



# Libya

and the  
Responsibility  
to Protect

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The **Global Centre for the Responsibility to Protect** was established in February 2008 as a catalyst to promote and apply the norm of the “Responsibility to Protect” populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Through its programs, events and publications, the Global Centre for the Responsibility to Protect is a resource and a forum for governments, international institutions and non-governmental organizations on prevention and early action to halt mass atrocities.

**Cover Photo:**

A family walks during a visit to Tripoli Street, the center of fighting between forces loyal to Libyan leader Muammar Qaddafi and rebels in downtown Misrata, Libya. Associated Press Images.

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## Executive Summary

For those concerned with the international community's Responsibility to Protect (R2P), the implementation of United Nations (UN) Security Council Resolution 1973, which authorized a military intervention in Libya, has caused much controversy and dissension.

From the start of Muammar al-Qaddafi's violent crackdown against protesters in February 2011, R2P informed the Security Council's response. Adopted at the UN World Summit in 2005 and intended as an antidote to the inaction that had plagued the UN during the genocides in Cambodia, Rwanda and Srebrenica, R2P represents a solemn commitment by the international community to never again be passive spectators to genocide, war crimes, ethnic cleansing or crimes against humanity. While R2P played some role in preventing an escalation of deadly ethnic conflict in Kenya during 2007, it had never been utilized to mobilize the Security Council to take coercive action against a UN member state before.

It is for this reason that Resolution 1970 of 26 February 2011, which framed the Security Council's response in terms of R2P, was hailed as a groundbreaking diplomatic moment. Similarly, Resolution 1973, which followed on 17 March, was initially seen as a timely and proportional intervention to ensure the protection of civilians at grave risk of mass atrocities. It was a regrettable, but necessary measure of last resort.

However, over the course of the following months the debate regarding the meaning of the resolutions and their implementation became increasingly bitter. Some argued that the Libyan intervention had been hijacked by partisans of "regime change." The alternative view was that "all necessary measures" were being used by the NATO-led alliance to prevent atrocities and protect civilians – nothing more and certainly nothing less. Questions of proportionality and motivation began to undermine the unanimity that initially existed.

The fall of Qaddafi's government in August 2011, the internecine conflicts between rebel militias and the challenges of rebuilding from the ruins of civil war mean that Libya continues to be a talisman for debates over R2P. Moreover, the Security Council's inability to take comprehensive action with regard to mass atrocities in nearby Syria has widened the divide between supporters and critics of the implementation of R2P in Libya.

This occasional paper from the Global Centre for the Responsibility to Protect analyzes the debates that have shaped interpretations of the intervention in Libya and argues that R2P played a crucial role in stopping mass atrocities and saving lives.



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## The Arab Spring and Libya<sup>1</sup>

On 17 December 2010 a young fruit and vegetable seller named Mohamed Bouazizi set himself on fire in a desperate protest against bureaucratic indifference and police corruption in Tunisia. His gruesome death provoked a month of fierce anti-government protests, and on 14 January 2011 President Zine el-Abidine Ben Ali fled into exile. Inspired by the Tunisian experience, mass demonstrations against the politically bankrupt regime of President Hosni Mubarak began soon after in Egypt. The civil revolt, focused around Cairo's Tahrir Square, succeeded in toppling his thirty-year dictatorship within three weeks. Sensing that a seismic shift in regional politics was now underway, similar protests erupted in Bahrain, Yemen and elsewhere. As popular movements for change radiated across the Middle East and North Africa in the opening weeks of 2011, the question was not whether this "Arab Spring" would continue, but which repressive government would fall next.

Muammar al-Qaddafi, who had ruled Libya since seizing power in a military coup in 1969, eyed these developments suspiciously.<sup>2</sup> On 15 February, just four days after Mubarak's resignation, protests began in Libya. An estimated two hundred people gathered in front of police headquarters in Benghazi demanding the release of a well-known human rights lawyer. A number of people were injured as the demonstration was broken up by the Libyan security forces.

When general protests against the government spread to other towns the following day, the security forces employed lethal force. Fourteen people were killed and Libyan supporters of the Arab Spring, especially those overseas with better access to social media, called for a "Day of Rage." Despite government warnings that live ammunition would be used to disperse mobs, large demonstrations took place in at least four major cities, including Benghazi and Tripoli, on 17 February. Human Rights Watch estimated that twenty-four protesters were killed by the security forces.<sup>3</sup> The demonstrations then rapidly increased in scale and ferocity until they evolved into a country-wide popular uprising against Qaddafi.

Protesters in Benghazi, Baida, Ajdabiya, Misrata and Zawiya took to the streets. Some attacked symbols of the regime, set fire to police stations and damaged other government buildings. Eyewitness accounts reported "dozens" killed by security forces in Benghazi after 17 February, including fifteen people shot at the funeral of a protestor who had been

killed earlier. While it was impossible to verify all of the terrifying and sensational reports from inside Libya, it was credibly claimed by Human Rights Watch and others that by 20 February at least 173 people had been killed during four days of protests.<sup>4</sup>

About this time the first shaky videos purportedly showing armed men going door-to-door in Benghazi attacking suspected opponents of the Qaddafi regime were broadcast on the international news networks. There were also stories of military aircraft flying low over demonstrations in a menacing display of potential lethal violence. It was reported that three people had been killed in Tajura, on the outskirts of Tripoli, when a fighter plane opened fire. Meanwhile, armed Qaddafi loyalists reportedly patrolled Tripoli in pick-up trucks, arresting or shooting at anyone suspected of public dissent.<sup>5</sup>

As the uprising spread, the Libyan police were forced out of Benghazi and then from Misrata by 24 February. A number of towns in the east of the country began to slip from Qaddafi's control. Some protesters started arming themselves and defending their neighborhoods from the security forces. The situation shifted inexorably from demonstration to insurrection as volunteer militias were formed across the east of the country.

The regime committed more desperate acts of violence and issued blood-curdling threats. On the night of 20 February Qaddafi's heir apparent, his son Saif al-Islam, appeared on Libyan television threatening that "thousands" would die and "rivers of blood" would flow if the rebellion did not stop. The next day, two Libyan fighter jets landed in Malta and their pilots alleged that they had been ordered to bomb Benghazi.<sup>6</sup> Soon after, Qaddafi, speaking in Tripoli, called upon loyalists to "get out of your houses" and "attack" all opponents of the regime. Invoking language that was reminiscent of the 1994 genocide in Rwanda, he described protesters as drug-crazed "rats," "cockroaches" and "cowards and traitors." He left no doubt about his intentions as he promised to "cleanse Libya house by house."<sup>7</sup>

Estimates of the number of civilians killed between 15 and 22 February vary. Residents of Tajura described numerous bodies littering the streets.<sup>8</sup> The UN Human Rights Council's International Commission of Inquiry received medical records regarding protesters shot dead in Tripoli, with doctors

testifying that more than 200 bodies were brought into their morgues over 20-21 February.<sup>9</sup> The International Criminal Court (ICC) later estimated that 500 to 700 civilians were killed in February prior to the outbreak of civil war.<sup>10</sup>

