

## THE RESPONSIBILITY TO PROTECT AND THE ARAB SPRING: LIBYA AS THE EXCEPTION, SYRIA AS THE NORM?

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### I INTRODUCTION

On 17 March 2011, the United Nations Security Council ('UNSC') passed *Resolution 1973* authorising the use of force for civilian protection purposes in Libya.<sup>1</sup> This resolution was hailed by many supporters of the responsibility to protect ('R2P') as a crucial step towards the consolidation of the concept's normative standing.<sup>2</sup> Gareth Evans described the intervention as 'a textbook case of the [R2P] norm working exactly as it was supposed to'.<sup>3</sup> For Lloyd Axworthy the Libya episode signalled a move towards a 'more humane world'.<sup>4</sup> United Nations ('UN') Secretary-General Ban Ki-moon declared that it 'affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government'.<sup>5</sup> At first glance, the UNSC's rapid, decisive response to escalating violence in Libya might well have suggested a new willingness on the part of the international community to take collective action to avert intrastate humanitarian crises. However, a closer examination of the text of *Resolution 1973* and statements by UNSC member states reveals a less than complete endorsement of R2P. Disagreements between states over the scope of the mandate for the use of force in Libya quickly emerged. Longstanding fears among Russia, China, and other non-Western states that R2P could be used as a pretext for regime change returned to the fore as the legality and legitimacy of the North Atlantic Treaty Organization's ('NATO') military action was called

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1 SC Res 1973, UN SCOR, 66<sup>th</sup> sess, 6498<sup>th</sup> mtg, UN Doc S/RES/1973 (17 March 2011) ('*Resolution 1973*').

2 When referring to R2P I use the terms 'concept', 'principle', and 'doctrine' interchangeably.

3 Gareth Evans, *Interview: The RtoP Balance Sheet after Libya* (November 2011) e-International Relations, 40 <<http://www.e-ir.info/wp-content/uploads/R2P.pdf>>.

4 Lloyd Axworthy, 'In Libya, We Move toward a More Humane World', *Globe and Mail* (online), 23 August 2011 <<http://www.theglobeandmail.com/news/opinions/opinion/in-libya-we-move-toward-a-more-humane-world/article2138221/>>.

5 Ban Ki-moon, 'Statement by the Secretary-General on Libya' (Statement, 17 March 2011) <<http://www.un.org/sg/statements/?nid=5145>>.

into question. This post-Libya backlash against R2P has been a central factor in the international community's subsequent inability to agree on effective civilian protection measures in Syria. Much of the optimism that surrounded R2P in the immediate aftermath of *Resolution 1973* has given way to a sober realisation that achieving international consensus on civilian protection measures will rarely be straightforward.

This article examines the Arab Spring's implications for R2P and for international law on the use of force. It begins in Part II by outlining the nature, evolution, and legal status of R2P prior to the 2011 Libyan intervention. Part III then analyses the international community's robust response to the Libyan crisis. It assesses the legal and political significance of *Resolution 1973* and considers the role that R2P played in the UNSC's timely and decisive action on Libya. In Part IV the ongoing UNSC impasse over Syria is examined. Finally, Part V considers the political and conceptual challenges that currently confront R2P's third pillar.

This article advances three main arguments. First, the immediate or direct impact of the Libyan intervention on the law governing the use of force is limited. *Resolution 1973* is firmly anchored within the existing legal framework of collective security. Although the Libyan mandate has several interesting features, in broad terms it is consistent with earlier, pre-R2P UNSC resolutions authorising the use of force in intrastate humanitarian crises. Secondly, claims that the UNSC's decisive response to Libya represents an important affirmation of the international community's acceptance of R2P are not borne out by a textual analysis of the relevant UNSC resolutions and the pronouncements of states. While humanitarian concerns played a role, the passage of *Resolution 1973* was made possible by a highly unusual, perhaps exceptional, confluence of political and factual circumstances, which created a 'perfect storm' for intervention in Libya.<sup>6</sup> Thirdly, the Arab Spring has highlighted several conceptual weaknesses in R2P's third pillar. The Syrian crisis illustrates that UNSC members remain deeply divided over when and how to respond to intrastate humanitarian crises. Rapid, decisive international action involving robust measures, as in Libya, is likely to remain the exception. Disagreement and deadlock, as in Syria, will continue to be the norm.

## II THE CONCEPT OF R2P

### A Origins and Evolution

External military intervention in intrastate humanitarian crises does not fit neatly into the international legal framework governing the use of force.

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6 The term 'perfect storm' in relation to the Libyan intervention was used in Tim Dunne and Jess Gifkins, 'Libya and R2P: Norm Consolidation or Perfect Storm?' on *The Interpreter* (14 April 2011) <<http://www.lowyinterpreter.org/post/2011/04/14/Libya-R2P-Norm-consolidation-or-perfect-storm.aspx>>.

International law prohibits the use of military force unless it falls within one of two recognised exceptions, namely the right of individual or collective self-defence,<sup>7</sup> or force authorised by the UNSC in accordance with its chapter VII powers.<sup>8</sup> The notion of a right of unilateral humanitarian intervention – that is, intervention by a state or group of states without UNSC authorisation – is inconsistent with the text of the *Charter of the United Nations* ('UN Charter') and has never gained sufficient support among the international community to constitute a third exception to the general prohibition on the use of force.<sup>9</sup> Although much less controversial than unilateral humanitarian intervention, the UNSC's competence to authorise military intervention in intrastate humanitarian crises also raises some legal questions. These arise from the distinction between international and domestic matters.<sup>10</sup> At the time of the *UN Charter's* inception, the collective security system was primarily envisaged as a means of responding to interstate conflicts. At first glance it might appear that purely internal conflicts are domestic matters that do not fall within the UNSC's primary responsibility to maintain 'international peace and security'.<sup>11</sup> However, the UNSC has a wide margin of discretion in determining the existence of a 'threat to the peace' in article 39. This has enabled the UNSC to adopt a 'selectively expansive' view of the concept in order to invoke its authority to act in situations that might appear to be purely domestic.<sup>12</sup> Therefore, if the UNSC decides that an intrastate humanitarian crisis is a 'threat to the peace' it has the legal power to sanction military intervention for civilian protection purposes. This potential for robust UN-authorised responses to humanitarian crises has, however, been largely frustrated due to political divisions between UNSC members or a lack of will to intervene.

The principle of R2P evolved in the aftermath of dismay at the international community's failure to prevent mass atrocities in Rwanda and elsewhere in the 1990s. R2P represents a reconceptualisation of the relationship between state sovereignty and human rights, in which sovereignty is viewed 'not as an absolute

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7 *UN Charter* art 51 begins: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.'

8 *UN Charter* art 42 provides that:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

9 For a detailed and convincing rejection of any claimed right of unilateral humanitarian intervention, see Olivier Corten, *The Law against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart Publishing, 2010) 495–549. See also Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge University Press, 5<sup>th</sup> ed, 2012); Christine Gray, *International Law and the Use of Force* (Oxford University Press, 3<sup>rd</sup> ed, 2008).

10 See Ian Hurd, 'The Selectively Expansive UN Security Council: Domestic Threats to Peace and Security' (2012) 106 *Proceedings of the Annual Meeting (American Society of International Law)* 35.

11 *UN Charter* art 24.

12 Hurd, above n 10, 36.

term of authority but as a kind of responsibility.<sup>13</sup> The original 2001 International Commission on Intervention and State Sovereignty ('ICISS') Report sought to shift the emphasis in debates over humanitarian crises from the controversial notion of a 'right to intervene' to the more palatable idea of a 'responsibility to protect'.<sup>14</sup> It developed a concept of R2P consisting of three elements: the responsibility to prevent a population from suffering serious harm, the responsibility to react if such harm occurs, and the responsibility to rebuild after an intervention.<sup>15</sup> While the primary responsibility to protect lay with the host state, if that state perpetrated 'serious harm' to a population, or was 'unwilling or unable' to stop such violence, the international community assumed a responsibility to protect.<sup>16</sup> 'Serious harm' was defined as actual or imminent 'large scale loss of life' or 'large scale ethnic cleansing'.<sup>17</sup> Military intervention for humanitarian purposes was envisaged as an exceptional measure within the framework of the responsibility to react. Importantly, the ICISS Report outlined a list of six criteria for assessing the appropriateness of military action: just cause, right intention, last resort, right authority, proportional means, and reasonable prospects of success.<sup>18</sup> On the crucial criterion of right authority, although the ICISS Report designated the UNSC as the most appropriate body for authorising military action for human protection purposes, it suggested that the General Assembly and regional or subregional organisations might provide alternative mechanisms for authorising force if the UNSC was deadlocked.<sup>19</sup>

Unsurprisingly, it was the military force dimension of the ICISS concept of R2P that generated the most controversy among states. From the outset, it was viewed with suspicion by Russia, China and a number of other non-Western states that have traditionally emphasised a strict interpretation of state sovereignty and non-intervention in domestic affairs. These states were concerned about the military component of the new principle, fearing that it might be used by powerful Western states as a cloak for the pursuit of other strategic objectives.<sup>20</sup> Conscious of the need to assuage such fears and build support for R2P, UN officials adopted a diplomatic strategy of emphasising the less controversial elements of the concept, namely prevention and state

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13 Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge University Press, 2006) 251.

