



Institute for Security Studies

# SITUATION REPORT

## LIBYA AND THE RESPONSIBILITY TO PROTECT

Between opportunistic humanitarianism and value-free pragmatism

The application of the 'responsibility to protect' (R2P) norm to Libya in 2011 was successful but controversial. For 350 years since Westphalia, sovereignty functioned as institutionalised indifference. International interventions in Kosovo and East Timor in 1999 broke that mould and provided the backdrop to United Nations (UN) Secretary-General Kofi Annan's search for a new norm. With Canada's help, an international commission formulated the innovative principle of the responsibility to protect.<sup>2</sup>

Let us not forget, the UN's origins lie in the anti-Nazi wartime *military* alliance among Britain, the United States and the Soviet Union; it was never meant to be a pacifist organisation. Its primary purpose was the maintenance of international peace and security. The chief responsibility for doing this was vested in the all-powerful Security Council as the world's sole and duly sworn-in sheriff for enforcing international law and order.

The system of collective security against interstate aggression never materialised. In the decades after World War 2 the nature of armed conflict was transformed.<sup>3</sup> Interstate warfare between uniformed armies gave way to irregular conflict between rival armed groups. The nature of the state too changed from its idealised European version. Many communist and some newly decolonised countries were internal security states whose regimes ruled through terror. Increasingly, the principal victims of both types of violence were civilians. Advances in telecommunications brought the full horror of their plight into the world's living rooms. In the meantime, the goals of promoting human rights and democratic governance, protecting civilian victims of humanitarian atrocities and punishing governmental perpetrators of mass crimes became more important. R2P spoke eloquently to the need to change the UN's normative framework in line with the changed reality of threats and victims.<sup>4</sup>

Failure to act in the 1994 Rwanda genocide<sup>5</sup> and the non-UN-authorized humanitarian intervention in Kosovo in 1999 set off angry and deeply divisive recriminations around the world for acts of omission and commission.<sup>6</sup> In the wake of that controversy, the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) argued that the essential nature of sovereignty had changed from state privileges and immunities to the responsibility to protect people from atrocity crimes. Where the state defaulted on its solemn responsibility, owing to lack of will or capacity, or because it was itself complicit in the commission of the atrocities, the responsibility to 'protect' tripped upwards to the international community acting through the authenticated structures and procedures of the UN.

Anne Orford argues that, contrary to claims that the requirement is to put the R2P principle into practice, R2P is

an attempt to integrate existing and evolving but dispersed practices of protection into a conceptually coherent account of international authority.<sup>7</sup>

The unanimous endorsement of R2P by world leaders in 2005 was historic, for it spoke to the fundamental purposes of the UN and responded to a critical challenge of the 21st century. R2P captures and channels the convergence of some significant trends in world affairs. Its preventive and rebuilding pillars involve strengthening a state's capacity to handle its own law and order problems. Nevertheless, R2P's hard edge requires the international community, acting through the UN, to take up the slack when any state defaults on its sovereign responsibility to protect all people inside its borders.

## NOT A WESTERN IMPLANT

The R2P debate is emphatically not a West versus The Rest narrative. Instead the theory and practice of state sovereignty is itself decidedly European. Developing countries, not Western ones, are the likely targets of international military interventions. If their people are the principal beneficiaries and their states the main victims when R2P is put into practice, their scholars, think tank analysts, public intellectuals and journalists should be the lead debaters. Asia has its own rich traditions that vest sovereigns with responsibility for the lives and welfare of their subjects while circumscribing the exercise of power with the majesty of law that stands above the agents of the state. In India, Ashoka, the great Mauryan emperor (3rd century BC), inscribed the following message on a rock edict: 'This is my rule: government by the law, administration according to the law, gratification of my subjects under the law, and protection [sic] through the law.'<sup>8</sup>

The debate is also wrongly framed on substance. In the real world, we know that there will be more atrocities, victims and perpetrators – and therefore more interventions. They were common before R2P; they are not guaranteed with R2P. The real choice is not whether and if interventions will take place, but when, why, how, by whom and under whose authority. Unilateral and ad hoc interventions will sow and nourish the seeds of international discord. Multilateral and rules-based interventions will speak powerfully to the world's determination never again to return to institutionalised indifference to mass atrocities.

R2P attempts to strike a balance between unilateral interference and institutionalised indifference. It will help the world to be better prepared – normatively, organisationally and operationally – to meet the recurrent challenge of external military intervention wherever and whenever it arises again, as assuredly it will. To interveners, R2P offers the prospect of international legitimacy, reduced compliance and transaction costs and more effective results. To potential targets of intervention, R2P offers the

reassurance of a rules-based system. Absent an agreed new set of rules, there will be nothing to stop the powerful from intervening 'anywhere and everywhere'.

