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## **MORTALLY WOUNDED: RESPONSIBILITY TO PROTECT POST-LIBYA**

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### **JCSP 46**

#### **Solo Flight**

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**By Major Allan Dwyer**

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## **MORTALLY WOUNDED: RESPONSIBILITY TO PROTECT POST-LIBYA**

### **INTRODUCTION**

The creation of Responsibility to Protect (R2P) as a United Nations (UN) accepted political principal was unanimously adopted by the UN General Assembly at the 2005 World Summit and was articulated in paragraphs 138–139 of that assembly’s outcome document.<sup>1</sup> This international commitment was an important moment for those who had battled to formalize an institutional, global and moral response to crimes against humanity, genocide and ethnic cleansing. Through inclusion, R2P gained enough support to begin the process of being established as an international norm and the general acceptance required to begin the process of becoming law. R2P was invoked successfully in engagements such as Kenya, Côte d’Ivoire, Guinea and Kyrgyzstan where mitigation of R2P crimes has occurred.<sup>2</sup> This paper will focus on 2011, where R2P was first invoked by the UN to intercede militarily in Libya.

This paper will posit that the altruistic and undeniably well intentioned principles that created R2P were perverted with the intervention in Libya. The use of R2P in Libya can be interpreted as a critical moment where international trust was put in Western powers to act without ulterior motive. NATO failed to understand the importance of this moment, as the United Kingdom and France actively transitioned to campaigning for not only intervention, but regime change.<sup>3</sup> R2P’s application was further stymied by

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<sup>1</sup> United Nations, “Resolution adopted by the General Assembly on 16 September 2005 – 2005 World Summit Outcome,” last modified 24 October 2005, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_60\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf).

<sup>2</sup> University of Toronto News, “Why Responsibility to Protect is more important than ever: Tina Park,” last modified 21 March 2016, <https://www.utoronto.ca/news/responsibility-to-protect>.

<sup>3</sup> CATO Institute, “How NATO Pushed the U.S. Into the Libya Fiasco,” last modified 21 February 2019, <https://www.cato.org/publications/commentary/how-nato-pushed-us-libya-fiasco>.

definition (or cultural language) and the friction of competition. These evolutions in purpose and context discredited R2P as an altruistic international norm, crippling it as a tool to provide physical protection to vulnerable populations. Moreover, it has proven that R2P is not ready to be an international law, with its status as a potential and evolving norm being all but destroyed.

This thesis will be examined by looking at R2P holistically in order to: understand the context of R2P; the measures required to act under the current R2P framework; examine the problems that China and Russia (specifically) have with R2P; show how the Libya intervention destroyed what little faith that was present between the veto carrying Permanent Five (P5) with respect to R2P; and what future R2P has as an international norm after Libya.

## **R2P – UNDERSTANDING THE CONTEXT**

Humanitarian Crisis's such as ethnic cleansing, genocide and crimes against humanity are not new phenomenon within the realm of human interactions. Nation Building, no matter how big or small, has often seen the state involved in the application of violence against both internal and external adversaries. Leading up to Word War II, awareness of atrocities such as those committed by Leopold II of Belgium in the Congo Free State or the Armenian genocide led to international pressure on states that partook in acts of violence against minorities, civilian populations and targeted groups (by race, religion or affiliation).<sup>4</sup> This increasing cognizance walked hand in hand with

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<sup>4</sup> United Nations, "Crimes against Humanity," last accessed 3 May 2020, <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>.

technological advancement, both in communication and in the capability of the state to execute violence to an extent not previously imagined, in both efficiency and scale.

This recognition did little to help curb the violence that subsequently exploded during World War II. Rather than learn that violence against minorities or targeted groups was wrong, it can be argued that effort applied during this time was focused on managing the information surrounding the execution of such atrocities, not preventing them.<sup>5</sup> It was during this period that Raphael Lemkin, a resolute Jewish lawyer who had survived the Holocaust, began his quest to identify genocide and make it a recognized international crime.<sup>6</sup> Lemkin's journey was not easy, as he had to fight numerous issues, including the questioning of his own mixed motives and how to frame recognition of genocide as being in the national interests of those petitioned. This is where R2P and Lemkin's journey both parallel and compliment each other. Raphael Lemkin's efforts have since been expanded upon to secure the rights of each individual, so they are protected by and from the state. Various notable figures such as Kofi Annan, Lloyd Axworthy and Gareth Evans, continued that work to create the normative foundation<sup>7</sup> that led to the acceptance of R2P by the UN in 2005.<sup>8</sup>

As noted, the aspirational goal of creating a world where individuals could be protected from genocide, ethnic cleansing and crimes against humanity has only a fairly

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<sup>5</sup> "Blueprint for Armageddon I," *Dan Carlin's Hardcore History*, 30 October 2013, <https://www.dancarlin.com/product/hardcore-history-50-blueprint-for-armageddon-i/>

<sup>6</sup> Adam Jones, *Genocide: A Comprehensive Introduction*. 3; 3 ed. (New York: Routledge Ltd, 2016), 14-17.

<sup>7</sup> Key was Lloyd Axworthy's work as part of The International Commission on Intervention and State Sovereignty (ICISS), which was an ad hoc commission was formed in 2001 to sensitize the concept of humanitarian intervention under the name of "Responsibility to Protect" within the international community.