Although some of the emerging stories were exaggerated, by 22 February it was clear that the Qaddafi regime, in its desperation to hold on to power, was willing to use extreme violence to crush the popular uprising. Despite censorship, confusion, rumors and misinformation, the threat of mass atrocities was imminent and real.<sup>11</sup>

## The UN Security Council Responds

From New York, the UN Secretariat viewed developments in Libya with grave concern. On 20 February the UN Secretary-General, Ban Ki-moon, had spoken with Muammar Qaddafi on the phone, telling him that the violence against civilians “must stop immediately.”<sup>12</sup> Qaddafi did not heed the counsel, but a number of senior Libyan diplomats, including the leadership of the Permanent Mission of Libya to the UN, defected. One diplomat observed that, “the more Qaddafi kills people, the more people go into the streets.” Libya’s ambassadors to Indonesia, India and several other countries resigned.<sup>13</sup>

On 22 February the UN High Commissioner for Human Rights, Navi Pillay, called for an immediate cessation of the “grave human rights violations committed by the Libyan authorities.” Pillay described the violence as possibly constituting “crimes against humanity.”<sup>14</sup> These sentiments were echoed in a joint statement by the UN Secretary-General’s Special Advisers on the Prevention of Genocide and the Responsibility to Protect. The Special Advisers also reminded Libya of its pledge at the 2005 UN World Summit to protect populations “by preventing genocide, war crimes, ethnic cleansing and crimes against humanity, as well as their incitement.”<sup>15</sup>

On the same day, the League of Arab States (Arab League) banned Libya from attending its meetings. Ekmeleddin İhsanoğlu, 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 use of force against civilians, deplored the repression against peaceful demonstrators, and expressed deep regret at the deaths of hundreds of civilians.”<sup>16</sup> The African Union (AU) followed

with Jean Ping, Chair of the AU Commission, calling for an immediate end to “repression and violence” in Libya.<sup>17</sup>

On 25 February Ban Ki-moon voiced his growing concerns to the UN Security Council. Meanwhile, in Geneva, Navi Pillay reminded members of the Human Rights Council about their individual responsibility to protect their populations and their collective responsibility to act in a timely and decisive manner when a state is manifestly failing to protect its population.<sup>18</sup> Soon after, coordinated action by the Human Rights Council and the General Assembly paved the way for Libya’s suspension from the council.<sup>19</sup>

The Responsibility to Protect focused the international response. Resolution 1970, unanimously adopted by the Security Council on 26 February, explicitly invoked the “Libyan authorities’ responsibility to protect its population.” The resolution included a comprehensive package of coercive measures – an arms embargo, asset freezes, travel bans and referral of the situation to the ICC – aimed at persuading the Qaddafi regime to stop killing its people.

During the weeks between Resolution 1970 and the adoption of Resolution 1973 on 17 March, escalating violence prompted regional and international organizations to again urge the Qaddafi regime to stop the killing and resolve the crisis through “peaceful means and serious dialogue.” On 10 March the AU’s Peace and Security Council established an ad-hoc High Level Committee on Libya, and on 12 March the Arab League called for a “no-fly zone” over Libya.<sup>20</sup>

By 16 March pro-Qaddafi forces were approaching the opposition stronghold of Benghazi and Saif al-Islam al-Qaddafi was quoted on Western television as saying the rebellion would “be over in forty-eight hours.” Libyan television broadcast a message that the army was coming to Benghazi “to cleanse your city from armed gangs.” Most importantly, Qaddafi himself threatened the opposition in Benghazi on national radio and television, saying that the army was on its way “tonight” and that “we will show no mercy and no pity.”<sup>21</sup>

The unrelenting violence and political intransigence of the Qaddafi regime, combined with the limited impact of Resolution 1970 on its behavior, ruled out further mediation and accommodation.<sup>22</sup> With Qaddafi’s forces on the outskirts of Benghazi, the risk of civilian massacres seemed highly probable if the city was allowed to fall. Urged on by the



Arab League, ten UN Security Council members supported Resolution 1973 (Bosnia-Herzegovina, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, South Africa, United Kingdom and United States) and five abstained (Brazil, China, Germany, India and Russia). Although the AU did not call for a no-fly zone, all three African members of the UN Security Council voted for Resolution 1973. Such a vote was entirely in keeping with Article 4(h) of the AU's Constitutive Act, which advocates a policy of "non-indifference," rather than non-interference, in the sovereign affairs of other states when "grave circumstances," including crimes against humanity, are concerned.

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." The text referred to "all necessary measures," including coercive military action but short of a "foreign occupation force." Two scenarios were specifically identified: 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."<sup>23</sup>

Those Security Council members who voted for Resolution 1973 understood that they were voting for air strikes to protect civilians. For at least one of those who voted for Resolution 1973, Ambassador Ivan Barbalčić of Bosnia-Herzegovina, the inability of the UN to stop past atrocities weighed heavily. He later commented that Benghazi could have potentially developed into "a situation not unlike Srebrenica" if it were allowed to be retaken by Qaddafi's forces.<sup>24</sup> Moreover, the decision to embark upon military intervention was only taken after other attempts at dissuasion had failed. The nature and structure of the Qaddafi regime closed off other diplomatic possibilities.

## Qaddafi's Libya

The ancient history of Libya is intimately connected with the ebb and flow of empires across the Mediterranean, Middle East and North Africa. Modern Libya, by contrast, was a creation of the UN.<sup>25</sup> The defeat of fascist Italy in World War II, during which Libya had been a significant

battleground, enabled decolonization. In 1951 the United Kingdom of Libya was created as a poor, weak, but nominally independent, constitutional monarchy. Under King Idris Libya was the single largest per-capita recipient of United States aid in the world by 1959.<sup>26</sup>

The discovery of oil in 1959 changed everything. Within two years Libya was an oil exporter, the revenues from which generated considerable state wealth. Oil production increased from 20,000 barrels per day in 1960, to nearly 3 million barrels by the end of the decade. The economy, lubricated by oil, grew by about 20 percent annually.<sup>27</sup>

Libya was struggling to deal with the ramifications of all of this when an army coup in September 1969 brought to power a small clique of young pan-Arabist officers who called themselves the Revolutionary Command Council (RCC). Within the RCC was Muammar al-Qaddafi, then a 27-year-old heavily influenced by the politics of Colonel Gamal Abdel Nasser in neighboring Egypt. As charismatic as he was ruthless, Qaddafi emerged as the central military figure of what he was now calling "the Libyan revolution."

The political form of the new Libyan republic was increasingly shaped by Qaddafi alone. In 1973 he suspended all previous laws. Four years later he dramatically abolished the government and declared Libya to be a "Jamahiriya" (state of the masses). Qaddafi continued only as honorary "guide of the revolution." His motivations were not solely ideological. Qaddafi was so suspicious of the possibility of a military coup that he had abolished the Ministry of Defense in 1969.<sup>28</sup> Over the following four decades he remained Libya's key military decision maker.

