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The Libyan Crisis in the Evolution of R2P as an International Norm

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Abstract

On March 17th 2011, the United Nations Security Council passed Resolution 1973 that paved the way for the NATO-led military operation in Libya. It was the first time a resolution authorized the use of force against a functioning government in order to protect civilians. It was also arguably the first time the doctrine of “Responsibility to Protect” (R2P) was alluded to in the text of a resolution of the Security Council. This paper seeks to understand the importance of the Libyan crisis in the development of R2P as an international norm and its potential future. Using a framework developed by Finnemore & Sikkink about the evolution of international norms, we assess the development of R2P before the Libyan crisis. We then establish the importance of the Libyan crisis in the evolution of R2P and look at the declarations made by the representatives of the Security Council member states after they had voted for Resolution 1973, and use them to show that the language and principles of R2P permeated much of the discussions about the Resolution. We finally focus on the backlash of the NATO-led military operation in Libya and its effect on the evolution of R2P with the examination of the “Responsibility while Protecting” proposal and what that might mean for the future of R2P.

Keywords: Responsibility to Protect, Libya, International Norms

Introduction

United Nations Security Council Resolution 1973, passed on 17 March 2011, was the first resolution in which the Security Council authorized the use of military force for human protection purposes against a functioning government. As such, it represents an important development in international politics and the use of military force. In addition, it is the first time that in an UNSC resolution the concept of “Responsibility to Protect”, or R2P, was alluded to and may have been used to justify such a use of military action. Gareth Evans, one of the fathers of the concept of R2P, stated that “Libya was a textbook case for the application of the “responsibility to protect” (R2P) principle, and the U. N. Security Council resolutions in February and March, which paved the way for the military campaign, were textbook responses” (Homans, 2011).

Many studies have been done concerning the Libyan crisis. A number of them focus on the

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potential legal issues of the resolution. Ulfstein and Christiansen for instance claim that civilian protection was part of the mandate but the overthrowing of the Qadhafi regime was an illegal use of force (Ulfstein & Christiansen, 2013, p. 162), while Williams and Popken contrast the actions of the international community in the Libyan crisis and the Bosnian crisis and argue that Resolution 1973 represents a moment of legal and moral clarity and provides a good blueprint for future military interventions for protecting civilians (P. R. Williams & Popken, 2011, p. 227). Others focus on how the Libyan crisis is an example of an R2P situation and the ensuing consequences. Gareth Evans describes how clearly the Libyan crisis is an R2P situation and what should be possible to do under the mandate of the Resolution and what should not (Evans, 2011). Bellamy and Williams show how the actions of the Security Council on Libya and Côte D'Ivoire represent a new politics of protection which emerged in the last decade and the role R2P played in it (A. J. Bellamy & Williams, 2011, p. 826). Some other researchers look at the aftermath of the NATO military operation, and its effect on the doctrine of R2P. Ramesh Thakur focuses on the result of the military operation of NATO and the effect it had on the support of R2P by emerging powers, urging them to become responsible stakeholders in the global order (Thakur, 2013, p. 72), while Jennifer Welsh sees the issues highlighted by the military operation as a chance for the international community to advance its understanding and implementation of the Responsibility to Protect (Welsh, 2011, p. 261).

There seems to be a consensus among scholars that the norm of R2P had something to do with the Security Council authorizing the use of force against the Libyan regime. If R2P was indeed one important factor for the passing of the Resolution, then that would signal an important shift in the behaviour of the Security Council and show that the Council is prepared to react and take moral stands. Furthermore, R2P has often been referred to as a “norm” or an “emerging norm”. Indeed, the first such mention is arguably in the report “A More Secure World: Our Shared Responsibility”, written by the High-Level Panel on Threats, Challenges, and Change in December 2004. Regarding R2P, the Panel stated that “[we] endorse the emerging norm that there is a collective international responsibility to protect” (UN General Assembly, 2004, para. 203). Since then, the term stuck and was often used when discussing R2P (Evans, 2006; Nanda, 2006; P. D. Williams & Bellamy, 2005).

However, few studies have taken an in-depth look at the evolution of R2P as an international norm and the effect the Libyan crisis had on this evolution. This paper seeks to examine the evolution of R2P before the Libyan crisis and its effect on the norm and its future. We do so by using a framework developed by Finnemore & Sikkink about the evolution of international norms, and we assess the development of R2P before the Libyan crisis. We then establish the importance of the Libyan crisis in the evolution of R2P and look at the declarations made by the representatives of the Security Council member states after they had voted for Resolution 1973, and use them to show that the language and principles of R2P permeated much of the discussions about the Resolution. We finally focus on the backlash of the NATO-led military operation in Libya and its effect on the evolution of R2P with the

examination of the “Responsibility while Protecting” proposal and what that might mean for the future of R2P.

1. The Responsibility to Protect as an International Norm

1.1. Finnemore & Sikkink’s “Norm Life Cycle” Model

Finnemore and Sikkink developed a framework representing the life cycle of a norm (Finnemore & Sikkink, 1998). They define a norm as a “standard of appropriate behavior for actors with a given identity.” (Finnemore & Sikkink, 1998, p. 891) This definition is somewhat different from what the common use of the term is when talking about International Law, where a norm is usually equated to a rule that is established in customary international law or a treaty. In our case, we are not dealing with the legal aspects of R2P but more with the social interactions and expectations it creates among the different actors of the international community. Because of that, we adopt the same definition of a “norm” as that given by Finnemore & Sikkink.

The model outlines three stages: norm emergence, norm cascade and internalization. Each stage is also characterized by three main elements: the actors who promote and apply the norm; the motives for promoting or applying the norm; and the dominant mechanisms used to promote and apply the norm. This framework was developed through an analysis of the literature on international norms spread (Finnemore & Sikkink, 1998) and has since been widely used and applied in the field of norm studies. We chose this model because it fits well our approach of focusing on the evolution of R2P as an international norm.

