

The Permanence of Inconsistency

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Libya, the Security Council, and the Responsibility to Protect

The United Nations Security Council-sanctioned intervention in Libya in March 2011 was heralded by many observers as evidence of the efficacy of the responsibility to protect (R2P). According to Gareth Evans, the intervention constituted “a textbook case of the R2P norm working exactly as it was supposed to.”¹ This ostensibly “unprecedented moment”² led many to predict the dawn of a “new era.”³ United Nations Secretary-General Ban Ki-moon summed up the mood: “By now it should be clear to all that the Responsibility to Protect has arrived.”⁴

While Resolution 1973 certainly coheres with the spirit of R2P, it should be seen as part of a trajectory of Security Council responses to large-scale intra-state crises that predate the emergence of R2P. This trajectory, a function of the decisions taken by the five permanent members of the Security Council (P5), is characterized by a preponderance of inertia punctuated by aberrant flashes of resolve and timely action, impelled by the rare confluence of interests and humanitarian need. This is not to suggest that parsimony in motives is a prerequisite for legitimacy or that the intervention in Libya was unwelcome, but rather that it was consistent with the Security Council’s record of incon-

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1. Gareth Evans, “Interview: The RtoP Balance Sheet after Libya,” in Thomas G. Weiss, Ramesh Thakur, Mary Ellen O’Connell, Aidan Hehir, Alex J. Bellamy, David Chandler, Rodger Shanahan, Rachel Gerber, Abiodun Williams, and Gareth Evans, *The Responsibility to Protect: Challenges & Opportunities In Light of the Libyan Intervention*, November 2011, p. 40, <http://www.e-ir.info/wp-content/uploads/R2P.pdf>.

2. Paul D. Williams, “The Road to Humanitarian War in Libya,” *Global Responsibility to Protect*, Vol. 3, No. 2 (June 2011), p. 249.

3. Lloyd Axworthy, “In Libya, We Move toward a More Humane World,” *Globe and Mail*, August 23, 2011, <http://www.theglobeandmail.com/news/opinions/opinion/in-libya-we-move-toward-a-more-humane-world/article2138221/>; Paul Heinbecker, “Plenty of Credit to Go Around in Gadhafi’s Fall,” *Montreal Gazette*, August 23, 2011, <http://www.montrealgazette.com/news/Plenty+credit+around+Gadhafi+fall/5291961/story.html>; and Rachel Gerber, “Beyond Libya: A World Ready to Respond to Mass Violence” (Muscatine, Iowa: Stanley Foundation, September 2011), <http://www.stanleyfoundation.org/resources.cfm?id=462>.

4. Ban Ki-moon, “Remarks at Breakfast Roundtable with Foreign Ministers on ‘The Responsibility to Protect: Responding to Imminent Threats of Mass Atrocities,’” United Nations, New York City, New York, September 23, 2011, http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=1325.

sistency. The primary factor that contributed to this record—the P5's veto power—remains post-Libya. So long as it does, the international response to intrastate crises will continue to be inconsistent.

This article begins by examining the positive appraisal of Resolution 1973 advanced by R2P's supporters and then critically assesses the claims that it was unique in two respects: one legal, the other normative. The article then situates the decision to sanction intervention in the context of the Security Council's "discretionary entitlement" to act and offers alternative explanations for the positions taken by the key actors involved, namely, the P5 and the League of Arab States (LAS).⁵

"An Historic Decision"?

In response to the unrest in Libya, the Security Council passed Resolution 1970 on February 26, 2011, which invoked the Council's Chapter 7 powers. When the situation deteriorated, the Security Council passed Resolution 1973 on March 17, 2011, which sanctioned the imposition of a no-fly zone over Libya and authorized states to "take all necessary measures . . . to protect civilians and civilian-populated areas under threat of attack." Military action against Libya began two days later, and by October Col. Muammar al-Qaddafi was dead and the National Transitional Council was in power.

The Security Council's swift and robust response was undeniably significant and, indeed, surprising. Support for the intervention was unusually widespread, largely as a consequence of Qaddafi's extraordinary public threat to the people of Benghazi: "We are coming tonight. . . . We will find you in your closets. . . . We will show no mercy."⁶ Additionally, the call by the rebels for external military support, after their initial reluctance, was of great significance, countering charges that intervention would constitute unwelcome interference. The support of the LAS, the Organization of Islamic Conference, the Gulf Cooperation Council (GCC), and the African Union (AU)—albeit to a lesser extent—also demonstrated that the intervention had regional support and was not a unilateral "Western" initiative.⁷

5. Frank Berman, "Moral versus Legal Legitimacy," in Charles Reed and David Ryall, eds., *The Price of Peace: Just War in the Twenty-First Century* (Cambridge: Cambridge University Press, 2007), p. 161.

6. Quoted in Tom Heneghan, "Gaddafi Tells Rebel City, Benghazi, 'We Will Show No Mercy,'" *Huffington Post*, March 17, 2011, http://www.huffingtonpost.com/2011/03/17/gaddafi-benghazi-libya-news_n_837245.html. See also Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics and International Affairs*, Vol. 25, No. 3 (Fall 2011), p. 263; and Simon Chesterman, "'Leading from Behind': The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya," *Ethics and International Affairs*, Vol. 25, No. 3 (Fall 2011), p. 282.

7. Williams, "The Road to Humanitarian War in Libya."

Many lauded Resolution 1973 as evidence of R2P's influence;⁸ indicatively, UN Secretary-General Ban declared, "The Security Council today has taken an historic decision. Resolution 1973 affirms, clearly and unequivocally, the international community's determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their own government."⁹ The intervention was similarly loudly praised by many other prominent proponents of R2P as variously a "spectacular step forward"; "a triumph . . . for R2P"; the dawn of "a more humane world"; and illustrative of the fact that "human progress is possible."¹⁰ The intervention, Alex Bellamy and Paul Williams declared, signified that the Security Council was now motivated by "a new politics of protection."¹¹

Support for the intervention was not universal, of course. Many decried the hypocrisy ostensibly evidenced by the West's silence over oppression elsewhere in the Middle East, especially Saudi Arabia's military support for the government of Bahrain during its crackdown on pro-democracy protestors.¹² Left-wing critiques unsurprisingly linked the intervention to oil.¹³ Richard Falk warned that the campaign itself exceeded the mandate of Resolution 1973 and constituted a potentially ominous reversion to Western "paternalism."¹⁴ Certain commentators advanced procedural concerns, such as those who criticized President Barack Obama for sanctioning military action without seeking congressional approval.¹⁵ Misogynistic critiques lamented the influence ostensibly wielded by "a troika of female advisers," namely, U.S. Secretary of

8. Richard Falk, "Preliminary Libyan Scorecard: Acting beyond the UN Mandate," *Foreign Policy Journal*, September 8, 2011, <http://www.foreignpolicyjournal.com/2011/09/08/preliminary-libyan-scorecard-acting-beyond-the-u-n-mandate/>.

9. Ban Ki-moon, "Statement by the Secretary-General on Libya," New York City, New York, March 17, 2011, <http://www.responsibilitytoprotect.org/index.php/crises/190-crisis-in-libya/3269-ban-says-historic-resolution-was-clearly-the-international-community-fulfilling-of-its-responsibility-to-protect>.

10. Evans, "Interview"; Ramesh Thakur, "Has R2P Worked in Libya?" *Canberra Times*, September, 19, 2011; Axworthy, "In Libya, We Move toward a More Humane World"; and Heinbecker, "Plenty of Credit to Go Around in Gadhafi's Fall."

