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International Responses to Human Protection Crises: Responsibility to Protect and the Emerging Protection Regime*

This essay examines contemporary debates about human protection by the UN Security Council and others in response to major humanitarian crises. It argues that there are clear signs of an emerging international human protection regime in the evolving practice of the Security Council and suggests that this regime is based on an accommodation between different moral accounts of humanitarian intervention. The first section examines some of the legal and moral debates that have arisen with respect to military intervention for protection purposes. The second section briefly reviews the Security Council's practice and reveals an emerging new politics of protection. The third section argues that although the use of force and other coercive measures remains controversial, there is evidence to suggest that the Security Council is taking its protection responsibilities more seriously in a way consistent with the emergence of a new regime.

Keywords: human protection; humanitarian crisis; humanitarian intervention; Security Council; United Nations.

On 19 March 2011, military forces from France, Canada, the United Kingdom and the United States struck the air defenses and soldiers of Muammar Gaddafi's regime in Libya. These countries led a wider coalition of states with the stated aim of enforcing the objectives set out by United Nations (UN) Security Council Resolution 1973 (2011), principally the enforcement of a no-fly zone over Libya, imposition of an arms embargo, and the protection of civilians. The following day, a summit was convened in Paris in which the initial modalities of Operation *Odyssey Dawn* were finalized. This involved representatives of 18 states (primarily from Europe and North America but also including Iraq, Jordan, Morocco, Qatar and the United Arab Emirates) as well as officials from the League of Arab States (LAS) and the European Union (EU). On 23 March, NATO leadership took over enforcement of the arms embargo; on 26 March it assumed responsibility for enforcement of the no-fly zone; and on 31 March the Alliance assumed full control of operations under what was now called *Operation Unified Protector*. Not all NATO members participated – Poland and Germany were notably absent – but the Alliance was joined by several others including Sweden, Jordan, Qatar and the United Arab Emirates (UAE). On 4 April, President Obama withdrew US forces from direct combat, after which the lion's share of combat missions were

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conducted by France, Britain, Italy, Denmark, Belgium, Canada, the UAE, Qatar and Norway. NATO-led operations prevented the fall of the rebel stronghold of Benghazi and a widely anticipated massacre, and after a period in which the frontline moved backwards and forward with alarming rapidity, the conflict settled into a period of stalemate. During this period, NATO and its allies continued to use force against Libyan targets, including command and control facilities. On 19 August, forces loyal to the rebel National Transitional Council (NTC) stormed Tripoli and the city was taken in the space of a week. Fighting continued around government strongholds until October, when the town of Sirte fell to rebel forces and Gaddafi himself was captured and executed.

As I argued in an article written with Paul D. Williams, the UN Security Council's response to the Libyan crisis in 2011 was significant for a number of reasons (Bellamy and Williams, 2011). Most notably, Resolution 1973 (17 March 2011) was the Council's first to mandate the use of military force against the *de jure* authorities of a UN Member State for the purpose of human protection. Although the Council had come close in the past, it had never before crossed the line. In Resolution 794 (December 1992), the Council had authorized the Unified Task Force to enter Somalia to ease the humanitarian crisis, but this was in the absence of a central government rather than against one. Similarly, in Resolution 929 (June 1994), the Security Council authorized the French-led *Operation Turquoise*, ostensibly with the humanitarian aim to protect victims of the ongoing genocide in Rwanda. Despite many concerns over the French government's motives, *Operation Turquoise* enjoyed the consent of the interim government in Rwanda as well as its armed forces. In resolution 940 (September 1994), the Security Council authorized the use of military force to oust the military junta in Haiti. But not only did this mission receive the explicit support of Haiti's *de jure* authorities (S/1994/905 annex), it was justified primarily with reference to defending democracy. The protection of Haitian civilians was only implied in the resolution's references to the intervening force maintaining a "secure and stable environment" (operative paragraphs 4 and 9a). More recently, in the Democratic Republic of Congo, Sudan, South Sudan and Côte d'Ivoire, the Security Council authorized the use of all necessary measures to protect civilians, but the blue-helmet operations in these countries all operated with the official permission of the state's *de jure* authorities. This was not the case in Libya. The Security Council has thus entered new political terrain: using force against a *de jure* government with the stated aim of protecting civilians.