14 ICISS, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre, 2001) 11 [2.4] <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>.

15 *Ibid.* xi.

16 *Ibid.*

17 *Ibid.* xii.

18 *Ibid.* 32 [4.16].

19 *Ibid.* xii–xiii.

20 See ICISS, *The Responsibility to Protect: Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre, 2001) <<http://web.idrc.ca/openbooks/963-1/>>. In ICISS Roundtable discussions in June 2001, China asserted that '[i]t is clear that certain Western powers have played with noble principles to serve their own hegemonic interests': at 392.

assistance.<sup>21</sup> This approach, coupled with ongoing resistance from R2P sceptic states to the military dimension of R2P, led to several significant modifications to the original ICISS conception of R2P. First, the military force dimension was placed exclusively under UNSC control, closing off the ICISS's suggestion that alternative authorisation mechanisms might be utilised if the UNSC was deadlocked. Secondly, the ICISS's criteria for determining the appropriateness of military intervention for humanitarian purposes were removed. Thirdly, the types of violence covered by R2P were limited to four mass atrocity crimes (genocide, war crimes, crimes against humanity and ethnic cleansing), rather than the previous less precise term of 'large scale loss of life'.<sup>22</sup> Finally, the threshold triggering the international community's responsibility was raised from a host state being 'unwilling or unable' to halt violence, to the more onerous standard of 'manifestly failing' to protect.

As a result of these changes, the conception of R2P that was unanimously adopted by UN member states at the 2005 World Summit was a far softer, less concrete version of the doctrine initially formulated by the ICISS.<sup>23</sup> This modified form of R2P – derived from paragraphs 138 and 139 of the 2005 *World Summit Outcome Document*, and subsequently outlined in the UN Secretary-General's 2009 report, 'Implementing the Responsibility to Protect' – consists of three mutually-reinforcing pillars.<sup>24</sup> The first is that each state has a responsibility to protect its populations from mass atrocity crimes. The second pillar stipulates that the international community should assist states in fulfilling their pillar one obligations. The third pillar provides that if 'national authorities are manifestly failing to protect their populations' the international community is 'prepared to take collective action, in a timely and decisive manner'.<sup>25</sup> Action under the third pillar encompasses non-coercive means such as diplomacy and humanitarian assistance, and coercive measures including, as a last resort, the use of force.

The substantially weaker version of R2P endorsed by states in 2005 was a disappointment for some R2P supporters. Weiss famously labelled it 'R2P-lite'.<sup>26</sup>

21 On R2P's preventive dimension, see Andrew Garwood-Gowers, 'Enhancing Protection of Civilians through Responsibility to Protect Preventive Action' in Angus Francis, Vesselin Popovski and Charles Sampford (eds), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (United Nations University Press, 2012) 134; Sheri P Rosenberg, 'Responsibility to Protect: A Framework for Prevention' (2009) 1 *Global Responsibility to Protect* 442.

22 For discussion of the legal definitions of the four mass atrocity crimes, see David Scheffer, 'Atrocity Crimes Framing the Responsibility to Protect' (2008) 40 *Case Western Reserve Journal of International Law* 111.

23 2005 *World Summit Outcome*, GA Res 60/1, UN GAOR, 60<sup>th</sup> sess, 8<sup>th</sup> plen mtg, Agenda Items 46 and 120, Supp No 49, UN Doc A/RES/60/1 (24 October 2005) para 139 ('*World Summit Outcome Document*'). For discussion of this shift along the normative continuum, see Jochen Prantl and Ryoko Nakano, 'Global Norm Diffusion in East Asia: How China and Japan Implement the Responsibility to Protect' (2011) 25 *International Relations* 204, 209.

24 *World Summit Outcome Document*, UN Doc A/RES/60/1 paras 138–9; *Implementing the Responsibility to Protect. Report of the Secretary-General*, UN GAOR, 63<sup>rd</sup> sess, Agenda Items 44 and 107, UN Doc A/63/677 (12 January 2009).

25 *World Summit Outcome Document*, UN Doc A/RES/60/1 para 139.

26 Thomas G Weiss, 'R2P after 9/11 and the World Summit' (2006) 24 *Wisconsin International Law Journal* 741, 750.

Chesterman concluded that R2P's 'normative content had been emasculated to the point where it essentially provided that the Security Council could authorise, on a case-by-case basis, things that it had been authorizing for more than a decade.'<sup>27</sup> While R2P had succeeded in shifting the terms of the debate from the language of 'intervention' towards a 'responsibility to protect', the concept endorsed in 2005 failed to address crucial questions relating to when and how the UNSC should decide on the appropriateness of military action for humanitarian purposes.

From 2005 onwards, discussion of R2P within the UN system continued to centre on the less controversial aspects of preventive action and state capacity-building under the first and second pillars. Despite lingering resistance to R2P from some states, including Russia and China, this cautious approach eventually led to consensus within the UNSC on *Resolution 1674*, which 'reaffirmed' the World Summit's commitments on R2P.<sup>28</sup> The first mention of R2P in relation to a specific crisis occurred subsequently in 2006 with UNSC *Resolution 1706* on the situation in Darfur.<sup>29</sup> In 2008, the preventive component of the concept played a significant role in framing the international community's response to post-election violence in Kenya,<sup>30</sup> while a further resolution in 2009 provided additional endorsement of R2P in general terms.<sup>31</sup> However, throughout this period, ongoing resistance to implementing R2P meant that specific references to the principle were not included in further UNSC resolutions on other crises. Instead, attention shifted from the UNSC to the General Assembly, where broader discussion of R2P could be undertaken by all UN member states. This culminated in the 2009 General Assembly debate, in which states overwhelmingly supported Secretary-General Ban Ki-moon's report outlining the three pillars of R2P.<sup>32</sup> Although this outcome appeared to vindicate the Secretary-General's diplomatic approach, his strategy of emphasising the preventive aspects of R2P meant that contentious issues surrounding the use of military force remained unresolved.<sup>33</sup> This indeterminacy in pillar three enabled virtually all states to pledge support for R2P at a rhetorical level, but it also papered over significant differences between Western and non-Western states' interpretations of when and how R2P's military dimension should be operationalised.

27 Simon Chesterman, "'Leading from Behind": The Responsibility to Protect, the Obama Doctrine, and Human Intervention after Libya' (2011) 25 *Ethics and International Affairs* 279, 280.

28 SC Res 1674, UN SCOR, 61<sup>st</sup> sess, 5430<sup>th</sup> mtg, UN Doc S/RES/1674 (28 April 2006).

29 SC Res 1706, UN SCOR, 61<sup>st</sup> sess, 5519<sup>th</sup> mtg, UN Doc S/RES/1706 (31 August 2006).

30 On the Kenyan situation, see Global Centre for the Responsibility to Protect, *The Responsibility to Protect and Kenya: Past Successes and Current Challenges* (13 August 2010) <<http://www.globalr2p.org/publications/52>>.

31 SC Res 1894, UN SCOR, 64<sup>th</sup> sess, 6216<sup>th</sup> mtg, UN Doc S/RES/1894 (11 November 2009).

32 *The Responsibility to Protect*, GA Res 63/308, UN GAOR, 63<sup>rd</sup> sess, 105<sup>th</sup> plen mtg, Agenda Items 44 and 107, Supp No 49, UN Doc A/RES/63/308 (7 October 2009).

33 For criticism of the Secretary-General's diplomatic strategy, see Jennifer Welsh, 'Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP' (2011) 25 *Ethics and International Affairs* 255, 261.



## B The Legal Significance of R2P

At present R2P is not an international legal rule in accordance with the formal sources of international law.<sup>34</sup> It is not part of any international treaty, has not attained the status of customary international law, and is not recognised as a general principle of law. Instead, it is best viewed as a multifaceted political concept based on existing principles of international law.<sup>35</sup> R2P does not alter the basic contours of the legal framework governing the use of force, which permits force only in self-defence or when authorised by the UNSC in accordance with chapter VII of the *UN Charter*. Furthermore, R2P does not create any additional *legal* duties for states or international bodies such as the UNSC. Endorsement of the concept can be seen as a political or moral commitment by states to implement established (pillar one and, to a lesser extent, pillar two) duties created in treaty law and customary international law.<sup>36</sup> The undertakings in pillar three are more conservative. The deliberately cautious wording – ‘we are *prepared* to take collective action ... on a *case-by-case basis*’ – illustrates the reluctance of states to include any language that could be interpreted as creating a responsibility or duty on the part of the international community to respond to humanitarian crises.<sup>37</sup> All that is expressed is a willingness to consider appropriate responses on an ad hoc basis. There is no general duty or obligation, either on the UNSC or the broader international community, to take any action – forcible or non-forcible – to protect populations from mass atrocity violence.<sup>38</sup> As one author has noted, ‘[w]hen it comes to the international community, there is little responsibility remaining in the responsibility to protect.’<sup>39</sup>

The legal significance of R2P can, however, be approached from an alternative perspective. Instead of assessing the extent to which the concept

34 See, eg, *Statute of the International Court of Justice* art 38(1).

35 On R2P’s legal status see, eg, Alex J Bellamy and Ruben Reike, ‘The Responsibility to Protect and International Law’ (2010) 2 *Global Responsibility to Protect* 267; Carsten Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’ (2007) 101 *American Journal of International Law* 99; Theresa Reinold, ‘The Responsibility to Protect – Much Ado about Nothing?’ (2010) 36 (Special Issue S1) *Review of International Studies* 55; Mehrdad Payandeh, ‘With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect within the Process of International Lawmaking’ (2010) 35 *Yale Journal of International Law* 469.

