in International Law at the ANU College of Law.

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Post Comment

- Suzie Wong
  1st April, 2011, 4:30 am

  This article is the classic example of the problem facing those in internaitonal law profession —
  either in the US, Australia or Europe.

  The article analyzes the United Nations international regimes without taking into an account
  the context of the post-Cold war strategic interactions. As the corollary, they miss the main point of
  the combined force of the United Nations Security Council, the NATO, and the US in the case of Libya.

  Reply

- James Smith
  1st April, 2011, 9:23 am

  Ms Wong’s comments are misguided. In his article, Mr Boreham is simply analysing the application
  of R2P to the situation in Libya, and the reservations some countries have about its foundation and
application. Any consideration of “post-Cold war strategic interactions” are simply irrelevant to his analysis of the R2P doctrine and its application.

Reply

- Suzie Wong
5th April, 2011, 9:28 am

While the UN Security Council builds its argument on humanitarian grounds, the Doctrine of the Responsibility to Protect is an integral component of the NATO and the US objectives in their threat assessments in the overall post-Cold war strategy. Operation Odyssey Dawn hence, puts force to keep the Mediterranean stable and in check.

Assuming international regimes to be universally implemented throughout the world without taking other factors including national interests, sphere of influence, etc., into consideration is a typical approach of international law. They treat international regimes similar to domestic laws.

In the Asia Pacific region, when China, India, Pakistan and Vietnam said to leave Myanmar alone, the superpower US in the unipolar world had to comply with it. Also, it is not in the U.S. national interests to bully Myanmar when Americans prefer to compete for infrastructure investment in the emerging market like Myanmar. Wrong foreign policy direction has a serious impact. Jim web, the senator in charge of Myanmar declined to run for the second term in Virginia as a democrat.

The European countries see the necessity of regime change in Libya, whereas the Asian powers see the importance of maintaining Myanmar regime. We cannot ignore the contextual difference between the Cold war and the post-Cold war world.