Protecting in Libya on Behalf of the International Community

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Abstract

Here is the third issue of a series of three, under the global title "Humanitarian Action – A Scope for the Responsibility to Protect?". The first issue dealt with "Humanitarian Assistance Looking for a Legal Regime Allowing its Delivery to Those in Need under any Circumstances" and ended with the conclusion that humanitarian action protagonist had hitherto failed to find the adequate regime. The second issue questioned whether R2P was a legal tool ready to use; it ended with the conclusion that it was not yet really the case.

But soon after this second issue was published, the first armed reaction to events threatening populations occurred, being carried out under a UN mandate. This paper has been written while the 2011 events developed in the Arab world. The last semester of the year 2011 has been marked by a very strong acceleration of the process of change in the name of R2P. The publication was purposely postponed twice.

When putting an end to the paper, we cannot know which future is to be awaited. However, it is already possible to do more than storytelling and to take stock of some trends.

A.   Introduction

No expert seems to have foreseen the "Arab spring". And it could not sensibly have been foreseen that the first real implementation of the responsibility to protect – "R2P" – would have been in the Arab world, so demanding in terms of respect for sovereignty. And, yet, on 17 March 2011 in New York, the United Nations Security Council (UNSC) adopted Resolution 1973, providing the following:

> "Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of civilians [...]

> Considering that the widespread and systematic attacks currently taking place in Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity [...]

3. Demands that the Libyan authorities comply with their obligations under international law. [...]

4. Authorizes Member States that have notified the Secretary General […] to take all necessary measures […] to protect civilians and civilian populated areas under threat of attacks in Libyan Arab Jamahiriya […] while excluding a foreign occupation force of any form on any part of Libyan territory. [...]

6. Decides to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians. [...]

8. Authorizes Member States that have notified the Secretary General […] to take all necessary measures to enforce compliance with the ban on flights imposed."[1]

Thus, the R2P is put forward as the true legal basis for military operations, which have lasted for nearly seven months. The reference to R2P is clear-cut, clearer perhaps than the very type of event it is about to protect from.[2] Indeed, while the UNSC had already suggested, in Resolution 1970, that "the widespread and systematic attacks currently taking place in Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity",[3] it has not felt the necessity to confirm this qualification before authorizing a militarily implemented no-fly-zone in its Resolution of 17 March.

Is this the starting point of a new era? And if so, is our reference to humanitarian action as a scope for R2P (the common title of our three issues in this Journal) somehow outdated and lacking ambition?

It does not seem to be so. Surely, the on-going Libyan case is a perfect case study (B.I.). But what kind of lasting consequences can be expected for R2P? Could there be exact repeats? (B.II.).

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[1]   SC Res. 1973, 17 March 2011.
[2]   With times, the situation of the opponents to Gaddafi appears to have been assessed very hastily early March.
[3]   SC Res. 1970, 26 February 2011.

B.   Libya in Focus: the First Military UN-Mandated Reaction to a State's Failure to Protect its Population

I.   A Case Study

Unlike the Rwanda or Srebrenica cases, the Libyan State's failure to protect the population was acknowledged in a timely fashion (1.) and, unlike the Kosovo case, the operation occurred as the International community's reaction to this failure (2.).

1.   Libya's Failure to Protect its Population

Framing Libya's conduct towards its citizens as a "failure" is euphemistic, since the Government of Libya itself caused their suffering. According to the World Summit Outcome Document, however, citizens' sufferings had to fall within specific categories. Genocide, War Crimes, Crimes against Humanity and Ethnic Cleansing can be considered the contemporary "four horsemen of the Apocalypse".[4] The motto "never again" has become popular since World War II, and the Rwandese genocide inspired a desire for vigilance eventually enshrined in the World Summit Outcome, although not without difficulties.[5] In Libya's case, the shadow of these past events remained in other States' consciences (a)), which led to mobilization (b)).

a)   The Shadow of the Four Horsemen of the Apocalypse

Gaddafi's Libya was not considered as a regime at risk, neither was its evolution toward a genocide foreseen in any of the existing risk assessment frameworks.[6]

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[4]   The four horsemen whose ride is said in the Book of the Apocalypse to be the forerunner of the end of the world (Revelation 6:2-8). This book, the last of the Bible, is attributed to St John, the evangelist, and it takes elements from Old Testament prophecy.

[5]   See M.-J. Domestici-Met, 'Humanitarian Action – A Scope for the Responsibility to Protect: Part II: Responsibility to Protect – A Legal Device Ready for Use?', 2 *Goettingen Journal of International Law* (2010) 3, 951, 961.

[6]   The 'Mass Atrocity Crime Watch List' did not include Libya in its list of 33 'at risk' countries: Genocide Prevention Project, 'Mass Atrocity Watch List 2008-2009', available at http://www.preventorprotect.org/images/documents/mass_atrocity_ watchlist.pdf (last visited 31 December 2011); nor did Barbara Harff's list of 27

The Libyan revolution began with some street protests in mid–January, following the success of the Tunisian revolution. Zined Ben-Ali fled from Tunisia on 14 February 2011. The following day, during a protest in Tripoli, street demonstrators asked for Muammar Gaddafi's 41-year "reign" to come to an end. The regime reacted forcibly, with the army rather than the police. However, some defections provided the opposition with the beginnings of a small army, which led to the creation of an Interim Council.

In the wake of the Tunisian and Egyptian revolutions, there was a feeling of rapid global change in the Arab world which was by no means to be hindered by any attempt at resistance by States. This led to a specific sensitivity to Gaddafi's crimes, later on described as such:

> "[C]ivilians were attacked in their homes; demonstrations were repressed using live ammunition, heavy artillery was used against participants in funeral processions, and snipers placed to kill those leaving the mosques after the prayers."[7]

Certainly, Gaddafi himself worsened the situation by threatening his enemies of a terrible fate: "officers have been deployed in all tribes and regions so that they can purify all […] from these cockroaches" and "any Libyan who takes arms against Libya will be executed."[8]

On 26 February the Interim opposition government was renamed the Transitional National Council, which was recognized by France as the

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countries, available at http://globalpolicy.gmu.edu/genocide/CurrentRisk2008.pdf (last visited 31 December 2011). Minority Rights Group International did not list Libya among the 68 countries posing a risk to minorities in 2010, (Minority Rights Group International, 'Peoples under Threat' (2010) available at http://www.minorityrights.org/9885/peoples-under-threat/peoples-under-threat-2010.html [last visited 31 December 2011]), and Libya was not an 'area of concern' for the Genocide Intervention Network (available at http://www.genocideintervention.net/ [last visited 31 December 2011]).