Despite Qaddafi's pretensions with regard to creating a unique system of self-governing socialist people's committees, Libya remained firmly under his eccentric direction. The ruling circle was tight and repressive. Censorship was pervasive. The formation of opposition political parties was outlawed under Law 71 of 1972 and punishable by death.<sup>29</sup>

The idea that opposition to Qaddafi was tantamount to treason was one that Qaddafi himself returned to constantly. For example, in a speech from 1993 he declared that "now we should seek traitors" and "kill them."<sup>30</sup> Dissidents were detained, routinely tortured and sometimes publicly executed. Those who made it into exile could be hunted down and assassinated by Libyan intelligence agents. Libya was also

a major sponsor of international terrorism, including a notorious connection to the blowing up of Pan Am Flight 103 over Lockerbie, Scotland in 1988.<sup>31</sup>

Qaddafi was able to use billions of petro-dollars to fund his political ambitions and foreign entanglements, and also buy off inchoate domestic opposition to his rule. Between 1969 and 1979 Libya received an estimated \$95 billion in revenue from oil.<sup>32</sup> Hard currency and hubris enabled a disastrous military intervention in Chad, a call for *jihād* in the Congo, an alliance with Uganda's Idi Amin and support for armed rebels in Mali. Qaddafi's pan-Arab vision failed during the 1970s when it became clear that other rulers would not bow to his leadership. Attempts from the late 1980s onwards to re-fashion himself as a pan-African "king of kings" similarly floundered, despite his willingness to bankroll various African political allies.<sup>33</sup>

Money from oil also enabled Qaddafi to construct an impressive welfare apparatus during the 1970s.<sup>34</sup> Genuine progress was made in advancing literacy and health care, the residual effects of which are still apparent. The UN's 2011 Human Development Index ranked Libya 64th out of 187 countries.<sup>35</sup> But receipt of economic handouts depended upon political acquiescence, and by the late 1980s the system of distributive welfare was crumbling both literally and figuratively.

Completely dependent upon oil revenue and subject to Qaddafi's whims, Libyan economic development was distorted. By 1970 oil was already providing 99 percent of state revenue, but employing only 1 percent of the workforce.<sup>36</sup> Billions of dollars were wasted through mismanagement. Endemic corruption meant that money that was not wasted was often siphoned into offshore bank accounts.<sup>37</sup>

Confrontations with a range of foreign powers had made Libya a pariah by the mid-1980s. Western sanctions, especially on oil exports, started to have an impact on Libya's revenue, which fell from \$21 billion annually to \$5.4 billion between 1982 and 1986.<sup>38</sup> The United States' decision to conduct airstrikes in Tripoli and Benghazi during April 1986, including on Qaddafi's personal residences, represented an obvious attempt to affect "regime change."<sup>39</sup> Because of Libya's complicity in international terrorism, the UN applied damaging sanctions from 1992 until 1999.<sup>40</sup>

In an extraordinary reversal of political fortunes, after giving up his weapons of mass destruction and the restoration of relations with several Western powers from December 2003 onwards, Qaddafi was actually courted as a North African buttress against al-Qaeda.<sup>41</sup> During 2004 British Prime Minister Tony Blair and French President Jacques Chirac both visited Libya. Between October 2004 and the end of 2009 the European Union granted €834.5 million worth of arms export licenses to Libya, with Italy being Qaddafi's single largest supplier.<sup>42</sup>

The overall effect of 40 years of Qaddafi's misrule was debilitating. Libya had a weak state and army, but possessed a vigorously repressive internal security apparatus. There was no governmental accountability as Qaddafi had no formal authority but possessed all real power.

Qaddafi also remained fiercely resistant to the idea of reform. For example, during a military mutiny in Misrata in 1993 and an isolated Islamist uprising in Benghazi in 1995, extreme violence was deployed with the air force being used to bomb the mutinous soldiers into submission. In June 1996 the security forces killed approximately 1,272 prisoners at Abu Salim prison following protests there. During the following month, when the crowd at a soccer game began to chant anti-Qaddafi slogans a riot broke out and as many as fifty people were shot dead by the security forces.<sup>43</sup>

When protests began in Benghazi during February 2011, Qaddafi relied upon the things he knew best – inflammatory rhetoric mixed with fierce repression. When Libyans protested or attacked symbols of his regime, he dismissed calls for compromise or conciliation. Outside Libya, Qaddafi had no significant international allies who could pressure him to moderate his behavior. Inside Libya, there were no restraints upon his decision-making. Although Libya was a country of more than six million people, one man made a negotiated outcome to the rapidly escalating conflict next to impossible.

## **"No Fly Zone," the AU "Road Map" and NATO**

Implementation of Resolution 1973 began on 19 March with a massive bombardment of Libyan air defenses and military hardware, with a focus on Qaddafi's forces outside Benghazi. Although the United States, United Kingdom and France initiated the operation, the NATO-led coalition assembled to

enforce Resolution 1973 would eventually encompass eighteen states. Notably, three Arab countries – Qatar, Jordan, and the United Arab Emirates – made military contributions.<sup>44</sup>

In terms of the “no-fly zone,” Qaddafi did not have much of an air force to disable. He did, however, have tanks, heavy artillery and ground troops. Although estimates vary, the regular Libyan armed forces constituted approximately 100,000 personnel. Qaddafi, who had some personal experience of coup plotting, deliberately kept his army weak. The exception was four well-resourced brigades directly linked to his tribe or to one of his sons, along with the internal security forces.<sup>45</sup>

Although Qaddafi’s forces outside Benghazi were destroyed by NATO bombers, his remaining troops displayed considerable resilience. After falling back from Benghazi they were able to maintain control of most of the west of the country, with the notable exception of Misrata, and retake several towns that had previously ousted the security forces. Despite being targeted by NATO, Qaddafi’s forces continued to pose a threat to civilians. For example, NATO claimed that on 20 April alone it destroyed 25 tanks that were shelling civilian areas in Ajdabiya and Misrata.<sup>46</sup>

NATO’s military operations in Libya proceeded on the assumption that air strikes would cause the Qaddafi regime to abandon its “cleansing” campaign. The decision to resort to air power emerged as the preferred option due to its perceived low risk as compared to deploying foreign ground forces. 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 corresponding possibility of accidentally killing the very population the mission is intended to protect.

Alternatives to coercive force were also still being explored. In particular, the AU continued to argue in favor of a negotiated settlement between Qaddafi and the rebels. On 10 April, after the airstrikes had begun, an AU delegation including the presidents of South Africa, Uganda, Congo-Brazzaville, Mali and Mauritania claimed to have secured Qaddafi’s support for a “road map” to end the conflict. The road map included an immediate ceasefire and negotiations on political reform. The emerging political representatives of the rebellion in Benghazi, who were now calling themselves the National Transitional Council (NTC), rejected the initiative.