36 See, eg, *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951), which has been interpreted by the International Court of Justice as imposing a legal duty on a state to take peaceful measures to prevent genocide in circumstances where that state has relevant information and the capacity to take such steps: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Merits)* [2007] ICJ Rep 43.

37 *World Summit Outcome Document*, UN Doc A/RES/60/1, [139] (emphasis added).

38 For a thought experiment on how a Security Council duty to act might evolve in the future, see Anne Peters, ‘The Security Council’s Responsibility to Protect’ (2011) 8 *International Organizations Law Review* 15. On legal developments separate from R2P which point towards the possible development of an international duty to protect, see Luke Glanville, ‘The Responsibility to Protect beyond Borders’ (2012) 12 *Human Rights Law Review* 1.

39 Saira Mohamed, ‘Taking Stock of the Responsibility to Protect’ (2012) 48 *Stanford Journal of International Law* 319, 330.

imposes new duties on states or on the international community, R2P can be seen as a means of conferring power or authority on international institutions. Orford argues that R2P ‘should be understood as normative in the ... sense of providing legal authorisation for certain kinds of activities’ that the UN has been engaged in for several decades.<sup>40</sup> She suggests that R2P can be used to transform

deeds into words ... [and] consolidate established practices of international executive rule, such as surveillance, fact-finding, security sector reform, peacekeeping, and civilian administration, and to provide a coherent normative framework for those practices.<sup>41</sup>

Viewed from this perspective, endorsement of R2P is a notable development because it anchors or entrenches the power of the international community to respond to intrastate humanitarian crises. In particular, it bolsters the legitimacy of the broader, ongoing UNSC trend towards an expansive interpretation of the concept of ‘threat to the peace’ contained in article 39 of the *UN Charter*.<sup>42</sup> As Breakey puts it, the ‘explicit endorsement of the UNSC’s role in authorising military action [means] it is much less plausible to argue that the UNSC as a matter of principle does not have the authority to rule on such matters.’<sup>43</sup> By expressly referring to the UNSC’s role in responding to intrastate violence the international community seems to have shifted from merely tolerating such practices towards acknowledging and approving them.<sup>44</sup> In this way, R2P provides what Orford calls ‘a coherent theoretical account of the form of international authority’ that has been evolving in recent decades.<sup>45</sup>

The normative vocabulary that R2P offers under this alternative perspective can be linked to the concept’s primary function, which is to act as a political or rhetorical tool to alter state behaviour. R2P’s potential lies ‘not in creating new rights or obligations ... [but] in making it harder [for states] to do the wrong thing or do nothing at all.’<sup>46</sup> By injecting considerations of morality and conscience into states’ decision-making processes R2P’s third pillar seeks to catalyse political will for timely and decisive responses to intrastate humanitarian

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40 See Anne Orford, ‘From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept’ (2011) 3 *Global Responsibility to Protect* 400, 421.

41 Ibid 403, 420.

42 Payandeh, ‘With Great Power Comes Great Responsibility?’, above n 35, 495–6.

43 Hugh Breakey, ‘The Responsibility to Protect: Game Change and Regime Change’ in Angus Francis, Vesselin Popovski and Charles Sampford (eds), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (United Nations University Press, 2012) 11, 26.

44 Payandeh, ‘With Great Power Comes Great Responsibility?’, above n 35, 496.

45 Orford, above n 40, 424.

46 Chesterman, above n 27, 282.



crises.<sup>47</sup> Whether R2P has, in practice, been able to exert such an influence is considered in the following parts of this article.

### III THE LIBYAN INTERVENTION

When violence erupted in Libya in February 2011 the UNSC responded swiftly and decisively.<sup>48</sup> Following the Gaddafi regime's initial crackdown on protesters, the UNSC issued a statement on 22 February in which it condemned the violence and 'called on the Government of Libya to meet its responsibility to protect its population.'<sup>49</sup> On 26 February, the Council unanimously adopted *Resolution 1970* under chapter VII of the *UN Charter*, again expressly referring to R2P by '[r]ecalling the Libyan authorities' responsibility to protect its population.<sup>50</sup> Acting in accordance with article 41 of the *UN Charter*, this resolution imposed an arms embargo and other restrictions on travel and Libyan assets, and referred the situation to the International Criminal Court. After the Libyan regime ignored *Resolution 1970* and violence intensified, the Arab League and other regional organisations called for the creation of a no-fly zone to protect civilians.<sup>51</sup> On 17 March, Gaddafi made explicit threats against civilians in Benghazi, increasing pressure on the international community to intervene. Later that day, the UNSC passed *Resolution 1973*, with 10 affirmative votes, and abstentions from China, Russia, Brazil, India and Germany.<sup>52</sup> This resolution stated that the 'situation in the Libyan Arab Jamahiriya' continues to constitute a threat to 'international peace and security'.<sup>53</sup> It established a no-fly zone and authorised member states to take 'all necessary measures, ... to protect civilians and civilian populated areas under threat of attack', while expressly 'excluding a foreign occupation force of any form on any part of Libyan territory'.<sup>54</sup> On 19 March a coalition of states, including the United States ('US'), the United

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- 47 For a critical account of R2P's reliance on moral advocacy as a means of altering state behaviour, see Robert W Murray and Aidan Hehir, 'Intervention in the Emerging Multipolar System: Why R2P Will Miss the Unipolar Moment' (2012) 6 *Journal of Intervention and Statebuilding* 387. Note also the constructivist view that R2P operates less as a 'rallying call' to international action, and more as a 'reshaper of states' identities and interests' which helps to create 'habits of protection': see Alex J Bellamy, 'The Responsibility to Protect: Added Value or Hot Air?' (2013) 48 *Cooperation and Conflict* 333.
- 48 For a detailed account of events leading up to NATO's military intervention in Libya, see Paul D Williams, 'Briefing: The Road to Humanitarian War in Libya' (2011) 3 *Global Responsibility to Protect* 248.
- 49 United Nations Security Council, 'Security Council Press Statement on Libya' (Press Statement, SC/10180-AFR2120, 22 February 2011) <<http://www.un.org/News/Press/docs/2011/sc10180.doc.htm>>.
- 50 SC Res 1970, UN SCOR, 66<sup>th</sup> sess, 6491<sup>st</sup> mtg, UN Doc S/RES/1970 (26 February 2011) Preamble ('*Resolution 1970*').
- 51 See Council of the League of Arab States, *Letter Dated 14 March 2011 from the Permanent Observer of the League of Arab States to the United Nations Addressed to the President of the Security Council*, 66<sup>th</sup> sess, UN Doc S/2011/137 (15 March 2011) ('*Letter Dated 14 March 2011*').
- 52 UN SCOR, 66<sup>th</sup> sess, 6498<sup>th</sup> mtg, UN Doc S/PV.6498 (17 March 2011) ('*UNSC Meeting 6498*').
- 53 *Resolution 1970*, UN Doc S/RES/1970 Preamble.
- 54 *Resolution 1973*, UN Doc S/RES/1973 paras 4, 6–12.

Kingdom ('UK') and France, began military action against Libyan targets. By August 2011 Libyan rebel forces had removed the Gaddafi regime and taken control of Tripoli.

### A UNSC Resolution 1973

While the adoption of *Resolution 1973* was a political surprise, as most observers had expected Russia and China to veto any proposal for military action,<sup>55</sup> from a legal perspective it is largely unremarkable. Two important points should be noted here. The first concerns the legal categorisation of the Libyan intervention. Although the use of force was for humanitarian or civilian protection purposes, it was an exercise of the UNSC's enforcement powers under chapter VII of the *UN Charter*. On this point, Kritsiotis is correct to warn that we should not 'confuse the descriptive powers of the term "humanitarian intervention" with its function as a legal justification for force'.<sup>56</sup> The Libyan episode has no legal impact on any claimed right of unilateral humanitarian intervention conducted without UNSC authorisation. The fact that military action in Libya was authorised by the UNSC means that it fits squarely within one of the two exceptions to international law's general prohibition on the use of force. Although the precise scope of the mandate in *Resolution 1973* and whether NATO subsequently overstepped the bounds of that authorisation later became highly contentious issues, those interpretive questions should be kept separate from the initial inquiry into the legal categorisation of the use of force in Libya.<sup>57</sup> *Resolution 1973* provided a clear legal basis for the initiation of military action against Libya within the established chapter VII framework. Therefore, in this respect at least, the Libyan intervention was legally uncontroversial.

A second important point about the Libyan intervention is that it was not the first time the UNSC has authorised the use of force for humanitarian protection purposes in the context of an intrastate crisis. Prior to the emergence of R2P the UNSC had, on several occasions, sanctioned military action in response to

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55 See, eg, Alex J Bellamy and Paul D Williams, 'The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect' (2011) 87 *International Affairs* 825, 840; Ramesh Thakur, *Libya: The First Stand or the Last Post for the Responsibility to Protect?* (13 March 2011) e-International Relations <<http://www.e-ir.info/?p=7646>>; Andrew Garwood-Gowers, 'Libya and the International Community's "Responsibility to Protect"' on *On Line Opinion* (25 February 2011) <<http://www.onlineopinion.com.au/view.asp?article=11676>>.