Also significant was the Council's willingness to quickly apply a raft of measures short of military force to coerce and persuade the Libyan authorities to change course. Resolution 1970 (26 February 2011) imposed targeted financial sanctions, an arms embargo, referred the situation to the International Criminal Court, mandated intensive diplomacy and demanded a peaceful resolution to the conflict. Indeed, one recent assessment suggests that the Council utilized almost the whole of its "preventive toolkit" in Resolution 1970, prior to authorizing the use of military force (Reike, 2012).

Finally, because the Council referred to the "responsibility to protect" (RtoP) principle in four of its resolutions on Libya – 1970 (2011), 1973 (2011), 2016 (2012), 2040 (2012) – its response to the situation there has unsurprisingly been characterized as a key test of this principle. For some of the principle's supporters, such as Gareth Evans (2012: 1), Resolutions 1970 and 1973 represented "a textbook example of how the Responsibility to Protect is supposed to work in the face of a rapidly unfolding mass atrocity situation."

However, controversy surrounded the implementation of Resolution 1973, stemming from the widely held view that the actions of NATO and its allies went beyond – or indeed violated – the terms of Resolution 1973. Key in this regard were the coalition's apparently overt pursuit of regime change despite the absence of a specific mandate to that effect, the supply of arms to rebel groups potentially in contravention of the Council's arms embargo, and NATO's unwillingness to countenance a negotiated settlement despite specific provisions to that effect in the resolution. These concerns prompted significant criticism from Council members, including two permanent members (China and Russia) and several significant emerging powers (notably Brazil, India and South Africa). They also gave rise, among other things, to the development of the concept of "responsibility while protecting" (RWP) by Brazil, which included a call for limits on Council decision-making (in the form of a focus on prevention and criteria to guide decision-making) and accountability measures to oversee the implementation of its resolutions. The intervention in Libya also reawakened lingering suspicions about the potential of the RtoP to be abused by Western states pursuing "regime change." According to some analysts, partly as a result of this, there developed an atmosphere within the Council that hindered the search for common ground on other crises, most notably Syria. Indeed, some commentators have argued that the Council's inability to reach a consensus on Syria is effectively "collateral damage" from the fallout over the Council's handling of Libya (Goldberg 2012).

This essay examines contemporary debates about human protection by the UN Security Council and others in response to major humanitarian crises and argues that despite the controversies stemming from Libya and problems inherent in international society's response to the crisis in Syria, there are clear signs of an emerging international protection regime. The essay proceeds in three parts. The first section examines some of the legal and moral debates that have arisen with respect to military intervention for protection purposes. The second section briefly reviews the Security Council's practice and reveals an emerging new politics of protection. The third section argues that, although the use of force and other coercive measures remains controversial, there is evidence to suggest that the Security Council is taking its protection responsibilities more seriously in that it is more likely to become engaged in protection crises than it once was.

Debating Intervention

Historically, genocides and episodes of mass killing have tended to end in one of two ways: either the perpetrators succeed in achieving their ambitions or they are forcibly prevented from doing so (Bellamy, 2009; de Waal and Zilkic, 2006). This cold fact is borne out by recent cases. The 1994 Rwandan genocide ended with the defeat of the Rwandan government and *interehamwe* militia at the hands of a rebel group known as the Rwandan Patriotic Front (RPF); the war in Bosnia came to an end when the military balance turned in favour of a Croat-Muslim coalition backed by NATO airpower; and NATO airpower brought ethnic cleansing in Kosovo to an end. On the other hand, the rate of killing in Darfur declined since its peak in 2003-4 primarily because the *Janjaweed* militia and their government backers have largely succeeded in forcing their enemies into exile, whilst the failure of either side to score a decisive victory in Syria has led to a protracted conflict characterized by mass atrocities.

Facts like this pose a major challenge to international peace and security. For both liberals and realists alike, security has traditionally been understood as the purview of states, and two of the main guarantors of national security are the principles of sovereignty and non-interference.¹ According to this perspective, international security is best pursued through a society of sovereign states that enjoy exclusive jurisdiction over a particular piece of territory and rights to non-interference and non-intervention that are enshrined in the

¹ For a good account of this way of thinking see Jackson (2000).

