

RESPONSIBILITY TO PROTECT AFTER LIBYA AND CÔTE D'IVOIRE

R2P PERCEPTIONS AND MISCONCEPTIONS

- How decisive was the Libyan crisis in the evolution of R2P?
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How decisive was the Libyan crisis in the evolution of R2P?

R2P, like all norms, is bound to see its capacity to deliver on its intended goals tested by real experience. Ever since R2P was endorsed by member states at the United Nations General Assembly in 2005, a number of cases have helped define the bounds of its application. Well before Libya, R2P had already made a discrete difference in a number of cases: from the most cited example of the political and diplomatic response to the outbreak of ethnic violence in Kenya in early 2008; to the patchy response to signs of ethnic cleansing in Kyrgyzstan in the summer of 2010; to the more forceful regional and international efforts in Guinea at the end of that year.

The challenge faced in Libya was of a high order of magnitude. The crisis rapidly escalated to a point where the UN Security Council had to consider the use of military force to halt mass atrocity crimes that were already occurring as the Gaddafi regime used tanks, aircraft and troops to suppress mass protests.

The steps taken by the international community leading to resolution 1973 were gradual, but were premised upon the expectation that faced with overwhelming, unanimous and unqualified international condemnation the Gaddafi regime would halt its widespread attacks on Libyan civilians. The

swift international response included simultaneous calls to the Libyan authorities for restraint by numerous international and regional actors.

On 22 February 2011, UN High Commissioner for Human Rights, Navi Pillay's call for an immediate cessation of the “grave human rights violations committed by the Libyan authorities” and for a “swift independent international investigation into the violent suppression of the protests” was echoed by a joint statement issued by UN Special Advisers on the Prevention of Genocide and the Responsibility to Protect. They expressed alarm at reports of “mass violence” and reminded Libya and other countries “facing large scale protests” of their pledge to protect populations “by preventing genocide, war crimes, ethnic cleansing and crimes against humanity, as well as their incitement.”

On the same day the Arab League banned Libya from attending its meetings. Ekmeleddin Ihsanoglu, Secretary-General of the Organization of the Islamic Conference, condemned the Libyan government's use of excessive force against civilians. The UN Security Council similarly condemned the “violence and the use of force against civilians, deploring the repression against peaceful demonstrators” and expressed “grave concern at the situation in Libya.” The condemnation by the African Union (AU) followed suit with Jean Ping, head of the AU Commission,

denouncing the “disproportionate use of force” in Libya and calling for an immediate end to “repression and violence.”

On 25 February the UN Secretary-General voiced his concerns to the UN Security Council about reports of the indiscriminate use of violence coming from the media, human rights groups and civilians on the ground in Libya. Meanwhile, in Geneva Navi Pillay reminded members of the Human Rights Council about their individual responsibility to protect their populations and about their collective responsibility to act in a timely and decisive manner when a state is manifestly failing to protect its population.¹ Soon after, concerted action by the Human Rights Council in Geneva and the General Assembly in New York paved the way for Libya’s suspension from the Council.²

Not only did R2P inspire the international response to the brutal and violent crackdown on protesters in Libya, it also kept it focused. Thus, resolution 1970, unanimously adopted by the UN Security Council on 26 February 2011, explicitly invoked the “Libyan authorities’ responsibility to protect its population.” It included an ambitious package of coercive measures – arms embargos, asset freezes, travel bans, and referral to the situation to the ICC – aimed at persuading the Gaddafi regime to stop killing its own people.

In the two weeks that lay between UN Security Council resolution 1970, and the adoption of resolution 1973 on 17 March 2011, mounting violence again prompted regional and international organizations to urge the Gaddafi regime to stop its fierce repression of protests and to resolve the crisis through “peaceful means and serious dialogue.” A chain of communiqués ensued. On 10 March 2011 the Peace and Security Council of the African Union established an ad hoc High Level Committee on Libya. On 12 March the Arab League called for the imposition of a no-fly zone over Libya. On 16 March the UN Secretary-General called for an immediate cease-fire.