<sup>8</sup> United Nations, "The 2005 World Summit High-Level Plenary Meeting of the 60th session of the UN General Assembly (14-16 September 2005, UN Headquarters, New York)," last modified 24 October 2005, [https://www.un.org/en/events/pastevents/worldsummit\\_2005.shtml](https://www.un.org/en/events/pastevents/worldsummit_2005.shtml)

recent backstory in human conflict. Despite the larger contemporary feel, the charges that would trigger R2P have precedent in international law and an established basis within internationally accepted norms, thanks in large part to Mr. Lemkin. The problem R2P faces is that there is often limited incentive for a state to invest in stopping another sovereign state at their own cost and risk.

Raphael Lemkin's success at establishing genocide as both a recognized term<sup>9</sup> and an international crime in 1948 was the result of years of dedication and unwavering perseverance.<sup>10</sup> He achieved this success by capitalizing on the growing awareness of the genocidal acts that occurred during World War II and by understanding the difference between national and personal interests and agendas; appealing to many different parties in subtly different ways.<sup>11</sup>

Although a victim of the attention that 9/11 wrested from the humanitarian interventions of the 1990's, R2P was similarly created, as it capitalized on international focus in the wake of post cold war events like Rwanda. R2P sought to incorporate interests of diverse states by seeking "to close the gap between the existing legal responsibilities of states already articulated in international humanitarian and human rights law, and the reality of populations threatened with large scale and systematic violence."<sup>12</sup> It did so by emphasizing the responsibility of the state to uphold the rights of its citizens. This framework appealed to the concept of sovereignty as the state was the

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<sup>9</sup> United Nations Office on Genocide Preventions and the Responsibility to Protect, "Genocide - Definitions," last accessed 3 May 2020, <https://www.un.org/en/genocideprevention/genocide.shtml>.

<sup>10</sup> United Nations Office on Genocide Preventions and the Responsibility to Protect, "Legal Framework – The Genocide Convention," last accessed 3 May 2020, <https://www.un.org/en/genocideprevention/genocide-convention.shtml>.

<sup>11</sup> Adam Jones, *Genocide: A Comprehensive Introduction*, 3<sup>rd</sup> ed. (New York: Routledge Ltd, 2016), 18.

<sup>12</sup> Jennifer M Welsh, Norm Robustness and the Responsibility to Protect, *Journal of Global Security Studies*, Volume 4, Issue 1, January 2019, Pages 53–72, <https://doi.org/10.1093/jogss/ogy045>.

primary authority and it framed a staged response that the international community could adhere to – while keeping foreign intervention as the mechanism of last resort. This was the understanding that led to R2P being accepted and recognized by the UN, eventually setting the stage for Libya.

## **MEASURES REQUIRED TO ACTIVATE**

To further understand the concept of how R2P was to be activated and why it did not meet more resistance in Libya, it is important to note that R2P is framed by three pillars and is subject to six principles. It is further subject to UN approval and can be blocked by the UNSC by veto. Both the pillars and the principles will be explored in the context of Libya to facilitate understanding of the legality of the aspiring norm and how it gained support.

The three pillars of R2P are: the protection responsibilities of the state; international assistance and capacity-building; and timely and decisive response.<sup>13</sup> These pillars can be translated into layers for better understanding. The primary layer is internal to the state; if the state cannot provide protection alone, R2P transitions to the next layer of involvement. Next is the responsibility of the international community to assist that state. Finally, if the state is unwilling or unable to protect its citizens, the international community has a responsibility to act. These pillars are somewhat nested as sequential elements, but the international community does not need to go through each step in order to get to the next, leaving room for interpretation of a situation's urgency.<sup>14</sup> Further,

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<sup>13</sup> Global Centre for the Responsibility to Protect, "What is R2P?" last accessed 27 April 2020, <https://www.globalr2p.org/what-is-r2p/>.

<sup>14</sup> United Nations Assembly – United Kingdom, "Understanding the Responsibility to Protect: an Introduction," last modified 18 December 2014, <https://www.una.org.uk/news/understanding-responsibility-protect-introduction>.



invoking R2P is not authorization for military intervention on its own, although somewhat implied. R2P is still legally bound by the UN Charter and UNSC approval. In summary, primacy of action is given to those other than military in nature, with the goal of respecting sovereignty without becoming a bystander or inadvertently aiding the perpetrators of the violence.

In the case of Libya, it was clear in the initial actions of Colonel Gaddafi's regime that the state had little appetite to address the concerns of the demonstrators. The fact that Libya had spiralled into an armed conflict between the state and militia groups was indicative of the states inability to respond without significant loss of life. At this time, Colonel Gaddafi had no true allies and his distrust of the West and the Arab League (AL) would have influenced his decision to reject outside help, especially as it would likely threaten his hold over Libya.<sup>15</sup> It was this situation which gave rise to UNSCR 1970. In this resolution, demands were made to stop the killing of civilians with the aim of stabilizing the region peacefully, supported by the African Union (AU) and AL. The resolution also made use of other political tools, as it "referred the situation in Libya to the ICC, implemented an arms embargo, a travel ban, and an asset freeze."<sup>16</sup> Libya's absolute disregard of UNSCR 1970 and further blatant threats to the population led to the adoption of UNSCR 1973 and military intervention in the form of a no fly zone.