Charter of the United Nations (Bull 1977). This is often labeled ‘Westphalian sovereignty’, referring to the 1648 Peace of Westphalia, which is commonly reckoned to have instituted a world order based on the right of sovereigns to jurisdiction over their own territory and the view that international rules should be limited to those governing coexistence between states rather than affairs within them.² Elements of this idea sit at the heart of contemporary international society’s rules governing relations between states. Article 2 (4) of the UN Charter forbids the threat or use of force by states in their dealings with one another, and Article 2 (7) prohibits the UN from interfering in the domestic affairs of its member states. There are only two exceptions to the ban on the use of force contained in Article 2(4): Article 39 gives the UN Security Council the right to authorise military action in cases where it identifies a “threat to international peace and security,” and Article 51 recognizes that all states have an inherent right to use force in self-defence.

The value of this Westphalian system of security rests on the assumption that states are the best guardians of their citizens’ security and reflect the values and moral preferences of the communities they house (e.g. see Walzer, 1994). In other words, the security of the state is considered important, and worth protecting, because states provide security to individuals and allow communities to flourish on their own terms. It should be clear from the preceding paragraphs, however, that this assumption is problematic. In the past century, threats to human security have tended to come more from an individual’s own state than from other states (Commission on Human Security, 2003: 2). This raises the question of whether there are circumstances in which the security of individuals should be privileged over the security of states.

The debate about the use of force for protection purposes thus hinges on the question of whether a state’s right to be secure and free from external interference should be conditional on its fulfillment of certain responsibilities to its citizens, not least a responsibility to protect them from mass killing. As a heuristic tool, it suggests that different positions can be plotted along two axes – the first relating to our conception of what is possible in world politics, and the other relating to which actors should be privileged (see Table 1).

² For a discussion of Westphalian and post-Westphalian concepts of sovereignty see Bellamy and Williams (2010).

Table 1: Contending Values and Perspectives

	State-centred	People-centred
Optimist	<i>rule-utilitarian</i> <i>legal-positivist</i> <i>pluralist (English school)</i> <i>communitarian (?)</i>	<i>liberal internationalist</i> <i>social contractualist</i> <i>cosmopolitan</i> <i>solidarist (English school)</i> <i>natural law</i>
Tragic	<i>Realist</i> <i>post-colonial (?)</i> <i>Marxist</i> <i>communitarian (?)</i>	<i>post-structuralist</i> <i>feminist (critical)</i> <i>post-colonialist (?)</i> <i>classical humanitarian</i>

The first axis on Table 1 refers to the way we understand the potentiality and limits of world politics. Some theories of international ethics are prefaced on an essentially optimistic vision which holds that because dialogue and therefore moral consensus and the development of shared purposes are possible across diverse communities, so too is human progress. As a result, dialogue can foster shared visions of the good, and determined and ethical collective action can move humanity in a positive direction towards it. Immanuel Kant's vision of a perpetual peace brought about incrementally through the regulation of war and then by the establishment of a community of nations is a good example of an optimistic account (1903 [1795]).

The alternative is a basically fatalistic or 'tragic' conception of world politics. This perspective is based on the view that the world is comprised of culturally distinct units with different values that pursue their own, distinct, goals, with limited possibility for cooperation (e.g. Niebuhr, 1938; Morgenthau, 1948; see Lebow, 2003). Those that try to impose their own particular beliefs on others will meet only resistance, often producing tragic effects that leave everyone worse off. This account is sceptical about the chances for progress, doubts that morality does (or should) play a role in world affairs, and predicts that efforts to spread moral values will prove costly and counter-productive. Simply put, the tragic conception suggests that "it would be wrong to think that were people to act ethically, humankind's condition would progress or improve" (Frost, 2003: 484).

