Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP

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As noted by other contributors to this roundtable, the response of the international community to civilian deaths in Libya—and the threat of further mass atrocities—is unusual in two key respects. First, Security Council Resolution 1973 authorized "all necessary measures" to protect civilians without the consent of the "host" state. The Council's intentions, and actions, could not be interpreted as anything other than coercive. Second, in contrast to other crises involving alleged crimes against humanity (most notably Darfur), diplomacy produced a decisive response in a relatively short period of time. Both of these features suggest that many analysts of intervention (including myself) need to revise their previously pessimistic assessments of what is possible in contemporary international politics.

What is less clear, however, is how the crisis in Libya—and NATO's ongoing aerial campaign—will affect the fortunes and trajectory of the principle of the responsibility to protect (RtoP). There is much wisdom in Thomas Weiss's statement that today "the main challenge facing the responsibility to protect is how to act, not how to build normative consensus."[1] As I will suggest later, there have been costs to the current secretary-general's diplomatic strategy for building support for RtoP, which has placed great emphasis on so-called root-cause prevention and state capacity building. At the same time, it would be too rash to conclude that the Libyan case ends the debate over RtoP's status, meaning, and strength in contemporary international society. Indeed, the very fact that Resolution 1973 mentions only the "responsibility of the Libyan authorities to protect the Libyan population" and not the responsibility of the international community suggests that the latter notion was still contested by some members of the Security Council as an appropriate rationale for military action.

What the Libyan case *will* do, however, is significantly shape the parameters within which the debate over what RtoP entails, and how it might be operationalized, will occur. It will do so in three main ways.

Reasserting the Centrality of the Security Council

To begin, the Libya crisis and subsequent international response has shifted the organizational focal point for the discussion and implementation of RtoP. The text of the 2005 Summit Outcome Document represented a compromise between supporters of the emerging norm and its detractors.[2] As part of that bargain, heads of state and government consciously rejected the idea that another organ within international society—other than the UN Security Council—might be a legitimate authority for the purposes of mandating responses to the threat or commission of mass atrocities. In short, there should be no more Kosovos.

Yet, simultaneously, the Outcome Document specifically identifies the General Assembly as the organ that will continue discussion of RtoP—a nod to dissenters, who wished to ensure that the worries of developing countries would be fully taken on board. (More cynically, one might argue that giving the General Assembly the mantle for advancing RtoP was one sure way of guaranteeing slow progress.) After 2005 it was therefore the General Assembly, and not the Security Council, which became the focal point for discussions—some of which have been heated—about RtoP's implementation. More specifically, the General Assembly has hosted debates about the potential to improve the United Nations' early-warning capacity for mass atrocity crimes and the creation of a Joint Office on the Prevention of Genocide and the Responsibility to Protect.

The Security Council, by contrast, has remained largely silent on RtoP, aside from endorsing Articles 138 and 139 of the Outcome Document in two of its thematic resolutions.[3] This relative lack of attention to RtoP has been fueled by a variety of factors, including continuing contestation over what responsibilities the principle entails, who precisely bears the international responsibility, and when a state's responsibility to protect its own population has manifestly failed. Instead, during the last decade the Council has focused on elaborating (through annual thematic debates) and implementing (through mandates given to peacekeeping missions) the agenda related to the Protection of Civilians (PoC)—a principle first pressed upon the Council by former secretary-general Kofi Annan in his 1998 report on conflicts in Africa.[4] The Council's activities on the PoC have run from the "soft" (reminding parties to a

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conflict to honor their legal obligations), to the "medium" (instituting measures to hold actors to account for violations of international humanitarian law), to the "hard" (authorizing UN missions to provide physical protection to civilians).

It is important to underscore, however, that while the PoC and RtoP overlap, they are not the same: the PoC is in one sense narrower, in that it only refers to situations of armed conflict (and RtoP crimes can occur outside that context); but it is also broader in that the rights of civilians in armed conflict extend beyond protection from mass atrocities.[5] This distinction has been emphasized not only conceptually but also politically. In its concentration on situations of armed conflict, the PoC directs the energies of the Council toward more clear-cut threats to peace and security, as opposed to the more contested area of mass human rights violations (the broad rubric of RtoP). Those countries supportive of the PoC agenda within the Council have at times taken pains to avoid association with the principle of RtoP for fear that the latter will politicize the former.[6]