All this was to no avail. The brutal actions and vicious rhetoric of the Gaddafi regime and the limited impact of the measures adopted by resolution 1970 on its behavior, ruled out the options of mediation and accommodation. The UN Security Council was pushed to revisit the situation. On the one hand the potential impact of the package of measures adopted by resolution 1970 was curtailed by the regime’s prior experience with sanctions, and its related ability to build liquid financial reserves and military capacities. On the other, Gaddafi’s brinkmanship dramatically reduced the available policy options and left the international community with little choice but to consider the possible use of force. Prompted by the strong call by the Arab League in favor of a no-fly zone, and with the support of 10 members and 5 abstentions (Brazil, China,

Germany, Russia and South Africa), the Security Council authorized resolution 1973.

This authorization made Libya stand apart from other cases of military intervention to halt mass atrocities. Previous unilateral interventions have included India’s in East Pakistan in 1971; Vietnam’s in Cambodia in 1978; France’s involvement in the overthrow of Jean-Bédél Bokassa of the Central African Empire in 1979; and Tanzania’s decision to topple the murderous Idi Amin regime in Uganda the same year. Multilateral interventions have also taken place in Northern Iraq in 1991; Sierra Leone in 1999; as well as NATO’s multilateral intervention in Kosovo in 1999. Although such interventions halted atrocities and were therefore morally justifiable, they lacked international legality. The Libyan intervention was different precisely because it was both multilateral and legal. The UN Security Council’s authorization represented “coercion by the united authority” of the international community.³

In addition to reiterating the responsibility of the Libyan authorities to protect its population, and deploring their failure to comply with resolution 1970, resolution 1973 called for an immediate “cease-fire and a complete end to violence and all attacks against, and abuses of, civilians.” It stressed the need “to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people.”

All necessary measures including coercive military action but short of a “foreign occupation force” were authorized by paragraphs 4, 6 and 8 under two scenarios: the protection of “civilians and civilian populated areas under threat of attack,” and the imposition of a “ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians.”

Those who voted for resolution 1973 understood that they were voting for air strikes to protect civilians. It is worth keeping in mind, however, that the decision to embark upon military intervention was only taken after other attempts at dissuasion had failed.

To what extent did values or interests dictate the response to Libya?

The immediate context leading to the adoption of both resolutions 1970 and 1973 was one in which the commission of mass atrocities was already occurring. The decision to impose a no-fly zone and to resort to “all necessary measures” met a number of tests. The regime had responded brutally to peaceful unarmed protesters. Its rhetoric was an open incitement to violence. Libyan military and civilian officials had defected in open disapproval of the regime’s behavior. Finally, Gaddafi’s determination to hold onto power at all costs clearly implied

the risk of further mass atrocity crimes. All of this created a situation of “extreme necessity.”

The imminent risk of a bloodbath increased as the regime’s forces advanced towards Benghazi. This galvanized those arguing in favor of collective coercive military action. As such the authorization of resolutions 1970 and 1973 was motivated by humanitarian objectives. While it is true that the prospect of a wave of refugees heading towards Europe provided additional strategic incentive, there is nothing to suggest that NATO and its allies were moved primarily by territorial designs or material interests.

Was there an alternative to resolution 1973?

Given the perceived risk of a large-scale massacre in Benghazi, available options were limited and entailed unacceptable human costs. The mandated airstrikes against Gaddafi’s forces did not instantaneously solve all problems, but as had been the case in Bosnia, it did impact upon the regime’s capacity to inflict further harm upon civilians. The intended military “cleansing” of Benghazi by Gaddafi’s forces was prevented.

There were of course alternatives. For example, a handful of commentators advised a policy of no-intrusion whatsoever in the affairs of Libya. At the other end of the spectrum, some argued that the full weight of the international community, including ground troops, should be deployed against Gaddafi in order to clear the way for regime change.

Other voices continued to argue in favor of compromise and negotiation with Gaddafi. From an R2P perspective, the campaign of inciting violence against dissenters, the language used to dehumanize sectors of the population, the resort to mercenaries, and the history and nature of the regime made this an unrealistic proposition.

Although resolution 1973 called upon the Libyan government to resolve the crisis through “peaceful means and serious dialogue,” there is no evidence to indicate that the Gaddafi regime intended to move in this direction. Efforts at mediation, mostly on behalf of the AU, failed to make meaningful progress as bloody events on the ground quickly overtook those occurring in diplomatic corridors.