The first stage, or norm emergence, explains how a new norm is born and how it starts developing. This stage is characterized by the importance of norm entrepreneurs as the main actors promoting the new norm. These persons or institutions have altruistic, empathic or ideational motives (Finnemore & Sikkink, 1998, p. 898), take a leading role in trying to convince and persuade leaders in the

Figure 1 Stages of Norms

	<i>Stage 1 Norm emergence</i>	<i>Stage 2 Norm cascade</i>	<i>Stage 3 Internalization</i>
<i>Actors</i>	Norm entrepreneurs with organizational platforms	States, international organizations, networks	Law, professions, bureaucracy
<i>Motives</i>	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
<i>Dominant mechanisms</i>	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

Source: Finnemore and Sikkink, “International Norm Dynamics and Political Change”, p. 898

international community to adopt the norm they promote (Finnemore & Sikkink, 1998, p. 895). The defining elements of any international society are membership and mutual recognition and recognized norms of conduct (P. D. Williams, 2009, p. 395). Norm entrepreneurs are thus agents that exert soft power to help spread acceptance of a norm by states that do not accept the norm yet. Non-compliant states start complying through “pressure for conformity, desire to enhance their international legitimization, and the desire state leaders to enhance their self-esteem” (Finnemore & Sikkink, 1998, p. 895). A famous example they give of a norm entrepreneur is Henri Dunant, whose personal efforts and his organizational platform, the Red Cross, were instrumental in the adoption of the first Geneva Convention in 1864 on the condition of the wounded in armies in the field.

Between the first two stages is a “tipping point”. This tipping point occurs when the norm entrepreneurs manage to get “a critical mass of states to become norms leaders and adopt new norms” (Finnemore & Sikkink, 1998, p. 901). The authors point to a number empirical studies that seem to suggest that the tipping point “rarely occurs before about one-third of total states in the system adopt the norm” (Finnemore & Sikkink, 1998, p. 901). However, not all states that adopt the norm are equal and some states are more important than others, but this depends on the particular issues of the norm (Finnemore & Sikkink, 1998, p. 901). Generally, states that “have a certain moral stature” (Finnemore & Sikkink, 1998, p. 901) are more likely to be critical states in the tipping point because other states will want to be associated to them and be seen in the same good light. Furthermore, states that are vital to the implementation of the norm are also considered critical states (Finnemore & Sikkink, 1998, p. 901). However, a norm reaching its tipping point does not mean that it is universally accepted nor will it necessarily lead to universal acceptance in the future. Indeed, even relatively universal norms do not automatically become embedded everywhere, and the local context is an important factor in determining the commitment to them (P. D. Williams, 2009, p. 394).

The second stage of the model is norm cascade. During this stage, states take a more prominent role in shaping the norm. More and more states start following the new norm and the primary mechanism for promoting norm cascades is “an active process of international socialization intended to induce norm breakers to become norm followers” (Finnemore & Sikkink, 1998, p. 902) using “diplomatic praise or censure [...] which is reinforced by material sanctions and incentives” (Finnemore & Sikkink, 1998, p. 902). Norm entrepreneurs and their organizational platforms or networks continue to play a role in the development of the norm by pressuring targeted actors to adopt “new policies and laws and to ratify treaties and by monitoring compliance with international standards” (Finnemore & Sikkink, 1998, p. 902). During this stage, states are forced to conform to the norm by the pressure other states exert on them to also adopt the norm, and by their need of international legitimacy, reputation and esteem (Finnemore & Sikkink, 1998, p. 903).

The last step in the life cycle of a norm is internalization. At this stage, the norm is so widely accepted within the international community that it is taken for granted and conformance to it is

almost automatic (Finnemore & Sikkink, 1998, p. 904). The authors give slavery, women's right to vote and medical personnel immunity during war as examples of such internalized norms (Finnemore & Sikkink, 1998, p. 895). However, because they are no longer an issue for discussion, such norms are rarely the subject of discussion among political scientists. In this stage, professionals such as lawyers, bureaucrats or even soldiers, become the main actors, working to internalize norms among their members through the mechanisms of iterated behaviour and habit. Professional training is more than just the transfer of technical knowledge: "it actively socializes people to value certain things above others" (Finnemore & Sikkink, 1998, p. 905). Finnemore and Sikkink give the examples of doctors who are trained to value life above all else while soldiers are expected to sacrifice their lives for certain goals (Finnemore & Sikkink, 1998, p. 905). These different normative biases are instilled in all professionals during their training. The next part briefly outlines the concept of R2P and evaluates its evolution using the framework presented above.

1.2. The Responsibility to Protect

During the 90s, the main doctrine for responding to grave humanitarian crises or mass violations of human rights was the so-called "humanitarian intervention", defined as "coercive action against a state to protect people within its borders from suffering grave harm" by Gareth Evans and Mohamed Sahnoun (Evans & Sahnoun, 2002, p. 1). While this doctrine was applied most notably in Somalia by the United States in 1993 and in Kosovo in the late 90s, such interventions provoked wide outrage from the parties not involved. The first blame was that such interventions were not decided by the United Nations Security Council and were thus illegal from an international law perspective. The second criticism made to humanitarian intervention was that it violated the sacrosanct principle of non-intervention inherited from the peace of Westphalia. The United Nations Secretary General of the time, Kofi Annan, challenged political leaders and asked the question: "How should we respond to a Rwanda, to a Srebrenica — to gross and systematic violations of human rights that affect every precept of our common humanity" (Annan & United Nations, 2000, p. 48).

