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## **R2P and Intervention after Libya**

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**John W. Dietrich**, Bryant University

**Abstract:** *In 2001, the International Commission on Intervention and State Sovereignty (ICISS) released a report arguing that states and the international community have a responsibility to protect (R2P) citizens from major human rights violations and war crimes. The coming years saw much discussion of the concept and supportive votes at the U.N., but there was little practical implementation. In 2011, world events and U.N. action breathed new life into R2P. Libya was the first case of the U.N. using R2P to authorize the use of force against an existing state to protect civilians. Debates over Libya before the authorization of force, and discussions of the mission both as it continued and afterward show that there remain deep divisions within the international community over key issues in authorizing and implementing R2P intervention. For an emerging norm, perhaps the only thing worse than being ignored is being implemented in a way that reinforces old fears and raises new controversies. The Libyan case already has shaped discussions of possible action in Syria. R2P has been dealt a severe setback, so it will not emerge as a meaningful new norm, will not serve as the justification of new interventions, and may in some cases actually delay the adoption of less coercive responses to human rights violations.*

### **1. Introduction**

At the turn of the twenty-first century, the international community was struggling with the challenge of reconciling the core concepts of state sovereignty and protection of human rights. In 2001, the International Commission on Intervention and State Sovereignty (ICISS), a panel of international experts chaired by Gareth Evans and Mohammed Sahnoun, released a report arguing that states have a responsibility to protect (R2P) their citizens from major human rights violations and war crimes. If a state fails to meet this responsibility, the international community should be prepared to take action to protect citizens. R2P quickly drew major international attention and debate. A version of R2P language was adopted at the U.N.'s 2005 World Summit and the U.N. Security Council indicated

support for some R2P language in Resolution 1674 in 2006. R2P seemed to be moving rapidly through the norm life-cycle identified by Finnemore and Sikkink (1998) beginning with norm emergence, followed by a norm cascade as states and international organizations accept the norm, heading toward internalization when states are guided by the norm, and into full customary international law. Subsequent years, though, revealed that many countries had not fully accepted key R2P concepts, that its language had been watered down as it progressed from ICISS report to U.N. statements, and that, most crucially, it was not being implemented to address ongoing human rights cases in Sudan, Sri Lanka, Somalia and elsewhere. Academics and policymakers began to question whether R2P would ever become more than just a nice slogan (Evans 2008b; Hehir 2010; Reinold 2010). These discussions highlight that one of the worst things for an emerging norm is for it to be ignored.

In 2011, world events and U.N. action breathed new life into R2P. The concept was employed in Cote d'Ivoire and then, more dramatically, in Libya. Libya was the first case of the U.N. using R2P to authorize the use of force against an existing state to protect civilians. Supporters of the concept hailed the actions as an important next step in moving the world from words to actions. Evans, for example, argued that at the outset Libya was "a textbook case of the RtoP norm working exactly as it was supposed to" (Evans 2011). In article entitled "End of the Argument," Evans further argued that there was now "overwhelming consensus" on at least the main principles of R2P (Evans 2011b).

Over time, though, it has become apparent that the debates over Libya before the authorization of force, and discussions of the mission both as it continued and afterward show that there remain deep divisions over key issues. Three of these key issues center on the decision to authorize an intervention and reflect issues that have been contentious for decades: 1) countries continue to disagree over how much weight should be given to sovereignty; 2) the

vagueness of R2P criteria lead some countries to fear that decisions of when and where to intervene will always reflect political considerations as much as humanitarian issues; 3) questions remain over which groups can properly authorize an R2P intervention and what to do when the U.N. Security Council is deadlocked. The Libya case also moved R2P from theory into action and thus showed three issues of proper implementation that previously had received less attention, but reinforced divisions in the international community: 1) which forces should carry out the intervention on behalf of the international community? 2) what should be the political and military goals of the intervention? 3) what responsibility does the international community have after an R2P intervention? These discussions about Libya show that, for an emerging norm, perhaps the only thing worse than being ignored is being implemented in a way that reinforces old fears and raises new controversies.

The full impact of the Libyan case on R2P may not be known for years since the passage of time can lead to different conclusions than immediate analysis, and because interventions are often judged by their long-term outcomes and Libya's future still remains uncertain. In the short term, though, the Libyan case has dealt a severe blow to R2P and complicated international responses to violence. The limited influence of post-Libya R2P can be seen in international responses to early violence in Syria. The Syrian situation has continued to progress to become a multi-factional civil war far beyond what R2P was designed to address, so the focus is really why little action was taken in 2011 or early 2012 before the situation spiraled.

Supporters will point out that R2P includes preventative aspects and that military action is not the only form of intervention, but R2P really cannot be fully separated from forceful humanitarian intervention. First, the whole concept stemmed from an effort to address the challenges of humanitarian intervention. Second, interventions draw public attention and focus policymakers' debates in different ways than prevention or less dramatic interventions, so

forceful interventions will shape overall perceptions of R2P and likely influence the level of global support for other aspects of R2P. Therefore, although R2P is not a synonym for humanitarian intervention, the concepts are so interwoven that supporters must address many of the same challenges that limited support for humanitarian intervention. This is why almost all observers, both supporters and critics, recognized that the first major R2P intervention would be a shaping event for the norm's future. The term will likely continue to be used in coming years in relation to preventative and other actions, but these actions could have been taken in any case, so R2P may be changing the terms of discussion, but it is not creating any significant new action.