7   ICC, 'ICC Prosecutor: Gaddafi used his absolute authority to commit crimes in Libya' (16 May 2011) available at http://www.icc-cpi.int/NR/exeres/1365E3B7-8152-4456-942C-A5CD5A51E829.htm (last visited 31 December 2011).

8   'Defiant Gaddafi issues chilling call', *ABC (Australia)* (23 February 2011), quoted in A. Bellamy & P. D. Wiliams, 'The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect', 87 *International Affairs* 4 (2011), 825, 838, note 53.

representative of Libya as early as 10 March 2011,[9] following a secret mission of the human rights activist Bernard-Henry Lévy.[10] The same position was taken by the Council of the European Union on 11 March 2011.[11]

While all Arab dictatorial regimes seemed close to being toppled by an overwhelming wave of popular revolt, things went particularly quickly with Libya. For the second time, the international community as a whole expressed its feeling of its subsidiary responsibility to protect. But for the first time, it also decided on a military response, going far further than had resolution 1706 in the Darfur case.[12]

Faced with repression in the streets of Tripoli, public opinion developed an emotional approach to the events in Libya expressed by transnational civil society (b)), eventually reaching institutional bodies.

b)   Calls for Protection Coming From Transnational Civil Society

On 20 February 2011, representatives from 22 NGOs subscribed to a call to stop atrocities in Libya. They reminded world leaders of their Responsibility to Protect. Starting from 20 February, Human Rights Watch released many urgent communiqués, the first of which provided "Libya: Governments Should Demand End to Unlawful Killings".[13] International Crisis Group (ICG) issued a number of reports, among them "Immediate International Steps Needed to Stop Atrocities in Libya"[14] (22 February 2011). The same

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9   'Libya: France recognises rebels as government', *BBC News* (10 March 2011) available at http://www.bbc.co.uk/news/world-africa-12699183 (last visited 31 December 2011).

10   He was sent by the French President in order to report on the situation in Benghazi.

11   EP Res., 11 March 2011, P7_TA(2011)0095.

12   See Domestici-Met, *supra* note 5, 968-970.

13   Human Rights Watch, 'Libya: Governments Should Demand End to Unlawful Killings. Death Toll Up to at Least 233 Over Four Days' (20 February 2011), available at http://www.hrw.org/news/2011/02/20/libya-governments-should-demand-end-unlawful-killings (last visited 31 December 2011); see also Human Rights Watch, 'Libya: Africa's Rights Body Should Act Now' (25 February 2011) available at http://www.hrw.org/news/2011/02/25/libya-africa-s-rights-body-should-act-now (last visited 31 December 2011) and Human Rights Watch, 'End Violent Crackdown in Tripoli' (13 March 2011) available at http://www.hrw.org/news/2011/03/13/libya-end-violent-crackdown-tripoli (last visited 31 December 2011).

14   International Crisis Group, 'Immediate International Steps Needed to Stop Atrocities in Libya' (22 February 2011), available at http://www.crisisgroup.org/en/publication-

day, Genocide Alert issued a press release calling upon the German government to advocate in favor of sanctions as well as a no-fly zone declared by the Security Council and European Union.[15] On 24 February 2011 Amnesty International issued a press release, "Fears Grow for Libya Migrants as Thousands flee" and released a report, "Libya: Detainees, disappeared and missing".[16]

The emotion dramatically escalated when on 26 February, the Permanent Representative of Libya to the UN sent a letter to the President of the Security Council calling for a referral of the situation to the ICC, and defended this position in front of the Council.[17] This was an appeal for the latter to overcome any hesitation and to adopt resolution 1970.[18] After this vote, the pressure went on, and led to resolution 1973.[19]

Under these circumstances, the international community was strongly called upon to react.

2.   The International Community's Reaction

This reaction was in line with the World Summit Declaration, which does not avoid strong wording when it comes to subsidiary responsibility, without, however setting as precise conditions as outlined in the ICISS:[20]

> "The international community, through the United Nations, also has the responsibility […] to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against

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[15]   type/media-releases/2011/immediate-international-steps-needed-to-stop-atrocities-in-libya.aspx (last visited 31 December 2011).

'Bürgerkrieg in Libyen: EU sollte militärische Flugverbotszone einrichten' (22 February 2011) available at http://www.genocide-alert.de/htdocs/contenido/cms/front_content.php?idcat=72&idart=294 (last visited 31 December 2011).

[16]   Amnesty International, 'Fears Grow for Libya Migrants as Thousands flee' (2 March 2011) available at http://www.amnesty.org/en/news-and-updates/fears-grow-libya-migrants-thousands-flee-2011-03-02 (last visited 31 December 2011) and Amnesty International, 'Libya: Detainees, disappeared and missing' (29 March 2011) available at http://www.amnesty.org/en/library/info/MDE19/011/2011/en (last visited 31 December 2011).

[17]   Before the Security Council, the Libyan Representative pleaded for "a swift, decisive and courageous resolution to put an end to the bloodshed and killing of innocent people", UN Doc. S/P.V.6490.

[18]   SC Res. 1970, 26 February 2011.

[19]   SC Res. 1973, 17 March 2011.

[20]   See Domestici-Met, *supra* note 5, 966-967.

humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[21]

Thus only two conditions must be respected:

- the manifest failure of the state to protect, in spite of the commission of one of the specified four crimes;

- and the fact that peaceful means are inadequate.

The first point was asserted in both resolutions 1970 and 1973 with the sentence "the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity"[22]. And the second could be deduced from the fact that violence had not stopped following to the SC Resolution 1970, even though some remarks could be made regarding the evolving situation in Libya: on the one hand, there were fewer demonstrators – and therefore less repression – in Tripoli; on the other hand, the second largest city in the country was held by an organized rebellion.[23]

The Libyan case provided the opportunity for a scenario of military-led protection to unfold. The first step was taken by the UN alert bodies, followed by the Human Rights Council, the "relevant regional organizations", and, finally, the Security Council. Step by step, it appeared that the conditions required by paragraph 139 were both met.

a)   The UN Watch and Alert Bodies

Since 2004, the UN Secretary-General (UNSG) receives the advice of a Special Adviser on the Prevention of the Genocide. The World Summit

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[21]   GA Res. 60/1, 24 October 2005, para. 139 (emphasis added by the author).
[22]   SC Res. 1970, 26 February 2011 and SC Res 1973, 17 March 2011.
[23]   See *infra*, C.I.1.