The answer came from the International Commission of Intervention and State Sovereignty, or ICISS, in the report "The Responsibility to Protect" released in the end of 2001 with the concept of "Responsibility to Protect". Basically, it puts forward two levels of responsibility. The first level of responsibility is that of the state itself: "the domestic authority is best placed to take action to prevent problems from turning into potential conflicts." (International Commission on Intervention and State Sovereignty, 2001, para. 2.30) The second one is that of the rest of the international community: "this fallback responsibility is activated when a particular state is clearly either unwilling or unable to fulfill its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular state are directly threatened by actions taking place there." (International Commission on Intervention and State Sovereignty, 2001, para. 2.31) It also outlined three duties that

should be accomplished. The first is the responsibility to prevent “both the root causes of problems and their more immediate triggers.” (International Commission on Intervention and State Sovereignty, 2001, para. 3.4) The next is a responsibility to react, requiring the state in trouble and the international community to respond to the situation when the first responsibility has failed, which “may include political, economic or judicial measures, and in extreme cases — but only extreme cases — they may also include military action” (International Commission on Intervention and State Sovereignty, 2001, para. 4.1). The last duty, after intervention, is a responsibility to rebuild, which requires “a genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development.” (International Commission on Intervention and State Sovereignty, 2001, para. 5.1) To address the critics made to humanitarian intervention, R2P, in principle, insists that prevention is the single most important component and military operation is the last ultimate resort and such operation should try to have the approval of the UN Security Council or other international or regional organizations (International Commission on Intervention and State Sovereignty, 2001, para. 4.37, 6.14, 6.29).

The concept immediately received great attention and support and was formally adopted in the UN World Summit of 2005, although a bit modified and restricted to only four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. The United Nations General Assembly has since then engaged in two debates to further refine the norm and “decides to continue its consideration of the responsibility to protect” (UN General Assembly, 2009, para. 2).

1.3. The Responsibility to Protect before the Libyan Crisis

As outlined by the “norm life cycle” model, norms evolve passing through three stages, namely “norm emergence”, “norm cascade” and “internalization” stages, with the first and the second being separated by a “tipping point”. If we are to study the Libyan case and the importance of R2P in it, we need to know what stage R2P was before the start of the crisis. Because the concept is still controversial and we are even debating the current state of R2P in its evolution, we can safely say that it is not in its last stage of evolution. Thus, R2P could be either in the “norm emergence” or “norm cascade” phases. To be able to say that R2P is in the second stage of the model, we need to identify the “tipping point”, the point in time where a critical mass of states adopts the concept.

In the case of R2P, we identify that point as the 2005 World Summit, which was the largest gathering of heads of states and where R2P was unanimously embraced at the rhetorical level, with the concept included in paragraphs 138, 139 and 140 of the Outcome Document. Because of this, it would be hard to argue that this was not the tipping point for R2P. As Christina Badescu and Thomas Weiss put it, “this adoption goes beyond the “critical mass of relevant state actors” (Badescu & Weiss, 2010, p. 360). However, the R2P paragraphs included in the World Summit Outcome Document make some important changes to the fundamental principles and obligations outlined in the original R2P report

of the ICISS. Bellamy found two areas of disagreement between states: whether only the Security Council had the authority to authorize armed intervention; and whether any set of criteria should guide the decisions on the use of force (Alex J. Bellamy, 2006, p. 164). The majority of states took the position that only the Security Council should have the authority to authorize the use of force. The language used in the Outcome Document clearly reflected that: paragraph 139 stated the requirement of approval by the Security Council and through the UN, but it avoided the use of stronger language and did not outright create obligations for states to react (UN General Assembly, 2005, para. 139). Any criteria for authorizing the use of force were also left out of the Outcome Document. Most states did not want such criteria to be imposed, but for different reasons. Some, such as the United States and the United Kingdom, were hesitant because it would put constraints on their potential use of force while others, such as China, Russia, and other developing countries, feared that the criteria would be abused (Alex J. Bellamy, 2006, p. 165). The proponents of R2P were only able to agree on paragraphs 138 and 139 in the World Summit Outcome Document by making compromises, “by bargaining away key tenets of the ICISS’s recommendations” (Alex J. Bellamy, 2006, p. 167).

Nonetheless, the concept was still adopted with a large consensus because of the support of some key leaders, especially those of the African Union. This is in part because the African Union, in its constitutive document, has Article 4(h) of the African Union Constitutive Act mirroring the principles of R2P by stating, “the right of the African Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances, namely: war crimes, genocide, and crimes against humanity” (African Union, 2000, sec. 4(h)). Thus, even with disagreements and compromises, it seems that a vast majority of states have embraced the norm at its basic level, leading us to consider the 2005 World Summit as the tipping point for R2P. The next part outlines the Libyan crisis and its importance in the evolution of R2P as an international norm.

2. The Libyan Crisis

2.1. The Significance of the Libyan Crisis

One question that could arise is why this particular crisis is chosen as a means to assess the evolution of R2P as an international norm. Indeed, there are a number of other crises around the world that can be considered as examples of R2P situations: the crisis in Darfur, the post-election violence in Kenya in 2009, the crisis in Côte D’Ivoire that happened concurrently with the events in Libya, or the current conflicts in Syria and Ukraine. All of these are indeed situations that can be analysed through the prism of R2P and all can give valuable insight into the evolution of R2P as an international norm. However, we believe that the crisis in Libya has a specificity which makes it unique among all the other conflicts. It is the only time that the Security Council authorized a military operation against an internationally recognized state and member of the United Nations with the express purpose of

protecting civilians.

While there were numerous times where the Council authorized the deployment of some military personnel in some countries, they have all been under different circumstances. For instance, all traditional peacekeeping operations, such as the Congo crisis in the 1960s or Darfur in the 2000s, were deployed with the consent of the host country and with strict rules of engagement that consisted mostly of self-defence. The military operation in Iraq in 1990 where the Security Council passed Resolution 678 authorizing “all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area” (UN Security Council, 1990, para. 2) could be seen as an equivalent to what happened in the case of Libya in that the Security Council authorized the use of military force against a member state. However, this also differs from the Libyan case in that Resolution 678 was passed to enforce the provisions of a previous Resolution in the case of a clear aggression by Iraq against Kuwait, and was not concerned with the protection of civilians. The Kenyan post-election crisis, although deemed a case of successful application of R2P (Tutu, 2008), was resolved peacefully, while the deployment of troops in Côte D’Ivoire, another crisis with R2P concerns, was again done with the consent of the internationally recognized government (UN Security Council, 2011c).

