Thinking About Libya, the Responsibility to Protect and Regime Change: A "Lessons Learned" Discussion Paper
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This discussion paper on the application of the Responsibility to Protect (R2P) doctrine in Libya is intended to stimulate dialogue among members of the World Federalist Movement – Canada (WFMC) and other R2P advocates.

We begin with the assumption that there was a real need for the international community to respond to the threats and behaviour of the Libyan government of Moammar Gaddafi. In the circumstances, the UN Security Council resolutions that followed Gaddafi's actions, resolutions 1970 and 1973, and then resolution 2009 which recognized the National Transitional Council after the fall of Gaddafi, were appropriate responses to the crisis. There was explicit reference to a responsibility to protect civilians and civilian areas. The International Criminal Court was referenced (in resolutions 1970, 1973 and 2009). There was demand for a ceasefire, to diplomatic channels being opened, to dialogue towards political reform (resolution1973), and to an arms embargo and freezing of assets. In resolution 1973 "all necessary measures" were authorized, as was a no-fly zone to protect Libyan civilians, including those in Benghazi.

However, there were many rough edges and a fair amount of (intended?) ambiguity. These topics are important to explore so that we are clear about where mandates were followed, or violated. Our goal is to strengthen the R2P doctrine so that it becomes a reliable new normative framework for future international diplomacy and protection of civilians. The experience of application in Libya will impact future efforts by the United Nations to invoke R2P. Therefore it is important that we "get it right" to the degree possible.

Was there a need for an international response?

On February 26, 2011, the United Nations Security Council (UNSC) stated in resolution 1970 that "widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity." The resolution referred to "incitement to hostility and violence against the civilian population made from the highest level of the Libyan government." There was condemnation, it noted, from the Arab League, African Union, and the Secretary General of the Organization of the Islamic Conference. The Security Council itself voted unanimously in support of Resolution 1970 (15-0-0).

Estimates vary widely but there is some basic agreement that at least several hundred (the lowest estimate) if not a couple of thousand civilians died in the early months of 2011 at the hands of the Gaddafi regime, preceding the UNSC resolution 1973 of March 17. That resolution in effect authorized military action, as necessary. The vote was passed, with five abstentions (10-0-5).

Ten Security Council members voted in the affirmative (Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, Portugal, South Africa, and permanent members

France, the United Kingdom, and the United States). Five (Brazil, Germany, and India, and permanent members China and Russia) abstained, with none opposed.

There is little disagreement about whether there was a need for some response to a crisis in Benghazi. The initial Security Council resolution 1970 was unanimous; although it did not specifically authorize the use of military force, it referenced Chapter 7 of the UN Charter. In other words, there was near consensus – twice – that the level of violence targeting civilians by the Libyan government was high – high enough and extensive enough to justify an International Criminal Court investigation. There were documented attacks on civilians on a large scale. A low estimate of casualties might be what Lebanon stated in its explanation of vote for Resolution 1973.[1] Lebanon referred to "hundreds of victims dying and thousands displaced. Faced with those risks and the great danger of those crimes, the United Nations had acted earlier, but Colonel Qadhafi had not heeded those actions."

The June 13 statement issued by WFMC supported the application of R2P principles to the crisis in Libya. The Libyan crisis developed directly from generally peaceful protests against the Gaddafi government beginning early in 2011 and was similar in scope and purpose to protests that took place in Tunisia and Egypt and elsewhere in the Arab world. While the Libya activities were part of the "Arab Spring" events, they met with a violent backlash from the Gaddafi government. However, there were also violent backlashes in several other Arab states, including Yemen, Bahrain and Syria.

WFMC pointed out in June that the engagement of the international community in Libya was a genuine application of R2P. We recognized that Responsibility to Protect was an emerging political doctrine. We had concerns about the ambiguity and permissive language of some parts of UN resolution 1973, which contained potential for abuse.

However, the U.N. reference to R2P was unambiguous. R2P was explicitly mentioned[2] in both UN Security Council resolutions 1970 (February 26) and 1973 (March 17) but not in the more recent UNSC Resolution 2009 (September 16).[3] The Libyan-NTC representative did refer to R2P in his comments at the time when resolution 2009 was adopted.

