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The Impact of the Libya Intervention Debates on Norms of Protection

SARAH BROCKMEIER, OLIVER STUENKEL and
MARCOS TOURINHO

Resolution 1973, which authorised military intervention in Libya, marked the first time that the United Nations Security Council explicitly mandated the use of force against a functioning state to prevent imminent atrocity crimes. While some hailed the resolution and the subsequent intervention in Libya as a victory for the concept of the international community's "responsibility to protect" (R2P), others predicted its early death. This article argues for a more nuanced view on the impact of the Libya intervention on the debates on R2P. As we will show, the intervention in Libya demonstrated new areas of agreement and at the same time revealed persisting and new disagreements within the international community on the role of the use of force to protect populations.

Introduction

Resolution 1973, which authorised military intervention in Libya, marked the first time that the United Nations Security Council explicitly mandated the use of force against a functioning state to prevent imminent atrocity crimes. The debate on the international community's "responsibility to protect" (R2P) has grown exponentially since the passage of the resolution and the subsequent intervention in Libya. Yet academics and policymakers have drawn different conclusions about what the Libya intervention meant for R2P and norms of protection. Traditional proponents welcomed the intervention as a sign that they had "won the debate".¹ The director of the Global Centre for the Responsibility to Protect, an advocacy organisation, argued that Libya represents "a key turning point in the

1. Gareth Evans, "End of the Argument: How We Won the Debate on Stopping Genocide", *Foreign Policy*, 28 November 2011, available: <http://www.foreignpolicy.com/articles/2011/11/28/gareth_evans_end_of_the_argument> (accessed 18 August 2014); Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm", *Ethics & International Affairs*, Vol. 25, No. 3 (2011), pp. 263–269, p. 263; Ban Ki-moon, "Remarks at Breakfast Roundtable with Foreign Ministers on 'The Responsibility to Protect: Responding to Imminent Threats of Mass Atrocities'" (New York: United Nations, 23 September 2011), available: <http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID_1325> (accessed 18 August 2014); see also Ivo H. Daalder and James G. Stavridis, "NATO's Victory in Libya: The Right Way to Run an Intervention", *Foreign Affairs* (March/April 2012), available: <<https://www.foreignaffairs.com/articles/libya/2012-02-02/natos-victory-libya>> (accessed 19 August 2014).

history of R2P": the debates changed from a "battle around ideas to a battle around implementation".²

But others highlighted the negative consequences of the intervention's execution for the credibility of the concept of R2P.³ These critics emphasised that Libya proved that R2P could be abused, and they highlighted the negative impact of the Libya intervention on the international response to the crisis in Syria. "In Libya force almost immediately followed the ultimatums issued to [Muammar] Qaddafi; for all intents and purposes, R2P was NATO-ized", argued journalist David Rieff in the *New York Times*. "As a result, everywhere outside Western Europe and North America, R2P is losing what little ethical credibility it ever commanded."⁴

Overall, Resolution 1973 and the excessive interpretation of the mandate by the intervening coalition have since been hailed as proof that R2P has become an established international norm, as well as decried as the beginning of its end. "Both sides of the debate will eagerly cite Libya the next time mass murder seems imminent", *The Economist* summarised just two months after the start of the intervention. "A lot rides on this war—and not just for the Libyans."⁵

In much of the literature on R2P immediately following the Libya intervention, the language used to describe the concept suggests a linear evolution of the norm: R2P is either "alive" or "dead", it has "arrived" or will need to "Rest in Peace".⁶ In the past few years, more nuanced analysis on the impact of the Libya intervention on R2P has emerged. Jennifer Welsh, Justin Morris and Edward Newman, among others, have provided more balanced views.⁷ This article adds to these voices by arguing that a thorough analysis of the debate around the Libya intervention on R2P demonstrates that the debate's impact is more complex and multi-directional than the "R2P: dead or alive?" dichotomy suggests.

The intervention reignited a discussion that has lain at the heart of R2P since its inception: when and how force should be used to protect populations, against the will of a functioning state. The intervention showed that, on the one hand, there are circumstances in which UN member states—including the veto powers Russia and China—could agree that the use of force is an adequate tool for protecting civilians from an imminent threat, even if this force was used without the approval of their

2. Interview with Simon Adams, New York, 19 May 2014.

3. David Berman and Christopher Michaelsen, "Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?", *International Community Law Review*, Vol. 14, No. 4 (2012), pp. 337–358; David Rieff, "R2P, R.I.P.", *New York Times*, 7 November 2011, available: <http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html?pagewanted=all&_r=0> (accessed 15 January 2013).

4. Rieff, *op. cit.*

5. *The Economist*, "The Lessons of Libya", 19 May 2011, available: <<http://www.economist.com/node/18709571>> (accessed 17 August 2014).

6. "Newton: 'R2P is Dead and Done' Due to Response to Syria", *Vanderbilt Journal of Transnational Law*, 16 September 2013, available: <<http://www.vanderbilt.edu/jotl/2013/09/newton-%E2%80%99R2P-is-dead-and-done%E2%80%9D-because-of-response-to-syria/>> (accessed 19 August 2014); Alex J. Bellamy, "R2P—Dead or Alive?", in Malte Brosig (ed.), *The Responsibility to Protect—From Evasive to Reluctant Action? The Role of Global Middle Powers* (Johannesburg: Konrad-Adenauer-Stiftung, Hanns Seidel Foundation, Institute for Security Studies, South African Institute of International Affairs, 2012), pp. 11–28; Berman and Michaelsen, *op. cit.*

7. Justin Morris, "Libya and Syria: R2P and the Spectre of the Swinging Pendulum", *International Affairs*, Vol. 89, No. 5 (2013), pp. 1,265–1,283; Edward Newman, "R2P: Implications for World Order", *Global Responsibility to Protect*, Vol. 5, No. 3 (2013), pp. 235–259; Jennifer Welsh, "Norm Contestation and the Responsibility to Protect", *Global Responsibility to Protect*, Vol. 5, No. 4 (2013), pp. 365–396.

government. This demonstration that such a situation was in fact possible and the ensuing debates on R2P contributed to an increased familiarity with the concept of R2P around the world. On the other hand, the debates on Libya revealed the persisting disagreements within the international community on the way in which force should be used to achieve the protection of civilians.

The controversy around regime change in Libya inspired a new coalition of actors in the debates on R2P and norms of protection. Those actors that support R2P because they endorse the idea of human security and of focusing on protecting individuals rather than the rights of states—including parts of the European Union, non-governmental organisations (NGOs) that advocate for R2P and many academics—joined the actors in opposition to the leaders of the NATO intervention, who had long been suspicious of R2P because they saw its potential for abuse. This new coalition sparked a more focused discussion on the role of the use of force to protect civilians. While the controversies regarding Libya exacerbated the Security Council deadlock over Syria, the council has since mandated the use of force more often than ever before in such a short period for peacekeeping and peace enforcement operations that involve the protection of civilians in Mali, South Sudan, the Central African Republic and the Democratic Republic of the Congo. In short, the norm was affected by the Libya intervention, but not in a single, linear direction.

This article examines the impact of the Libya intervention on R2P—and norms of protection on the prevention of atrocity crimes more generally—in three parts. First, we briefly review the course of events leading to the passage of Resolution 1973 and the intervention that followed. Second, we examine the arguments that were put forward during the Libya debates on the role of the use of force to protect civilians, against the will of a functioning state. Third, we discuss how these debates impacted R2P and norms of protection.

