

Libya – The Responsibility to Protect and the Use of Military Force

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Although the 2011 Libya intervention was militarily successful it has been the subject of sustained criticism centered on allegations that NATO went beyond its mandate to effect regime change. This paper will look at the criticisms made placing them within the context of both UNSCR 1973 and the subsequent conduct of the NATO led intervention. Focusing exclusively on the air campaign, it will be argued that NATO prosecuted the mission in accordance with the letter and spirit of the mandate and that whilst regime change was not a strategic objective it was the logical consequence of the actions taken to protect the civilian population taking into account the wider context of the ongoing civil war. In light of the above it will be contended that the criticisms made of the campaign are misdirected and may be seen as indicative of an unresolved tension between the concepts of human security and sovereignty as anything other than inviolable.

Introduction

UNSCR 1973 (2011) on the situation in Libya was hailed as the “first time that the Security Council had authorised the use of military force for human protection purposes against the wishes of a functioning state.”¹ Advanced within the framework of the nascent Responsibility to Protect, the Libyan intervention was seen to epitomise the change in international ethos from a culture of sovereign impunity towards a politic focused on the protection of the victims of mass atrocity crimes.² Central to this changed politic was the concept of human security shifting the focus from the territorial or state entity to securing the individual citizen.³

Following the passing of UNSCR 1973 a coalition of the willing commenced military action in March 2011 that gave way to a NATO led operation that was to prove as successful in preventing the massacre of Libyan civilians as it was controversial for the way in which it was conducted. Criticisms of the intervention have broadly centred upon allegations that NATO went beyond the authority provided by the UN mandate, implemented a highly kinetic military campaign at the expense of escalating the existing civil war and ultimately pursued regime change as a strategic end-state. Such criticisms have gained currency in the post Libya discourse on the future of the Responsibility to Protect contributing to a marked hesitance evident within some sections of the international community to pursue coercive measures and more specifically the use of military force within its framework.

This paper will begin by introducing the doctrines of the Protection of Civilians in Armed Conflict (Protection of Civilians) and the Responsibility to Protect before discussing the mandate provided in UNSCR 1973. It will be argued that in UNSCR 1973 the UN affirmed the Responsibility to Protect within a thematic Protection of Civilians mandate. This contributed to ambiguity as to the authorities granted which underpinned the criticisms subsequently made of the operationalisation of the mandate. This paper will then discuss the prosecution of the NATO led air campaign excluding the no-fly zone and the way in which it responded to the positioning of civilian protection at the strategic heart of the mission. Turning to the criticisms made of the intervention, consideration will be given to whether they are well founded through placing them within the context of the mandate. Finally this paper will look at the Brazilian sponsored concept of the Responsibility while Protecting to consider whether this initiative could offer a way acceptable to the international community to utilize military force within the framework of the Responsibility to Protect to halt human suffering in the most egregious of circumstances.

The Protection of Civilians in Armed Conflict and the Responsibility to Protect

The horrors witnessed in Rwanda, Srebrenica and Somalia at the end of the 20th Century shocked the conscience of the world and gave impetus to a refocusing of the international community’s attention on human security. This resulted in both a reappraisal of peacekeeping operations within a Protection of Civilians framework and the emergence of the new doctrine of the Responsibility to Protect.⁴

The Protection of Civilians in Armed Conflict

Born out of the interstate wars of the 19th and 20th Centuries, the doctrine of the Protection of Civilians is established in both Treaty law and state practice. Despite its historical foundation, the post Cold War surge in UN mandated peacekeeping exposed flaws in the application of the doctrine particularly where civilian populations were targeted by belligerent parties. The humanitarian interventions in the 1990s were characterized by their focus on providing food and medical supplies to those in need whilst largely failing to address the root causes of their vulnerability.

The inability of peacekeepers to address human security may be traced directly to the founding principles of the doctrine foremost amongst which is the requirement that deployments only take place with the consent of the relevant parties. To gain and retain such consent deployments had to maintain an impartial stance to the political dynamics found in theatre giving them little opportunity to be proactive in the protection of vulnerable groups. This was further complicated by the fact that peacekeepers lacked proactive rules of engagement due to a prohibition on the use of force save in self-defence or in defence of the mandated mission objectives. The inability of peacekeepers to protect the vulnerable was underlined when deployed to regions where peace had yet to be established as their maintenance of impartiality was exploited to devastating effect by belligerents.

The re-evaluation of peacekeeping strategies culminated in the Brahimi Report.⁵ Whilst the report did not endorse military intervention for civilian protection purposes it redefined the concept of impartiality for such operations as an “adherence to the principles of the UN Charter” together with an acceptance that the equal treatment of all parties at all times could “result in ineffectiveness and in the worst cases may amount to complicity with evil” concluding that “no failure did more to damage the standing and credibility of UN peacekeeping in the 1990s than its reluctance to distinguish victim from aggressor.”⁶

As a consequence of this re-evaluation the protection of civilians became an explicit responsibility and primary operational task of UN peacekeeping operations⁷ resulting in more robust mandates expanding the remit given to peacekeeping operations whilst concurrently placing peacekeepers under increasing pressure to tread the fine line between protecting civilians and supporting the peace process.⁸ Thus the doctrine was developed beyond its traditional framework providing the Security Council with credible response options in circumstances of widespread and systematic violence and to deal in depth with the ways in which it could achieve the direct protection of human rights against third party threats.⁹

The Responsibility to Protect

While the process of reassessing the doctrine of the Protection of Civilians was ongoing the International Commission on Intervention and State Sovereignty (ICISS) was brought together under the auspices of the Canadian government. The remit of the ICISS was to consider the “so-called right of humanitarian intervention” and the question of “when, if ever, it was

appropriate for a state to take coercive – and potentially military – action, against another state for the purpose of protecting people at risk in that other state.”¹⁰ The ICISS presented its report entitled *The Responsibility to Protect*¹¹ to the UN in 2001. In their report the ICISS sought to redefine the terms of the discourse taking place to move away from a claimed right of humanitarian intervention toward a new definition of sovereignty as a “dual responsibility, externally to respect the sovereignty of other nations and internally, to respect the dignity and basic rights of all the people within the state.”¹² This redefined concept constituted a paradigm shift in thinking on sovereignty bonding human security to responsible governance and introducing the accountability of states for their actions.