Thus, the Libyan crisis is a unique case among military operations sanctioned by the Security Council and among other R2P crises. Furthermore, this case deals with the most extreme case in R2P, namely using force to protect civilians against an unwilling government. The fact that the international community managed to pass a Resolution to respond to the most extreme case of R2P seems to be a clear indication that R2P as a norm is mature enough to influence the behaviour and actions of member states. However, there are other factors that are potentially more important that made the passing of Resolution 1973 possible.

2.2. Background and Events in Libya

The Libyan crisis started in the wake of the revolutions in neighbouring Tunisia and Egypt, in February 2011, when people started demonstrating in various cities across Libya and got reprimanded heavily. The first demonstrations happened in the eastern city of Benghazi, and were met by security forces using excessive and lethal force, causing numerous civilians to die.

With the situation deteriorating quickly, and following the Arab League’s recommendation, the United Nations Security Council convened and passed resolution 1970 (UN Security Council, 2010) on 26 February 2011. In it, the Council expressed “grave concern” (UN Security Council, 2011a, p. 1) at the situation in Libya and condemned “the violence and use of force against civilians” (UN Security Council, 2011a, p. 1). An arms embargo was imposed, preventing weapons from being exported to or out of Libya (UN Security Council, 2011a, para. 9–10) as well as a travel ban (UN Security Council, 2011a, para. 15) and an asset freeze targeting Qadhafi and his immediate family (UN Security Council,

2011a, para. 17).

The government was still amassing the army close to the city of Benghazi and was preparing to assault it, with Qadhafi making inflammatory statements on national television. The League of Arab States called on the UN Security Council “to take the necessary measures to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighbouring States,” and to “cooperate and communicate with the Transitional National Council of Libya and to provide the Libyan people with urgent and continuing support as well as the necessary protection from the serious violations and grave crimes committed by the Libyan authorities, which have consequently lost their legitimacy.” (League of Arab States, 2011) Subsequently, the Security Council then passed Resolution 1973 (UN Security Council, 2011b) on 17 March 2011, submitted by France, Lebanon, the United Kingdom of Great Britain and Northern Ireland and the United States of America, based on the resolution of the League of Arab States. The resolution:

- demanded the immediate establishment of a ceasefire and a complete end to violence and all attacks against, and abuses of, civilians (UN Security Council, 2011b, para. 1);
- imposed a no-fly zone over Libya (UN Security Council, 2011b, para. 6);
- authorized all necessary means to protect civilians and civilian-populated areas, except for a “foreign occupation force” (UN Security Council, 2011b, para. 4);
- strengthened the arms embargo (UN Security Council, 2011b, para. 13);
- imposed a ban on all Libyan-designated flights (UN Security Council, 2011b, p. 17);
- imposed an asset freeze on assets owned by the Libyan authorities, and reaffirmed that such assets should be used for the benefit of the Libyan people (UN Security Council, 2011b, para. 19–20);
- extended the travel ban and assets freeze of Resolution 1970 to additional individuals and Libyan entities (UN Security Council, 2011b, para. 22–23);
- established a panel of experts to monitor and promote sanctions implementation (UN Security Council, 2011b, para. 24).

The resolution was passed with ten votes in favour (Bosnia and Herzegovina, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, South Africa, the United Kingdom, and the United States), zero votes against and five abstentions (Brazil, China, Germany, India, and Russia).

2.3. R2P in the Libyan Crisis

Because we are studying the effect of the Libyan crisis on the evolution of R2P as an international norm, it is imperative to first establish that R2P did indeed play a role in the crisis. Some scholars don't see R2P as having been particularly important or relevant in dealing with the Libyan crisis.

Indeed, Hehir indicated that there was no mention of R2P in either Resolution 1970 and 1973, except for the responsibility of the Libyan government to protect its own people (Hehir, 2013a, p. 147). He also pointed out that statements made by the member states the day of the vote of Resolution 1973 showed “a paucity of references to R2P” (Hehir, 2013a, p. 147), and relied on Chapter VII of the Charter or Resolution 1970 to justify the authorization of military action. This view is however challenged by Dunne and Gelber. Using the same statements of the representatives as Hehir, they argue that “given the extent of the use of explicit RtoP language in the statements and justifications of key state and non-state based actors, it is difficult to agree with Hehir” (Dunne & Gelber, 2014, p. 343). Citing how all the representatives, even those who abstained, emphasized the need of the protection of the civilians, the authors concluded that the statements showed that the international community affirmed its responsibility to protect the civilians of Libya and that it stood united against the actions of the Libyan government, while having different opinions on how to tackle the matter. Thus, this demonstrated that “the RtoP norm was present explicitly and implicitly in the reasoning of Council members.” (Dunne & Gelber, 2014, p. 343)

Furthermore, in our opinion, there is an additional element in the statements made by the representative in the Security Council on the day of the passing of Resolution 1973 that allows us to say that they were issuing their statements with R2P in mind. The issues they addressed, namely the justness of the cause, the right intention of the use of force, its use as a last resort and the prospects and feasibility of the military operation, seem to constitute a number of criteria that the member states used to evaluate the legitimacy of the provisions of the Resolution. Indeed, each member state’s representative touched upon these issues and used these points to justify their support or not of the Resolution. Furthermore, these points are very close to a list of criteria proposed by the ICISS in its initial report on R2P for evaluating the legitimacy of the use of force in dealing with an R2P situation. The ICISS list includes right authority, just cause, right intention, last resort, proportional means and reasonable prospects (International Commission on Intervention and State Sovereignty, 2001, p. 32). The fact that the points addressed in the statements of the representatives seem to cover most of the same criteria advocated by the ICISS leads us to believe that the Council members were indeed using the principles of R2P in discussing and justifying their behaviour, which seems to indicate that R2P exerted an important effect and was thus relatively strong factor. In the next part, we show how member states addressed the issues outlined above in their respective statements just before or just after the vote of Resolution 1973.

