

THE RESPONSIBILITY TO PROTECT: LIBYA AND CÔTE D'IVOIRE

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Introduction

Over the course of four weeks the UN Security Council adopted a number of resolutions that evoked or explicitly referred to the Responsibility to Protect.

Resolutions 1970 (26 February, 2011) and 1973 (17 March, 2011) on the situation of the Libyan Arab Jamahiriya and resolution 1975 adopted by the Security Council on Côte d'Ivoire on 30 March 2011 suggest a significant shift in the Council's action *vis-à-vis* mass atrocities. Some observers have considered these as landmark resolutions, signalling the readiness of the Council to take action when "outrageous conduct shocks the conscience of mankind".¹ For others, however, the challenges that have resulted from the actions authorised by the Security Council, particularly in Libya, are likely to constrain future Council action in this important area.

Whether or not one agrees with the sequence of policy decisions adopted in relation to both Côte d'Ivoire and Libya, and in particular with the decision to resort to military force, there is little doubt that the Council's actions were a function of the risk of mass atrocities. The readiness to act in both Côte d'Ivoire and Libya clearly contrasts with the fatal paralysis that took hold of the UN during the Rwandan genocide and the painful dithering of both the UN and regional actors over the sequence of tragedies in the Balkans. Nowhere has this shift been more clear than in the swift and solid unanimity accompanying the adoption of resolution 1970 on Libya.

The brutal actions and vicious rhetoric of the Gaddafi regime—as well as the remorseless use of mortars, rocket-propelled grenades and heavy weapons against civilians and women by the forces associated with Mr Laurent Gbagbo in Côte d'Ivoire—left the international community of states with little choice

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¹ R.J. Vincent, "Grotius, human rights and intervention," in H. Bull, B. Kingsbury & A. Roberts (eds.) *Hugo Grotius and International Relations*, Oxford: Oxford University Press 1990, p. 225.

and compelled it to act. Critically, in both Côte d'Ivoire and Libya the Council's decision to act was preceded by regional initiatives. Security Council resolution 1973 succeeded the request by the Arab League; resolution 1975 on Côte d'Ivoire—jointly tabled by France and Nigeria—followed the lead taken by ECOWAS and its resolution A/RES.1/03/11 of 25 March 2011.

This policy shift and the apparent consensus to take action to protect populations at risk of mass atrocity crimes should be viewed against the backdrop of two constructive and forward-looking debates in the General Assembly, one formal and one informal. While in 2009 the General Assembly broadly confirmed the Secretary-General's R2P strategy, and soon after adopted by consensus its first resolution on R2P, in 2010 through its 'continued consideration' of R2P the Assembly addressed the more practical aspects of early warning and assessment. There is no doubt that these positive and vigorous debates helped restore, deepen and broaden the consensus behind R2P. They provided a key background to the decisions taken on both Côte d'Ivoire and Libya.

Not only did the breadth of condemnation against the spectre of mass atrocities in both Côte d'Ivoire and Libya echo the spirit of R2P; it also provided the vital political context for the decision to resort to military force to protect civilians. The condemnation which had called so strongly for a response was in fact its first voice. In both cases the R2P was a key ingredient in the decision by the Security Council to respond in a 'timely and decisive' manner to the spectre and evidence of mass atrocities. Together, these crises have provided flagrant evidence of why the R2P norm is needed. Likewise the response by the international community of states to these crises and its determination to act and intervene — even with the use of force — has clearly lived up to a good half of the expectations of R2P.

I. Operationalising the Responsibility to Protect

In both Côte d'Ivoire and Libya the difficulties faced in terms of anticipating, preventing and opening up the range of policy options available to the international community of states have made abundantly clear the need to further develop R2P as a policy tool. R2P may have now moved into the realm of policy practice, but its ability to offer credible responses short of the use of military force has been clearly challenged by the rapidity with which mass atrocities unfold on the ground. In Libya and Côte d'Ivoire, the decision to take action and to intervene to protect lives took place in contexts already dominated by the occurrence of war crimes and crimes against humanity and by the unleashing of massive waves of refugees.

The consensus around R2P has given us a green light for action, but we still need the instrumental and institutional pieces for making this norm fully operational. Moreover, while the path to the restoration of order and stability may be clearer in Côte d'Ivoire, the eventual success or failure of authorised

actions in Libya is likely to have a significant impact on the extent to which the Security Council will be willing to address future mass atrocity crises.