The NTC saw the AU, whose secretariat received substantial funding from Libya, as protecting Qaddafi’s interests. They were especially skeptical given that two members of the delegation, President Jacob Zuma of South Africa and President Yoweri Museveni of Uganda, had already publicly criticized the NATO-led intervention. Indeed, Museveni had written in March that while Qaddafi had made mistakes, he was a “true nationalist” and that “I prefer nationalists to puppets of foreign interests” – an inelegant stab at the opposition. Another delegate, President Mohamed Ould Abdel Aziz of Mauritania, who came to power in a military coup in 2008, had close ties to Qaddafi, who had cancelled Mauritania’s \$100 million debt. It was therefore regrettable, but not surprising, that the NTC rejected the AU road map and repeated its demand that Qaddafi and his family leave Libya as a precursor to peace talks.<sup>47</sup>

Countries supporting the NATO-led intervention applied little diplomatic pressure on the NTC to take the AU initiative seriously. Although Qaddafi’s gesture may have been empty, it still should have been vigorously pursued. However, the concerns of the NTC were also valid. The fact that the AU delegation publicly referred to Qaddafi as “Brother Leader” rankled, as did the fact that the most prominent member of the delegation, President Zuma, did not visit Benghazi, returning to South Africa after his time with Qaddafi in Tripoli.

Most importantly, in Benghazi, the heart of the rebellion, the AU’s criticism of “regime change” did not sit comfortably with people whose lives were at grave risk if the regime survived. Allegations that Qaddafi was recruiting mercenaries from several AU member states, especially Chad and Niger, also heightened suspicions. The AU delegation had been welcomed at Qaddafi’s private compound in Tripoli, but in Benghazi about a thousand protestors gathered outside their hotel. One woman was photographed carrying a placard that read, in English, “the people want to change the regime.”<sup>48</sup>

A diplomatic opportunity was possibly missed, but this was as much a mistake of the AU delegation as of those enforcing the UN’s civilian protection mandate. While the AU delegation had announced Qaddafi’s agreement to their road map, Qaddafi made no such public statement. His private commitment may have been genuine, but to the NTC it appeared to be a cynical delaying tactic. Crucially, despite the immediate ceasefire promised in the road map, even as the

AU delegation checked into their hotel in Benghazi, Qaddafi's forces continued to shell the besieged city of Misrata.<sup>49</sup>

As the opportunities for negotiation dissipated and the NATO bombing campaign started to focus upon "command and control" centers in Tripoli and other urban areas, the possibility of civilian casualties grew. NATO Secretary-General Anders Fogh Rasmussen later insisted that, "no comparable air campaign in history has been so accurate and so careful in avoiding harm to civilians."<sup>50</sup> But, on 21 June, NATO held a press conference where it admitted to a small number of civilian casualties caused by technical malfunctions or targeting errors. A later investigation by the UN Human Rights Council's International Commission of Inquiry found that sixty civilians were accidentally killed in at least five NATO strikes that went wrong. While the commission declared that "we are quite sure that NATO did not deliberately attack civilians," this was little solace for those who lost loved ones.<sup>51</sup>

The Qaddafi regime purposefully misrepresented the issue of NATO casualties. For example, a journalist writing for *The Economist* from Tripoli reported at the start of July that:

*The point, repeated relentlessly, is that civilians have been killed by Western bombs and that the people remain loyal to the Brother Leader. Crowds chanting his name greet reporters everywhere they are taken on official tours. But nowhere else. The picture presented by the regime often falls apart, fast. Coffins at funerals have sometimes turned out to be empty. Bombing sites are recycled. An injured seven-year-old in a hospital was the victim of a car crash, according to a note passed on surreptitiously by a nurse. Journalists who point out such blatant massaging of facts are harangued in the hotel corridors.*<sup>52</sup>

Over eight thousand sorties were eventually flown over Libya by the NATO-led alliance. Although the immediate objective of stopping Qaddafi's 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 mandate created expectations about neutrality and impartiality.<sup>53</sup> On the other, limiting the military operation to civilian protection was undermined by developments on the ground.

While the east of the country was under the control of rebels by the end of April, most of the west, including Tripoli, was still controlled by Qaddafi's forces. The Benghazi-based NTC was busy transforming itself into an alternative government.

The various civilian militias had slowly consolidated into a rebel army under the NTC's loose overall command. Increasingly, any attempt by Qaddafi's forces to retake key towns and villages in the east was met by fearsome NATO airstrikes in coordination with the defending rebels. By any measure, Libya was now in the midst of a full-blown civil war.

## Mass Atrocity Crimes

Protecting civilians from mass atrocity crimes was the reason the Security Council authorized a military intervention in Libya. But crimes also continued throughout the civil war.

After being repulsed from Benghazi, the Qaddafi regime continued to rely upon its weakened security forces and also deployed suspected mercenaries, a number of whom were allegedly recruited from neighboring African countries or Eastern Europe.<sup>54</sup> A later investigation by the UN Human Rights Council's International Commission of Inquiry concluded that "international crimes, specifically crimes against humanity and war crimes, were committed by Qaddafi forces," including "acts of murder, enforced disappearance, and torture" that were "perpetrated within the context of a widespread and systematic attack against a civilian population."<sup>55</sup> Among other war crimes, the rebel-held western city of Misrata, home to half a million people, was subjected to a vicious siege by loyalist forces from mid-March until May.

Qaddafi's troops indiscriminately shelled Misrata with Grad rockets, mortars and artillery. A hospital in Misrata was attacked and cluster munitions were fired into the el-Shawahda residential district. Loyalist snipers preyed upon civilians. In at least one case Qaddafi's forces also used civilians as a "human shield" to deter NATO attacks on their positions. There was a deliberate attempt to starve the civilian population and block humanitarian aid from reaching Misrata. There were also widespread allegations that loyalist forces were guilty of the "murder, rape and sexual torture" of Misrata's residents. Doctors testified to "military-sanctioned rape" of women and girls as young as fourteen. In all, more than 1,100 Misrata residents died as Qaddafi's forces besieged the city.<sup>56</sup>

Given the extensive nature of war crimes perpetrated in Misrata, it was clearly within the UN's "all necessary measures" mandate for NATO to attack Qaddafi's forces encircling the city. But as the duration of the Libya operation

lengthened beyond initial expectations, it became a battle of nerves between Qaddafi and NATO as much as between Qaddafi and the NTC rebels. Military stalemate and *de facto* partition of Libya seemed a distinct possibility. Meanwhile international public support for the intervention fell. In the United States, for example, the percentage of “likely voters” who supported the intervention in late March was 46 percent, but by August it was down to 24 percent.<sup>57</sup>

Far away from the frontlines of Misrata, the battle to hold perpetrators of mass atrocity crimes legally responsible for their actions also continued. On 27 June an ICC arrest warrant was issued for Qaddafi, his son Saif al-Islam and the head of intelligence services, Abdullah al-Senussi, for responsibility for alleged crimes against humanity committed since mid-February.

It was not until late May that the military momentum started to shift decisively in favor of the rebels, with NATO air-support proving crucial to their offensive. They broke the siege of Misrata and started to move towards Tripoli. Intense fighting continued, but after six months the final collapse of Qaddafi’s forces was rapid. On the night of 21 August rebel forces were inside Tripoli.