WFM - Canada acknowledged in our June statement that there could be a rough road ahead in the application of R2P to Libya; and we made clear that even with our own best hopes and international community's best intentions, "some governments also fear that this new norm compromises traditional notions of sovereignty and will be used in future

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[1] Full casualty estimates, February - present day:
http://en.wikipedia.org/wiki/Casualties_of_the_2011_Libyan_civil_war
[2] "Recalling the Libyan authorities' responsibility to protect its population..." (Second page of preamble, UNSC Resolution 1970 (2011))
[3] SC Resolution 2009 of September 16, 2011 does not refer to R2P but recognizes the National Transitional Council as the interim replacement representatives for Libya and authorizes the creation of a UN support mission (UNSMIL). There was unanimous SC support for this resolution: 15-0-00. There was reference to R2P in the explanation of vote section of the UN news release. http://www.un.org/News/Press/docs/2011/sc10389.doc.htm

by powerful governments to intervene unjustly in the internal affairs of weaker states." This wariness towards a bad precedent being set was always in the background, and when the operation became controversial, which was quite early on, it was not surprising that a variety of critiques would surface.

Nonetheless, there was all-party support in Canada on March 21, 2011 for UNSC Resolution 1973 demanding an "immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;" and authorizing a No Fly Zone, and "all necessary measures" to "protect civilians and civilian populated areas under threat of attack…"

Canada's follow-up vote in June to extend the mission another three months won support from all parties, except for the leader of the Green Party. In June the New Democratic Party (NDP) qualified their support by indicating that they would not support continuance of the military mission at the end of another three months.

The September 23 majority vote in the Canadian House of Commons supported "an extension of up to three months of the involvement of the Canadian Armed Forces operating with NATO in accordance with the legal mandate from the UNSC Resolution 1973…" The vote was 189-98 with support from the Conservatives, Liberals and Bloc Québecois, but not from the NDP or Green Party leader.

Was the NATO operation justified? Was it authorized by the United Nations?

There was sufficient evidence of large-scale human rights abuses and potential for war crimes. With the application of the responsibility to protect the objective is not to wait until it is too late. The Security Council, with no vetoes, approved an operation and included authority for all necessary measures, and a no fly zone, etc. There had been at least one precedent within the Security Council by which an abstention by a permanent member of the Security Council would still give a "green light" for a resolution in the absence of unanimity, and thus the Russia and China abstentions were equivalent to "nods of consent" for others to proceed. (During the first Gulf War, for instance, China abstained but military action proceeded, based on UN Security Council resolution 678 (1990)[4]. Thus, after 1990 it was well understood that an abstention by a permanent member of the Security Council could not block the required consensus.)

UNSC resolution 1973 was vague in its language, perhaps too permissive and ambiguous. If the meaning of "all necessary measures" wasn't unclear, it was at least open-ended. Political control and oversight over military operations was not obviously in the hands of the Security Council. Guidelines affecting rules of engagement, were not specified in the resolution. Member states implementing the resolution were obliged only to "inform" the Secretary-General of the measures they took. Similarly the Internatonal Contact Group for Libya[5] (later, the "Friends of Libya") an ad hoc group of states implementing the

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[4] http://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_678
[5] The Libya Contact Group was comprised of 28 country members and 16 observers, 6 international organizations (including the UN) and 2 observer organizations (including the African Union). See also: "New Libya contact group to meet in Qatar", Aljazeera, March 29, 2011 (viewable on the web.)

resolution moved quickly to support the rebel side in the civil war. There were many questions about why no ceasefire was seriously pursued once offered by Gadaffi, and why diplomatic channels were not explored more exhaustively. There was no assurance that a ceasefire or the diplomacy track would have been successful, but in the eyes of many, both options seemed to be pulled from the table too quickly. The responsibility to protect favours the use of diplomatic and other peaceful measures, with the resort to use of force as a last resort. Diplomatic measures may not be sufficient in a developing crisis. But failing to do more to pursue a ceasefire and negotiations may have diminished enthusiasm for future R2P responses.

Was Use of Force Authorized?

A Chapter 7 reference is found in both the 1970 and 1973 resolutions. "All necessary measures" is agreed code for "use of military force" if necessary.

Was Regime Change Authorized?

Regime change was not specified, nor was it excluded by resolution 1973. On the other hand, the ICC was engaged to begin its proceedings through language in both UNSC resolution 1970 and 1973. The freezing of assets and a travel ban against the Libyan government leadership were stated explicitly, with names of Libyan leaders listed. The combination of these restrictive measures was clearly an effort to severely constrain, if not overtly topple, the Libyan regime.