On the key issue of international interventions, R2P is quite weak after the Libya case. In coming years, it will not emerge as a meaningful new norm, will not serve as the justification of new interventions, and may in some cases actually delay the adoption of less coercive responses to human rights violations. This leaves the international community much where it was at the turn of the century in trying to weigh political and practical challenges against desires to end mass violations of human rights. It is, therefore, useful to trace a little history before examining the six issues raised by R2P and how they played out in the Libyan case.

## **2. Developing R2P**

The modern idea of humanitarian intervention first rose to prominence in the 1990s as the end of the Cold War increased the chance for global cooperation, shifted focus to regional issues, but also saw the outbreak of new intra-state conflicts. The U.N. authorized actions in Somalia and Bosnia in 1992. Neither mission was a full success and the U.N.'s inaction in Rwanda in 1994 seemed to confirm that, although there was some desire to protect civilians and others from abuses, it often was outweighed by major political and practical barriers to successful intervention.

The latter half of the 1990s saw leadership of interventions shift more toward regional groups and actors. For example, West African forces intervened in Sierra Leone and Liberia, U.S. forces in Haiti, and Australian forces in East Timor. This trend to regional groups was highlighted by NATO actions in Bosnia in 1995 and Kosovo in 1999. These regional actions proved more coordinated and forceful than the U.N. actions, but raised the crucial issue of whether intervention without U.N. approval was illegal. In the famous words of the Independent International Commission on Kosovo, NATO's intervention was "illegal but legitimate" (Independent, 2000, 4).

In developed countries, this wave of interventions led to debates over when countries should act outside of their national interests to protect civilians in other countries and what resources and sacrifices were justifiable in such cases. Less developed countries (LDCs) were frequently more critical of the interventions. In a famous piece, Mohammed Ayoob argued that LDCs saw the interventions as a violation of state sovereignty, a new form of Western imperialism, and driven by double standards in that Western countries and allies were immune from focus (2004). Another scholar summarized sentiment saying, "at the turn of the century, it has become clear that the concept of HI [humanitarian intervention] has no future; that it is not acceptable to the majority of U.N. member states" (Gierycz, 2010, 112).

The ICISS 2001 report and other efforts to develop R2P attempted to move away from the terms and specific policies of humanitarian intervention, but continue to build on the sentiment that international actions should be taken to protect civilians. The focus shifted from a right to intervene to a responsibility to protect, and from a focus on sovereignty granting control to "sovereignty as responsibility" (ICISS 2001). States retained the prime responsibility for protecting their citizens from genocide, mass murder, and ethnic cleansing, but if the state was unable or unwilling to meet its responsibilities then the principle of non-intervention could be set aside and the international community should

consider action. The report argued that intervention should be supplemented with policies of prevention and post-conflict peace building. It also argued that military force was only one form of intervention. Thus, “The ICISS sandwiched military force between the sliced white bread of prevention and postconflict peacebuilding. . . [so] the option of military intervention to protect human lives became somewhat more palatable than it had been, especially in the global South” (Weiss 2011, 2). The report also argued that specific cases should be judged using Just War criteria such as would the intervention stop gross violations of rights, was force reserved as a last resort, and did the intervention have a reasonable prospect of success. The ICISS placed primary responsibility for authorization in the U.N. Security Council, but suggested that the five permanent members agree to not use their veto power unless vital national interests were at stake. Furthermore, a deadlocked Security Council could be addressed by going to the General Assembly or regional groups.

R2P was explicitly endorsed in two paragraphs of the U.N.’s 2005 World Summit Outcomes Document. This inclusion was a victory for R2P supporters, but, because it came after several years of questions and criticisms being raised, several compromises were made that weakened the concept compared to the ICISS report. The result was “R2P lite” (Weiss 2007, 117). Authorization was put firmly back in the Security Council’s hands, but the idea of limiting vetoes was rejected by China, Russia, and the United States. The Just War criteria were not formally included in U.N. statements. Protection would occur in cases of genocide, war crimes, ethnic cleaning and crimes against humanity, but there was no further clarification on the required level of these threats, and the need for intervention was to be judged on a case-by-case basis. The threshold for a state failing to meet its responsibilities was raised to “manifest failure.” There also was no stated obligation to act, only a call for preparation to take action.

Even with the weakened language, subsequent years saw a degree of “buyer’s remorse” among certain states that further weakened R2P implementation following the 2005 World Summit (Evans 2008, 288). Several states such as Algeria, Brazil, and Egypt argued that the 2005 agreement called for further study and debate, rather than immediate implementation. Key countries, including Russia and China, renewed concerns about sovereignty and non-intervention. In 2006, Security Council Resolution 1674 broadly supported R2P, but only after the resolution was watered down to just reaffirming the 2005 wording. In subsequent years, criticisms and back-sliding continued and there were no cases of authorized R2P intervention.