11. Alex J. Bellamy and Paul D. Williams, "The New Politics of Protection? Cote d'Ivoire, Libya, and the Responsibility to Protect," *International Affairs*, Vol. 82, No. 7 (July 2011), p. 826.

12. Adrian Blomfield, "Bahrain Hardliners to Put Shia MPs on Trial," *Telegraph*, March 30, 2011, <http://www.telegraph.co.uk/news/worldnews/middleeast/bahrain/8416953/Bahrain-hardliners-to-put-Shia-MPs-on-trial.html>; Pepe Escobar, "Exposed: The US-Saudi Libya Deal," *Asia Times*, April 2, 2011, http://atimes.com/atimes/Middle_East/MD02Ak01.html; and Craig Murray, "The Invasion of Bahrain," *Craig Murray*, blog, March 14, 2011, <http://www.craigmurray.org.uk/archives/2011/03/the-invasion-of-bahrain/>.

13. Tariq Ali, "Who Will Reshape the Arab World?" *Guardian*, April 29, 2011, <http://www.guardian.co.uk/commentisfree/2011/apr/29/arab-politics-democracy-intervention>.

14. Falk, "Preliminary Libyan Scorecard."

15. Robert Naiman, "Surprise War for Regime Change in Libya Is the Wrong Path," *Foreign Policy in Focus*, April 4, 2011, http://www.fpif.org/articles/surprise_war_for_regime_change_in_libya_is_the_wrong_path.

State Hillary Clinton, U.S. Ambassador to the United Nations Susan Rice, and Special Adviser to the President Samantha Power.¹⁶

The issue of what impelled the intervention is, as Williams notes, “a critical question.”¹⁷ If the decision was influenced to a significant extent by a collective desire to abide by the principles of R2P—by what Secretary-General Ban described as the Security Council’s “determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their own government”—then the international community has undoubtedly entered a new era.¹⁸ If, however, the intervention was the consequence of a unique constellation of necessarily temporal factors unrelated, or only tangentially related, to R2P, then the intervention, though undeniably significant in itself, has limited long-term implications.

It has been claimed that Resolution 1973 was significant in two respects—one precedential, the other normative. The precedential claim is that the Security Council utilized its powers in a unique fashion, thus heralding a new disposition.¹⁹ The normative claim centers on the role ostensibly played by R2P in fashioning this disposition.²⁰ Each is discussed in turn in the following section.

“A New Politics of Protection”?

There have been previous instances when military action has induced similar levels of optimism to that evident in the wake of the Libyan intervention. The Security Council’s sanctioning of force to repel Iraqi forces from Kuwait in 1991 and the subsequent imposition of no-fly zones over Northern and Southern Iraq to protect civilians from Saddam Hussein’s aggression precipitated “a period of euphoria.”²¹ While the optimism was short lived, NATO’s

16. Jacob Heilbrunn, “America’s Foreign Policy Valkyries: Hillary Clinton, Samantha Power, and Susan Rice,” *National Interest*, March 21, 2011, <http://nationalinterest.org/blog/jacob-heilbrunn/americas-foreign-policy-valkyries-hillary-clinton-samantha-p-5047>; and Mark Krikorian, “They Know Who Wears the Pants in This Country,” *National Review Online*, March 31, 2011, <http://www.nationalreview.com/corner/262607/they-know-who-wears-pants-country-mark-krikorian>.

17. Williams, “The Road to Humanitarian War in Libya,” p. 249.

18. Ban, “Statement by the Secretary-General on Libya.”

19. Alex J. Bellamy, “Libya and the Responsibility to Protect: The Exception and the Norm,” *Ethics and International Affairs*, Vol. 25, No. 3 (September 2011), p. 263; Evans, “The RtoP Balance Sheet after Libya”; Williams, “The Road to Humanitarian War in Libya,” p. 249; and Bernard-Henri Levy, “After Qaddafi, Assad,” *New Republic*, May 19, 2011, <http://www.tnr.com/article/world/88662/bashar-al-assad-syria-qaddafi-arab-spring>.

20. Gerber, “Beyond Libya”; and Ramesh Thakur, “The World’s Responsibility to Protect Libyans,” *Epoch Times*, March 19, 2011, <http://www.theepochtimes.com/n2/content/view/53257/99999999/1/1/>.

21. David Malone, *The International Struggle over Iraq: Politics in the UN Security Council, 1980–2005* (Oxford: Oxford University Press, 2006), p. 11. See also Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2002), p. 172.

intervention in Kosovo in 1999 led to similar expressions of hope, though a hope in the willingness of Western states to subvert the ostensibly anachronistic Security Council.²²

Although both Iraq and Kosovo are previous occasions when optimism prevailed, there are key differences between them and Libya; the action against Iraq was a response to an interstate conflict, while the intervention in Kosovo was not authorized by the UN. In the following subsections, I focus on two cases that, although often overlooked, constitute more pertinent examples of occasions when the Security Council sanctioned robust action prior to the emergence of R2P. The final subsection assesses the claims that the absence of Libyan consent differentiates Resolution 1973 from all predecessors.

SOUTHERN RHODESIA, 1965

On November 12, 1965, the Security Council passed Resolution 216, condemning Iain Smith's widely reviled racist government in Southern Rhodesia for its oppressive internal policies. Just over a week later, it passed the more forceful Resolution 217, which described the regime and the situation in the country as a threat to international peace and security, called for an international boycott, and authorized the use of "all other appropriate measures which would prove effective."

The Cold War is often portrayed as a period when ostensibly "internal events" were ignored by the Security Council, but Resolutions 216 and 217 condemned Smith's regime on the basis of its domestic policies. Resolution 216 condemned the "illegal racist minority regime," while Resolution 217 likewise "[c]ondemns the usurpation of power by a racist settler minority." Writing in the immediate aftermath of these resolutions, John Halderman observed that if the action taken against Southern Rhodesia, and the sanctioning of force in particular, was a function of more than expediency, then it constituted "the most important, as well as the most favourable development among the sanctions measures adopted by the United Nations . . . from the standpoint of developing a possible future system based on the Charter and capable of fulfilling the major United Nations purpose of maintaining international peace and security."²³ Halderman's analysis of the decisionmaking that preceded the resolutions, however, led him to conclude that, although the measures taken against Southern Rhodesia were "the first instance" of this type of action, there was no evidence to suggest this constituted the harbinger of a new disposition.

22. Alex J. Bellamy, *Kosovo and International Society* (New York: Palgrave Macmillan, 2002), p. 212.

23. John W. Halderman, "Some Legal Aspects of Sanctions in the Rhodesian Case," *International and Comparative Law Quarterly*, Vol. 17, No. 3 (July 1968), p. 672.

“Rather than being an example of law that can be applied with any degree of consistency,” he wrote, “it seems more readily accounted for as the result of a peculiar configuration of political forces and economic feasibility.”²⁴

Today, Resolutions 216 and 217 are historical curiosities that contrast with the inertia and division that characterized the Security Council’s response to intrastate oppression during the Cold War. Nonetheless, even during the Cold War there were a number of these “peculiar configurations” that collectively amount to what Adam Roberts described as “trends and disjointed moves which pointed, often ambiguously and always controversially, in the direction of accepting the legitimacy of intervention in support of an oppressed and threatened population.”²⁵ The action against Southern Rhodesia can be seen as part of this trend: an isolated instance of swift and robust collective action.

The similarities between the actions taken against Southern Rhodesia and Libya should not be exaggerated, of course; the Security Council’s actions in 1965 involved a number of issues and controversies that were not relevant in 2011.²⁶ In particular, Chapter 7 was not invoked, and the United Kingdom was at the time recognized as the “administering power.” Nonetheless, this case demonstrates that the Security Council did act swiftly in response to domestic events, albeit rarely, prior to the emergence of R2P and even before the 1990s.