The Course of the Libya Intervention

The international reaction to the crisis in Libya was quicker and more explicitly connected to the concept of the responsibility to protect than any other crisis before it. Just one week after Libyan security forces had begun to violently suppress protests on 15 February 2011, the United Nations Security Council issued a press statement that called on the Libyan government “to meet its responsibility to protect its population”. Given the controversy surrounding Resolution 1973, it is often overlooked that in comparison to previous discussions on the international response to Darfur⁸ or Sri Lanka,⁹ the idea that the international community had a role to play in protecting Libyan civilians, against the stated wish of a functioning government, went remarkably undisputed. On 25 February, the UN Human Rights Council recommended suspending Libya’s membership in the council. The discussions accompanying the recommendation of the Human Rights Council,¹⁰ as well as the decision of the UN General Assembly to follow that recommendation,¹¹ showed

8. Cf. Verhoeven, Soares de Oliveira and Jaganathan, this special issue.

9. Cf. Kurtz and Jaganathan, in this issue.

10. UN Human Rights Council, “Resolution S-15/1. Situation of Human Rights in the Libyan Arab Jamahiriya, UN doc. A/HRC/S-15/1”, 25 February (Geneva: United Nations, 2011).

11. UN General Assembly, “Resolution 65/265. Suspension of the Rights of Membership of the Libyan Arab Jamahiriya in the Human Rights Council, UN doc. A/RES/65/265”, 1 March (New York: United Nations, 2011).

that the states that argued, in the weeks before the intervention, for an international role in protecting the Libyan population included not only Western states but also many states of the African Union, most members of the Arab League and a large number of Latin American and Asian countries.¹²

On 26 February 2011, the Security Council passed Resolution 1970. The council condemned the use of force against civilians, recalled the Libyan authorities' responsibility to protect its citizens, imposed sanctions (including asset freezes, travel bans and an arms embargo) and referred the situation in Libya to the International Criminal Court (ICC). These measures were not uncontroversial in the council,¹³ but the unanimous vote for the unprecedented sanctions in Resolution 1970, as well as the first unanimous referral of a crisis situation to the ICC, demonstrated the strong support for coercive measures against Muammar Gaddafi's regime.

On 17 March 2011, the Security Council—which included Brazil, India and South Africa as non-permanent members—passed Resolution 1973, with 10 votes in favour and five abstentions by China, Russia, Brazil, India and Germany. Resolution 1973 was passed with the urgent sense that the forces controlled by Gaddafi needed to be stopped from committing atrocities in Benghazi. A few days earlier, the Gulf Cooperation Council and the Arab League had called for the establishment of a no-fly zone over Libya to protect the Libyan population. In the days before 17 March, Gaddafi's forces were steadily advancing towards Benghazi in eastern Libya, while negotiation efforts stalled. Those who supported the authorisation of military measures pointed to the rhetoric employed by the Libyan leader and his son. In addition to his earlier statements comparing protesters to "cockroaches" (which had a chilling effect on many diplomats, who were reminded of the hate speech that accompanied the Rwandan genocide), Gaddafi warned the residents of Benghazi in a speech on the morning of 17 March (the day Resolution 1973 was passed) that his soldiers would "be coming tonight" and would "show no mercy".¹⁴ Though he also said that unarmed people would not have to be afraid, his rhetoric increased the sense of urgency in the negotiations in New York.¹⁵

In Resolution 1973, the council demanded an immediate ceasefire and warned that attacks against civilians in Libya could constitute crimes against humanity. In the preamble of the resolution, the council reiterated "the Libyan authorities' responsibility to protect the Libyan population" and recalled the communiqués by the Organization of the Islamic Conference, the Arab League and the African Union that had requested an end to the violence. In paragraph 4 of the resolution, the council authorised those member states that would notify the UN secretary-general to take "all necessary measures ... to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding an occupation force of any form on any part of Libyan

12. UN General Assembly, "Official Records, 65th Session: 76th Plenary Meeting, UN doc. A/65/PV.76", 1 March (New York: United Nations, 2011).

13. See, e.g., discussions after the vote on Resolution 1970: UN Security Council, "Meeting Records, 6491st Meeting, UN doc. S/PV.6491", 26 February (New York: United Nations, 2011).

14. Souhail Karam, Tom Heneghan and Elizabeth Fullerton, "Gaddafi Tells Benghazi His Army is Coming Tonight", Reuters, 17 March 2011, available: <<http://uk.reuters.com/article/2011/03/17/libya-gaddafi-address-idUKLDE72G2E920110317>> (accessed 15 September 2014).

15. Sarah Brockmeier, "German Policy towards Intervention in Libya", Master's thesis, University of Cambridge, 2012, p. 21.

territory". It authorised member states to implement a no-fly zone over Libya (paragraph 8). Further measures in the resolution included a tightening of the arms embargo and asset freezes. Paragraph 2—pushed by Brazil, India and South Africa—emphasised the "need to intensify efforts to find a solution to the crisis". This paragraph also referred to the efforts of the secretary-general's special envoy to Libya and of the African Union to "[facilitate] dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution".¹⁶

Almost immediately after Resolution 1973 was passed, it became clear that the international community disagreed on the right course of action to implement it. On 19 March 2011, French, British and American forces began military operations in Libya, imposing a no-fly zone and bombing Gaddafi tanks from the air. An attempt by representatives of the African Union to travel to Libya to negotiate a ceasefire with the Gaddafi government on 19 March was cancelled because the coalition forces were unwilling to stop their airstrikes.

Two weeks after the start of the military efforts, NATO took over the operation. Over the following six months, NATO airstrikes were conducted in parallel with various initiatives to achieve a political solution to the conflict. Between March and October of 2011, Abdel-Elah Al-Khatib, the secretary-general's special envoy to Libya, tried to get the rebel forces (represented by the National Transitional Council) and the Gaddafi government to negotiate a ceasefire. In the meantime, the African Union conducted its own attempts to mediate between the parties. Additionally, the Libya Contact Group—essentially the political arm of the coalition that conducted the military operation¹⁷—pursued its own diplomacy to find a political solution, notably one that did not involve Gaddafi. From the start, a crucial question in both the political and the military efforts concerned the future of the Libyan leader. Many states and international commentators argued that regime change significantly overstepped the mandate of Resolution 1973.¹⁸ Yet NATO's intervention in Libya only ended with the overthrow and death of Gaddafi in October 2011.

Debating the Controversial Aspect of R2P: The Role of Force to Protect Civilians

The Libya intervention refocused the international discussion about the responsibility to protect back on the key normative questions that underpinned the creation of the concept in the first place.¹⁹ The use of coercive measures against a state, such as sanctions and referrals to the International Criminal Court, has also proven controversial in the United Nations Security Council. However, the use of force has been the most controversial tool in the debates on R2P and the protection of

16. UN Security Council, "Resolution 1973, UN doc. S/RES/1973", 17 March (New York: United Nations, 2011).

17. NATO and additional partners that participated in the intervention: Jordan, Qatar and the United Arab Emirates.

18. Edward Cody, "Arab League Condemns Broad Bombing Campaign in Libya", *The Washington Post*, 20 March 2011, available: <<http://tinyurl.com/4tdw7sr>> (accessed 14 August 2014); Alex de Waal, "'My Fears, Alas, Were Not Unfounded': Africa's Responses to the Libya Conflict", in Aidan Hehir and Robert Murray (eds.), *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2013), pp. 58–82.

19. See Stuenkel, Tourinho and Brockmeier in this issue.

civilians since the beginning.²⁰ For the first time since the agreement on the principle by the UN at the 2005 World Summit,²¹ Libya raised questions that had already been debated during the intervention in Kosovo and discussed in much detail in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS), which first proposed the concept of R2P:²² what should be the role of force in protecting populations from atrocity crimes? Although the Security Council had mandated the use of force by peacekeepers many times, and although there had been several cases in which the council delegated the use of force to a third party,²³ the Libya intervention was the first time that the council mandated a military intervention to be conducted by a third party, with the explicit purpose of protecting civilians. Consequently, the debate on the Libya intervention provided the first real test case and an opportunity to discuss the criteria for the use of force, regime change and the abuse of humanitarian arguments.²⁴

In what follows, we analyse the arguments regarding the role of the use of force in protecting civilians, against the will of a functioning state, as they were put forward during this debate. We do so in two parts. First, we focus on the debates on Resolution 1973 and the authorisation of force to highlight the moments of partial agreement between most UN member states, which were subsequently overshadowed by the controversial discussions on the implementation of the resolution. Second, we examine the debates on regime change, the abuse of humanitarian arguments and the degree of force used in Libya after the immediate threat to civilians in Benghazi was halted.

