

Libya and R2P: A Year After UNSCR 1973

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Summary

UN Security Council Resolution 1973 will stand out in history as it marked the first military implementation of the Responsibility to Protect (R2P) doctrine. But ever since the resolution was passed in the Council in March 2011, various developments have altered the way the concept of R2P has come to be perceived. The resolution was responsible for sparking off debates in the UN General Assembly and the Security Council which, in turn, has led to the emergence of viable alternatives to military intervention or the use of force. These developments are largely due to the consequences that UNSCR 1973 had on the ground, in Libya. This Issue Brief analyses the evolution of the R2P principle in the last one year and how Libya has contributed to its growth.

The United Nations Security Council Resolution (UNSCR) 1973 was not the first time that the international community invoked the principle of Responsibility to Protect (R2P). Kenya (2007), Guinea (2010), Sudan (2011) were other instances when the larger international community assumed it to be their responsibility to prevent atrocities from taking place in these States. However, the Libyan case will stand out in history as it marked the first military implementation of the doctrine. But ever since the resolution was passed in the Council in March 2011, various developments have altered the way the concept of R2P has come to be perceived. This is largely due to the consequences that UNSCR 1973 had on the ground, in Libya. Before discussing the evolution of the R2P principle since the passing of the resolution, it is imperative to have a look at the challenges that Libya has been facing in the last one year to understand how Libya has contributed to R2P's growth.

Libya One Year Later: The Challenges

Though the Libyans can rejoice about the end of dictatorship with the death of Qaddafi, today, a year after the UN Security Council passed Resolution 1973, peace and democracy continues to remain elusive for the people of Libya. The country remains unstable, marred by a host of tribulations. There have been widespread media reports of frustration among Libyans with the pace of reforms since Qaddafi's fall. The National Transitional Council (NTC) has been accused of lack of transparency and is unable to address issues of unity, reconciliation and inclusiveness owing to fact that the NTC is mired in its own divisions. The security situation in the country is deplorable and has been worsening with every passing day. A media report observed that, 'the resentment and bitterness he (Qaddafi) incubated is now bursting forth in general lawlessness'¹. Revolutionary forces have captured cities and months after the fall of Qaddafi, the interim government has proved incapable of governing. As a fallout of the lack of governance, Libyans who took up arms during the rebellion against Qaddafi are not willing to part with it till the June 2012 elections fearing threats to their lives. According to analysts, for the Libyans, weapons are 'guarantors of the revolution'² and wish to see the fruits of their revolution before they give up their weapons. The proliferation of arms has also posed a roadblock to democracy and the manner in which the government deals with the militias will determine Libya's transition to democracy.³

¹ "Freed of Qaddafi, Libya's instability only deepens", *Al Arabiya News*, March 04, 2012, available at <http://english.alarabiya.net/articles/2012/03/04/198447.html?PHPSESSID=iau4kr20m8cu47jg7be4eq1s6>, accessed on April 19, 2012.

² Human Rights Watch Emergencies Director Peter Bouckaert in "Analysis: Libya's long road to disarmament", *IRIN News*, December 29, 2011, available at <http://www.irinnews.org/Report/94559/Analysis-Libya-s-long-road-to-disarmament>, accessed on April 09, 2012.

³ "Libyan government starts to get tough on road to democracy", *Al Arabiya News*, May 09, 2012, available at <http://english.alarabiya.net/articles/2012/05/09/213134.html>, accessed on May 11, 2012.

This unwillingness to give up arms by the militias reflects distrust, rising suspicion of the central authority and also uncertainty about who has the legitimacy to lead during the process of transition. As a consequence, Libya today witnesses an illicit proliferation of arms, missing weapons, heavily armed militias and the International Crisis Group reports⁴ that almost 125,000 Libyans are armed. These militias who have repeatedly clashed, have their own procedures to register vehicles and weapons, supply identification cards, conduct investigations, issue warrants and are also accused of arresting and detaining suspects. More than 8000 detainees (allegedly Qaddafi loyalists) are being tortured in 60 detainee centres across the country, which are not under the control of the authorities but under individual armed brigades.⁵ In December 2011,⁶ CNN reported that al-Qaeda was allegedly sending militants to Libya in an effort to recruit a 'fighting force' after Qaddafi's demise. In addition, sporadic fighting among different groups continues in various parts of the country. Several people are reported to be dead and wounded in the ongoing clashes between the Zwai and Tabu tribes in Al-Kufra; between the Sabha militias and the Tabu tribes in the Sabha region; and the fighters from al-Jumail and Zuwara militia.