Does the resort to the use of force mean a return to “humanitarian intervention?”

No. UN Security Council resolutions 1975, in the case of Côte d’Ivoire, and 1973, in the case of Libya, mentioned R2P, not humanitarian intervention, as the principle that guided both interventions. Unlike humanitarian intervention, R2P aspires to ground national and international action in law

and institutions. Rather than compromising sovereignty, it harnesses the notion of sovereignty as responsibility.

The doctrine of humanitarian intervention may be summed up as, “military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.”⁴ This differs from R2P on at least three grounds.

First, the remit of “humanitarian intervention”, which aims at preventing large scale suffering or death, whether man-made or not, is far broader than that of R2P which focuses on the prevention of four crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.

Second, humanitarian intervention automatically focuses upon the use of military force, by a state or a group of states, against another state, without its consent. As such it overlooks the broad range of preventive, negotiated and non-coercive measures that are central to R2P.

Third, to the extent that the doctrine of “humanitarian intervention” is predicated on the basis of the “right to intervene,” it assumes that it can proceed without the need to secure legal authorization.

Military action in Libya was preceded by a range of robust non-military measures that sought to persuade the Gaddafi regime to stop killing and start talking. All the steps considered in resolution 1970—the referral of the matter to the International Criminal Court, the imposition of an arms embargo, enforcement of a travel ban for certain individuals, freezing the assets of senior regime figures—while coercive, were peaceful in nature. None of these measures bore fruit. It was only when this chain of preventive measures failed that the use of force was finally considered.

Did NATO overstep their Protection of Civilians mandate in Libya?

Prior to its approval by the UN Security Council, it was made clear by military strategists, including US Secretary of Defense Robert Gates, that any no-fly zone would have to include aerial bombardment of Gaddafi’s air defenses. The major issue is whether the subsequent military support that NATO gave to the rebels can be considered to be part of an operation authorized to protect civilians.

Questions regarding protection of civilians cannot neglect political and military realities. In a situation where the civilian population is confronted with an unrelentingly ruthless regime, the use of force may not only be legitimate, but clearly needed to stop rapidly unfolding mass atrocities.

Given the well-founded fear that if Gaddafi were to regain control of rebel-held territory he could perpetrate further crimes, assisting the rebels in preventing him from regaining such control was, arguably, a part of protecting the population.

What were the main challenges facing the military strategy to protect civilians in Libya?

The inherent difficulties in resorting to military means to protect civilians needs to be candidly addressed. The UN lacks the means to exercise the responsibility to protect in emergency situations where military assets are needed on short notice. The reality is that states and multilateral alliances remain better equipped to react to rapidly unfolding emergencies. While the use of force in Libya was properly authorized by the UN Security Council, organizing prompt and effective military action was entrusted to a coalition led by NATO that included Qatar.

Military action in Libya proceeded on the assumption that air-strikes would cause the Gaddafi regime to abandon its brutal tactics. The NATO decision to resort to air power emerged as the default option due to its perceived low risk and the political sensitivities surrounding the presence of a foreign occupation force. Although improvements in accuracy and discrimination have significantly lowered the risk of civilian casualties, death and damage remain intrinsic to air warfare. This is particularly the case in densely populated urban areas, with the associated risk of accidentally killing civilians and alienating the very population the mission is intended to protect.

Although resolution 1973 was clearly motivated by the need to protect civilians, this was not without problems. The fact that the imposition of the no-fly zone started with an air attack heightened the perception that it was an act of war. Although the immediate objective of stopping an assault on Benghazi was successful, the operational directive confining the use of military force solely to protecting civilians proved challenging. On the one hand, such a tight mandate put a premium on expectations about neutrality and impartiality. On the other hand, initial confidence about the prospects of limiting the military operation to civilian protection was weakened by developments on the ground.

NATO's bombing raised hopes among those whose lives remained under threat, while simultaneously raising suspicion the Libyan intervention was about promoting regime change. As the conflict dragged on over several months, the Libyan intervention proved increasingly problematic on logistical, military and political grounds.

What factors explain why the Security Council took action on Libya but not Syria?

