Humanitarian Intervention and the Responsibility to Protect: An analysis of factors contributing to the implementation of R2P in Libya and its implications for future cases of humanitarian intervention

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Humanitarian Intervention and the Responsibility to Protect: An analysis of factors contributing to the implementation of R2P in Libya and the implications for future cases of humanitarian intervention

Not until recently, has the idea of prevention gained its rightful role in the long-standing international debate on humanitarian intervention. The debate has traditionally centered on the use of military force, with a particular focus on whether states have the right to intervene in a military capacity to prevent or halt egregious and widespread violations of human rights. ¹ Despite this misplaced focus, it is widely accepted that due to the inadequacies of mechanisms within international law, use of force to prevent human rights abuses is largely ineffective.²

From the Rwandan genocide of the 90s to the present situation in Syria, many challenging and complex situations could have been prevented from escalating into humanitarian crises with early international commitment to addressing and resolving the issues.³ Recent developments, such as the use of the Responsibility to Protect (R2P) doctrine in preventing mass atrocities from occurring in Libya, indicate a global understanding for the need for intervention to protect vulnerable populations despite the traditional legal understanding of state sovereignty. Proponents of R2P argue that it is indicative of a global acceptance of sovereignty as responsibility, a normative shift from the traditional notion of a state “right” to a state “duty.”

¹ Simons, Penelope. From Intervention to Prevention: The Emerging Duty to Protect. [http://www.worlddialogue.org/content.php?id=328 Accessed April 1, 2014.](http://www.worlddialogue.org/content.php?id=328)
² Ibid.
³ Ibid.
This paper will examine this global focus on prevention of widespread and egregious mass atrocities, and trace its emergence in international discourse from the idea of a legal right to one of a moral obligation, as well as an extension of rule-making associated with bureaucratic behavior of large international organizations. It will discuss and analyze the most recent case of humanitarian intervention approved by the United Nations Security Council in Libya, lauded by proponents of R2P as setting precedence for swift humanitarian action in the event of future crises, and determine the factors comprising the decisions of the P5 to either support or oppose intervention in Libya. Furthermore, it will discuss the implications of Libya and the R2P for future responses to humanitarian crises.

**Historical background**

In 1999, Secretary General Kofi Annan, in his address to the 54th United Nations General Assembly set the context and made the case for humanitarian intervention when he said:

> State sovereignty, in its most basic sense, is being redefined by the forces of globalization and international cooperation. The State is now widely understood to be the servant of its people, and not vice versa [...] While the genocide in Rwanda will define for our generation the consequences of inaction in the face of mass murder, the more recent conflict in Kosovo has prompted important questions about the consequences of action in the absence of complete unity on the part of the international community. It has cast in stark relief the dilemma of what has been called humanitarian intervention: on one side, the question of the legitimacy of an action taken by a regional organization without a
United Nations mandate; on the other, the universally recognized imperative of effectively halting gross and systematic violations of human rights with grave humanitarian consequences. The inability of the international community in the case of Kosovo to reconcile these two equally compelling interests—universal legitimacy and effectiveness in defense of human rights—can only be viewed as a tragedy. It has revealed the core challenge to the Security council and to the United Nations as a whole in the next century: to forge unity behind the principle that massive and systematic violations of human rights—wherever they may take place—should not be allowed to stand [...] To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask—not in the context of Kosovo—but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defense of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold? To those whom the Kosovo action heralded a new era when States and groups of States can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances?
In response to the Secretary General, the Government of Canada established the independent International Commission on Intervention and State Sovereignty (ICISS).\(^4\) Consisting of 12 globally prominent members, the Commission released *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* in December 2000, arguing that, “sovereign states have a responsibility to protect their own citizens from avoidable catastrophe--from mass murder and rape, from starvation--but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”\(^5\)

Identifying a set of criteria that it conceived as justifying military intervention to protect human rights, including ongoing or imminent “serious and irreparable harm” involving “large scale loss of life,” or “large scale ethnic cleansing” and the use of force as a last resort, and the use of “proportional means” such that, “the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.”\(^6\)

The Commission stressed that decisions on intervention should be made by the Security Council, but declared that if the Council fails “to discharge its responsibility in conscience-shocking situations crying out for action, then it is unrealistic to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations.”\(^7\) In December 2004, the Secretary General’s High-level

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\(^5\) Ibid.

\(^6\) Ibid.

\(^7\) Ibid.
panel on Threats, Challenges and Change released a report in which they, “endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security council authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.”

Additionally, the Panel enjoined the Security Council to espouse an agreed set of guidelines that maximized consensus-building amongst its Member States on the appropriate use of force, thereby, minimizing the possibility of individual Member States seeking alternatives to the Security Council. Its proposed guidelines provide that in consideration of authorizing or endorsing the use of military force, the Security Council should always address, amongst other considerations it may take into account, at least the following five basic criteria of legitimacy:

- **(I) Seriousness of threat:** Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify prima facie the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

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(II) Proper purpose: Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

(III) Last resort: Has every nonmilitary option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

(IV) Proportional means: Are the scale, duration, and intensity of the proposed military action the minimum necessary to meet the threat in question?