Resolution 1973 in its preamble also refers to an immediate ceasefire and a complete end to violence and all attacks against, and abuses of, civilians and to sending of a Special Envoy along with the Peace and Security Council of the African Union to facilitate dialogue "to lead to the political reforms necessary to find a peaceful and sustainable solution." In the discussion of Resolution 1973, there is some language that indicates several states believed the resolution challenged the legitimacy of the Gaddafi regime:

> Lebanon stated that "the Libyan authorities had lost all their legitimacy and the resolution was aimed at protecting Libyan civilians."

> United Kingdom agreed that "the Libyan regime had lost legitimacy, had violated the Council's resolutions and was on the verge of assaulting Benghazi…"

> Germany said that the Security Council's intention was to stop the violence in Libya and send a message to Colonel Qadhafi and his associates "that their time is over [and] they must relinquish power immediately." [Germany abstained on the vote.]

> Brazil abstained on the motion, saying their vote should not be interpreted as condoning the Libyan authorities' behaviour. But Brazil believed the resolution "contemplated measures that went beyond" the call to stop the violence through a no-fly zone.

Colombia said the resolution was humanitarian and was "conducive to bringing about conditions that would lead to the protection of civilians under attack from a regime that had lost all legitimacy. The Council had acted because the Government, through its actions, had shown that it was not up to protecting and promoting the rights of its people."

Russia abstained on the resolution because many questions remained unanswered, "including how it would be enforced and by whom, and what the limits of engagement would be."

Was the Arms Embargo implemented according to the UNSC resolution?

The answer to this question in part is embedded in the previous question about regime change. If regime change was justified, as a "necessary measure" to protect civilians then an arms embargo could be tailored for that purpose.

The arms embargo specified in UN resolution 1973 prohibits a long list of transfers of weapons, equipment, ammunition etc. into and out of Libya, measures to prevent direct or indirect supply, sale or transfer. However, the resolution also allows "other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the [Sanctions] Committee."

Thus the arms embargo is monitored by a sanctions committee made up of the full Security Council (all 15 members). The committee was to report to the Security Council within 30 days and thereafter to report as deemed necessary by the committee. Did the committee meet, and what did it report to the Security Council? Did it allow an arms embargo that showed preferential treatment for the rebels? Or were the measures to arm and supply the rebels taken in contravention of the UN resolution? These questions should be answered. However, reports from the sanctions committee are not publicly available.

Dissent at the United Nations?

There was also discussion within the Security Council at the time of passage of resolution 2009, (September 16, 2011), establishing the United Nations Support Mission in Libya (UNSMIL) and endorsing the National Transitional Council (NTC) as representatives of Libya at the UN, concerning how the previous resolutions had been implemented. For instance [all italics added]:

VITALY CHURKIN (Russian Federation) said that in accompanying the transition process, it was important to consider lifting the no-fly zone over Libyan territory since its main goal was to protect civilians. Unfortunately, ***that objective had been breached by the targeting of civilian facilities***, and lifting the sanctions would be part of a return to normality.

BASO SANGQU (South Africa) … a "complete and verifiable" ceasefire was necessary to all efforts in Libya, he stressed, saying South Africa was *disappointed that the Council had not issued a clear call in that respect.* Second, South Africa reiterated its call for an end to reprisals, killings and other activities. Finally, South Africa looked forward to the lifting of the no-fly zone as soon as possible.

IBRAHIM DABBASHI (Libya-National Transitional Council) …He paid tribute to all those who had supported the "responsibility to protect" in Libya — thereby helping to save the lives of thousands, as well as the country's sovereignty and territorial integrity — through resolutions 1970 (2011) and 1973 (2011). The resolution just adopted was another sign of the Council's ability to maintain peace and defend human rights *despite disagreements*…

The problem of ambiguity

We can safely acknowledge that there was loose language within the central UN resolution (1973) in regards to the use of force. Back corridor comments by states may have indicated they believed the resolution meant more than it said. One can argue that the resolution had assumptions embedded within it about the likelihood or need for regime change in Libya. That change was facilitated by NATO's choice of targets, who it supplied and received intelligence to/from and the way it implemented the arms embargo.

It cannot be denied that some countries, including some Security Council members, did not want NATO to take over the UN operation in Libya, side with the rebel side of a civil war, employ a two-tiered arms embargo and facilitate a rebel-NTC seizure of power.