The second axis in Table 1 relates to an ontological question about what sort of actor should be privileged. For our purposes we can focus on the question of whether states or people should be awarded priority. It is common for theories of International Relations to privilege the state on the grounds that it is the principal actor in world affairs, the main

source of order, and the bearer of international rights and responsibilities. This perspective also suggests that communities or nations have value in themselves. Nations enjoy a 'common life' and culture, and should be free to determine their own forms of governance. There is a 'fit', communitarians argue, between the political community and the state, and the latter enables the former to develop and protect its own values and ideas about how its members ought to live (Walzer, 1977: 87; 1994). According to Walzer (1983: 312-3),

[...] justice is relative to social meanings: there are an infinite number of possible lives, shaped by an infinite number of possible cultures, religions, political arrangements, geographic conditions and so on. A given society is just if its substantive life is lived in a certain way – that is, in a way faithful to the shared understandings of its members.

An alternative perspective privileges individuals as the only irreducible ontological entity. From this perspective, statehood and its attendant sovereignty should be understood as instrumental values – not as ends in themselves – because they derive their moral value from the state's capacity to protect the welfare of its citizens. After all, humans invented states to fulfil certain purposes, not the other way around. When states fail in their duty, they lose their sovereign rights (Téson, 2003: 93). There are a variety of ways of arriving at this conclusion. Some draw on Kant's concept of the rational individual to insist that all individuals have certain pre-political rights (Caney, 1997: 34). Others use Augustine's insistence that force be used to defend public order to argue that intervention to end injustice was "among the rights and duties of states until and unless supplanted by superior government" (Ramsey, 2002: 20, 35-6). Alternatively, historical accounts show that in both theory and practice sovereign rights have always been associated with responsibilities of one form or another (Glanville, 2011).

As Table 1 illustrates, and remembering that this is only a heuristic exercise, thinking of ethical positions on humanitarian intervention in terms of these two axes gives us four main clusters – optimistic/state-centred, tragic/state-centred, optimistic/people-centred and tragic/people-centred – which offer different accounts in response to the question of whether sovereignty should sometimes be set aside in the name of human rights, different ways of evaluating specific interventions, and different ways of responding appropriately to the problem of mass killing and human suffering.

In recent years, important practical progress has been made towards bridging some of the moral divides evident on these questions. Most notably, the RtoP principle, adopted by

over 150 world leaders in 2005 and reaffirmed by the UN Security Council the following year in Resolution 1674 and later in Resolutions 1894 (2009) and 2150 (2014), attempted to reconcile the twin concerns of state sovereignty and human security by setting out the responsibilities that states have towards their own populations, and international society's responsibility in cases where states struggle or fail to meet their responsibilities. By situating the potential for humanitarian intervention within a broader continuum of measures such as early warning and capacity-building designed to prevent crises erupting in the first place, the RtoP also promised to address some of the practical problems associated with humanitarian intervention.³ By situating the whole schema within the framework of rules of co-existence established by the UN Charter, advocates of RtoP attempted to find common ground with those who hold a more tragic or state-centred view of the conditions of possibility in world politics. This common ground reflected emerging practice in the UN Security Council, as the following section demonstrates.

Towards a 'New' Politics of Protection?

As mentioned earlier, RtoP was unanimously adopted by UN member states at the 2005 World Summit. The World Summit recognized that states had a responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity; that international society had a duty to assist states to fulfil their RtoP; and that, should a state "manifestly fail" to protect its populations from these crimes, international society would take "timely and decisive" action through the various provisions set out in the UN Charter. Since then, RtoP has been reaffirmed in Council resolutions – including Resolutions 1674 (2006), 1894 (2009) and 2150 (2014) – in reports of the UN Secretary General, and in the establishment of a new joint office for RtoP and the prevention of genocide. RtoP has also featured prominently in the Security Council's response to protection crises in Côte d'Ivoire, Libya, Mali, Yemen, Central African Republic, and South Sudan. The Council has even referred to the principle in a press statement on the situation in Syria.

Although the formal adoption and subsequent usage of RtoP was an undoubtedly important milestone in international society's ongoing engagement with the problem of genocide and mass atrocities, the Security Council has engaged with human protection issues since the late 1990s and has developed a thematic civilian protection agenda related

³ On the emergence of RtoP, see Evans (2010).

to but distinct from RtoP. This shows that RtoP is part of a broader trend towards the development of an international human protection regime (Bellamy and Williams, 2011). In particular, the Council's work on the protection of civilians in armed conflict encompasses demands for compliance with international humanitarian law, operational issues connected to peace operations and humanitarian access, the Council's role in responding to emergencies, and disarmament issues.