(V) Balance of consequences: Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction.9

Despite the Security Council’s refusal to adopt the Panel’s proposed criteria, the Secretary General and Heads of State endorsed the Responsibility to Protect idea at the UN’s 2005 Millennium+5 Summit. The Panel’s final document elaborated on the responsibility of every state to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity.10

In January 2009, the Secretary General noted in a Report on Implementing the Responsibility to Protect, that the concept did not alter the legal obligations of the member states to refrain from the use of force except in conformity with the Charter, and

9 Ibid.
10 Ibid.
that “humanitarian intervention had posed a false choice between two extremes: either standing by in the face of mounting civilian deaths or deploying coercive military force to protect the vulnerable and threatened populations.” Advocating that the perception of “sovereignty as responsibility” may prevent the making of that choice, he identified three pillars to an implementation strategy:

*Pillar I: stresses that states have a primary responsibility to protect their own populations, and suggests that states can improve their capacity to do so.*

*Pillar II: concentrates on the responsibility of the international community to assist states in building capacity to protect their own populations through development assistance, preventive deployments, rule of law assistance.*

*Pillar III: emphasizes the responsibility of the international community to take appropriately timed and decisive action to prevent genocide, ethnic cleansing, war crimes, and crimes against humanity if and when a state is “manifestly failing” to protect its citizenry.*

Nevertheless, Pillar III also emphasizes that this can be accomplished through peaceful means, such as diplomatic sanctions, arms embargoes, and other coercive means. The Secretary General’s report was debated at length in the July 2009 UN

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12 Ibid.

13 Ibid.
General Assembly, in which, the United States joined a majority, including Russia and China, in supporting the implementation of Responsibility to Protect. Despite the majority consensus, numerous developing countries expressed concern that the concept of Responsibility to Protect could be used to undermine less powerful states.\textsuperscript{14}

The case against Responsibility to Protect

Opponents of R2P will often argue that military intervention in another state is prohibited in international law under article 2.4 of the United Nations Charter, which states:

\begin{quote}
All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. \textsuperscript{15}
\end{quote}

This preemptory norm of international law requires that states settle their disputes by peaceful means, and when that fails, to resolve the issue through the United Nations Security Council resolution.\textsuperscript{16} There are, however, two exceptions to this prohibition: under Article 51 of the United Nations Charter lies the “inherent” right of states to resort to the use of self-defense or for the purposes of collective self-defense.\textsuperscript{17} Additionally, the


\textsuperscript{15} Simons, Penelope. From Intervention to Prevention: The Emerging Duty to Protect. http://www.worlddialogue.org/content.php?id=328 Accessed April 1, 2014.

\textsuperscript{16} Ibid.

Security Council also retains the monopoly on the legal use of military force through Article 42, which gives it the right to authorize the use of force “to maintain or restore international peace and security.”\textsuperscript{18}

Since the end of the Cold War, Security Council practice has progressively expanded the definition of “international peace and security,” which under Article 42 was narrowly defined and not seen to include a right to intervene in a state to prevent egregious and widespread violations of human rights.\textsuperscript{19} Although some continue to challenge the Security Council’s authority in this regard, it is generally accepted that the Council has a legal right to authorize use of force for the purpose of preventing or stopping widespread violations of human rights.\textsuperscript{20} However, the remaining point of contention herein is the unilateral use of force, military action taken without Security Council authorization, to prevent the widespread violations of human rights.\textsuperscript{21}

Case in point - NATO’s unauthorized humanitarian war in Kosovo in 1999, which is widely accepted by legal scholars as an illegal use of force.\textsuperscript{22} The NATO campaign in Kosovo did not lay the groundwork for an emerging legal norm to intervene, and was largely recognized as a “one-off violation of international law.”\textsuperscript{23} NATO Member States


\textsuperscript{19} Ibid.

\textsuperscript{20} Ibid.

\textsuperscript{21} Ibid.

\textsuperscript{22} Ibid.

\textsuperscript{23} Ibid.
recognized this incident as singular and maintained that it should not be seen as a modification of the United Nations Charter’s directives on the use of force.\textsuperscript{24}

Interestingly, the Kosovo debates provided clarification on the legality of unilateral use of force to prevent egregious violations of human rights - it reflected the widespread belief that military intervention, although illegal, was morally justifiable to directly prevent large-scale atrocities, such as those perpetrated in Kosovo.\textsuperscript{25} NATO member states justified their bombing campaign as a “moral duty,” with Javier Solana, then secretary-general of NATO stating:

\textit{This military action is intended to support the political aims of the international community...We must halt the violence and bring an end to the humanitarian catastrophe now unfolding in Kosovo...We have a moral duty to do so. The responsibility is on our shoulders and we will fulfill it.}\textsuperscript{26}

Many scholars and civil society organizations argued that NATO had not exhausted all peaceful means to resolve the issue before launching its interventionist campaign. Moreover, the methods of warfare employed by NATO, such as high-altitude bombing, use of cluster bombs and targeting of civilian infrastructure, were seen as violating key principles of international humanitarian law.\textsuperscript{27} Further criticism involved

\textsuperscript{24} Ibid.