This application of the three pillars, or levels, of R2P can be seen to have been followed in a linear and progressive manner, but rely on accepting the interpretation of armed protestors as a vulnerable population in need of protection. While Colonel Gaddafi

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<sup>15</sup> New York Times, "Dislike for Qaddafi Gives Arabs a Point of Unity," last edited 21 March 2011, <https://www.nytimes.com/2011/03/22/world/africa/22arab.html>.

<sup>16</sup> Security Council Report, "Chronology of Events," last modified 15 April 2020, <https://www.securitycouncilreport.org/chronology/libya.php>.

was known to be a brutal dictator who did not hesitate to kill his opposition, this was not Rwanda. Those being killed were using force to overthrow a government and were reaching out for help as they were losing ground.<sup>17</sup>

Accepting the linear progression and legitimacy, R2P still had room to manoeuvre if needed. Noam Chomsky points out that another study was conducted in 2001 which is also titled “Responsibility to Protect.” This report, which is a product of the Evans commission (chaired by Gareth Evans) is largely identical to the UN version of the same name, but has one large notable difference. It states that if the P5 is unable to take appropriate action, then organizations of states may act, with the understanding they will seek UNSC approval at a later date.<sup>18</sup> This creates problems in both language and intent, when referenced in an international forum.

R2P is also subject to six conditions that allow for implementation. They are: the right authority; just cause; right intention; be the last resort; use proportional means; and have reasonable prospects of success.<sup>19</sup> In essence, these conditions must all be met in order for the implantation of any level of physical or military intervention. This level of scrutiny was deemed necessary to avoid threats to sovereignty and will be looked at in the context of Libya.

The right authority in the Libya case was sought, and resided within the UNSC. Both UNSCR 1970 and 1973 were approved by the UNSC and were bolstered by AU and

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<sup>17</sup> The Globalist, “Libya: Hillary Clinton, Susan Rice and the Ghost of Rwanda,” last modified 27 October 2016, <https://www.theglobalist.com/libya-the-ghost-of-rwanda-west-united-states/>.

<sup>18</sup> YouTube, “Noam Chomsky – Responsibility to Protect,” last modified 3 December 2016, [https://www.youtube.com/watch?v=tvXq6HIKV\\_A](https://www.youtube.com/watch?v=tvXq6HIKV_A).

<sup>19</sup> NATO Review, “The Responsibility to Protect,” last modified 1 December 2001, <https://www.nato.int/docu/review/articles/2002/12/01/the-responsibility-to-protect/index.html>

AL support and consultation. Regional investment, support and caveats gave credibility to both resolutions, preventing P5 vetoes.

Just cause, as a condition of military intervention can only be defined as actions required to prevent serious and irreparable harm occurring to human beings. Large-scale loss of life or ethnic cleansing executed through killing, rape, acts of terror or expulsion as a product of a failed state, official policy or neglect, all are considered just cause by NATO.<sup>20</sup> In retrospect, Libya has become a matter of debate in this regard, but reporting at the time indicated that the population was at risk and not just the rebels. This assessment was fairly consistently accepted across the board as reporting from CNN, BBC and Al Jazeera all were coming to similar conclusions.<sup>21</sup>

The primary intent of intervention, must be to halt or avert human suffering. Despite mixed motives being largely accepted as the only way to secure action from states, the intent of the intervention must be recognized by the UNSC as just, and not primarily weighted in national interest. In Libya, this was demonstrated by regional support. The AL and AU's support for these measures was seen as a legitimizing element to the UNSCRs and worked to alleviate concerns raised by Russia, China and others.

As UNSCR 1970 was ignored and the rhetoric and threats coming from Colonel Gaddafi were escalating rapidly, the argument that intervention through the establishment of a no-fly zone over Libya was made. To justify this action, the P5 needed to agree that all other measures had been exhausted. The only reason China did not veto this measure was the AL and AU supported it. Russia agreed with the premise of preventing an

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<sup>20</sup> *Ibid.*

<sup>21</sup> Al Jazeera News, "The Lust for Libya: How a Nation was Torn Apart - The Big Picture," last modified 18 October 2018, <https://www.youtube.com/watch?v=Sn16bsEHJFY&feature=youtu.be>.

atrocities, but abstained due to concerns that key control measures were not agreed upon and they stated they held out a preference for peaceful mitigation of the conflict vice military intervention.<sup>22</sup>

Proportional means that the method, duration and force of the intervention be the minimum required “to secure the defined human protection objective.”<sup>23</sup> For example, if an intervention is staged to protect civilian lives and prevent a massacre and the targeted regime requests a cease fire to conduct negotiations, it can become difficult to continue your campaign and defend adherence to this condition. This was the case in Libya and although a case can be made that the credibility of these ceasefire attempts by the regime was lacking, the fact that they were not explored further indicated that this principle was not adhered to.<sup>24</sup>

The last of the conditions is the intervention’s reasonable prospects of success. The success must be determined by the overall effect of saving lives. If the intervention risked causing cascade failure in state institutions or triggering an aggressive regional proxy conflict that would cause more harm than inaction, that intervention would fail this condition. In this case, regime change that would highlight institutional holes created by the many years of dictatorial rule would have to be considered and the lessons of Iraq be heeded. Neither factor weighed in favor of Libyan intervention.

