

A Critical Assessment of the Application of Responsibility to Protect in Libya

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JAY CRUSH, AUG 22 2014

The development of the responsibility to protect (R2P) is well documented (Zifcak 2009, Payandeh 2010). It emerged in the report of the International Commission on Intervention and State Sovereignty (ICISS) which reconceptualised state sovereignty to include responsibilities, namely the responsibility to protect civilians from serious human rights abuses. Only when a state defaults on this responsibility will it fail to be realised by the international community through a 'three-pronged responsibility – to prevent, react and rebuild' (Weiss 2011, 287). Later, R2P was unanimously endorsed at the 2005 World Summit where states most significantly committed to 'take decisive action... on a case by case basis' if peaceful methods prove 'inadequate' and a state 'manifestly fails' in its responsibility (para 139).

R2P 'came of age' with its application in Libya (Ki-moon 2012) when the Security Council (UNSC) adopted Resolution 1970 in response to Gaddafi's attacks on civilians and clear 'statements of intent to commit mass atrocities' (Williams, Ulbrick and Worboys 2012). This reaffirmed Libya's responsibility to protect, referred the situation to the International Criminal Court (ICC) and initiated travel bans, asset freezes and an arms embargo. However, the violence continued and so Resolution 1973 was adopted authorising states to use force to protect civilians in Libya.

This essay will argue that the UNSC's application of R2P in Libya was fully within the scope and spirit of R2P. On the other hand the implementation of Resolution 1973 by NATO was incompatible with R2P, going further than the civilian protection mandate by appearing closer to a regime change operation. This has led to lack of trust in R2P, which has consequences for any prospects of humanitarian action in Syria. However, R2P can emerge stronger from these problems in two ways. Firstly R2P can evolve based on the problems of Libya by adopting Brazil's concept of 'responsibility while protecting'. Secondly, by focusing on the 'responsibility to rebuild', R2P can leave a beneficial legacy in Libya and demonstrate that R2P is not solely about military intervention.

Both resolutions 1970 and 1973 were clearly 'framed... in R2P terms' (Williams and Bellamy 2012, 276); Resolution 1970 invoked R2P by 'recalling the Libyan authorities' responsibility to protect its population', and Resolution 1973 was based on Libya's manifest failure to honour its responsibility and the failure of peaceful preventative methods (Williams, Ulbrick and Worboys 2012, 13). Significantly, this was the first time that force had been authorised by the UNSC 'for human protection purposes against the wishes of a functioning state' (Bellamy and Williams 2011). These two resolutions, adopted 'in the name of' R2P made it clear that 'the doctrine's time had arrived' (Sarkin 2012).

In the World Summit formulation of R2P, states pledged to take 'timely' action if necessary (para 139). The UNSC acted with 'unprecedented speed' (Zifcak 2012, 3); demonstrations broke out in Libya in mid February 2011 and by the 22nd of February Gaddafi promised to 'purge Libya' of the demonstrators whom he labelled 'rats' and 'cockroaches' (Pape 2012, 63). Resolution 1970 was unanimously adopted four days later. This ultimately did not deter Gaddafi, who soon after declared that he would 'show no mercy and no pity for the insurgents' as he prepared to attack Benghazi (Pommier 2011, 1070). Therefore on the 17th March Resolution 1973 was adopted which deplored Libya's failure to comply with Resolution 1970, and authorised 'all necessary measures' to protect civilians.

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In the space of 5 weeks the UNSC adopted two strong resolutions taking action against the rapidly deteriorating situation in Libya. Acting in such a rapid manner is of added significance when one considers the UNSC's lacklustre response to the Rwanda and Srebrenica atrocities, which 'humiliated' the world's powers (Western and Goldstein 2011), especially as Gaddafi labelling the protestors as cockroaches and rats 'bore direct echoes' to incitements to violence during the Rwandan genocide (Bellamy and Williams 2011, 383). R2P was partly developed in order to ensure that these failures of the past were never repeated, and so with the quick responses in Libya it would appear that R2P is serving its purpose.

Yet, as well as being criticised for acting too slowly, states have conversely been characterised as being too keen to take up military action without exhausting peaceful alternatives, seen with the USA's interventions in Grenada and Panama (Grey 2008, 56-57). This concern was reflected at the World Summit; military action must only be authorised 'should peaceful means be inadequate' (para 139).

