Libya and the Responsibility to Protect: The Exception and the Norm

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The Responsibility to Protect (RtoP) played an important role in shaping the world's response to actual and threatened atrocities in Libya. Not least, the adoption of Resolution 1973 by the UN Security Council on May 17, 2011, approving a no-fly zone over Libya and calling for "all necessary measures" to protect civilians, reflected a change in the Council's attitude toward the use of force for human protection purposes; and the role played by the UN's new Joint Office on the Prevention of Genocide and the Responsibility to Protect points toward the potential for this new capacity to identify threats of mass atrocities and to focus the UN's attention on preventing them. Given the reluctance of both the Security Council and the wider UN membership even to discuss RtoP in the years immediately following the 2005 World Summit—the High-level Plenary Meeting of the 60th Session of the General Assembly that gave birth to RtoP—these two facts suggest that significant progress has been made thanks to the astute stewardship of UN Secretary-General Ban Ki-moon, who is personally committed to the principle. Where it was once a term of art employed by a handful of like-minded countries, activists, and scholars, but regarded with suspicion by much of the rest of the world, RtoP has become a commonly accepted frame of reference for preventing and responding to mass atrocities.

Resolution 1973 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. As Paul Williams argued, the closest the Council came to doing so in the past was in Resolutions 794 (1992)

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and 929 (1994). In Resolution 794, the Council authorized the Unified Task Force to enter Somalia to ease the humanitarian crisis, but this was in the absence of a central government rather than against one—a point specifically made at the time by several Council members.[1] Similarly, in Resolution 929 the Security Council authorized the French-led Operation Turquoise, ostensibly to protect victims of the ongoing genocide in Rwanda. Operation Turquoise enjoyed the consent of the interim government in Rwanda as well as its armed forces. More recently, in Haiti, the Democratic Republic of Congo (DRC), Sudan, and Côte d'Ivoire, the Security Council has authorized the use of "all necessary measures" to protect civilians, but the peace operations in these countries all operate with the consent of the host state.[2] Having twice stated its readiness in Resolutions 1674 (2006) and 1894 (2009) to take "timely and decisive action" to prevent or halt mass atrocities, the Council has now set a precedent that it will not be inhibited *as a matter of principle* from authorizing enforcement for protection purposes without host state consent.

Another aspect of the UN's response to the Libyan crisis that deserves mention is the role of the UN Secretariat in assessing the situation through the prism of RtoP and drawing attention to the human protection issues. Although the Secretariat has only recently begun to build the capacities needed to bring an atrocity prevention and human protection lens to bear on policy-making, after several years of persistence and persuasion by the secretary-general, the signs from Libya suggest that the establishment of modest early-warning, assessment, and convening capacities can have a positive effect on policy planning and decision-making. Almost from the outset of the crisis, senior UN officials warned of the imminent threat of mass atrocities and framed their responses in RtoP terms. On February 22, 2011, the UN High Commissioner for Human Rights, Navi Pillay, issued a statement in which she reiterated that the state "has an obligation to protect the rights to life, liberty, and security." She continued, "Protection of civilians should always be the paramount consideration in maintaining order and the rule of law. The authorities should immediately cease such illegal acts of violence against demonstrators. Widespread and systematic attacks against the civilian population may amount to crimes against humanity."[3]

On the same day, the special advisers to the UN secretary-general on genocide prevention (Francis Deng) and on RtoP (Edward C. Luck) issued a statement in which they noted that the Libyan regime's behavior could amount to crimes against humanity and reminded "the national authorities in Libya" of their own

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2005 pledge to uphold the principles of RtoP.[4] This call was reiterated the following day by the secretary-general and helped frame the ensuing debate as one about the prevention of mass atrocities and protection of vulnerable populations. In this way, the Secretariat helped identify the imminent risk of mass atrocities, portrayed the crisis in Libya as a human protection problem, and reminded both the Libyan authorities (to no effect) and the Security Council (to good effect) of their responsibilities. This early activism was part of the catalyst for the adoption of Resolution 1970 (February 26, 2011), which condemned attacks on the civilian population that it deemed could amount to crimes against humanity, demanded an immediate cessation of violence, established an arms embargo and travel ban, and referred the matter to the prosecutor of the International Criminal Court. With Qaddafi showing little sign of backing down, the secretary-general intervened personally by phoning the Libyan leader and trying to persuade him to comply with the resolution. When that too failed, the onus was placed squarely on the Council to determine the next step.

But despite the significance of Resolution 1973 and the Secretariat work that helped inform it, Libya is only one piece of a much broader transformation in the way the world thinks about and responds to mass atrocities. That transformation was anticipated by the International Commission on Intervention and State Sovereignty. The commission's central argument about the need to shift debate away from the "rights" of interveners and toward the "responsibilities" of various actors to protect people from grave abuses has been realized to some extent. Debates about preventing and responding to mass atrocities are no longer primarily about *whether* to act, but about *how* to act. That shift in focus was evident before Libya, in the response of the United Nations and regional organizations to crises in Kenya, Guinea, Côte d'Ivoire, Darfur, and eastern DRC, and in the attention paid to managing the referendum in Sudan in early 2011. In all of these cases, international attention was squarely focused on the protection of populations.