Through this lens, R2P was invoked in a largely correct manner. Criticism in retrospect lays primarily with the execution, as mission creep and mixed motives became

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<sup>22</sup> United Nations, “Security Council Approves ‘No-Fly Zone’ over Libya, Authorizing ‘All Necessary Measures’ to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions,” last modified 17 March 2011, <https://www.un.org/press/en/2011/sc10200.doc.htm>.

<sup>23</sup> NATO Review, “The Responsibility to Protect,” last modified 1 December 2001, <https://www.nato.int/docu/review/articles/2002/12/01/the-responsibility-to-protect/index.html>.

<sup>24</sup> Media Lens, “NATO Rejects Every Attempt Made to Declare a Ceasefire in Libya,” last accessed 3 May 2020, [https://www.medialens.org/23\\_fg\\_75\\_lc/viewtopic\\_t3241.html](https://www.medialens.org/23_fg_75_lc/viewtopic_t3241.html).

most evident when it is shown that the NATO campaign escalated while the AU was trying to use the no fly zone to establish a diplomatic result.<sup>25</sup> The international community realized they were not understanding R2P in the same way, exposing fundamental issues in its doctrine and eroding previously gained support.

## **CONFLICTING PERSPECTIVES**

Initial international support for the concept of R2P was evident in its inclusion in an unanimously supported UN document.<sup>26</sup> The baseline premise of grounding responsibility in the state to protect its citizens and that R2P reinforced commonly accepted international law with respect to genocide, ethnic cleansing and other crimes against humanity facilitated its inclusion. It was seen as an opportunity for the world to collectively make progress on human rights. From another perspective it could even be inferred that the acceptance of R2P could be used as a mechanism to slow or halt Western interventionism as the military function required both pre-conditions and P5 concurrence.<sup>27</sup> To demonstrate this difference in viewpoints specifically as they relate to Libya, a contrasting body to that of the West (US, United Kingdom, France, Canada and NATO etc.) will be examined. Despite conflicting accounts of the how opposition to R2P is framed, with claims of West vs East and North vs South being invoked, this paper will

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<sup>25</sup> J.D. Summerfield, "Mixed Motives and Irregularities: Libya, Syria, and the Responsibility to Protect" (Command and Staff Course Paper, Canadian Forces College, 2017), 45.

<sup>26</sup> Although outcome documents are not formally voted on, they need to be agreed upon in order to pass. For transparency, although the outcome document passed, it was controversial as John Bolton, the newly appointed US ambassador to the UN, was highly confrontational and made numerous unilateral demands and changes up until the day the document was to pass.

<sup>27</sup> YouTube "Noam Chomsky – Responsibility to Protect," last modified 3 December 2016, [https://www.youtube.com/watch?v=tvXq6HIKV\\_A](https://www.youtube.com/watch?v=tvXq6HIKV_A).

use BRICS as the counter to Western ambition for R2P.<sup>28</sup> BRICS is composed of Brazil, Russia, India, China and South Africa.

While BRICS countries are certainly not a unified entity across the spectrum, their collaboration provides a powerful perspective that includes two P5 members, over a quarter of the world's economic might and 40% of the world's population.<sup>29</sup> In this section, the interpretation of R2P in Libya will be explored against: the BRICS concept of sovereignty in the global commons; the idea of Western intervention and its merits against regional actions; and the legal framework and buy-in required to make R2P legitimate in the eyes of the member states of BRICS.

As an entity, one of the chief concerns of BRICS is the concept of sovereignty. In an increasingly globalized world, BRICS countries have expressed, to some degree, the requirement for national and regional issues to be addressed "from the bottom up."<sup>30</sup> While BRICS does not seek to be an anti-Western coalition "they are concerned with maintaining their independence of judgment and national action in a world that is increasingly economically and socially interdependent."<sup>31</sup> This can be seen from a multitude of angles, for example China, a nation that suffered near destruction at the hands of Western Imperialism in the early 20<sup>th</sup> century, seeks to be a globalizing force,

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<sup>28</sup> Gareth Evans cites a divide between North and South with respect to interpretation of R2P in his study, *The Responsibility to Protect*. This runs counter to traditional West versus East thought. BRICS covers both and is a defined group with clear member states on the world stage.

<sup>29</sup> Global Sherpa, "BRIC Countries – Background, Key Facts, News and Original Articles," last accessed 3 May 2020, <http://globalsherpa.org/bric-countries-brics/>.

<sup>30</sup> Igor Denisov, Andrei Kazantsev, Fyodor Lukyanov and Ivan Safranchuk, "Shifting Strategic Focus of BRICS and Great Power Competition." (Strategic Analysis: Special Issue: BRICS and the Global Order, 2019), 490.

<sup>31</sup> Zaki Laïdi, "BRICS: Sovereignty Power and Weakness." (*International Politics* 49 (5), 2012), 614.

rather than a country that has been globalized.<sup>32</sup> The Embassy of the People's Republic in China in the United States of America still quotes a 1996 speech on their position on sovereignty with specific reference to the conceptual base of R2P.