The Debates on the Authorisation of Force in Libya (until 17 March 2011)

In the days leading up to 17 March, two questions were at stake in the debates on the authorisation of force in Libya. Had all possible political and diplomatic means been exhausted, and did force therefore represent a last-resort measure to protect civilians in Libya? What degree of force was necessary to complete this task? Both debates continued after the intervention started.

During the negotiations, proponents of the use of force argued that all other measures had evidently failed to stop Muammar Gaddafi and that a massacre in

20. Thorsten Benner *et al.*, "Effective and Responsible Protection from Atrocity Crimes: Toward Global Action" (Berlin: Global Public Policy Institute, 2015).

21. Cf. Murthy and Kurtz, in this issue.

22. Even though the commission introduced the term "responsibility to protect", its central idea of defining sovereignty as responsibility had already been proposed by Francis Deng and others in the 1990s. For more detailed descriptions of the discussions of the ICISS, see Gareth Evans, "Interview: The R2P Balance Sheet after Libya", in e-International Relations (ed.), *The Responsibility to Protect: Challenges & Opportunities in Light of the Libyan Intervention* (2011), available: <<http://www.e-ir.info/wp-content/uploads/R2P.pdf>> (accessed 7 March 2015), pp. 34–41; Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings, 2008), pp. 139–147; Ramesh Thakur, "R2P, Libya and International Politics as the Struggle for Competing Normative Architectures", in e-International Relations, *op. cit.*, pp. 12–14; Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge/New York: Cambridge University Press, 2006), pp. 260–262; Thomas G. Weiss, "Wither R2P?", in e-International Relations, *op. cit.*, pp. 7–11.

23. This includes interventions in Bosnia (1992–1994), Rwanda (1994) and Kosovo (1999), for example.

24. The UN/French operation in Côte d'Ivoire provided a second case of the removal of a head of state, but this discussion took place somewhat in the background of the Libya debate.

Benghazi was imminent.²⁵ This group of states was led by the United States, which only decided late on the night of 15 March to support an intervention in Libya.²⁶ The American switch in positions was closely related to the decision to push for a resolution that authorised more than the no-fly zone that had previously been proposed by the French and the British and discussed in the Security Council.²⁷ Accordingly, the US, supported by France and Britain,²⁸ argued in the council that a no-fly zone would not be effective at protecting civilians in Benghazi who were threatened by tanks on the ground. The journalist Colum Lynch quoted then US Ambassador Susan Rice as referring to a “naked no-fly zone” during a Security Council meeting.²⁹ By emphasising the urgency of the situation, the US, France and the United Kingdom put pressure on other states in the council to support the resolution. Scholars Adler-Nissen and Pouliot cite an elected member on the council recalling that “the information flowing in, and the discussions among diplomats outside the Council, often took the following form: ‘Do you want to wake up tomorrow and there is no Benghazi?’”³⁰ The US also made a point of urgency by warning of “another Srebrenica” during the negotiations.³¹

Others—including Brazil, India, South Africa, Russia, China, Portugal and Germany—argued that what was primarily needed were serious negotiation efforts for a ceasefire. According to a senior Brazilian diplomat at the UN at the time, these countries’ demands were reflected in paragraph 2 of the resolution, which emphasised the “need to intensify efforts to find a solution to the crisis”.³² The paragraph also referred to the efforts of the secretary-general’s special envoy to Libya and of the African Union to “[facilitate] dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution”.³³ These countries were also not convinced that the situation in Libya required the extensive authorisation of the use of force proposed by the US. At least one country that ultimately abstained—Brazil—might have voted “yes” on the resolution, had it only authorised a no-fly zone.³⁴ When Brazil and India abstained, they said they doubted that such an open-ended and large-scale use of force was necessary and appropriate at that stage.³⁵

25. Sarah Brockmeier, “Germany and the Intervention in Libya”, *Survival Global Politics and Strategy*, Vol. 55, No. 6 (2013), pp. 63–90, p. 75.

26. *Ibid.*, pp. 70–71; Sarah Brockmeier, Gerrit Kurtz and Philipp Rotmann, “Schutz und Verantwortung: Über die US-Außenpolitik zur Verhinderung von Gräueltaten” (Berlin: Heinrich Boell Foundation, 2013), pp. 102–103.

27. Brockmeier, “Germany and the Intervention in Libya”, *op. cit.*; Colum Lynch, “Amb. Rice: Leading from Behind? That’s ‘Whacked’”, *Foreign Policy*, 31 October 2011, available: <http://turtlebay.foreignpolicy.com/posts/2011/10/31/amb_rice_leading_from_behind_that_s_whacked> (accessed 5 December 2012).

28. It is important to know, though, that Britain and France were themselves sceptical at first of the feasibility of asking for more than a no-fly zone as they feared a Russian veto. See Brockmeier, “Germany and the Intervention in Libya”, *op. cit.*, p. 70.

29. Lynch, *op. cit.*

30. Rebecca Adler-Nissen and Vincent Pouliot, “Power in Practice: Negotiating the International Intervention in Libya”, *European Journal of International Relations*, Vol. 20, No. 4 (2014), pp. 1–23, p. 13.

31. *Ibid.*, p. 13.

32. UN Security Council, “Resolution 1973”, *op. cit.*, para. 2.

33. *Ibid.*; Adler-Nissen and Pouliot, “Power in Practice”, *op. cit.*

34. Interview with senior Brazilian diplomat, New York, 20 May 2014.

35. See statements by Brazil and India in their explanations of vote after the passage of Resolution 1973: UN Security Council, “6498th Meeting, UN doc. S/PV.6498”, 17 March (New York: United Nations, 2011).

At the same time, the countries that argued for a greater focus on negotiations and opposed large-scale authorisation of force were also affected by the threat to civilians in Benghazi. A senior Brazilian diplomat at the time remembered the warnings from France and the US of “another Rwanda” and the sense that immediate action had to be taken.³⁶ Russia and China, which could have vetoed and prevented the resolution, abstained. There were many other reasons for their abstentions, which are discussed in detail elsewhere³⁷ and included the backing of regional organisations for a no-fly zone and few geopolitical interests in Libya. Yet the abstentions by Russia, China, India and Brazil³⁸ ultimately reflected their ambiguous feelings regarding the resolution. They did not vote “yes”, in part because they were not convinced that all other measures short of a large-scale authorisation of force had been tried, and they doubted that the large-scale authorisation of the use of force as included in paragraph 4 of the resolution was necessary. At the same time, they did not vote “no”, and the resolution passed partly because of the fear that inaction—i.e., passing no resolution—might lead to a massacre in Benghazi. The Russian president at the time, Dmitry Medvedev, even explicitly stated in a press conference on 21 March 2011 that Russia made the decision to abstain “consciously in the aim of preventing an escalation of violence” and emphasised that “everything that is happening in Libya is a result of the Libyan leadership’s absolutely intolerable behavior and the crimes that they have committed against their own people”.³⁹ Even if some doubts remained, the states in the Security Council on 17 March 2011 felt that the criterion of last resort was sufficiently fulfilled in order for Resolution 1973 to pass.

The Debates on Regime Change and the Use of Force (after 17 March 2011)

Given the controversy that had already accompanied the passage of Resolution 1973, it is not surprising that almost immediately after its passage, the international community disagreed on the right course of action to implement it. After just a few days of the intervention, before NATO had even taken over, the initial military objective of the use of force in Libya had been achieved: civilians in Benghazi were no longer under immediate threat by regime forces.⁴⁰ The central questions that emerged on 19 March, soon after the start of the intervention, were whether the intervention should stop before Gaddafi had relinquished power, and accordingly, whether regime change in Libya could constitute the goal of an intervention that was justified by the need to protect civilians. In the weeks following the start of

36. Interview with a senior Brazilian diplomat, 5 August 2014.

37. Compare, e.g., Samuel Charap, “Russia, Syria and the Doctrine of Intervention”, *Survival: Global Politics and Strategy*, Vol. 55, No. 1 (February/March 2013), pp. 35–41; Marcin Kaczmarek, “Russia on the Military Intervention in Libya”, *Ośrodek Studiów Wschodnich*, 23 March 2011; Mu Ren, “China’s Non-intervention Policy in UNSC Sanctions in the 21st Century: The Cases of Libya, North Korea, and Zimbabwe”, *Ritsumeikan International Affairs*, Vol. 12 (2014), pp. 101–134.