\textsuperscript{25} Ibid.

\textsuperscript{26} NATO, \url{http://www.nato.int/docu/pr/1999/p99-040e.htm} Accessed March 25, 2014.

NATO’s selective sense of obligation contrary to its expanding military purview; ethnic cleansing and human rights violations were occurring in Sudan and Afghanistan, yet NATO had not chosen to intervene on behalf of those populations.

Opponents of R2P will argue that the NATO bombing campaign of 1999 helped clear out Serbian forces from Kosovo, allowing the Kosovo Liberation Army to turn on the Serbian civilians remaining in the province and in neighboring Macedonia. The argument here is that the case for humanitarian intervention or aiding defenseless civilians is usually solved by empowering armed factions claiming to represent these groups, who are often responsible for major human rights violations of their own.\textsuperscript{28} In Kosovo, the NATO bombing campaign actually hardened Serbian opinion against the Kosovar Albanians who rallied behind Milosevic, causing an escalation in Serbian attacks on Kosovars.\textsuperscript{29}

The idea of Responsibility to Protect as a norm of international law is one that is in question, especially by opponents who rightly fear the abuse of such interventionist policy. The 2008 case of Russia is often cited as it invoked humanitarian intervention as a justification for its military offensive in Georgia.\textsuperscript{30} The corresponding European Union Fact-Finding Mission on the Georgia Conflict rejected Russia’s argument and offered a skeptical view of the legal impact of Responsibility to Protect, stating that under international law as it stands, humanitarian interventions are in principle not admissible.

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\textsuperscript{28} Ibid.

\textsuperscript{29} Ibid.

\textsuperscript{30} Russia, Georgia and the Responsibility to Protect. \url{http://ojs.ubvu.vu.nl/alf/article/view/58/115} Accessed December 9, 2013.
and illegal, and although morally desirable, such proposals have not yet developed into law. The endorsement of the concept of Responsibility to Protect by international actors lightly affected the law on unilateral interventions because it was limited to UN-authorized operations.

Another oft-cited case by opponents of R2P is that of Bosnia, where the US eventually backed Croatian and Bosnian Muslim forces to block further aggression by President Milosevic, and although, these forces were considerably less brutal than the Serbian forces, they were nevertheless, complicit in several large-scale atrocities.31 Moreover, in April 2011, two Croatian military leaders were tried and convicted at The Hague for crimes against humanity.

Opponents of R2P also claim that moral costs of intervention, such as the loss of innocent lives during a military intervention, undercuts the moral calculus intervention policies are based upon. The death of 18 U.S. soldiers in the 1993 Somalian “Black Hawk down” incident was a humanitarian intervention that lead to the death of at least 500 Somalis by UN troops that day, and as many as 1,500 during the remaining time of the mission, more than half of them women and children.32 Moreover, the record of preventive missions has been terrible, such as the genocides in Bosnia, Rwanda and Darfur, where International peacekeepers were present during the 1995 slaughter of


32 Ibid.
approximately 8000 Bosnian Muslims in Srebrenica, witnessed by 400 UN peacekeepers.\textsuperscript{33}

The strongest argument against humanitarian interventions is that of opportunity costs, lost opportunities that could have received resources instead of military missions.\textsuperscript{34} The argument herein is that military interventions are far less cost-effective and are a particularly expensive way to save lives.\textsuperscript{35} Instead of intervention, the focus ought to be on prevention, such as through international public health programs that have proven to be the most cost-effective way to save lives abroad.\textsuperscript{36} Furthermore, disaster relief efforts are a viable alternative to military interventions, followed by aiding victims of violent conflicts and repression, and refugees.

\textbf{Analysis of international organizations (IOs) & bureaucratic behavior}

In \textit{Rules for the World: International Organizations in Global Politics} Michael Barnett and Martha Finnemore argue that an International Organization, such as the UN, is a bureaucracy with a distinctive social form of authority and has its own internal logic and behavioral proclivities.\textsuperscript{37} Authority is defined as the ability to induce deference from others through use of discursive and institutional resources. They further state, that it is because of this autonomy, that IOs like the UN, are able to change the world around them by making ‘impersonal rules.’ Moreover, IOs are often trusted by actors because of the

\textsuperscript{33} Ibid.
\textsuperscript{34} Ibid.
\textsuperscript{35} Ibid.
\textsuperscript{36} Ibid.
\textsuperscript{37} Barnett, Michael and Finnemore, Martha. \textit{Rules for the World: International Organizations in Global Politics}. Cornell University Press,
implicit legitimacy they hold, as opposed to states who are conceived to be self-serving actors.