In 1999 the Council unanimously adopted Resolution 1265, which expressed its "willingness" to consider "appropriate measures" in response "to situations of armed conflict where civilians are being targeted or where humanitarian assistance to civilians is being deliberately obstructed"; called on states to ratify key human rights treaties and work towards ending the "culture of impunity" by prosecuting those responsible for genocide, crimes against humanity and "serious violations of international humanitarian law"; and expressed the Council's willingness to explore how peacekeeping mandates might be reframed to afford better protection to endangered civilians. In 2004, the Council issued an aide-memoire on civilian protection, which was subsequently adopted and developed by the UN's Office for the Coordination of Humanitarian Affairs (OCHA). In April 2006, the Council issued a further resolution (1674) on the protection of civilians which reaffirmed RtoP, reiterated the Council's demand for humanitarian access in crisis zones and indicated its preparedness to act in cases where civilians are deliberately targeted. The following year, Secretary-General Ban Ki-moon created a working group to explore avenues for translating the Council's commitment to protection into tangible outcomes for endangered populations. Most recently, in late 2013, the UN Secretariat adopted a new strategy for responding to human protection crises. Called 'Rights up Front', the new strategy calls for UN officials to monitor human rights situations that could develop into mass atrocity crimes, provide information about these situations, bring them to the Security Council, and develop coordinated responses to them.

The Council also supported human protection by crafting relevant mandates for peace operations. Protection is now widely seen as one of the primary functions of peace operations and central to their legitimacy. Although some early peacekeeping operations contained human rights components, it was very rare for civilian protection to be considered a core objective of the mission. Starting in 1999 with the UN mission in Sierra Leone (UNAMSIL), the Security Council has regularly invoked Chapter VII of the UN Charter to

create protection mandates. Shortly thereafter, the Brahimi Report argued that peacekeepers who witness violence against civilians should officially “be presumed to be authorized to stop it, within their means.” Since then, peace operations in Haiti (MINUSTAH), Burundi (ONUB), Liberia (UNMIL), Sudan (UNMIS, UNAMID), the Democratic Republic of Congo (MONUC/MONUSCO), Mali (MISCA), the Central African Republic (MINUSMA) and South Sudan (UNMISS) as well as UNOCI in Côte d’Ivoire, have been mandated under Chapter VII to use “all necessary means” to protect civilians, though usually with the insertion of some important geographical, temporal and capabilities-based caveats. The regular use of Chapter VII to mandate peace operations to protect civilians represented an important development in the Council’s thinking. But it is important to stress that each one of these missions operated with the consent – albeit sometimes coerced and unreliable – of the recognized government. Indeed, for at least one permanent member of the Security Council – China – host state consent was a necessary prerequisite for all such deployments (see Teitt, 2011). In practice, the caveats and problems related to consent resulted in peace operations employing force to protect civilians infrequently, and in most cases only against non-state actors (despite the fact that government forces were often equally culpable).

Over the past decade, the Security Council has also delegated authority to regional arrangements in order to protect civilians, as in the French-led operations deployed to Mali in 2012 and Central African Republic in 2013 and the African Union (AU) Mission in Somalia (AMISOM). Like UN missions, these operations were authorized to use force and enjoyed the nominal consent of the *de jure* authorities in the respective countries.

Debates about the use of force for protection purposes and the Security Council’s response to the crisis in Libya need to be seen in the context of this changing politics of protection. Especially, the Security Council’s increasing willingness to authorize coalitions and ‘blue-helmet’ peacekeeping operations to use all necessary means – including the use of force – for human protection purposes. This trend has become established in the context of international debate about RtoP and the Council’s own willingness to reaffirm the principle. However, there were clear limits to what the Council and international society more generally were prepared to do. Most notably, until Libya the Council remained reluctant to authorize the use of force against states. This intervention, of course, provoked stinging criticism from states such as Russia, China, South Africa and India, which argued that NATO and its allies exceeded their limited mandate to protect civilians by pursuing an overt agenda

of regime change. As I mentioned earlier, many analysts have argued that the controversy arising from Libya has stymied the emerging consensus on human protection charted in this section and inhibited concerted action in response to the crisis in Syria. The following section evaluates this claim by briefly considering international society's record overall since Libya. It suggests that although Libya proved highly controversial and international society has failed to respond effectively to the crisis in Syria, there is plenty of evidence to suggest that underlying progress towards a human protection regime is being made.