Even as it became clear that all was lost, Qaddafi’s forces continued to commit war crimes. On 23 August, as Tripoli was falling to the rebels, soldiers from the 32nd Brigade, following orders from a senior member of the military, carried out a massacre of prisoners at a warehouse that had been used earlier as a place of detention and torture. More than fifty “civilians and combatants” were murdered by their guards in addition to an unknown number who had been tortured to death in earlier incidents. In the words of one investigative report compiled afterwards, high-ranking military commanders were at the warehouse, ordered the massacre and conspired to “conceal and destroy evidence of their crimes.”<sup>58</sup> Human Rights Watch documented similar atrocities in al-Qawalish, al-Khoms and Bani Walid.<sup>59</sup> Such massacres were part of an established pattern of conduct rather than isolated incidents.

## Humanitarian Intervention versus R2P

Throughout the conflict a number of media commentators misleadingly labeled the international action in Libya as a “humanitarian intervention.”<sup>60</sup> Some protagonists rushed to defend the inviolability of Libya’s national sovereignty and

denounced Western malfeasance, while others proclaimed a new dawn for the notion of just war. Almost all misrepresented the Responsibility to Protect.

Even though the Responsibility to Protect features in just three paragraphs of the 40-page outcome document of the 2005 UN World Summit, historian Martin Gilbert has suggested that it constituted “the most significant adjustment to national sovereignty in 360 years.”<sup>61</sup> R2P’s core idea is that all governments have an obligation to protect their populations from four mass atrocity crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. It is primarily a preventive doctrine. However, R2P also acknowledges that we live in an imperfect world and if a state is “manifestly failing” to meet its responsibilities, the international community is obliged to act. It is not a right to intervene, but a responsibility to protect. The distinction is not diplomatic artifice. After the 1994 genocide in Rwanda and the 1995 genocide in the Bosnian town of Srebrenica, the international community resolved to never again be a passive spectator to mass murder.

By contrast, 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.”<sup>62</sup> This differs from the Responsibility to Protect on at least three grounds.

First, the remit of humanitarian intervention, which aims at preventing large scale suffering, is far broader than that of R2P, which focuses upon the prevention of the four mass atrocity crimes. 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 other 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 appropriate authorization under international law.

The Security Council’s framing of the crisis in terms of R2P and its authorization of Resolution 1973 made Libya stand apart from cases of humanitarian intervention to halt mass atrocities, such as NATO’s 1999 intervention in Kosovo, which was conducted without UN authorization. Although previous interventions to halt atrocities may have

been morally justifiable, they lacked international legality.<sup>63</sup> Rather than compromising sovereignty, R2P harnesses the notion of sovereignty as responsibility and seeks to respond to extreme crises in a way that is both legitimate and legal.<sup>64</sup>

Military action in Libya was preceded by a range of non-military measures that sought to persuade the Qaddafi regime to stop the killing. All the steps considered in Resolution 1970 —referral of the matter to the ICC, imposition of an arms embargo, enforcement of a travel ban for certain individuals, freezing the assets of senior regime figures — while coercive, were peaceful. It was only when these measures failed that the use of military force was finally considered.

It must also be remembered that since the 1990s there has been a tendency to conflate any military action in support of humanitarian ends with military invasion for material gain. Long considered the prime-motive for any foreign intervention in the Middle East or North Africa, oil is only one of many factors influencing international interest in this strategically important region. Libya was already fully integrated into the world energy market and several Western governments had extensive oil contracts with the Qaddafi regime.<sup>65</sup> On 22 February, prior to Resolution 1970, it was reported that the crisis in Libya had increased global oil prices by 2.6 percent - reaching the highest point since before the 2008 global financial crisis. The price of oil increased again following the first airstrikes.<sup>66</sup> This volatility in the oil market occurred at a time of growing uncertainty in the global economy. If anything, oil was a disincentive for intervention in Libya.

Unlike a “humanitarian intervention,” the decision to resort to “all necessary measures” in Libya was not only legal under international law, it also met a number of key political tests. The Qaddafi regime was committing mass atrocities and its public rhetoric was an open incitement to further crimes. Qaddafi’s determination to hold onto power at all costs clearly implied the risk of escalating violence, and senior Libyan diplomats had defected in open disapproval of the regime’s behavior. The fact that Resolution 1973 was adopted without a single negative vote on the Security Council reflected that even those with serious reservations about a NATO-led military intervention recognized that the world needed to act. But in Libya there was also the vexed political question of “regime change” to consider.

## R2P and Regime Change

Airstrikes to halt the attacks of Qaddafi’s forces on civilians in Benghazi, Misrata and elsewhere were clearly justifiable under “all necessary measures” in Resolution 1973. However, as the civil war became a war of attrition between Qaddafi’s forces and the rebel army, other forms of military intervention became less clearly in keeping with the spirit, if not the letter, of the UN mandate. For example, despite an arms embargo under Resolution 1970, some countries provided sizeable quantities of weapons to the rebels. In June France admitted to supplying assault rifles, rocket launchers and anti-tank missiles, claiming that such actions were both morally justifiable and within the legal parameters of Resolution 1973. Dwarfing the French contribution was that of Qatar, which allegedly supplied militias connected to the NTC with eighteen shipments amounting to 20,000 tons of weaponry.<sup>67</sup>

Other forms of support from key members of the NATO-led alliance included providing battleground leadership advice during the final rebel offensive on Tripoli and Sirte. During August 2011 the *New York Times* reported that “Britain, France and other nations deployed special forces on the ground inside Libya to help train and arm the rebels.” Qatar went much further, later admitting that it had “hundreds” of troops “in every region” fighting against Qaddafi’s forces. This was confirmed by a senior figure from the NTC.<sup>68</sup> Although not a direct violation of Resolution 1973, which only expressly forbid “a foreign occupation force of any form on any part of Libyan territory,” this was not in keeping with the spirit of the civilian protection mandate represented in Resolution 1973.

Although much of this support was only publicly admitted in late October after the Qaddafi regime had collapsed, rumors and reports were circulating as early as June. India’s Ambassador to the UN, Hardeep Singh Puri, started disparagingly referring to NATO as the “armed wing” of the UN Security Council precisely because he believed NATO’s role in Libya had casually shifted from protecting civilians in Benghazi to overthrowing the government in Tripoli.<sup>69</sup> There was a growing view at the UN in New York that NATO was no longer acting as a defensive shield for populations at risk, but as the NTC’s air force.

Those who had most strenuously advocated in favor of Resolutions 1970 and 1973 faced criticisms that R2P had been

co-opted by the “regime change” agenda of a few Western powers. The contrary argument was that while Qaddafi’s forces had been engaged, but not broken, they still constituted a grave threat to civilians. Was there a strategic middle ground between these positions?

The operational alternatives were far from desirable, but were certainly more clearly in keeping with the original protective mandate. Or, as “NATO Watch” argued:

*The threat to Benghazi was the principal basis on which UN and Arab League support was obtained for a no-fly zone. That threat was averted within days and no further resolution was gained for NATO to support a rebel advance on Tripoli. Once [Qaddafi’s] heavy weapons had been stopped the Libyan people could have been left to struggle it out themselves (which might have prolonged the conflict and led to even more casualties). If no party had prevailed the option of a negotiated political settlement brokered by the African Union may have become more attractive.*<sup>70</sup>

Critiques of the ongoing intervention were especially strident in the corridors of the UN, particularly regarding arms being supplied to the NTC rebels despite the UN-authorized embargo. Such activities left several countries enforcing Resolution 1973 open to criticism regarding double standards and clandestine agendas.