There are five factors that explain the different manner in which the Security Council responded to Libya as opposed to Syria.

1. Key actors in the region played a different role in both crises. The Arab League's early condemnation of Gaddafi's actions and calls for a no-fly zone in Libya contrasted with its comparative silence on the situation in Syria. Lebanon, currently the only Arab League member on the UN Security Council, pushed the Council to take action on Libya (with which it had a longstanding feud), but has defended the Syrian government (Lebanon's powerful neighbor).
2. Whereas a sizable number of key government officials defected from the regime (including the PR and DPR of the Libyan mission, who made compelling statements during UN Security Council discussions), in Syria the regime has maintained the formal allegiance of most government officials.
3. Libya's status as a pariah state without close, powerful allies contrasts with Syria, which maintains close relationships with Russia and Iran.
4. Statements by Gaddafi that he would go "house to house" to cleanse the nation of "cockroaches" and "rats" were viewed as incitement to commit crimes against humanity, whereas President al-Assad has taken actions that, while mostly window-dressing, were viewed as conciliatory.
5. The strong reaction and military intervention in Libya made China, Russia, and others nervous about the UN Security Council becoming involved in a similar conflict due to a fear that this could again result in military intervention.

What do Côte d'Ivoire and Libya tell us about the relationship between R2P and regime change?

Any military operation that is aimed primarily at regime change, even if that regime is guilty of gross human rights violations, cannot accurately be said to be in accordance with R2P. Military operations are only in accordance with R2P if they are authorized by the UN Security Council and designed to prevent or halt the four mass atrocity crimes. Overthrow of a regime is not, in and of itself, a legitimate objective. However, disabling the capacity of Gbagbo's and Gaddafi's regimes to harm their own people was seen by many as essential to discharging the mandate of protection.

In some cases, curtailing a regime's ability to commit further crimes may not prove sufficient if such violations are chronic, institutional and integral to the regime's survival. Few would quarrel with the view that halting mass atrocities in Cambodia during the brutal rule of the Khmer Rouge, Uganda under Idi Amin, or during the genocide in Rwanda, became inseparable from the goal of ending those regimes. Where a regime is the primary perpetrator of ongoing mass atrocity crimes, changing the leadership may be the most effective way to end the commission of crimes.

What more could have been done to prevent atrocities in Côte d'Ivoire?

In Côte d'Ivoire, electoral contestation and the incumbent's obstinacy – combined with the legacy of civil war and ethnic cleavages – led to the commission of mass atrocities. Given previous history, the international community should have planned for the possibility of a hotly contested election in which Gbagbo would probably refuse to cede power. It should have come up with a viable plan, prior to the election, to entice Gbagbo to respect the election outcome, and to leave peacefully if he lost the Presidential ballot.

Such contingency planning should have identified populations in the western part of the country, notably in the town of Duékoué, as being at grave risk. In fulfilling the protection of civilians mandate the UN should have deployed more troops to this area, perhaps preventing the massacre of more than 500 people in a 48-hour period over 28-29 March.

Finally, there needed to be better coordination of messaging, as well as action, between the Economic Community of West African States (ECOWAS), the AU, the UN, and member states. Gbagbo was able to exploit perceived disagreements, particularly between the AU and ECOWAS, to prevaricate. Meanwhile, mass atrocity crimes continued to be perpetrated.

What do recent experiences in Libya and Côte D'Ivoire suggest about the R2P responsibilities of regional organizations?

For a variety of reasons regional arrangements and regionally based security systems are bound to play a key role in implementing R2P. First, such institutions tend to have greater understanding of the causes and nature of the problems affecting the region.

Second, from Africa to the Americas, existing regional understandings have already made sovereignty conditional to human rights standards and norms. Regional structures and organizations are thus seen as obvious platforms for the promotion and implementation of R2P. In this light, regions

are perceived as offering arenas for developing consensus around the R2P principle and its implementation.

Third, the incentives for containing crises and managing conflict are likely to be higher in the immediate neighborhood.

However, the idea that the practical implementation and operationalization of R2P will prove more effective if solely entrusted to the regional level is problematic. As the recent experiences in Côte d'Ivoire and Libya have revealed, the belief in seamlessly interlocking systems between the regional and the global levels may not always prove to be accurate.