China resolutely opposes hegemonism, power politics, aggression and expansion in whatever form, as well as encroachments perpetrated by one country on the sovereignty and territorial integrity of another, or interference in the internal affairs of another nation under the pretext of ethnic, religious or human rights issues.<sup>33</sup>

Russia is more direct in its formal position. In its published policy put in place by President Putin in 2016, paragraphs 26. b. and c. make its stance against military intervention into a sovereign state in the name of R2P explicitly clear. In fact, in para c. President Putin states his nations aspiration to “prevent military interventions or other forms of outside interference contrary to international law, specifically the principle of sovereign equality of States, under the pretext of implementing the "responsibility to protect" concept.”<sup>34</sup> This hardened line is the result of the loss of faith in the US/Russia reset, of which the 2011 Libya intervention, or regime change, played a part.<sup>35</sup>

In both these stances, it is clear that the independent sovereignty of the state is paramount and that it should be protected from outside interference. A notable outlier in

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<sup>32</sup> Igor Denisov, Andrei Kazantsev, Fyodor Lukyanov and Ivan Safranchuk, "Shifting Strategic Focus of BRICS and Great Power Competition." (Strategic Analysis: Special Issue: BRICS and the Global Order, 2019), 493: The Brookings Institution, “Global China: Domestic politics and foreign policy,” last modified September 2019, <https://www.brookings.edu/research/global-china-domestic-politics-and-foreign-policy/>.

<sup>33</sup> Embassy of the Peoples Republic of China in the United States of America, “Main Characteristics of China’s Foreign Policy,” last viewed 3 May 2020, <http://www.china-embassy.org/eng/zmgx/zgwjzc/t35077.htm>.

<sup>34</sup> The Ministry of Foreign Affairs of the Russian Federation, “Foreign Policy Concept of the Russian Federation (approved by President of the Russian Federation Vladimir Putin on November 30, 2016)” last modified 1 December 2016, [https://www.mid.ru/en/foreign\\_policy/official\\_documents/-/asset\\_publisher/CptlCk6BZ29/content/id/2542248](https://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk6BZ29/content/id/2542248).

<sup>35</sup> Foreign Policy, “The Russian Reset the Never was,” last modified 9 December 2016, <https://foreignpolicy.com/2016/12/09/the-russian-reset-that-never-was-putin-obama-medvedev-libya-mikhail-zygar-all-the-kremlin-men/>.

BRICS is Brazil, who after the Libyan intervention of 2011 tried to reshape R2P by introducing “Responsibility While Protecting” (RwP). RwP expanded on key provisions of R2P with the intent of making military interventions less accessible.<sup>36</sup> One of these expansions was to hold the intervening states responsible for damages in the conduct of R2P actions. This attempt to reform R2P as an international norm did not get support from other BRICS countries (who were not ready to degrade national sovereignty in any way) or the West (who saw it as an attempt to limit their options on the international stage through additional approvals and heightened price tags).<sup>37</sup>

The Western reaction speaks to the core perception by certain countries and certainly by BRICS nations that the West is prone to military intervention, paternalism and regime change. This is not an unfounded fear as the US has increased its appetite for this type of action over time. The US conducted 46 foreign interventions from 1948 to 1991, meaning that the US was responsible for 1.07 interventions per year over those 43 years. From 1992 to 2017, 188 foreign interventions were conducted by the US, for an average of 7.52 interventions per year.<sup>38</sup> Libya occurred during this latter period and coincided with a movement led by a Republican from Texas that argued regime change should “become the explicit policy of the United States.”<sup>39</sup>

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<sup>36</sup> Michael Kenkel and Cristina Stefan, "Brazil and the Responsibility while Protecting Initiative: Norms and the Timing of Diplomatic Support." (Global Governance: A Review of Multilateralism and International Organizations, 22 (1), 2016), 41-43.

<sup>37</sup> *Ibid.*, 47.

<sup>38</sup> The National Interest, “Why is America Addicted to Foreign Interventions?” last modified 10 Dec 2017, <https://nationalinterest.org/feature/why-america-addicted-foreign-interventions-23582?page=0%2C1>.

<sup>39</sup> Centre for American Progress, “Understanding the Russian Response to the Intervention in Libya,” last modified 12 April 2011, <https://www.americanprogress.org/issues/security/news/2011/04/12/9529/understanding-the-russian-response-to-the-intervention-in-libya/>



Whether that perception is correct, simply a product of particular circumstances, or the US's role in the global order during that period is not the focus of this paper. It is worth noting that statistics and stances such as those referenced above strengthen the reservation that countries such as those in BRICS, have towards intervention. BRICS is wary not only of the West's proclivity towards intervention, but also their motives and intentions as Libya's R2P was barely approved before regime change entered the discussion. To further complicate this, consistency of action has been lacking. Despite being quick to act in oil producing countries like Libya and Iraq, the West was slow to react in Bosnia and barely reacted at all in Rwanda.

The inaction of the international community in Bosnia and Rwanda in the face of genocide and ethnic cleansing gave momentum to R2P as an idea and helped shape and develop key actors that would play a role in establishing R2P in the UN and its implementation in Libya, such as Kofi Annan and Samantha Power.<sup>40</sup> It did not however, help empower regionalism as the world order could still be described in the lead-up to 2011 as uni-polar in the military sense, with the UNSC being the deciding body and the US being the most capable lead force to execute intervention as either part of the UN, NATO or an ad-hoc coalition. The actions taken under the name of R2P's intervention in Libya during 2011 can only increase the unease of nations that are already uncomfortable with Western intervention, and according to Gareth Evans in 2012, evaporated the consensus of what the third pillar of R2P meant.<sup>41</sup>

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<sup>40</sup> War on the Rocks, "Beyond do Something – Revisiting the International Communities Role in the Rwandan Genocide," last modified 5 October 2018, <https://warontherocks.com/2018/10/beyond-do-something-revisiting-the-international-communitys-role-in-the-rwandan-genocide/>.