At the start of the intervention in Libya, President Barack Obama of the United States had been careful to stay on message, announcing on 21 March that, “when it comes to our military action, we are doing so in support of United Nations Security Council Resolution 1973 that specifically talks about humanitarian efforts, and we are going to make sure that we stick to that mandate.”<sup>71</sup> But in a joint op-ed by President Obama, President Nicolas Sarkozy of France and Prime Minister David Cameron of the United Kingdom, published around the world on 15 April, these leaders tried to have it both ways. After referring to the “bloodbath” that had been prevented in Benghazi, the three leaders argued that:

*Our duty and mandate under UN Security Council Resolution 1973 is to protect civilians, and we are doing that. It is not to remove Qaddafi by force. But it is impossible to imagine a future for Libya with Qaddafi in power. It is unthinkable that someone who has tried to massacre his own people can play a part in their future government. The brave citizens of those towns that have held out against forces that have been mercilessly targeting them would face*

*a fearful vengeance if the world accepted such an arrangement. It would be an unconscionable betrayal.*<sup>72</sup>

As early as 10 March, before Resolution 1973 was passed, France recognized the NTC as the legitimate representative of the Libyan people. This conveyed the impression that, beyond civilian protection, France had partisan interests in Libya. Similarly, on 20 March, just a few days after the NATO bombing commenced, United Kingdom Defense Minister Liam Fox said:

*Mission accomplished would mean the Libyan people free to control their own destiny. This is very clear – the international community wants [Qaddafi’s] regime to end and wants the Libyan people to control for themselves their own country.*<sup>73</sup>

There is no doubt countries that were actively supporting the Libyan intervention stretched their interpretation of Resolution 1973 regarding “all necessary measures” to its limit. But, on the other hand, questions regarding protection of civilians cannot neglect political and military realities. Given the well-founded fear that if Qaddafi were to regain control of rebel-held territory he would perpetrate further mass atrocities, assisting the rebels in preventing him from doing so was, arguably, a legitimate part of the protection mandate. Moreover, as has been argued by James Traub with regard to Darfur:

*Once the international community threatens to use coercive action against a state committing atrocities, indigenous forces opposing the state will see outside actors as their allies and act accordingly. The discovery that the international community is on their side enhances their sense of righteousness... They will have little, if any, incentive for diplomacy and compromise... Diplomats must make it clear that they are intervening on behalf of a people, not an insurgency.*<sup>74</sup>

NATO’s prolonged campaign raised hopes among those whose lives remained under threat and emboldened the Benghazi-based NTC, while simultaneously raising suspicion that the Libyan intervention was about more than civilian protection.

As the conflict dragged on, these problems highlighted the need to revisit the issue of establishing possible guidelines for the use of military force in R2P situations. In various high-level reports, books and speeches, Gareth Evans, former Australian foreign minister and co-chair

of the international commission that developed R2P, has consistently argued for five criteria that could be used. Without elaborating upon all of his supporting arguments, the criteria are worth briefly reviewing:

1. **Seriousness of harm.** Is the threat clear and extreme enough to justify military force?
2. **Proper purpose.** Is the central purpose to halt or avert the threat, despite “whatever other purposes or motives may be involved?”
3. **Last resort.** Has every reasonable non-military option been explored?
4. **Proportional means.** Are the scale, duration and intensity of military action the minimum necessary?
5. **Balance of consequences.** Is there a reasonable chance of success in averting the threat without worsening the situation? Is action preferable to inaction?<sup>75</sup>

The Libya intervention initially met all five criteria. However, it is arguable that as the civil war dragged on the “proportional means” became less credible. But, it is also important to remind ourselves of two essential facts. The first is that if Benghazi or Misrata had fallen to Qaddafi there is every indication that widespread, indiscriminate and deadly violence against civilians would have resulted. Former British statesman Paddy Ashdown’s comment that we should measure our success by “the horrors we prevent, rather than the elegance of the outcome,” is perhaps relevant in this regard.<sup>76</sup>

Second, in some cases curtailing a government’s ability to commit further mass atrocity crimes may not prove sufficient if such activities are integral to its survival. Few would quarrel with the view that halting mass atrocities in Cambodia during the genocidal rule of the Khmer Rouge, Uganda under Idi Amin or Rwanda during the genocide became inseparable from the goal of ending those regimes. Where a government is the primary perpetrator of ongoing atrocities, changing the leadership may sometimes be the only effective way to end the crimes. In this context, permanently disabling the capacity of the Qaddafi regime to harm its own people was seen by some as essential to discharging the mandate of civilian protection.

## Backlash

Following the fall of Tripoli at the end of August, Libya’s new leaders, having won a bitter civil war, faced enormous challenges. After 42 years of dictatorship under Qaddafi, the rule of law was almost non-existent. Infrastructure had been damaged or destroyed throughout the country and whatever limited governmental bureaucracy that existed before February had collapsed. In addition, tribal divisions and regional interests conflicted with the NTC’s desire to promote reconciliation and rebuilding.

According to the NTC an estimated 25,000 Libyans, including soldiers from both the rebel and loyalist forces, died during the civil war. One death, however, was especially notable. As Tripoli fell to the rebels, Qaddafi and his entourage fled to Sirte. Qaddafi continued to denounce the rebels in messages broadcast via foreign media.<sup>77</sup> When rebels reached the center of Sirte on 20 October, Qaddafi made the fateful decision to flee the city in a convoy of vehicles.

After being detected from the air, the convoy was bombed, apparently without NATO realizing Qaddafi was in one of the cars. Qaddafi survived, but was wounded and disoriented. He then walked with two aides towards the main road, before hiding in a drainage pipe to avoid rebel soldiers. Upon discovery he was infamously hauled from the pipe, beaten and most likely tortured, before being executed by gunshots to the belly and head. His corpse was then publicly displayed in Misrata as a trophy of war.