It is worth remembering, of course, that the original International Commission on Intervention and State Sovereignty (ICISS) report expressed some misgivings about relying on the Council to act as the "proper authority" for military action related to RtoP, given its frequent susceptibility to politicization. Thus, while it still privileged action authorized under Chapter VII of the UN Charter, it also set out procedures that would allow action to occur if the Council was paralyzed.[7] Similar sentiments were expressed by some states during the General Assembly debate on Secretary-General Ban Ki-moon's 2009 report on RtoP: a body in which powerful states have vetoes, they maintained, will tend to result in inconsistency and politically or economically motivated action.[8] (Not surprisingly, these same states have linked their comments on the implementation of RtoP to broader calls for reform of the Security Council.)

The Libyan case offers us an interesting window through which to assess these assumptions about the Council, and the broader balance of power between it and the General Assembly with respect to RtoP. First, it was clear from the very beginning that Western countries, particularly as represented by the NATO alliance, would not countenance action without a Council mandate. As NATO chief Anders Fogh Rasmussen reiterated during the days prior to the passage of Resolution 1973, the alliance would assist in protecting civilians only if there was a "demonstrable need, *clear legal basis*, and strong regional support."[9]

Second, as the authors of the ICISS report had hoped, those permanent members of the Council with concerns about the implications of Resolution 1973 (specifically,

China and Russia) chose to abstain rather than block Council action. We are beginning to understand the reasons for this decision; key among them appear to have been the Arab League call for action and the views of the African states sitting as nonpermanent Council members (the latter were of particular concern for China, which has invested significant diplomatic capital in enhancing its influence in Africa). Indeed, the affirmative votes of Nigeria, Gabon, and South Africa are particularly significant, given that the African Union itself had expressed in a March 10 communiqué of its Peace and Security Council its "rejection of any foreign military intervention" in Libya, "whatever its form."[10]

Finally, the makeup of the Council during the deliberations over Resolutions 1970 and 1973 mirrored its ideal composition as envisioned by proponents of Council reform: in addition to the permanent members, the Council included (among others) Germany, Brazil, India, and South Africa—all large regional powers with global aspirations. That swift action was agreed upon may be interpreted as a positive indication of how such countries could work together in the future. It is also possible, however, that the abstentions of key countries (such as Germany) could harm their bids for permanent or semipermanent membership.

Relinquishing Impartiality

A second important aspect of Resolution 1973, and the accompanying air campaign, is the degree to which it shifts the nature of the UN's involvement from one of genuine (or at least professed) impartiality—a hallmark of the United Nations' original approach to peacekeeping—to one of "taking sides." Of course, as Simon Chesterman notes in his contribution, action authorized under Chapter VII of the Charter has theoretically always been partial, as it does not require the consent of the target state.[11] Yet, in most cases since 1990 the Council has in practice sought to gain an invitation to act for reasons of both pragmatism (the host government's consent can make a military action easier to carry out) and principle (powerful states, such as China, have demanded consent as an expression of the deeper value of sovereign equality). With the Libya case, the Council is reasserting its right to point its finger at the "wrongdoer."

The particular wording of the 2005 Summit Outcome Document, which talks about RtoP *crimes* (as opposed to the broader notions of "large-scale loss of life" in the original ICISS report), has contributed to this shift away from impartiality, with important consequences for both the principle of RtoP and for the

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United Nations itself. Crimes have particular perpetrators, as opposed to "parties in a conflict"; they also have victims. The actions required to change the incentives of the former, and the degree of vulnerability of the latter, move the United Nations, regional organizations, and state diplomats out of a more comfortable zone of mediation and compromise—even if, as some would argue, this stance of impartiality has sometimes been an illusion. Though this change in approach can be seen in other cases (most notably Bosnia, the Democratic Republic of Congo, and the recent UN-mandated actions in Côte d'Ivoire), the relinquishing of impartiality in Libya is likely to affect and set precedents for future responses to actual or threatened mass atrocities.