Overall, R2P’s development shows that several important issues, discussed in more detail below, remain. Compromises were made to move the process along. These compromises weakened R2P from the ICISS vision, yet were not been enough to quell critics. Most countries had agreed to R2P in broad principle, but it remained up to each country to define what that meant in practice. To move R2P forward, some academic supporters and UN officials sought to distance R2P from humanitarian intervention and focus more on prevention (Bellamy 2009). These prevention efforts certainly have merit, but R2P really cannot be fully separated from forceful humanitarian intervention and the challenges that brings.

### **3.1 Sovereignty**

Over the last century, there has been a growing development of international norms and laws protecting individual human rights. This movement always has had to deal with the issue of how to balance the state’s right of sovereignty and non-interference in domestic affairs with the individuals’ rights. This issue is of course dramatically highlighted by cases of humanitarian intervention directly aimed at changing state behavior and, in many cases, seeking regime change. Concerns over sovereignty were central to many developing countries’ worries in the 1990s

and the development of R2P has brought back those same worries. Additionally, R2P has sought to redefine sovereignty and alter existing notions of its benefits and obligations.

Issues of sovereignty and non-interference are commonly raised by LDCs. Ayoob has argued that these countries are particularly sensitive to the loss of sovereignty because they have only just achieved independence from colonialism (2004). The memory of colonialism also makes them sensitive to the idea of Great Powers interfering in domestic politics. Further, their state of development may make them worry that they will be targeted for intervention. Many developing countries have multiple ethnic groups, so there is a chance of ethnic violence. Many are weaker states that may be challenged by internal groups and feel the need to use repression and violence to keep order. Many European states had violent pasts, but today the rules have shifted and internal violence risks international intervention.

During the 1990s, developing countries repeatedly opposed interventions on the grounds that they violated sovereignty. In 2000, the South Summit of 122 states rejected “the so-called ‘right’ of humanitarian intervention which has no legal basis in the United Nations Charter or in the general principles of international law” (Gierycz 2010, 125). India, Brazil, South Africa and other leading LDCs have, at times, expressed similar feelings. In 2001 discussions of the R2P report, the Chinese delegation argued, “the assertion of ‘human rights transcending sovereignty’ has serious fallacies in theory and lends no help to the legalization of humanitarian intervention” (Ayoob, 2004, 108). Importantly, Russia has voiced similar views, so two veto-wielding powers often seek to defend the existing concept of strong sovereignty.

R2P reframed the sovereignty issue, but reactions have been similar to humanitarian intervention. In 2005, India’s ambassador argued that discussions of R2P must not be allowed to confer legitimacy on a right of intervention. The Coordinating Bureau of the Non-Aligned Movement (NAM)

observed there were “similarities” between R2P and humanitarian intervention and reasserted that there was no right to intervention (Bellamy 112). Ayoob has again warned that the Great Powers are creating legal justifications for the interventions they always desired (Ayoob 2002). It should be noted that the LDCs are not united in opposition as many countries in Africa and Latin America have expressed support for the R2P concept or for particular actions.

To some observers, raising issues of sovereignty may conjure an image of an abusive dictator hiding behind a legal curtain, but it must be remembered that sovereignty has been a bedrock principle of international law for centuries, referenced by the powerful as well as the weak, the good as well as the bad, so alterations in the definition must be carefully considered by the international community as a whole. R2P’s logic that sovereignty brings certain responsibilities builds off the work of U.N. advisors Roberta Cohen and Francis Deng (Cohen and Deng 1998). International legal terms are flexible and develop through usage, but it is unrealistic to expect that the entire international community would shift its understanding of a centuries-old core principle within just a few years. If countries do not accept the redefinition, then the sovereignty discussion will play out much like it has for decades and few R2P interventions will be authorized. These views were nicely captured by the Head of Mission of a major G77 country when he noted, “The concept of responsibility to protect does not exist except in the minds of the Western imperialists” (Evans 2008, 55).

From the above discussion, it is noteworthy, and probably surprising to some doubters, that in the Libyan case the U.N. did authorize the use of all means necessary to protect civilians. This shows sovereignty concerns can be overcome, but Libya was a highly unusual situation, furthermore the actions taken in Libya reinforced LDC worries, so a repeat elsewhere is far from guaranteed.

In early discussions of Libya, several countries resisted the use of force or even sanctions. Russia and China led calls for a ceasefire and internal Libyan solution, and were supported by India, Brazil and Germany. Eventual, forceful action in Libya was driven by a number of factors. First, conditions for civilians continued to worsen and a massacre of civilians appeared imminent. Gaddafi had directly threatened to kill civilians who opposed him. Second, Gaddafi did not have good relations with many regional leaders and Libya did not have major ties to either Russia or China. Third, several regional organizations called for intervention, so it became easier for Russia and China, but also the United States, to say that they were following the will of the community. Rarely will these factors all come together again.