Although the UN, the ICC and numerous international human rights organizations would all call for an investigation into the extra-judicial execution of Qaddafi, within Libya there initially seemed to be little appetite for anything except rejoicing over his demise. Nevertheless, his treatment at the hands of his captors (recorded on smartphone and broadcast around the world) was deeply disturbing and possibly constituted a war crime.<sup>78</sup>

While rebel forces had largely escaped critical scrutiny in the international media during the struggle against Qaddafi’s regime, organizations such as Human Rights Watch and Amnesty International raised serious concerns about the conduct of some rebel units. Human Rights Watch reported, for example, on the situation in Tawergha, near Misrata, where rebels had taken reprisals against a town mainly comprised of black Africans who were collectively accused



of siding with Qaddafi during the civil war. The town of 30,000 people was forcibly depopulated and much of it put to flame. Human Rights Watch also documented another incident where 53 pro-Qaddafi loyalists appeared to have been summarily executed by rebel soldiers in Sirte.<sup>79</sup>

The UN Human Rights Council's International Commission of Inquiry later concluded that anti-Qaddafi forces, "committed serious violations, including war crimes and breaches of international human rights law." These crimes included "unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks and pillage." The March 2012 report detailed ongoing attacks by anti-Qaddafi militias against former residents of Tawergha, but also noted that "the significant difference between the past and the present is that those responsible for abuses now are committing them on an individual or unit level, and not as part of a system of brutality sanctioned by the central government."<sup>80</sup>

Even before Qaddafi's death the UN had recognized the NTC as the legitimate representatives of the Libyan people. But the end of the civil war led to broader reflection regarding the legitimacy of the intervention. Announcing the completion of NATO's operation at the end of October, the alliance's Secretary-General, Anders Fogh Rasmussen, claimed that NATO-led forces had "prevented a massacre and saved countless lives."<sup>81</sup> But rather than focusing on the lives saved in Benghazi and elsewhere, some critics continued to focus upon the deaths resulting from six months of civil war.<sup>82</sup>

For example, former President Thabo Mbeki echoed the South African government's criticisms of the Libyan intervention, arguing that NATO members on the UN Security Council had actively "blocked" the AU's attempts to peacefully resolve the Libyan conflict.<sup>83</sup> A softer, but more widely reported, critique came from former UN Secretary-General Kofi Annan. Speaking at the University of Ottawa on 4 November, at a meeting to commemorate the tenth anniversary of the creation of the R2P concept, Annan expressed concern over the fact that "regime change came up very quickly" in Libya.<sup>84</sup> Influential voices in the mass media also chimed in, but the real test would be inside the Security Council.<sup>85</sup>

As Resolution 1973 passed in the Security Council, Syria erupted in protest. Similarly inspired by the Arab Spring, an opposition movement that had been developing since January had become a popular uprising by mid-March. The reaction of the Syrian security forces was bloody and unrelenting.

Over the following year more than 10,000 civilians would be killed as the Syrian state used soldiers, tanks, artillery, attack helicopters and even warships to crush popular opposition to its rule. With the Security Council initially distracted by Libya, and with permanent council member Russia a long-standing ally, the government of President Bashar al-Assad was able to prevaricate, break numerous promises to reform and avoid UN action.

There was a glaring disparity in the Security Council's response – timely and effective in Libya, tardy and underwhelming in Syria. There are five factors that explain the Security Council's actions.

First, key actors in the region played a different role in both crises. The Arab League's rapid condemnation of Qaddafi's actions and calls for a no-fly zone in Libya contrasted with its initially cautious response to the situation in Syria. Lebanon, the only Arab League member on the Security Council, pushed the council to take action on Libya but initially defended the Syrian government. The Arab League did not start to play a leading role regarding the Syrian crisis until the second half of 2011.

Second, whereas a sizable number of key Libyan officials defected from the regime (including the leadership of Libya's Permanent Mission to the UN, who made compelling statements during Security Council discussions), in Syria the regime maintained the formal allegiance of most senior government officials during the first months of the crisis. The Ambassador of Syria to the UN, Bashar Ja'afari, remained a steadfast supporter of Assad.

Third, Libya's status as a pariah state without powerful allies contrasts with Syria, which maintains close relationships with Russia and Iran. Fourth, public statements by Qaddafi that he would "cleanse" the nation of "cockroaches" were viewed as incitement to commit crimes against humanity, whereas Assad made statements that were viewed as conciliatory despite all evidence to the contrary. Finally, several council members were nervous about the Security Council possibly being drawn into another armed intervention.

Despite ongoing mass atrocity crimes, on 4 October 2011 Russia and China vetoed a Security Council resolution that sought to impose sanctions, an arms embargo and travel bans on the Syrian government. The ostensible justification was that Russia and China were nervous that such UN-authorized

measures might eventually lead to Syria becoming “the next Libya.” The double veto was, therefore, also an explicit challenge to the Responsibility to Protect.

The reality is that Russia would have vetoed the Syria resolution even if the Libyan intervention had never happened and R2P did not exist. During the Cold War, the Soviet Union was Syria’s major military supplier and the government allowed the Kremlin to establish a naval base at Tartus, the Soviets’ only military outpost in the Mediterranean and Middle East. Tartus remains a key component of Russia’s plan to rebuild a global military presence befitting a recovering superpower. Furthermore, in August 2011 the *Moscow Times* had commented that Russia’s tepid support for Security Council action in Libya had adversely affected Russia’s arms industry and strategic interests. At the start of the Syrian crisis, Assad’s government had \$6 billion in active arms contracts, making it one of the top five importers of Russian weaponry.<sup>86</sup>

Traditionally nervous about any UN action that impinges upon state sovereignty, China had only used its veto six times since 1972. Lacking any direct interest in Libya and facing a world outraged by Qaddafi’s crimes against his own people, China abstained from the crucial Security Council resolution that led to the Libyan intervention. However, Russia’s intense lobbying convinced the Chinese to veto with regard to Syria.

Not surprisingly, therefore, Syria brought the issue of R2P and selectivity into the center of the political debate. Although some critics argued that selectivity posed a potentially fatal risk to the norm, academic Michael Barnett argued that it was necessary to not exaggerate the issue:

*All international norms are selectively applied, especially norms that include the use of force. If selectivity and inconsistent use doomed international norms, then there would probably be no international norms to speak of. The real measure of R2P’s success is whether it helps those marked for death.*<sup>87</sup>

Libya and Syria also posed important questions regarding the role of the IBSA countries – India, Brazil, South Africa – on the Security Council. South Africa voted for Resolution 1973 while Brazil and India abstained. All three emerging powers abstained on the Syria resolution in October. The position of Ambassador Baso Sangqu of South Africa was that with regard to Syria the “trajectory, the templates for the solution were very clear, it was along similar lines to Libya.”<sup>88</sup> Such

a view became less sustainable the longer the crisis endured and the more the coercive elements in the proposed resolution were amended and diluted.

The media became increasingly critical. On 9 November, for example, *BBC* correspondent Barbara Plett wrote that despite “a declared commitment to championing human rights,” the IBSA countries had “mostly lined up with Russia and China in key debates over Libya and Syria, strengthening dismay about the Security Council’s inability to respond in a unified way to the deepening crisis.” Her conclusion was that, “IBSA’s approach has in practice meant supporting a repressive regime rather than those calling for democratic change. It has meant not a new voice on the Security Council speaking on their behalf, but the absence of one.”<sup>89</sup>

In a situation where ongoing crimes against humanity were being perpetrated in Syria, and where the Security Council was divided between a majority who wanted a vigorous response in keeping with R2P and a veto-wielding minority who did not, the IBSA countries appeared to be abstaining, both literally and figuratively, from the process of finding a solution. Brazil, however, tried to bridge the political divide by publishing a short paper on the “Responsibility *while* Protecting” and convened a private meeting of countries from the global North and South to discuss a way forward.<sup>90</sup>

While the failure of the Security Council to adequately respond to the crisis in Syria exposed it to intense criticism, it did invoke R2P in resolutions concerning Yemen and South Sudan. The UN General Assembly and Human Rights Council also passed strong R2P-influenced resolutions condemning crimes against humanity in Syria. When a second, weaker, Syria resolution was put to the Security Council on 4 February 2012, Russia and China vetoed it again.