Responsibility to Protect and the UN Security Council after Libya

To what extent has the Council's failure to mount an effective response to the crisis in Syria reflected broader trends in the UN's political organs since Libya? If it were the case that Libya had adversely affected global consensus on RtoP and human protection, we would expect to find evidence of this in the world's responses to protection crises that have emerged since Resolution 1973. However, as this section will demonstrate, there is little evidence to suggest that either the Security Council or the UN General Assembly have become more wary of utilising RtoP or of accepting their protection responsibilities – though of course that does not mean that these institutions have succeeded in marshaling effective responses in each and every case. It is one thing to accept and agree on a principle, it is another thing entirely to agree on how best to realize that principle in difficult and dangerous real-world situations. What is at issue here, though, is the extent to which there has been any weakening of international attitudes towards RtoP and the emerging human protection regime since mid-2011. This section begins with the Security Council and moves on to discuss the General Assembly.

The UN General Assembly adopted RtoP in September 2005. In the 65 months between then and the Security Council's first resolution on Libya (Resolution 1970 [26 February 2011]), the Council referred to the principle just four times. Only two of these related to specific situations, as the Council twice reaffirmed RtoP in thematic resolutions on the Protection of Civilians in Armed Conflict (Resolution 1674 [2006]; Resolution 1894 [2009]). Of the remaining two, one broadly addressed the regional situation in the African Great Lakes region, specifically in relation to Burundi and the Democratic Republic of Congo. This resolution 'underscored' that states in the region had the primary responsibility to protect their own population and called upon them to promote human rights and good governance

and deny sanctuary to armed non-state groups. Passed only a few months later, Resolution 1706, on the situation in Darfur, 'recalled' the World Summit's provisions on RtoP and authorised the deployment of some elements of the UN Mission to Sudan (UNMIS) into Darfur. The inclusion of RtoP in this resolution proved so contentious that the language was left out of later resolutions on Darfur and was also not included in the Council's resolutions on Somalia (esp. Resolution 1814 [2008]), despite calls from the UN Secretary-General's Special Representative on the issue, among others (Strauss, 2009: 57).

It would be almost 5 years before the Council would refer to RtoP in relation to another country situation. During this time, major protection crises in Sri Lanka, Guinea, Kenya, the eastern Democratic Republic of Congo, Kyrgyzstan, Somalia, Darfur and Sudan/South Sudan came and (to some extent) went. Writing in 2009, Ekkehard Strauss (2009: 58) summed up the state of play in the Security Council when he observed that "the lack of unity in the Council or, in fact, the opposition of some Member States prevented the Council so far from applying the responsibility to protect on a specific country situation."

If it were true that negative judgments about the NATO-led intervention in Libya had damaged international consensus on RtoP and the emerging human protection regime and been used to delegitimise it by the principle's detractors, one would expect that, among other things, the Security Council's antipathy towards RtoP evident from mid-2006 to early 2011 would have resurfaced post-Libya. In fact, the opposite has happened. Despite recriminations over the implementation of Resolution 1973 on Libya, the Security Council has proven more willing to use RtoP in relation to specific situations than it was prior to Libya. From four resolutions mentioning RtoP in 65 months before Resolution 1973 on Libya, at the time of writing the Council had notched up 10 resolutions mentioning RtoP in 33 months, and an additional three presidential statements, including one on Syria. Rather than running from a delegitimised RtoP, the Council has embraced the principle post-Libya as it never has before.