States along the border of Libya have fallen victim to and been engulfed by the problems arising from the country's instability. A UN Report⁷ states that the Libyan crisis has exacerbated an already precarious security situation in the region. The governments of the Sahel region (including Algeria, Mali, Chad, Egypt, Mauritania, Niger and Tunisia) have to deal with the influx of thousands of traumatised and impoverished returnees. Compounding this problem is the inflow of unspecified and unquantifiable number of arms and ammunition from the Libyan arsenal. The Report further elaborates on the issues that the region has to contend with. The countries are threatened by an imminent food insecurity and nutrition crisis and there is a high possibility of the smuggled weapons

⁴ "Holding Libya Together: Security Challenges After Qadhafi", Middle East/ North Africa Report No. 115, *International Crisis Group*, December 14, 2011, available at <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/North%20Africa/115%20Holding%20Libya%20Together%20-%20Security%20Challenges%20after%20Qadhafi.pdf>, accessed on April 02, 2012.

⁵ "Statement to the Security Council by Navi Pillay, High Commissioner for Human Rights (Libya)", January 25, 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11779&LangID=E>, accessed on April 13, 2012.

⁶ "Source: Al Qaeda leader sends veteran jihadists to establish presence in Libya", *CNN*, December 29, 2011, available at http://articles.cnn.com/2011-12-29/middleeast/world_meast_libya-jihadists_1_al-qaeda-leader-ayman-al-zawahiri-gadhafi-regime?_s=PM:MIDDLEEAST, accessed on April 02, 2012.

⁷ Report of the assessment mission on the impact of the Libyan crisis on the Sahel region 7 to 23 December 2011, S/2012/42, January 18, 2012, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/AUUN%20S%202012%2042.pdf>, accessed on April 13, 2012.

being hidden in the desert and sold to terrorist groups like the al-Qaeda in the Islamic Maghreb, Boko Haram or criminal organisations.

After conducting investigations for almost a year, the International Commission of Inquiry on Libya that was established by the Human Rights Council concluded in its report⁸ that though the interim government expressed commitment to human rights and its concerns about torture and other violations, it has failed to implement the commitment. Moreover, Libya today faces a shortage of trained staff such as prosecutors, judicial police and forensic investigators who could bring the perpetrators of crimes to justice. Nor have the authorities succeeded in holding the *thuwars* (anti-Qaddafi forces) accountable for serious violations of unlawful killings and arbitrary arrests. The Commission reported that this is due to unequal implementation of the law. Another challenge that is yet to be overcome is the high levels of abandoned and unexploded ordnance (UXO), which put life at risk in towns and roads where fighting took place.⁹

R2P And Its Evolution Since UNSCR 1973

Before dwelling on the arguments that have shaped the R2P debate in the last year, it is vital to recognise the loopholes in the implementation of the principle that has sparked off the debate. Days after UNSCR 1973 was passed by the UN Security Council, the unity that was showcased among the members who had explicitly supported the resolution began to wither away. The Arab League reversed its stance and criticised the use of force that it had earlier authorised. In addition, there was a lack of clarity among the politicians of Britain and America as to whether Qaddafi himself was the target.

One could not agree more with the 'errors of practice' as enumerated by Jonathan Eyal,¹⁰ which, he says, were rooted not in the initial preparation for action but in the way the resolution was implemented. The first error occurred in the establishment of a command structure for the operation. Eyal argues that the true purpose of the exercise was not humanitarian but 'to expand or re-establish Western 'domination' in North Africa', which confirmed the 'conspiracy theories' of the sceptics for whom the resort to R2P was but a façade for 'old-style' Western intervention. Moreover, Council members were aware right

⁸ Report of the International Commission of Inquiry on Libya, Advance Unedited Version, A/HRC/19/68, 02 March 2012, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A_HRC_19_68_en.doc, accessed on April 02, 2012.