Although the veto was to have tragic consequences for ordinary Syrians, there was a glimmer of hope. There were no abstentions, and India and South Africa were among the thirteen Security Council members who voted for the resolution.<sup>91</sup> During the high level discussion that preceded the vote, the Guatemalan Foreign Minister, Harold Caballeros, had insisted that:

*Non-intervention in the internal affairs of sovereign States and the respect for their territorial integrity are cardinal principles of our foreign policy. But we also acknowledge the obligation of all States to observe certain norms of conduct in relation to their*

*own populations... That is why, in an era when the principle of the Responsibility to Protect (R2P) is being questioned, we are not ashamed to affirm that, with some nuances that we have explained in other forums, we support that principle.*<sup>92</sup>

After the 13-2 vote, the “Libya hangover” was declared over by several journalists. Moreover, despite Russia’s protests to the contrary, its second veto on Syria was widely perceived as not being about Libya and R2P, but as being motivated by arms, allies and strategic power. By February 2012, therefore, despite lingering concerns regarding Libya, the emerging consensus (enabled largely by the Brazilian initiative) was that R2P’s advocates needed to develop better preventive, mediated and coercive tools as they operationalize R2P in the future.

## Conclusion

Despite the failures of the past, Libya revealed that the international community can act in a timely fashion to halt mass atrocity crimes when sufficient political will and operational capacity exists. The swift and unanimous adoption of Resolution 1970 contrasts sharply with the paralysis that overtook the UN during the Rwandan genocide and the painful dithering during the Balkans wars of the 1990s. On a military level, it took two days between the adoption of Resolution 1973 and the imposition of the no-fly zone. By comparison, it had taken NATO twelve days to initiate operations over Bosnia two decades earlier. In this sense, Libya represents an important demonstration of what can happen when political will and operational capacity align.

When a regime is already committing atrocities against its own people the options for policymakers are narrow, but that does not mean that they do not exist. We need timely and proportional reactions to all R2P situations. We need to learn not only from Libya and Côte d’Ivoire, but also from Guinea, Kenya and other places where R2P has been invoked, but military force was unnecessary. 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. Exactly what measures should be utilized depends upon the need to develop varying responses to diverse situations.

Crucially, we need to be mindful of the fact that the most catastrophic and ignoble decision of the UN in its entire history was not the result of misplaced action, but of inaction. Almost one million people died during the Rwandan genocide

in just one hundred days – making it the fastest and most deadly genocide of the twentieth century. The UN was forewarned of the impending catastrophe, but was unwilling to act. The same was true of Srebrenica the following year. The Genocide Convention had been in place for almost fifty years, but when faced with the reality of genocide in the heart of Europe, the UN could only respond with empty threats and broken promises. These failures created the moral and political basis for the emergence of the Responsibility to Protect.

In an end of year press conference held on 14 December 2011, UN Secretary-General Ban Ki-moon addressed the question of Libya and R2P. The Secretary-General told reporters in New York that:

*Security Council resolution 1973, I believe, was strictly enforced within the limit, within the mandate. This military operation done by the NATO forces was strictly within 1973. I believe this is what we have seen, and there should be no misunderstanding on that.*<sup>93</sup>

The Secretary-General argued that the international community had “advanced the Responsibility to Protect” in Côte d’Ivoire and Libya, both of which were “important victories for justice and international law.”<sup>94</sup> But given the lingering disagreement over the Libya intervention, perhaps we should also recall the words of Rwanda’s President Paul Kagame in May 2011:

*No country knows better than my own the costs of the international community failing to intervene to prevent a state killing its own people. Through UN Resolution 1973, we are seeing a committed intervention to halt the crisis that was unfolding in Libya. From what the world saw on the sidelines of this conflict, had this action not been taken, the bombardment of that country’s towns and cities would have continued, Benghazi most likely would have borne the brunt of a furious administration, and hundreds of thousands of lives could well have been lost... Our responsibility to protect is unquestionable – this is the right thing to do; and this view is backed with the authority of having witnessed and suffered the terrible consequences of international inaction.*<sup>95</sup>

At the opening of the sixty-sixth UN General Assembly during September 2011, Syria’s Foreign Minister declared that in confronting mass protests and the “blatant conspiracies” of foreigners, the government of Syria had “exercised its responsibility to protect its citizens.”<sup>96</sup> Ironically, by invoking

R2P language the Syrian Foreign Minister paid a backhanded compliment to the strength of the emerging norm, despite the political backlash from Libya.

Within the UN the debate now is about how R2P should be practically implemented in specific cases and crises rather than whether such an abstract responsibility exists. But the struggle to give deeper meaning, operational substance and institutional structure to R2P continues to develop. Misuse of R2P debases the concept. Clarity of purpose, proportionality and precision remain essential.

Finally, we can not be distracted by the obfuscation of those who argue that Libya is the sole benchmark by which to measure the Responsibility to Protect. Despite division and debate about the meaning and implications of the Libyan intervention, R2P is still the best instrument we have to bridge the gap between the noble aims of the UN and the imperfect world of global diplomacy. R2P remains our best hope to make “never again” a living principle, rather than a cliché to whisper as we shuffle past the memorials and mass graves of those who died while the world sat in silence.

## Endnotes

- 1 This paper draws upon the earlier work of Global Centre for the Responsibility to Protect staff whose policy brief, "R2P After Libya and Côte d'Ivoire: Perceptions and Misconceptions," is further developed here.
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- 26 Vandewalle, *A History of Modern Libya*, 45; St. John, *Libya: From Colony to Independence*, 116.
- 27 Vandewalle, *A History of Modern Libya*, 63.
- 28 Vandewalle, *A History of Modern Libya*, 149; St. John, *Libya: From Colony to Independence*, 166-171.
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- <sup>89</sup> Plett, "UN Security Council middle powers' Arab Spring dilemma."
- <sup>90</sup> Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, available at: [http://www.globalr2p.org/media/pdf/Concept-Paper-\\_RwP.pdf](http://www.globalr2p.org/media/pdf/Concept-Paper-_RwP.pdf).
- <sup>91</sup> Brazil's period as an elected member on the UN Security Council finished at the end of 2011.
- <sup>92</sup> Statement by Harold Caballeros, Minister of Foreign Affairs of Guatemala, to United Nations Security Council Debate on the Situation in the Middle East, 31 January 2012.
- <sup>93</sup> Louis Charbonneau, "U.N. chief defends NATO from critics of Libya war," *Reuters*, 14 December 2011, available at: <http://uk.reuters.com/article/2011/12/14/uk-libya-nato-un-idUKTRE7BD1XF20111214>.
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## Glossary of Abbreviations

Arab League	League of Arab States
AU	African Union
IBSA	India, Brazil and South Africa
ICC	International Criminal Court
NATO	North Atlantic Treaty Organization
NTC	National Transitional Council
R2P	Responsibility to Protect
RCC	Revolutionary Command Council
UN	United Nations



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