38. For a detailed analysis on the abstention of Germany, see Brockmeier, “Germany and the Intervention in Libya”, *op. cit.*

39. *The Mendeleyev Journal*, “Why Russia Voted to Abstain on Libya ‘No-Fly’ Resolution (Excerpts from English Translation of Press Conference by President Medvedev)”, 21 March 2011. See also Yun Sun, “China’s Acquiescence on UNSCR 1973: No Big Deal”, *PacNet: Pacific Forum CSIS*, 31 March 2011, available: <<http://csis.org/files/publication/pac1120.pdf>> (accessed 10 November 2014).

40. Christopher Chivvis, *Toppling Qaddafi: Libya and the Limits of Liberal Intervention* (Cambridge: Cambridge University Press, 2013), p. 174.

protests in Libya, but even before a military intervention had been discussed, the leading NATO countries argued that Gaddafi, by using violence against his citizens, had lost legitimacy to rule the country.⁴¹ This demand was supported by a number of countries, including those that did not support the use of force in Libya, such as Germany. On 11 March 2011, the European Union stated in a common communiqué that “Colonel Kadhafi must relinquish power immediately”, arguing that his “regime has lost all legitimacy and is no longer an interlocutor for the EU”.⁴² After the start of the intervention, however, the question became whether this removal of Gaddafi from power should be achieved by military force.

The ensuing debate pitched an interventionist coalition—led by the US, France and the UK—against a wide array of actors that opposed regime change in Libya. The latter argued on two interrelated levels against regime change. First, they opposed the extent of force that was used by NATO to implement its goal of ending the Gaddafi regime. Second, they were appalled by what they saw as the abuse of the humanitarian argument of protecting civilians for the political goal of regime change.

As had already become clear during the negotiations on Resolution 1973, some members of the Security Council—including Brazil, India and South Africa—favoured more limited military operations to be used in combination with diplomatic efforts to reach a negotiated settlement between the parties. In their view, military force was to be used only to protect civilians, while other policy instruments would be given time to work on the resolution of the dispute.⁴³ Instead of using a gradual approach—i.e., halting the intervention after the immediate threat to civilians in Benghazi no longer existed and refocusing on negotiations—the intervening coalition continued its air operations and provided direct military support to the rebels.⁴⁴ Most controversially, as outlined above, the countries leading NATO’s intervention dismissed outright efforts by the African Union to negotiate a ceasefire between the Gaddafi government and the rebel forces at several stages during the intervention. The alliance did not use its influence on the National Transitional Council run by the rebels to press them to negotiate with the Gaddafi regime.⁴⁵ While it is impossible to prove in retrospect whether these efforts—mostly pushed by the African Union—had any chance of success, the fact that NATO did not even allow for an attempt frustrated not only African leaders.⁴⁶ A senior Brazilian diplomat, for example, recalled that the suggestion

41. Cf. US statement during debate after Resolution 1970: UN Security Council, “Meeting Records, 6491st Meeting,” *op. cit.*

42. European Council, “Declaration: Extraordinary European Council, EU doc. EUCO 7/1/11 Rev”, 11 March (Brussels: European Council), para. 7.

43. Harry Verhoeven, C.S.R. Murthy and Ricardo Soares de Oliveira, “‘Our Identity Is Our Currency’: South Africa, the Responsibility to Protect and the Logic of African Intervention”, *Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 509–534, p. 525; Madhan Mohan Jaganathan and Gerrit Kurtz, “Singing the Tune of Sovereignty? India and the Responsibility to Protect”, *Conflict, Security & Development*, Vol. 14, No. 4 (2014), p. 474.

44. E.g., Gareth Evans, Ramesh Thakur and Robert A. Pape, “Correspondence: Humanitarian Intervention and the Responsibility to Protect”, *International Security*, Vol. 37, No. 4 (2013), pp. 199–214; Simon Adams, “Libya and the Responsibility to Protect” (New York: Global Centre for the Responsibility to Protect, 2012), p. 9; Interview with senior Brazilian diplomat, 5 August 2014.

45. de Waal, *op. cit.*

46. *Ibid.*

to interrupt the military operation and to pursue political negotiations was opposed by the countries leading the NATO intervention, with the argument that the military operation should not be micromanaged—not an argument that truly addressed the proposed termination of the operation.⁴⁷ Therefore, opponents of extensive use of force in Libya—such as Brazil and India—repeatedly emphasised their belief during Security Council debates that the use of force should be a measure of last resort.⁴⁸ Their view was supported by many analysts and advocates of R2P, who argued from a human security perspective, usually focusing on individuals as subjects for protection rather than states.⁴⁹ “NATO’s choice to rely on military means alone”, argued Benner, for example, “at the very least reveals a lack of creativity in terms of combining the available tools from targeted sanctions to political mediation in sequence or even in parallel with targeted military efforts”.⁵⁰

The opponents of regime change argued that NATO, by aiming at regime change and not seriously supporting negotiations after the threat to Benghazi was stopped, was acting contrary to the goal of protecting civilians. India, South Africa and Brazil in particular argued that the NATO-led intervention in Libya did not employ measures proportional to the threats posed to the civilians, as it directly targeted Gaddafi’s command facilities and infrastructure that were far removed from the immediate battlefield. They were appalled when France delivered arms to the rebel forces and when some NATO members began deploying special forces to advise them.⁵¹ They pointed to the risks that the intervention and the prolonged conflict posed for Libyan civilians.⁵² Relatedly, they argued that taking sides so decisively with the rebel forces did not further the aim of ending the conflict swiftly.⁵³ Much later, in January 2014, the UN Human Rights Council published a report by a commission of inquiry into “all violations of international human rights law in Libya”.⁵⁴ It found that NATO had conducted a “highly precise campaign with a demonstrable determination to avoid civilian casualties”⁵⁵ and put the number of civilians killed by NATO airstrikes at 60, far below previously alleged figures.⁵⁶ The report also concluded that not only had the Gaddafi regime committed crimes against humanity and war crimes, but the rebel forces supported by NATO had also committed war crimes and “breaches of international human rights law”. The report thereby disproved the allegations of massive civilian casualties of NATO airstrikes put forward by some of the opponents of the intervention,

47. Interview with senior Brazilian diplomat, 5 August 2014.

48. Compare, e.g., statements by India and Brazil in the Security Council during the 10 May 2011 thematic debate on the protection of civilians. UN Security Council, “6531st Meeting, UN Doc. S/PV.6531”, 10 May (New York: United Nations, 2011).

49. Evans, Thakur and Pape, *op. cit.*

50. Thorsten Benner, “NATO’s Libya Mission Could Cause a Political Backlash”, *Deutsche Welle*, 8 September 2011, available: <<http://www.dw.de/natos-libya-mission-could-cause-a-political-backlash/a-15371687-1>> (accessed 14 January 2013).

51. Alan J. Kuperman, “NATO’s Intervention in Libya: A Humanitarian Success?”, in Hehir and Murray, *op. cit.*, pp. 191–221; Micah Zenko, “The Slippery Slope of US Intervention”, *Foreign Policy*, 11 August 2014, available: <http://www.foreignpolicy.com/articles/2014/08/11/the_slippery_slope_of_us_intervention_iraq_islamic_state_humanitarian_intervention> (accessed 15 August 2014).

52. Cody, *op. cit.*; de Waal, *op. cit.*

53. Adler-Nissen and Pouliot, *op. cit.*, p. 20.

54. Human Rights Council, “Report of the International Commission of Inquiry on Libya, UN doc. A/HRC/19/68” (Geneva: United Nations, 2014).