Placing the state at the heart of the Responsibility to Protect, the ICISS proposed a three-stage approach to human security, (i) to prevent human suffering, (ii) to react should preventative measures fail and (iii) to rebuild following any intervention. Within the reactive pillar the ICISS envisaged the application of widely drawn measures both non-coercive and coercive tailored to the situation. At the heart of the ICISS recommendations lay four basic objectives; (i) to establish clear rules, procedures and criteria for determining whether, when and how to intervene, (ii) to establish the legitimacy of military intervention when necessary where all other approaches had failed, (iii) to ensure that military intervention was carried out for the purposes proposed, in an effective manner and with proper concern to minimise human costs and institutional change as a result, and (iv) to help eliminate the causes of conflict while enhancing the prospects for a sustainable peace.¹³

The concept of threshold criteria was central to this framework to be applied on a sliding scale dependent upon the nature of the intervention contemplated ensuring that any intervention was legitimate in principal, workable and acceptable in practice.¹⁴ Mindful of the sensitivity of such measures the ICISS proposed six criteria for military intervention which can be summarised under the headings; (i) right authority, (ii) just cause, (iii) right intention, (iv) last resort, (v) proportional means and (vi) reasonable prospects. It is notable that the ICISS was pragmatic in its consideration of the issue of *right intention* for military intervention concluding that while the primary purpose of the intervention must be to halt or avert human suffering, the humanitarian motivation may not be the only consideration operative upon the states taking part. In an effort to try to ensure that the right intention criterion was satisfied the ICISS recommended that military intervention always take place as a collective or multinational enterprise and that the opinions of regional organisations were taken into account before any authority to act was provided.¹⁶

While the ICISS adopted a traditional concept of *right authority* placing primacy on the Security Council within the UN construct it also recognised that the Security Council could find itself paralysed by the national interests of the permanent five members and their use of the veto. Thus, the ICISS proposed a code of conduct for the permanent five to undertake not to use their veto powers in matters where their vital state interests were not involved and thereby agree not to obstruct the passage of resolutions authorising military interventions for human

protection purposes for which there was otherwise majority support.¹⁷ To emphasize this point the ICISS recommended that in circumstances where the Security Council failed to act the support of the General Assembly for military action could be sought under the uniting for peace procedure.¹⁸

Four years after the ICISS report, the UN General Assembly adopted a modified version of the Responsibility to Protect in Resolution 60/1 of 2005, also known as the World Summit Outcome document. Paragraphs 138 and 139 of the World Summit Outcome Document record the acceptance by Member States of the principle that “each individual state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity” and that this responsibility encompassed the prevention of such crimes, including their incitement, through “appropriate and necessary means.”¹⁹ Whilst the primary responsibility lay with the domestic state, the global nature of human security was reflected in the acceptance of a responsibility to act “through the United Nations [...] to help protect populations” from the specified mass atrocity crimes.²⁰ If preventative measures proved insufficient the international community declared itself to be committed to act in accordance with the direction of the UN Security Council to be, “prepared to take collective action, in a timely and decisive manner [...] on a case by case basis and in cooperation with the relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations” from the four specified mass atrocity crimes.²¹

While the General Assembly adopted the central principle of the Responsibility to Protect, consensus was only achieved at the expense of the ICISS criteria for intervention together with a narrowing of the remit of the doctrine to four specified mass atrocity crimes. This crime centric approach mirrored the terms of the Rome Statute albeit with the addition of ethnic cleansing and the omission of the interstate orientated crime of aggression. This narrowing of the doctrine was further evident in the vesting of implementation authority for the more coercive measures solely in the Security Council with no articulation of a code of conduct for the use of the veto in the Security Council or of the ability of the General Assembly to make recommendations under the uniting for peace procedure.

The further implementation of the doctrine was effectively deferred as it was immediately returned to the General Assembly to “continue consideration of the responsibility to protect [...] and its implications, bearing in mind the principles of the Charter and international law.”²² This was consistent with the view later expressed that it was premature to advance the concept in Security Council documents given the “complex compromise that was required to reflect that issue in the 2005 World Summit Outcome document.”²³ The “complex compromise” required may be seen as founded in the uneasy relationship between the nascent doctrine, state sovereignty, and the principle of non-intervention as embodied within the UN Charter. Although the *raison d'être* of the Responsibility to Protect was morally unassailable, its practical application particularly in the more coercive measures raised difficult issues.

While relatively benign when pursued by way of preventative measures in support of consenting states, the implementation of the doctrine encompassed a more confrontational stance in situations where mass atrocity crimes were alleged to have taken place. This is so because the commission of atrocity crimes infers a perpetrator to be held accountable, should that perpetrator be the government of a state, the use of force to protect the civilian population carries obvious implications for the traditional concept of sovereignty.²⁴ This presents the UN with difficulties in reconciling the sovereign equality of all states and the corresponding norm of non-intervention with the impact of human rights norms and the shift from a culture of sovereign impunity to one of national and international accountability.²⁵ While it is arguable that such controversy is founded in a misunderstanding of the Responsibility to Protect given that the doctrine relies upon a “positive affirmation of the concept of sovereignty as a responsibility”²⁶ it is a recurrent theme within the discourse and a fundamental flaw in the perception and application of the Responsibility to Protect in all but the most benign of circumstances.

Since its adoption, the Responsibility to Protect has provided the focus of a series of annual reports presented by UN Secretary General Ban Ki Moon to the General Assembly. In his inaugural report on the subject, Ban set out a framework for the implementation of the Responsibility to Protect within a three-pillar structure. Retaining the parameters set out in the World Summit Outcome Document, the first pillar addressed the primary protection responsibilities of the state, the second, the role of the international community in providing assistance in capacity building whilst the third pillar considered the more coercive measures available in the face of the manifest failure of a state to meet its pillar one responsibilities. Within this formulation Ban was at pains to present the three pillars as equally important to the implementation of the doctrine; however, in reality the subsequent discourse has concentrated heavily on the less contentious aspects of the doctrine and has failed to address in any meaningful way what a military intervention under a pillar three mandate would look like and how far the international community would be prepared to go in the pursuit of the principle of human protection. This constitutes a major omission in the development of the doctrine underlying the perceptual difficulties for, and criticisms of, NATO following the Libyan intervention.

Summary

The commonalities between the Responsibility to Protect and the Protection of Civilians are clear in their shared “concern for civilians suffering from mass induced violence;”²⁷ however, the two doctrines are different in a number of aspects. The doctrine of the Protection of Civilians is wider in its application reaching beyond the specified atrocity crimes that are the basis for the Responsibility to Protect but the Responsibility to Protect is not bound to times of armed conflict and may serve as a framework for action to prevent or halt the specified mass atrocity crimes regardless of whether they occur within the context of hostilities.²⁸ It is also clear that the two doctrines are fundamentally different in their orientation as the Protection of Civilians concerns itself with the protection of individuals while the Responsibility

to Protect addresses the vulnerability of populations.²⁹ However, the most fundamental difference between the doctrines concerns the potential for Responsibility to Protect mandates to lead to direct confrontation with states identified as perpetrating mass atrocity crimes upon their own populations. Such confrontation cannot be accommodated even within the post Brahimi definition of impartiality in peacekeeping as while it is contended that peacekeepers can and should develop an atrocity prevention lens to inform their protective stance, it is conceded that they cannot be enlisted into any non-consensual coercive action against states.³⁰ It was the confrontational nature of the coercive measures undertaken within a pillar three mandate that marked the Libyan intervention as both controversial and highly politicised.³¹

Libya: A Test of International Resolve

Whilst military force had been used against the protesters in Tunisia and Egypt, the collective will of the people had achieved political change without overt outside intervention. This was not to be the case in Libya where the full force of the military was deployed against unarmed civilians as the inflammatory rhetoric of Col. Muammar Al Gaddafi (Gaddafi) signalled his intent. In language reminiscent of that employed during the genocide in Rwanda, Gaddafi incited the Libyan people to “get out of your homes, to the streets, secure the streets, take the rats, the greasy rats out of the streets.”³² Faced with mounting evidence of regime brutality and a developing humanitarian disaster the international community reacted within the framework of the Responsibility to Protect.

