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The International Action in Libya: Revitalizing the Responsibility

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The success in passing Resolution 1973 in the UN Security Council (UNSC) on March 17, 2011 calling for the use of all necessary means short of occupation to protect the civilian population in Libya can be seen as a regeneration of the evolving norm of the "Responsibility to Protect" (R2P). While this norm has been thoroughly debated over the last decade, Libya is the first instance where the norm has been backed by a UNSC Chapter VII resolution and used as grounds for intervention in an ongoing crisis.

The Background to R2P

Following tragic events such as the genocide in Rwanda and the failure of the international community to respond, then-UN Secretary General Kofi Annan called upon the international community to reach a consensus on when humanitarian military intervention is justifiable. The Canadian government took upon itself the mission and formed the International Commission on Intervention and State Sovereignty (ICISS). The commission published its report in December 2001 and chose to replace the widely used but contentious term of "humanitarian intervention" with the term "responsibility to protect." According to this notion, sovereignty is more than a right states enjoy, and includes a duty to protect their citizens and property. If the state fails to do so, the international community should assist it, and if these efforts also fail, intervention is justified in extreme cases such as genocide and ethnic cleansing.

The guidelines on R2P establish four basic principles: that the action is done out of the right intention (that it is motivated by humanitarian concerns and aimed at "averting human suffering"); that military action is used as the last resort (i.e., that other options were used or at least seriously considered); that the response is proportional; and that there are reasonable prospects for success. In addition, the ICISS called for authorization from an international organization for such action, preferably the Security Council. Since 2001, this notion has been adopted by the UN 2005 World Summit Outcome Report, which added war crimes and crimes against humanity as instances where international action is justifiable. The following year UNSC Resolution 1679, adopted parts of the 2005 outcome

report concerning the evolving norm of the responsibility to protect, further enhancing the status of the emerging norm. In 2009 UN Secretary General Ban Ki-moon presented his report "Implementing the Responsibility to Protect" to the General Assembly.

R2P in Libya

How do the current UNSC-authorized, NATO-led operations in Libya relate to the parameters of legitimate intervention under the emerging R2P norm?

The basic requirement to trigger intervention under R2P is a given state's lack of ability or willingness to meet its duty to protect its civilian population, a requirement certainly met in the Libyan case, where the state regime is also the main perpetrator of the crimes against the civilian population.

Qaddafi's use of force in Libya since the beginning of the protests far exceeded the level employed by his regional counterparts. Amidst reports of widespread brutality against the civilian population, the dictator further strengthened the perception of an impending humanitarian catastrophe by promising to "crush the cockroaches" who had dared to rise up against his regime. At the same time, the public resignations of Libyan ambassadors and the demands of the Libyan ambassador to the UN to stop the ongoing "genocide" also supported the notion that the regime had lost its domestic legitimacy, and that the level of violence in Libya was significant enough to prompt a reaction by the international community.

On February 26, 2011, in response to the growing violence and humanitarian crisis, the UNSC passed Resolution 1970, calling on the "government of Libya to meet its responsibility to protect its population," and for the first time openly referring to R2P. The resolution also attempted to stop the violence by urging the Libyan government to halt the violence, while imposing an arms embargo, a travel ban, and asset freeze, along with a referral of the Libyan regime to the International Criminal Court.

In parallel to these sanctions and in response to the regime's growing brutality, France and Britain started to hint of the possibility of harsher sanctions, including a no-fly zone. This option was received quite coldly at first by the international community, and severely criticized by China, Russia, Turkey, and other states. However, as the level of violence in Libya continued to rise, the international will to take stronger measures grew. An important step in that direction occurred on March 12 when the Arab League first asked the UNSC to impose a no-fly zone, strengthening the voices of countries like the UK and France, who then began co-drafting a relevant UNSC resolution.

The process that led to the passing of UNSC Resolution 1973 was therefore a gradual one, and the final authorization of "all necessary measures" to enforce a no-fly zone and protect civilians was seen as a last resort, complying with the principles of intervention under R2P. Moreover, the Chapter VII resolution serves as a legal basis for military action in

Libya, ensuring that the NATO-led operations – unlike in the Kosovo case – are in compliance with the R2P requirement of acting after specific UNSC authorization.

The other three main requirements of R2P intervention (proportionality, intention, chances of success) are harder to assess, but there is reason to believe that they too are met by the current operations.

Although the process of assessing intention and proportionality in international law is open to dispute, the mandate of the military operations in Libya is specific in terms of the objectives of the mission (protecting civilians and enforcing sanctions), while explicitly "excluding a foreign occupation force of any form on any part of Libyan territory," thus seemingly meeting those criteria. In addition, the regional support for the mission (voiced by the Arab League, the Organization of the Islamic Conference, and the Gulf Cooperation Council), and the calls from Libya's rebel leaders to actively intervene heighten the legitimacy of the military operations. However, in the longer term, whether the mission and the rules of engagement will remain within these parameters is ultimately contingent upon the military reality on the ground, thus making it impossible to predetermine whether the intervention will stay within the "proportionality" requirement.

The most problematic criterion to assess in looking at the R2P standards is perhaps the reasonable prospects for success. While news reports refer that NATO's own assessment is for a 90-day operation followed by a Bosnia-styled multinational peacekeeping force, the feasibility of such a plan is far from certain. Specifically, it is yet unclear how the mission will manage to attain its goals (protecting the civilian population) without having to expand its mandate (regime change) and becoming entangled in a civil war scenario.

Despite the uncertainties of success of the current military operations, the UN-authorized intervention is clearly reflective of the R2P standards, and it has had the impact of revitalizing this emerging norm and putting it back on the map.