In the context of Responsibility to Protect, the UN Secretariat and the UN Department of Peace Keeping Operations as the implementing mechanisms of said doctrine are the bureaucracy that exercises power in two ways: first, it regulates the social world by correcting or attempting to correct the behavior of state and non-state actors by changing incentives for their decisions. Through a range of monitoring tools, the UN General Assembly determines the extent of violations of human rights and freedoms in a state and attempts to change the behavior of the culpable state through various corrective actions executed by enforcement mechanisms. Responsibility to Protect goes one step further, as it attempts to codify the norms of acceptable behavior by states with respect to its population, instead of regulating the social world which has preexisting codification of impersonal rules, such as international laws that are largely founded on the concept of state sovereignty.

Second, IOs exercise power by using their knowledge and authority to constitute the world, creating new interests, actors and social activities.\textsuperscript{38} Essentially, they have the power to greatly influence the construction of present social reality.\textsuperscript{39} It is arguable that the idea of Responsibility to Protect is a product of the natural progression of bureaucratic authority, an exercise of power by the UN. As an IO, the UN Secretariat led by the Secretary General, holds a social authority that seemingly transcends self-interested behavior attributed to Heads of State.

\textsuperscript{38} Ibid.

\textsuperscript{39} Ibid.
More importantly, as the nexus of multilateral cooperation and international knowledge-base, the UN Secretariat and Member States have the agency to construct social norms on acceptable behavior and governance by states. Not only can it determine who is in violation of human rights, but what human rights are and how they should be protected and promoted.\(^{40}\) By doing so, the UN much like a bureaucracy, has the authority to regulate its creation of social reality.

Although IOs, such as the UN, exercise power through rule-making and possess powers of social construction, they also exhibit self-defeating behavior.\(^{41}\) Reasons for failure range from simple funding and staffing inadequacies to more complicated designs, such as excessive specialization and division of labor that creates tunnel vision and an inability to respond to unique crisis situations.\(^{42}\) As any bureaucracy, the UN exhibits these ‘pathologies’, dysfunctions that are attributable to rigid bureaucratic rules and structures, and are often self-protective when actualization of self-professed goals are challenging.\(^{43}\)

It is widely accepted that the construction of Responsibility to Protect, was an endeavor spurred by the failings of the UN in Rwanda and Kosovo; however, the shortcomings of a bureaucracy, such as inadequate resources and inability to deviate from path dependent protocols contributed to the organizational failings of the UN. The UN response, within the context of a bureaucracy, to these failings was logical; it defined the

\(^{40}\) Ibid.  
\(^{41}\) Ibid.  
\(^{42}\) Ibid.  
\(^{43}\) Ibid.
problems manifested in Kosovo and Rwanda within its preferred technocratic context, and as a rational-legal authority, it devised a solution that reflected those preferences of technocratic impartial action, and constructed more ‘impartial rules’ and social norms that attempted to regulate state behavior, such as those manifested within the R2P doctrine.44

With its construction of the Responsibility to Protect doctrine, in response to its failings to appropriately address the humanitarian tragedies in Kosovo and Rwanda, it is arguable that the UN Secretariat performed its bureaucratic function by constructing social norms of ‘state responsibility to its population’ and ‘international responsibility to people,’ which expanded its regulating authority in present social reality. Despite the criticism of simply being an exercise in ‘bureaucratic imperialism,’ as suggested by opponents, the R2P doctrine can be seen as a logical outgrowth of the UN’s authority to create impartial rules in regulating social reality, and a rational attempt to prevent future humanitarian disasters.45

Libya and the implementation of R2P

The crisis in Libya began as political protests against the Libyan leader Muammar Gaddafi’s 41-year reign spread from the capital of Tripoli, and across the country to the city of Benghazi.46 Quickly becoming the opposition’s stronghold, Benghazi fell under the shocking brutality of Gaddafi who quickly dispatched the national army to crush the rebels.47 Displaying a complete disregard for human rights, the Libyan leader announced

44 Ibid.

45 Ibid.

46 Alex J. Bellamy, “Libya and the Responsibility to Protect: The Exception and the Norm,” Ethics and International Affairs, Vol. 25, No. 3 (Fall 2011)

47 Ibid.
his clear intentions in a public threat broadcasted on February 22, 2011, “We are coming tonight...We will find you in your closets...We will show no mercy.”

Gaddafi’s threat presented the “imminent threat” to massacre the city’s population, and the international community recognized the need for quick action in response to the Libyan government’s “unwillingness” and its “manifest failure” to uphold its responsibility to protect the Libyan people.