⁹ "Libya one year on: The battle against cluster bombs, landmines and UXO", *Mines Advisory Group*, February 16, 2012, available at <http://reliefweb.int/node/477163>, accessed on April 13, 2012.

¹⁰ Jonathan Eyal, "The Responsibility to Protect: A Chance Missed" in Adrian Johnson and Saqeb Mueen (eds.) *Short War, Long Shadow The Political and Military Legacies of the 2011 Libya Campaign*, Whitehall Report 1-12.

from the start, that the imposition of a 'no-fly zone' would require strikes from the ground. Secondly, though UNSCR 1973 did not envisage a regime change in Libya, the open-ended manner in which the resolution was interpreted and the halt of the NATO offensive soon after the killing of Qaddafi despite the continuation of sporadic violence in some parts of the country proved the sceptics right and weary of invoking the third pillar of the R2P principle¹¹ in future cases including Syria. A military operation that is aimed at regime change, regardless of the existence of sufficient evidence to prove that the regime is guilty of gross crimes against humanity and human rights violations, does not conform with the fundamental principles of R2P.¹²

According to Eyal, the most blatant departure from the spirit of UNSCR 1973 was the Western approval for supply of weapons and training to the Libyan rebels (the repercussions of which can be seen today), which implied that a group of 'self-appointed' countries could derogate from the arms embargo sanctioned by the resolution. Another grey area in the implementation of the principle was the collateral damage that the NATO strikes caused. Though the NATO forces conducted a 'precise campaign with demonstrable determination to avoid civilian casualties',¹³ the International Commission of Inquiry on Libya confirmed civilian casualties (in five air strikes documented, 60 civilian deaths and 55 injuries were confirmed) and found targets that showed no evidence of military utility. Thereby, the NATO forces are guilty of killing and alienating the very population that the mission intended to protect. It is likely that the death toll could be higher than what has been confirmed given Russia's contestation of the Commission's finding and the Commission itself recommending further investigations.

R2P: Contentious Issues

Libya was a case where R2P's victory was hailed and was seen as a coming of age in international humanitarian law. Libya is one of the instances which made Council members and the international community at large realise that 'something must be done'.¹⁴ One of the proponents of R2P, Gareth Evans, sees it as a 'matured principle' on which there is

¹¹ The third pillar defines the responsibility of the international community to take collective action in a timely and decisive manner.

¹² Background Briefing: Responsibility to Protect After Libya and Cote d'Ivoire, Global Centre for the Responsibility to Protect, available at http://reliefweb.int/sites/reliefweb.int/files/resources/BACKGROUND_BRIEFING_R2P_AFTER_LIBYA_AND_COTE_DIVOIRE.pdf, accessed on April 03, 2012.

¹³ Report of the International Commission of Inquiry on Libya, Advance Unedited Version, Note 8.

¹⁴ Tim Dunne and Jess Gifkins, "Libya and R2P: norm consolidation or a perfect storm?", *Open Democracy*, April 19, 2011, available at <http://www.opendemocracy.net/tim-dunne-jess-gifkins/libya-and-r2p-norm-consolidation-or-perfect-storm>, accessed on April 14, 2012.

more clarity and consensus today. The implementation of R2P in March 2011, according to Evans, was 'the sharpest end of all' when 'prevention had manifestly failed and a massacre was manifestly imminent'.¹⁵

Though the 'romance with airpower' in the case of Libya breathed a new life into R2P, Barkawi argues that it 'reignited also the neo-conservative belief that democracy can be exported by military means'.¹⁶ He further adds that the possibility of military intervention in Libya setting a precedence should be viewed with concern because 'it is becoming increasingly legitimate to use military power in the global South without taking responsibility for the political and human aftermath'.¹⁷ Following the implementation of the UNSCR 1973, a majority of the voices from the international community questioned not the appropriateness of the principle but its execution and this characterises the debates within the Security Council too. The breach of the competencies of the resolution has had grave negative ramifications, with the Council having to deal with a stalemate on Syria for almost a year. The overreach of the resolution made countries like Russia and China apprehensive of supporting any kind of West-backed resolution.