2.3.1. Justness of the Cause

Many representatives explained their support of the Resolution because it was a just cause. They talked about the legitimacy, or lack thereof, of the Qadhafi regime. Some states affirmed that the Libyan authorities had lost all legitimacy and were no longer representative of the Libyan people. This

was notably the position of the representative of the United Kingdom, Lebanon, Germany and Portugal. While all member states condemned the repression and aggressions against civilians, these four states made it clear that the Libyan regime of the time could no longer be seen as the representative of the Libyan people and thus there would have to be a political transition to a new regime (UN Security Council, 2011d, p. for the UK p. 4; for Lebanon p. 3; for Germany p. 4; and for Portugal p. 8.). It is interesting to note that though Germany also adhered to this argument, it still abstained in the vote, showing that this issue was of less importance in its view.

The Security Council also discussed the regional implications of an involvement and military participation in Libya in the context of what came to be known as the Arab Spring. Indeed, many countries recognized that important changes were rocking the Arab world and that it could have a big impact on the region in the future. For France, it was “one of the great revolutions that change the course of history” (UN Security Council, 2011d, p. 2) and Germany recognized that “North Africa is undergoing major political changes” (UN Security Council, 2011d, p. 4). However, there was division in how to deal with the particular situation in Libya in that regional context. For France, the United Kingdom and the United States, that meant supporting the opponents of the Qadhafi regime in what they saw as their legitimate demands. France was particularly vehement in its statement, saying that “we must not give free rein to warmongers; we must not abandon civilian populations, the victims of brutal repression, to their fate; we must not allow the rule of law and international morality to be trampled underfoot” (UN Security Council, 2011d, p. 2) and the United States insisted that it “stands with the Libyan people in support of their universal rights” (UN Security Council, 2011d, p. 5). South Africa echoed this sentiment, but to a lesser degree, stressing the necessity for any solution to the conflict to “also preserve the unity, sovereignty and territorial integrity of Libya” (UN Security Council, 2011d, p. 9) and Germany stressed “the opportunities for political, social and economic transformation” (UN Security Council, 2011d, p. 4) of such a movement. But for Brazil, it was the “spontaneous, home-grown nature” of the movement that was the most important and it feared that using force “could change that narrative in ways that may have serious repercussions for the situation in Libya and beyond” (UN Security Council, 2011d, p. 6). Russia was also wary of the possible implications any military operation would have on the whole region.

2.3.2. Right Intention of the Use of Force

The issue of right intention of the use of force was a topic that was addressed by many representatives. Indeed, several members of the Security Council made it clear that they were against resorting to the use of force in this situation but the degree differed. Most notably, China and India were strongly opposed to any form of use of force. The representative from China said that his country was “always against the use of force in international relations” (UN Security Council, 2011d, p. 10), while the Indian representative said that it was “totally unacceptable and must not be resorted to” (UN

Security Council, 2011d, p. 5). On the other hand, the representative of Russia was more wary of the possibility of excessive use of force and the consequences it might have on the conflict and the region (UN Security Council, 2011d, p. 8) and expressed strong concerns over the fact that some countries insisted on having the possibility of using force. Most notably, France and the United Kingdom were the front leaders in arguing for a military operation, and it has since emerged that France's ex-president Nicolas Sarkozy might have had motives for favouring a military solution against Qadhafi (Allen, 2012). However, all member states condemned the use of force of the Qadhafi regime against its population and many acknowledged the fact that Libya did not comply with the previous resolution (UN Security Council, 2011d).

The position of Lebanon on this argument is perhaps the most intriguing in that its representative stated that it "would never advocate the use of force or support war in any part of the world" (UN Security Council, 2011d, p. 4), but that it supported the resolution with the hope that it might serve as a deterrent to the Libyan authorities to force them to stop their operations. This position is possibly due to the fact that Lebanon was not only representing itself but also the position of the League of Arab States that supported the establishment of a no-fly zone and of which Lebanon is a member.

On the other side of the fence, the positions of Nigeria and South Africa are much softer on this issue. Indeed, they are not against the use of force *per se* but against any unilateral use of force or occupation force (UN Security Council, 2011d, pp. 9–10). In supporting the resolution, they emphasized the provisions of the resolution requiring a multilateral and joined effort and explicitly excluding any foreign occupation force. This position clearly reflects the position of many African countries that are suspicious of military operations reminiscent of the humanitarian intervention doctrine. By supporting the resolution, they guarantee that any military operation would have to be multilateral with the Security Council still informed.

2.3.3. Use of Force as a Last Resort

Many representatives also discussed the use of force as a last resort. There was still an on-going mission of the Special Envoy of the Secretary General to Libya taking place at the time (Spokesperson for the Secretary-General, 2011) and some member states such as India were awaiting his report of the situation and his progress (UN Security Council, 2011d, p. 6). At the same time, the African Union was also planning another round of discussion scheduled to start on 19 March 2011 with the Qadhafi regime and the rebels (De Waal, 2013, p. 371). Russia and China were particularly opposed to the possibility of the use of force and pushed strongly for a political and peaceful settlement of the conflict. Russia recalled that it had presented an earlier draft of the resolution backing the efforts of the Special Envoy and the need for a peaceful settlement, but was rejected because "the passion of some Council members for methods involving force prevailed" (UN Security Council, 2011d, p. 8). Both India and Russia also stressed the importance of the involvement of regional organizations in trying

to find a peaceful solution, commending the efforts of the African Union in particular and giving their support to their initiative. Russia also feared the possibility of states using force to further their own agenda rather than just for protecting the civilians while a peaceful and negotiated solution was being researched but said that “during negotiations on the draft, statements were heard claiming an absence of any such intentions” and that it “take[s] note of these” (UN Security Council, 2011d, p. 8).

Even some member states who voted for the resolution were hopeful for a peaceful solution to the conflict. As mentioned earlier, Lebanon hoped the threat of the use of force would deter the Libyan regime from attacking the civilians anymore (UN Security Council, 2011d, p. 4). As members of the African Union, Nigeria and South Africa also expressed strong hope in political and peaceful resolution of the conflict, with Nigeria reminding that “the crisis is one of regional import” (UN Security Council, 2011d, p. 9) and South Africa “the decision of the African Union Peace and Security Council to dispatch an ad hoc high-level committee to Libya to intensify efforts towards finding a lasting political solution to the crisis in that country” (UN Security Council, 2011d, p. 9).