Declaration paid special tribute to him.[24] A few years later, in 2008, a position was created for a UNSG Special Adviser for Responsibility to Protect. A Joint Bureau was recently created as a common Secretary for both.

Both Special Advisers had been very active about Côte d'Ivoire with two statements: one adopted on 29 December 2010 and one on 19 January 2011.[25] On 22 February, they tackled the Libyan case, issuing a common press release reminding the Libyan Government of its responsibility to protect its citizens.

b)   The First UN Decisions: Human Rights Council and General
      Assembly

On 25 February 2011, the Human Rights Council met in a special session devoted to "the situation of human rights in the Libyan Arab Jamahiriya". In its Resolution S-15/2 it called upon the Libyan government to cease all human rights violations, and recommended Libya's suspension by the General Assembly.[26] The latter suspended Libya from the Human Rights Council on 1 March2011.[27] From member state, Libya then became a State under review.[28] On 11 March the Human Rights Council named the members of an International Commission of Inquiry, entrusted with the responsibility of gathering testimonies and evidence and listing them in a report to the Council to be submitted by 1 June 2011.[29]

c)   The Relevant Regional Organizations

The expression "relevant" stems from Paragraph 139 of the World Summit Outcome Document.[30] It can be construed in the following sense: the organizations that the State under review belongs to; and obviously the Arab League and the African Union had a strong influence upon the

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[24]   "We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide", GA Res. 60/1, 24 October 2005, para. 140.

[25]   See *infra* C.II.

[26]   UN Doc. A/HRC/RES/S-15/1 (25 February 2011).

[27]   Press Release GA/11050, available at http://www.un.org/News/Press/docs/2011/ga 11050.doc.htm (last visited 22 November 2011).

[28]   *Id.*

[29]   The report was submitted on 1 June. See A/HRC/17/44 (1 June 2011).

[30]   GA Res. 60/1, 24 October 2005, para. 139.

Security Council's position. However, another organization played a major role: the European Union.

The European Union was the first to act after SC Resolution 1970. On 28 February, it adopted a decision[31] in order to implement the latter, by imposing a travel ban and freezing the financial assets of Libyan Government members. The Transitional Council, located in Benghazi, recognized by France on 10 March 10, was in turn recognized on 11 March by the European Parliament as officially representing the Libyan opposition.[32] In the same Resolution, the Parliament stressed that "the EU and its Member States must honor their Responsibility to Protect, in order to save Libyan civilians from large-scale armed attacks",[33] asking them not to rule out any option provided for in the Charter, and calling on the High Representative and the Member States to stand ready for a UNSC decision, including a possible no-fly zone. It was a strong invitation for a robust response to Libya's failure to protect.

In the last days before SC Resolution 1973 was adopted, the African Union, the Organization of Islamic States, the Gulf Cooperation Council and the Arab League took positions upon the situation. The strongest was the Arab League's. On 3 March, it decided to suspend Libya and began considering a no-fly zone. To that end, it convened an Extraordinary session for 12 March, where it

> "call[ed] on the Security Council to bear its responsibilities towards the deteriorating situation in Libya, and to take the necessary measures to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighboring States"[34].

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[31]   Council Decision 2011/137/CFSP, L 58/53.
[32]   EP Res., 11 March 2011, P7_TA (2011) 0095.
[33]   EP Res., 11 March 2011, P7_TA (2011) 0095, para. 10.
[34]   'The outcome of the League of Arab States meeting at the Ministerial Level in its extraordinary session on the implications of the current events in Libya and the Arab position' (12 March 2011) available at http://responsibilitytoprotect.org/Arab%20 League%20Ministerial%20level%20statement%2012%20march%202011%20-%20 english%281%29.pdf (last visited 2 January 2012), para. 1.

In between the two Arab League meetings mentioned above, the Gulf Cooperation Council, had, on 7 March, expressed its hope to see the "UN Security Council take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya", and also condemned the "crimes committed against civilians, the use of heavy arms and the recruitment of mercenaries"[35] by the Libyan regime. On 28 March, Qatar took an even more political position by recognizing the NTC.

The African Union was more aligned with a peacekeeping approach, stating that violence in Libya posed "a serious threat to peace and security in that country and in the region as a whole, as well as to the safety and dignity of Libyans and of the migrant workers, notably the African ones, living in Libya"[36]. While AU Member States called for the creation of a High-Level Committee on Libya to engage with all parties and facilitate dialogue, they expressly rejected any form of foreign military intervention.[37]

d)   The UN Security Council

The wording "responsibility to protect" belongs to both SC Resolutions 1970 and 1973, even though the measures adopted are quite different.

On 26 February, the Security Council used article 41 of the Charter to impose smart sanctions, together with referring the situation to the Prosecutor of the ICC. But the decision of the Council to use article 41 is not grounded on threat to peace:

> "Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya.
>
> Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

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[35]   Cited by 'Gulf States back Libya for no-fly-zone' (7 March 2011) available at http://www.france24.com/en/20110307-gulf-states-back-libya-no-fly-zone?quicktabs _1=0 (last visited 31 December 2011).

[36]   Communiqué of the 265th meeting of the Peace and Security Council, PSC/PR/COMM.2 (CCLXV), para. 3.

[37]   *Id.,* para. 6.

> Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,
>
> 1. Demands an immediate end to the violence and calls for steps to fulfil the legitimate demands of the population;
>
> 2. Urges the Libyan authorities to: [...]"[38]

Thus the motives listed in the preamble of the SC Resolution 1970 were close to those in the SC Resolution 1973 preamble, with a noticeable difference: SC Resolution 1973 goes back to the "threat to peace scheme", through the theme of protection.

The resolution 1970 did not remain unimplemented. The European Union answered to the call immediately, on 26 February. The Prosecutor of the ICC launched an investigation as early as 2 March.