Even with the factors supporting intervention, Resolution 1973 explicitly rejected “a foreign occupation force of any form on any part of Libyan territory.” Enforcing a no-fly zone would affect sovereignty, but in a less direct way. The Resolution passed 10-0, with Russia, China, India, Brazil and Germany all abstaining. The abstentions show that many significant international actors did not fully accept R2P’s challenge to sovereignty. Those abstaining cited their long-standing views on non-intervention and preference for a political solution, but by that point the political pressure not to block action was significant, so they chose to abstain not veto.

### **3.2 Lack of Criteria and Politicization**

International norms and customary law always allow a degree of interpretation and thus can be flexible to meet particular circumstances. The downside of flexibility is that political calculations may shape interpretation leading to inconsistent application of laws across time and across cases. This inconsistency leads to claims of political agendas and double standards. The 1990s interventions were particularly susceptible to these accusations because there was neither an accepted legal definition of

humanitarian intervention nor established criteria for action. There were frequent complaints that Western allies, particularly Israel, were given a free pass, while enemies of the West faced international action. There also was a feeling that problems in Yugoslavia and Haiti were addressed quickly because they were geographically close to major powers, while much worse problems in African countries were allowed to continue.

The language adopted at the 2005 World Summit, reinforced by the Security Council, moved R2P beyond humanitarian intervention in establishing a politically and legally binding set of standards (Gierycz). The R2P standards are, though, intentionally vague on a number of points. Countries must protect their citizens, but there are no firm guidelines for when a state has crossed the line. This vagueness will inevitably trigger political battles--one need only think of the many disputes over what constitutes genocide that have occurred even after acceptance of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Second, international action should come when states are "manifestly failing to protect their populations." Again, there will be debate over when such a condition exists. Third, the international community has the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means," and only consider force "should peaceful means be inadequate." These ideas follow the Just War principle of last resort, but could allow for long debates about whether peaceful means have been exhausted. For all of these reasons, R2P is left as a case-by-case decision and one that carries no legal obligation to act. This lack of specificity is intentional. It is favored by countries wary of R2P who do not want to give it further legitimacy with set standards, but it is also favored by the Great Powers who do not want to have their political options reduced. This leaves the world with little more clarity than existed with humanitarian intervention. Thus, complaints of inconsistency are sure to reemerge.

As previously mentioned, in the Libyan case, several key countries favored continued political pressure and negotiation rather than force. If Gaddafi had shown a true interest in meeting with foreign negotiators and had made some strategic concessions, he potentially could have delayed or prevented action, much as Sudan has done in the case of Darfur. The fact that action was taken in Libya then opens the question of why there was no equivalent action in Bahrain, or Yemen where the Western countries have stronger political ties. The perceived Western bias of R2P was highlighted just days after the U.N. authorized force, when Russian Prime Minister Vladimir Putin commented, "In general, it reminds me of a medieval call for a crusade" (Levy and Shanker 2011). Overall, there is no simple solution to the complications brought by vague terms, but that very point means that critics will continue to see R2P as a selective, political tool.

### **3.3 Authorization**

A major reason why both humanitarian intervention, and R2P, has been perceived as politically driven and selective is because of the workings of the U.N. Security Council. The Council is a political body, gives major power to the five permanent seats, and its voting rules can often end in stalemate. Even with these issues, a vast majority of states would rather the U.N. have the authority to authorize R2P rather than to allow unilateral action by Great Powers or regional groups. It is therefore a matter of how to make the best of an imperfect situation.

The U.N.'s failure to agree on action in Rwanda and Kosovo were prominent issues as R2P was being formulated. The ICISS argued that all R2P actions should seek Security Council approval to reinforce the importance of the U.N. and sustain international law. The ICISS, though, also suggested three further points on authorization. First, permanent members should follow a code of conduct under which they would not veto R2P actions unless there was a vital national interest at stake. This idea may have intellectual merit, but

it was dead on arrival in the real world. The veto, of course, goes back to the founding of the U.N. and was seen as a way of enticing the Great Powers into the U.N. The veto, and the threat of a veto, has given the powers major leverage that they have never been willing to limit in any previous U.N. reform package. Their view was recently restated by Putin who wrote to a Russian and foreign audience, "Let me remind you that the veto right is not a whim but an integral part of the global system, codified in the U.N. Charter, by the way, at the insistence of the United States" (No "Libyan scenario" 2012). The idea of a code was simply dropped as discussion of R2P moved forward in the U.N.

The ICISS also suggested that, if the Security Council did not act, the issue could be taken to the General Assembly through the "Uniting for Peace" resolution. This resolution dates to 1950, when western powers were trying to assure that the Soviet Union could not block action aiding South Korea. The resolution states that when the Security Council fails to act to maintain international peace and security, the General Assembly can issue recommendations. The legitimacy of the resolution is questioned by those who argue that it contradicts the Charter's allocation of duties, plus the legal weight of General Assembly resolutions is minimal. In any case, for R2P, any potential General Assembly role was negated by the 2005 World Summit document that directly reaffirmed the Security Council as the legitimate forum for authorization.