In each case the decision of ECOWAS, the Arab League and the Security Council to respond robustly to R2P crimes was preceded by diplomatic efforts at persuasion, yet both Côte d'Ivoire and Libya showed that when confronted with unfolding mass atrocities the range of available and relevant tools rapidly narrows. Indeed, in neither case was the call to action by any means reduced to military or coercive means. It was the clear inclination of both Laurent Gbagbo and Muammar Gaddafi to play to the endgame that reduced the number of available policy options. In hindsight, both the nature of the response and the challenges confronting intergovernmental organisations over when and how to respond have made urgently clear the need to develop the tools and expertise needed to *anticipate* as well as respond to the spectre of mass atrocities.

While the variance between the readiness to respond and the narrowing of available policy options can be attributed to the personal calculations and dynamics surrounding both Laurent Gbagbo and Colonel Gaddafi, their reckless defiance – together with the imprudent decisions of many government authorities confronting mass demonstrations in the Middle East and across Northern Africa – makes crystal clear the need to work and bolster R2P's compliance pull. In their own and different ways, these crises demonstrate the urgent need of more audacious actions on the part of the international community to develop competent and effective R2P structures at the local and regional levels. To be sure, notions and standards of human rights have long been part of both national and international orders. Yet recent developments – including Libya's human rights evaluation under the Universal Periodic Review – have made clear the limits of the existing human rights machinery in providing much-needed scrutiny for serious human rights violations. In the absence of more solid R2P national, regional and international frameworks, the international community of states will continue to find itself in the throes of severe crises.

In responding to the crises in Côte d'Ivoire and Libya the Security Council and the larger international community of states had to contend with different and distinctive challenges. As is the case with other normative frameworks, the application of R2P is to be understood in its own particular and specific context. While the crimes will always be R2P crimes, every mass atrocity crisis will implode in its own peculiar way.

II. From Clarity of Purpose to Problems of Action

First, while in Côte d'Ivoire the risk of mass atrocities emerged in the context of a post-electoral crisis, by 10 March 2011 the tortuous confirmation of Alessane Ouattara as legitimate president offered a more solid basis for what had remained a rather unstable international consensus. This in turn allowed key actors and the Security Council to clearly determine the aim to be achieved by

various means, including the use of force. In the case of Libya, both resolutions 1970 and 1973 were predicated on the immediate need to protect civilians. They stopped short of outlining a desired political outcome to the crisis.

Security Council Resolution 1970 imposed a series of coercive measures on Libya short of the use of force. Through a robust package of measures the Council's actions centred on four fronts:

- referral of the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court (ICC);
- imposition of an arms embargo;
- enforcement of a travel ban for certain individuals;
- and ordering the freezing of assets of some individuals associated with the regime.

While a consensus had emerged regarding the need for competent and effective action, the unprecedented swift action on all these fronts failed to properly grasp some basic facts. On the one hand, the potential impact of these measures on Gaddafi's behaviour was curtailed by the regime's ability to build liquid financial reserves and military capacities. Then, having been previously subjected both to extensive sanctions and air strikes, the regime was fully prepared to endure such measures. Last but not least, the Council's decision to refer the matter to the ICC proved problematic. While the legitimacy of this decision was opened to criticism by the reluctance of three permanent Council members to adhere to the Rome Statute, equally troublesome was its narrowing of room for diplomatic manoeuvring in the immediate term.

As the measures deployed under the authority of resolution 1970 proved powerless, and the ominous risks around Benghazi hung in the air, the prospects that Gaddafi would listen to reason soon evaporated. Prompted by a second resolution issued by the Arab League, the Security Council authorised resolution 1973 on 17 March 2011.

With the support of ten members and five abstentions (Brazil, China, Germany, India and Russia) resolution 1973 deplored Libya's failure to comply with the terms of its previous resolution and reaffirmed its determination to consider all measures to ensure the protection of civilians. Notwithstanding the five abstentions, it should not be overlooked that no Council member, whether permanent or elected, openly resisted more forceful action. None, that is, was prepared to be seen as countenancing a mass atrocity.

With a view to reinforcing the measures previously taken on behalf of the protection of civilians, resolution 1973 called for an immediate ceasefire and a complete end to violent attacks against and abuses of civilians. It then resolved to:

- enhance the enforcement of the arms embargo and the freezing of assets;
- establish a ban on flights and create a no-fly zone;
- request the Secretary-General to create a 'panel of experts.'