However, faced with the on-going events and growing pressure,[39] the Security Council adopted, Resolution 1973 on 17 March 17 with the approval of Nigeria, South Africa, Gabon and Lebanon. It was the first coercive action taken in the name of responsibility to protect and "against the wishes of a functioning State"[40].

The progress since SC Resolution 1706 is striking. The latter referred indirectly to R2P:

> "Recalling […] its previous resolutions […] and 1674 (2006) on the protection of civilians in armed conflict, which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit Outcome"[41].

The historical signification of Resolution 1973 was specially highlighted. For Secretary General Ban Ki-Moon, Resolution 1973 "affirms

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[38]   SC Res. 1970, 26 February 2011.

[39]   International Crisis Group on 10 March 2011, Human Rights Watch on 13 March 2011. And even after the SC Resolution 1973 of 17 March, Human Rights Network-Uganda (HURINET), in an open letter dated 28 March 2011, called for up scaling the Responsibility to Protect Mechanism.

[40]   Bellamy & Williams, *supra* note 8, 825. The authors add that "[t]he closest it had come to crossing this line previously was in Resolutions 794 (1992) and 929 (1994)" (Somalia and Rwanda).

[41]   SC Res. 1706, 31 August 2006, preamble.

clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government"[42]. A wide support to this Resolution was perceptible.[43]

The European Council welcomed Resolution 1973[44] and the Prosecutor of the ICC issued warrants for the arrest of Muammar Gaddafi and his close aids.[45]

Thus the International community, for the first time, reacted to a failure to protect; and it has been able to do so within the institutional framework set up by paragraph 139 of the World Summit Outcome. For R2P it is an important step forward. And, in spite of some nascent fault lines in international unanimity – namely regarding the way of putting an end to the crisis[46] – a NATO-led military operation, on 23 March. It has since put an end to Gaddafi's 42-year rule.[47]

II.   A Success Story?

At first glance, the outcome seems positive. Tribal membership has not – at least for the time being – fuelled the "long, long war" Gaddafi promised on 20 March.[48] The endangered Benghazi is safe and victorious. Moreover, the success lies in the very composition of the Security Council when it adopted the resolution (1.). But equally interesting is the outcome of the "timely response", which has – up to now – proven to be more political than humanitarian in nature (2.).

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[42]   UN Doc. SG/SM/13454, Statement by the United Nations Secretary General, 17 March 2011.

[43]   In the wake of SC Resolution 1973, a meeting of 35 governments was organized in London on 29 March 2011. The NATO itself held a meeting in Paris.

[44]   Council of the European Union, EU Priorities for the 66th Session of the General Assembly of the United Nations, Doc 11298/11, 10 June 2011.

[45]   ICC Pre-Trial Chamber I, Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi, Doc ICC-01/11-13, Warrant of Arrest for Saif Al-Islam Gaddafi, Doc ICC-01/11-14, Warrant of Arrest for Abduullah Al-Senussi, Doc ICC-01/11-15, all issued 27 June 2011 with the charge of crimes against humanity.

[46]   See, *infra,* C.I.

[47]   See U. Laessing & M. Ryan, 'Rebels enter Tripoli, crowds celebrate in streets' (21 August 2011) available at http://www.reuters.com/article/2011/08/21/us-libya-idUSTRE77A2Y920110821 (last visited 31 December 2011).

[48]   See 'Libya air strikes: Gaddfi vows 'long war'', *BBC* (20 March 2011) available at http://www.bbc.co.uk/news/world-africa-12798568 (last visited 31 December 2011).

1.   The Fruit of an Exceptional Security Council Membership

It is commonly asserted that the veto power makes it impossible for the Security Council to adopt strong resolutions. It has been proven not only throughout decades of cold war, but even after the fall of the Berlin wall.[49] Why were Resolutions 1970 and – in particular – 1973 possible? It is all the more surprising given that many non-permanent members of the Council, without any veto power, would have been expected to be strong opponents to any interference in a Southern State's affairs.

At this precise moment, the Security Council, politically speaking, appeared similar to a "G 20". Among the non-permanent members of the Council were the most famous "emerging States", with the result that the Council encompassed the four members of BRIC – Brazil, Russia, India and China – reinforced by the presence of the two bigger powers in Africa: South Africa, the GDP of which is half of whole Sub-Saharan Africa, and Nigeria, the most populated African State. A R2P-grounded resolution adopted under such circumstances is a particularly strong proof of success.[50]

But other no less extraordinary elements, played in favor of the Resolutions' adoption. One is the presence among non-permanent members of a witness of what might happen in the absence of R2P: Bosnia-Herzegovina, still mourning the Srebrenica slaughter. Moreover, the State that was failing to protect its population was quite isolated on the international stage. Gaddafi was commonly considered as a somehow ridiculous tyrant, with a difficult history of conflicts with all its neighbors. After missed "marriages" and a war of conquest,[51] he had attempted more pacific means of imperialism through an international organization, the Union of Arab Maghreb (UMA). Self-proclaimed interpreter of the Koran,[52] he nevertheless behaved in ways that didn't fit with this pretension.[53]

Is SC Resolution 1973 a real milestone, a solid ground for a true precedent? And if the population of Benghazi has been saved, is it purely a protection success story?

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[49]   E.g. the Chinese veto on 25 February 1999 leading to the withdrawal of the UNPREDEP in Macedonia.

[50]   In the opposite sense, one could argue that this very membership of the Security Council was responsible for the lack of unanimity.

[51]   On Tchad about the Aouzou strip (1973-1987).

[52]   In his Green Book, first published in 1975.

[53]   E.g. his female praetorian guard.

2.   Protection, the Triggering Mechanism of a Political Outcome

Even though officially based upon the concept of "protection", Bernard-Henry Lévy's alert in favor of Benghazi[54] was deliberately aimed at helping the "good" ones against the "evil" ones. When the operation began, the idea of saving the civilian opponents stood first. And after Tripoli's fall and Gaddafi's death, Alain Juppé, French Foreign Minister declared that the operations had avoided thousands and thousands of additional victims.[55]

However, during the protracted crisis – if not war – the official objective quickly shifted to removing Gaddafi from power.[56] Establishing a no-fly zone required inflicting severe damage to the Libyan air force and the destruction of SAMs (Surface to Air Missiles). Yet French and British strikes went beyond, namely up to shelling Gaddafi's palaces.