Resolutions on RtoP include further resolutions on Libya which have underscored the Libyan government's primary responsibility to protect (Resolution 2014 [2011] and Resolution 2040 [2012]), suggesting that not only has the controversy over the NATO-led intervention in Libya not delegitimised RtoP generally, it has not even deterred the Council from applying this language in relation to the situation in Libya itself. In addition, since mid-2011 the Council has referred to RtoP in relation to five country situations: Cote d'Ivoire

(Resolution 1975 [2011]), South Sudan (Resolution 1996 [2011]), Yemen (Resolution 2014 [2011]), Mali (Resolution 2085 [2012]) and the Central African Republic (Resolution 2121 [2013]). The Council also referred to RtoP in its 2011 Presidential Statement on preventive diplomacy (S/PRST/2011/18, 22 September 2011), 2013 Statement on Peace and Security in Africa (S/PRST/2013/4, 15 April 2013) and statement on Syria (S/PRST 2013/15, 2 October 2013). The Council's statement on peace and security in Africa was especially effusive in declaring the Council's commitment to RtoP and support for the Secretary-General on this matter.

Not only has the Council referred formally to RtoP much more frequently since Libya than it did before, the inclusion of RtoP in resolutions and statements has become significantly less controversial than it was at the time of Resolution 1706. In the 10 resolutions mentioned above, the inclusion of RtoP was largely uncontroversial. Several UN officials and diplomats engaged in the Security Council have expressed this view privately, and public evidence pointing in that direction is available. Resolution 1975 (30 March 2011) on Cote d'Ivoire was adopted unanimously. Adopted under Chapter VII of the Charter, this resolution reaffirmed the primary responsibility of each state to protect civilians and authorised a strengthening of the UN mission there (UNOCI) to include the use of 'all necessary means' to protect civilians. None of the Council's members referred to RtoP in their statements on the resolution, suggesting that its inclusion had not been controversial (S/PV. 6508, 30 March 2011). Resolution 1996 (2011) on South Sudan was also adopted unanimously. This resolution, also adopted under Chapter VII of the Charter, established a UN mission to South Sudan (UNMISS), with a mandate to – among other things – advise and assist the government “in its responsibility to protect civilians.” The resolution was adopted without statements being offered by Council members, suggesting, once again, that the inclusion of RtoP was uncontroversial (S/PV.6576, 8 July 2011). Likewise, Resolution 2014 on Yemen was adopted unanimously and without statements (S/PV.6634, 21 October 2011). In this resolution, the Council reminded the Yemeni government of its primary responsibility to protect its population. Acting under Chapter VII, Resolution 2085 (2012) authorised the creation of an African-led International Support Mission in Mali (AFISMA) to, among other things, “support the Malian authorities in their primary responsibility to protect the population.” The resolution was adopted unanimously and the inclusion of RtoP was not mentioned in the formal statements offered by Council members (S/ PV.6898, 20 December

2012). Finally, each of the two additional resolutions on Libya (Resolution 2016 [2011] and Resolution 2040 [2012]) underscored the primary responsibility of the government to protect the population, with the former paying particular attention to the protection of foreign nationals and African migrants. Both were adopted unanimously and without formal statements.

Finally, it should also be noted that when circumstances on the ground in Syria changed in August 2013, so too did the UN Security Council's position. The chemical weapons attack on Ghouta, which may have killed as many as 1000 civilians, forced the Council's hand, pushing it first to demand an independent investigation by the UN and then, when that investigation provided evidence of the regime's responsibility, to take steps to eliminate chemical weapons in Syria. At the same time, the Council also began to demand compliance with International Humanitarian Law, humanitarian access and to remind the Syrian government of its responsibility to protect. All of this suggests that when confronted with clear evidence of one side's culpability for war crimes or crimes against humanity which invalidate calls for an 'even-handed' approach, states such as Russia and China could not legitimise a veto. This, in turn, further suggests that factors associated with Syria itself played a more significant role in shaping the international response than more generalised concerns about international norms stemming from the Libya experience.

From this brief snapshot of the Council's practice, there is little evidence to support the view that Libya has made the Council less willing to incorporate RtoP into its messaging and practice. Not only has the Council referred to RtoP in substantive resolutions much more frequently since Resolution 1973 than before it, the inclusion of RtoP language in Council resolutions has become much less controversial than it once was. What is more, as the situation in Syria has changed so too has the Council's response, resulting in a new initiative to eliminate chemical weapons and the direct use of RtoP itself.