HAITI, 1994

The 1990s witnessed an increased willingness among the P5 to sanction action in response to domestic crises. This disposition specifically developed from a creative interpretation of the term “threats to international peace and security” in Chapter 7 of the Charter. This determination was employed by the P5 in a number of cases where the actual threat to international peace and stability was minimal.²⁷

Michael Schmitt argues that although the no-fly zone over Libya was more “potent” than anything previously authorized by the Security Council, “there are historical precedents.”²⁸ In 1992 the Security Council, acting under Chap-

24. *Ibid.*, p. 686.

25. Adam Roberts, “The United Nations and Humanitarian Intervention,” in Jennifer Welsh, ed., *Humanitarian Intervention and International Relations: Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2006), p. 80.

26. J.E.S. Fawcett, “Security Council Resolutions on Rhodesia,” *British Yearbook of International Law*, Vol. 41 (1968), pp. 103–121.

27. Simon Chesterman, *Just War or Just Peace?* (Oxford: Oxford University Press, 2002), pp. 112–113.

28. Michael Schmitt, “Wings over Libya: The No-Fly Zone in Legal Perspective,” *Yale Journal of International Law Online*, Vol. 36 (Spring 2011), p. 57.

ter 7, imposed a no-fly zone over Bosnia-Herzegovina through Resolution 781 and subsequently in Resolutions 786 and 816. Resolution 816 authorized member states “to take . . . all necessary measures” to enforce the flight ban, which lasted until 1995. Although the enforcement of the no-fly zone was far less robust than the military action against Libya, “force was repeatedly used,” with both NATO and Serb aircraft shot down.²⁹

The case in the 1990s of arguably most relevance to the Libyan intervention, however, was the action taken in response to the situation in Haiti. In 1991 a military coup ousted Haiti’s democratically elected President Jean-Bertrand Aristide, and in response, the UN imposed economic sanctions. The Security Council eventually deemed the sanctions ineffective and responded with Resolution 842 in June 1993 and, more robustly, in July 1994, when Resolution 940 authorized the establishment of “a multinational force” with the power “to use all necessary means” to remove the junta. Former U.S. President Jimmy Carter, however, brokered a deal with the junta to restore Aristide before the force was deployed.³⁰

Some observers interpreted the sanctioning of military action in Haiti in 1994 as heralding a new intolerance of military coups.³¹ In fact, more parochial motivations among the P5 aligned to create the conditions for the Security Council’s response. The United States, the driving force behind the resolution, sought to stem the flow of refugees from Haiti and protect its economic ties with the country; Russia agreed to the resolution on condition that it receive support for a Commonwealth of Independent States peacekeeping mission in Georgia;³² and China acquiesced because the United States promised it support for a World Bank loan in return.³³ It is not surprising, therefore, that post-Haiti the P5 did not always consider benefactors of military coups threats to international peace and stability, or even worthy of condemnation.

In addition, in keeping with other uses of Chapter 7 during the 1990s, the Security Council officially deemed Resolution 940 an exception; the wording recognized “the unique character” of the situation and stated that “[Haiti’s] extraordinary nature . . . [requires] an exceptional response.” Similarly, the sanctioning of action in Somalia in 1992 via Resolution 794 was premised on it being an “exceptional response,” and the deployment of troops in Rwanda in

29. *Ibid.*, p. 50.

30. Chesterman, *Just War or Just Peace?* p. 155.

31. Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Dobbs Ferry, N.Y.: Transnational, 1997), p. 249.

32. Chesterman, *Just War or Just Peace?* pp. 153, 161.

33. Erik Voeten, “Delegation and the Nature of Security Council Authority,” in Bruce Cronin and Ian Hurd, eds., *The UN Security Council and the Politics of International Authority* (London: Routledge, 2008), p. 51.

1994, through Resolution 929, was described as a “unique case.” Proclaiming the “exceptional” nature of these resolutions was a means to avoid creating precedents that would demand consistency or automaticity in the future.³⁴ The inconsistent use of Chapter 7 angered many states and opened the Security Council to accusations of hypocrisy.³⁵

Williams argues, however, that Resolution 940 is significantly different from Resolution 1973 because the former “was justified with reference to defending democracy not defending Haitian civilians.”³⁶ Resolution 940 does, however, explicitly refer to the predicament of Haitian civilians; the Security Council declared itself to be “[g]ravelly concerned by the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties, [and] the desperate plight of Haitian refugees.” The ultimate aim, as stated in the resolution, was to replace the junta with a regime that would create a “secure and stable environment”; the restoration of democracy was thus a means to an end.

CONSENT?

“Resolution 1973,” according to Bellamy, “is especially important because it is the first time that the Security Council has authorized the use of military force for human protection purposes against the wishes of a functioning state.” This view is shared by Williams,³⁷ and underpins Lloyd Axworthy’s claim that Resolution 1973 has long-term implications for the laws governing the use of force, which constitute “decisive alterations to the international framework of law.”³⁸

These claims are questionable. As Simon Chesterman argues, the issue of consent is “not legally significant” in the context of a Chapter 7-mandated operation.³⁹ Under Article 42, the Security Council has the power to take action “to maintain or restore international peace and security” regardless of the host state’s consent, and it was this provision that, per the wording of Resolution 1973, constituted the legal basis for the intervention.⁴⁰ Therefore, once the Security Council invokes Chapter 7—as in Resolution 1973—the issue of consent is of no legal importance.

34. Chesterman, *Just War or Just Peace?* p. 165.

35. Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2005), p. 347; and Roberts, “The United Nations and Humanitarian Intervention,” p. 71.

36. Williams, “The Road to Humanitarian War in Libya,” p. 249.

37. Bellamy, “Libya and the Responsibility to Protect,” p. 263; and Williams, “The Road to Humanitarian War in Libya,” p. 249.

38. Axworthy, “In Libya, We Move toward a More Humane World.”

39. Chesterman, “Leading from Behind,” p. 280.

40. Schmitt, “Wings over Libya,” p. 48.

Aside from this legal point, the nature of the “consent” previously given for certain Security Council operations is questionable;⁴¹ as Bellamy and Williams acknowledge a number of times, in the post–Cold War era, “consent” was “coerced and unreliable.”⁴² When the Security Council—via Resolution 794 in December 1992—sanctioned military intervention in Somalia, there was no functioning government to give its consent.⁴³ The consent of the dominant, albeit unrecognized, powers in the state, Gen. Mohamed Farah Aideed and Gen. Ali Mahdi, was not sought; in fact, UN Secretary-General Boutros Boutros-Ghali publicly stated that military forces were to be deployed regardless of the warlord’s position.⁴⁴ Yet, as Nicholas Wheeler noted, “states and not governments are recognized in international law as the bearers of rights and duties,” and thus the absence of a functioning government in Somalia did not necessarily mean that the proscription against unsolicited intervention in Article 2.7 of the Charter was superseded.⁴⁵ The legal basis for acting was Chapter 7, which by definition trumps Article 2.7’s proscription against external interference.⁴⁶ The consent of the Somali government—whether or not it existed—was therefore not legally significant once the Security Council invoked Chapter 7 as the basis for action.