55. *Ibid.*, p. 2.

56. *Ibid.*, p. 16.

but simultaneously provided evidence for their claim that the rebel forces so decisively supported by NATO also put civilians at risk.

The second aspect of the regime change debates focused on the question of whether Resolution 1973 was abused by the NATO coalition. Here, the views of the postcolonial states that opposed regime change as a matter of principle aligned with those arguing with reference to human security principles. At the centre of the outrage of BRICS countries (Brazil, Russia, India, China, South Africa) on the Security Council was the perceived abuse of humanitarian arguments for the political agenda of removing Gaddafi from power.⁵⁷ By doing so, as these states and civil society actors argued, the countries leading the NATO coalition undermined and endangered the protection agenda. South Africa explicitly made the point that stretching the mandate of Resolution 1973 would “undermine the gains made in this discourse [on the protection of civilians] and provide ammunition to those who have always been skeptical of the concept”.⁵⁸ UN officials and a variety of R2P proponents in policymaking and academia who are usually informed by a human security perspective also made this argument. Then UN Emergency Relief Coordinator Valerie Amos, for example, highlighted “concerns in terms of the potential undermining of the protection of civilians agenda”.⁵⁹ The drafters of the original report proposing a responsibility to protect, Gareth Evans and Ramesh Thakur, are just two prominent examples of R2P proponents and academics who found that NATO had overstepped its mandate and who argued that regime change should not be part of a military intervention in the framework of R2P.⁶⁰

Towards the end of the intervention, Edward Luck, then special advisor to the secretary-general for the responsibility to protect, tried to argue along a line that the International Commission on Intervention and State Sovereignty had already agreed on in its report, distinguishing between regime change as an objective and as a means:⁶¹ “I should say that it isn’t the goal of the responsibility to protect to change regimes. The goal is to protect populations. It may be in some cases that the only way to protect populations is to change the regime, but that certainly is not the goal of the R2P per se”.⁶²

Yet France, the UK and the US—the states most vocal in arguing that the intervention should only stop with the removal of Gaddafi from power—did not explicitly make the case that regime change by force was a means of implementing the

57. UN Security Council, “6650th Meeting, UN doc. S/PV.665”, 9 November (New York: United Nations, 2011).

58. Compare South Africa’s statement at the 10 May 2011 debate on protection of civilians: UN Security Council, “6531st Meeting”, *op. cit.*

59. *Ibid.*, p. 4.

60. Evans, Thakur and Pape, *op. cit.*; Lloyd Axworthy and Allan Rock, “A Reflection on Responsibility: What Does Syria Mean for R2P?”, *Diplomat Magazine*, 4 October 2012, available: <<http://diplomatonline.com/mag/2012/10/a-reflection-on-responsibility-what-does-syria-mean-for-r2p/>> (accessed 14 August 2014); James Pattison, “The Ethics of Humanitarian Intervention in Libya”, *Ethics & International Affairs*, Vol. 25, No. 3 (2011), pp. 271–277, p. 272; Rieff, *op. cit.*; Jennifer Welsh, “What a Difference a Year Makes”, *Open Canada*, 5 February 2012, available: <<http://opencanada.org/features/syria-un/>> (accessed 14 August 2014).

61. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), p. 35.

62. Bernard Gwertzman, “Will Syria Follow Libya? Interview with Edward C. Luck, Special Advisor to the UN Secretary-General”, Council on Foreign Relations, 1 September 2011, available: <<http://www.cfr.org/syria/syria-follow-libya/p25745/>>.

protection of civilians mandate in Libya. In contrast, throughout the intervention they tried to uphold a distinction between their stated political aim of Gaddafi leaving power and their stated military goal of protecting civilians—while at the same time continuing the intervention until the rebel forces took over Tripoli and Gaddafi had been defeated.

Less than a month after the start of the intervention, US President Barack Obama, French President Nicolas Sarkozy and UK Prime Minister David Cameron made this point in a joint op-ed: “Our duty and our mandate under UN Security Council Resolution 1973 is to protect civilians, and we are doing that. It is not to remove Qaddafi by force. But it is impossible to imagine a future for Libya with Qaddafi in power”.⁶³

When a Labour MP asked British Foreign Minister William Hague on 3 May 2011 whether he thought that “at some point there will have to be a political solution led by the Arab League and the African Union”, Hague argued that only a regime without Gaddafi would guarantee the safety of Libyan civilians.⁶⁴ When the rebel forces took over Tripoli in August 2011 and most states recognised the rebels’ National Transitional Council as the Libyan government, allied leaders argued that “as long as Qaddafi was still at large, the possibility of further attacks on civilians was still a cause for concern”.⁶⁵

These indirect comments are the closest that NATO leaders came to making an explicit case that regime change was a necessary means of protecting civilians in Libya. Unlike some international lawyers and academics who argued that regime change could in fact be a tool that could legitimately be included in “all necessary measures to protect civilians”,⁶⁶ the NATO coalition never explicitly argued that regime change should be a part of implementing the responsibility to protect in this or other cases. Some senior politicians in NATO countries, such as the French minister of defence, were even quoted early in the intervention as saying that they believed the resolution did not cover regime change.⁶⁷ Yet in practice they used the resolution that was authorised to protect civilians and extended

63. Barack Obama, David Cameron and Nicolas Sarkozy, “Libya’s Pathway to Peace”, *The International Herald Tribune*, 15 April 2011, available: <<http://www.nytimes.com/2011/04/15/opinion/15iht-libya15.html>> (accessed 7 December 2012).

64. House of Commons UK Parliament, “Oral Answers to Questions, Foreign and Commonwealth Office, The Secretary of State Was Asked—”, Tuesday, 3 May 2011, available: <<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110503/debtext/110503-0001.htm>> (accessed 14 August 2014).

65. Chivvis, *op. cit.*, p. 165. In November 2011, the US argued in the Security Council that NATO’s operation was in line with Resolution 1973 and its conduct “necessary and appropriate”, given that Gaddafi’s forces “continued to unleash brutal attacks on civilians and civilian populated areas and hindered the delivery of humanitarian assistance”. In accordance with Resolution 1973, the US argued that “NATO and its partners protected civilians for as long as necessary”.

66. Mehrdad Payandeh, “The United Nations, Military Intervention and Regime Change in Libya”, *Virginia Journal of International Law*, Vol. 52, No. 2 (2011), p. 389; Hugh Breakey, “The Responsibility to Protect: Game Change and Regime Change”, in Charles Sampford, Angus Francis and Vesselin Popovski (eds.), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (Geneva: United Nations University, 2012), p. 29; Lars Brozus, “Improving Mass Atrocities Prevention: Guidelines for Effective and Legitimate Implementation of the Responsibility to Protect”, *SWP Comments*, December 2012, available: <http://www.swp-berlin.org/fileadmin/contents/products/comments/2012C38_bzs.pdf> (accessed 15 January 2013); Nesam McMillan and David Mickler, “From Sudan to Syria: Locating ‘Regime Change’ in R2P and the ICC”, *Global Responsibility to Protect*, Vol. 5, No. 3 (2013), pp. 283–316.

67. BBC News, “Libya Conflict: NATO Summit Fails to Secure New Planes”, 15 April 2011, available: <<http://www.bbc.co.uk/news/world-africa-13096829>> (accessed 13 October 2014).

the intervention to such an extent that it included the change of the government by military force—the very definition of regime change. As Eyal points out, the fact that the intervention was stopped right after the death of Gaddafi, despite a massive security vacuum and continued violence in other parts of the country that still threatened civilians, was further proof for the opponents of NATO's actions that the alliance was prioritising regime change over humanitarian goals.⁶⁸

At the same time, the leading NATO countries did not fully engage in the debate on the extent of the force used, nor with the accusation that they had abused the resolution for a different purpose. NATO pointed to the operational guidelines that stipulated a standard of “zero expectation” of civilian casualties⁶⁹ and argued that its operations were conducted in a manner proportional to the goal of protecting civilians in Libya. France, the UK and the US argued in the council that the precise military planning and implementation of the intervention was up to the mandate-taker of the resolution, i.e. NATO, and that once military operations start, one cannot micromanage them. They also defended themselves against the accusation of abuse by saying that it had been clearly spelled out during the negotiations that the military operation would include not only a no-fly zone but also targeted airstrikes.⁷⁰ Yet neither NATO nor the political leaders of its member states engaged with the main criticism of the intervention outlined above—namely, that it took sides in a civil war and did not seriously pursue political negotiations.