<sup>41</sup> Aidan Hehir, "Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring." (Cooperation and Conflict 51 (2), 2016), 172.

That discomfort is also magnified with the acknowledgement of R2P as a norm. International Law and the International Criminal Court (ICC) is bound by willing compliance of the body of participant states. It has served to prosecute war criminals and has tried people for genocide and crimes against humanity under guidance from the UN. Interestingly, even as the US was part of many initiatives to bring other countries to justice in support of the ICC, the US has ensured that it has not ratified the ICC officially and has recently even resorted to denying visas to ICC officials to ensure US military nor officials were investigated by the body.<sup>42</sup> Although the US is not alone in its reluctance to submit to the ICC, this stance brings into question: the rule of law and its prominence in US policy and decisions; and if the rule of law is not respected internationally, should the US be involved in any intervention?

Ignoring the enormity of the question posed, the premise is the acute concern that it must bring to international agreements at the UN. If R2P is an assurance of the world's desire to do good, but the chief enforcer of this policy does not want to sign the accord that empowers the ICC, nor be subject to it... there is a reason to pause. From the view of a BRICS nation, this is an area that lends credibility to their concern about the primacy of sovereignty. It highlights that Brazil's attempts to make intervention more accountable is counter purpose to Western, or in this case, US ambitions for freedom of action.

The immediate counter to this is the West is most responsible for the establishment of the current world order after World War II, and that R2P is only a small aspect of their enormous global responsibilities and engagement. In being the force most

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<sup>42</sup> Human Rights Watch, "US Threatens International Criminal Court - Visa Bans on ICC Staff," last modified 15 March 2019, <https://www.hrw.org/news/2019/03/15/us-threatens-international-criminal-court>.

likely to be asked to take on interventions when they are needed, they are rightfully wary of being held responsible if the situation degrades despite their best efforts and intentions. As history has shown, Western interventions in the Middle East and Africa have not always gone according to plan, nor have they provided the benefits that the West is accused of seeking.

BRICS nations, despite assurances or explanation, are both historically wary and acutely critical of the third pillar of R2P and its link with Western intervention. This is born from interpretations of globalization, sovereignty and legal obligations, which were explicitly aggravated by and in Libya.

#### **LIBYA – THE EXECUTION OF**

This brings focus exclusively on how Libya became the first R2P intervention in 2011 despite the concerns mentioned above. Libya was a case where its leader, Colonel Muammar Gaddafi, was dealing with a populist revolution within his country's borders that was born from the momentum of "The Arab Spring." A leader with few real allies, his military response and subsequent televised proclamation of clearing his nation of the revolutionary force by personally going room to room raised alarm. The international community, wanting to avoid being accused of inaction like that of the Rwandan genocide was successfully roused to action by requests for help by the newly established Libyan transition council, who was endorsed by the Arab League and African Union.<sup>43</sup> The information available or disseminated at the time supported the urgency of this request, with images of dead in the street being reported by varied sources including the

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<sup>43</sup> Al Jazeera News, "The Lust for Libya: How a Nation was Torn Apart - The Big Picture," last modified 18 October 2018, <https://www.youtube.com/watch?v=Sn16bsEHJFY&feature=youtu.be>.

BBC and Al-Jazeera.<sup>44</sup> The factors affecting the decision to act will be looked at through: the UNSCRs 1970 and 1973; the action taken under the name of R2P versus its intended application; and regime change.

At the outset UNSC resolution 1970 was adopted on 26 February 2011 which condemned Gaddafi's actions and: demanded the immediate cessation of hostilities against civilians; demanded the taking of steps to address the legitimate demands of the "protestors;" urged for the freedom of media, urged for the flow of humanitarian supplies; and urged for the ability of foreign nationals to leave the conflict area.<sup>45</sup> The term protestors is put in quotations, as by this time they were an armed resistance and their gatherings were no longer peaceful or legal. UNSCR 1970 also included a referral to the ICC for investigation that would occur, while simultaneously reaffirming the independence and sovereignty of Libya.<sup>46</sup> Despite clearly cornering Gaddafi by economically targeting his regime and referring his actions to the ICC, this resolution passed as it employed levers of power other than military and the inclusion of the referral to the ICC was pushed for by local stakeholders, recognized as the AL and AU.

As it became apparent that Gaddafi would not cede to UN pressure, international dialogue began to explore other options. France and the United Kingdom (UK) led the call to intervene and found support in the AL and AU. Advised by Samantha Power, Susan Rice and Hillary Clinton, and assured a supporting role to the UK and France,

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<sup>44</sup> Sumaya Al Nahed, "Covering Libya: A Framing Analysis of Al Jazeera and BBC Coverage of the 2011 Libyan Uprising and NATO Intervention." (Middle East Critique 24 (3), 2015), 251-53.