However, there were also those who argued that since the previous resolution was not followed by the Qadhafi regime, the new resolution would have to be stricter with means to enforce its provisions. As explained by the representative of Colombia, “even more important than the establishment of a no-fly zone is its enforcement... [and] without this authorization, the no-fly zone would be illusory”, estimating that “the Libyan authorities had sufficient time to comply with resolution 1970” (UN Security Council, 2011d, p. 7). This view was shared mostly by France, the United Kingdom, the United States, Portugal and Lebanon.

2.3.4. Prospects of the Military Operation

Many states expressed some concerns about prospects of the military operation and the way it would be conducted. India questioned the implementation of the resolution, pointing that they “do not have clarity about details of enforcement measures, including who will participate and with what assets, and how these measures will exactly be carried out” (UN Security Council, 2011d, p. 6) while Russia received no answer regarding “how the no-fly zone would be enforced, what the rules of engagement would be and what limits on the use of force there would be” (UN Security Council, 2011d, p. 8). The abstention of Germany was justified by its view the prospects of the operation were not good. Indeed, it feared large-scale loss of life and making the situation a protracted conflict and announced it would not contribute its forces for the military operations (UN Security Council, 2011d, p. 5). On the other side, France and the United Kingdom simply reaffirmed their readiness to act to enforce the provisions of the resolution, with the United Kingdom clearly citing NATO as a participant in the military operation (UN Security Council, 2011d, p. 4).

3. R2P after the Libyan Crisis

Given the work of Dunne and Gelber and the statements of the representatives outlined in the previous section, it seems difficult to argue that R2P did not have a somewhat important role in the passing of Resolution 1973. However, the aftermath of the military operation seemed to have an adverse effect on the evolution of R2P. Indeed, many states that may or may not have supported the passing of Resolution 1973 complained that NATO overstepped the mandate of the UN resolution and turned the military operation to a goal of regime change. For instance, in a meeting of the Security Council about the issue of protection of civilians in armed conflicts held Tuesday 10 May 2011, the representative of South Africa was concerned that “the implementation of these resolutions [on Libya and Côte D’Ivoire] appear[ed] to go beyond their letter and spirit” and called on actors to “refrain from advancing political agendas that go beyond the protection of civilian mandates, including regime change” (UN Security Council, 2011e, p. 18).

In the same meeting, the representative of Brazil said that “we must avoid excessively broad interpretations of the protection of civilians, which could link it to the exacerbation of conflict, compromise the impartiality of the United Nations or create the perception that it is being used as a smokescreen for intervention or regime change” (UN Security Council, 2011e, p. 11). The representative of China also stressed that “the strengthening of the protection of civilians in armed conflict must strictly abide by the purposes and principles of the Charter of the United Nations” and that “[t]here must be no attempt at regime change or involvement in civil war by any party under the guise of protecting civilians” (UN Security Council, 2011e, p. 20). Referring to “the ambiguous experiences in protecting civilians during peacekeeping operations sanctioned by the Security Council”, the Russian representative reaffirmed that “it is unacceptable for United Nations peacekeepers to be drawn into armed conflict and, in effect, to take the side of one of the parties when implementing their mandate” (UN Security Council, 2011e, p. 9). In an interview, the representative of India went so far as to say that “Libya has given R2P a bad name” (Bopolion, 2011).

While the initial response and the measures taken by the international community seemed to point towards a stricter and more consistent application of R2P, and thus towards R2P getting into the final stage of the “norm life cycle” model, because of this aftermath, it seems that the evolution of the norm has been severely hindered and the norm did not enter the last stage in the “norm life cycle” model. Instead, using the image of Morris, the pendulum is swinging back (Morris, 2013), with some states such as the BRICS re-questioning some of the basic tenets of the norm. In this section, we consider the potential future of R2P and how the “Responsibility while Protecting” concept might bring back the pendulum swing forward for the evolution of R2P.

3.1. The “Responsibility while Protecting” Proposal

The Libyan crisis has laid bare the problems of R2P and has seemingly halted its evolution towards the last phase of the norm life cycle model. This does not mean that the norm will no longer be able to reach it. Instead, it is again in the norm cascade phase, and it needs to reinforce its legitimacy and build up its reputation through socialization, institutionalization and demonstration through the acts of the states and international organizations. One such attempt at trying to move the norm forward again came from the government of Brazil with its concept or “Responsibility while Protecting” (or RWP for short).

This new concept was introduced by Brazilian President Dilma Rousseff at the September 2011 plenary of the General Assembly and further formalized it in a letter of the representative of Brazil to the UNSG dated 9 November 2011 (Brazil, 2011b). Basically, RWP should be seen as complementary approach to R2P, seeking to have member states agree on a set of “fundamental principles, parameters and procedures” (Brazil, 2011b, para. 11) that should guide and legitimize the use of force by the international community to protect civilians. First and foremost, it put back the emphasis on prevention because “it is the emphasis on preventive diplomacy that reduces the risk of armed conflict and the human costs associated with it.” (Brazil, 2011a, para. 11a) The document then described how the international community should react to the threat of violence against civilians by elaborating a number of parameters or criteria that constrain the use of force.

Of particular importance was the notion of last resort, stating that the international community “must be rigorous in its efforts to exhaust all peaceful means available in the protection of civilians under threat of violence” (Brazil, 2011a, para. 11b). The paper further emphasized the importance of this criteria stressing that “it is imperative to always value, pursue and exhaust all diplomatic solutions to any given conflict” (Brazil, 2011a, para. 7) and that the use of force must always be preceded by “a comprehensive and judicious analysis of the possible consequences of military action on a case-by-case basis” (Brazil, 2011a, para. 7). In a possible reference to how Resolution 1973 was passed, the paper also clarified that the international community may resort to force only “upon the manifest failure of the individual State to exercise its responsibility to protect and upon the exhaustion of all peaceful means” (Brazil, 2011a, para. 5). Because of this understanding, the three pillars of R2P “must follow a strict line of political subordination and chronological sequencing” (Brazil, 2011a, para. 6).