Early condemnation and calls for action emerged in response to the crisis from regional entities. Reacting quickly to Gaddafi’s public threats, on February 22, 2011, the Special Advisers on the Prevention of Genocide and the Responsibility to Protect, issued a statement reminding the Libyan leader and his government of its responsibility to protect its citizens, and called for an immediate end to the violence.

The United Nations Human Rights Council followed suit, and adopted Resolution S-15/2, which called on the Libyan government to uphold its responsibility to protect its citizens and halt all activities that violated the human rights of its populace. Furthermore, it called for the UN General Assembly to suspend Libya’s membership from the Council, which was accepted and executed on March 1, 2011.

The League of Arab States condemned the violence against civilians, and called for a dialogue between the government and the interim opposition government.

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established in February 2011, and later named the National Transitional Council (NTC).\textsuperscript{51} The African Union on February 23, 2011, condemned the violence against civilians in Libya, and called for a political solution to the crisis, rejecting any foreign intervention.\textsuperscript{52} Notably, the AU adopted a “Roadmap for Peace” on March 25, 2011, which called for an immediate ceasefire and implementation of political reform.\textsuperscript{53} The Roadmap also provided for monitoring mechanisms, but was swiftly rejected by the National Transitional Council (NTC), as it did not provide for the resignation of Gaddafi, nor did it account for human rights violations perpetrated by his forces.\textsuperscript{54}

Contrastingly, the Gulf Cooperation Council and the League of Arab States called on the Security Council to issue a no-fly zone over Libya on March 7, and March 12, 2011, respectively.\textsuperscript{55} In response to the unrest in Libya, and responding to concerns from the Arab League, African Union, Organization of the Islamic Conference, and the United Nations Human Rights Council, the Security Council passed Resolution 1970 on February 26, 2011, invoking the Council’s Chapter VII powers.\textsuperscript{56} In it, the Council

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\textsuperscript{52} African Union. \url{http://www.au.int/en/sites/default/files/COMMUNIQUE_EN_10_MARCH_2011_PSD_THE_265TH_MEETING_OF_THE_PEACE_AND_SECURITY_COUNCIL_ADOPTED_FOLLOWING_DECISION_SITUATION_LIBYA.pdf}

\textsuperscript{53} African Union. \url{http://www.au.int/en/sites/default/files/communique_-_Libya__eng_%5B1%5D_0.pdf}

\textsuperscript{54} Williams, “The Road to Humanitarian War in Libya.”

\textsuperscript{55} Hehir, Aidan. “The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.”

\end{footnotesize}
affirmed the Government of Libya’s responsibility to protect, marking the first time the Council had referred to the R2P framework since the situation in Darfur.\(^{57}\)

It also imposed a travel ban and asset freeze on the Gaddafi family and key members of government, an arms embargo, and referred the situation to the International Criminal Court for investigation into reports of crimes against humanity.\(^{58}\) By March 2011, the European Union responded to the crisis with sanctions, an arms embargo, and a travel ban on Gaddafi and members of his family and froze assets held by the central bank and the Sovereign wealth fund of Libya.\(^{59}\) Individual member states including the U.K., U.S., Switzerland, Australia, and Canada, reacted to the situation by freezing assets and imposing travel bans and sanctions of their own.\(^{60}\)

Within Libya, members of the government, military, tribal leaders, and army units defected and joined the opposition, which had established itself under the leadership of former Justice Minister Mustafa Abdul Jalil.\(^{61}\) This was especially so after February 22, 2011, the day the Government of Libya began targeting civilians in aerial bombardments. France and the U.K. advocated for the recognition of the rebel movement,

\(^{57}\) Ibid.

\(^{58}\) Ibid.

\(^{59}\) Ibid.


\(^{62}\) Ibid.
and spearheaded the calls for a no-fly zone, provided it received regional and legal support.\textsuperscript{62}

In London, leaders from 35 governments, NGOs, and regional organizations including NATO, met on March 29, 2011, to discuss the worsening situation in Libya, and upon reaching a consensus on the failed legitimacy of Gaddafi’s government established a political contact group to provide leadership and overall political direction to Libya in close coordination with the UN, AU, Arab League, OIC, and the EU.\textsuperscript{63}