<sup>45</sup> United Nations Security Council Resolution - Search engine for the United Nations Security Council Resolutions, "Resolution 1970," last accessed 4 May 2020, <http://unscr.com/en/resolutions/1970>.

<sup>46</sup> *Ibid.*

President Obama endorsed the efforts which led to UNSCR 1973.<sup>47</sup> In the execution of UNSCR 1973 however, NATO deviated from R2P in a nuanced but clear manner. As noted previously, the nature of R2P is one which respects the sovereignty of a state and seeks to only use required and proportional force to ensure the safety of venerable populations. Unfortunately, this intervention cast off aspirations of working solely within R2P early, with clear language and action that was aimed at not only the protection of innocents, but equally towards regime change. NATO's "neutral intervention to protect civilians that were threatened specifically in Benghazi morphed into being largely a one-sided affair to support the Libyan rebel force to overthrow Gaddafi."<sup>48</sup>

As UNSCR 1973 already engendered a feeling of reluctant submission in five nations within the Security council, including Russia and China, this move was seen as a significant change in scope. R2P was suddenly not just in danger of "mixed motives," but could now be argued as a vehicle for paternalistic Western interventionism and hegemony. Russia, who had numerous business ventures in the region was not a major player in the decision.<sup>49</sup> China, who only allowed the UNSCR to pass based upon AL and AU support were receiving news that indicated that Western forces had breeched conditions set by the two regional alliances and that the AU specifically was unhappy with the situation.<sup>50</sup> It was clear that the assurances given to countries such as China and

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<sup>47</sup> Jason W Davidson, "France, Britain and the intervention in Libya: an integrated analysis," (Cambridge Review of International Affairs, 26:2, 2013), 310-313.

<sup>48</sup> Saul Takahashi, "Human Rights, Human Security, and State Security: The Intersection, Vol. 1," (Santa Barbara, CA, Praeger, 2014),

<sup>49</sup> The Conversation, "Russia has a serious stake in Libya's uncertain future," last modified 20 Jun 2017, <https://theconversation.com/russia-has-a-serious-stake-in-libyas-uncertain-future-79371>.

<sup>50</sup> Common Dreams, "Al-Jazeera Footage Captures 'Western Troops on the Ground' in Libya," last modified 31 May 2011, <https://www.commondreams.org/news/2011/05/31/al-jazeera-footage-captures-western-troops-ground-libya>: It is also important to note that the support of the AU, as was broadcast in the tight diplomatic timeline that led up to the approval of UNSCR 1973 was debated after the fact and seen as a Western tactic used to ensure South Africa voted for the resolution.

Russia with respect to the nature of the intervention were no longer being adhered to. This evolution made China's abstention politically difficult to justify in retrospect.<sup>51</sup> For Russia, it was symbolic that any "reset" in foreign policy with the US was not to be taken seriously.

## **FUTURE IMPLICATIONS**

On a panel on R2P hosted by TVO's The Agenda in 2016, University of Toronto's Janice Stein argued that post Libya R2P was either dead or on life support, while Global Brief's Irvin Studin countered that R2P was simply an evolving norm that needed time to gain the legitimacy required to be accepted as law.<sup>52</sup> Despite their positions, both acknowledged Libya as a failure of R2P implementation and Studin admitted that after Libya, R2P needed re-branding in order to secure broader support, like in China or Russia. While an altruistic narrative certainly enabled the inclusion of R2P in the UN's lexicon in 2005, its noble beginning was compromised at the outset due to language and intent. The effect of this compromise is seen in the international community's subsequent inaction in cases where the third pillar of R2P could be invoked. To explore this, Syria and Myanmar will be briefly considered.

The case of Syria bears many similarities to Libya.<sup>53</sup> From timeline, culture, and oppressive government forces inflicting suffering on a population, the case could be made that if R2P was invoked in Libya, then it should have similarly been invoked in

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<sup>51</sup> European Journal of European Relations, "Power in practice: Negotiating the international intervention in Libya," last modified 29 January 2014, <https://journals-sagepub-com.cafvl.idm.oclc.org/doi/10.1177/1354066113512702>.

<sup>52</sup> The Agenda, "Stein & Studin: Is R2P Dead?" last modified 15 March 2016, <https://www.youtube.com/watch?v=sgQNFQrOpgY>.

<sup>53</sup> Major John Summerfield makes an effective argument about how the conditions surrounding Syria and Libya are similar in theme and context, especially in relation to the activation of R2P in his Canadian Forces College directed research paper from 2017.

Syria. Aside from the fact that Syria's Bashar al-Assad outclasses the aging Muammar Gaddafi as a global statesman and personality,<sup>54</sup> the principal differences are that Syria can rely on Russia to quash UN resolutions that infringe on Syria's sovereignty and neither the AL or the AU support action against Syria.<sup>55</sup> Russia and, to a lesser degree, China's support to Syria's sovereignty is firm, despite the estimated death toll of 511,000 and internal and globally displaced populations of about 12.2 million as of March 2018.<sup>56</sup> This support exists due to both Russian investment and trade with Syria, and the recognition Russia is receiving as a world power in the Middle East.<sup>57</sup>

The case of the Rohingya in Myanmar is one where factors of geography, history and trade are key to the international community's inability to react. A persecuted Muslim minority far from Europe, the Rohingya do not have a Western champion. As an ally of Myanmar, India has refused to let the Rohingya be an agenda item in the UN unless it is agreed that no resolutions are to arise from it.<sup>58</sup> China, as a regional player also holds a veto to stop interventions and does not want to see NATO, or an equivalent coalition operate in a country that shares a border with it and whose forces proximity

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<sup>54</sup> Western Interviews (BBC and NBC) with Bashar al-Assad during the Syrian civil war display a composed and articulate leader, where similar attempts with Gaddafi before 2011 by Journeyman pictures and France 24 show a less relatable and coherent subject.