In any case, this remains the first UN-mandated military reaction to protect a population threatened by its government. Will this example guide the next case? Or does its analysis presage difficulties with finding an exact repeat?

C.   Libya in Context

The wording "R2P's life" was put forward by Ban Ki Moon in its major contribution to R2P: "Implementing the responsibility to protect"[57]. To implement the Responsibility to Protect, he writes, is to "give a doctrinal, policy and institutional life to the responsibility to protect".[58] The Libyan case gives operational life to R2P, and it is therefore worth exploiting the lessons learnt.

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[54]   See e.g B.-H. Lévy, 'Sarkozy, Libya and Diplomacy of Extreme Urgency' (3 December 2012) available at http://www.huffingtonpost.com/bernardhenri-levy/sarkozy-libya-diplomacy_b_834951.html (last visited 31 December 2011).

[55]   ITELE, 'La France est fière d'avoir aider les Libyens' (20 October 2011) available at www.dailymotion.com/video/xltky8 (last visited 31 December 2011).

[56]   N. Sarkozy, B. Obama & D. Cameron, 'Sarkozy, Obama Cameron: 'Kaddhafi doit partir'' (14 April 2011) available at http://www.lefigaro.fr/international/2011/04/14/01003-20110414ARTFIG00772-sarkozy-obama-cameron-kadhafi-doit-partir.php (last visited 31 December 2011).

[57]   Report of the Secretary General, Implementing the responsibility to protect, UN Doc A/63/677, 12 January 2009.

[58]   *Id.*, para. 2.

However, focusing on the sole Libyan case would possibly amount to losing a part of the story, since the first months of 2011 have been rich in events which have or might have induced international actors to invoke the Responsibility to Protect. A comparison between Ivory Coast (Côte d'Ivoire), Libya, Bahrain, Yemen, Syria, a look at the increase in references made to protection could enable us to assess whether the Libyan case, together with its context have brought a decisive contribution to R2P.

And, regarding some failures of the operation; do they necessarily prove a global failure for R2P? And could even "failed" episodes of R2P help taking stock of the true evolution?

One major reproach made in relation to the Libyan no-fly zone and strikes is the "double standard" of Syria's treatment by the international community when contrasted with the treatment of Libya (I.). Beyond this point, one can discover some interesting lessons which seems to progressively arise from such events (II.).

I.   A Lasting Impression of Double Standard

The possibility of 'double standards' cannot be reduced to a mere comparison between the treatment of Syria and Libya. The protection of civilians has often been on the forefront of international attention during the last ten to eleven months, even though all cases differ from one another. A rich context is made of several cases where the fate of civilians has drawn actors of the international community to warn of possible violations of human rights. Indeed, not all victims have been shielded by the international community. Before the Libyan case, the post-electoral crisis in Côte d'Ivoire already created public concern over the fate of civilians; and after Resolution 1973, the same concern arose in relation to Syria, and – to a lesser extent – Bahrain and Yemen.

1.   Many Populations are Less Protected Than Libya's

Without asserting that the Libyan case is excessively celebrated, we shall as briefly as possible go beyond these events and consider other examples of the approach to R2P. In the wake of Resolution 1973, the question is: has the strong reaction opposed to Libya's failure open a new era? The context of the "Arab awakening" offered the perfect opportunity for a series of coherent precedents.

However, the cases of Bahrain, Syria and Yemen are not consistent with the Libyan one. Facts are different; and fates, too.

a)   Populations Experiencing a Lack of Protection

The Bahrain case is totally opposed to the Libyan one. It shows an intervention in favor of the authorities by an outside State, in a context marked by ethnic divisions. The majority of the population is made of Shiites; and the power belongs to a Sunni king, surrounded by Sunni ruling elites. On 14 March 2011, the Sunni Kingdom of Saudi Arabia sent in troops to help the King of Bahrain. R2P was not explicitly taken into account.

The Syrian case can be compared both to Libya's and Bahrain's ones. Ethnically speaking, Syria is the reverse of Bahrain: a large majority of Sunnis, a small ruling elite of Alaouite Shiites. Politically, the conflict in Syria was characterized up to early August by the lack of any global reaction, either in favor of the authorities, or in favor of protecting the population. Iran is considered to support Assad's regime: here, together with the proximity of Israel, lies the probable reason for the international community's long abstention. The fear of a major destabilization has globally long prevailed over the responsibility to protect, even if things seem to be moving.

b)   Populations Experiencing Political Limits of Armed Protection

This was the case with Côte d'Ivoire, where the management of the protracted, nearly ten–year-old crisis reached a new acuteness with the post-electoral crisis (November 2010 - April 2011). In this context, the theme of protection of civilians is worth analyzing. Indeed, two kinds of civilians were targeted and their situation was approached in different ways, which is relevant to our analysis.

Gbagbo's supporters targeted those of Ouattara in Abidjan's Abobo neighborhood in March; whereas Gbagbo's ethnically-related civilians had been undergoing hardships in Douekoué since January. There was room for protection and for responsibility to protect, all the more so, given that the UNOCI and the French army had the mandate for so.

Yet for months, R2P stood behind the problem of elections, legitimacy and power devolution. As a result, the pro-Ouattara party, i.e. that of the internationally-recognized President, seemed to be treated as the "good"

side. After the latter's victory, and the defeat of the other side, this shocking double standard came to an end.

Once again, political patterns had covered up the problem of protection of civilians. The same occurred in Syria.

2.   Syria: From Non-Protection to a Growing Interference

With time, and thanks to information gathered through social networks, the above-mentioned situation in Syria was deemed unbearable. Upon a request from the Human Rights Council, a fact-finding mission headed by Deputy High Commissioner for Human Rights Kyung-wha Kang, has been tasked with investigating "all alleged violations of international human rights law […]".[59] In spite of practical difficulties, and nevertheless thanks to first-hand information,[60] a report covering events from 15 March to 15 July evokes "a pattern of human rights violations that constitutes widespread or systematic attacks against the civilian population, which may amount to crimes against humanity", and the disproportionate use of force by Syrian security forces, stating the figure of 2000 victims over up to then five months and many precise details of the modus operandi.[61]

On 3 August, the situation came to a turning point with a Presidential Declaration by the Security Council.[62] At first glance, there is one obvious thing lacking: the words "responsibility to protect". The notion is, however, disguised behind other elements of language, meaning that the formulation says much of what lies behind "R2P", but without explicitly using those terms. In the statement under review, the very conception of "sovereignty as

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[59]   Human Rights Council, Resolution S-16/1, UN Doc A/HRC/RES/S-16/1, 4 May 2011.