56 Dino Kritsiotis, 'The Arab Spring, Massive Violations of Human Rights and the Use of Force' (2013) 5 *Amsterdam Law Forum* 80, 88 (emphasis in original).

57 On the scope of the mandate in *Resolution 1973*, see Geir Ulfstein and Hege Føsund Christiansen, 'The Legality of the NATO Bombing in Libya' (2013) 62 *International and Comparative Law Quarterly* 159; Michael N Schmitt, 'Wings over Libya: The No-Fly Zone in Legal Perspective' (2011) 36 *Yale Journal of International Law Online* 45; Mehrdad Payandeh, 'The United Nations, Military Intervention, and Regime Change in Libya' (2012) 52 *Virginia Journal of International Law* 355; Sienho Yee, 'Editorial Comments: The Dynamic Interplay between the Interpreters of Security Council Resolutions' (2012) 11 *Chinese Journal of International Law* 613.

situations of internal conflict.<sup>58</sup> Examples of earlier resolutions authorising ‘all necessary means’ for civilian protection purposes include *Resolution 794* on Somalia<sup>59</sup> and *Resolution 940* on Haiti.<sup>60</sup> Bellamy argues that these earlier situations were materially different from Libya because they involved the consent of the host state.<sup>61</sup> Libya, on the other hand, represents the first time that the UNSC has mandated the use of force for humanitarian purposes *against* the wishes of a host state.<sup>62</sup> It is true that neither the Somalia nor Haiti resolution involved the UNSC sanctioning force in direct contravention of the wishes of the host state. In Somalia there was no functioning government to provide or withhold consent, while in Haiti the consent of the exiled Aristide government had been obtained. However, as Chesterman points out, these are merely ‘nuances of difference’ between the Libyan authorisation and earlier episodes of UNSC-mandated military intervention in intrastate conflicts.<sup>63</sup> Furthermore, ‘the question of consent to an operation is not legally significant when it is authorized under chapter VII of the *UN Charter*.’<sup>64</sup> The key point is that the UNSC had, prior to the emergence of R2P, demonstrated a sporadic willingness to authorise robust military action in response to intrastate humanitarian crises. Hehir describes the Council’s record as ‘characterized by a preponderance of inertia punctuated by aberrant flashes of resolve and timely action, impelled by the rare confluence of interests and humanitarian need.’<sup>65</sup> Therefore, while subtle distinctions between *Resolution 1973* and earlier resolutions may be discernible, the UNSC’s decision to authorise military action for civilian protection purposes in Libya was not entirely unprecedented in either legal or historical terms.

There is, however, a further interesting and potentially significant feature of *Resolution 1973*. This emerges not from what the resolution says but from what it omits to say. The text of *Resolution 1973* makes no reference to the Libyan situation being ‘unique’ or ‘exceptional’ in nature. This stands in contrast to the earlier Somalia and Haiti resolutions. *Resolution 794* specifically referred to ‘the unique character of the present situation in Somalia’.<sup>66</sup> The same expression was included in *Resolution 940* on Haiti, which also described the situation as being of an ‘extraordinary nature, requiring an exceptional response’.<sup>67</sup> Without the

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58 For more detailed discussion of earlier Security Council responses to intrastate humanitarian crises, see Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council and the Responsibility to Protect’ (2013) 38(1) *International Security* 137.

59 SC Res 794, UN SCOR, 47<sup>th</sup> sess, 3145<sup>th</sup> mtg, UN Doc S/RES/794 (3 December 1992) (*‘Resolution 794’*).

60 SC Res 940, UN SCOR, 49<sup>th</sup> sess, 3413<sup>th</sup> mtg, UN Doc S/RES/940 (31 July 1994) (*‘Resolution 940’*).

61 Alex J Bellamy, ‘Libya and the Responsibility to Protect: The Exception and the Norm’ (2011) 25 *Ethics and International Affairs* 263, 264.

62 Ibid.

63 Chesterman, above n 27, 280. Bellamy’s assertion that *Resolution 1973* was unique is also challenged by Vesselin Popovski, ‘The Concepts of Responsibility to Protect and Protection of Civilians: “Sisters, but Not Twins”’ (2011) 7(4) *Security Challenges* 1, 7.

64 Chesterman, above n 27, 280.

65 Hehir, ‘The Permanence of Inconsistency’, above n 58, 137.

66 *Resolution 794*, UN Doc S/RES/794, Preamble.

67 *Resolution 940*, UN Doc S/RES/940 para 2.

inclusion of these phrases, China and other UNSC member states would not have allowed the passage of these earlier resolutions. The fact that *Resolution 1973* was adopted without the need for such language may indicate that there is now less resistance to the UNSC's authority to sanction robust responses to intrastate humanitarian crises. This development might be interpreted as part of a broader trend towards the 'growth of Council authority, and the shrinking of domestic autonomy' that has been underway for several decades.<sup>68</sup> However, as Part IV of this article reveals, UNSC paralysis over Syria indicates that major non-Western states continue to resist this shift.

On the whole, *Resolution 1973* did not break new ground in a strict legal sense. It does not alter the scope of international law's prohibition on the use of force or support the case for a right of unilateral humanitarian intervention in the absence of UNSC authorisation. Although the adoption of *Resolution 1973* surprised many observers at the time, it can in fact be seen as 'consistent with the Security Council's record of inconsistency' on responses to intrastate humanitarian crises.<sup>69</sup>

## B R2P and the Libyan Intervention

One of the most critical questions about the Libyan episode concerns the relationship between the UNSC's two key resolutions and the concept of R2P. As noted in the introduction to this article, supporters of R2P were quick to proclaim that the Libyan intervention represented an important confirmation of the international community's acceptance of the principle. However, a textual analysis of the UNSC's resolutions on Libya does not reveal significant evidence to support that claim. Although both UNSC resolutions expressly identified *Libya's* responsibility to protect its populations, it is notable that these statements appeared only in the preamble, rather than in the operative parts of the respective resolutions.<sup>70</sup> Even more significantly, neither resolution mentioned the *international community's* responsibility. Despite the Libyan crisis appearing to present a textbook case of a state manifestly failing to protect its population, it seems that the UNSC remained unwilling to directly acknowledge any international responsibility to protect under R2P's third pillar. Welsh interprets this omission as an indication 'that the latter notion [of the international community's responsibility] was still contested by some members of the UNSC as an appropriate rationale for military action.'<sup>71</sup> This failure to expressly acknowledge any international responsibility was most likely prompted by concerns that including such a reference might imply the existence of a legal obligation to take similar action in future cases concerning mass atrocities. Given

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68 Hurd, above n 10, 38. See also Catherine Powell, 'Libya: A Multilateral Constitutional Moment?' (2012) 106 *American Journal of International Law* 298.

69 Hehir, 'The Permanence of Inconsistency', above n 58, 137–8.

70 *Resolution 1970*, UN Doc S/RES/1970; *Resolution 1973*, UN Doc S/RES/1973.

71 Welsh, above n 33, 255.

this significant omission, the UNSC's resolutions on Libya represent, at most, only a partial endorsement of R2P.

In fact, analysis of the Libya resolutions suggests that the *primary* normative foundation for the UNSC's action was the concept of protection of civilians in armed conflict ('PoC'), rather than the principle of R2P.<sup>72</sup> While R2P and PoC are closely related concepts which share a similar normative core – namely protection of civilians from violence – they remain separate norms with distinct characteristics.<sup>73</sup> Crucially, PoC has had a less controversial history than R2P and enjoys greater political support among states.<sup>74</sup> With respect to Libya, the PoC emphasis is evident most clearly in operative paragraph four of *Resolution 1973*, where the centrepiece of the UNSC's response – the authorisation of the use of force – is contained under the subtitle 'Protection of Civilians'.<sup>75</sup> As noted above, R2P language appears only in the preamble, and does not include any acknowledgement of the international dimension of the concept. *Resolution 1973* therefore encompasses aspects of both PoC and R2P but it is the former, not the latter, that the UNSC emphasised as the primary normative basis underpinning its decision to sanction military action.<sup>76</sup> Given this focus on PoC it is, as Berman and Michaelsen argue, 'inappropriate [for R2P advocates] to cite a Council authorisation for the use of force for narrower PoC purposes as evidence for an increasing acceptance of the broader concept of [R2P]'.<sup>77</sup>

Clear fault lines between UNSC member states over *Resolution 1973* are also evident from statements made in the immediate aftermath of its adoption.<sup>78</sup> Speaking after the UNSC vote, four of the five states that abstained – Russia,

72 See David Berman and Christopher Michaelsen, 'Intervention in Libya: Another Nail in the Coffin for the Responsibility to Protect?' (2012) 14 *International Community Law Review* 337, 350–4. See also Hugh Breakey and Angus Francis, 'Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC' (2011) 7(4) *Security Challenges* 39; Ramesh Thakur, 'Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism' (2011) 7(4) *Security Challenges* 13; Popovski, above n 63.

73 For in-depth comparative analysis of R2P and PoC, see Hugh Breakey, 'Protection Norms and Human Rights: A Rights-Based Analysis of the *Responsibility to Protect* and the *Protection of Civilians in Armed Conflict*' (2012) 4 *Global Responsibility to Protect* 309; Angus Francis, Vesselin Popovski and Charles Sampford (eds) *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (United Nations University Press, 2012).