The proposal also brought back the possibility of having not only the Security Council as the only authority allowed to authorize the use of force, but also in exceptional circumstances the General Assembly through its “Uniting for peace” Resolution 377(V) (Brazil, 2011a, para. 11c). The paper also outlined a number of other criteria and parameters necessary in order to authorize the use of force. The final paragraphs had to do with increasing the accountability of the force implementing the mandate of the Council. They called for Security Council procedures “to monitor and assess the manner in which resolutions are interpreted and implemented” (Brazil, 2011a, para. 11h) and

requested the Council to “ensure the accountability of those to whom authority is granted to resort to force.” (Brazil, 2011a, para. 11i)

However, since an informal discussion at the United Nations in February 2012, Brazil has not iterated on the concept and no other member state either. While the concept of RWP seems to have been shelved by the Brazilian government, and did not seem to create enthusiasm in the rest of the world, it does not mean that the initiative was devoid of merit. Indeed, the way it was done could pave the way for other member states to contribute meaningfully to the further evolution of R2P. And such initiatives are indeed needed in the aftermath of the NATO military operation in Libya and the current inaction of the international community towards what is happening in Syria. While the initiative was received pretty poorly by the West, viewed sceptically by Russia and China and almost ignored by other rising powers for a number of reasons (Benner, 2013, pp. 4–7), it had nonetheless the merit of trying to push the concept from the apparent halt it had come to and to confront head-on the issues raised by the abuse of R2P (Kolb, 2012, p. 15). It might be said that Brazil pushed this agenda with the purpose of neutering R2P under the cover of stricter rules for its application. Indeed, given the vocabulary they used and the strict chronological requirement they presented, it could be argued that Brazil had no intention to push for a clearer definition of when the coercive part of R2P should be employed, but rather that it wanted to bury the doctrine under very strict requirements that would make it almost impossible to use in actual crises.

Even if we take this stance, it is our opinion that the way Brazil used to propose this further evolution was the good way to push the norm again: it came directly from a relatively strong state, who was not very keen on the idea of R2P but that wanted to achieve more international recognition (Benner, 2013, pp. 1–2). The fact that the proposal came from a state rather than an NGO or a think tank lends strong support to the idea that the norm is important to the international community, especially when coming from a regional power such as Brazil. That it came from a country that was traditionally not very supportive of the concept also helps with putting the concept on the radar of other states and provoke them into having a meaningful debate about it. Furthermore, we shouldn't underestimate the will of states, especially emerging powers, to be more recognized on the international scene. Brazil, having presented this proposal, thrust itself into the light as an international and leading norm entrepreneur, improving its image of international power. Thus, on the form, the Brazilian initiative is a potential good template to follow in order to push R2P again and continue its evolution towards a fully internalized international norm. The content is a different matter.

Many of the aspects of RWP seem to support R2P. Indeed, it brings back the notions of having a set of criteria to be passed in order to authorize the use of force, it emphasizes the importance of prevention and it allows the possibility having the General Assembly authorize such a use of force while reinforcing the accountability of the agents of the mandate and giving the Security Council a say in the interpretation and implementation of the mandate. At first sight, it looks as if RWP is the

right step to give R2P more legitimacy and avoid the mistakes of NATO in Libya. However, on closer inspection, major flaws appear.

One of the most important aspects of the RwP paper is the idea that the three pillars of R2P “must follow a strict line of political subordination and chronological sequencing” (Brazil, 2011a, para. 6). While this may have been implied before, it nonetheless left the Security Council able to decide when to use of force instead of forcing it, as this proposal does, to go through all the different steps of diplomacy. Although it seems a good idea, it is nonetheless a problem because it would cause unavoidable delays and remove the flexibility that would allow a quick response in order to stop an imminent or on-going mass atrocity, and would conflict with the preparedness of member states to take action as they pledged to in the 2005 World Summit Outcome Document (Kolb, 2012, p. 12). This point was further addressed during informal debates at the UN about RwP and even the Brazilian representative rejected to strict adherence to a chronological order (Benner, 2013, p. 7).

The RwP concept also further limits the conditions for and the possibility of military action by stating that “the use of force must produce as little violence and instability as possible and under no circumstance can it generate more harm than it was authorized to prevent” (Brazil, 2011a, para. 11e). Such a condition is impossible to guarantee at the onset of any military operation and it would discourage any entity wanting to enforce the mandate because it could be held responsible for anything that would go wrong. Another potential complication is the call for continuous coordination with the Security Council during on-going operations. While it does make the military operation more accountable and transparent, it may also cause delays to important operations and even possibly be counter-productive to the forces on the ground. The Brazilian proposal was also very vague on this matter and did not offer concrete or specific ways to improve this issue (Kolb, 2012, p. 15).

Given these issues, it seems that RwP, while offering a number of objective improvements to R2P, may actually impede the proper response to crises. Introducing a number of criteria to be met in order to authorize the use of force and the emphasis on prevention and greater accountability all serve to improve the legitimacy of R2P and reinforce it. However, the imposed chronological sequencing and the impractical monitoring and assessment of military operations would make any attempt at stopping on-going atrocities highly improbable. If the goal of R2P is to no longer have a Rwanda or a Srebrenica, then RwP as it has been presented by Brazil may be counter-productive to R2P.

3.2. The Lessons of Libya

While the Libyan crisis could have been the beginning of the “internalization” phase of the evolution of R2P, the way NATO overstepped its mandate induced a strong backlash against the norm, seemingly stopping its evolution. Even the Brazilian proposal of RwP, while done in a laudable way, failed to gather enough momentum and its content was also counter-productive to R2P. However, it is possible to say that this backlash against R2P is a good thing because it forces its proponents to take

another good look at the norm and try to address the issues more specifically than before. And there are a few lessons to take from this.