Despite these multilateral efforts, Gaddafi’s attacks on Benghazi continued and the Security Council passed Resolution 1973 - with abstentions from China, Russia, India, Brazil, and Germany - on March 17, 2011, sanctioning a no-fly zone over Libya and authorizing states to “take all necessary measures...to protect civilians and civilian-populated areas under threat of attack.\textsuperscript{64} Secretary General Ban Ki-Moon issued a statement following immediately the historic decision by the Council, highlighting how Resolution 1973, “affirms, clearly and unequivocally, the international community’s determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their own government.”\textsuperscript{65}

\begin{itemize}
\item \textsuperscript{63} NATO. London Conference on Libya, 29, March, 2011. \url{http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/20110927_110329_-London-Conference-Libya.pdf}
\item \textsuperscript{65} Ibid.
\end{itemize}
A coalition of states consisting of 15 NATO countries, Sweden, Qatar, Jordan, and the U.A.E. jointly implemented the no-fly zone over Libya as mandated by Resolution 1973, and provided support to the NTC forces in the cities of Benghazi, Misrata, Tripoli, and Sirte.\textsuperscript{66} The crisis in Libya quickly deteriorated into a civil war between rebel forces and pro-Gaddafi military.\textsuperscript{67} NTC ground forces and the Coalition fought to gain control of loyalist territory through aerial bombardments to which, Gaddafi’s forces responded with use of cluster munitions and targeted civilian areas.\textsuperscript{68} The UN High Commissioner for Refugees (UNHCR) reported that many civilians had fled the conflict and crossed the border into Tunisia, Egypt or Chad.\textsuperscript{69}

On October 20, 2011, following the death of Gaddafi and his son Mutassim, the NTC which by September 2011 was universally accepted as the governing body of Libya, declared the end of the eight-month conflict, and the NATO mission ceased on October 31, 2011.\textsuperscript{70} Throughout the conflict, NTC forces including other anti-Gaddafi militias were accused of targeting Sub-Saharan Africans due to perceived loyalty to Gaddafi.\textsuperscript{71} Reportedly, foreign migrants were subject to arbitrary arrests and in some cases were subject to torture and execution.\textsuperscript{72} Further undermining the human rights record of the


\textsuperscript{67} Crisis in Libya. \url{http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya}

\textsuperscript{68} Ibid.

\textsuperscript{69} Ibid.

\textsuperscript{70} \url{http://www.aljazeera.com/news/americas/2011/10/20111027142458981751.html}

\textsuperscript{71} Crisis in Libya. \url{http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya}

\textsuperscript{72} Ibid.
TNC was a disturbing report published by the International Organization for Migration on November 3, 2011, whose findings indicated that 768,372 foreign migrants had left Libya.\(^73\)

Human Rights Watch published a report in which it stated that bodies of 53 Gaddafi supporters had been discovered on October 23, 2011, apparently executed by rebel militias.\(^74\) Additional concerns of human rights violations by coalition forces, including NATO’s aerial bombardments resulting in possible civilian casualties, further undermined the humanitarian nature of the intervention.\(^75\) To this effect, the Prosecutor of the International Criminal Court in a November 2011 report, highlighted consideration of allegations of war crimes committed by all sides in the conflict and stated that NATO may have used indiscriminate force in civilian occupied areas.\(^76\) NATO was also under fire from some member states and civil society organizations for effecting regime change by helping rebel forces defeat Gaddafi’s army, actions that overstepped the bounds of its civilian-protection mandate.\(^77\)

**Political motivations of R2P in Libya**

Due to the Security Council’s swift and robust response in Libya, along with the widespread support for intervention shielding it from accusations of Western imperialism


\(^{76}\) Crisis in Libya.

- the R2P’s influence on Resolution 1973 is lauded by the international community. Skeptics decried the hypocrisy of the West’s silence over oppression elsewhere, such as the Saudi Arabian military support for Bahrain’s crackdown on pro-democracy protestors. Others made the unsurprising link for swift military action to oil. Skeptics argue that the “legalized hegemony” of the P5, who are vested with veto powers, intervened in Libya not on the basis of perceived moral duty, but due to a collective interest in - or at least unopposed to - halting mass atrocities. Therefore, there is no obligation of collective action to act except when the P5 choose to act at their discretion.

Interestingly, this line of criticism puts forth the notion that R2P is predicated on normative pressure from advocacy groups and overt actions perpetrated by states, which compels the P5 to actively alter the foreign policy calculus. This idea begs the question - do P5 sanctioned resolutions, such as the one in Libya, derive from a desire to abide by moral doctrines such as R2P, or are they a product of the alignment of national interests with humanitarian concerns? Was the implementation of R2P in Libya inspired by a normative desire for collective action by the P5, or was it an act of discretionary

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81 Hehir, Aidan. The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.