Concrete examples of this move away from impartiality can be found in the text of the Libyan resolutions themselves. Most obviously, they identify particular individuals as the targets of action, both in terms of sanctions and international criminal justice. In Resolution 1970 this strategy of "naming" was clearly designed to have two effects: first, to change the incentives of those who were in a position to commit atrocities against civilians; and second, to encourage defections that might contribute to the fall of Qaddafi's regime. As commentators have noted, the referral of the events in Libya to the International Criminal Court (which in May 2011 led the chief prosecutor, Luis Moreno-Ocampo, to seek three arrest warrants for Colonel Qaddafi, his son Saif al-Islam, and intelligence chief Abdullah al-Senussi[12]) creates a high-stakes game for the NATO-led coalition, as it makes the colonel's "orderly departure" from Libya less likely.[13]

In addition, Resolution 1973 talks not only about the "protection of civilians" but also the "protection of civilian populated *areas*." With these words, the Security Council was effectively inserting itself in the ongoing struggle, putting certain cities out of bounds for Qaddafi and his forces. President Barack Obama took this approach further in his March 18 ultimatum to Qaddafi to pull back from rebel strongholds, such as Ajdabiya and Misrata.[14] Though one can understand the logic behind the focus on civilian-populated areas, it nonetheless concretely moves the international community toward aiding one side in a conflict and restricting the movements of another.

The by-product of this creep toward partiality is that the ambition of the military mission no longer matches the narrowly circumscribed political objective of civilian protection. (Followers of Clausewitz are no doubt shaking their heads.) These ambiguities about whether civilian protection is really the ultimate aim help to explain the tension that exists within the wider community of states

that were originally supportive of Resolution 1973. (Indeed, even within NATO itself there are varying views about the desired end game.) While some states clearly believe that civilians will only be safe once Qaddafi is out of power,[15] others maintain that civilians can be protected without third parties dictating an outcome to the political struggle and that a cease-fire and negotiations are the appropriate paths forward.

These tensions will only deepen if the alleged stalemate on the ground continues. At the time of writing, NATO's Operation Unified Protector has flown more than 8,000 air raids over Libya. Increasingly, the judgment that the current military strategy may not do the job is gaining strength, leading individual members of the coalition to send military advisors to Benghazi (in the case of the United Kingdom) or hold talks with rebel leaders about the possibility of financial and military assistance (in the case of the United States). In the near term, these concerns will likely lead to a widening of targets to include infrastructure that is believed to be crucial to the regime's survival—a move already favored by the head of the British armed forces.[16] But as time goes on, the debate may become reminiscent of a particular phase in the Kosovo campaign of 1999, when commentators began to argue that only troops on the ground could achieve NATO's objectives.

Elaborating the "Sharp End" of RtoP Prevention and Response

These uncertainties about what civilian protection actually requires, and what role external military capacity can play, expose the limitations of the diplomatic strategy employed by the UN secretary-general between 2007 and 2009: namely, to gain support for the principle of RtoP by emphasizing the dimensions under pillar one (prevention and protection responsibility of the state) and pillar two (responsibility of the international community to assist states in meeting their core responsibilities). There is clearly a need to increase the capacities of states to protect their own populations, and to develop noncoercive tools that third parties can wisely employ to address the deep causes of mass atrocity crimes. But there is also an urgent need to elaborate the more targeted and coercive tools that the international community can employ as part of pillar three (the international responsibility to react to RtoP crimes)—whether those tools are being employed

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preventively (to avoid an imminent catastrophe) or as part of a response to ongoing large-scale atrocities.

As Alex Bellamy reminds us, Libya was on no one's watch list in terms of being at risk of mass atrocity crimes.[17] Structural or root-cause prevention strategies would have had little to say about this particular country. Instead, events in Libya were brought to a head by a series of shocks and specific events, which very few predicted. In order to be prepared for such dynamic situations, international actors and national governments require *some* ready-made capacities to both deter potential perpetrators of crimes and address the vulnerability of potential victims. Of course, such measures need to be tailored to the specific context, but this should not preclude policy-makers from learning more about the conditions under which particular late-stage tools (for example, targeted sanctions, coercive diplomacy, surveillance, or no-fly zones) are likely to be effective. As much as Ban Ki-moon wanted to talk about the ways of implementing RtoP that do *not* involve coercion, it is now time to better understand those that *do*.

More generally, the response to the crisis in Libya should encourage us to question two assumptions that seem to underpin the secretary-general's report. The first is that prevention and reaction are mutually exclusive. In contrast to the secretary-general's framework, the Libyan case suggests that preventive action does not end with the onset of pillar three. Indeed, the majority of the policy tools and measures considered and implemented through Resolution 1970 fall within what Ban Ki-moon calls "timely and decisive response." The second questionable assumption is that pillars one and two are somehow less intrusive in terms of state sovereignty, and therefore less likely to fuel opposition to the principle's implementation. In reality, capacity building, conditionality, and national watch lists all have intrusive dimensions, even if they are less obvious and less dramatic than the sight of warplanes flying over a state's territory. There is no ducking the fact that the prevention of and response to *crime* takes the international community into difficult and uncharted terrain.