The ICISS further noted that in cases of Security Council inaction, concerned states may still wish to act. They discouraged unilateral action, given fears of political motives and a further weakening of the U.N., but suggested that there could be actions by regional groups and retrospective legitimacy given by Security Council approval. Interestingly, the Libyan case shows regional groups playing a different role, not as independent actors, but as "gatekeepers" for U.N. action (Bellamy 2011, 841). On March 7, the Gulf Cooperation Council (GCC) called on the Security Council to use all means necessary to protect civilians. The

Organization of Islamic Countries issued a similar statement, but with direct emphasis that no foreign ground troops should be involved. The African Union was more cautious as it criticized Libya, but did not call for forceful intervention. The key group, though, was the League of Arab States (LAS). The LAS called for a no-fly zone and establishment of protected safe areas for civilians. The LAS statement help tip the United States to support the use of force. It also made it more difficult for Russia and China to oppose the use of force, although they still could use the threat of a veto to keep the force's mandate limited.

With the code of conduct and General Assembly ideas removed, R2P authorization rests firmly with the Security Council. In the past, this has allowed China and Russia to end discussions of actions in Myanmar and Sri Lanka and to modify actions in the Libyan case. Regional groups pushing R2P in the Libyan case contributed to action, but this development raises long-term questions. If regional groups act as gatekeepers, can they veto operations they oppose? Can they ever pressure the U.N. to take actions that the Great Powers oppose? There also are questions of what group should be considered the true spokesperson for a region. R2P thus will either have to move forward with a highly political and divided U.N., or with a complicated and likely controversial multi-tiered authorization system. These are not problems for R2P alone, but since these same problems about authorizing action on other issues have not generated significant U.N. reform, it is unlikely that R2P will.

### **3.4 Whose Forces and Decisions**

Over its first decade, R2P remained largely a theoretical concept, so most discussion centered on questions of triggering actions. Now, more attention needs to be focused on implementation issues. A leading concern here comes from another U.N. structural issue, namely that there is no U.N. army or standing peacekeeping force. Some R2P actions may be delayed, or even never implemented, if no countries are willing to volunteer their forces and material.

Further, U.N. forces will be weak if they are drawn mainly from LDC armies. As of 2011, the ten top troop-contributing countries for peacekeeping were Bangladesh, Pakistan, India, Nigeria, Ethiopia, Nepal, Egypt, Jordan, Rwanda, and Ghana. Some of these countries have highly regarded troops, but the lack of major power involvement is still a problem if R2P missions are to be successful.

In cases where major powers do volunteer forces, the larger problem becomes that those countries will then expect to make the decisions on military tactics and goals. This further politicizes the action and raises the risk that there will be a mismatch between the original authorizing resolution and actions taken on the ground. For example, the initial stages of 1992 intervention in Somalia involved almost exclusively U.S. troops. The mission therefore was seen by some as a U.S. intervention, with U.N. cover. In time, other countries' troops and officials arrived, and the U.N. was given responsibility and authority, but tensions then emerged between U.S. and U.N. officials. There remained heavy U.S. influence until U.S. troops were removed in 1993, an action that effectively meant that the U.N. needed to end its involvement. It was therefore largely the United States that was making decisions for the international community.

In the case of Libya, the U.N. authorized member states "acting nationally or through regional organizations" to use all means necessary. England and France led many of the initial strikes. The United States was active, although President Obama announced that U.S. troops would quickly assume a supporting role focused on intelligence, logistics, and search and rescue. A senior White House official noted that Obama always stressed that US involvement should be "days, not weeks" (Cooper and Myers 2011). On March 31, formal control of the Libyan mission was transferred to NATO.

The shift to NATO control broadened the number of countries involved, but still left England, France, and the

United States as the military and political leaders. At an April 14 meeting of Foreign Ministers from NATO Allies and non-NATO Partners, the alliance committed to using all necessary resources and operational flexibility to meet the U.N. mandate until all attacks on civilians and civilian-populated areas ended, the Libyan government had withdrawn all military and para-military forces to bases, and the government permitted immediate, full, safe and unhindered access to humanitarian aid for the Libyan people. These new goals did not directly contradict the original U.N. resolution, but they were a modification and showed that the power of decision on specific goals often goes to those who advance the troops. China, Russia, South Africa and other soon claimed that NATO was not following the U.N. mandated goals, but could do little directly since their troops were not involved.

Jonathan Eyal has correctly argued that the move to NATO control

sharpened divisions in the UN, damaged the moral authority of the operation in the eyes of doubters and confirmed all the conspiracy theories of those who argued that R2P is nothing more but a new justification for some old-style Western intervention (C, 58).

If future R2P missions are authorized, careful consideration should be given to who will actually lead the forces.