As envisioned by the General Assembly, regional organisations led the call for action to be taken to protect the people of Libya. This was echoed by the UN High Commissioner for Human Rights, Navi Pillay, whilst the UN Secretary General’s Special Advisors on the Prevention of Genocide and the Responsibility to Protect, Francis Deng and Edward Luck, added their condemnation of the Libyan regime’s use of military force and noted that actions had been reported that if confirmed may constitute crimes against humanity.³³ This firmly placed the situation in Libya within the context of the doctrine of the Responsibility to Protect, an association further advanced by the Security Council in its call to the Libyan government to meet its responsibility to protect its own population.³⁴ In adopting the language of the Responsibility to Protect the Security Council also stressed “the need to hold accountable those responsible for the attacks, including by forces under their control, on civilians.”³⁵ The African Union Peace and Security Council also issued a communiqué condemning “the indiscriminate and excessive use of force and lethal weapons against peaceful protesters, in violation of human rights and international Humanitarian law,”³⁶ while the UN Human Rights Council adopted resolution A/HRC/5-15/1 which employed the language of the Responsibility to Protect, explicitly identified the Libyan government as responsible for the incitement of violence against the civilian population and called for the creation of an international commission of inquiry to “investigate all alleged violations of international human rights law in Libya.”³⁷ Thus, from

the very beginning of the repression of protests in Libya regional organisations and the wider international community were clear in their condemnation of the regime.

Faced with the evidence of massive human rights abuses and the increasingly isolated position of Gaddafi a number of Libyan diplomats distanced themselves from the regime. On the 25 February 2011 Abdel Rahman Shalgham, the newly defected Libyan Ambassador to the UN, made an impassioned plea to the Security Council calling for “a decisive, rapid and courageous resolution.”³⁸ The following day a draft of what was to become UNSCR 1970 of 2011 was placed before the Security Council.

UNSCR 1970 and the Build up to Military Intervention

Specifically discounting the use of military force,³⁹ UNSCR 1970 closely followed the Security Council’s previous statements on Libya noting the “Libyan authorities’ responsibility to protect its population” and the “need to hold to account those responsible for attacks [...] on civilians.”⁴⁰ The evidential foundation for the evocation of the Responsibility to Protect was also firmly established in the assertion that “systematic attacks [...] against the civilian population may amount to crimes against humanity.”⁴¹ Having established the doctrinal and evidential basis for the resolution the measures imposed sought to address the immediate protection of the Libyan people and coerce the regime in an effort to counter irresponsible governance hiding behind a claimed right of sovereignty. Thus, the Security Council imposed a general embargo on both the importation and exportation of arms and related material⁴² and underlined the accountability of those responsible for the commission of atrocities through a referral of the situation in Libya to the Chief Prosecutor of the International Criminal Court (ICC). Additionally a travel ban was imposed on 16 named members of the regimes inner circle and the assets and holdings of 6 members of the Gaddafi family were frozen.

Although UNSCR 1970 demonstrated the international community’s condemnation of the actions of the regime, it ultimately lacked an enforcement mechanism in the face of the increasing intransience of the Libyan regime. As the international community watched on, the Libyan military began to mass its forces in Brega in preparation for an assault upon Benghazi, the seat of the opposition movement and home to over 600,000 civilians. Faced with the increasingly precarious position of Benghazi and the escalatory rhetoric of Gaddafi the international community galvanised itself to take action amidst a growing acceptance that diplomacy alone would not prevent a massacre.⁴³

On the 7 March 2011 the Gulf Cooperation Council “demanded that the UN Security Council take all necessary measures to protect civilians, including by enforcing a no-fly zone over Libya.”⁴⁴ This was followed by the Organization of the Islamic Conference invoking the language of the Responsibility to Protect to support the call for a no fly zone but at the same time positioning itself against any outside military intervention.⁴⁵ Although this position may seem inherently contradictory given that the enforcement of a no-fly zone

would necessitate outside intervention, it is perhaps indicative of a recognition that air power has the unique capability to selectively intervene and then rapidly withdraw.

While reach, speed and agility have long been recognised as the essential qualities of air power, the military response options that it can provide cannot be overestimated. Within the context of the polarisation of the Islamic and non-Islamic worlds an exclusively air centric strategy allowed regional powers to support the principle of intervention for humanitarian purposes without having to endorse a western led land campaign. Thus, the presentational difficulties associated with the foreign occupation of territory could be largely mitigated and the resolution of the political situation left to be determined by the Libyan people. Equally for those countries willing to take part in an intervention the prosecution of an air campaign provided a means by which the UN mandated mission could be supported without committing politically or militarily to an enduring deployment. In such circumstances air power provided an option to pursue a centrally controlled incremental strategy through the engagement of nationally approved target sets whilst allowing those directing the battle apparent strategic flexibility through the re-tasking of air assets within the proscriptions provided. The pursuit of an air campaign also offered a proportionately lower risk option in terms of mass casualties to alliance forces as the application of air power placed relatively few friendly forces in harms way. Conversely the committing of ground troops would have had far wider ranging implications as such interventions have historically been lengthy, expensive and left the contributing states vulnerable to an enduring follow-on commitment to stabilisation missions in the aftermath of hostilities.⁴⁶

On the 10 March 2011 the Gulf Cooperation Council issued a second statement insisting that the Gaddafi regime had lost all credibility and encouraging the Arab League to establish contact with the Libyan opposition now represented by the National Transitional Council, a step that had already been taken by the European Union, France and Italy. On the 11 March 2011 the UN sent special envoy Abdul Khatib to Tripoli to assess the situation on the ground followed on the 12 March 2011 by a Ministerial level meeting of the Arab League that resulted in the production of Resolution 7360 dealing with the implications of the events in Libya and the Arab position.

Resolution 7360 called upon the Security Council to take the necessary measures to impose an immediate no-fly zone on Libyan military aviation and to establish safe areas in places exposed to shelling as a precautionary measure whilst respecting the sovereignty and territorial integrity of neighbouring states.⁴⁷ This Resolution has been described as crucial in bringing about a change in American foreign policy causing it to move away from *rapprochement* to support the calls made by regional organizations and Britain and France for the imposition of a no-fly zone.⁴⁸

Thus, in light of the support of regional organisations for further action to be taken and the evident failure of lesser coercive measures contained within UNSCR 1970, a second draft

resolution was placed before the Security Council. Backed by the USA and sponsored by the UK, France and the Lebanon the new resolution was introduced by French foreign minister Alain Juppe who challenged the UN Security to take action concluding; “if we are careful not to act too late, the Security Council will have the distinction of having ensured that in Libya law prevails over force, democracy over dictatorship and freedom over oppression.”⁴⁹ Draft Resolution 1973 (2011) subsequently received Security Council assent albeit with 5 members, Brazil, Germany, India, China and Russia abstaining.