[60]   The Government of Syria denied any access to its territory to the Commission members. They however managed to/in interview(ing) victims and witnesses. And they have viewed more than 50 videos.

[61]   Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic, UN Doc A/HRC/18/53, 15 September 2011, III. Patterns of Violations.
Killing of civilians was run/achieved by, both, forces on the ground, snipers on the rooftops and airpower, a clear shot-to-kill policy being made obvious by the use of live ammunitions and wounds systematically located in the head and chest of victims. Eyewitnesses have corroborated summary executions -allowing certitude for 353 named victims- as well as at least 98 acts of torture.

[62]   Statement by the President of the Security Council, UN Doc S/PRST/2011/16, 3 August 2011.

responsibility" lies in the conjunction of a) the reaffirmation of a "strong commitment to sovereignty, independence and territorial integrity of Syria" and b) the call for respect of Syria's "obligations under international law, including [full] respect [of] human rights". Furthermore, as to failures the declaration mentions "the use of force against civilians by the Syrian authorities"[63].

Two preliminary remarks have to be made:

- First: the International community acts through a Presidential statement, rather than a resolution. The difference is twofold. On the one hand, a resolution is binding. On the other one, a resolution is the result of a vote. Reaching a consensus is easier than reaching the majority required for a Resolution (not to speak of the risk of veto, since when such a risk does exist, there is no Presidential Declaration).

- Secondly, there is no reference in the Declaration to an *obligation* for the International community to take a step such as the given Declaration, or any other step.

And, coming to the contents, there was a kind of balance:

- as to the authorities: "The Security Council condemns the widespread violations of human rights and the use of force against civilians by the Syrian authorities"[64];

- as to the demonstrators/insurgents: "The Security Council calls […] to refrain from reprisals, including attacks against state institutions", while "urg[ing] all sides to act with utmost restraint."[65]

Since then, the level of concern in the international community has increased. In a report made public on 18 August and High Commissioner Navy Pillay recalled the R2P 2005 agreed principle, underlining that "when

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[63]   *Id.*
[64]   *Id.*
[65]   *Id.*

a State is manifestly failing to protect its population from serious international crimes, the international community has the responsibility to step in by taking protective action in a collective, timely and decisive manner"[66]. The High Commissioner went further, recommending that the Human Rights Council urge the Security Council not only to call for an immediate cessation of attacks against civilian populations, but also to consider referring the situation in Syria to the ICC.[67] The same day, 18 August, saw concerted declarations of Presidents Obama and Sarkozy, of British Premier David Cameron, of German Chancellor Angela Merkel, EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, and Secretary of State Hillary Clinton called for President Assad's resignation, before a new wave of smart sanctions.[68]

3.   A "Double Standard" or a New Bipolar Era?

But, with these bold – and mainly Western – Declarations, and the wave of sanctions on 29 August,[69] the consensus previously reached on Libya seemed to be lost. And there could have been a fear for a –once again- split international community, opposing the Western States and the major other ones. On October 4, a Western-supported[70] draft resolution,

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[66]   Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic, *supra* note 66, IV. Recommendations, para. 92.

[67]   *Id.*, IV. Recommandations, para. 94 (c).

[68]   Statement by Barack Obama: M. Phillips, 'President Obama: 'The future of Syria must be determined by its people, but President Bashar al-Assad is standing in their way.'' (18 August 2011) available at http://www.whitehouse.gov/blog/2011/08/18/president-obama-future-syria-must-be-determined-its-people-president-bashar-al-assad (last visited 30 December 2011); 'Germany, France and UK Call on Syria's Assad to Step Aside: Joint Statement by Chancellor Angela Merkel, French President Nicolas Sarkozy, and British Prime Minister David Cameron on Syria' (18 August 2011) available at http://www.germany.info/Vertretung/usa/en/__pr/P__Wash/2011/08/18__Syria__State__PR.html (last visited 30 December 2011); Statement by High Representative Catherine Ashton on Behalf of the EU on EU Action Following the Escalation of Violent Repression in Syria, Doc EU/NR 29/11, all 18 August 2011.

[69]   Non armed coercive measures are foreseen in paragraph 139 of the World Summit Outcome, *supra* note 19.
        Regarding Syria, the latter measures have not up to date/day been decided by the UN. However, the US were forerunners in 2004, boycotting some Syrian exports and in 2006, the Commercial Bank of Syria. In 2011, the EU and the US compete in banning any travel of Syrian civil servants.

[70]   Proposed by France, Germany, Portugal and UK and voted by the USA.

build upon the scheme of R2P, recalling the Syrian Government's "primary responsibility to protect its population" was vetoed by Russia and China[71], which were supporting a weaker text. And, since then, the major western countries, and mainly France, have increased the level of criticism. The Declarations of the French Ambassador to the Security Council on December 12, proved, once again, a very high level of tension upon the situation: "le silence du Conseil de Sécurité est un scandale. Il est scandaleux que le Conseil de Sécurité, du fait de l'opposition de certains membres, du fait de l'indifférence des autres, n'ait pas pu agir pour exercer une pression sur les autorités syriennes"[72].

Is there a Human rights-based diplomacy opposed to a sovereignty-driven one? Would it be the new "Clash of civilizations?"[73] It seems fortunately not, in the light of the lessons to be learnt.

II.   Some Lessons to be Learnt

When putting an end to this paper, on 27 December 2011, after 5000 persons have been killed in Syria,[74] we cannot say whether Bashar El Assad will – in addition to monitors[75] – accept real changes, and how long the regime will survive. Yet, already, two elements can be assessed. There is a growing and spreading conviction of States having a say in other States' behavior regarding their own population (1.); however this does not mean that the presently developing conception is fully in line with "R2P" (2.).

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[71]   The resolution was approved by nine countries (the sponsors plus United States, Bosnia-Herzegovina, Colombia, Gabon and Nigeria); four States abstained (South Africa, Brazil, India and Lebanon).