Who leads the mission has a large impact on the tactics chosen. In Libya, the first tactics chosen resembled those of Kosovo. Airstrikes again proved to be militarily impressive, but an imprecise tactic as both civilians and fighters seeking to oust Gaddafi were killed and civilian infrastructure was damaged. NATO forces bombed government forces near rebel strongholds, but also support facilities, command centers, and government offices. Within days of Resolution 1973's approval, Chinese, Russian and other officials were calling for an end to bombing, noting that civilians were being killed in a mission designed to protect civilians. They

were later sharply critical of attacks that killed members of Gaddafi's family. In all, NATO aircraft flew nearly 10,000 strike missions. Had foreign ground troops been introduced, civilian deaths still would have occurred, but possibly would have been reduced, but the idea of ground troops was ruled out not on the comparative cost-benefit to civilian protection or on military grounds, but rather on political grounds. Russia and China would not have supported ground troops and Western powers were wary of placing troops in another Muslim country. The issue of blunted tactics became increasingly obvious as the war stretched from weeks into months and would have become even more glaring had it dragged into years of engagement. Ground troops may not be appropriate for every R2P operation, but if they are simply taken off the table, R2P will struggle to reach its goal of protecting civilians.

A second tactic highlighted by the Libyan case is the arming and training of insurgents. Resolution 1973 that authorized all means necessary build on Resolution 1970 passed weeks earlier. Resolution 1970 established an arms embargo on Libya and Resolution 1973 appeared to reinforce that policy. Members of the British Foreign Office, though, argued that 1973 allowed for the provision of defensive weapons if the weapons would aid the goal of protecting civilians (Eyal 2012). States such as Qatar sent weapons to the insurgents with at least the knowledge, if not the active support, of NATO officials. The difficulty of course is that once weapons enter a theatre it becomes impossible to control their future use. The insurgents mounted major offensives against regime strongholds that placed civilians in jeopardy. Later the U.N. Human Rights Council reported that "the *thumar* (anti-Qadhafi forces) committed serious violations, including war crimes and breaches of international human rights law" (U.N. Human Rights Council, 2012, 2). Furthermore, after the war, the arms held by various factions have been a major source of instability in Libya and the broader region. These experiences highlight several issues. First, if an R2P mission is supposed to protect civilians, it may need to protect them from

insurgents as well as from existing regimes. Second, arming factions in the short-term can have complicated and uncertain long-term consequences.

The Libyan experience may lead some countries to want more explicit military goals and rules of engagement included in resolutions. Requirement for more details, though, could further delay approval of resolutions as details are explored and debated. Countries putting their troops at risk may then chafe at the idea of others making military decisions for their soldiers. An alternative would be to pass resolutions more frequently, so that they can adjust to changing circumstances on the ground. This approach, though, would require repeated diplomatic work and would risk having missions terminated or significantly altered halfway through. All together, these practical difficulties of finding troops and setting tactics reduce the overall likelihood of future R2P missions.

### **3.5 Appropriate Goals**

A main goal of humanitarian intervention is to stop human rights violations and war crimes. R2P espouses a similar goal of protecting civilians from those crimes. How best to achieve this goal is not always clear. Outside forces could, for example, set up safe havens for civilians or establish corridors for humanitarian aid. There could be efforts to negotiate a ceasefire. There could be more dramatic actions to address the violations at their root by bringing regime change or defeat of one faction in a civil war. These are very different types of actions, so thought should be given to which objective is most likely to be necessary and the chosen objective should be made clear up front, so that those authorizing force understand what they are agreeing to do.

In the 1990s, the U.N. favored tactics at the less aggressive end of the spectrum in part because this lessened challenges to sovereignty and increased the chance of global support. Forces were sent in as “impartial” actors.

Writing about these interventions, Richard Betts has made the strong case that impartiality is in fact a “delusion” (1994). Using force always will change the dynamics on the ground and thus the political outcome, so it is never fully impartial. Further, [Edward N. Luttwak](#) (1999) has argued that the steps taken by outside observers at times may actually make situations worse in the long-run. Establishing safe havens encourages civilians to stay in a region and thus remain in harm’s way if the safe haven fails. Ceasefires do not resolve the underlying political dispute, so violence may restart in the future and, in the meantime, forces may regroup and rearm so that the second wave of violence is worse than the first.

Despite these existing ideas, R2P supporters often implied that interventions could be apolitical operations protecting civilians while not radically altering local political power. The Libya case calls this idea further question as the operation’s ultimate goal slid toward regime change. Resolution 1973 made no mention of regime change and had that idea explicitly been included, it is almost certain the resolution would have faced a Russian or Chinese veto. Just days after the resolution, however, leaders such as David Cameron of Great Britain, Nicolas Sarkozy of France and Obama began arguing that Gaddafi must be removed from leadership as the only way to assure long-term security for civilians. Further, from a practical perspective, the longer the fighting continued, the harder it became to imagine any result short of Gaddafi’s removal. If he remained in power, there would have been a day when Gaddafi could reignite his efforts to crush the opposition. Also, with the statements of key leaders, NATO’s reputation was increasingly tied to bringing about regime change.

Not surprisingly, countries wary of any intervention sharply opposed the drift toward the goal of regime change. In April, Russian Foreign Minister Sergei Lavrov argued, “The U.N. Security Council never aimed to topple the Libyan regime. All those who are currently using the U.N. resolution for that aim are violating the U.N. mandate” (NATO 2011). In

May 2011, in a Security Council debate on the protection of civilians in armed conflict, China bluntly warned that “[t]here must be no attempt at regime change ... under the guise of protecting civilians (Protection 2011). Russian, Chinese and other diplomats suggested that they had been tricked into agreeing to an R2P mission only to see it become a regime change mission (Garwood-Gowers 2012). There also was criticism that NATO operations ended almost as soon as Gadaffi was captured and killed despite ongoing violence in the country.