Nonetheless, within the context of this broader transformation, Libya is the exception rather than the rule in at least three senses. First, there was the extraordinary clarity of the threat of mass atrocities. Not since Rwanda has a regime so clearly signaled its intent to commit crimes against humanity. With direct echoes of Rwanda, Qaddafi told the world that "officers have been deployed in all tribes and regions so that they can purify all decisions from these cockroaches," and that "any Libyan who takes arms against Libya will be executed."[5] It is far

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more usual for regimes bent on mass atrocities to try to hide their actions by hiring militia to perform mass killings, denying the commission of crimes, arguing that their victims were not civilians, or insisting that crimes were committed by rogue elements.

The second reason the Libya situation was exceptional is that the time frame was extremely short. None of the world's various risk-assessment frameworks viewed the country as posing any sort of threat of mass atrocities.[6] Neither was a conflict widely anticipated. For example, *CrisisWatch*, the early-warning arm of the International Crisis Group, did not even mention Libya in its report of February 1, 2011, and did not issue a "conflict risk alert" until after the conflict had actually erupted. The rapidity of rebel gains and subsequent losses, which left the stronghold of Benghazi vulnerable to Qaddafi's forces and their promised retribution, left little time to try either the new round of mediation proposed by Russia or the more graduated response preferred by some UN officials. The Council's first resolution on Libya, Resolution 1970, bundled together a variety of punitive measures when slower-moving events might have facilitated a more graduated approach to coercive inducement. At the time Resolution 1973 was presented to the Council, the fall of Benghazi was days, if not hours, away.

The third reason Libya was exceptional was the role played by regional organizations. Qaddafi's regime had few friends in the region, and it was the call for a no-fly zone by the Gulf Cooperation Council (GCC), the Organization of the Islamic Conference (OIC), and the League of Arab States (LAS) that proved to be a diplomatic game-changer. Without their support, China and Russia would have certainly vetoed Resolution 1973. We do not yet know why these organizations called for the imposition of a no-fly zone, but Qaddafi's unpopularity, the influence of the pro-U.S. Gulf Cooperation Council, and the fact that many key LAS members were not present when the League voted on the no-fly zone were probably just as important as the feelings of humanitarian solidarity generated in part of the Middle East by the "al Jazeera effect" in shaping these responses. One thing that has already become clear by the Security Council's failure to date to reach a consensus on either Syria (where Lebanon has blocked consensus) or Yemen (where the GCC and LAS are not united) is that this confluence of factors is unlikely to be often repeated.

Once states accept that international society has a responsibility to protect and that the proper question should be *how* rather than *whether* to fulfill that responsibility, they have limited political room for maneuver in the face of compelling

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evidence of an imminent threat of mass atrocities. Of course, as I recently argued in this journal, most cases are sufficiently complex to allow states to accept the need for action but at the same time argue on prudential grounds about the most appropriate form of action, limiting the frequency of "timely and decisive" action.[7] In the face of Qaddafi's record and his public utterances, however, states could not plausibly argue that the threat of mass atrocities was not real. And in the face of Benghazi's imminent collapse, they could not plausibly argue that the threat was not imminent. With strong regional support (for whatever reason) and in the absence of reasonable alternative policies for preventing a massacre in Benghazi, those Council members that remained skeptical about the use of force believed that they could not legitimize inaction.

This tension was intimated by several of the Council members who abstained in the vote on Resolution 1973. As Brazil argued: "Our vote today should in no way be interpreted as condoning the behavior of the Libyan authorities or as disregard for the need to protect civilians and respect their rights," but that "We are not convinced that the use of force as provided for in paragraph 4 of the resolution will lead to the realization of our common objective—the immediate end to violence and the protection of civilians." Russia explained: "We are consistent and firm advocates of the protection of the civilian population. Guided by this basic principle as well as by the common humanitarian values that we share with both the sponsors and other Council members, Russia did not prevent the adoption of this resolution. However, we remain convinced that the quickest way to ensure robust security for the civilian population and the long-term stabilization of the situation in Libya is an immediate ceasefire." Finally, China pointed out that it "is gravely concerned by the continuing deterioration of the situation in Libya. We support the Security Council's adoption of appropriate and necessary action to stabilize the situation in Libya as soon as possible and to halt acts of violence against civilians. . . . China is always against the use of force in international relations . . . China has serious difficulty with parts of the resolution."[8]

In most other times and places, the prevention of mass atrocities and protection of vulnerable populations will require different methods, and there will be neither the will nor the consensus necessary for the use of military force. This is precisely why the secretary-general's call for a "narrow and deep" approach to implementing RtoP—one that uses all the resources at the international community's disposal in a carefully tailored fashion to prevent and respond to mass atrocities—is the right one.[9] Sometimes, as in Kenya (2008) and Guinea (2009), diplomacy led by

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regional actors but supported by both UN officials and the Security Council is most effective. In other cases, delivering on existing peacekeeping mandates to use "all necessary means" to protect civilians from harm by contributing the capabilities needed and supporting them with political and humanitarian efforts provides more protection. In a third category of cases, such as Côte d'Ivoire (2011), addressing the threat of atrocities requires a combination of peacekeeping, peace enforcement, and support for the more legitimate local leaders. Across all of these types of scenarios, effective engagement involves multiple strands of policy (political, humanitarian, legal, economic, and military) employed by different actors. Working out what combination of measures works best in different circumstances, and precisely where available and willing capacity lies, is a major and as yet unmet challenge for researchers. Another problem is how to promote coherence across sectors and actors.