[72]   "It is an outrage that the Security Council was not able to act and put the pressure upon Syrian authorities, due to the opposition of some members, and the indifference of other ones" (translated by the author), France at the United Nations, 'Human Rights situation in Syria: Remarks to the press by Mr. Gérard Araud, Permanent Representative of France to the United Nations, with the Representatives of the United Kingdom, Germany, Portugal and the United States' (12 December 2011) available at http://franceonu.org/spip.php?article5952 (last visited 31 December 2011).

[73]   Cf. S. Huntington, *The Clash of Civilizations* (1993). The reference to this title does not mean that there is a similarity between the civilizations referred to in this paper and those identified by Huntington. The French Minister for Foreign Affairs put very strongly forward its human rights-based diplomacy.

[74]   'Syria: 5,000 dead in violence, says UN human rights chief', *The Guardian* (12 December 2011) available at http://www.guardian.co.uk/world/2011/dec/12/syria-5000-dead-violence-un (last visited 2 January 2012).

[75]   He has accepted Arab monitors on December.

1.   The "Arab Spring Acquis": a Growing Feeling of Having a Say About Fellow States' Population Fate

The specific role played in the Libyan case by regional organizations seems about to become the norm: the have a kind of lead, or, at least, they are considered as providing legitimacy to universal decisions.

a)   At the Regional Level

A few days after the above mentioned veto, the Gulf Cooperation Council and the Arab League opened a new era in the Syrian case, by showing their indignation at the events.

The GC-Council had proposed an Initiative, at last accepted by President Saleh. This lead the UNSC to adopt resolution number 2014 on October 21. Some two weeks later, the Arab League tackled the Syrian case with a renewed energy, joining the lasting efforts of some Western States.

Thus, the non-interference-concept is receding in front of the idea that fellow States are entitled to put pressure to the one which fails in protecting its own population.

After a mediation for a Peace plan, encompassing the cessation of repression, and after the failure of Syrian government to implement it, the Arab League, on Nov 12th decided to suspend Syria, exactly as it had done on March 3 for Libya.

On 27 November, the Arab League the League adopted sanctions against Syria.[76] On 17 December, Arab League gave a last and final delay to allow in observers or else it could take the issue to the UN.

Thus, after these regional undertakings in favor of R2P in Yemen and Syria, fewer topics can be seen as domestic affairs.

b)   At the Universal Level: a Nascent Universal Concern

A strong impulse has been given by the West with the bold above mentioned Declarations. But a large support has been given by Colombia, Gabon and Nigeria, and the States showing approval are numerous.

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[76]   Arab League Res. 7442, 27 November 2011: League of Arab States, 'Full text of the Arab League resolution against Syria' (28 November 2011) available at http://www.openbriefing.org/regionaldesks/middleeast/resolution7442/ (last visited 31 December 2011).

Moreover, there is a global evolution towards a shared interest in what happens domestically about human rights, in spite of the traditional reluctance of some States in this regard. The Russian and Chinese approaches, such as expressed in the voting explanations of their respective vetoes to the 4 October draft resolution, do not show a frontal opposition. Both States express hostility towards crackdown on civilians. There is no visible consensus, but perhaps a kind of silent coming together.[77]

2.   A Conception of Protection to be Further Fine-Tuned

The Libyan case, in itself, shows that a certain amount of conceptual work has to be made upon R2P's implementation (a), whereas the other cases under review help singling out what R2P really means (b).

a)   Being Responsible While Protecting

This is the formula through which Brazil has expressed its reservations towards the implementation of resolution 1973 it had – yet – voted. The expression seems justified; however its fostering agent has not yet given it all the necessary precision.

Anyhow, the Libyan case is disappointing from a humanitarian law point of view, even though NATO's forces have been attentive not to infringe upon it, during their operations. Even if the resolutions which have singled out Gaddafi's regime and open the way to the air strikes aimed at protecting civilians, they -at last- resulted in making out of the weak the new power, and out of the torturer a slaughtered victim.

About the (primarily) "weak", much could be said, and namely why to call it "civilians" from the beginning, when there were not yet any combatant? Another paper would be necessary on that topic.[78] Therefore, the present analysis will be limited to what is the most obvious: the former "victims" – the NTC troops — have committed many crimes, which can be summarized as follows:

- attacks against civilians, when they began conquering and besieging cities,

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[77]   One might as well notice that within the meetings of the Arab league. It has been clearly stated that this stance is motivated by the desire of avoiding any new Libyan-like operation.

[78]   It is underway

- disregard for the immunity of people *hors de combat,* namely Gaddafi (no matter the seriousness of the crimes he had committed, he was no longer a commander in a conflict, the latter being over),

- breach of the dignity of persons, by exposing Gaddafi's corpse,

- ethnic cleansing, namely against Sub Saharian Africans who were employed in Libyan industry, and later used as mercenaries in the civil war.

No doubt, the perpetrators should not be immune from punishment.[79] Moreover, one future campaign aimed at protecting demonstrators/ insurgents should be more cautious in front of the risk of such an overturned action, going far beyond protection and finally against it. This leads us to a broader issue: how are protection and R2P linked?

b)   Protecting Through R2P and/or Outside R2P

Throughout the year 2011, the vocabulary concerning the Arab crises has shifted many times, which is worth taking a closer look at.

One turning point could have been the August Presidential Declaration, which has put an end to the silence in the Syrian case, together with introducing a new "standard", a kind of "Syrian" formula. The latter was more or less based upon the international community's responsibility, since the Security Council, through its President, interfered in Syria's affairs and called for a range of precise behaviors. But, in the same time, this "Syrian doctrine" stood a level below the Libyan one, be it only for a kind of balance kept by this Statement between authorities and protesters, both called upon to renounce to violence.

Since then and notwithstanding the difference between France and Russia statements for example, the protagonists are likely to come together one next day, upon new bases, the nature of which could partly be foreseen through recent elements.

One first assessment relates to a kind of back flow of the very expression R2P, clearly shown by the following list:

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[79]   On 27 October 2011, the resolution 2016 put this clearly, among other elements regarding the end of the strikes.

- in resolution 1970, R2P is the only ground for Security Council measures under Chapter VII, without any reference to "threat to peace";

- in resolution 1973, R2P is the main ground for Security Council measures under Chapter VII, but through the channel of "threat to peace";

- the August Declaration depicts sovereignty as a responsibility, but avoids the wording R2P;

- the October European draft, itself, puts forward State's responsibility to protect without mentioning the International Community's substitutive responsibility;

- the October resolution on Yemen, in turn, points out the primarily State's responsibility to protect, but far behind and without mentioning the International Community's substitutive responsibility.