Academics have argued that the shift from R2P to regime change alters the moral legitimacy of the action. James Pattison (2011) argues that Just War theory could support a R2P mission in Libya since there were sufficient reasons to act and there would be low costs. However, there was not sufficient cause for a Just War of regime change and that goal would bring such high costs that “this bar is unlikely to have been met in Libya.”

In the wake of the Libyan experience, some observers therefore have suggested that the way to rescue R2P is to separate it from the controversial idea of regime change (Western and Goldstein 2013). The problem with this idea is that in many cases, R2P interventions will require regime change to be fully effective. Even those that do not require full regime change will need to greatly alter the local political balance, since if existing governments were willing and able to protect their citizens, they would have taken those steps to avoid the intervention. Saying upfront that regime change is necessary or even likely will make missions more controversial and less often approved. Announcing regime change only once operations have begun will lead to poorly coordinated actions and resentment. Ultimately, widespread international acceptance that certain situations require regime change is needed, but such acceptance is unlikely to emerge often in today’s political climate, so this is a major problem for R2P in the future.

### 3.6 Post-conflict Rebuilding

The ICISS report and subsequent U.N. documents have argued that R2P needs to move beyond prevention and action to consider rebuilding after interventions. As the report described it:

Too often in the past the responsibility to rebuild has been insufficiently recognized, the exit of the interveners has been poorly managed, the commitment to help with reconstruction has been inadequate, and countries have found themselves at the end of the day still wrestling with the underlying problems that produced the original intervention action (ICISS 2001).

These issues historically have received much less academic and policy attention. Also, frustrations over troops' deaths in cases such as Somalia, and over long-term commitments with no clear end such as in Bosnia and Kosovo, have meant that much of the focus that has been given to post-conflict issues has been on developing exit strategies that seek to end interventions quickly. The lack of planning and the desire to rush out quickly must be reversed if R2P is to prove a long-term benefit.

The ICISS suggested focusing on the key areas of security, justice and reconciliation, and development. Security requires functioning police and armed forces that are loyal to the new government, properly trained, and willing to perform the tasks they are assigned. In many cases, security requires disarming and demobilizing factions. Justice and reconciliation requires a functioning judicial system. Countries also must consider options of trials, truth commissions, or amnesties for those involved in the previous government. Long-term stability requires economic development to provide jobs, services, and a viable tax base.

In Libya, NATO operations were ended on October 31, 2011 less than two weeks after Gaddafi was killed. An interim government and cabinet headed by Prime Minister

Dr. Abdurrahim El Keib was formed. To assist the new government, the U.N. authorized the United Nations Support Mission in Libya (UNSMIL) in September 2011, but security operations were fully in the hands of the interim government (Kumar 2012). Steps have been taken to rebuild the military and police forces, but it will take time for them to be seen as fully functioning and legitimate. One major challenge the new government faces is disarming the factions and assuring control of what once were major and advanced weapons in the Libyan military's arsenal. The impact of weak government control of security was highlighted by the September 11, 2012 attack on the American diplomatic mission at Benghazi. The attack was carried out by well-armed Islamist militants who have gained in power in the vacuum of weak government control. Weak government control of weapons and territory has also affected the region as equipment and militants have moved to Algeria, Mali, and Chad.

The new government's efforts at justice began with a jarring start when Gaddafi was killed after his capture. Other revenge killings occurred, but they did not spiral out of control. The government, therefore, has begun to consider establishing a truth commission expressly modeled on those in Chile, Argentina and South Africa. The focus would be on fact finding and reconciliation rather than retribution. Trials, though, are likely for the leaders of the Gaddafi regime. Again the international world must keep focus on Libya so that fair standards are established, and must offer it technical assistance when requested.

On July 7, 2012, the National Transitional Council supervised democratic elections for a 200 member General National Congress to replace the Council. The assembly was to choose a prime minister and organize parliamentary elections in 2013. The process did not proceed smoothly as in October 2012, Libya's Prime Minister-elect Mustafa A.G. Abushagur stepped down after failing a second time to win parliamentary approval for a new cabinet. A process to write a constitution will also be determined to be followed by a

referendum. These various moves show progress in establishing a new government that can bring security and justice, but a stable government with full control of its own territory is still years away.

On development, Libya does have an advantage compared to many possible R2P cases, namely that its oil and large foreign assets provide it with major resources. Allocating those resources in an equitable way is more of a challenge. Before the war, income distribution was extremely skewed. This reality will not suddenly reverse, so the new government will face the challenge of citizens with higher expectations, but no immediate prospects for long-term, equitable growth.

If Libya falls into political instability, violence, or economic stagnation, or if it requires major long-term international commitments of time and resources, it will be harder to convince the international community to support future R2P actions.