UNSCR 1973

Like its predecessor UNSCR 1973 was couched in the language of the Responsibility to Protect; however it once again failed to further develop the doctrine containing no statement of condemnation of the manifest failure of the Libyan regime to meet its responsibility or of the international communities responsibility to act in consequence thereof. This is an important omission as the resolution went on to provide authority for a military intervention within a pillar three framework. However, this omission must be seen in the wider context of the determination that the situation in Libya constituted an internal armed conflict. This determination enabled the Security Council to specifically affirm the Responsibility to Protect within the context of a Protection of Civilians mandate, an affirmation that was consistent with the nature of both doctrines as where mass atrocity crimes are alleged to have been committed within the course of an armed conflict the overlap between the two is effectively complete.⁵⁰

While the dual doctrinal foundation of the mandate did not impact its legitimacy, it generated differing interpretations of the scope of the authorities provided. This was not assisted by the way in which the mandate laid out a statement of enduring political intent as the end-state and failed to address how this was to be militarily achieved. Thus paragraph 4 of the Resolution provided authority for the taking of; “all necessary measures [...] to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory [...]”⁵¹

The prohibition on an occupation force was also influential in the conduct of the intervention as whilst the prohibition provided no legal bar to the deployment of land forces respecting the sovereignty of Libya⁵² NATO adopted a more restrictive interpretation resulting in the direction that no land forces under command would be deployed anywhere in northern Africa. This resulted in NATO lacking any ability to protect the civilian population by separating it from the regime’s military and created the circumstances in which air power was to play the preeminent role in protecting Libyan civilians through the attrition of regime military capacity.

Libya and the use of Military Force

Two days after the passing of UNSCR 1973 a coalition of 15 nations commenced military

operations. This phase of the Operation has become known by the designator given to it by the United States; Operation Odyssey Dawn (Odyssey Dawn).

Odyssey Dawn initially concentrated on achieving air supremacy over the major Libyan population centres and military bases located near the coast before moving on to target command and control facilities and ground forces. Just ten days after the commencement of operations Vice Adm. Gortney, Director of the US Joint Staff, stated that; "Gaddafi has virtually no air defences left to him and a diminishing ability to command and sustain his forces on the ground. His air force cannot fly, his warships are staying in port, his ammunition stores are being destroyed, communication towers are being toppled and his command bunkers are being rendered useless."⁵³ Thus, the scene was set for NATO to assume command of all alliance operations including the protection of civilians on the 31st March 2011 under the designator Operation Unified Protector (Unified Protector).

Operation Unified Protector: The Protection of Civilians and Civilian Populated Areas

The influence exerted over the conduct of Unified Protector through the placing of the protection of civilians at the heart of the mandate cannot be over-stated. While the doctrinal foundation of the mandate did not give rise to a more onerous legal framework, it arguably placed an enhanced moral duty upon those enforcing it. This was evident in all aspects of Unified Protector but was most keenly felt in the targeting enterprise. While it is always incumbent upon the military to distinguish between combatants and civilians taking no direct part in hostilities, the law of armed conflict recognises that civilians may be killed or injured as a result of a lawful attack if such deaths are considered proportionate to the direct military advantage anticipated.⁵⁴ However, during Unified Protector, any suggestion that the lives of civilians could be sacrificed in furtherance of the mission specifically mandated to protect them was considered an anathema and was reflected in the direction that no target, deliberate or dynamic, could be engaged unless the expectation of civilian casualties arising as a result could be mitigated to zero.

Having assumed command of the operation NATO initially concentrated on addressing the immediate threat to the civilian population posed by the regime's military. This focus prioritised the maintenance of an enduring air presence in the east in order to engage fielded regime forces and thereby protect the population of Benghazi with any additional capacity tasked with providing air cover for other besieged towns including the port of Misrata. The protection of Benghazi was operationally and politically critical for Unified Protector as it was Libya's second city and the only one specifically mentioned within the UN mandate. Benghazi was also strategically important within the context of the ongoing civil war as the stronghold of the fledgling National Transitional Council. Thus, by adhering to the terms of the mandate, Unified Protector placed itself in direct opposition to the regime's military frustrating its efforts to take the city and secure victory against anti Gaddafi forces.

The concentration of the air campaign in the east resulted in regime forces directly threatening Benghazi being largely fixed in Brega by the middle of April 2011. However, although successful, this strategy effectively consigned the air campaign to a largely reactive role which when pursued with limited ISR and strike assets underlined the potential infeasibility of curtailing air to attacking perpetrators in the act of committing atrocities.⁵⁵ Furthermore, although the threat posed by regime military forces was contained in the east the defence of Benghazi did nothing to address the wider vulnerability of the civilian population across Libya.

On the 14th April 2011 NATO Ministers met in Berlin, a meeting that was to ultimately clarify NATO's strategic position and provide Unified Protector with a potentially verifiable military end state. The Ministerial resulted in the assertion of three objectives to be achieved before there could be a scaling down of military operations, (i) an end to the attacks and threat of attacks against civilians and civilian populated areas; (ii) that the regime verifiably withdraw to base all military forces including from all populated areas that they had forcibly entered, occupied or besieged throughout the whole of Libya; and (iii) that the regime permit immediate, full, safe and unhindered humanitarian access to all people in Libya in need of assistance.⁵⁶

The Berlin Ministerial was immediately followed on the 15th April by the publication of an open letter jointly signed by Prime Minister Cameron and Presidents Obama and Sarkozy.⁵⁷ In the letter the three leaders stated their view that any action that resulted in Gaddafi remaining in power would constitute an "unconscionable betrayal" of the people of Libya and reaffirmed their belief that "so long as Gaddafi remained in power, NATO and its coalition partners must maintain their operations so that civilians remain protected and the pressure on the regime builds. Then a genuine transition from dictatorship to an inclusive constitutional process can really begin, led by a new generation of leaders."⁵⁸

Whilst the setting of conditions for the cessation of hostilities was consistent with the prosecution of a developing coercive military campaign,⁵⁹ the terms articulated both at Berlin and in the open letter provide evidence of a growing tension between political and military objectives. This was clear in the conditions articulated at the Berlin Ministerial as whilst the first and third conditions put forward were grounded in the wording of UNSCR 1973, the requirement that regime forces withdraw to their bases was not. In this respect the Berlin Ministerial went beyond the wording of the resolution to incorporate a condition that had first been articulated by the National Transitional Council as a condition precedent to any ceasefire during its meeting with the UN Special Envoy to Libya on the 2nd April 2011.⁶⁰ Thus, the incorporation of this condition placed the interests of the National Transitional Council onto the political agenda to the detriment of the regime. The effect of this condition was manifest as it was very difficult for the regime to accommodate as while it could have observed a ceasefire within the terms of the resolution without suffering harm to its tactical position, to withdraw its forces to their bases without a similar undertaking from anti regime forces would have resulted in it conceding territory within the context of the ongoing civil war. Although the

withdrawal of regime forces was necessary to protect civilians from continuing attack, the conditions set at Berlin left the regime with little incentive to comply particularly at a time when anti regime forces were perceived as weak, disorganised and seemingly posed little credible threat militarily in the absence of the NATO air campaign.

The NATO air campaign continued to develop exploiting the coercive effect of air power through engaging command and control and logistics facilities in order to isolate the regime's military hierarchy from its forces. The evolution of the strategy from a largely reactive to a proactive air campaign resulted in criticism premised on the assertion that in interdicting targets other than those immanently engaging civilians Unified Protector had extended its operation beyond the mandate provided. This objection fails to address the practical application of force both within the stated terms of the resolution and in response to the situation on the ground. The broad political mandate articulated in the resolution to protect civilians and civilian populated areas provided the object and purpose of the mandate⁶¹ forming the basis of, and providing the authority for, all action subsequently taken. Importantly the resolution contained no statement as to the conditions to be met for the end-state to be achieved, thus, in the absence of further guidance, the UN may be seen as having delegated the exercise of its Chapter VII powers and the task of developing a vision of the end state, together with the actions required to achieve it, to those implementing the mandate.⁶² Such delegation is wholly consistent with the pragmatic practice of the UN in recognition of its inability to generate forces to enforce its own mandates.