## GADDAFI IN THE CROSSHAIRS OF A CHANGING NORMATIVE ORDER

R2P is narrow – it applies only to the four crimes of ethnic cleansing, genocide, crimes against humanity, and war crimes. But it is deep: there are no limits to what can be done in responding to these atrocity crimes. In a matching symmetry, support for R2P has been broad but shallow. In a poignant testament to its tragic origins and normative power, R2P was the discourse of choice in debating how best to respond to the Libya crisis in 2011.

R2P is not solely about military intervention. The world's comfort level is greater with action under Pillar One (building state capacity) and Pillar Two (international assistance to build state capacity) than Pillar Three (coercive international action with the final option being military intervention to protect at-risk populations from atrocity crimes). By its very nature, including unpredictability, unintended consequences and the risk to innocent civilians caught in the crossfire, warfare is inherently brutal: there is nothing humanitarian about the means. But, to be meaningful, the R2P spectrum of action must include military force as the option of last resort.

## The R2P debate is emphatically not a West versus The Rest narrative

The UN Security Council, Human Rights Council and Secretary-General called on Libya to respect its R2P, human rights and international humanitarian law obligations.<sup>9</sup> When their appeals were ignored, on 26 February 2011 in Resolution 1970 the Security Council demanded an end to the violence in Libya, which 'may amount to crimes against humanity'; imposed sanctions; affirmed Libya's R2P obligations; and referred Muammar Gaddafi to the International Criminal Court.<sup>10</sup> On 4 March, the Global Centre and International Coalition for R2P published an open letter to the Security Council pointing out that Resolution 1970 had failed to halt attacks taking place at the moment and calling for additional protective measures.<sup>11</sup>

Although Britain and France took the lead in trying to mobilise diplomatic support for some military action to help the Libyan rebels, the critical turning point was US backing. The key decision was made by US President Barack Obama at a meeting with top officials on 15 March.<sup>12</sup>

The game-changer was the juxtaposition of R2P as a powerful new galvanising norm; the defection of Libyan diplomats who joined the chorus of calls from the rebels for immediate action to protect civilians; and Arab, French and British participation that provided political cover and international legitimacy. In Iraq in 2003, Washington was the ardent suitor for military intervention. In Libya in 2011, Washington was the reluctant follower.

## Libya marks the first time the Security Council has authorised an international R2P operation

Adopted on 17 March by a 10-0-5 (China, Russia, Brazil, Germany, India) vote, Security Council Resolution 1973 authorised the use of 'all necessary measures ... to protect civilians and civilian-populated areas': the first UN-sanctioned combat operation since the 1991 Gulf War.<sup>13</sup> In the Balkans, it took NATO almost the full decade to intervene with air power in Kosovo in 1999. In Libya, it took just one month to mobilise a broad coalition, secure a UN mandate to protect civilians, establish and enforce no-fly and no-drive zones, stop Gaddafi's advancing army and prevent a massacre of the innocents in Benghazi.

Carefully crafted to both authorise and delimit the scope of intervention, Resolution 1973 specified the purpose of military action as humanitarian protection and limited the means to that goal. At a time when the recapture of Benghazi by Gaddafi loyalists seemed imminent, it authorised military action to prevent such civilian slaughter but not intervene in the civil war (any state has the right to use force to suppress armed uprisings), not effect regime change, and not occupy Libya. Gaddafi was not to be directly targeted. To the extent that he was so targeted, NATO exceeded UN authority in breach of the Charter law.

Obama's insistence that the US would not be deploying ground troops aligned military means to the limited ambitions and objectives: humanitarian protection, not regime change.<sup>14</sup> In contrast to the Bush Doctrine, under Obama the United States will act in concert with others, not alone; coax, persuade and heed, not impose its will; and set clear limits on goals and means. This did not please some shadow warriors. Referring to the role of Hillary Clinton, Susan Rice and Samantha Power in the decision to join the intervention against the inclinations of Defense Secretary Robert Gates, National Security Adviser Thomas Donilon and Chief of Counterterrorism John Brennan, Jacob Heibrunn derided Obama for effectively having

been henpecked into interventionism by 'these Valkyries of foreign affairs'.<sup>15</sup> Not to be outdone on misogyny, Mark Krikorian commented caustically that 'our commander-in-chief is an effete vacillator who is pushed around by his female subordinates'.<sup>16</sup>

## NORM CONSOLIDATION OR ABUSE?

The jury is still out on whether NATO military action in Libya will consolidate or soften the R2P norm. There were inconsistencies in the muted response to protests and uprisings in Bahrain and Saudi Arabia, where vital Western geopolitical and oil interests are directly engaged, and with the lack of equally forceful military action in Syria and Yemen. Western failures to defend the dignity and rights of Palestinians under Israeli occupation have been especially damaging to their claims to promote human rights and oppose humanitarian atrocities universally instead of selectively.