The paucity of thinking about the coercive tools under pillar three means that international organizations and national governments have only begun to understand how force can and should be used to protect civilians, and what kinds of operational tensions, legal dilemmas, and normative challenges arise from its use. If the Libya case can contribute to further research and policy debate on these questions, then it truly will have advanced the international community's understanding and implementation of the responsibility to protect.

NOTES

[1] Thomas G. Weiss, "RtoP Alive and Well after Libya," *Ethics & International Affairs* 25, no. 3 (Fall 2011), p. 291.

[2] For further discussion of the bargaining that took place in and around the summit, see Alex J. Bellamy, *Global Politics and the Responsibility to Protect* (New York: Routledge, 2011), pp. 21–25.

[3] See Security Council Resolution 1674 (2006) and Security Council Resolution 1894 (2009). In some cases sections of draft Council resolutions containing the principle of RtoP were deleted due to lack of consensus on their inclusion. See Jennifer M. Welsh, "Implementing the Responsibility to Protect: Where Expectations Meet Reality," *Ethics & International Affairs* 24, no. 4 (Winter 2010), pp. 415–30. For detailed examples of the continuing debate over meaning and use, see Alex J. Bellamy, "The Responsibility to Protect—Five Years On," *Ethics & International Affairs* 24, no. 2 (Summer 2010), pp. 143–69.

[4] United Nations General Assembly, "Report of the Secretary-General: The Situation in Africa," S/1998/318-A, April 13, 1998.

[5] Global Centre for the Responsibility to Protect, "The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict," Policy Brief, May 9, 2011; globalr2p. org/media/pdf/GCR2PPolicyBrief-ProtectCivConflict.pdf.

[6] I have discussed this point more fully elsewhere. See Welsh, "Implementing the Responsibility to Protect."

[7] Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), p. xiii. The three procedures set out by the commissioners were as follows: states must at least request Council authorization before acting; a resolution supporting military intervention must have at least majority support in the Council; and if the veto is used in these instances, recourse can be made to the General Assembly (under the Uniting for Peace resolution) or to regional bodies.

[8] See the comments of various states during the Thematic Debate on the "Report of the Secretary-General on Implementing the Responsibility to Protect," A/63/677, July 23, 2009.

[9] "NATO Chief Urges Quick UN Deal on Libya," *Straits Times*, March 17, 2011; www.straitstimes. com/BreakingNews/World/Story/STIStory_646287.html. Emphasis mine.

[10] African Union, "Communiqué of the 265th Meeting of the Peace and Security Council," PSC/PR/Comm.2 (CCLXV). The communiqué did denounce the violence in Libya as a "serious threat to peace and security" in the region and created a High-Level Committee on Libya to facilitate dialogue among the parties to the conflict.

[11] Simon Chesterman, "'Leading from Behind': The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya," *Ethics & International Affairs* 25, no. 3 (Fall 2011), p. 280.

[12] The warrants are for alleged crimes against humanity, in relation to the crackdown following the start of antigovernment protests on February 15, 2011. Despite the Security Council's reference to breaches of international humanitarian law in Resolution 1970, the chief prosecutor has yet to find sufficient evidence that war crimes were committed.

[13] Phillippe Sands, "The ICC Arrest Warrants Will Make Colonel Gaddafi Dig in His Heels," *Guardian*, May 4, 2011.

[14] "Libya: President Obama Gives Gaddafi Ultimatum," BBC News; www.bbc.co.uk/news/world-africa-12791910.

[15] Barack Obama, David Cameron, and Nicolas Sarkozy, "Libya's Pathway to Peace," *International Herald Tribune*, April 15, 2011.

[16] "Forces Chief: Target Gaddafi," *Sunday Telegraph*, May 15, 2011. General David Richards continued to insist that Qaddafi was not a target, but that if Qaddafi happened to be in a command and control center and was hit by NATO air raids, such an attack would be within the rules.

[17] Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics & International Affairs* 25, no. 3 (Fall 2011), p. 267.

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