74 See SC Res 1265, UN SCOR, 54<sup>th</sup> sess, 4046<sup>th</sup> mtg, UN Doc S/RES/1265 (17 September 1999); SC Res 1296, UN SCOR, 55<sup>th</sup> sess, 4130<sup>th</sup> mtg, UN Doc S/RES/1296 (19 April 2000); SC Res 1674, UN SCOR, 61<sup>st</sup> sess, 5430<sup>th</sup> mtg, UN Doc S/RES/1674 (28 April 2006); SC Res 1894, UN SCOR, 64<sup>th</sup> sess, 6216<sup>th</sup> mtg, UN Doc S/RES/1894 (11 November 2009). For a summary of key developments in the history of PoC, see In Search of Common Ground Research Project, *Chronological Evolution of the Protection of Civilians (POC) 1991-2012* (2 April 2013) Australian Civil-Military Centre <<http://acmc.gov.au/wp-content/uploads/2013/04/2012-74-Protection-of-Civilians-Comparative-Report-Final.pdf>>.

75 *Resolution 1973*, UN Doc S/RES/1973 para 4.

76 This subtle distinction has been largely overlooked, or perhaps forgotten, with most authors and UN officials characterising *Resolution 1973* as an R2P resolution. In this respect, Breakey and Francis were correct in predicting that it 'is also likely (though not certain) that, despite its non-invocation of R2P, Res[olution] 1973 will come to be acknowledged as an *official* R2P resolution': Breakey and Francis, above n 72, 48 n 27 (emphasis in original).

77 Berman and Michaelsen, above n 72, 354.

78 *UNSC Meeting 6498*, UN Doc S/PV.6498.

China, Brazil and India – expressed misgivings about the content of the resolution. China stated it had ‘serious difficulty with parts of the resolution’ and its preference was to resolve ‘the current crisis ... through peaceful means.’<sup>79</sup> Russia regretted the fact that it had received no answers to its questions about ‘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.’<sup>80</sup> The scope of the mandate in *Resolution 1973* was also a concern for India, which noted the lack of ‘clarity about details of enforcement measures, ... and how these measures will exactly be carried out.’<sup>81</sup> The Brazilian representative in the UNSC was of the view that ‘the text of resolution 1973 ... contemplates measures that go far beyond that call [for a no-fly zone].’<sup>82</sup> Even South Africa, which initially agreed to join Brazil and India in abstaining but ultimately decided to vote in favour, appeared somewhat uncomfortable with the resolution. It warned against ‘unilateral military intervention under the pretext of protecting civilians’ and expressed ‘hope that this resolution will be implemented in full respect for both its letter and spirit.’<sup>83</sup> Viewed together, these highly critical statements indicate that even *before* NATO began its military operations in Libya there were deep divisions between Western and non-Western states over *Resolution 1973*.

Given this evidence of states’ reluctance to fully embrace R2P and of significant disagreements between UNSC members, what explains the passage of *Resolution 1973*? Humanitarian concerns were one of the motivating factors, though as indicated above, these were framed more strongly in PoC language than in R2P terms. However, those civilian protection considerations were accompanied by several other significant political and factual circumstances, which combined to create a ‘perfect storm’ for intervention in Libya.<sup>84</sup> Three crucial aspects of this highly unusual, perhaps exceptional, confluence of factors are considered.<sup>85</sup>

The first key factor that influenced international action in Libya was the clarity and immediacy of the threat to the civilian population.<sup>86</sup> The risk of mass atrocity crimes was clearly identified by senior UN officials during February and March 2011, and crystallised as Gaddafi forces surrounded the town of Benghazi. It was subsequently confirmed by Gaddafi’s own statements that ‘[o]fficers have been deployed in all tribes and regions so that they can purify all decisions from these cockroaches’, and that ‘[a]ny Libyan who takes arms against Libya will be

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79 Ibid 10.

80 Ibid 8.

81 Ibid 6.

82 Ibid.

83 Ibid 10.

84 Dunne and Gifkins, above n 6.

85 The following paragraphs of this part draw on Andrew Garwood-Gowers, ‘China and the “Responsibility to Protect”’: The Implications of the Libyan Intervention’ (2012) 2 *Asian Journal of International Law* 375, 383–6.

86 Bellamy and Williams, above n 55, 838–9.



executed.<sup>87</sup> Such explicit threats of violence were highly unusual and created a clear, urgent need for international action.

The second and most crucial factor that provided the impetus for military action in Libya was the presence of regional consensus on the need for external intervention.<sup>88</sup> Gaddafi's unpopularity in the Arab world meant that the Arab League, the Gulf Cooperation Council, and the Organization of the Islamic Conference<sup>89</sup> all condemned the violence in Libya and suspended Libya from the respective organisations. This was followed by the Arab League passing a resolution on 12 March 2011, which expressly called for a no-fly zone to protect civilians.<sup>90</sup> Although the African Union ('AU') was opposed to international military intervention, there was support from the UNSC's three African members, Nigeria, Gabon, and South Africa. This regional consensus was the 'political game-changer', which 'fram[ed] the issues and defin[ed] the range of feasible international action.'<sup>91</sup> It was particularly influential in relation to China's decision to allow the passage of *Resolution 1973*.<sup>92</sup>

A third important trigger was the defection of members of the Gaddafi government. Several prominent figures, including Libya's ambassador to the UN, condemned the regime's violence against protesters and called on the UNSC to deliver a 'decisive, rapid and courageous resolution'.<sup>93</sup> These defections added to Gaddafi's international isolation and placed further pressure on the international community to intervene.

The combined effect of these three factors was that China, Russia, and the other 'BRICS'<sup>94</sup> on the UNSC at that time, who retained misgivings about using force in Libya, were in a difficult position. Given the gravity and immediacy of the threat to civilians, blocking a resolution might have led to significant criticism and damaged their international reputations. Faced with these consequences, China, Russia, Brazil and India (as well as Germany) decided to abstain from voting on *Resolution 1973*. Bellamy and Williams conclude that these states 'abstained because they believed that they could not legitimize inaction in the face of mass atrocities.'<sup>95</sup> In this respect, the role of humanitarian values in shaping decision-making on Libya must be acknowledged. However, as argued above, this is by no means a new development: earlier instances of UNSC action in intrastate humanitarian crises suggest that similar moral concerns were at play prior to the emergence of R2P.

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87 ABC Radio National, 'Defiant Gaddafi Issues Chilling Call', *The World Today*, 23 February 2011 (Barbara Miller) <<http://www.abc.net.au/worldtoday/content/2011/s3146582.htm>>.

88 For detailed discussion of the positions taken by regional organisations and states, see Bellamy and Williams, above n 55, 838–46.

89 Now renamed as the Organisation of Islamic Cooperation ('OIC').

90 See *Letter Dated 14 March 2011*, UN Doc S/2011/137.

91 Bellamy and Williams, above n 55, 841.

92 *UNSC Meeting 6498*, UN Doc S/PV.6498, 10.

93 'Libyan Ambassador Jolts UN into Action', *The Age* (online), 26 February 2011 <<http://www.theage.com.au/world/libyan-ambassador-jolts-un-into-action-20110226-1b92k.html>>.

94 BRICS refers to Brazil, Russia, India, China and South Africa.

95 Bellamy and Williams, above n 55, 844.

Thus, Libya stands as an unusual situation in which strategic interests momentarily aligned with humanitarian values to enable the UNSC to respond swiftly and decisively. However, beneath the surface of this apparent consensus there were deep divisions between Western and non-Western states over the appropriateness of intervening militarily. Those disagreements erupted spectacularly as the extent of NATO's military campaign unfolded. Criticism from Russia, China and the other BRICS states centred on three main themes. The first was the accusation that Western powers had exceeded the scope of the mandate in *Resolution 1973* by arming rebels and attacking a broad range of targets beyond those necessary for the protection of civilians.<sup>96</sup> Russia warned that '[a]ny act going beyond the mandate established by that resolution in any way or any disproportionate use of force is unacceptable.'<sup>97</sup> China stated that '[w]e are not in favour of any arbitrary interpretation of the Council's resolutions or of any actions going beyond those mandated'.<sup>98</sup> South Africa also questioned 'whether the actions of the implementing states have been consistent with the letter and the spirit of [the arms embargo imposed by] resolution 1970'.<sup>99</sup> Closely linked to the first line of criticism was the broader claim that R2P and civilian protection had been used by the West as a pretext for the strategic goal of removing the Gaddafi regime.<sup>100</sup> While this concern over regime change was expressed most strongly by Russia, it was also a feature of the other BRICS' criticisms of NATO's campaign throughout 2011.<sup>101</sup> The third basis for criticism of NATO's campaign in Libya was the primacy given to the use of military force and the potential for forcible responses to do more harm than good. Russia, in particular, specifically drew a link between the West's military intervention and the outbreak of 'full-fledged civil war, the humanitarian, social, economic and military consequences of which transcend Libyan borders.'<sup>102</sup> The other BRICS states also indicated a preference for political, rather than military, solutions to the Libyan conflict.<sup>103</sup>

Overall, NATO's intervention in Libya damaged relations between Western and non-Western members of the UNSC. The perception that R2P was used as a smokescreen for regime change has undoubtedly undermined the concept's credibility. Speaking in June 2011, India's ambassador to the UN stated bluntly

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96 Most authors have concluded that NATO *did* overstep the bounds of the mandate in *Resolution 1973*. See, eg, Ulfstein and Christiansen, above n 57; Schmitt, above n 57; Payandeh, 'The United Nations, Military Intervention', above n 57.