Although the course advocated by resolution 1973 was clearly motivated by the need to protect civilians and to halt the Gaddafi regime from perpetrating mass murder, this was not without problems. First, in contrast to resolution 1970, from the outset this resolution garnered less support due to the fact that the imposition of a no-fly zone starts with an air attack, and thus entails the risk of being perceived as an act of war. Secondly, as had been the case in Kosovo, the coalition of states leading the actions authorised by the Council proceeded on the assumption that a few air strikes would rapidly lead the Gaddafi regime to abandon its brutal tactics.² Third, the Security Council decision to use "all necessary measures" to enforce a no-fly zone, and "all necessary measures (...) to protect civilians and civilian populated areas under threat of attack" was clearly limited in purpose: to protect the civilian population. As an operational directive this limited mandate — confining the use of military force to protecting civilians — was bound to face significant challenges. On the one hand, it immediately raised hopes not only among those whose lives remain under threat, but also within the resistance and the opposition. On the other, such a tight mandate inexorably put a premium on expectations about neutrality and impartiality.

A certain amount of initial confidence about the prospects of effectively limiting the military operation to civilian protection was apparent. In addition to reiterating that under the terms established by resolution 1973 the international military intervention in Libya could not in any way aim at toppling the Gaddafi regime, serve as an air force for the rebel insurgency, or seek to promote democratic change, some sheltered expectations that such tight, 'sharply defined' and properly authorised military intervention could reduce, neutralise and eventually remove the threat to civilian populations.³ Experts

²The unauthorised NATO intervention in Kosovo in March 1999 led to a forceful aerial bombardment campaign which lasted more than ten weeks. The deployment of more than 38,000 NATO combat missions made clear the limits of air power and the need for ground support. Such ground support was eventually provided by the Kosovo Liberation Army (KLA) whose capacity to recruit had been in turn favoured by the tragic fortunes of the civil resistance campaign. The concert established between air and ground efforts, together with the compromise reached within the Security Council by which Russia interceded with Belgrade, helped break the stalemate and ultimately forced Serbia's withdrawal from Kosovo. See D. Harland, "Kosovo and the UN," *Survival* 2010-5, pp. 75-98 and H. Clark, "The Limits of Prudence: Civil Resistance in Kosovo, 1990-98," in: A. Roberts and T. Garton Ash (eds) *Civil Resistance and Power Politics. The Experience on Non-Violent Action from Gandhi to the Present*, Oxford: Oxford University Press 2009, pp. 276-294.

³See G. Evans, "UN Targets Libya with Pinpoint Accuracy," *The Age*, 24 March 2011, distributed by Project Syndicate as 'Libya: the Scope and Limits of the Responsibility to Protect,' and M. Frost and D. Rodin, "A Limited Mandate in Libya can still have Transformative Events," at <http://www.elac.ox.ac.uk/news/> (1 July 2011); S. Sewall and A. Zinni, "The military interventions we don't plan for — those to protect civilians" at

swiftly pointed to the increased technological capacity both in terms of surveillance capabilities to monitor developments on the ground and to command airborne surveillance and action on individual targets, highlighting in turn the advantages to be drawn from the use of drones and manned aircraft. However, they also called attention to a number of impending challenges. These soon materialised. As previous experiences had demonstrated, the ability of airpower to provide effective protection is not only limited but is bound to come at a price. This is particularly the case in densely populated urban areas, with their associated risk of the accidental killing of civilians.

The idea that tight military action could be strictly limited to the protection of civilians was soon challenged by the inherent difficulties of managing military force and unfolding developments on the ground. While the authorised measures to enforce the no-fly zone were on the whole uncontroversial — airborne attacks to disable the regime's air defences and its attack aircraft and helicopters — the range of possible measures considered to enforce the wider civilian protection mandate soon proved controversial. Military action was expected to be strictly limited to the protection of civilians from the threat of armed attack from any of the parties to the conflict. Risks aside, the consensus dictated that airborne action to neutralise the regime's advancing tanks and troop columns would be permitted provided it did not serve the aims of the armed rebellion.