A second assessment refers to the increasing place of human rights law in the relevant documents. In order to describe situations akin to the former Libyan one, the recent documents

- use more scarcely the word "civilians", which means the Human rights law touch taking precedence over the IHL one, probably due to the growing activity of High Commissioner Navy Pillay and the Human Rights Council;

- give more place to the freedoms of expression and demonstration which, anyhow, were already at stake from the onset of the Arab "spring";
- do not disregard violence committed by opponents.

It was even clear in the draft resolution vetoed 4 October, which could however be considered as being, among the recent documents, the closest to resolution 1973, due to its reference to Syria's responsibility to protect its population:

"2. Demands an immediate end to all violence and urges all sides to reject violence and extremism;

3. Recalls that those responsible for all violence and human rights violations should be held accountable;

4. Demands that the Syrian authorities immediately:

(a) cease violations of human rights, comply with their obligations under applicable international law, and cooperate fully with the office of the High Commissioner for Human Rights;

(b) allow the full exercise of human rights and fundamental freedoms by its entire population, including rights of freedom of expression and peaceful assembly, release all political prisoners and detained peaceful demonstrators, and lift restrictions on all forms of media;

(c) cease the use of force against civilians;

(d) alleviate the humanitarian situation in crisis areas, including by allowing expeditious, unhindered and sustained access for internationally recognized human rights monitors, humanitarian agencies and workers, and restoring basic services including access to hospitals;

(e) ensure the safe and voluntary return of those who have fled the violence to their homes [...]."[80]

The December Russian draft – supported by all BRICs – is curiously close to the August Presidential Declaration,[81] which is a proof of a possible coming together we referred to previously.

One more assessment comes out of the examination of the different documents and statements issued during the second half of 2011. It relates

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[80]   UN Doc. S/2011/612, 4 October 2011.
[81]   See 'Russia offers tougher draft resolution on Syria to UN security council', The Guardian (16 December 2011) available at http://www.guardian.co.uk/world/2011/dec/16/syria-russia (last visited 31 December 2011).

to the place of humanitarian access, the importance of which is highlighted, not only by the French-British-German-Portuguese Draft of 4 October,[82] but also by the presidential Declaration dated 3 August, and by resolution 2014 on Yemen. Moreover, it was previously present in resolution 1973 itself. Thus, protection, through its different avatars, from the boldest R2P formulation to some shyer or softer ones is linked with field humanitarian action. When devising an *ad hoc* protection, humanitarian action is part of the game.

And, in order to close these considerations upon the on-going trends, it is worth mentioning documents with sentences mixing protection and human rights, without mentioning the responsibility to protect. A good example lies in a General Assembly resolution on Syria passed on December 19.[83] Its paragraph 2 calls upon Syrian authorities to immediately put an end to all Human rights violations, to protect their population and to fully comply with their obligations under International law.

When approaching the end of the present paper, one cannot help thinking of a change in atmosphere. The Libyan 1973 resolution was emergency and emotion-driven. Today, there is no quick answer when the US Department of State special coordinator on Middle East affairs asserts that "the International community's duty to the Syrian people transcends power politics"[84], and when Ban Ki Moon calls upon the international community to act "in the name of humanity" against Syria's crackdown.[85] However, this sentence could be misleading. In the opposite sense, it is worth highlighting the aforementioned recent resolutions, since they could bring something very new to the whole issue of R2P.

Indeed, the latter, as explained in previous papers, had been proclaimed with a narrow scope – the four big crimes we sometimes name "the four horsemen of the Apocalypse" – since its goal was to help prevent deadly dynamics likely to lead to the hell. It was not about creating an implementing mechanism for any protective norm. Many criticisms had been raised against this narrow scope, which has led Secretary General Ban Ki Moon to justify this narrowness by the need to preserve the fragile

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[82]   UN Doc. S/2011/612, *supra* note 80.
[83]   It was put on the Agenda with reference A/66/462/Add.3.
[84]   Frederic Hof, during a Hearing with Congressmen on US policy toward Damascus, *Agence France Presse*, 14 December 2011.
[85]   *Id*.

consensus reached in 2005. The Secretary General however explained that this narrow scope benefited from a deep protection in three pillars.[86]

But the present trend is to put the stress on the obligations under Human rights law of the State affected by political troubles and repression, when worried by putting in the forefront its responsibility to protect against the risk of sliding into a path leading to a major crime. And this is full of signification.

First, it is seen as a way of avoiding an armed operation on behalf of the subsidiary responsibility of the International community (and, in this regard, it might reveal a false interpretation of R2P, disregarding pillars Two and Three or a lack of confidence).

Secondly, it could be construed as a better acceptance – at least a reduced reluctance – toward civil and political rights,[87] up to now looked at with caution by strict defenders of sovereignty; the latter fearing any outside interference in the choice of political regime.

The observations afore deserve all the more attention that the cases under review show political efforts of crisis management. The "regime change" occurred in Yemen with the resignation of President Saleh, it is presently a pacific work in progress in Bahrain,[88] and it is at the centre of the diplomatic efforts around Syria. It seems as if a taboo had disappeared, even if another one is on the raise: nationally-led inclusive political process as crisis exit strategy.

It is too early to know whether in the near future, the Security Council is likely to adopt R2P "1973-like" resolutions. Or will it rather be inspired by this kind of softer "doctrine" which seems to be developing, based on political freedom and humanitarian access as a guarantee of survival for protesters? It very much depends on which will be the next country. Yet, in the second hypothesis, R2P would become "less narrow".

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[86]   See Domestici-Met, *supra* note 5.

[87]   *Habeas corpus* and human rights related to the expression of political opposition. Economical and social rights seem better accepted, all the more that the related International Covenant allows their progressive realization.

[88]   The independent commission on Bahrain, led by Cherif Bassiouni, has issued on November 24 a severe report. The latter was welcome by Secretary-General Ban Ki Moon who called for liberation of all political prisoners. Then, the Government of Bahrain has asked to the UN High Commissioner for Human rights to help him establishing an open and democratic society, *UN News Trackers* (11 December 2011). A field delegation has been established.