But on the positive side, what one saw was a non-Western approach emerging as an alternative within the Council that challenged the status-quo. This also rendered itself unreservedly to wider debates on the R2P principle which enlarged the limited understanding of the concept. The principle emerged from being narrowly understood as a euphemism for the West-led 'humanitarian intervention' to a concept that included solutions in terms of diplomatic and non-coercive measures before the international community responds through the use of force. Though the implementation of UNSCR 1973 on the ground is highly debatable, it nonetheless paved the way for the normative development of R2P and protection of civilians.

The use of force in Libya to protect civilians also brought to the fore reservations against the enforcement of Pillar 3 of the R2P principle. While there is consensus on Pillar 1 (State is the primary bearer of the responsibility to protect populations from mass atrocities) and Pillar 2 (responsibility of the international community to assist States in protecting populations) of the principle, it is the ambiguous and open-ended nature of the third pillar (responsibility of the international community to take collective action in a timely and

¹⁵ Gareth Evans, "The Responsibility to Protect in Action" in *R2P: The Next Decade*, *COURIER*, The Stanley Foundation, No. 74, Spring 2012, available at <http://www.stanleyfoundation.org/articles.cfm?id=721>, accessed on May 04, 2012.

¹⁶ Tarak Barkawi, "Intervention without responsibility", *Aljazeera.com*, November 23, 2011, available at <http://www.aljazeera.com/indepth/opinion/2011/11/20111121161326433590.html>, accessed on April 18, 2012.

¹⁷ *Ibid.*

decisive manner) that prevents the international community from taking timely collective action.¹⁸ Pillar 3 includes responses both through pacific measures under Chapter VI and Chapter VIII of the UN Charter and in the event of peaceful means proving to be inadequate, the Security Council can resort to coercive measures under Chapter VII. This is where the bone of contention lies, with consensus often lacking within the Council on the issue of when is the time ripe to sanction military intervention. Various countries including India have raised their apprehensions regarding this pillar at international forums. At an event organised by the Stanley Foundation earlier this year to commemorate the 10th anniversary of R2P, India raised some valid conceptual issues that are yet to be resolved. These include:

- Should the international community always have to step in through the use of coercive and punitive means?
- In case the community steps in and the UNSC too mandates the intervention, can the international community then not comply with the entirety of the resolution but make it selectively applicable (as was witnessed in the Libyan case)?
- How can the differences in the interpretation of the resolution be reduced?

There are no easy solutions for these questions. But the very fact that the principle is being widely debated brings hope that the international community will learn from its past mistakes and in the process also address the gaps in the principle.

Emerging Solutions

Efforts Undertaken by the UN Secretary-General

Libya and Cote d'Ivoire in 2011 marked 'watershed' events in the evolving doctrine of R2P and they also bring the increasing possibility of civilian protection being placed under the UN's peace and security agenda.¹⁹ R2P in 2011 garnered global attention and the UN General Assembly's informal thematic debate on the concept set the stage for further consolidation of the principle. The Secretary-General's Report,²⁰ published prior to the debate,

¹⁸ The three pillar-approach to R2P was set out in Secretary-General Ban Ki-moon's 2009 Report on Implementing R2P, available at [http://responsibilitytoprotect.org/SGRtoPEng%20\(4\).pdf](http://responsibilitytoprotect.org/SGRtoPEng%20(4).pdf), accessed on April 27, 2012.

¹⁹ "Libya, Cote d'Ivoire events mark historic precedent, Secretary-General tells Sofia Platform, citing 'watershed' in Responsibility to Protect doctrine", Secretary-General, SG/SM/13548, May 06, 2011, available at <http://www.un.org/News/Press/docs/2011/sgsm13548.doc.htm>, accessed on April 30, 2012.