Resolution 940 did technically have the consent of the Haitian government, though it was in exile, and though the *de facto* government, the junta, opposed intervention. The ostensible novelty of Resolution 1973 is, therefore, predicated on a punctilious understanding of “government” to overcome the Haitian case. If, indeed, Aristide’s regime was considered the government at the time, his invitation to the United States to intervene removed the need for Chapter 7 authorization in any event.⁴⁷

The argument that the consent of Aristide’s exiled regime did count is compromised by the intervention in East Timor in 1999. In that case, in contrast to Haiti, the Security Council recognized the consent of the *de facto* rather than *de jure* power as essential. Following the slaughter perpetrated by Indonesian forces in the wake of the plebiscite held in August 1999, the Security Council passed Resolution 1264, which mandated an Australian-led force to restore peace and security. The deployment was, however, predicated on the consent of Indonesia, which was achieved after significant external pressure was leveraged against the regime by major powers and international financial in-

41. Cassese, *International Law*, pp. 344–345; and Ian Johnstone, “Managing Consent in Contemporary Peacekeeping Operations,” *International Peacekeeping*, Vol. 18, No. 2 (March 2011), p. 170.

42. Bellamy and Williams, “The New Politics of Protection?” p. 828.

43. Adam Roberts, “Humanitarian War: Military Intervention and Human Rights,” *International Affairs*, Vol. 69, No. 3 (July 1993), p. 440.

44. Wheeler, *Saving Strangers*, p. 177.

45. *Ibid.*, p. 187.

46. Schmitt, “Wings over Libya,” p. 48.

47. Chesterman, *Just War or Just Peace?* p. 159.

stitutions.⁴⁸ Given that, with the exception of Australia, no state recognized Indonesia as the legitimate authority in East Timor—Portugal officially remained the “administering power of a non-self-governing territory.” This consent was legally unnecessary,⁴⁹ and, indeed, of dubious legality given the manner in which it was achieved.⁵⁰

The Responsibility to Protect in Action?

The more widely championed, and arguably more politically important, claim to novelty made regarding the intervention in Libya was the influence ostensibly exercised by R2P.⁵¹ There are few who have claimed that R2P alone influenced how the Security Council reacted, but it has been commonly presented as a key causal factor, a “norm” that changed the decisionmaking calculus.⁵² Williams argues, “[I]t is difficult to imagine how [Resolution 1973] could have been authorized without the preceding decade of pro-R2P advocacy.” More emphatically, Simon Adams, executive director of the Global Centre for the Responsibility to Protect, writes that Resolution 1970 was “unprecedented . . . because of its unanimous endorsement . . . of ‘the responsibility to protect’ as its motivation for doing so.”⁵³ The evidence to support the claims made regarding R2P’s influence, however, is correlative rather than causal.

WHERE IS THE “INTERNATIONAL RESPONSIBILITY TO PROTECT”?

As per the original 2001 report by the International Commission on Intervention and State Sovereignty (ICISS), and paragraphs 138 and 139 of the 2005 World Summit Outcome Document, R2P comprises two related loci of responsibility: an internal locus, namely, the responsibilities of states toward their own people; and an external locus, that is, the responsibility of the interna-

48. *Ibid.*, p. 219; Nicholas Wheeler and Tim Dunne, “East Timor and the New Humanitarian Interventionism,” *International Affairs*, Vol. 77, No. 4 (October 2001), pp. 805–827; and Johnstone, “Managing Consent in Contemporary Peacekeeping Operations,” p. 170.

49. Simon Chesterman, *You the People: The United Nations, Transnational Administration, and State-Building* (Oxford: Oxford University Press, 2005), p. 62.

50. Cassese, *International Law*, p. 371.

51. Thomas Weiss, “R2P Alive and Well after Libya,” *Ethics and International Affairs*, Vol. 25, No. 3 (Fall 2011), pp. 287–292.

52. Axworthy, “In Libya, We Move toward a More Humane World”; Gerber, “Beyond Libya”; and International Coalition for Responsibility to Protect (ICRtoP), “FAQs on Impact of Action in Libya on the Responsibility to Protect” (New York: ICRtoP, May 6, 2011), <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/3436-icrtop-2-page-faq-on-the-impact-of-action-in-libya-on-rtop>; and Williams, “The Road to Humanitarian War in Libya,” p. 259.

53. Simon Adams, “R2P and the Libya Mission,” *Los Angeles Times*, September 28, 2011, http://globalr2p.org/media/pdf/R2P_and_the_Libya_mission_Simon_Adams.pdf.

tional community to act when the host state is unwilling or unable to do so. R2P thus comprises an implicit acknowledgment that not all states will be either willing or able to abide by their domestic responsibility; hence the guidelines on the international community's responsibility to protect.⁵⁴ Although many analysts have questioned the novelty of both of these aspects of R2P,⁵⁵ there is no doubt that consistent adherence to the external responsibility would constitute a significant change.

If, however, R2P has created a new normative context in which decisions are made, one would—surely not unreasonably—expect the rhetoric justifying the intervention in Libya to acknowledge R2P. Yet while Resolution 1973 certainly coheres with the spirit of R2P, it is noteworthy that the resolution does not mention this subsidiary responsibility, nor does Resolution 1970. The term “responsibility to protect” appears once in Resolution 1970—“The Security Council . . . Recalling the Libyan authorities’ responsibility to protect its population”—while Resolution 1973 includes the sentence, “Reiterating the responsibility of the Libyan authorities to protect the Libyan population.” In both cases, the “responsibility to protect” cited is that of the host state. The legitimate basis for action noted in both resolutions is Chapter 7 of the UN Charter; there is no mention of the international community’s “responsibility to protect” or the action being a function of, or even informed by, this responsibility.

The various statements made by the fifteen members of the Security Council at the Council meeting held on March 17, 2011, to vote on the draft of Resolution 1973 similarly evidences a paucity of references to R2P. Interestingly, Williams’s analysis of the arguments advanced for and against Resolution 1973 makes no mention of R2P.⁵⁶ Ten states voted in favor of the resolution, and all, with the exception of Gabon, which declined to speak, justified the intervention without referring to the external dimension of R2P constituting a basis—legal or normative—for the action taken. Only Colombia, France, the United Kingdom, and the United States explicitly sought to identify a legitimate authoritative basis for the action to supplement the humanitarian/moral justification; all cited either Chapter 7 or Resolution 1970

54. Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, D.C.: Brookings Institution Press, 2008), pp. 39–43; and UN General Assembly, sixty-third session, “Implementing the Responsibility to Protect: Report of the Secretary-General,” A/63/677, January 12, 2009, p. 9.

55. Aidan Hehir, “Responsibility to Protect: Sound and Fury Signifying Nothing?” *International Relations*, Vol. 24, No. 2 (June 2010), pp. 218–239; Theresa Reinold, “The Responsibility to Protect: Much Ado About Nothing?” special issue, *Review of International Studies*, Vol. 36 (October 2010), pp. 55–78; and Carsten Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?” *American Journal of International Law*, Vol. 101, No. 1 (January 2007), pp. 99–120.

56. Williams, “The Road to Humanitarian War in Libya,” pp. 256–258.

adopted under Chapter 7.⁵⁷ The Colombian and French representatives both declared that Libya had failed in its responsibility to protect its own people, and South Africa stated that, by passing Resolution 1973, the Security Council had “acted responsibly to protect and save the lives of countless civilians.”⁵⁸

It is additionally noteworthy that President Obama’s televised speech to the nation on March 28, justifying the intervention, made no mention of R2P.⁵⁹ Likewise, British Prime Minister David Cameron did not refer to R2P in either his statement on the day the air strikes began or his address to the London Conference on Libya ten days later.⁶⁰ The joint article written by President Obama, Prime Minister Cameron, and French President Nicholas Sarkozy also did not mention R2P.⁶¹ If R2P was a casual factor in the decision to intervene, then it is surely curious that the architects of the intervention declined to acknowledge this. Two explanations are possible. The first is that the key leaders did not want to acknowledge the action as being motivated by R2P lest it create a precedent for future action. This would be in keeping with the Security Council’s determination to describe action sanctioned under Chapter 7 in the 1990s as “exceptional.” The second is that because R2P is unpopular with many states, it was not mentioned lest referring to it might erode support for the action. Either explanation is plausible, but both inherently undermine R2P’s credentials as a “norm.”