An additional sign that the Security Council's inability to reach a consensus on timely and decisive action in Syria is not a product of a wider political backlash against RtoP and human protection more generally is that many of the measures proposed for Syria that were vetoed by Russia and China in the Security Council have been endorsed by significant majorities in the UN General Assembly. On 26 February 2012, two weeks after the second vetoed draft Security Council resolution, the General Assembly voted by 137 to 12 (with 17 abstentions) to adopt a resolution which contained much of the text from the rejected Council draft. The

Assembly resolution condemned the “widespread and systematic human rights violations by the Syrian authorities,” called on all armed groups to put an immediate end to violence and reprisals, supported the Arab League’s peace initiative, and called on the Secretary-General to lend his support (A.66/L.36, 16 February 2012). Among the states voting against the resolution were Russia, China, North Korea, Iran, Syria itself, Zimbabwe and Venezuela. Interestingly, for our purposes, among those states that supported the resolution were some of the most strident critics of the NATO-led intervention in Libya, including Brazil, India, South Africa and Pakistan.

A few months later, on 3 August 2012, a day after Kofi Annan announced his decision to resign as the joint envoy for Syria citing the parties’ unwillingness to abide by their commitments and the Security Council’s inability to respond effectively, the General Assembly adopted a second resolution on the situation in Syria, again by a huge majority of 132 votes to 12. This resolution, principally drafted by Qatar and Saudi Arabia, proved somewhat more controversial than the first because it heaped all its criticism on the Syrian authorities and did not condemn atrocities committed by opposition groups, a problem identified especially by India. Significantly, for our purposes, the resolution “deplored” the failure of the Security Council to adopt measures on Syria, sending a clear signal that the Council’s position did not reflect that of the wider UN membership. The controversy over the lack of even-handedness created more abstentions (31), including India and Pakistan, than in the first vote, but no more negative votes. Despite these concerns, however, Brazil and South Africa voted in favour of the resolution (GA/11266, 3 August 2012).

The General Assembly’s willingness to back a more timely and decisive response to the crisis in Syria and censure the Security Council lends further weight to the argument that there has been no generalised backlash against RtoP and human protection as a result of the controversies arising from the implementation of Resolution 1973 on Libya. We would have expected a more equivocal position from the General Assembly had NATO’s implementation of Resolution 1973 caused a more generalised backlash. In the event, the General Assembly – including states that had expressed reservations about Libya – clearly signaled that the vetoing of the three draft Security Council resolutions did not reflect the attitude of the wider UN membership.

Conclusion

The UN, its Member States and other international and regional organizations are gradually becoming more actively involved in the protection of populations from genocide and mass atrocities. This suggests the emergence of a new international human protection regime, through which what were once seen as new practices (the use of force to protect civilians in peacekeeping) have become habitual and old thresholds (the use of force against sovereign states) crossed. This regime, I have argued here, was made possible by attempts to bridge the gaps between different moral accounts, achieved mainly through the nesting of humanitarian principles within a framework based on the existing international rules of coexistence. Of course, this common ground makes the regime less proactive than some would like, but it also makes it more legitimate and hence sustainable in the long-run. What is more, because the Security Council is a political body, and few decisions are more inherently political than those concerning the use of force, progress has been patchy and inconsistent. Yet we should let individual inconsistencies mask evidence of the underlying changes evident in the practice of the UN Security Council.

As the Council and other actors become more active in this domain, so concerns about the mandating and management of the use of force will grow and, with it, demands for new checks and balances. In the long-term, these demands will have to be satisfied if the UN Security Council is to remain in the game of using all available means to protect populations from the very worst of abuses. That we are even discussing the issue in this way – as a problem of how to implement a shared principle in the hardest of cases – is testament to just how the emerging human protection regime has come. If it are to go further, more work will be needed to ensure that legitimacy is protected when force is used for protection.

Thus, the next stage of thought and practice on the protection of populations to be focused on the provision of better analysis about emerging risks, lessons learned drawn from the various cases described in this essay, and the strengthening of accountability mechanisms within the UN Security Council. Taken together, these would help create a strong platform for the continuing work of making the protection of populations from genocide and mass atrocities a daily-lived reality.

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