First, while R2P continues to be a political rather than a legal norm (Stahn, 2007, p. 120) and is “predicated on an assumption that normative pressure will compel states to alter their foreign policies” (Hehir, 2013b, p. 38), it still seems that R2P has managed to become the *de facto* framework for dealing with mass atrocities. Indeed, as we have seen in the statements of the member states, states no longer question the fact of whether to do something about such crises but rather how the best answer would be. And while there could still be deadlocks in the Security Council over how to react such as in the case of the war in Syria, it remains an important change compared with the past decades of the prevalence of the principle of non-intervention. Thus R2P has managed to impose its agenda at least on the framing of crises.

Second, the Libyan crisis has shown that there needs to be a stronger control over the intervening force when it has received the authorization of the use of force. While the Brazilian concept of *RwP* proposed some important steps to give the UN more control over the operations, those steps are too constraining and would only impede the possibility of the force to react in a timely manner to threats on the ground. One possible way to circumvent this problem would be to have clearer vocabulary used in Resolutions, but that too would possibly “make it more difficult for Council members to find common ground on human protection mandates” (A. J. Bellamy & Williams, 2011, p. 847). Nonetheless, it is important for R2P to avoid the kind of interpretation of mandates as what happened for the Libyan crisis, and it would be probably necessary to have a stronger oversight by the UN on the intervening force, but not to the level proposed by Brazil.

Third, the possibility of the use of force needs to remain a part of R2P. Morris proposed that Pillar III of R2P be excised, leaving R2P as a standard for proper behaviour and a platform of prevention and capacity-building while decisions on any military operation would be back to being discussed by the Security Council on a case-by-case basis (Morris, 2013, p. 1282). However, that would simply take us back to previous status quo of having the Security Council decide on whether to intervene or not. Hehir points at this particular issue, noting that Resolution 1973 was “consistent with the Security Council’s record of inconsistency”¹, and that “claims of both legal and normative novelty made by the optimists are dubious given the historical record” (Hehir, 2013a, p. 157). But R2P is more than just a catchword covering only existing obligations and offering nothing new. Indeed, while before R2P, the question was whether to do something about a particular crisis; it has since become a question of how to do so instead. R2P also brings together a number of commitments and offers a number of tools to deal with the issues, allowing for them to possibly become part of international law in the future. This is in clear opposition with the previous paradigm of *ad-hoc* non-precedent-setting of the various Security Council decisions on how to deal with particular crises and doing what Morris suggests would bring us back to that paradigm. Therefore, R2P needs to stay as a comprehensive package, including

the possibility of the use of force, dealing with mass atrocities.

Fourth, as stated earlier, the way to advance the norm best would be to follow the Brazilian way of making a proposal and debating it in the UN. That way not only engages the international community as a whole but is also more likely to give strong legitimacy to the potential points that would be accepted because of the inclusive character of the debate and it coming from the result of a consensus.

Fifth, and following the proposal in RwP and other scholars, it is necessary to address the issue of the lack of legal codification of R2P. Indeed, with the authorization of the use of force depending on the good will and self-interest of the permanent members in the Security Council, R2P would have no chance to become consistently applied. One way is to actually try and codify R2P. As stated by Hehir, “it is obvious that legal reform is required” (Hehir, 2013b, p. 52) and he rightly notes that R2P proponents and organizations dismiss or ignore that issue (Hehir, 2013b, p. 38). However, if R2P is to become an internalized norm, the codification process will sooner or later have to be done. Another way to address this issue would be to find other sources of authority outside of the Security Council, such as the General Assembly or regional organizations, as was suggested in the original ICISS report (International Commission on Intervention and State Sovereignty, 2001, p. 53). This authority could be legal, through the “Uniting for Peace” procedure for the General Assembly or through Security Council authorization *ex post facto* for regional organizations. However, it is necessary to avoid any unilateral actions because that would bring us back to the days of humanitarian interventions and the doubts over the real reasons of intervention. A final way could be to come up with a new paradigm of authorization but there have been no such proposals yet.

4. Conclusion

We have analysed the evolution of R2P as an international norm using the “norm life cycle” model developed by Finnemore and Sikkink. We have found that the evolution of R2P could be divided in two main periods: the first between 2001 and 2005, and the second from 2005 until now. These periods correspond to the “norm emergence” phase and the “norm cascade” phases respectively and are separated by the 2005 World Summit, which serves as the “tipping point” of the norm life cycle model. The Libyan crisis was a defining moment in this evolution because it could have heralded a more consistent application of the norm and thus the beginning of its “internalization” phase. We have added another argument in support of the view that R2P was indeed important in the decision-making of member states who voted for Resolution 1973. The statements of the member states showed that they evaluated the response to the crisis not just through self-interest but through a number of moral criteria that are intrinsically linked with the vocabulary of R2P. But while the Libyan crisis could have served as a bridge towards bringing R2P to the last “internalization” phase, its aftermath has clearly brought the rapid evolution of the norm to a halt or even a back swing.

We also discussed the potential future of the norm. We found mixed results. On the one hand, the basic principles of the norm are relatively well accepted by states and civil society in general, having intrinsic characteristics and strong adjacency claims with notions of human rights and human security, and R2P has managed to become the de facto framework for talking and dealing with mass atrocities. On the other hand, the norm remains divisive concerning the possibility of the use of force, with strong opposition from China and Russia and a cautious attitude from India and South Africa. The RWP proposal of Brazil, while inconclusive in the end, could provide a model for emerging powers to contribute to the further evolution of R2P if they so wished. For R2P to stay relevant, it needs to keep the possibility of coercive action and deal with the issue of its codification into international law. The pendulum of R2P evolution is still swinging backwards, and to switch it back forward, the main actors, states and the United Nations, should be taking the issues and engage in further discussion about the challenges R2P faces when implementing its reactive part and notably its authorization of the use of force.

Notes

- 1 Aidan Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect,' *International Security* 38, no. 1 (July 1, 2013): 157, doi: 10.1162/ISEC_a_00125.

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