Resolution 1970 employed an exhaustive collection of peaceful means as an attempt to end the violence including; travel bans, asset freezes and an arms embargo, plus calling on Libya to halt the violence and allow humanitarian assistance to reach civilians. Additionally, the situation was referred to the ICC. This is only the second time the UNSC has referred a situation to the ICC and the first time it had done so unanimously and alongside an invocation of R2P (Stahn 2012, 325). This was a welcome development, for the ICC can be a powerful means of peacefully ending violence and preventing atrocities. Research shows that the threat of action from an international criminal tribunal has a deterrent effect on leaders using violence because it impacts the 'cost benefit calculus of using atrocities as an instrument of power' (Akhavan 2009, 652).

Contrary to this, O'Connell argues that not enough time had passed to test whether these peaceful means proved inadequate, for only three weeks passed between Resolutions 1970 and 1973; 'the sanctions... had hardly been put in place when the bombs began to fly' (2011). However, O'Connell is disregarding R2P's requirement of 'decisive action' should a state 'manifestly fail' in its responsibility to protect expressed at the World Summit (paragraph 139). Shortly before Resolution 1973 was adopted it was apparent that Libya had 'manifestly failed' in its responsibility to protect. There were reports of 'widespread and systematic attacks against civilian populations' (United Nations 2011) and Gaddafi's forces had pushed East to Benghazi making 'overt threats to commit atrocities' against the civilian population there (Williams and Bellamy 2012, 288), all despite of Resolution 1970.

The situation had deteriorated to such an extent that waiting longer for the sanctions to fully apply would have been irresponsible. There were no other 'plausible alternative policies for preventing a massacre in Benghazi' thus it was apparent that the 'decisive action' required in the situation would have to be military force (Williams and Bellamy 2012, 288). Thus Resolution 1973 was adopted authorising the use of force to protect populations, short of a 'foreign occupation force' and established a no fly zone. This authorisation was fully complicit with R2P, being a last resort and predicated on the manifest failure of a state to protect its populations.

In addition to these preconditions to the use of force, R2P as expressed at the World Summit has the limitations of requiring coercive actions to be authorised through the UNSC 'in accordance with the Charter'. The controversy surrounding NATO's unauthorised use of force in Kosovo (Grey 2008, 39 - 51) demonstrates how a mission's legitimacy depends on UNSC authorisation. Furthermore at the World Summit it was agreed that force should be exercised 'in cooperation with relevant regional organisations' (Para 139) so that R2P does not appear to be an 'imperialist' tool of the powerful western states (Bellamy 2010, 144). The League of Arab States, the Organisation of Islamic Cooperation, the Gulf Cooperation Council and the African Union all played a 'critical role' in the UNSC's response in Libya (Dunne and Gifkins 2011, 519). These organisations were quick to condemn the violence against civilians, and most significantly backed a no fly zone; the Gulf Cooperation Council even urged the UNSC to take 'all necessary measures to protect civilians' including military force (Zifcak 2012, 5). The contributions of these bodies were all recalled in Resolution 1973 and aimed to ensure that the Libyan intervention was seen as a legitimate wholly humanitarian mission.

Therefore it is clear that the adoption of the two resolutions on Libya was fully in accordance with R2P. Furthermore, in terms of the prevention of mass atrocities and the overthrow of a totalitarian leader the intervention was a success,

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with Ban ki-Moon estimating that 'tens of thousands of lives were saved' (2012). In this way it would appear that the intervention itself was a perfect application of the international community's residual responsibility to protect civilians at risk.

However, the same cannot be said for the actual implementation of Resolution 1973; the ends achieved are not all we must judge the intervention against as any intervention under R2P must be limited to human protection aims with no scope for ulterior objectives. This limitation is a vital part of R2P for previous invocations of a right to humanitarian intervention were strongly rejected by the international community due to fears it would be abused by powerful states. These fears were best expressed by Sweden in the UNSC; such a right 'would be bound to be abused, especially by the big and strong, and to pose a threat, especially to the small and weak' (1976, para 121). For many these fears were confirmed with the use of humanitarian language to justify operations in Iraq in the 1990s, believed to be preparation for the 2003 invasion (Grey 2008, 36-37), and the controversial and illegal Kosovo intervention (ibid, 39-51).