The Impact of the Libya Intervention on the Responsibility to Protect

The debates on Libya and the controversies over the implementation of Resolution 1973 noticeably affected the atmosphere in the United Nations Security Council soon after the resolution passed.⁷¹ As analysts of the non-profit organisation Security Council Report in New York affirmed in their review of the year 2011, “controversy surrounding the implementation of the protection of civilians mandate in Libya appears to have created a new level of mistrust among Council members that negatively impacted the Council's work, not only on protection of civilians issues, but also more generally”.⁷² This view is supported by diplomats who worked in the council in 2011 and 2012.⁷³

The negative atmosphere was most notable during the debates over Syria. Ramesh Thakur summarised one view on the impact of Libya that has now become almost commonplace: the “price of Libya has been paid by Syrians”.⁷⁴

68. Jonathan Eyal, “The Responsibility to Protect: A Chance Missed”, in Adrian Johnson and Saqeb Mueen (eds.), *Short War, Long Shadow—The Political and Military Legacies of the 2011 Libya Campaign* (London: Royal United Services Institute for Defence, 2012), pp. 53–62.

69. Human Rights Council, “Report of the International Commission of Inquiry on Libya”, *op. cit.*, p. 16.

70. E.g., British Ambassador House of Commons Defence Committee, *Operations in Libya*, Vol. 1, HC 950 (London: The Stationery Office, 25 January 2012), question 78 onwards, question 86.

71. Interview with German diplomat, New York, 21 May 2014; Interview with think tank experts, New York, May 2014.

72. Security Council Report, “Protection of Civilians in Armed Conflict” (New York: Security Council Report, 2012), p. 2.

73. Interview with senior Brazilian diplomat, 5 August 2014; Interview with French diplomat at the United Nations, 19 April 2012.

74. Ramesh Thakur, “R2P after Libya and Syria: Engaging Emerging Powers”, *The Washington Quarterly*, Vol. 36, No. 2 (2013), pp. 61–76.

As Alex Bellamy points out, the direct connection between the two crises is made not only because of the context of the Arab Spring, but also because several states, including Russia and South Africa, have explicitly referred to the experience of the Libya intervention when voting against Security Council resolutions on Syria.⁷⁵ As Bellamy also argues,⁷⁶ however, the opposition of Russia to sanctions against the Assad regime likely would have also been strong, had the Libya intervention not happened, given Russia's interests in its relationship with the Syrian government.⁷⁷ It was not only Western diplomats that referred to the Libya intervention as a "pretext".⁷⁸ A senior Brazilian diplomat at the UN at the time also pointed out that Libya "gave those that were reluctant to take action in Syria a very good argument not to go on that path again", though the diplomat meant not only the Russian and Chinese positions, but also the reluctance of Western countries like the United States to use military force in this case, which would have involved a much riskier military undertaking.⁷⁹ The dissatisfaction with the course of the Libya intervention at least made it easier for Russia to block any coercive action on Syria. One Western diplomat highlighted that "Russia could afford its strong pushback, especially in 2011, because it had the backing of Brazil, South Africa and India in the Security Council".⁸⁰ Without Libya and these countries' outrage over the regime change agenda, it might have been harder for Russia and China to veto the early resolutions on Syria.

Despite the central place given to Syria in the literature on the consequences of the Libya intervention,⁸¹ and the many articles since then on one side or the other of the "R2P: dead or alive?" debate, the structural impact of the debates about the Libya intervention on the norms of protection is not as clear-cut or one-directional as many of these articles suggest. An examination of the debates on protection since 2011, both on an abstract level and as they related to crisis-specific actions, shows that the Libya debates strongly impacted R2P and norms of protection more generally, but in multiple, and at times contradicting, ways.

There are two main impacts that can be discerned. First, the debates on Libya led to an explosion of discussions on R2P and increased international engagement with the emerging norm. Second, the controversies led to a shift in the international normative debates on protection by creating a coalition between those human security advocates who opposed stretching the mandate of Resolution 1973, and those countries with non-aligned or postcolonial perspectives that opposed regime change out of principle. This new coalition facilitated the start of an increased

75. UN Security Council, "6627th Meeting, UN doc. S/PV.6627", 4 October (New York: United Nations, 2011), p. 4.

76. Alex J. Bellamy, "From Tripoli to Damascus? Lesson Learning and the Implementation of the Responsibility to Protect", *International Politics*, Vol. 51 (2014), pp. 23–44.

77. Interview with German diplomat, New York, 21 May 2014.

78. Dan Bilefsky, "New Move to Condemn Syria in UN" *New York Times*, 8 June 2011, available: <<http://www.nytimes.com/2011/06/09/world/middleeast/09nations.html>> (accessed 19 August 2014); Spencer Zifcak, "The Responsibility to Protect after Libya and Syria", *Melbourne Journal of International Law*, Vol. 13 (2012), pp. 1–35.

79. Interview with senior Brazilian diplomat, 5 August 2014.

80. Interview with German diplomat, New York, 21 May 2014.

81. Joshua Foust, "Syria and the Pernicious Consequences of Our Libya Intervention", *The Atlantic*, 6 February 2012, available: <<http://www.theatlantic.com/international/archive/2012/02/syria-and-the-pernicious-consequences-of-our-libya-intervention/252631/>> (accessed 15 January 2013); Morris, *op. cit.*; Welsh, "What a Difference a Year Makes", *op. cit.*

discussion about Security Council accountability and the criteria for humanitarian interventions.

The Increase in Engagement with R2P

The passage and implementation of Resolution 1973 inspired a significant growth in debate on the responsibility to protect. That Resolution 1973 was possible demonstrated that under specific circumstances, the use of force to protect civilians against the will of a state was something that member states could agree upon. The passage of the resolution and the ensuing controversies regarding its implementation not only inspired a sharp increase in interest from the academic world,⁸² but also significantly increased the number of states that engaged in discussions on the concept. Governments and politicians that previously had barely known about the idea were now starting to discuss R2P not only at the UN but also at home—in think tanks, parliaments and newspapers, and with their domestic publics.⁸³

An exchange on the “structural dilemmas” of R2P between Roland Paris, professor at the University of Ottawa, and a series of R2P experts and scholars in the journal *International Peacekeeping* provides a good example of the increased depth in the academic debates on the principle after the Libya intervention. Taking the course of the debates on the Libya intervention as an example, Paris points to five structural “problems” inherent in the logic of a military intervention to protect civilians. These include several issues that have since been important in debating the impact and assessment of the Libya intervention, including that these interventions will always be based on more than just altruistic motives (“mixed motives”) and the difficulty of proving that an atrocity that did not happen could have happened without the intervention (the “counterfactual problem”).⁸⁴ None of the questions have easy solutions, and as Paris argues in reply to his critics, the questions and debates that emerged from the Libya intervention have shown that the “debate over R2P and preventive humanitarian intervention is far from over”.⁸⁵

On a more practical policy level, despite the controversy, or even because of it, the Libya intervention debates might have generally contributed to a growth in familiarity with and the internationalisation⁸⁶ of R2P and norms of protection. More states have started to appoint “focal points” to institutionalise the concept in their national bureaucracies, and several regional networks and activities sprang up to hold

82. A search for the term “responsibility to protect” on Google Scholar, for example, shows a 40% increase in articles between 2010 and 2013.

83. A good example of this development is the discussion in Germany, cf. Sarah Brockmeier, Gerrit Kurtz and Julian Junk, “Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect”, *Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 429–460.