<sup>55</sup> National Public Radio, "Why Syria is more Complicated than Libya," last modified 29 August 2013, <https://www.npr.org/2013/08/29/216858049/why-syria-is-more-complicated-than-libya>.

<sup>56</sup> Human Rights Watch, "Syria – Events of 2018," last modified 29 June 2018, <https://www.hrw.org/world-report/2019/country-chapters/syria>.

<sup>57</sup> Foreign Policy, "What Putin Really Wants in Syria - Russia never sought to be a small-time fixer in the Middle East. Its goal was to reclaim its status as a global power broker," last modified 1 February 2019, <https://foreignpolicy.com/2019/02/01/what-putin-really-wants-in-syria-russia-assad-strategy-kremlin/>.

<sup>58</sup> Fair Observer, "What are We Doing to Protect the Rohingya?" last modified 21 September 2017, [https://www.fairobserver.com/region/asia\\_pacific/rohingya-refugees-myanmar-rakhine-r2p-latest-news-81721/](https://www.fairobserver.com/region/asia_pacific/rohingya-refugees-myanmar-rakhine-r2p-latest-news-81721/).

could easily transition to threaten dominance within the South China Sea. In this instance, the Rohingya are a victim of international relations.

The above examples are chosen deliberately, but do not ignore the fact that UNSCRs made after Libya and throughout 2019 have continued to mention a state's responsibility to protect its citizens from mass rape, genocide and crimes against humanity in various forms. Cases like, but not limited to, resolutions 2385 (Somalia), 2463 (Congo) and 2449 (the Middle East) all continue to push the responsibility of the state as a norm, but none wield R2P as the tiered tool envisioned.<sup>59</sup>

While focusing on the argument of international alliances and interests, it is important to note that this is a two-way street. Western mixed motives crippled R2P in Libya, but the reinforcement of sovereignty and its prevue by BRICS countries have provided the death blow. In this sense, neither the West, nor BRICS are solely responsible for R2P failing as a norm, instead the problem is found in a lack of consensus over the primacy of individual or state rights between national governing bodies on the international stage. This does not mean that the idea of responsibility to protect is dead, but it does mean that meaningful action to protect vulnerable elements of society is caught up in an argument of definition.

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<sup>59</sup> United Nations Security Council Resolution - Search engine for the United Nations Security Council Resolutions, "Responsibility to Protect," last accessed 4 May 2020, [http://unscr.com/en/resolutions/1970.http://unscr.com/en/search?SearchForm%5Byear%5D=&SearchForm%5Btxt%5D=responsibility+to+protect&SearchForm%5Bmode%5D=and&Doc\\_page=5](http://unscr.com/en/resolutions/1970.http://unscr.com/en/search?SearchForm%5Byear%5D=&SearchForm%5Btxt%5D=responsibility+to+protect&SearchForm%5Bmode%5D=and&Doc_page=5).



## CONCLUSION

The battle to establish R2P as an international norm was often as tenuous as Lemkin's original fight to establish genocide as a crime. Unlike R2P however, Raphael Lemkin played consistently to the interest of all parties and capitalized on the acute international awareness surrounding the Holocaust. For R2P, this moment of international will was denied, as the scars of Rwanda and Bosnia were obscured by the focus required post 9/11 to conduct the "Global War on Terror". Although the process continued, its moment was muted.

Direct attempts to kill Colonel Muammar Gaddafi and target his forces and assets while operating under the mantle of R2P further empowered counter views on sovereignty infringement. That the campaign continued despite cease fire requests and resulted in a 9 year and counting civil war, alleviated the risk of critics of R2P being on the wrong side of history. A principled stand could now be taken on sovereignty, as the Libyan Death toll post international intervention is estimated to exceed 350,000.<sup>60</sup>

Despite this, an argument to intervene on humanitarian basis will at some point re-emerge to counter these arguments. The Syrian civil serves as a counter to the above argument, with a death toll of well over 500,000 despite diplomatic and political engagement by Russia. The challenge will not be easy, and intervention in Libya has ruined the progress previously made. Humanitarian intervention must once again address the hardening of Russian and Chinese policy and how to agree on a way forward that addresses and balances state sovereignty and the protection of vulnerable populations.

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<sup>60</sup> Mint Press News, "Calculating the Millions-High Death Toll of America's Post-9/11 Wars," last modified 26 April 2018, <https://www.mintpressnews.com/how-many-millions-have-been-killed-in-americas-post-9-11-wars/241144/>

Given this operating environment, it can be argued that Libya killed the international framework of R2P and wounded the norm of humanitarian intervention. The latter will likely rise again to champion persecuted groups that require aid, but not under the mantle of the former. R2P is dead, it just doesn't know it yet.

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