As the multilateral coalition gathered its forces to implement the Council's actions, the air campaign was found to be strewn with challenges: not only did it lack proper 'strategic headquarters,' but it was set to sail without a precise understanding of either its desired outcome or its opponent. Gaddafi remained defiant and through tactical manoeuvring made the already difficult distinction between civilians, opposition and combatants ever more difficult.⁴ Thus, what started as a seemingly successful air strike campaign soon mutated into a mission showing diminishing returns.

III. Upshots for the Responsibility to Protect

The decision to launch a military operation framed by the narrow goal of protecting civilians proved problematic on both logistic and moral grounds. Before long, the disarray among the coalition regarding strategy, operations and tactics complicated the effective use of military force. Perhaps more importantly, the decision to launch a military operation under such restrictive

http://www.washingtonpost.com/opinions/the-military-interventions-we-dont-plan-for--those-to-protect-civilians/2011/04/14/AFQSiYKE_story.html (1 July 2011).

⁴ R. Smith, "The Security Council and the Bosnian Conflict: A Practitioner's View," in: V. Lowe, A. Roberts, J. Welsh and D. Zaum (eds.) *The United Nations Security Council at War*, Oxford: Oxford University Press 2008, pp. 442-451; A. Roberts, "Lives and Statistics: Are 90% of War Victims Civilians?," *Survival* 2010-3, 115-136; Adam Roberts, "The Civilian in Modern War," in H. Strachan and S. Scheipers (eds.) *The Changing Character of War*, Oxford: Oxford University Press, forthcoming.

terms raised doubts about its capacity to meet one of the five internationally endorsed criteria of legitimacy in the use of force: “balance of consequences.”⁵

While the authorised international military intervention, charged with the responsibility to stop atrocities, may have averted a catastrophe in Benghazi, an action cannot be judged only by its immediate results; it ought to take into account also mid as well as long-term consequences. As the signs of a strategic stalemate and new evidence of the regime’s readiness to perpetrate atrocities became clear, many expressed doubts about the capacity of authorised military actions to stand a reasonable chance of success.⁶

The question has become whether Libya could evolve towards a scenario close to that found in Iraq between 1991 and 2003 whereby the country was divided into two areas, one under the protection of a no-fly zone, and the other under the control of a tyrannical regime.⁷ In this extreme scenario, the international community could easily find itself confronting the same dilemmas it has faced before. The lack of attention to such longer-term considerations has haunted the issuing of resolution 1973 from the start. Not surprisingly, the international military action has been simultaneously attacked by those who have maintained that more ambitious actions will be required, and by those demanding a full and continued adherence to its tight mandate. Clearly, the risk of mass atrocities was only superficially dealt with and the Council may soon be saddled with this urgent and sensitive issue yet again.

The responsibility to protect does not take place in a vacuum and questions regarding protection of civilians cannot possibly neglect political and military realities. The decision as to which groups can be described as ‘civilians’ is not only challenging, but clearly political. The problem is compounded by the fact that the 2005 Summit document refers to populations rather than civilians.

In a situation in which the civilian population is confronted with a ruthless and unrelenting regime which shows no remorse in resorting to maximum force against its opponents, some have argued that violence may not only be legitimate, but clearly needed to stop rapidly unfolding atrocities. Against this backdrop, the interpretation about the scope and limits of the actions considered by resolutions 1970 and 1973 has now turned into a contentious matter.

⁵ The ICISS Commission and the UN High Level Panel *A More Secure World* identified five basic criteria for legitimacy that the Security Council should consider before authorising the use of force: seriousness of the threat, proper use, last resort, proportional means and the balance of consequences. See G. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Washington D.C.: Brookings Institution Press 2008, p. 145. See also A. Hurrell, “Legitimacy and the Use of Force: Can the Circle be Squared?” *Review of International Studies*, Supplement S1 Force and Legitimacy in World Politics 2005-3, pp. 15-32.

⁶ Sewall and Zinni, “The military interventions we don’t plan for — those to protect civilians”

⁷ I thank my colleague Angel Jaramillo for bringing this to my attention.

What needs to be better understood is what mass atrocity *prevention* and protection entail—and that in time the distinction between civilians and opposition may become effectively blurred. In other words, the international community must continue grappling with these difficult issues.

The discussion over whether the coalition on Libya should consider arming the anti-Gaddafi rebels offers a clear example. The question of whether resolutions 1970 and 1973 prohibit this course of action is a tricky proposition given the arms embargo imposed by resolution 1970. Under the terms of this resolution member states are expected to:

immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts ...