97 UN SCOR, 66<sup>th</sup> sess, 6528<sup>th</sup> mtg, UN Doc S/PV.6528 (4 May 2011) 9 ('*UNSC Meeting 6528*').

98 Ibid 10.

99 Ibid 11.

100 See, eg, Russia's statements in the Security Council: UN SCOR, 66<sup>th</sup> sess, 6627<sup>th</sup> mtg, UN Doc S/PV.6627 (4 October 2011) 3–5 ('*UNSC Meeting 6627*').

101 Ibid 5–7, 10–12.

102 Ibid 4.

103 *UNSC Meeting 6528*, UN Doc S/PV.6528.

that ‘Libya has given R2P a bad name’.<sup>104</sup> This assessment was echoed by former UN Secretary-General Kofi Annan, who admitted that ‘[honestly,] the way the “responsibility to protect” was used in Libya caused a problem for the concept.’<sup>105</sup> These renewed concerns about R2P and Western-led intervention have been a central feature of the political climate within which the UNSC has attempted to respond to the humanitarian situation in Syria.

#### IV THE SYRIAN CRISIS

In stark contrast to its rapid response to Libya, the UNSC has failed to adopt effective measures to stem the violence in Syria.<sup>106</sup> Since the Syrian uprising began in March 2011 the only action UNSC members have been able to agree on was the April 2012 deployment of an unarmed observer mission, which proved ineffective. Three separate Western-supported draft resolutions proposing non-forcible measures against the Assad regime have been vetoed by Russia and China in the UNSC.<sup>107</sup> Much of the optimism that surrounded R2P in the immediate aftermath of *Resolution 1973* now appears to have been naive and misplaced.

Disagreements over Syria have centred on two key issues: first, how to interpret events on the ground, and second, how to respond to the violence.<sup>108</sup> In the early stages of the conflict Western powers characterised the situation as brutal repression of pro-democracy protesters by the Assad regime. In contrast, the BRICS states – particularly Russia and China – emphasised that violence was occurring in the context of a legitimate government response to attacks on state infrastructure by armed opposition groups. These divergent perspectives on the

104 Phillippe Boloipon, ‘After Libya, the Question: To Protect or Depose?’ *Los Angeles Times* (online), 25 August 2011 <<http://articles.latimes.com/2011/aug/25/opinion/la-oe-boloipon-libya-responsibility-t20110825>>.

105 Natalie Nougayrède, ‘Kofi Annan: “Sur la Syrie, à L’évidence, Nous N’avons Pas Réussi”’ [Interview with Kofi Annan: ‘On Syria, It’s Obvious, We Haven’t Succeeded’], *Le Monde* (online), 7 July 2012 <[www.lemonde.fr/proche-orient/article/2012/07/07/kofi-annan-sur-la-syrie-a-l-evidence-nous-n-avons-pas-reussi\\_1730658\\_3218.html](http://www.lemonde.fr/proche-orient/article/2012/07/07/kofi-annan-sur-la-syrie-a-l-evidence-nous-n-avons-pas-reussi_1730658_3218.html)>.

106 This Part draws on Andrew Garwood-Gowers, ‘The BRICS and the Responsibility to Protect in Libya and Syria’ in Rowena Maguire, Bridget Lewis and Charles Sampford (eds), *Shifting Global Powers and International Law: Challenges and Opportunities* (Routledge, 2013) 81, 90–4. For more on the Security Council’s deadlock over Syria, see Jess Gifkins, ‘The UN Security Council Divided: Syria in Crisis’ (2012) 4 *Global Responsibility to Protect* 377; Spencer Zifcak, ‘The Responsibility to Protect after Libya and Syria’ (2012) 13 *Melbourne Journal of International Law* 59.

107 For the three draft resolutions, see *Draft Resolution – France, Germany, Portugal and United Kingdom of Great Britain and Northern Ireland*, 66<sup>th</sup> sess, UN Doc S/2011/612 (4 October 2011) (‘*Draft Resolution October 2011*’); *Draft Resolution – Bahrain, Colombia, Egypt, France, Germany, Jordan, Kuwait, Libya, Morocco, Oman, Portugal, Qatar, Saudi Arabia, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America*, 67<sup>th</sup> sess, UN Doc S/2012/77 (4 February 2012) (‘*Draft Resolution February 2012*’); *Draft Resolution – France, Germany, Portugal, United Kingdom of Great Britain and Northern Ireland and United States of America*, 67<sup>th</sup> sess, UN Doc S/2012/538 (19 July 2012) (‘*Draft Resolution July 2012*’).

108 Gifkins, above n 106, 389–93.

factual situation on the ground have undermined attempts to reach agreement on appropriate responses. While Western states – and subsequently the Arab League – have called for President Assad to step aside, Moscow and Beijing have been strongly opposed to any external pressure aimed at changing the regime in Damascus.

The first of the three double vetoes in the UNSC came on 4 October 2011, when China and Russia blocked a proposed resolution sponsored by the UK, France, Germany and Portugal.<sup>109</sup> Vetoes were cast despite the fact that the draft resolution was relatively weak; it merely condemned the ongoing violence and warned of possible sanctions against Syria if civilian casualties continued.<sup>110</sup> In explaining their vetoes Moscow and Beijing expressed concerns that the draft resolution failed to address violence emanating from opposition groups, was motivated by a desire to achieve regime change, and would exacerbate tensions in Syria.<sup>111</sup> The strongest language came from Moscow, which stated that ‘[t]he international community is alarmed by statements that compliance with UNSC resolutions on Libya in the NATO interpretation is a model for the future actions of NATO in implementing the responsibility to protect.’<sup>112</sup> Russia warned that it ‘is easy to see that today’s “Unified Protector” model [NATO’s Libyan operation] could happen in Syria’ and that ‘[t]hese types of models should be excluded from global practices once and for all.’<sup>113</sup> Beijing made it clear that any UNSC action should comply with ‘the Charter of the United Nations and the principle of non-interference in the internal affairs of States’.<sup>114</sup>

After the failure of the Arab League’s observer mission to Syria, the UNSC again attempted to respond to the continuing violence. A Western-supported draft resolution endorsing the Arab League’s plan for President Assad to step aside in a ‘Syrian-led political transition to a democratic, plural political system’ was put to a vote on 4 February 2012.<sup>115</sup> In an effort to assuage Russian and Chinese concerns about ulterior motives or expansive interpretations of UNSC mandates, the text explicitly ruled out any military action under article 42 of the *UN Charter*.<sup>116</sup> However, Russia and China still blocked the proposed resolution. Moscow and Beijing were prepared to veto the draft despite it receiving support from all of the other 13 UNSC members. Russia and China were also among a small number of states that voted ‘no’ on 16 February 2012 when the UN

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109 *UNSC Meeting 6627*, UN Doc S/PV.6627. There were nine votes in favour (Bosnia and Herzegovina, Colombia, France, Gabon, Germany, Nigeria, Portugal, the UK and the US), two against (China and Russia) and four abstentions (Brazil, India, Lebanon and South Africa).

110 *Draft Resolution October 2011*, UN Doc S/2011/612.

111 *Ibid.*

112 *UNSC Meeting 6627*, UN Doc S/PV.6627 4.

113 *Ibid.*

114 *Ibid* 5.

115 *Draft Resolution February 2012*, UN Doc S/2012/77 para 7.

116 *Ibid* Preamble.

General Assembly adopted a non-binding resolution containing similar wording to the vetoed UNSC draft.<sup>117</sup>

Following the second double veto, former UN Secretary-General Kofi Annan was appointed Joint Special Envoy to Syria by the UN and the Arab League. Hopes of a resolution to the crisis were raised briefly when Annan's Six-Point Plan was agreed to by the Syrian government and subsequently endorsed by the UNSC, which authorised the UN Supervision Mission in Syria ('UNSMIS') to monitor compliance with the plan.<sup>118</sup> However, this mission, described by one commentator as a 'lowest common-denominator response', was later suspended due to the continuing violence.<sup>119</sup>

After that brief period of consensus within the UNSC, divisions between Western states and Russia and China re-emerged once it became clear that the Six-Point Plan was not being implemented. A third Western-sponsored draft resolution was put to a vote in the UNSC on 19 July 2012. This proposal would have extended UNSMIS for another 45 days and threatened sanctions against the Syrian authorities if they did not comply with Kofi Annan's Six-Point Plan.<sup>120</sup> Once again, Moscow and Beijing vetoed the draft, complaining that it failed to adequately address violence emanating from Syrian opposition groups, did not explicitly rule out military intervention, and would not help to resolve the situation on the ground.<sup>121</sup>

The UNSC's inability to agree on any effective measures to protect civilians in Syria can be interpreted from a number of perspectives. First, in political terms the fall out from the Libyan intervention has undermined trust between Western and non-Western members of the UNSC. According to one Russian author, the 'way the R2P and the UNSC mandate were abused during the Libyan operation has taught Russia and many other states a lesson, which they will not forget easily'.<sup>122</sup> Blocking action on Syria can be, therefore, be viewed as a Russian and Chinese diplomatic riposte to the West for what they perceive was NATO's use of *Resolution 1973* as a pretext for removing the Gaddafi regime. The vetoes were Moscow's and Beijing's way of saying we 'will not fall for that trick again'.<sup>123</sup> These post-Libya tensions within the UNSC have hampered efforts to generate political consensus on appropriate responses to Syria.