R2P AS A “NORM”?

Resolution 1973 was certainly not, as some have claimed, the first time that the Security Council justified a Chapter 7 resolution exclusively on the basis of humanitarian need.⁶² Resolution 794 on Somalia, passed in December 1992, justified the deployment of a military force to that country on the basis of “the magnitude of the human tragedy . . . the deterioration of the humanitarian situation.” During the course of the debate on Resolution 794, a number of states argued that the Council had a responsibility to save lives. Russia, in fact, cited the existence of “obligations to put an end to the human tragedy in that coun-

57. UNSC, “The Situation in Libya,” S/PV.6498, March 17, 2011, p. 5.

58. *Ibid.*, pp. 3, 7, 10.

59. Barack Obama, “Remarks by the President in Address to the Nation on Libya,” National Defense University, Washington, D.C., March 28, 2011.

60. David Cameron, “Prime Minister’s Statement on Libya,” speech given outside Downing Street, London, March 19, 2011, <http://www.number10.gov.uk/news/prime-ministers-statement-on-libya-2/>; and Cameron, “Prime Minister David Cameron Opening Remarks at the London Conference on Libya,” London, March 29, 2011, <http://www.number10.gov.uk/news/pms-speech-at-london-conference-on-libya/>.

61. Barack Obama, David Cameron, and Nicholas Sarkozy, “Libya’s Pathway to Peace,” *New York Times*, April 14, 2011, <http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html>.

62. Adams, “R2P and the Libya Mission”; and Thakur, “Has R2P Worked in Libya?”

try." As Wheeler notes, it was "groundbreaking" for Russia to assert that "the Security Council had a moral responsibility to save the victims of famine and civil strife."⁶³ This consensus on a "moral responsibility" quickly dissipated, however, thereby diminishing its normative potentiality. In 1999, two years before the publication of the ICISS report, the Security Council passed Resolution 1265, which advanced an expansive summation of the Council's understanding of the responsibilities of states to international humanitarian law and the Council's remit when states fail to meet this responsibility. Additionally, as Chesterman notes, formulations of the phrase "responsibility to protect" were used even prior to the recognition by the UN of R2P at the 2005 World Summit.⁶⁴ States, including the P5, therefore talked about "moral responsibilities" and even obligations prior to the emergence of R2P.

The absence of any reference to the international responsibility to protect in both resolutions on Libya, Jennifer Welsh argues, is not only significant but is evidence that the idea is "still contested by some members of the Security Council."⁶⁵ This is of major importance, not so much for determining whether the intervention in Libya was legitimate, but for assessing whether it is true that attitudes within the Security Council have changed in response to a new norm.

The term "norm" has been used loosely with respect to R2P as though its near ubiquity in international political discourse is sufficient to qualify it as a "norm." There is a large body of academic literature that interrogates the meaning of "norms," the process by which a norm is established, and the difference between genuine "norms" and "political catchwords."⁶⁶ Martha Finnemore and Kathryn Sikkink's seminal work on the evolution of norms, for example, warns of the need to "think seriously about the microfoundations on which theoretical claims about norms rest, and evaluate those claims in the context of carefully designed historical and empirical research."⁶⁷ Although this is not the place to engage with this broader debate, it is relevant to assess,

63. Wheeler, *Saving Strangers*, p. 185.

64. Chesterman, "Leading from Behind," p. 280.

65. Jennifer Welsh, "Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP," *Ethics and International Affairs*, Vol. 25, No. 3 (September 2011), p. 255.

66. Michael Byers, "Not Yet Havoc: Geopolitical Change and the International Rules on Military Force," in David Armstrong, Theo Farrell, and Bice Maiguashca, eds., *Force and Legitimacy in World Politics* (Cambridge: Cambridge University Press, 2005); Ann M. Florini, ed., *The Third Force: The Rise of Transnational Civil Society* (Washington, D.C.: Carnegie Endowment for International Peace, 2000); Peter J. Katzenstein, *The Culture of National Security* (New York: Columbia University Press, 1996); Stahn, "Responsibility to Protect," p. 120; and Jack L. Snyder and Leslie Vinjamuri, "Preconditions of International Normative Change," in Stathis N. Kalyvas, Ian Shapiro, and Tarek Masoud, eds., *Order, Conflict, and Violence* (Cambridge: Cambridge University Press, 2008), pp. 378–396.

67. Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization*, Vol. 52, No. 4 (Autumn 1998), p. 890.

in light of the preceding evidence, whether R2P evidences the characteristics of a (new) norm specifically in relation to the legitimization of the military action against Libya.

The relationship between a putative norm and legitimacy is, though often overlooked, of great importance. By definition, expressing adherence to a norm, whether legal or moral, constitutes a means of legitimization.⁶⁸ The importance of norms, therefore, derives from their capacity to bestow legitimacy. According to Ian Hurd, legitimacy “refers to an actor’s normative belief that a rule or institution ought to be obeyed.” “The operative process in legitimization,” Hurd argues, “is the internalization by the actor of an external standard.”⁶⁹ Thus, norms, commonly recognized as legitimate modes of behavior, are incorporated into the decisionmaking calculus of states and are manifested in the policies these states pursue. Hurd suggests that there are three indicators that this internalization has occurred: “that states treat the rule in question as a necessary part of the strategic landscape for decisionmaking; that they cease making cost-benefit calculations about the effects of breaking the rule as they consider future behaviours; and that they use as resources the symbols that derive from the rule or institution.”⁷⁰ There is some evidence that the first of these three is evident with respect to R2P; states, including the P5, are unwilling to publicly reject R2P and are eager to ensure that their actions are justified in a way that does not clash with its basic ethos, however minimally they interpret it.⁷¹ This does not mean, however, that R2P compels timely and effective action; policies are framed so as to at least appear to cohere with R2P, as was arguably the case when the United Kingdom and the United States used R2P to, ironically, justify nonintervention in Darfur.⁷² Evidence of the second and third indicators, however, is more obviously lacking. Statements by the P5 on Libya highlight that they will continue to treat each case put before the Security Council on a case-by-case basis following evaluation of their respective interests. The responses of China and Russia to the ongoing violence in Syria (dealt with in the following section) certainly suggests that they have not stopped making cost-benefit calculations. With respect to Hurd’s

68. Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2007), pp. 206–227.

69. Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton, N.J.: Princeton University Press, 2007), pp. 7, 31.

70. *Ibid.*, p. 79.

71. Aidan Hehir, “The Responsibility to Protect in International Political Discourse: Encouraging Statement of Intent or Illusory Platitudes?” *International Journal of Human Rights*, Vol. 15, No. 8 (December 2011), pp. 1329–1346.

72. Alex J. Bellamy, “Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit,” *Ethics and International Affairs*, Vol. 20, No. 2 (June 2006), p. 33; and David Chandler, “Unravelling the Paradox of ‘The Responsibility to Protect,’” *Irish Studies in International Affairs*, Vol. 20 (November 2009), pp. 27–39.

third indicator, R2P does not yet appear to constitute an essential positive symbol of legitimization, given there were so few official public avowals of R2P.