84. David Mutimer, “Whose Problems Are These Anyway? A Response to Roland Paris”, *International Peacekeeping*, Vol. 22, No. 1 (2015), pp. 6–8; Robert A. Pape, “Response to Roland Paris Article”, *International Peacekeeping*, Vol. 22, No. 1 (2015), pp. 9–10; Roland Paris, “The ‘Responsibility to Protect’ and the Structural Problems of Preventive Humanitarian Intervention”, *International Peacekeeping*, Vol. 21, No. 5 (2014), pp. 569–603; Ramesh Thakur, “R2P’s ‘Structural’ Problems: A Response to Roland Paris”, *International Peacekeeping*, Vol. 22, No.1 (2015), pp. 11–25.

85. Roland Paris, “Responsibility to Protect: The Debate Continues”, *International Peacekeeping*, Vol. 22, No. 2 (2015), pp. 143–150, p. 149.

86. For an overview of R2P and the Finnemore/Sikkink model of norm development, see Edward Luck, “Building a Norm: The Responsibility to Protect Experience”, in Robert I. Rotberg (ed.), *Mass Atrocity Crimes: Preventing Future Outrages* (Cambridge, MA/Washington, DC: World Peace Foundation/Harvard Kennedy School Program on Intrastate Conflict/Brookings Institution Press, 2010), pp. 108–127.

debates on R2P.⁸⁷ Even the UN Security Council increasingly referred to the concept after 2011.⁸⁸ Between March 2011 and the point of writing, the Global Centre for the Responsibility to Protect listed 20 Security Council resolutions that used the term “responsibility to protect” in its summary overview.⁸⁹ It included two explicit references to paragraphs 138 and 139 of the World Summit outcome document in thematic resolutions on small arms⁹⁰ and genocide prevention.⁹¹ These references to R2P mostly relate to specific country situations and emphasise the “primary responsibility” of the respective authorities to protect their populations. They thereby underline the sovereignty of these states and do not go against the understanding of sovereignty as proclaimed by China or Russia.⁹² Therefore, the mere number of resolutions does not indicate an increase in normative support for R2P, in disagreement with a claim commonly made by R2P advocates.⁹³ Rather, the fact that references to the concept are less controversial than they were before 2011 supports the thesis that the Libya debates led to an increased familiarity with and use of the R2P concept.

Shifting Coalitions against Regime Change and for Greater Control of the Use of Force to Protect Civilians

Pointing to the agreement on R2P in the 2005 outcome document, Bellamy argued in 2008 that there was no urgent need for criteria that regulated the use of force in the context of R2P, because the very fact that the Security Council was the only authority allowed to mandate the use of force would guard against the abuse of the principle.⁹⁴ If this caveat had in fact ever convinced a state sceptical of R2P, Libya proved this argument decisively wrong. Significantly, the Libya case did so not only for the already sceptical postcolonial states, but also for those actors—states or civil society members—that had always supported R2P from a perspective of human security. The abuse of the Libya mandate in this way led to a reordering of the coalitions and arguments in international debates on protection.

In previous instances of intervention debates (for example, on Kosovo or Darfur⁹⁵), the interventionist arguments based on human security and major power exceptionalist perspectives were pitched against arguments based on post-colonial, legalistic or anti-imperialist perspectives. After Libya, the supporters of

87. Lars Brozus and Raphaela Hobbach, “Lernen aus Ruanda”, *SWP-Aktuell* 2014, No. 19, April (2014), pp. 2–3.

88. Bellamy, “From Tripoli to Damascus?”, *op. cit.*, p. 26.

89. Global Centre for the Responsibility to Protect, “R2P References in United Nations Security Council Resolutions and Presidential Statements”, *GCR2P Report* (May 2014), available: <<http://bit.ly/1o8HUV6>> (accessed 19 August 2014).

90. UN Security Council, “Resolution 2117, UN doc. S/RES/2117 (2013)”, 26 September (New York: United Nations, 2013).

91. UN Security Council, “Resolution 2150, UN doc. S/RES/2150 (2014)”, 16 April (New York: United Nations, 2014).

92. Interview with US diplomat, 23 May 2014; Interview with Richard Gowan, New York, 23 May 2014.

93. Bellamy, “From Tripoli to Damascus”, *op. cit.*

94. Alex J. Bellamy, “The Responsibility to Protect and the Problem of Military Intervention”, *International Affairs*, Vol. 84, No. 4 (2008), pp. 615–639, p. 629.

95. Cf. Verhoeven, Soares de Oliveira and Jaganathan, in this issue.

human security joined the latter. As described above, the majority of states, civil society actors and academics formed an opposition to regime change that combined legal and geopolitical arguments against the removal of a functioning government, with those arguments made from a human security perspective. Therefore, the debates on the Libya intervention ultimately sharpened the contours of what most actors believed should be included in R2P, as this majority made a point of emphasising that regime change was incompatible with the concept or the normative idea of protection more generally.⁹⁶

This shift in coalitions was possible to a large extent because the countries leading the Libya intervention did not engage with the arguments against regime change as described above. In practice, the split by the human security advocates from the (Western) exceptionalists could be observed in at least two ways in the post-Libya debates. First, there was growth in support for discussing criteria for the use of force to protect civilians and more accountability of those implementing a protection mandate issued by the Security Council. Second, the poisoned atmosphere in the Security Council did not prevent an increase in force mandated by the council to protect civilians in peacekeeping operations—a system that already fulfilled these accountability requirements.

One direct consequence of the Libya intervention was the Brazilian proposal of “responsibility while protecting” (RwP).⁹⁷ The proposal called for a renewal of the discussion on the criteria for when and how force should be employed to protect civilians, and for greater accountability for those that implement the mandate by the Security Council.⁹⁸ The criteria that should guide Security Council authorisation of the use of force in such circumstances were already subject to discussions during the work of the ICISS,⁹⁹ the World Summit¹⁰⁰ and the 2009 and 2010 General Assembly debates on R2P.¹⁰¹ RwP revived these debates and was supported not only by India and South Africa, but also by a broad majority of states that resembled the coalition of those that criticised the course of regime change during the Libya intervention.¹⁰²

Moreover, despite the fallout of the Libya intervention, the Security Council, instead of weakening its protection language in specific country situations and peacekeeping mandates, strengthened this language and passed peace operation

96. For statements by traditional proponents of R2P arguing that regime change should not be a part of R2P, see, e.g., Evans, “Interview: The R2P Balance Sheet after Libya”, *op. cit.*; Thakur, “R2P, Libya and International Politics”, *op. cit.*; Giselle Lopez, “Responsibility to Protect at a Crossroads: The Crisis in Libya”, in Anthony Chase (ed.), *Transatlantic Perspectives on Diplomacy and Diversity* (New York: Humanity in Action Press, 2015), pp. 119–138.

97. UN Security Council and UN General Assembly, “Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General. Responsibility While Protecting: Elements for the Development and Promotion of a Concept, UN Doc. S/2011/701” (9 November 2011). Cf. Stuenkel, Tourinho and Brockmeier, in this issue.

98. Cf. Stuenkel, Tourinho and Brockmeier, in this issue.

99. International Commission on Intervention and State Sovereignty, *op. cit.*

100. Cf. Kurtz and Jaganathan, in this issue.

101. Global Centre for the Responsibility to Protect, “Implementing the Responsibility to Protect: The 2009 General Assembly Debate: An Assessment” (New York: Ralph Bunche Institute for International Studies, 2009).