While in both Libya and Côte d'Ivoire the UN Security Council's decision to act was preceded by regional initiatives, the long and torturous process between ECOWAS and the AU in Côte d'Ivoire increased the risk of mass atrocity crimes occurring. Similarly, the initially sluggish response of the AU to the crisis in Libya contrasted with the more assertive role played by the Arab League. Last but not least, lack of UN Security Council action in the context of systematic and persistent atrocities in Syria has been partly linked to the paralysis of regional organizations.

Has implementation in Côte d'Ivoire and Libya undermined the credibility of R2P?

While the actions authorized by the UN Security Council in Côte d'Ivoire and Libya have not undermined R2P, three important lessons need to be drawn from these crises.

First, the breadth of condemnation against the specter of mass atrocity crimes in both Côte d'Ivoire and Libya echoed the spirit of R2P and provided the political context for subsequent decision making. The swift and unanimous adoption of UN Security Council resolutions 1970 and 1975 contrasts sharply with the paralysis that overtook the UN during the Rwandan genocide and the painful dithering of both the UN and regional actors during the Balkans war of the 1990s. Notwithstanding the five abstentions accompanying the adoption of resolution 1973, no UN Security Council member, whether permanent or elected, voted against more forceful action. No one was prepared to be seen as countenancing mass atrocity crimes.⁵ This is an important step forward.

Second, in each case the decision of regional organizations and the UN Security Council to respond robustly to R2P crimes was preceded by efforts at persuasion. In neither case was the call to action reduced exclusively to military means. It was the determination of both Gbagbo and Gaddafi to play to the endgame that reduced the number of available options. Indeed, in both crises the decision to intervene to protect lives took place in contexts already dominated by the occurrence

of war crimes and crimes against humanity. In both cases the ability of the international community to offer credible responses short of the use of military force was challenged by the reckless behavior of unresponsive leaders and by the rapid pace with which mass atrocities unfolded on the ground.

Third, while both resolutions 1973 and 1975 activated emergency measures to protect civilians, the prospects for resolution were clearer in the latter. The unanimous re-confirmation of Alassane Ouattara as legitimate president by regional and international organizations allowed the UN Security Council to clearly determine the aim to be achieved by deploying the use of force. By contrast, both resolutions 1970 and 1973 were predicated on the immediate but challenging mandate to protect civilians. The resolutions stopped short of outlining a desired political outcome to the crisis. In short, while the political process and the use of force were in concert in Côte d'Ivoire, such synergy was missing in Libya.

Finally, while we must strive for consistency with regard to the future application of R2P, we also have to judge each crisis on its own merits. While Libya and Côte d'Ivoire have presented challenges, they should increase our determination to develop better preventive, mediated and coercive tools as we operationalize R2P in the future.

1. Secretary-General's remarks to Security Council Meeting on Peace and Security in Africa, New York, 25 February 2011. Available at <http://www.un.org/apps/sg/printsstats.asp?nid=5109> (accessed 14 March, 2011). In her remarks Ms Pillay highlighted the fact that the current "shocking and brutal situation" in Libya was the direct outcome of a "callous disregard for the rights and freedom of Libyans that has marked the almost four-decade long grip on power by the current leader." See Statement by Navi Pillay, UN High Commissioner for Human Rights, Human Rights Council, 15th Special Session, Geneva P5 February 2011, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10760&Langl...> (accessed 14 March 2011).

2. On 1st March 2011, following the unprecedented request made by the Human Rights Council, the General Assembly expressed deep concern about the situation in Libya and by consensus suspended this country's membership in the Geneva-based Council (A/RES/65/266).

3. The phrase was coined by W.E. Gladstone in the context of the brutal Turkish repression of Bulgarian minorities in 1876 and his consideration of a European multilateral intervention.

4. Adam Roberts, "Humanitarian war: military intervention and human rights," *International Affairs* 69:3, 1993, p. 429.

5. Those abstaining included: Brazil, China, Germany, India and Russia. Resolution 1973 adopted by the Security Council on 17th March 2011 deplored Libya's failure to comply with the terms of its previous resolution and reaffirmed its determination to consider all necessary measures to ensure the protection of civilians.