There is, additionally, a lack of conceptual clarity surrounding key aspects of R2P—in particular, the threshold criteria for intervention—and this, by definition, influences the extent to which R2P can be deemed to constitute a “norm.” Theresa Reinold’s analysis of this confusion and contestation concludes that as a “norm” constitutes “an intersubjectively shared standard of appropriate behaviour,” the ambiguity surrounding R2P means that “norm internalisation cannot occur.”⁷³

Utilizing the “Discretionary Entitlement”

Many pronouncements heralding the dawn of a new era or paradigm for international relations, human rights, and/or the UN have in retrospect proved premature. In 1991 UN Secretary-General Javier Pérez de Cuellar stated, “The extinction of the bipolarity associated with the cold war has no doubt removed the factor that virtually immobilized international relations over four decades. It has cured the Security Council’s paralysis and helped immensely in resolving some regional conflicts.”⁷⁴ This belief in the imminence of a new era for the UN was widely held.⁷⁵ That this new era did not materialize derives, to a large extent, from the fact that for all the changes that took place from 1989 to 1992, the power of the Security Council remained intact. R2P has not altered this system either, and thus its capacity to catalyze a sea change in the international response to intrastate crises must be questioned.

The UN was, of course, designed by the United States, the United Kingdom, and the Soviet Union, which reserved significant competencies for themselves: most notably, the veto powers of the P5, described by Gerry Simpson as a form of “legalised hegemony.”⁷⁶ At the time, the victorious Allies argued that the new organization could function only if it “worked with, rather than in opposition to, the realities of power.”⁷⁷ The power of the Security Council at the ze-

73. Reinold, “The Responsibility to Protect,” p. 74.

74. UN General Assembly, forty-sixth session, “Report of the Secretary-General on the Work of the Organization,” A/46/1, September 13, 1991, p. 2.

75. Mats Berdal, “The UN Security Council: Ineffective but Indispensable,” *Survival*, Vol. 45, No. 2 (Summer 2003), p. 9; Chesterman, “Leading from Behind,” p. 281; and Michael Barnett, *The International Humanitarian Order* (London: Routledge, 2010), pp. 21–22.

76. Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004), p. 68. See also David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (New York: Oxford University Press, 2009), pp. 10–38; and Dimitri Bourantonis, *The History and Politics of Security Council Reform* (London: Routledge, 2007), p. 6.

77. Herbert Briggs, “Power Politics and International Organization,” *American Journal of International Law*, Vol. 39, No. 4 (October 1945), p. 670.

nith of the new system was particularly evident with respect to two features of its constitutional competencies; the Council's exceptional entitlement to sanction force under Chapter 7, and the veto. The lack of judicial review of Security Council decisionmaking meant, and still means, that the applicability and scope of Chapter 7 is, in effect, a matter for the P5 to interpret.⁷⁸

R2P, in the form recognized at the 2005 World Summit and endorsed at the 2009 General Assembly debate, does not alter the powers of the Security Council, ascribe any new competencies or procedural laws, or create any obligations to act.⁷⁹ There remains, therefore, "no obligation of collective action except when the permanent members choose it."⁸⁰ This of course raises the question: What determinants influence the Security Council's decision to intervene? History amply demonstrates that the P5's response to any particular alleged or clear breach of the law is entirely a function of the members' respective interests; there are no binding rules they must adhere to apart from minor procedural regulations. Therefore, the reason that the Security Council's response to intrastate crises has been inconsistent is that the powers of the P5 constitute "a discretionary entitlement."⁸¹

The application of R2P is, therefore, ultimately dependent on whether the members of the P5 have a collective interest in—or are at least not opposed to—halting a particular looming or actual mass atrocity. As a result, R2P is predicated on an assumption that normative pressure—in terms of the agitation of advocacy groups and the declaratory acts of states that leaves them ostensibly "rhetorically entrapped"⁸²—will compel the P5 to alter the foreign policy calculus. It is certainly true that stating that the P5 acts on the basis of a consideration of their respective national interest does not necessarily render R2P moribund. The national interests of states change, and this potentially facilitates the incorporation of humanitarian concerns. If it can be proven that the P5 sanctioned Resolution 1973 out of a desire to abide by, or be seen to abide by, R2P, then the contemporary influence of the concept must be acknowledged, whatever the historical record.

78. Julie Mertus, *The United Nations and Human Rights: A Guide for a New Era* (London: Routledge, 2009), p. 98; and Nigel White, "The Will and Authority of the Security Council after Iraq," *Leiden Journal of International Law*, Vol. 17, No. 4 (December 2004), p. 666. This is not a unanimous view; see Luke Glanville, "The Responsibility to Protect beyond Borders," *Human Rights Law Review*, Vol. 12, No. 1 (December 2012), pp. 65–78; and Dapo Akande, "The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?" *International and Comparative Law Quarterly*, Vol. 46, No. 2 (April 1997), pp. 309–343.

79. Hehir, "Responsibility to Protect"; and Stahn, "Responsibility to Protect."

80. Hurd, *After Anarchy*, p. 191.

81. Berman, "Moral versus Legal Legitimacy," p. 161.

82. Luke Glanville, "Darfur and the Responsibilities of Sovereignty," *International Journal of Human Rights*, Vol. 15, No. 3 (March 2011), p. 471.

EXPLAINING SUPPORT FOR RESOLUTION 1973

The decision by China and Russia to abstain on the vote on Resolution 1973 was imperative for the sanctioning of military action but also a change to their traditional—though, as discussed earlier, not unwavering—stance on military intervention.⁸³ Whether this change was motivated by a desire to abide by R2P, however, is not assured.

Some observers argued that the decision by China and Russia to abstain was wholly cynical; Michael Walzer suggests that they welcomed another ill-conceived, costly, and potentially divisive Western intervention in the region.⁸⁴ Additionally, news that representatives of Qaddafi's regime traveled to China during NATO's intervention to buy an estimated "\$200 million worth of rocket launchers, antitank missiles, [and] portable surface-to-air missiles" from state-controlled arms companies led some to wonder aloud about China's intentions and humanitarian credentials.⁸⁵

China's statement to the Security Council following its abstention on Resolution 1973 offers the clearest explanation for its decision; in addition to stating that "China is always against the use of force in international relations," their ambassador acknowledged, "We also attach great importance to the position of African countries and the AU. In view of this . . . China abstained."⁸⁶ Thus the support of the AU, as well as the LAS, understandably influenced China given its growing economic and political ties with Africa and the Middle East. Russia also referred to regional opinion in its statement; declaring that because it felt that military action was not the last resort, it could not support the resolution, Russia explained its abstention as being an expression of support for the LAS request to the Security Council.⁸⁷ This is an explanation, indeed, accepted by many of the more public proponents of R2P. Referring to the position taken by the LAS, Evans wrote, "[I]ts political support was absolutely crucial in ensuring that there was both a majority on the Council and no exercise of the veto by Russia or China."⁸⁸ According to Bellamy, without the support of key regional organizations such as the LAS and the AU, "China and Russia would have certainly vetoed Resolution

83. Bellamy and Williams, "The New Politics of Protection?" p. 828.

84. Michael Walzer, "The Case against Our Attack on Libya," *New Republic*, March 20, 2011, <http://www.tnr.com/article/world/85509/the-case-against-our-attack-libya>.

85. Anne Barnard, "China Sought to Sell Arms to Qaddafi, Documents Suggest," *New York Times*, September 4, 2011, <http://www.nytimes.com/2011/09/05/world/africa/05libya.html>; and Tania Branigan, "Chinese Arms Companies 'Offered to Sell Weapons to Gaddafi Regime,'" *Guardian*, September 5, 2011, <http://www.guardian.co.uk/world/2011/sep/05/chinese-arms-companies-weapons-gaddafi-regime>.