Despite the doubts, the alternative of standing idly on the sidelines yet again would have added to the shamefully long list of rejecting the collective responsibility to protect. Gaddafi would have prevailed and embarked on a methodical killing spree of rebel leaders, cities and regions alley by alley, house by house, room by room. Had the world shirked its responsibility, Libya could have been the graveyard of R2P and the UN might as well have sounded the last post for it.

Libya marks the first time the Security Council has authorised an international R2P operation. Côte d'Ivoire was the first time it authorised the use of military force by outside powers solely for the protection of civilians. In justifying the authorisation of all necessary measures by the UN peace operation in Côte d'Ivoire, Security Council Resolution 1975 reaffirmed 'the primary responsibility of each State to protect civilians' and, in the same sentence, reiterated that 'parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of civilians'.<sup>17</sup> Between them, Resolutions 1973 and 1975 show that including R2P language in the preamble might provide the normative justification for protection of civilians (POC) demands in the operational paragraphs of the UN mandates.

Seamus Milne, convinced that the Arab revolution had been hijacked by the imperialist West in Libya, argued: 'If stopping the killing had been the real aim, NATO states would have backed a ceasefire and a negotiated settlement, rather than repeatedly vetoing both'.<sup>18</sup> Terry Macalister, the *Guardian's* energy editor, believes that: 'The Libyan conflict has been a war about oil if not "for" oil'.<sup>19</sup>

In his speech to the General Assembly, India's Prime Minister Manmohan Singh made a thinly veiled attack on the expansive interpretation of Resolution 1973: 'Actions taken under the authority of the United Nations must

respect the unity, territorial integrity, sovereignty and independence of individual states.<sup>20</sup> Russia and China led the chorus of dismay at the UN appearing to take sides in the internal conflicts in Libya and Côte d'Ivoire.<sup>21</sup> They may be less willing in future to permit sweeping endorsements for tough action, either by a coalition (Libya) or by UN peacekeepers (Côte d'Ivoire).

Value-free pragmatism is no more an answer to the challenge of reconciling realism and idealism than opportunistic humanitarianism. Brazil, China, Germany, India and Russia joined the African Union (AU) in positioning themselves on the wrong side of the war – as witnessed in the triumphal visit of British Prime Minister David Cameron and French President Nicolas Sarkozy to Libya in September – and on the wrong side of history insofar as the emerging normative architecture is concerned. The AU moved to recognise the rebel Transitional National Council (TNC) on 20 September, only after they had captured Tripoli. Among others, one risk for the AU is that the new regime will highlight its Arab over its African heritage and identity.<sup>22</sup> The reason this matters is that, following the Libya precedent, regional organisations may well acquire a critical 'gatekeeping role' in the global authorisation of R2P-type operations.<sup>23</sup> As long as the rising new powers remain more concerned with consolidating their national power aspirations than developing the norms and institutions of global governance,<sup>24</sup> they will remain incomplete powers, limited by their own narrow ambitions, with their material grasp being longer than their normative reach.

The Libyan people's euphoria and NATO's relief over the successful military campaign are likely to temper criticism of the manner in which NATO rode roughshod over UN authorisation to protect civilians. For NATO had indeed intervened on behalf of one side in a civil war and pursued regime change. That said, we should not retreat into naivety on what may be required in particular circumstances. Already in 2003, replying to criticisms of the ICISS report by Professor Adam Roberts, I had noted that 'the primary motivation behind intervention – the cause rather than the necessary condition – must not be defeating an enemy state', but 'if defeat of a non-compliant state or regime is the only way to achieve the human protection goals, then so be it'.<sup>25</sup> In Libya, the West's strategic interests coincided with UN values. This does not mean that the latter was subordinated to the former. It does mean, as with Australia vis-à-vis East Timor in 1999, that there was a better prospect of sustained NATO engagement than if Western interests were not affected.