R2P aimed to move beyond these concerns by presenting the use of force for humanitarian purposes as a residual responsibility, not a right, which can only be exercised if specific circumstances exist, such as UNSC approval and a manifest failure of the state. This was why even the most suspicious states tentatively agreed to R2P at the World Summit. If R2P were not limited in this way interventions would be seen to be 'more likely to be ad hoc, unilateral, self-interested and deeply divisive' (Thakur 2011, 13). In the UNSC states were clearly uncomfortable with authorising the use of force, but did not vote against the resolution due to the severity of the situation in Libya (UNSC 2011a). Those states put their trust in NATO and its allies to intervene in the spirit of R2P and Resolution 1973 which was clearly designed to 'delimit the scope of intervention' to human protection purposes only (Thakur 2011, 13).

Despite this, NATO's intervention was 'less about protecting the population and more about regime change' (Tarnogórski 2012, 4). As the intervention progressed the civilian protection objectives mandated by the UN 'strongly converged with a goal of regime change' (Pommier 2011, 1067), shown by the targeting of the Gaddafi family compound (Guardian 2011) and supplying the rebels with arms (BBC 2011). While this is clearly stretching the mandate to protect civilians to its 'absolute limit' (Zifcak 2012, 8), it is hard to firmly conclude that it goes so far beyond Resolution 1973 to make the intervention *ultra vires*. The phrase 'all necessary measures' is so vague that trying to secure the fall of Gaddafi's regime can be argued to be necessary to protect civilians; as Thakur writes 'if defeat of a non-compliant state or regime is the only way to achieve the human protection goals, then so be it' (2003, 163).

A narrow focus on the strict legality of an application of R2P is an inappropriate way to assess what is ultimately a political concept which relies on the support of the international community. It has been difficult for R2P to disassociate itself from the humanitarian intervention invocations of the 1990s discussed above. This was seen during what Bellamy calls the 'post-2005 revolt' where a number of states began to retreat from the position agreed at the World Summit due to fears that the concept could be abused (Bellamy 2009, 112).

R2P managed to survive this revolt to be applied in Libya. However the way NATO conducted its intervention has revived these fears. This was articulated in subsequent UNSC meetings (2011b, 2011c) not only by Russia and China, but also by Brazil, India and South Africa, all influential emerging powers crucial to R2P's global acceptance. Brazil warned that 'excessively broad interpretations of the protection of civilians' could lead to an 'exacerbation of conflict' and 'compromise the impartiality of the UN' and make the mission look like a 'smokescreen for intervention or regime change' (2011c, p11).

To avoid these concerns NATO should have confined itself to a role of constant vigilance, being ready to strike if civilians were threatened without committing to support any side in the civil war. This may have meant it would have taken longer to resolve the conflict, but R2P would have been applied in a manner consistent with its aims and spirit which would ultimately have a greater benefit over time. Sadly this was not the case and NATO's failure to apply R2P correctly has damaged the trust that had been carefully built up in it, which is having detrimental implications for R2P's potential application in Syria. Both China and Russia have linked their vetoes against resolutions aimed at the Syrian crisis with the perceived abuse of Resolution 1973, a position also supported by South Africa and India

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(Zifcak 2012, 20). These attitudes could ultimately 'be a death knell for the whole R2P concept' (Tarnogórski 2012, 1).

The challenge is now to restore faith in R2P. As seen by the UNSC's action in February and March 2011 R2P can be a great force for good, providing the impetus for the timely and decisive action in the face of atrocities that has not been forthcoming from the UNSC in the past. R2P must adapt based on its shortcomings which have become apparent during its application to Libya. While the spirit of Resolution 1973 and of R2P is to use military force for the objective of purely protecting civilians, R2P does not offer much assistance beyond this. This shortcoming was identified by India and Russia in the UNSC after Resolution 1973's adoption, expressing concern that key issues had not been determined, such as how the military force will be carried out, with what assets, limits and rules of engagement (2011a, 6-8). A further issue with R2P intervention was identified in a later UNSC meeting by India's representative who asked 'who watches the guardians', who is there to ensure that force is applied in accordance with the mandate and R2P? (UNSC 2011c)

In the light of these legitimate and constructive concerns, Brazil put forward the concept of a 'responsibility while protecting' in a letter to the UNSC (2011) which notes the perception that R2P 'might be misused for purposes other than protecting civilians, such as regime change' (para 10). In order to counter this perception it suggests criteria that any intervention must respect, namely that the military force employed must be 'limited in its legal, operational and temporal elements which should be clearly specified in the resolution (para 11). In order to ensure these limits are respected Brazil also called for the UN to develop an enhanced capability to 'monitor and assess' the implementation of such resolutions (ibid).