86. UNSC, "The Situation in Libya," p. 5.

87. *Ibid.*, p. 8.

88. Evans, "The RtoP Balance Sheet after Libya," p. 41.

1973.”⁸⁹ There are precedents for the influence of regional opinion on the decisions made by these two states, such as their response to the situation in Côte d’Ivoire in December 2010.⁹⁰ Thus, the rationale for China’s and Russia’s abstentions is unrelated to R2P.

There is also little evidence that the LAS was itself motivated by R2P to advocate robust measures against Libya. The LAS’s position on the “Arab Spring” has been far from principled, with its reaction to the situation in Bahrain arguably evidence that politics, rather than an adherence to R2P or to human rights protection more generally, determined the League’s position. Bellamy and Williams suggest three possible explanations for the LAS’s stance on Libya: first, not all LAS members attended the meeting on March 12, 2011, and thus the pro-U.S. GCC exercised disproportionate influence on the statement made; second, Qaddafi was already seen as a pariah within the region, particularly among influential heads of state such as the Saudi royal family; and third, “some regional governments may have calculated that turning the international spotlight on Libya would divert attention from their own troubles.”⁹¹ This latter and more nefarious explanation has been advanced by commentators who claim that the position taken by the LAS was a trade-off whereby support for action against Libya led to Western silence on Saudi Arabia’s support for the embattled regime in Bahrain.⁹² Given the importance afforded to the views of the LAS, the sanctioning of Resolution 1973 was, Bellamy and Williams argue, “unthinkable without the LAS resolution.”⁹³

The fact that support for Resolution 1973 was dependent on the assent of the LAS must give pause for thought; if the situation in Libya was as ominous as the intervening coalition repeatedly stated once 1973 was passed, why would the support from the LAS be a *sine qua non* given that the humanitarian situation on the ground would have been the same whatever the LAS said? Additionally, predicating international action to protect human rights on the consent of the LAS is surely worrying given that nineteen of the twenty-two members of the LAS are considered to be authoritarian regimes.⁹⁴ Furthermore, many of the member states, particularly Saudi Arabia, Sudan, and Yemen, are regularly cited by humanitarian organizations as human rights oppressors.⁹⁵

89. Bellamy, “Libya and the Responsibility to Protect,” p. 267.

90. Bellamy and Williams, “The New Politics of Protection?” p. 833.

91. *Ibid.*, p. 842.

92. Escobar, “Exposed”; Murray, “The Invasion of Bahrain”; and Naiman, “Surprise War for Regime Change in Libya Is Wrong Path.”

93. Bellamy and Williams, “The New Politics of Protection?” p. 843.

94. Economist Intelligence Unit, “Democracy Index 2010: Democracies in Retreat,” http://graphics.eiu.com/PDF/Democracy_Index_2010_web.pdf.

95. Nineteen of the twenty-two states are listed in the “Not Free” category by Freedom House. Three—Kuwait, Lebanon, and Morocco—are listed in the “Partly Free” category. Freedom House, “Combined Average Ratings—Independent Countries” (Washington, D.C.: Freedom House, 2011),

In addition to the paucity of strong evidence that R2P influenced China, Russia, or the LAS's stance on Resolution 1973, the United States' position also appears to have been a function of a confluence of factors.⁹⁶ The LAS's position was also a key factor in the eventual decision by the United States to support military action, with Secretary of State Clinton describing the LAS's statement as precipitating a "sea change."⁹⁷ President Obama acknowledged that the intervention was undertaken "because our interests and values are at stake." More explicitly, later in the same speech he stated, "America has an important strategic interest in preventing Qaddafi from overrunning those who oppose him."⁹⁸ There is no doubt that influential figures within the U.S. administration, such as Ambassador Rice and Presidential Adviser Power, are supporters of humanitarian intervention, but the claim that they somehow bullied Obama into intervening stretches credulity. In other words, the action taken by the United States most likely derived from President Obama's worldview, which comprises "a pragmatic assessment of individual cases," rather than his adherence to a law or principle.⁹⁹ The key role played by President Sarkozy has also been attributed by some to France's 2012 presidential election; with Sarkozy's main rival, far-right politician Jean Marie Le Pen, standing on an anti-immigration platform, the president allegedly acted to stem a potentially politically disastrous exodus.¹⁰⁰

Even if David Cameron, Barack Obama, and Nicholas Sarkozy pushed for action because of a genuine desire to honor commitments made to R2P, the long-term efficacy of R2P would remain in doubt. As R2P is clearly a political principle rather than a legal obligation that must be obeyed, the personality of the president/prime minister constitutes an important factor in the decision whether to intervene in a particular case. This, indeed, is the explanation proffered by Bernard-Henri Levy, who worked with President Sarkozy in generating support for the intervention. Describing the intervention as "the absolute exception," he claimed that the decision was "a mixture of chance and necessity," which ultimately would not have occurred without "the political will of one man, the President of the French Republic, Nicholas Sarkozy."¹⁰¹ Action taken on the basis of altruistic individual impulses cannot reasonably be cited

[http://www.freedomhouse.org/sites/default/files/inline_images/CombinedAverageRatings\(IndependentCountries\)FIW2011.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/CombinedAverageRatings(IndependentCountries)FIW2011.pdf).

96. Bellamy and Williams, "The New Politics of Protection?" p. 843.

97. Hillary Clinton, "There's 'No Way United States Will Take Unilateral Action in Libya,'" *CBS News*, March 16, 2011, http://www.cbsnews.com/8301-503544_162-20043991-503544.html.

98. Obama, "Remarks by the President in Address to the Nation on Libya."

99. Chesterman, "Leading from Behind," p. 285.

100. Soeren Kern, "Why France Was So Keen to Attack Libya" (New York: Gatestone Institute, International Policy Council, March 23, 2011), <http://www.hudson-ny.org/1983/france-libya-attack>.

101. Levy, "After Qaddafi, Assad."

as constituting a precedent or new norm. Rather, it is more accurately described as aberrant behavior impelled by a unique constellation of necessarily temporal factors.

To highlight that national, and personal, interest influenced the intervention in Libya does not mean that one adheres to a conspiratorial view whereby the “West,” indifferent to the humanitarian crisis, hatched a nefarious plan to plunder Libya’s oil fields.¹⁰² Rather, a combination of factors, including events on the ground; the favorable regional disposition; Libya’s geostrategic importance; and Qaddafi’s pariah status, reputation for violence, and exceptional public declaration of murderous intent—plus doubtless myriad domestic considerations—combined to induce the leaders to push for action.

INTERESTS AND VALUES

This union of interests and values is far from unique or shocking; in their analysis of the history of humanitarian intervention, Nicholas Wheeler and Justin Morris observe that “[i]n no case have states intervened when there were no vital interests at stake.” The result is “a pattern of intervention that is highly selective.”¹⁰³ Each member of the P5, Mats Berdal observes, is committed “to using the Security Council as a means of promoting its interests in the world,”¹⁰⁴ and thus it would be truly shocking if the P5 had acted on the basis of a “determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their own government,” as claimed by Secretary-General Ban.¹⁰⁵

A number of those who heralded the intervention as indicative of R2P’s influence did acknowledge the influence exerted by other factors.¹⁰⁶ Thakur observed, “In Libya, the West’s strategic interests coincided with UN values.”¹⁰⁷ Bellamy explained the decision to intervene as being caused by a “confluence of factors,” a situation that he accepted “is unlikely to be often repeated.”¹⁰⁸ Indeed, only five weeks after sanctioning military action against Libya, Chinese and Russian opposition led to the failure of the Security Council to agree on a statement condemning the violence in Syria.¹⁰⁹ As the situation worsened, the

102. Ali, “Who Will Reshape the Arab World?”

103. Nicholas Wheeler and Justin Morris, “Justifying the Iraq War as a Humanitarian Intervention: The Cure Is Worse Than the Disease,” in Ramesh Thakur and Waheguru Pal Singh Sidhu, eds., *The Iraq Crisis and World Order: Structural, Institutional, and Normative Challenges* (New York: United Nations University Press, 2007), p. 448.