It has to be said that support for R2P principles is still fragile within the international community, even after the 2005 UN General Assembly endorsement..[6]

As Alex Bellamy, Professor of International Security at Griffith University in Australia, has pointed out,[7] when the Williams Report condemning the Sudan government for grave breaches of humanitarian law in Darfur was released, it was "denounced by Arab and Asian members of the Human Rights Council, and it took six months to persuade the Security Council to reaffirm a principle to which its members had given their assent in 2005; several governments have argued that they did not in fact endorse the principle in 2005…" In fact, China's reluctance to press for sanctions against Sudan "enjoyed the

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[6] Gareth Evans, however, makes a solid case for the R2P norm already being entrenched: "No serious objection was mounted by anyone [in 2011 at the UN General Assembly general debate] to the responsibility to protect principle. The only issue debated was the way in which it was being implemented." "Responding to Mass Atrocity Crimes: The 'Responsibility to Protect' After Libya", Gareth Evans, Chathan House transcript, October 6, 2011: http://www.chathamhouse.org/sites/default/files/public/Meetings/Meeting%20Transcripts/061011evans_q&a.pdf

[7] Bellamy, The Responsibility to Protect and the Problem of Military Intervention, International Affairs 84: 4 (2008) 615-639.

support of a significant chunk of the Non-Aligned Movement, the League of Arab States and the Organization of the Islamic Conference…"

There was real fear and a "common belief among governments (especially members of the Non-Aligned Movement) that R2P is simply a more sophisticated way of conceptualizing and hence legitimizing humanitarian intervention" and "potentially without the sanction of the UN Security Council" -- in effect a "Trojan Horse" for the legitimization of unilateral intervention.

Supporters such as WFMC, of course, point out that R2P can be seen in an opposite light – that it responds to grave humanitarian crises early and rapidly, it can provide welcome transparency for actions (which may not even be military), and it *reduces* the reliance on, and likelihood of, unilateral intervention. While greater Security Council transparency was a desirable goal for several African states in the 2005 discussions, the USA, China and Russia were opposed to the spelling out of criteria for the use of force.

The current understanding of R2P at the United Nations does not set out criteria for military intervention, (on the contrary, it should be noted, to what the original authors of the International Commission on Intervention and State Sovereignty (ICISS) concept had ambitiously hoped for). What it does do is provide a framework to judge when the international community should become engaged.

Bellamy has more recently[8] written that neither the UN Operation in Cote d'Ivoire nor the UN authorized NATO operation in Libya "contravened the letter of [the 2005] consensus", which was a political commitment legitimizing, where required, the "use of force when the Security Council judged it necessary in order to prevent genocide, war crimes, ethnic cleansing and crimes against humanity or to protect populations from these four crimes." Both operations acted under Chapter 7 resolutions and "the problem was not so much the use of force to protect civilians from mass atrocities… but the facts that the use of force resulted in regime change and that this result was *intended* by those responsible for implementing the Security Council's decision even though the Council itself had not specifically authorized regime change."

Bellamy goes as far as suggesting that the BRIC[9] states may have blocked an intervention in Syria and Yemen, because of their (negative) experience in Libya. It's a good argument, although it may be over-stating the case. There are other reasons that might have combined as insurmountable impediments, at least for the moment. Gareth Evans points to several reasons why Syria, unlike Libya, might not have "ticked" all the criteria boxes that are required to legitimize the use of force, including the difficulties posed by a "bigger, uglier" Syrian army, and a lack of enthusiasm for an intervention by the Arab League. [10]

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[8] Bellamy, "The Responsibility to Protect and the Problem of Regime Change", September 27, 2011; Available online at: http://www.e-ir.info/?p=14350
[9] Brazil, Russia, India, China.
[10] More recent developments in Syria suggest an aversion to Libya style civil war and external aid: "Syrian opposition forms united front" in AlJazeera, October 2, 2011

It is less likely, however, that the future of R2P will be irreparably tarnished if this test case of Libya ultimately "turns out well." It may turn out well. There are many questions that remain regarding success or failure of the Libya intervention, such as:

What are the unintended consequences? How many of them were predictable or preventable? Even if a relatively smooth transition occurs in Libya, will the way R2P was applied augur well for future crises? Why weren't United Nations monitoring personnel put in place to ensure oversight of the civilian protection mission and to assess the effects of NATO bombing on civilians?

The Responsibility to Protect includes a "responsibility to rebuild." There is a special obligation, therefore, to ensure that the post-intervention result in Libya, is a clear success, or as clear a success as is possible, given the circumstances. That positive outcome may be crucial to demonstrating that R2P was indeed appropriately used for humanitarian, and not nefarious, purposes and that the doctrine can in the years ahead reliably serve the international community and the needs of civilians threatened by mass atrocity crimes.

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