The absence of any qualification placed upon the authority to use military force in furtherance of the mandate also freed Unified Protector from pursuing a purely reactive campaign. More specifically the lack of any requirement in Article 4 of the mandate that the threat be imminent permitted an expansive interpretation that provided authority for the development of the air campaign towards the prosecution of targets with the intent of coercing the regime by degrading its capacity to project force against civilians at a future date. Such an interpretation was wholly consistent with the letter and spirit of the mandate and interpretive convention that requires resolutions to be read in a manner consistent with, and to give effect to, their objective and purpose.⁶³

In order to fully exploit the coercive effect of air power it was necessary to understand the rationale behind the regime's actions and decision-making process. Such an understanding was fundamental to effective exploitation of the second and third order effects of the application of lethal force cogniscent of the fact that it was ultimately the Libyan regime that would decide whether or not to comply.⁶⁴ Therefore the motivation of the regime was key; did it consider itself to be acting in self defence against an internal threat to its existence or was it instead intent on exterminating all opposition to it at any cost and with no compulsion towards political settlement? The answer to this question would have clear implications for Unified Protector as the possibility of political settlement would lend itself to a coercive approach through the gradual escalation of air power thereby seeking to reduce the vulnerability of the

population by modifying the regime's intent to commit atrocities.⁶⁵ However, the pursuit of a graduated effects based approach to operations presented difficulties for Unified Protector as the political imperative to establish and maintain a high operational tempo from the start of the campaign had left little, if any, capacity to increase the weight of attack. Therefore, while maintaining its capability to respond dynamically to events on the ground, Unified Protector shifted its focus towards Tripoli to provide a credible escalatory option.

As Unified Protector developed its air campaign regime forces adopt increasingly asymmetric tactics abandoning the outward signifiers of their military status in order to conceal themselves amongst the civilian population. Although these tactics rendered such forces unable to prosecute large-scale operations they continued to terrorise the population at close quarter. As the air campaign against regime communication facilities gained pace regime forces occupied civilian buildings from which to direct the battle serving to further blur the distinction between the belligerents and the civilian population. Such tactics presented additional challenges for the application of air power as it became increasingly difficult to manage perceptions as ostensibly civilian buildings were struck. The inherent difficulties for air power in pursuing ground forces hiding in amongst the population are manifest as air power is ultimately limited in the civilian protection role by its physical separation from those it seeks to protect. Technological advances in optics seek to mitigate spatial separation; however, whilst the latest thermal imaging technologies can determine the presence of personnel within a structure they cannot take that extra crucial step to distinguish between the civilian and soldier. In such circumstances the lack of a land component under command has historically increased exponentially the operational risk to the civilian population and consequently the mission; however, during Unified Protector the risk to civilians was effectively mitigated through a reliance on timely actionable intelligence, the professionalism of the aircrews and the exclusive use of precision-guided munitions.

Advanced munitions, particularly low collateral, inert and fused weapons such as Hellfire, dual mode seeker Brimstone and Paveway IV,⁶⁶ proved crucial in providing both accuracy in delivery and precision of effects to mitigate civilian casualties and collateral damage to the greatest degree possible. Images published in the world's press bore witness to air power's ability to prosecute the range of military objectives from subterranean bunkers to specific floors within high-rise buildings in order to neutralise the threat posed to civilians whilst leaving adjacent structures intact.⁶⁷

Leaflet drops, radio broadcasts and social media sites carried messages reiterating NATO's commitment to its mandate to protect civilians, calling for unity amongst the population and condemning the human rights abuses carried out by the regime. The strategic communications effort also provided warning of attack to civilians directing them to distance themselves from military equipment and facilities so as to spare them the consequences of the air campaign.⁶⁸ The synchronization between the lethal targeting and information campaigns was to prove crucial in informing and maintaining the support of the Libyan people

and the wider international community. This was vital as it was clear from the inception of the campaign that Unified Protector would be conducted in the full glare of the world's media and its success ultimately judged not on the lives saved, but on those lost in consequence of its actions. Whilst no military can ever be complacent about the death of, or injury to, civilians, the 60 civilian fatalities and 55 injuries⁶⁹ alleged to have been caused by NATO air strikes during the course of Unified Protector must be placed in context of the fact that during the air campaign over 9,700 strike sorties were flown delivering over 7,700 weapons and destroying over 5,900 military targets.⁷⁰ Whilst critical of NATO's inability to investigate allegations of civilian casualties, the UN mandated International Commission of Inquiry on Libya concluded that the conduct of the NATO campaign demonstrated concern to avoid civilian casualties and that NATO took extensive precautions to ensure that civilians were not killed.⁷¹

Unified Protector and Subsequent Criticisms

Despite the success of Unified Protector in averting the anticipated massacre of Libyan civilians, the intervention has been the subject of much criticism. Such criticism may be seen as founded in the persistent disconnect between the policy level at which UNSCRs are drafted and the operational level where operations are designed and implemented.⁷² As this paper has endeavoured to portray, UNSCR 1973 was drafted in such a way so as to give those enforcing it the maximum flexibility to act. Thus, it would appear incongruous that the subsequent controversy has focused on NATO's adoption of an expansive interpretation of the mandate particularly as it was ultimately to prove successful in achieving the political intent of protecting civilian life. Furthermore, it is interesting to note that the most vociferous criticism of Unified Protector has come from the BRICS states⁷³ all of who were represented in the Security Council at the time of the passing of resolutions 1970 and 1973. Given that they were represented, the BRICS nations all had the opportunity to place constraints upon the use of military force through the imposition of clearly defined objectives and time scales if they considered such imposition consistent with the intent of the mandate and reflective of the will of the international community. This was even more emphatically the case in respect of Russia and China both of whom could have deployed their respective vetos rather than abstaining from voting in respect of the resolutions.⁷⁴

While a number of criticisms have been made of the conduct of Unified Protector the major concern expressed is founded in the issue of regime change. However, it is crucial to note that this concern is not limited to application of force in the context of Libya but rather goes to the heart of the doctrine of the Responsibility to Protect and the continuing tension between the respect for state sovereignty, pressure to protect victims of mass atrocity crimes and the desire for justice.⁷⁵

Within the context of Unified Protector, a number of factors would seem to provide evidence that a regime change agenda was followed. Such factors include inter alia the recognition of the National Transitional Council as the legitimate representative of the Libyan people by many taking part in the intervention,⁷⁶ the increasingly overt political agenda evident in Western

capitals, the sending by some nations of advisors to assist the National Transitional Council and the death of Gaddafi at the hands of anti regime militia following a NATO airstrike on his convoy. However, it is necessary to draw a distinction between the political agenda pursued by some states and the operational mandate provided to NATO.

However, it is important to place this in the context of the build up to UNSCR 1973 that followed the framework envisioned within the UN construct for a Responsibility to Protect mandated mission. The condemnation of the Libyan regime by regional organisations and the wider international community placed the regime firmly in the role of aggressor and perpetrator of mass atrocity crimes upon its own population. The measures thereafter mandated in UNSCR 1970 evidenced an attempt to protect the civilian population without the resort to military intervention and when such measures proved unsuccessful the Security Council proceeded to authorise the use of force within UNSCR 1973. The subsequent operationalisation of the mandate by Unified Protector through the targeting of the Libyan regime's ability to project force was both consistent with the authorities provided within the resolution and the logical consequence of the prosecution of the mandate. To do otherwise would have undermined NATO's ability to be proactive in furtherance of the protection mandate whilst placing civilians at greater risk of harm by prolonging the campaign. In the absence of any evidence of modification in regime behaviour, Unified Protector acted within the mandate provided by the international community. Whilst actions taken in furtherance of the mandate were to have consequences for the regime's ability to project force within the context of the civil war this is not the same as actively pursuing regime change as a strategic objective.