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117 *The Situation in the Syrian Arab Republic*, GA Res 66/253, UN GAOR, 66<sup>th</sup> sess, 97<sup>th</sup> plen mtg, Agenda Item 34, UN Doc GA/RES/66/253 (21 February 2012, adopted 16 February 2012). This resolution was passed with 137 votes in favour, 12 against and 17 abstentions.

118 See SC Res 2043, UN SCOR, 67<sup>th</sup> sess, 6756<sup>th</sup> mtg, UN Doc S/RES/2043 (21 April 2012); SC RES 2059, UN SCOR, 67<sup>th</sup> sess, 6812<sup>th</sup> mtg, UN Doc S/RES/2059 (20 July 2012).

119 Gifkins, above n 106, 377.

120 *Draft Resolution July 2012*, UN Doc S/2012/538 paras 10, 14.

121 UN SCOR, 67<sup>th</sup> sess, 6810<sup>th</sup> mtg, UN Doc S/PV.6810 (19 July 2012) 8–9, 13–14.

122 Vladimir Kotlyar, 'Responsibility to Protect: The Hopes and the Crash of an Illusion and a Possibility to Resuscitate It' (Paper presented at Responsibility to Protect in Theory and Practice Conference, Faculty of Law, University of Ljubljana, 11 April 2013).

123 Walter Russell Mead, 'The Wilsonian World Order Has Once Again Been Postponed' on Walter Russell Mead, *The American Interest* (5 October 2011) <<http://blogs.the-american-interest.com/wrm/2011/10/05/the-wilsonian-world-order-has-once-again-been-postponed/>>.

The ‘blow-back’ effect from Libya does not, however, provide a complete explanation of the UNSC’s paralysis over Syria. Even if the NATO intervention in Libya had not occurred, it is likely that the UNSC would have struggled to agree on an appropriate response to the Syrian crisis. This is because strategic and geopolitical factors make intervention in Syria a far more complex proposition than it was in Libya.<sup>124</sup> Furthermore, the national interests of UNSC members are more directly affected by the situation in Syria, and the factors discussed in Part III, which combined fortuitously to enable acquiescence to a robust response in Libya, were absent in the early stages of the violence. Given the more complicated decision-making calculus that Syria raises for UNSC members, it is unsurprising that humanitarian concerns and moral principles appear to have been outweighed by national interests and geopolitical considerations.<sup>125</sup> In this respect, the lesson from Syria is that most intrastate humanitarian crises will continue to be messy, complex affairs in which UNSC consensus is difficult to achieve.

A third perspective on UNSC deadlock over Syria situates it within the broader context of competing visions over intervention and the international order.<sup>126</sup> Although debates over R2P do not fit neatly into a Western versus non-Western or North–South categorisation, Syria nevertheless highlights conflicts between UNSC members over both principle and political strategy. Russia and China, as well as the other BRICS members, remain reluctant to depart from their traditional foreign policy emphasis on non-intervention and non-use of force. When intrastate conflicts occur, these states prefer to employ peaceful means of conflict resolution such as dialogue and negotiation, rather than coercive measures involving sanctions or military force. For historical and pragmatic reasons they are deeply sceptical of the West’s focus on ‘muscular humanitarianism’ as a civilian protection strategy.<sup>127</sup> All of these themes have been present in the discourse of Russia, China, and to a lesser extent, the other BRICS states during the Arab Spring, indicating that fundamental differences of principle and political approach continue to divide the major Western and non-Western powers.

On the whole, the continuing UNSC deadlock over Syria suggests that the timely and decisive international response in Libya was an aberration, rather than the beginning of a new era of international cooperation on civilian protection measures. The Libyan model of robust intervention for humanitarian purposes is likely to remain the exception, while Syria-type paralysis of the UNSC is more likely to be the norm.

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124 For in-depth analysis of the various strategic and political considerations at play in Syria, see Zifcak, above n 106.

125 Hehir, ‘The Permanence of Inconsistency’, above n 58, 157–8.

126 The author explores this issue in greater depth in Garwood-Gowers, ‘The BRICS and the Responsibility to Protect’, above n 106. See also Ramesh Thakur, ‘R2P after Libya and Syria: Engaging Emerging Powers’ (2013) 36(2) *Washington Quarterly* 61.

127 Murray and Hehir, above n 47, 402.



## V THE FUTURE OF R2P

The Arab Spring has illustrated that R2P's third pillar remains politically divisive and conceptually weak. If R2P is to become a more influential factor in international decision-making on responses to intrastate humanitarian crises it must respond to several major challenges. The first and most immediate obstacle to further operationalisation of R2P's third pillar is a lack of trust between UNSC members in the aftermath of Libya. The political damage caused by 'gaps in expectation, communication, and accountability between those who mandated the [Libya] operation and those who executed it' has contributed to the UNSC stalemate over Syria.<sup>128</sup> There is a clear need for a 'respectful conversation among proponents and sceptics over when, how, and by whom to execute' R2P.<sup>129</sup>

The release of Brazil's official concept note on 'Responsibility While Protecting' ('RWP') is an important first step towards restarting the discussion on R2P.<sup>130</sup> RWP can be seen as an attempt to bridge the gap between Western powers and R2P sceptics such as Russia and China.<sup>131</sup> The concept is intended to complement, rather than replace, R2P. Its main elements are a response to two of the major conceptual weaknesses in R2P's third pillar that the Libyan intervention has highlighted.

The first conceptual shortcoming is the lack of objective criteria to guide UNSC decision-making on the appropriateness of authorising military force. The absence of clear standards governing when and how the UNSC should respond means that the adoption of civilian protection measures remains largely 'contingent on the will of the UNSC and this will is heavily contingent on political exigencies.'<sup>132</sup> In response to this lack of consistency and transparency in UNSC decision-making RWP proposes a set of principles which include the use of force as a last resort only, proportionality, and likelihood of success.<sup>133</sup> These guidelines are not new; they represent a return to the original criteria proposed in the 2001 ICISS conception of R2P. Persuading UNSC members to agree to a set of decision-making principles that limits their discretion will not be straightforward.<sup>134</sup> However, it is an important step that needs to be taken in order to enhance the legitimacy of UNSC decision-making in R2P situations.

128 Thakur, 'R2P after Libya and Syria', above n 126, 72.

129 Ibid.

130 Brazil, *Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General*, UN GAOR, 66<sup>th</sup> sess, Agenda Items 44 and 117; UN SCOR, 66<sup>th</sup> sess, UN Docs A/66/551 and S/2011/701 (11 November 2011) annex ('*Responsibility While Protecting: Elements for the Development and Promotion of a Concept*') ('*RWP Concept Note*').

131 Oliver Stuenkel, 'Brazil and the Responsibility While Protecting' on *Post Western World* (28 November 2011) <<http://www.postwesternworld.com/2011/11/28/brazil-and-the-responsibility-when-protecting/>>.

132 Aidan Hehir, 'The Responsibility to Protect in International Political Discourse: Encouraging Statement of Intent or Illusory Platitudes?' (2011) 15 *International Journal of Human Rights* 1331, 1343.

133 *RWP Concept Note*, UN Docs A/66/551 and S/2011/701 annex para 11.

134 On proposals relating to the veto power, see Ariela Blätter and Paul D Williams, 'The Responsibility Not to Veto' (2011) 3 *Global Responsibility to Protect* 301; Daniel H Levine, 'Some Concerns about "The Responsibility Not to Veto"' (2011) 3 *Global Responsibility to Protect* 323.

The second main conceptual weakness in R2P's third pillar concerns the relationship between the means and ends of military intervention in intrastate humanitarian crises. Leaving aside specific questions over the way in which NATO interpreted its mandate on Libya, there is a need for general clarification of whether, and if so, how R2P intervention to protect civilians from state-perpetrated violence can be carried out effectively without also resulting in the removal of that government.<sup>135</sup> It has been argued that '[t]he demise of a regime responsible for the mass atrocities that trigger an R2P intervention is logically inevitable'.<sup>136</sup> Even strong supporters of R2P acknowledge that military intervention under the third pillar will involve a blurring of the lines between civilian protection and other goals such as the removal of oppressive governments.<sup>137</sup> Brazil's RWP responds to this tension by proposing that the UNSC establish monitoring and compliance mechanisms to assess the manner in which mandates for the use of force are interpreted and implemented.<sup>138</sup> Developing some form of oversight of Council-authorized military interventions would reduce the potential for R2P to be used as a pretext for the pursuit of other strategic objectives. Whether UNSC members would be willing to accept such limits remains to be seen.