82 Ibid.

83 Ibid.
entitlement, where collective interest of P5 members facilitated the incorporation of humanitarian concerns?\(^{84}\)

For Resolution 1973 to pass, it was imperative that China and Russia abstain, as their self-proclaimed aversion to intervention in the sovereign affairs of states traditionally kept them from vetoing resolutions in favor of intervention on humanitarian grounds.\(^{85}\) The Chinese Ambassador’s statement following its abstention on Resolution 1973 offers the clearest explanation for its decision, “China is always against the use of force in international relations...We also attach great importance to the position of African countries and the AU. In view of this...China abstained.”\(^{86}\)

Critics argue that China and Russia abstained due to perceived advantages another Western intervention in the region could provide, as reportedly, Gaddafi’s regime traveled to China during NATO’s intervention to purchase an estimated $200 million worth of rocket launchers, antitank missiles...and portable surface-to-air missiles from state-controlled arms companies.\(^{87}\) Moreover, China’s growing economic ties with Africa and its budding relations with in the Middle East greatly influenced its decision to abstain, as the AU had strongly advocated for a political solution and opposed intervention by use of force, while the LAS had called for the implementation of a no-fly zone from the early stages of the crisis.\(^{88}\)

\(^{84}\) Ibid.

\(^{85}\) Ibid.


\(^{88}\) Hehir, Aidan. The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.
Russia, for its part, referred to regional opinion in its statement, stating that military action was not the last resort so it could not support the resolution, and couched its abstention as an expression of support for the LAS request to the Security Council. The political support of the LAS and the AU was key in the passing of Resolution 1973, as it ensured that Russia or China would not exercise their veto. The LAS’s position on Libya and its robust calls for humanitarian action early on is largely questioned by critics as evidence of its adherence to R2P. In fact, critics claim that its position on the Arab Spring was far from principled, and its policies towards pro-democracy protests in Bahrain supported the notion that politics and not a sense of moral duty or a general sense of protection of human rights was at play.

Critics argue that the LAS’s position on Libya provided it with the opportunity to deflect international criticism of its own human rights violations, by holding Gaddafi accountable for his. Gaddafi’s lack of political goodwill within the region, particularly amongst the Saudi royal family, incentivized the LAS to take the position it did on Libya, seeing the ousting of the dictator as a trade-off whereby support for action in Libya encouraged the West to remain silent on Bahrain and the Saudi support therein.

As noted earlier, the importance of the political support of the LAS for the adoption of Resolution 1973 was key, and if their motivations for action in Libya were purely derived from national self-interest, then the adoption of Resolution 1973 on Libya

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90 Hehir, Aidan. The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.

91 Ibid.

92 Ibid.
and the subsequent declaration of R2P as the underpinning force behind that humanitarian action was highly misguided.

The United States also cited the LAS’s position on Libya as a key factor for its decision to support military action against Gaddafi. Although it is a well-known fact that influential figures within the U.S. administration, such as then Presidential Adviser Power and Ambassador Rice are proponents of humanitarian intervention, it is highly dubious to ascribe the U.S. support for military action to their influence over the President.

On Libya, President Obama openly acknowledged that intervention was supported and undertaken “because our interests and values are at stake...America has an important strategic interest in preventing Gaddafi from overrunning those who oppose him.” It is arguable that President Obama’s worldview, comprising of a pragmatic and realistic assessment of individual situations, led to the action taken by the U.S. in the case of Libya. Therefore, it is arguable that the President’s actions were not derived simply from an adherence to a moral principle such as the R2P.

Interestingly, it was French President Nicolas Sarkozy who led the Western call for action in Libya. Critics claim that President Sarkozy’s readiness to take credit for the intervention by allied forces in Libya on March 19, 2011, saying France had “decided

93 Ibid.
94 Obama, “Remarks by the President in Address to the Nation on Libya.”
95 Hehir, Aidan. The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.
96 Ibid.
to assume its role...before history” was in fact largely due to strategic self-interest.\textsuperscript{97} The French President’s concern for Libyans was in stark contrast to the relationship he entertained with Gaddafi three years ago in 2007.\textsuperscript{98}

Welcoming the dictator to a lavish state visit in France, the French President dismissed the dictator’s abhorrent human rights record on the grounds that Libya had turned a new leaf, and was on a newfound path of respectability.\textsuperscript{99} However, President Sarkozy’s political calculus changed dramatically when in 2011, facing the possibility of a disastrous public exodus with the lowest poll ratings since 1958 and the controversial issue of Muslim immigration in France, he led the call for military action against his former guest.\textsuperscript{100}

It is also arguable that even if the U.S., U.K., and France, and their respective heads of state had voted for military intervention derived from a genuine commitment to R2P, the long-term effectiveness of R2P remains questionable.\textsuperscript{101} Due to the fact that R2P is not a legal obligation that demands fulfillment but rather a political commitment, the personality of a president or prime minister plays an integral role in the decision to intervene in a particular case.\textsuperscript{102}

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\textsuperscript{98} Ibid.

\textsuperscript{99} Ibid.

\textsuperscript{100} Ibid.

\textsuperscript{101} Ibid.