²⁰ "The role of regional and sub-regional arrangements in implementing the responsibility to protect", Report of the Secretary-General, General Assembly Sixty-fifth Session, A/65/877-S/2011/393, June 28, 2011, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/65/877, accessed on April 27, 2012.

not only shifted the focus of R2P from broad conceptualisations to specificities but also addressed the lacunae in the principle. There is an increased realisation among the international community that the participation of regional and sub-regional organisations can bring added value to each of the three pillars of the principle. Among others, the most urgent priority for the UN today is to improve its operational prevention capacity (strive to avert what appears to be an imminent threat of an atrocity under Pillar 3 of R2P) in collaboration with regional and sub-regional organisations.

Declaring 2012 as the Year of Prevention, UN Secretary-General Ban Ki-moon added that there is a need to develop more innovative ways to use the under-utilised tools of Chapter VI; for example, through inquiries and fact-finding missions. Under the auspices of the UN, specifically the Joint Office of the Secretary-General's Special Advisers on the Prevention of Genocide and R2P, efforts are being made to improve early warning mechanisms, end impunity and assist States under stress by sharing assessments and information. A need has also been felt for sharpening the tools for prevention and protection and ensuring that the principle is applied consistently across all cases. To nip mass atrocities in the bud or in other words to prevent them from taking place, the UN's future agenda involves fully understanding what motivates perpetrators and planners of mass violence. There is a call for an early flexible response tailored to the circumstances of each case rather than any generalised or prescriptive set of policy options.

The Brazilian Contribution: Responsibility while Protecting

Responsibility *while* Protecting (RwP), the Brazilian contribution to the consolidation of the R2P principle, emerged mainly due to the overstretch of the Security Council mandate in Libya. In the concept paper presented before the UN General Assembly,²¹ Brazil makes a case for distinguishing between collective responsibility (exercised through the use of non-coercive measures) and collective security (when there is a threat to international peace and security) on the one hand and between military and non-military coercion on the other. Brazil contends that while exercising R2P, the international community has to show a great deal of RwP which should evolve together based on principles such as prevention first and resort to use of force under Chapter VII only after all peaceful means are exhausted. It also lays down certain conditions that military intervention should meet. For example, military action if at all undertaken should abide by the letter and in strict conformity with international law, the use of force should not generate more harm than it was authorised to prevent, enhanced Security Council principles to monitor and assess the

²¹ Annex to the letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, *Responsibility while protecting: elements for the development and promotion of a concept*, General Assembly, Sixty-sixth Session, A/66/551-S/2011/701, November 11, 2011, available at <http://www.un.int/brazil/speech/Concept-Paper-%20RwP.pdf>, accessed on April 30, 2012.

manner in which the resolution is interpreted and implemented to ensure RwP and also ensure accountability of those to whom authority is granted to use force.

Conclusion

It is important to recognise the military intervention in Libya as a blessing in disguise, as it has contributed towards the normative evolution of the concept of R2P. The Libyan case also laid bare the fissures in the third pillar of the principle. It has kindled discussions on the broad range of measures available under the third pillar including political, economic, humanitarian and if necessary, military responses, thus paving the way for a constructive dialogue on how the regional as well as the international community can respond effectively to genocide, war crimes, ethnic cleansing and crimes against humanity.

R2P has come a long way since it was ratified at the 2005 World Summit. Cases like Libya, Syria, Cote d'Ivoire and more recently South Sudan have demonstrated that the international community cannot continue to be a silent spectator to genocide or mass atrocities. These instances have also contributed to the debates on the principle by bringing on board non-Western approaches as viable alternatives to West-led military intervention, Kofi Annan's shuttle diplomacy and the deployment of unarmed military observers in Syria and RwP being cases in point. The varied nature of crimes against humanity till date have demanded unique, non-prescriptive solutions and in the years to come, R2P as a principle will continue to evolve till the world is truly able to say 'never again' to such crimes.