#### **4. Libya's Implications for Syria and Beyond**

At the beginning of the intervention in Libya, Obama and others stressed that the Libyan case was unusual and should not be seen as establishing set criteria and expectations for future actions. The reality, though, is that since Libya was the first major use of force for R2P actions, this case will have major implications for the norm's future. For those favoring the development of R2P, the very fact of action in Libya with U.N. consent is an important milestone. However, the operation brought back many of the unresolved issues of the past and reinforced many of the critics' worries. It also showed the major challenges of implementation and rebuilding that have until now received less attention in R2P discussions. Overall, the use of R2P in Libya has decreased the likelihood of actions elsewhere. As Evans, one of the long-term architects of the policy noted, "Consensus has collapsed amid recrimination about how the NATO-led implementation of the Security Council's Libya mandate 'to protect civilians and civilian populated areas under threat of attack' was carried out (Philps 2012).

As protests and government crackdowns escalated in Syria, the Special Advisers of the Secretary-General on the Prevention of Genocide and on the Responsibility to Protect called “on the international community to take immediate, decisive action to meet the responsibility to protect populations at further risk of atrocity crimes in Syria, taking into consideration the full range of tools available under the United Nations Charter” (Statement 2012). Action, though, has been minor and slow as countries consider the realities of Syria’s geopolitical realities and the memories of R2P in Libya.

Russian officials have been the most explicit about the connection of Libya and Syria. They repeatedly have said that they will not accept a “Libya-style” solution for Syria. Putin recently wrote, “Learning from that bitter experience, we are against any U.N. Security Council resolutions that could be interpreted as a signal for military interference in the domestic processes of Syria” (“Russia’s Putin” 2012). Russia has long-standing ties with Syria, sees those ties as a way to keep Russian influence in Middle East discussions, continues to sell Syria military supplies, and has a naval base in Syria. Russia’s stance on many issues also has toughened as Putin reasserts power as President. Russia thus has both philosophical and practical objections to major action in Syria. Additionally, China has renewed focus on protecting sovereignty. An editorial in the *People’s Daily* referred to Libya as “a negative case study” (Garwood-Gowers 2012). Russia and China have used a double veto in the Security Council to block even mild punishments for Syria. India, South Africa and others also appear to have become more opposed to intervention as a result of events in Libya. Indian U.N. representative Hardeep Singh Puri noted “the Libyan case has already given R2P a bad name” (Beauchamp 2012).

The Western countries, too, are wary after Libya, so there has been much less discussion of using force. When force was raised as an option in the U.S. Senate, military officials responded by explaining why military operations in Syria

would be much more difficult than in Libya. Pragmatic constraints, not the responsibility to protect civilians, carry the day.

The previously discussed unresolved issues about R2P reemerged in discussions of Syria. Great focus has been put on sovereignty. Russia's Lavrov has argued, "We never said President Assad remaining in power is the solution to the crisis. What we did say is that it is up to the Syrians themselves to decide how to run their country" ("Russia Won't" 2012). Lavrov also has noted that, "regime change is not our profession" (MacFarquhar 2012). Further, Russia and China have been hesitant to pass resolutions with any mention of punishment for fear that the process will end in calls for force and regime change. Ruan Zongze, vice president of the China Institute of International Studies, argued that Libya shows R2P "proved nothing more than the pursuit of hegemony in the name of humanity" (2012). The Libyan case therefore seems to have sensitized key players to such a point that major R2P action seems highly unlikely.

The Syria case also shows the ongoing issues around who can authorize action. In this case, the vetoes of Russia and China have blocked action. More subtly, the threat of vetoes has led to repeated efforts to waterdown resolutions, for example by taking out any mention of the word sanctions. This reinforces the fact that, with current U.N. rules, future R2P resolutions are likely to be blocked, or to be so toothless that they put little additional pressure on states. Frustrated with the Security Council stalemate, those wanting action turned to the General Assembly. In February 2012, the General Assembly supported a resolution condemning human rights violations and calling for Assad to step down. The vote was 137-12 with 17 abstentions. The General Assembly resolution explicitly built off the ideas of the Arab League, another instance of regional groups becoming active in pushing for internal reforms. Neither the General Assembly nor the Arab League, though, has been able to convince Assad to end the violence or consider stepping down. These resolutions also have not convinced Russia or

China to change their stance. General Assembly resolutions can indicate global preferences, but R2P actions depend on the politics of the Security Council. R2P supporters like Canada's former Minister of Foreign Affairs Lloyd Axworthy have returned to arguing for reform of U.N. vetoes, but this will surely fall on deaf ears yet again (Axworthy 2012).

Overall, it appears that if R2P is not dead, it is on life support. R2P prevention efforts may continue, although it is not clear that these efforts really need the term R2P to move forward. On the more dramatic idea of R2P interventions, key issues have never been resolved and recent events have only highlighted these issues and heightened critics' fears. The terms have changed from humanitarian intervention to R2P, but the debates are largely the same. In the wake of the Libyan case, interventions are likely to dwindle much as they did for the first decade of the 21<sup>st</sup> century following the backlash against the humanitarian interventions of the 1990s.

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