The Future for the Responsibility to Protect, the Responsibility while Protecting and Military Intervention

While allegations of regime change have dominated the post intervention debate there have been initiatives seeking to codify the operationalisation of the Responsibility to Protect. Preeminent amongst such initiatives has been the concept advanced by Brazil as the Responsibility while Protecting.

Just 9 days after the conclusion of Unified Protector the Brazilian President Dilma Rousseff delivered a statement to the General Assembly expressing the view that the international community should display a high level of responsibility while exercising the Responsibility to Protect. This was followed by a concept note entitled: Responsibility while Protecting: elements for the development and promotion of a concept.⁷⁷ Within the concept note Brazil proposed a set of criteria for military intervention, a monitoring and review mechanism to assess the implementation of Security Council mandates and a renewed emphasis on capacity building to avert crises before they take hold.⁷⁸ When considering the use of military force the concept of the Responsibility while Protecting returns to the ICISS' reliance upon a set of criteria to be considered before a mandate can be authorised and a monitoring and review mechanism to ensure that the implementation of the mandate is "seriously debated."⁷⁹

The criteria put forward for consideration draws upon just war theory in much the same way as was originally envisaged in the ICISS report. Thus, the use of force is always to be considered a measure of last resort, the authorisation of force must be a proportionate response to the threat perceived and any application of force must abide by the law of armed conflict. While these principles may be seen to have been operative before and during the intervention in Libya by dint of the application of international law and UN procedure, the Responsibility whilst Protecting goes further to signal a retreat into the language of impartiality seen in peacekeeping missions. This is evident in the proposal that the use of force must produce as little violence and instability as possible and under no circumstances can it generate more harm than it was authorised to prevent.⁸⁰ Such criteria may be interpreted as a clear rejection of all risk but most notably the risks associated with the use of military force. This ignores the fact that in some albeit extreme circumstances acceptance of a risk of harm in the short term is the only way to work towards enduring protection of civilians and progress recognition of their most fundamental human rights. If this premise is correct then the total prohibition on an acceptance of risk would be a formula for inaction in the most pressing circumstances of human vulnerability. The assumption of risk is inherent to the application of military force therefore to discount the acceptance of any level of risk would be to deny that the best outcome for those in need may be achieved through a military intervention that recognises that risk and takes all practical measures to mitigate it.⁸¹

In this respect the Responsibility while Protecting also ignores the fact that in some circumstances the military offers the only viable method by which to deter or halt the continuing commission of mass atrocities and that diplomacy without a credible threat descends into posturing while civilians pay the cost of international community inactivity with their lives. This was evident in Libya where the failure of diplomatic efforts to bring to an end the attacks perpetrated by the regime on the civilian population left the international community with a stark choice between military intervention and inaction. To do nothing would have resulted in the massacre of innocents and prematurely consigned the Responsibility to Protect to history through the failure of the international community to meet its responsibility to the peoples of the world.

The final two criteria put forward within the concept of the Responsibility while Protecting propose the establishment of enhanced Security Council procedures to monitor and assess the manner in which resolutions are interpreted and implemented. This would ensure adherence to the responsibility while protecting and underline the accountability of those to whom authority to act is granted.⁸² It is argued that such a procedure would ensure the legitimacy of any action undertaken as authorised by the Security Council enabling the wider membership to be informed about, and maintain scrutiny of, the way that the mandate is interpreted.⁸³

While this proposal appears to have merit it lacks detail as it fails to identify who would provide an authoritative interpretation of the mandate both initially and in the case of dispute and what the consequences would be for those that fail to adopt the consensus approach.

Furthermore, the imposition of a high interpretive authority independent of the country or alliance undertaking the mandated enforcement action would be extremely difficult to accommodate within the framework of military planning which derives its authority to act through its own political institutions. The acceptance of an outside interpretive authority would also require a political commitment to subject the intervening military authority to evaluation by it and ultimately the Security Council and thereafter act upon their findings and recommendations or presumably face as yet undefined sanctions. This could clearly have the effect of discouraging states from contributing forces to such operations for fear that the agreed interpretation and subsequent scrutiny could conflict with national interest.

Even if achievable the production of an agreed interpretation of the mandate and a consensus on the application of force fails to address the potential infeasibility of predetermining the most effective way to implement a mandate within a developing scenario. The placing of such restrictions upon the exercise of military strategy would also deny those implementing it their greatest weapon, the flexibility to react to the situation as it evolves and thereby take the initiative and those measures necessary to achieve the stated political objective. Furthermore, such measures fail to address the reality of the composition of the UN Security Council and the use of the veto by the five permanent members as any agreed interpretation would have to be the product compromise both in terms of political accommodation and military efficacy. Even if such difficulties could be overcome the Responsibility while Protecting whilst placing more regulation and oversight on the Responsibility to Protect ultimately fails to address the root cause of the controversy that surrounds the doctrine as this resides not in the application of military force but in the failure to accept that regime change can sometimes be the legitimate aim or consequence of action taken to spare the victims of the mass atrocity crimes.

Conclusion

Unified Protector demonstrated that military intervention can be employed to protect the victims of mass atrocity crimes and that air power has matured to the point that it can stand alone in delivering the effects required with both accuracy and precision. However, Unified Protector also laid bare the inherent flaw in the doctrine of the Responsibility to Protect in exposing the unresolved tension between an acceptance of the concept of sovereignty as a dual responsibility and the reality of military intervention for human protection purposes in breach thereof. This tension was not unforeseen as the ICISS report acknowledged that action to halt or avert human suffering may necessitate the disabling of a regime's capacity to harm its own people.⁸⁴ Whilst the ICISS report did not go on to define what the end state would be in such circumstances it would appear at best naïve and at worse disingenuous to consider that acts leading to the disabling of a regime capacity to harm would take place within a political vacuum. This is the essential dilemma of the Responsibility to Protect as whilst centred on the protection of the victims of mass atrocity crimes the international community has evidenced an unwillingness to accept that even in the breach the concept of sovereignty is anything other than inviolable.

In addition to the political difficulties inherent to the doctrine the Responsibility to Protect there are practical challenges posed for the application of military force. This is evident in the very concept of the responsibility as the protection of the civilian population is not a military objective but rather a statement of enduring political intent. In trying to operationalise the concept to meet the terms of UNSCR 1973 NATO had two options - separate the people from those who would harm them or take steps to eliminate the threat to the population at source.⁸⁵ Although the first option may be the preferred model for those wishing to maintain a strict distinction between the Responsibility to Protect and regime change through the adoption of a largely passive/reactive role, it comes at a price in terms of international community commitment through the large-scale deployment of land forces. Such manpower intensive operations can be costly in terms of both blood and treasure, require an enduring political commitment and are unlikely to find favour at a time of fiscal austerity. However, the model pursued during Unified Protector provides a successful example of limited engagement through the exploitation of the primary strengths of air power to strike at the root of the identified threat to be deterred. Whilst Unified Protector has been criticised the fact of the matter is that anti Gaddafi forces were able to capitalise on the actions taken by NATO in pursuit of the Responsibility to Protect mandate, this is a fundamentally different proposition to the allegation that NATO pursued regime change per se. To assert that NATO pursued regime change as the strategic end state is not only unsubstantiated on the facts but also fails to acknowledge the role of the indigenous uprising and the commitment of ordinary Libyan citizens to a new political order.