\textsuperscript{102} Ibid.
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Bureaucratic rule-making, political motivations and the future of R2P

It is arguable that the use of military force in Libya to halt widespread, egregious atrocities under Resolution 1973 of the United Nations Security Council was due to a combination of factors, including Libya’s geostrategic importance, Gaddafi’s lack of regional political allies and his astounding declarations of murderous intent.\(^\text{103}\) What this demonstrates, however, is that the reasoning for intervention in Libya was not entirely based on adherence to the moral principles enshrined in the R2P doctrine, but rather, was largely due to political leaders within the Security Council making decisions in an ad hoc fashion by balancing national interests, legal considerations, global opinion, and perceived costs.\(^\text{104}\)

The behavior of the Security Council and its adoption of the R2P doctrine can be explained using international organization theory posited by Barnett and Finnemore, that the UN is a bureaucracy with a distinctive social form of authority and has its own internal logic and behavioral proclivities.\(^\text{105}\) It is widely accepted that the construction of Responsibility to Protect, was an endeavor spurred by the failings of the UN in Rwanda and Kosovo; however, the pathologies of a bureaucracy, such as inadequate resources and inability to deviate from path dependent protocols, such as UN resolutions, which are internal bureaucratic processes attributed to the bureaucratic failings of the UN.

\(^{103}\) Hehir, Aidan. The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.

\(^{104}\) Alex J. Bellamy, Responsibility to Protect: The Global Effort to End Mass Atrocities (London: Polity, 2009).

\(^{105}\) Barnett, Michael and Finnemore, Martha. Rules for the World: International Organizations in Global Politics. Cornell University Press,
The UN response, within the context of a bureaucracy, to these failings was logical; it defined the problems manifested in Kosovo and Rwanda within its preferred technocratic context, and as a rational-legal authority, it devised a solution that reflected those preferences of technocratic impartial action, and constructed more ‘impartial rules’ and social norms that attempted to regulate state behavior, such as those manifested within the R2P doctrine.\textsuperscript{106}

With its construction of the Responsibility to Protect in response to its failings to appropriately address the humanitarian tragedies in Kosovo and Rwanda, it is arguable that the UN Secretariat performed its bureaucratic function by constructing social norms of ‘state responsibility to its population’ and ‘international responsibility to people,’ which expanded its regulating authority in present social reality. Though seemingly an exercise in bureaucratic imperialism as suggested by opponents, the R2P doctrine can be seen as a logical outgrowth of the UN’s authority to create impartial rules in regulating social reality, and a rational attempt to prevent future humanitarian disasters.\textsuperscript{107}

Although this argument of objective rule-making by the UN explains its need to regulate its present social reality through construction of new rules, such as the ones in the R2P, the implementation of these rules in a consistent fashion is highly contested. As long as the Security Council is provided with the R2P doctrine as merely a “political commitment” as opposed to a “legal obligation,” it will surely continue to use its discretionary tactics to employ intervention techniques based on the alignment of perceived national interests with the facilitation of humanitarian concern.

\textsuperscript{106} Ibid.

\textsuperscript{107} Ibid.
This sad realization hardly comes as a surprise to opponents of R2P, especially in light of the Syrian crisis, which has been met with a vastly different response.\textsuperscript{108} More importantly, it highlights the Security Council’s inconsistency in humanitarian intervention, and evidences the idea that R2P has not altered the decision making process of the Security Council.\textsuperscript{109} In this regard, Libya can be seen as an aberration rather than a product of a new outlook on international security.\textsuperscript{110}

The counterargument, however, is that although the R2P doctrine in the case of Libya was unable to galvanize Security Council action based on adherence to the moral principle of “responsibility to protect,” it became a factor that was taken into consideration by the Security Council’s Libya calculus. It is well understood that selectivity of cases in which to intervene is the modus operandi of the Security Council, and that that selectivity is heavily influenced by geopolitical and national interests.

In this respect, the existence of the R2P doctrine has created the much needed evolution of sovereign responsibility by providing a framework of guidance when faced with a humanitarian crisis that demands intervention. It’s mere existence demands that it be considered in the narrative of humanitarian intervention and so, produces a level of influence that although negligible, should not be mistaken as nonexistent.

Opponents of R2P often argue that the opportunity costs involved are far too great to successfully implement the doctrine; however, it is worth noting that when a crisis

\textsuperscript{108} Hehir, Aidan. The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.

\textsuperscript{109} Ibid.

\textsuperscript{110} Ibid.
deteriorates with no political solution in sight, and coercive political and economic means fail, it becomes incumbent on the international community to act decisively to protect vulnerable populations. Present-day crises such as Syria and the Central African Republic escalated into their current state due to a lack of collective response by the international community.

When faced with the occurrence of mass atrocities in a sovereign state, perpetrated by the government, the international community ought to galvanize its resources and put an end to the violations. In such situations, the R2P doctrine provides the framework that guides the Security Council and presents itself as a factor that demands to be taken into consideration. However, like much of international law, political commitments have a slow evolutionary process, whereby they eventually gain legal obligatory status. In that sense R2P is in its nascent stage of development, but it has certainly become one factor in the decision making calculus of states.