Paris, London and Washington – and UN Secretary-General Ban Ki-moon – did not waver in their resolve, despite critics from the left pushing for diplomacy, not war, and critics from the right calling for boots on the ground. The protracted wars in Iraq and Afghanistan notwithstanding, too many expected or demanded instant

military gratification. In fact six months to overthrow an entrenched and determined dictator is not excessively long.

The outcome is a triumph first and foremost for the citizen soldiers who refused to let fear of Gaddafi's thugs determine their destiny any longer. It is a triumph secondly for R2P. It is possible for the international community, working through the authenticated, UN-centred structures and procedures of organised multilateralism, to deploy international force to neutralise the military might of a thug and intervene between him and his victims. NATO military muscle deployed on behalf of UN political will helped to level the killing field between citizens and a tyrant.

## We should not retreat into naivety on what may be required in particular circumstances

But the ruins of Libya's political infrastructure and parlous state of its coffers mean that the third component of R2P – the international responsibility to rebuild and reconstruct – will also be called on. The willingness, nature and duration of outside help will help to shape the judgement of history on whether Western motivations were primarily self-interested geopolitical and commercial, or the disinterested desire to protect civilians from a murderous rampage. As with the war itself, however, the lead role will have to be assumed by Libyans themselves, while the international community can assist without assuming ownership of the process or responsibility for the outcome.

The price of that in turn may require the international community to accept and live with the political choices made by the Libyans. Iraq showed an unexpected determination in refusing to exempt US forces from its laws and so Washington decided to pull out all combat forces by the end of 2011. Similarly, in insisting that Sharia would be the main reference point for the new Libya's legal framework, the TNC was telling its own people, the region and the world that it did not foresee being a mere puppet of the West. The obeisance to a moderate form of political Islam appeases Muslims and buttresses domestic and regional legitimacy by drawing on traditional and religious wellsprings of legitimacy while signalling a deliberate distancing from the West. Yet, simultaneously, there is also an acceptance of democratic rules, stated openness to democratic institutions, and a willingness to integrate with world markets. It is possible that the TNC looks to today's Turkey as the primary model: increasingly self-confident geopolitically, integrated into the international economy,

but also religiously conservative. In addition, of course, the growing global and African profile of the powerful non-Western players from the BRICS – Brazil, Russia, India, China, and South Africa – gives Libya room for manoeuvre in setting the new terms of engagement with the West. This includes the challenging question of relations with Israel, on which the BRICS are not captives of Israeli intransigence like the West seems to be.

## CONCLUSION

In both Libya and Côte d'Ivoire, regimes that had lost domestic and international legitimacy declared war on their own people. In both, global political responses were shaped by universal values as well as strategic interests. Because the UN is taking the lead in redefining sovereignty by aligning state prerogatives with the will and consent of the people, the ruling class of any country must now fear the risk and threat of international economic, criminal justice and military action if they violate global standards of conduct and cross UN red lines of behaviour.<sup>26</sup>

The two operations in Libya and Côte d'Ivoire therefore mark a pivotal rebalancing of interests and values. In the old world order, international politics, like all politics, was a struggle for power.<sup>27</sup> The new international politics will be about the struggle for the ascendancy of competing normative architectures based on a combination of power, understood as the disciplined application of force, and values and ideas.

## There is also an acceptance of democratic rules ...

With the capture and killing of Gaddafi, hard questions, unasked so as not to complicate the push for victory, come to the fore. Who are the rebels? What do they stand for? For whom do they speak? How much popular support do they command? Albeit qualified and incomplete, therefore, Libya nevertheless does mark an important milestone on the journey to tame atrocities perpetrated on their own people by tyrants.

Tunisia, Egypt and Libya have fallen, boosting the demonstration effect of the Arab Spring in several other countries. But there is nothing self-guaranteeing about any revolution. Mob rule may overthrow a dictator but cannot, by itself, give birth to democracy. Because powerlessness has been displaced by ownership does not mean that deprivations will disappear. A revolution can devour its

authors and lead to even greater tyranny: witness the reigns of terror after the French, Russian, Chinese and Iranian revolutions; or it can lead to a republic founded on laws and ruled by democratic consent, as in the United States and Eastern Europe after the collapse of the Soviet Union.

In the words of former Secretary-General Dag Hammarskjöld, the UN was 'not created in order to bring us to heaven, but to save us from hell'.<sup>28</sup> Failures in Africa and the Balkans in the 1990s reflected structural, political and operational deficiencies that accounted for the UN's inability to save people from a life of hell on earth. R2P responds to the idealised United Nations as the symbol of an imagined and constructed community of strangers: we are our brothers and sisters' keepers.

## NOTES

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