Care must be taken not to portray the intervention in Libya as a model for all future missions under the doctrine of the Responsibility to Protect as intervention for human protection purposes is not synonymous with confronting the ruling elite. However, where the regime is identified as the perpetrator of mass atrocity crimes intervention on behalf of the victims requires the international community through the Security Council to be clear that the consequence of military intervention is to take a side and in so doing abandon all pretense of impartiality. Taken a step further, while regime change may not have been a stated objective of UNSCR 1973, it was arguably a legitimate means to fulfill the mandate⁸⁶ as where the regime is the primary perpetrator of ongoing mass atrocities, changing the regime may be the most effective way of ending the commission of such crimes.⁸⁷

Acceptance of this proposition would necessitate recognition of the radical nature of the Responsibility to Protect in its most coercive guise and a consequent commitment to both the ideal and practice that legitimacy of sovereignty is dependent upon an enduring commitment to human security. Failure of responsible governance within such terms would, in the most extreme of cases, be met with a recognition that regime change can be a lawful consequence of legitimate measures taken to protect victims or even the legitimate means by which this can be achieved. If this is not the case then military intervention to discharge the international community's self proclaimed responsibility to protect the most vulnerable will remain subject to allegations of straying beyond the mandate in circumstances where regime change results

from actions taken in the cause of human protection. Failure to meet this challenge will consign the Responsibility to Protect to history and result in the abandoning of any pretence of sovereign accountability even in the most extreme of circumstances allowing gross and systematic violations of human rights that offend every precept of our common humanity⁸⁸ to go unanswered.

Notes

¹ Bellamy, A. J, (2011) *Libya and the Responsibility to Protect: The Exception and the Norm*, *Ethics and International Affairs: First View Articles*. Carnegie Council for Ethics and International Affairs. New York, USA. It is arguable that UNSCR 1973 was not the first time military force had been so authorized as the UK, France and the USA all relied upon an interpretation of UNSCR 688 (1991) as providing the legal foundation for the no-fly zones imposed in Iraq following the first Gulf war in 1991 although it should be noted that UNSCR 688 made no specific reference to the imposition of a no-fly zone and the Secretary General of the UN at the time questioned their legality.

² Bellamy, A. J, (2011) *The Responsibility to Protect: Libya and Beyond*, *E-International Relations* [online] Available at: <http://www.e-ir.info/2011/03/30/the-responsibility-to-protect-libya-and-beyond/> (accessed 16 September 2013)

³ Von Feigenblatt, O. F, (2009), *Human Security and the Responsibility to Protect: A holistic Approach to Dealing with Violent Conflict in Southeast Asia*, *Journal of Social Sciences*, Vol. 11, Number 1, January – June 2009. Banaras Hindu University, Varanasi, India

⁴ Breakey, H, Francis, A, Popovski, V, Sampford, C, and Smith, M.G, and Thakur, R, (2012), *Enhancing Protection Capacity: A Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflict*. Institute for Ethics, Governance and Law, Queensland, Australia. Available at: <http://www.griffith.edu.au/criminology-law/institute-ethics-governance-law/research/responsibility-to-protect-protection-of-civilians-policy-guide> (Accessed: 21 January 2014)

⁵ Brahimi, L, (2000) *Report of the Panel on United Nations Peacekeeping* (2000) Available at: <http://www.stimson.org/images/uploads/research-pdfs/BR-CompleteVersion-Dec03.pdf> (accessed 11 February 2013)

⁶ *Ibid*, Page 9.

⁷ Doss, A, (2011) *Great Expectations: UN Peacekeeping , Civilian Protection and the Use of Force*. Geneva Centre for Security Policy, Research Series 4. December 2011. Geneva, Switzerland. Available at: <http://www.gcsp.ch/Leadership-in-Conflict-Management/Publications/GCSP-Publications/Geneva-Papers/Research-Series/Great-Expectations-UN-Peacekeeping-Civilian-Protection-and-the-Use-of-Force> (accessed: 20 December 2013)

⁸ Henderson, C, and White, N. D, (2013) *The Changing Face of Peacekeeping in the 21st Century*. Liverpool University News [online] Available at <http://news.liv.ac.uk/2013/05/29/the-changing-face-of-peacekeeping-in-the-21st-century/> (accessed: 13 February 2014)

⁹ Breakey, H, (2012) *The Responsibility to Protect and the Protection of Civilians in Armed Conflict: Overlap and Contrast*, Page 5, *supra*

¹⁰ International Commission on Intervention and State Sovereignty, *Report of the International*

Commission on Intervention and State Sovereignty: the responsibility to protect (Ottawa, 2001), Page VII. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed: 7 May 2013)

¹¹ International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: the responsibility to protect* (Ottawa, 2001), Page VII. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed: 7 May 2013)

¹² Evans, G, and Sahnoun, M, (2002), The Responsibility to Protect: Revisiting Humanitarian Intervention, *Foreign Affairs*, November/December 2002. Available at: <http://foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect> (accessed: 21 October 2013)

¹³ International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: the responsibility to protect* (Ottawa, 2001), Para2.3. *Supra*

¹⁴ International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: the responsibility to protect* (Ottawa, 2001), Page 29. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed: 7 May 2013)

¹⁵ International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: the responsibility to protect* (Ottawa, 2001), Page 32. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed: 7 May 2013)

¹⁶ International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: the responsibility to protect* (Ottawa, 2001), Page 36. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed: 7 May 2013)

¹⁷ International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: the responsibility to protect* (Ottawa, 2001), Page 51. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed: 7 May 2013)

¹⁸ International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: the responsibility to protect* (Ottawa, 2001), Page 34. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed: 7 May 2013)

¹⁹ UN A/RES/60/1 of 2005, paragraph 138. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (accessed 15 August 2013)

²⁰ UN A/RES/60/1 of 2005, paragraph 139. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (accessed 15 August 2013)

²¹ UN A/RES/60/1 of 2005, paragraph 139. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (accessed 15 August 2013)

²² UN A/RES/60/1 of 2005, paragraph 139. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (accessed 15 August 2013)

²³ This view was espoused by Russia, China, Argentina, The Philippines and Brazil. See UN S/PV. 5319, 9 December 2005, Report of the Secretary General on the protection of civilians in armed conflict (S/2005/740) Page 19. Available at: <http://unispal.un.org/UNISPAL.NSF/0/80DA98A7FE23F5FB852570D5005D9D1D> (accessed: 20 September 2013).