104. Berdal, “The UN Security Council,” p. 20.

105. Ban, “Statement by the Secretary-General on Libya.”

106. Bellamy and Williams, “The New Politics of Protection?” p. 825.

107. Thakur, “Has R2P Worked in Libya?”

108. Bellamy, “Libya and the Responsibility to Protect,” p. 267.

109. Neil MacFarquhar, “Push in U.N. for Criticism of Syria Is Rejected,” *New York Times*, April 27, 2011, <http://www.nytimes.com/2011/04/28/world/middleeast/28nations.html>.

Security Council continued to meet throughout 2011, and a draft resolution was put to the Council on October 4. The resolution was, according to UN Ambassador Rice, “a vastly watered-down text that doesn’t even mention sanctions” and certainly far less robust than 1973.¹¹⁰ Yet China and Russia both exercised their veto in an unusually emphatic rejection. Secretary-General Ban decried the P5 for having failed to abide by their responsibility, and the ICRtoP denounced the decision as “a failure of the Security Council’s responsibility to protect the Syrian population.”¹¹¹ The claims made by Ban in the wake of the intervention against Libya that “R2P has arrived” and that the Security Council acted out of a “determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their own government” are surely less convincing in light of the Council’s response to Syria.¹¹² In this case, absent the propitious confluence of factors that enabled Resolution 1973, the decision was different.

Conclusion

According to Paul Heinbecker, the “happy events in Libya” can be described in four words; “success, vindication, satisfaction, optimism.”¹¹³ Optimism certainly pervaded many analyses of the intervention.¹¹⁴ Ramesh Thakur claimed that the decision of the Security Council to intervene was “shaped by universal values rather than strategic interests”; he concluded, “I can sleep more soundly with that comforting thought.”¹¹⁵

If optimism is to be more than utopian naiveté, then it must have an evidential basis. As surprising as Resolution 1973 arguably was, however, it is consistent with the Security Council’s record of inconsistency. Comparable—though certainly not identical—action has occurred previously, and the claims of both legal and normative novelty made by the optimists are dubious given the historical record. Aside from this historical evidence, the situation in Syria illustrates that the international response to intrastate crises is still determined by

110. ICRtoP, “UN Security Council Fails to Uphold Its Responsibility to Protect in Syria” (New York: ICRtoP, October 7, 2011), <http://www.responsibilitytoprotect.org/index.php/component/content/article/136-latest-news/3688-un-security-council-fails-to-uphold-its-responsibility-to-protect-in-syria>.

111. Ban, “Remarks at Breakfast Roundtable with Foreign Ministers on ‘The Responsibility to Protect’”; and ICRtoP, “UN Security Council Fails to Uphold Its Responsibility to Protect in Syria.”

112. Ban, “Statement by the Secretary-General on Libya.”

113. Heinbecker, “Plenty of Credit to Go Around in Gadhafi’s Fall.”

114. Gerber, “Beyond Libya.”

115. Ramesh Thakur, “R2P, Libya, and International Politics as the Struggle for Competing Normative Architectures,” *e-International Relations*, September 7, 2011, <http://www.e-ir.info/?p=13728>.

interests and geopolitics, rather than principle. This is hardly a surprise, nor does it mean that the action in Libya was by definition illegitimate.¹¹⁶ The vastly different responses to the crises in Syria—and indeed Bahrain—must, however, call into question the precedential nature of Libya, which was impelled by a unique confluence of factors, and this must temper nascent hope that a new dawn has broken. This selectivity is in keeping with the Security Council's record of inconsistency, a record that predates R2P. Given that R2P has not altered the decisionmaking process, or powers, of the Security Council, it is difficult to believe that wholesale change of the scale proclaimed by some in the wake of Resolution 1973 is imminent; as Allen Buchanan and Robert Keohane assert, so long as the veto power remains, "the Security Council has little prospect for substantial improvement . . . self-abnegation is highly unlikely."¹¹⁷ Therefore, the response to the situation in Libya is better understood as an aberration rather than the product of a new disposition and the harbinger of a new era.

Many proponents of R2P have, of course, acknowledged this, and it would be wrong to suggest that R2P is universally held to be a panacea. As Alex Bellamy admitted, decisions on the response to intrastate crises will continue to be "made in an ad hoc fashion by political leaders balancing national interests, legal considerations, world opinion, perceived costs and humanitarian impulses—much as they were prior to the advent of R2P."¹¹⁸ Likewise, Thomas Weiss wrote, "Libya suggests that we can say no more Holocausts, Cambodias, and Rwandas—and occasionally mean it."¹¹⁹ If the response to intrastate crises remains prey to the political considerations identified by Bellamy and, as a result, rhetorical commitments to human rights protection will only, as Weiss states, "occasionally" be honored, there appears to be a limited basis for the post-Libya optimism.

Of course, the alignment of various factors prior to Resolution 1973 does not mark the creation of an irresistible momentum. The P5, obviously, still had to choose to sanction action or to abstain. One could conceivably argue, therefore, that these factors enabled humanitarian impulses and concerns to be realized and that, ipso facto, this proves that these concerns are real and that the national interests of states, including the P5, have sometimes changed to accom-

116. James Pattison, "The Ethics of Humanitarian Intervention in Libya," *Ethics and International Affairs*, Vol. 25, No. 3 (Fall 2011), p. 6.

117. Allen Buchanan and Robert Keohane, "Precommitment Regimes for Intervention: Supplementing the Security Council," *Ethics and International Affairs*, Vol. 25, No. 1 (Spring 2011), p. 51.

118. Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (London: Polity, 2009), p. 3.

119. Weiss, "R2P Alive and Well after Libya," p. 292.

moderate humanitarian concerns. It is not illogical to cite R2P as a factor in this new disposition. The obvious rebuttal to this, of course, is to posit a nefarious plot that can be cited as the “true” underlying motivation. This claim may be superficially attractive, but hardly credible in this case given the relatively cordial and mutually beneficial relationship between the West and Muammar al-Qaddafi prior to 2011. The counterargument advanced here, however, is not that the P5 has no interest in human rights or that the ubiquity of R2P has not made it somewhat more difficult to justify inaction. Rather, the key issue is that the calculations made in the days and weeks prior to the passing of Resolution 1973 were, to all intents and purposes, of the same nature as those made prior to the emergence of R2P, when humanitarian concerns also featured in the decisionmaking, particularly in the 1990s. As discussed earlier, this has produced a record whereby certain crises have benefited from a timely and effective response, whereas others have not. It was precisely this problematic inconsistency, evident throughout the 1990s, that led to the creation of R2P. If the Security Council’s response continues to be buffeted by an amalgam of factors beyond the scale of the humanitarian crises, then it is inevitable that the reaction to intrastate crises will continue to be inconsistent. R2P has possibly become one factor in the decisionmaking calculus of states, but it is one among a great many—a loud voice in a large, disparate, chanting crowd.