However, both the last line of paragraph 9, which indicates that this measure “shall not apply to...” and more specifically paragraph 9c suggest some room for exceptions: “Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the [Security Council arms embargo] committee.”

Clearly, the discussion has less to do with the actual transfer of assets for this purpose or the provision of arms, than with the more challenging question of the range of political and military measures that will be needed to effectively avert further atrocities.

While both risks and prestige hang in the balance, if the international community of states and the UN Security Council are serious about stopping atrocities in Libya, more flexibility will be needed to see their actions through to a successful outcome. The options include that of becoming actively engaged in favour of the opposition.

Conclusion: the Responsibility to Protect and Regime Change

In both Côte d’Ivoire and Libya multiple pressures and a wide variety of challenges stood in the way of the efforts of regional and international actors. Yet lurking behind these two examples has been the issue of the relationship between R2P and regime change.

From the outset mass atrocities and regime change were clearly blended in Côte d’Ivoire. On the one hand, there was a political crisis unleashed by a hotly contested election. On the other hand, there was the deeper issue of humanitarian risks fomented by xenophobic ideas, which had in turn been fanned through long-lasting and deeply entrenched polarising political processes. As the UN recognised one of the two candidates as the legitimate

President elect of Côte d'Ivoire, questions concerning whether the ultimate goal was fostering regime change rather than applying R2P came to the fore.

Through the pre and post-electoral periods, both the UN and the Security Council were forced to navigate the complex relations between these two issues. In the course of the post-electoral crisis the Council issued four resolutions (1962, 1967, 1968, and 1975), all of which addressed matters concerning the protection of civilians. Through this tense period questions arose as to whether these two goals were not at loggerheads. Not surprisingly the inexorable way in which the two agendas were linked generated disagreements within the Security Council. Throughout the crisis some Council members adamantly objected to a formula that prompted the UN to take sides in favour of one of the parties. In the end, although the resolution of the crisis did not come without tensions, the confirmation by both the African Union and ECOWAS of Alassane Ouattara as legitimate president paved the way for forceful action on behalf of civilian protection.

Whether one agrees or disagrees with those accounts that have depicted Libya as a classic R2P case, the reality is that action against the Libyan Arab Jamahiriya was prompted by the perceived risk of an impending massacre. In the eyes of many, the decisions taken by the Security Council concerning Libya promised to establish a significant precedent. Once the resolutions were adopted, all that was required for the show to go on was to closely follow the stage directions. Mass atrocity prevention and protection has undoubtedly given the international community of states a sense of purpose and direction. Yet the apparent lack of responsiveness of the Gaddafi regime points to the uncomfortable fact that more radical actions might be needed. The international community of states may soon be confronted with starker choices and the dilemmas will prove particularly acute for the Council.

We have long told ourselves that by restricting and calibrating our responses to mass atrocity prevention and protection we will be able to hold the consensus. This is clearly an assumption that departs from the premise that those on the other side of the spectrum will eventually listen. If R2P is intended to serve as tool for persuasion, what happens when that fails? The difficulty with this particular crisis is not whether the coalition should depart from the authorised course of action. The deeper problem lies in the need to broaden the scope of authority for more forceful action. It is important to remind ourselves that the UN has been here before. In the summer of 1995 dreadful events in Bosnia tragically and belatedly forced the UN to take sides. The Security Council can address the challenge up-front or risk again being marginalised as it was in 1995.

The dilemmas unleashed by both Côte d'Ivoire and Libya raise difficult questions of selectivity and moral contestability. Yet in both crises the UN and more specifically the Security Council offered a unique platform for collective legitimation that stretched all the way to decisions regarding the use of force —

decisions that some found problematic. But if legitimacy is the conceptual space where facts and norms merge — where a shared conviction is expected to be reflected in collective action -- the international community of states cannot simply give up when dilemmas arise.⁸

The politics of R2P argumentation and persuasion are now being played out for various audiences. For the Security Council this means that disengagement cannot be an option; for the Group of Friends and the General Assembly, that R2P has become a common idiom. R2P is a new tool that we are only just beginning to learn how to use.

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⁸ J. Steffek, "The Legitimation of International Governance: A Discourse Approach," *European Journal of International Relations* 2003, pp. 249-275.