102. Cf. Stuenkel, Tourinho and Brockmeier, in this issue.

mandates with a focus of unprecedented degree on the protection of civilians.¹⁰³ Just two weeks after the passage of Resolution 1973, the council authorised the peacekeeping mission in Côte d'Ivoire to "use all necessary measures to carry out its mandate to protect civilians". In 2011 alone, it passed two new peacekeeping operations that included the authorisation to use force to protect civilians—in Abyei, Sudan and in South Sudan.¹⁰⁴ In 2012, Resolution 2085 on Mali authorised the use of force by an African-led mission to, among other goals, "support the Malian authorities in their primary responsibility to protect the population".¹⁰⁵ In March 2013, the council unanimously decided to add an "intervention brigade" to the mandate of the peacekeeping mission in the Democratic Republic of the Congo.¹⁰⁶ The resolution specifically emphasised that the brigade was authorised "on an exceptional basis" and was not to set a precedent. Yet it was widely seen as a greater willingness of the council to authorise even offensive force for the purpose of protecting civilians.¹⁰⁷

One factor behind the growth of the use of force in peacekeeping for the protection of civilians despite the fallout over the use of force in Libya is the fact that UN peacekeeping is consistent with precisely those requirements demanded in the RwP proposal and reflected the concerns of human security advocates. Within the UN peacekeeping system, how a mission is conducted remains squarely within the control of the council. As a senior Brazilian diplomat put it, giving a UN mission the authority to use force to protect civilians is "different than the discussion of the council itself authorizing a third party to come in and conduct a military operation. In the case of the UN, there's more scrutiny. The UN is under the responsibility of providing information on what is happening. There is more control. There is more accountability."¹⁰⁸

There are other factors that help explain the increase in the mandating of force in peacekeeping for protection. Though passed under Chapter VII, the aforementioned missions were explicitly invited or negotiated in agreement with the host government. Given that the use of force in these cases was not mandated against a state-perpetrator, these cases evoke much less concern in terms of sovereignty.¹⁰⁹ In addition, the situations in which the Security Council authorised the use of force after Libya concerned conflicts on the African continent that—in contrast to the crisis in Syria—did not involve significant geopolitical interests for those countries that would oppose the use of force because of sovereignty concerns. But a higher degree of accountability to the council through the established mechanisms of

103. Security Council Report, "Protection of Civilians in Armed Conflict" (New York: Security Council Report, 2011); Security Council Report, "Protection of Civilians in Armed Conflict" (2012), *op. cit.*

104. UN Security Council, "Resolution 1990, UN doc. S/RES/1990 (2011)", 27 June (New York: United Nations, 2011); UN Security Council, "Resolution 1996, UN doc. S/RES/1996 (2011)", 8 July (New York: United Nations, 2011).

105. UN Security Council, "Resolution 2085, UN doc. S/RES/2085 (2012)", 20 December (New York: United Nations, 2012).

106. UN Security Council, "Resolution 2098, UN doc. S/RES/2098", 28 March (New York: United Nations, 2013).

107. Nicholas Kulish and Somini Sengupta, "New UN Brigade's Aggressive Stance in Africa Brings Success, and Risks", *New York Times*, 12 November 2013.

108. Interview with senior Brazilian diplomat, 5 August 2014.

109. Benner *et al.*, *op. cit.*, p. 11.

control in the UN peacekeeping system is an important explanatory factor behind this growth.

Conclusion

The intervention in Libya was significant for the development of the “responsibility to protect” concept, yet it marked neither an uncontested victory nor the death of R2P. It both showed new areas of agreement and refreshed old disputes regarding the nuances of the role of the use of force to protect populations, against the will of their governments. The debates on regime change reconfirmed suspicions that R2P could be abused for other political purposes and that this can be the case even with the supposed safeguard of a United Nations Security Council mandate. Partially due to the refusal of NATO countries to openly make a case for why regime change might at times be a necessary consequence of protecting populations, the debates saw the formation of new coalitions opposing regime change for reasons related to human security and because of the potential abuse of hegemonic power. In terms of the practical implementation of R2P, the Libya controversies have contributed to, but have not been the primary cause of, the deadlock in the Security Council over Syria. In all other specific country situations and in regards to peacekeeping mandates in Africa, the controversies did not prevent progress on the agenda of civilian protection.

The discussions on the Brazilian “responsibility while protecting” proposal provided some space for discussing the issues that emerged from the Libya intervention in greater detail—including the sequence of diplomatic and military means, the criteria for the use of force and greater accountability for those that implement the mandate by the Security Council.¹¹⁰ The idea of “responsible protection” put forward by a Chinese pundit in 2012 might further signal the increasing openness of China as a P5 to contribute to these discussions.¹¹¹ But after Brazil stopped advocating for its own proposal,¹¹² the debates subsided. Key advocates of R2P, like the UN secretary-general’s special advisor for the concept, have reverted to the strategy they pursued before the intervention, which focuses on emphasising agreement and further discussions of the non-military aspects of R2P, hoping to thereby keep alive the discussion on the prevention of atrocity crimes.

While this strategy might have its merits from the perspective of bureaucratic politics at the UN or advocacy organisations that hope to gather as much support as possible for R2P, Libya (and later RwP) showed that there is in fact a need for more discussions on the military aspect of R2P. What is needed is not only a mere discussion on abstract criteria and abuse (although an honest attempt by key Western

110. Cf. Tourinho, Stuenkel and Brockmeier, in this issue.

111. Andrew Garwood-Gowers, “China’s ‘Responsible Protection’ Concept: Re-interpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes”, *Asian Journal of International Law* (2015), available: <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9542706&fileId=S2044251314000368>> (accessed 15 March 2015); Zongze Ruan, “阮宗泽:中国应倡导“负责任的保护” [China Should Advocate for Responsible Protection], *Global Times (Chinese Edition)*, 7 March 2012, available: <<http://opinion.huanqiu.com/1152/2012-03/2501163.html>> (accessed 26 May 2015).

112. Thorsten Benner, “Brazil as a Norm Entrepreneur: The ‘Responsibility While Protecting’ Initiative”, *GPPi Working Paper* (2013); Oliver Stuenkel and Marcos Tourinho, “Regulating Intervention: Brazil and the Responsibility to Protect”, *Conflict, Security & Development*, Vol. 14, No. 4 (2014), pp. 379–402.

states to engage in this debate would be helpful) or arguments on the structural dilemmas of R2P between academics, but debates on the extent of force that were also held during the Libya intervention. There are different perceptions around the world regarding what the use of force can realistically achieve and thus when and how it should be employed. A handful of powerful Western countries—including the United States, France and the United Kingdom—are much more optimistic about the likelihood of success of using force than other countries. China, India, Brazil and Germany are much more sceptical about what force can achieve.¹¹³ In August 2014, the former Brazilian Foreign Minister Antonio Patriota, for example, pointed to the “blind faith in the effectiveness of military action to promote stability” that had been proven mistaken in Iraq, Syria, Libya and Afghanistan. “In all of these scenarios”, he argued, “serious setbacks have demonstrated the limitations of strategies that attribute to the use of force a role that it does not and cannot fulfill in today’s world”.¹¹⁴ For both sides, this attitude is rooted in historical experience with the use of military force at home or abroad.¹¹⁵ This general difference in attitudes towards the utility of the use of force is relevant for each case-specific discussion and consequently informs the arguments and coalitions of actors in debates on how Resolution 1973 was implemented.

Even if it was possible to strip away the posturing and hypocrisies that exist on all sides of the debates on R2P,¹¹⁶ we would be left with a genuine divide between those states that are more optimistic about what force can achieve in international relations—and therefore also in the protection of civilians—and those that are more sceptical. Promoting the debate on the utility or effectiveness of force could provide a useful and relevant contribution to furthering international debates on the responsibility to protect.

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113. Heiko Biehl, Bastian Giegerich and Alexandra Jonas, “Introduction”, in Heiko Biehl, Bastian Giegerich and Alexandra Jonas (eds.), *Strategic Cultures in Europe. Security and Defence Policies across the Continent* (Wiesbaden: Springer VS, 2013), pp. 7–17.

114. Ambassador Antonio Patriota, Security Council Open Debate on Conflict Prevention, “UN Security Council, 7247th Meeting, UN doc. S/PV.7247”, 21 August (New York: United Nations), p. 25.

115. For articles that discuss in more detail the ideational and historical sources for all BRICS states, the US and Europe with regards to the responsibility to protect, see Philipp Rotmann, Gerrit Kurtz and Sarah Brockmeier, “Major Powers and the Contested Evolution of a Responsibility to Protect”, *Conflict, Security and Development*, Vol. 14, No. 4 (2014), pp. 355–377.

116. *Ibid.*

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