Of course, there will be times when plausible options are extremely limited. Somalia is a case in point. Following the upsurge of violence in Somalia in 2006, the African Union and the Bush administration called for the United Nations to deploy a peace operation. European members of the Security Council countered that the conditions were not ripe for peacekeeping because there was no viable and inclusive political process, no peace agreement, and little local commitment. In this context, they argued, a UN peace operation was likely to be counterproductive. The Council compromised and asked the UN Department of Peacekeeping Operations (DPKO) to assess the military options. DPKO reported that UN peacekeeping was only viable if certain conditions were met (especially a lasting cease-fire and viable and inclusive political process), and that in the absence of those conditions the only plausible military option was the deployment of a large and highly capable multinational force to conduct a peace enforcement operation and impose a settlement. Given past experiences in Somalia, Western military overstretch, advice that external intervention was likely to be treated as hostile by several armed groups, and the absence of a clear pathway from large-scale military intervention to exit and sustainable peace, there was understandably little enthusiasm for the multinational force option. With the Security Council's approval, the African Union eventually authorized and deployed an 8,000-strong mission in Somalia (AMISOM) to support the peace process and transitional institutions, but as predicted it has proven unable to bring peace, has deployed only 6,000 of its mandated 8,000 troops, and has become a party to the conflict.[10] The lessons here are that the use of

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military power can be a blunt instrument and that its capacity to protect is shaped by a host of context-specific factors.

While military intervention is an essential part of RtoP's arsenal, it is important to recognize that the range of plausible options for human protection—and with it the likelihood of actually achieving protection—tends to narrow as massacres become more imminent. Clearly necessary given the context, there is no hiding the fact that the form of intervention in Libya was highly imperfect, that it delivered indirect and patchy protection at best, and that it placed the region's long-term stability in the hands of fractious rebels about whom little is known. Such late-in-the-day decisions about military intervention to prevent atrocities will always be taken in a context of deep uncertainty about their effects and will be driven by the specific political context. As such, they tend to be inconsistent and imperfect, but sometimes the best that can be made of a bad situation. With this in mind, in the long term the implementation of RtoP needs to retain its focus on reducing the number of cases that become so acute as to require this sort of urgent decision-making.

NOTES

[1] Paul D. Williams, "Briefing: The Road to Humanitarian War in Libya," *Global Responsibility to Protect* (forthcoming 2011); and Paul D. Williams and Alex J. Bellamy, "Principles, Politics and Prudence: Libya and the New Politics of Humanitarian War" (unpublished paper, 2011).

[2] Williams, "Briefing: The Road to Humanitarian War."

[3] "UN Human Rights Chief Pillay Calls for International Inquiry into Libyan Violence and Justice for Victims," press statement, February 22, 2011; available at reliefweb.int/node/389359.

[4] United Nations Press Release, "UN Secretary-General Special Adviser on the Prevention of Genocide, Francis Deng, and Special Adviser on the Responsibility to Protect, Edward Luck, on the Situation in Libya," February 22, 2011; available at www.un.org/en/preventgenocide/adviser/pdf/OSAPG,%20Special%20Advisers%20Statement%20on%20Libya,%2022%20February%202011.pdf.

[5] "Defiant Gaddafi Issues Chilling Threat," ABC (Australia), February 23, 2011; available at www.abc.net.au/worldtoday/content/2011/s3146582.htm.

[6] The Mass Atrocity Crime Watch List did not include Libya in its list of thirty-three "at risk" countries; see www.preventorprotect.org/overview/watch-list.html; nor did Barbara Harff's list of twenty-seven countries; see globalpolicy.gmu.edu/genocide/CurrentRisk2008.pdf; Minority Rights Group International did not identify Libya among the sixty-eight countries posing a risk to minorities in 2010; see www.minorityrights.org/9885/peoples-under-threat/peoples-under-threat-2010.html; and Libya was not an "area of concern" for the Genocide Intervention Network; see www.genocideintervention.net/.

[7] Alex J. Bellamy, "The Responsibility to Protect—Five Years On," *Ethics & International Affairs* 24, no. 2 (2010), pp. 143–69.

[8] All quotes from S/PV.6498, March 17, 2011.

[9] Ban Ki-moon, "Implementing the Responsibility to Protect: Report of the Secretary-General," UN Document A/63/677, January 12, 2009.

[10] See Paul D. Williams, "Into the Mogadishu Maelstrom: The African Union Mission in Somalia," *International Peacekeeping* 16, no. 4 (2009), pp. 514–30.

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