A third important aspect of R2P's third pillar that requires further elaboration is the notion of a host state 'manifestly failing' to protect its populations.<sup>139</sup> This represents the threshold or point at which the international – as opposed to host state – dimension of the responsibility to protect becomes engaged. Although it appears that this threshold is set higher than the earlier ICISS standard of 'unable and unwilling', there are no indicators as to what level of violence is required to constitute 'manifestly failing'. As Stahn notes, this is a critical issue because the 'requirement of manifest failure may be used as an additional means to challenge the legality and timing of collective security action.'<sup>140</sup> It is possible to interpret some of China's statements on Syria in this light. While Beijing has not explicitly referred to this factor it could be inferred from comments that the international community 'should give peace a chance in Syria.'<sup>141</sup> The Chinese position may be that because the Assad regime has remained largely intact it has not yet 'manifestly failed' to protect, and therefore, at this stage, the international

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135 For discussion of the various meanings of 'regime change', see Breakey, 'The Responsibility to Protect', above n 43.

136 Kevin Boreham, 'Libya and the "Responsibility to Protect" Doctrine' (26 August 2011) on *On Line Opinion* <<http://www.onlineopinion.com.au/view.asp?article=12522>>.

137 See Bellamy and Williams, above n 55, 849.

138 *RWP Concept Note*, UN Docs A/66/551 and S/2011/701 annex para 11.

139 For detailed consideration of this issue, see Adrian M Gallagher, 'What Constitutes a Manifest Failure? Ambiguous Terminology and the Case of Syria' (Paper presented at Responsibility to Protect in Theory and Practice Conference, Faculty of Law, University of Ljubljana, 11 April 2013).

140 Stahn, above n 35, 117.

141 This statement was made by the Chinese ambassador to the United Kingdom, in an opinion piece in *The Guardian* newspaper: Liu Xiaoming, 'China Believes Syria Needs a Peaceful Solution' *The Guardian* (online), 10 February 2012 <<http://www.guardian.co.uk/commentisfree/2012/feb/09/china-syria-veto-un-resolution>>.

community should not become involved. It is not clear whether Beijing does, in fact, subscribe to this strict interpretation of manifest failure. If it does, such a view would substantially narrow the scope and applicability of R2P's third pillar. The key point, however, is the need for greater conceptual clarity on this crucial aspect of the concept.

The Arab Spring has highlighted several conceptual weaknesses and ambiguities in R2P's third pillar, illustrating the need for elaboration and clarification of the principle. Brazil's RWP concept is a positive first step towards further discussion of R2P and was given substantial attention in the UN Secretary-General's 2012 report on R2P.<sup>142</sup> However, any future moves to formally incorporate RWP elements into R2P are likely to encounter significant resistance from UNSC member states, who are opposed to the imposition of limits on their freedom of decision-making on matters of international peace and security.

## VI CONCLUSION

The events of the Arab Spring are the latest chapter in a long history of intrastate humanitarian crises that have raised complex legal, political, and moral issues concerning external intervention for civilian protection purposes. At first glance, the UNSC's timely and decisive action in authorising military force in Libya seemed to point to a new era of international cooperation on civilian protection. Supporters of R2P were quick to hail *Resolution 1973* as a triumph for the new concept. However, closer examination of the Libyan intervention, coupled with the international community's sharply contrasting response to Syria, has called into question the validity of those claims.

This article has argued that military action in Libya was triggered primarily by an unusual alignment of political and factual circumstances, and should not be viewed as evidence of a fundamental change in states' attitudes towards intervention for civilian protection purposes. This conclusion is supported by a textual analysis of the UNSC's resolutions on Libya, which reveals that states did not expressly acknowledge the international dimension of R2P. While the adoption of *Resolution 1973* was a political surprise, from a legal perspective it is firmly anchored within the *UN Charter* system of collective security and does not differ significantly from earlier UNSC's resolutions passed prior to the emergence of R2P.

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142 See *Report of the Secretary General on the Responsibility to Protect: Timely and Decisive Response*, UN GAOR, 66<sup>th</sup> sess, Agenda Items 14 and 117; UN SCOR, 66<sup>th</sup> sess, UN Docs A/66/874 and S/2012/578 (25 July 2012). For an overview and links to the comments from states at the annual informal interactive dialogue on R2P on 5 September 2012: International Coalition for the Responsibility to Protect, *UN General Assembly Dialogue on the Responsibility to Protect: Timely and Decisive Response* (5 September 2012) <<http://responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4331-un-general-assembly-dialogue-on-the-report-of-the-secretary-general-on-the-responsibility-to-protect-timely-and-decisive-response>>.

For Russia, China and several other influential non-Western states the removal of the Gaddafi regime in Libya has reignited longstanding suspicions about R2P's third pillar. The post-Libya backlash against R2P has been evident in the UNSC's inability to agree on any effective civilian protection measures in Syria. The optimism that greeted *Resolution 1973* has been replaced by a realisation that there is little evidence, so far at least, that the emergence of R2P has substantially altered state decision-making on whether, and if so, how to intervene.<sup>143</sup> International intervention in intrastate humanitarian crises will continue to be conducted on a highly selective, imperfect basis. The complexity of the international system means that rapid, decisive UNSC responses, as in Libya, are likely to remain the exception. The norm will continue to be complex, protracted disagreements between leading powers, as exemplified by Syria.

This is not to say that R2P cannot develop into a more influential decision-making factor in the future. However, in order to do so it will need to address the tricky political issues and conceptual weaknesses that the Arab Spring has highlighted. At present, it is unclear whether the current challenges confronting R2P's third pillar are painful but merely temporary 'growing pains', or in fact, signs of a more serious, perhaps terminal illness for this dimension of the concept.

### Postscript

On 21 August 2013 there was an alleged chemical weapons attack on the Damascus suburb of Ghouta. The US, UK and France attributed responsibility for the incident to the Syrian regime, and indicated that they were considering responding with military force.<sup>144</sup> If force is used it is expected to take the form of limited, targeted missile strikes, rather than a more extensive military campaign. The Assad government has denied using chemical weapons and blamed rebel fighters for the Ghouta incident.<sup>145</sup> A UN weapons inspection team has been granted access to the site of the alleged attack but has yet to report on whether there is evidence of chemical weapons usage.

On 28 August the UK announced that it had drafted a UNSC resolution that would authorise the use of force against Syria in accordance with chapter VII of the *UN Charter*. The UK proposal condemned the use of chemical weapons by the Syrian authorities and authorised member states to take 'all necessary measures to protect civilians' in Syria.<sup>146</sup> Discussions among the permanent five members of the UNSC took place on 28 and 29 August. These talks failed to generate consensus over the UK draft. Russia indicated that any discussion of the proposal was premature given that the UN weapons team had yet to complete its

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143 For a similar conclusion see Hehir, 'The Permanence of Inconsistency', above n 58, 157–9.

144 'Syria: Cameron and Obama Threaten "Serious Response"', *BBC News* (online), 25 August 2013 <<http://www.bbc.co.uk/news/uk-23830590>>.

145 *Ibid.*

146 'Syria Crisis: UK Puts Forward UN Proposal', *BBC News* (online), 28 August 2013 <<http://www.bbc.co.uk/news/world-middle-east-23864124>>.

investigation into the alleged chemical weapons attacks.<sup>147</sup> According to Moscow, any military strike on Syria would have ‘catastrophic consequences’ for the region.<sup>148</sup> As at 30 August, no draft resolution has been formally tabled in the UNSC and no vote has taken place. However, given the ongoing divisions between the permanent five members it appears highly unlikely that the UNSC will authorise military action in Syria.

On 29 August the UK government released two important documents. The first was an intelligence report which concluded that it was ‘highly likely that the regime was responsible for the CW [chemical weapons] attacks on 21 August’.<sup>149</sup> The second was a short publication outlining the official UK government legal position on using military force in Syria following the alleged chemical weapons attack.<sup>150</sup> This document noted that the UK was seeking to gain UNSC authorisation for the use of force, but asserted that the doctrine of humanitarian intervention provided an alternative legal basis for the UK to use force unilaterally. According to the UK government:

If action in the Security Council is blocked, the UK would still be permitted under international law to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the further use of chemical weapons by the Syrian regime. Such a legal basis is available, under the doctrine of humanitarian intervention ...<sup>151</sup>

This document reaffirms the UK’s position that there is a right of unilateral humanitarian intervention in the absence of a UNSC resolution authorising the use of force. There is no reference to R2P in the document.

On 29 August, shortly after the release of these two documents, British members of parliament voted against British involvement in any possible military strikes against Syria.<sup>152</sup> Following this vote, the British government indicated that the UK will not take part in military action. It remains to be seen whether the US, France and possibly other states will decide to use military force against Syria, and if so, what legal arguments they will rely on to justify such action.

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147 Ibid.

148 ‘Syria Crisis: Russia and China Step Up Warning over Strike’, *BBC News* (online), 27 August 2013 <<http://www.bbc.co.uk/news/world-us-canada-23845800>>.

149 Joint Intelligence Organisation (UK), ‘Syria: Reported Chemical Weapons Use’ (29 August 2013) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235094/Jp\\_115\\_JD\\_PM\\_Syria\\_Reported\\_Chemical\\_Weapon\\_Use\\_with\\_annex.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235094/Jp_115_JD_PM_Syria_Reported_Chemical_Weapon_Use_with_annex.pdf)>.

150 Prime Minister’s Office (UK), *Chemical Weapon Use by Syrian Regime: UK Government Legal Position* (29 August 2013) <<https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/html-version>>.

151 Ibid.

152 ‘David Cameron Loses Commons Vote on Syria Action’, *BBC News* (online), 29 August 2013 <<http://www.bbc.co.uk/news/uk-politics-23892783>>.