The call for specific and clear limits on any intervention, as well as better monitoring will make it even more difficult for interveners to go beyond the spirit of the resolution as was the case with Libya. These suggestions cleverly address the concerns raised by the Libya intervention and if implemented will hopefully restore trust in R2P. Furthermore they are of added significance as they have not been developed by a 'western' state, but by an influential emerging power.

The second way that faith in R2P can be restored is by ensuring that R2P's application in Libya is as successful as possible; its future 'will be clearly influenced by how the situation in Libya is resolved' (Bellamy and Williams 2011, 845). The ICISS report suggested that R2P should include a 'responsibility to rebuild' after intervention, reflected in the World Summit pledge to assist states at risk from conflict. Thus R2P's application in Libya is still incomplete and is in its most significant phase. Having intervened militarily the international community has the responsibility to rebuild Libya. This is particularly important since 'some 50% of resolved conflicts slide back into conflict' (Pace and Deller 2005, 30).

R2P is often characterised by opponents and supporters alike as being primarily focused on military intervention, a characterisation which is a 'travesty' according to Evans (2007) but understandable given the controversy over intervention in Libya. This focus on the rebuilding of Libya will demonstrate that military intervention 'is a very limited component' of R2P and that 'prevention and rebuilding are the important and viable aspects' of it (Sarkin 2012, 25).

Significant progress has been made in rebuilding Libya. The first elections in Libya since 1964 were held in July 2012, where 1.77 million voted. These were conducted remarkably smoothly with minimal irregularities and an 'enthusiasm for openness' from the authorities (Economist 2012a). However an electoral democracy is not sufficient (Merkel 2004), Libya must emerge as a liberal democracy based on the rule of law and respect for human rights, with full accountability for those exercising power. Linked to this is the need for Libya to experience sustainable economic growth, which is not only needed to secure basic public goods such as healthcare, but is also a prerequisite for a functioning democracy (Lipset 1959).

The international community is fulfilling its responsibility to rebuild through the UN Support Mission in Libya (UNSMIL) which is mandated to provide the Libyan authorities with strategic support and technical advice to help its transition into a liberal democracy. UNSMIL has had a significant impact, with the Libya's representative to the UN describing its advice as 'indispensable' to rebuilding Libya, especially since Libyans have 'inherited a state that has

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never experienced democracy in its contemporary history' (2012, 2). These positive sentiments are also reflected in the Secretary General's report on UNSMIL (2012), which shows that it has been pushing for the Libyan Ministry of Justice to ensure that all detainees are held within the legal framework and are given a fair trial, and giving technical support for reactivating Libya's judiciary (ibid, 5-6). Additionally UNSMIL has been helping Libya attract investment partners through trade conferences, and has been working with the Ministry of Planning to improve the country's economic infrastructure (ibid, 10-11).

However, serious security issues remain. The authorities have had difficulty in bringing the loose group of militias that fought against Gaddafi under central control. Moreover 'pockets of jihadist sympathisers still exist' which seriously undermines state security, seen most vividly with the killing of the US ambassador to Libya (Economist 2012b). This situation is also having spillover effects in the rest of Northern Africa; it is widely believed that the recent attacks against foreign workers in Algeria were launched from Libya (Economist 2013). In this context it is promising to see that the EU is respecting its responsibility to rebuild by preparing to send experts to assist Libya in developing its border security (2013). Secure borders will help the Libyan authorities secure control over all its territory, and consequently help promote stability in the entire region.

To conclude, the application of R2P in Libya was a success in that it mobilised the UNSC to act decisively with remarkable speed and fully in accordance with R2P. This is in stark contrast to its recalcitrance during the atrocities in Rwanda and Srebrenica. Most importantly this application of R2P has created beneficial results in Libya, many lives were saved and a modern democratic state is emerging. Success is not assured however, and the international community must continue to honour its responsibility to rebuild in order to cement this success. However the military intervention itself was not applied in the spirit of R2P, its objective went beyond protecting civilians to securing a regime change. This has led to a backlash against R2P by states with the legitimate concern that the concept will be abused for such ulterior purposes, but with the adoption and development of Brazil's 'responsibility while protecting' idea, these concerns can be assuaged.

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