²⁴ Breakey, H, Francis, A, Popovski, V, Sampford, C, and Smith, M. G, and Thakur, R, (2012), *Enhancing Protection Capacity: A Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflict*. Institute for Ethics, Governance and Law, Queensland, Australia. Available at: <http://www.griffith.edu.au/criminology-law/institute-ethics-governance-law/research/responsibility-to-protect-protection-of-civilians-policy-guide> (Accessed: 21 January 2014)

²⁵ Evans, G, and Sahnoun, M, (2002), page 102. *The Responsibility to Protect: Revisiting Humanitarian Intervention*, *Foreign Affairs*, November/December 2002. Available at: <http://foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect> (accessed: 21 October 2013)

²⁶ Ban, K. M, (2008) Report of the Secretary General. *On Responsible Sovereignty: International Cooperation for a Changed World*. United Nations, New York, USA. Available at: <http://www.un.org/News/Press/docs/2008/sgsm11707.doc.htm> (Accessed: 31 October 2013)

²⁷ Popovski, V, (2011), *Siblings But Not Twins: Protection of Civilians and the Responsibility to Protect*, United Nations University, Tokyo, Japan. Available at: <http://www.unu.edu/publications/articles/siblings-not-not-twins-protection-of-civilians-and-responsibility-to-protect.html> (Accessed: 8 October 2013)

²⁸ Popovski, V, (2011), *Siblings But Not Twins: Protection of Civilians and the Responsibility to Protect*, United Nations University, Tokyo, Japan. Available at: <http://www.unu.edu/publications/articles/siblings-not-not-twins-protection-of-civilians-and-responsibility-to-protect.html> (Accessed: 8 October 2013)

²⁹ Popovski, V, (2011), *Siblings But Not Twins: Protection of Civilians and the Responsibility to Protect*, United Nations University, Tokyo, Japan. Available at: <http://www.unu.edu/publications/articles/siblings-not-not-twins-protection-of-civilians-and-responsibility-to-protect.html> (Accessed: 8 October 2013)

³⁰ Popovski, V, (2011), *Siblings But Not Twins: Protection of Civilians and the Responsibility to Protect*, United Nations University, Tokyo, Japan. Available at: <http://www.unu.edu/publications/articles/siblings-not-not-twins-protection-of-civilians-and-responsibility-to-protect.html> (Accessed: 8 October 2013)

³¹ Popovski, V, (2011), *Siblings But Not Twins: Protection of Civilians and the Responsibility to Protect*, United Nations University, Tokyo, Japan. Available at: <http://www.unu.edu/publications/articles/siblings-not-not-twins-protection-of-civilians-and-responsibility-to-protect.html> (Accessed: 8 October 2013)

³² Gaddafi, M, (2011) Radio Address to rebels in Benghazi 17 March 2011 Speech delivered on State Television, 22 February 2011, transcript available at: http://docs.google.com/document/d/10dy5oLJY2QL7k2VuwKonUpSgCUX-_9ATQ-134Xka9fs/edit?hl=en&pli+1 (accessed: 5 December 2013)

³³ Deng, F, and Luck, E, (2011) United Nations Press Release. Available at: <http://www.un.org/en/>

preventgenocide/adviser/pdf/OSAPG,%20Special%20Advisers%20Statement%20on%20Libya,%2022%20February%202011.pdf (accessed: 17 December 2013)

³⁴ Security Council Press Statement on Libya, (22 February 2011) United Nations, New York, USA. Available at: <http://www.un.org/News/Press/docs/2011/sc10180.doc.htm> (accessed: 18 August 2013)

³⁵ Security Council Press Statement on Libya, (22 February 2011) United Nations, New York, USA. Available at: <http://www.un.org/News/Press/docs/2011/sc10180.doc.htm> (accessed: 18 August 2013)

³⁶ The Communique went on to characterize as legitimate the “aspirations of the people of Libya for democracy, political reform, justice and socio-economic development.” Communique On The Situation In Libya, (23 March 2011), African Union Peace and Security Council, Addis Ababa, Ethiopia. Available at: <http://www.peaceau.org/uploads/psc-communique-on-the-situation-in-libya.pdf> (Accessed: 18 August 2013)

³⁷ United Nations Human Rights Council resolution A/HRC/S-15/1, (2011) United Nations. New York, USA. Available at: http://www2.ohchr.org/english/bodiess/hrcouncil/docs/15session/HRC-S-15_1_AUV.pdf (Accessed: 30 August 2013)

³⁸ Shalgham, A. R, (2011) Transcript of Speech delivered to The United Nations Security Council, 25 February 2011. Available at: http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_6_Fast_Transcription_Shalgam_at_UN.pdf (accessed: 27 December 2013)

³⁹ Charter of the United Nations Article 41 provides that the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and may call upon Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

⁴⁰ United Nations Security Council Resolution 1970 (2011) the United Nations, New York, USA. Available at: <http://www.daccess-dds-ny.un.org/doc/UNDOC/Gen/N11/245/58/PDF/N1124558.pdf?OpenElement> (Accessed: 30 August 2013)

⁴¹ United Nations Security Council Resolution 1970 (2011) the United Nations, New York, USA. Available at: <http://www.daccess-dds-ny.un.org/doc/UNDOC/Gen/N11/245/58/PDF/N1124558.pdf?OpenElement> (Accessed: 30 August 2013)

⁴² UNSCR 1970, Article 9, *supra*

⁴³ Bellamy, A. J, and Williams, P. D, (2001), Page 840. The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect. *International Affairs* 87:4, pp. 825-850, Blackwell Publishing Ltd, Oxford, England.

⁴⁴ AFP Report: Statement by the Gulf Cooperation Council Concerning Libya, 7 March 2011, [online] Available at: http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_13_AFP_Report.pdf (accessed: 4 September 2013)

⁴⁵ Ihsanoglu, E, (2011) Statement of Professor Ekmeleddin Ihsanoglu OIC Secretary General to the Meeting of the Permanent Representatives on the Situation in the Libyan Jamahiriya, 8 March 2011. Available at: <http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/>

[arabspring/libya/Libya_17_Statement_Professor_Ekmeleddin_Ihsanoglu_Oic.pdf](#)

(accessed: 17 September 2013)

⁴⁶ See, Lessons Offered From The Libya Air Campaign, Royal Aeronautical Society Specialist Paper, (2012), The Royal Aeronautical Society, London England. This perception was also evident in the debate on military intervention in Syria following reports of the alleged use of chemical weapons by the regime, whilst no action was ultimately taken it is interesting to note that the Prime Minister Cameron together with President Obama discounted the use of land troops from consideration.

⁴⁷ Arab League Resolution 7360, (2011), The outcome of the Council of the League of Arab States meeting at the Ministerial level in its extraordinary session on the implications of the current events in Libya and the Arab position 12 March 2011, Cairo, Egypt. Available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96F9%7D/Libya%207360.pdf> (Accessed: 7 December 2013)

⁴⁸ Bellamy, A. J, and Williams, P. D, (2001), Page 843. The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect. *International Affairs* 87:4, pp. 825-850, Blackwell Publishing Ltd, Oxford, England.

⁴⁹ Juppe, A, (2011) Security Council Debate on the Situation in Libya, S/PV.6498, 17 March 2011. Available at: <http://responsibilitytoprotect.org/Security%20Council%20meeting%20on%20the%20situation%20in%20Libya%2017%20March%202011.pdf> (Accessed: 7 September 2013)

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⁵¹ UNSCR 1973, (2011), Article 4. Available at: <http://responsibilitytoprotect.org/1973.pdf> (accessed: 14 June 2013)

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⁶³ See The Vienna Convention on the law of treaties, (1969), Article 31 and 32 which provide the framework for the interpretation of international treaties. Article 31 sets out the main principle that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.”

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