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**Article**

**APPLYING THE *RESPONSIBILITY TO PROTECT* TO THE 'ARAB SPRING'**

**Gary Wilson°**

**Abstract**

The doctrine of the responsibility to protect, since its inception in the ICISS report of 2001, has been the subject of considerable discussion. Arguably its most publicised component is the principle that the international community has the responsibility to protect civilian populations against severe suffering where the relevant national authorities are unable or unwilling to do so. Consequently, the main focus of discourse upon the responsibility to protect has centred on its impact upon the approach of the international community to intervention in respect of situations posing considerable humanitarian crises. The events of the Arab Spring, in which full blown conflict in some states gave rise to serious human suffering, provided a real opportunity for the international community to evaluate the role of the responsibility to protect in decision-making over responding to such instances, and potentially to develop it into a practical and meaningfully implementable concept. However, due to political flaws inherent in the doctrine, and its arguably overstated significance, the doctrine at best played a minimal role in guiding the international response to developments in the Arab World. Nonetheless, responses to the Arab Spring do allow certain conclusions to be drawn in respect of the future relevance of the doctrine.

INTRODUCTION

° Dr Gary Wilson, Phd, LLB (Hons.), Senior Lecturer in Law, Liverpool John Moores University. E-Mail: G.Wilson@ljmu.ac.uk

The events which would come to be collectively labelled the 'Arab Spring' took the form of a series of uprisings against longstanding authoritarian regimes in North Africa and the Middle East, in pursuit of greater liberalisation and democratisation in the affected states. Commencing in Spring 2011 with what were comparatively peaceful 'revolutions' in Tunisia and Egypt as the regimes in those states eventually caved in to pressure to stand down following widespread protests, uprisings spread across the region and sparked off civil wars in Libya and Syria. Libya disintegrated into civil war, albeit brief, which was brought to an end following the toppling of the Gaddafi regime after NATO conducted a series of air strikes against government forces under authority conferred by the UN Security Council for the "protection of civilians and civilian populated areas under threat of attack."[1] Syria soon also degenerated into protracted conflict between the Assad regime and opposition forces which continues to this day. After a period of relative calm following the toppling of the Mubarak regime, Egypt witnessed fresh uprisings in the aftermath of the military's removal from power of the democratically elected President, Mohammed Morsi of the Muslim Brotherhood.

The events of the Arab Spring give rise to a number of issues of concern to international lawyers. These include, but are not restricted to, human rights, the issue of a possible emerging right to democracy in international law, the use of force, prosecution of international crimes, and the operation of the UN collective security system.[2] One theme which pervades all of these on at least some level is the recently developed doctrine of the *responsibility to protect (RtoP)*, under which states acknowledge a responsibility to protect their populations against harm and the international community assumes a subsidiary

[1] SC Res 1973 (2011), para.4.
[2] See further Panara, C & Wilson, G (eds.), *The Arab Spring: New Patterns for Democracy and International Law* (Leiden & Boston: Martinus Nijhoff, 2013).

responsibility to step in and do so where states are unable or unwilling to fulfil their primary responsibility. Indeed, references to the *R2P* doctrine have featured especially in discourse upon the humanitarian crises which developed in Libya and Syria.

The objective of this paper is to assess and contrast the relevance of the *RtoP* doctrine to international responses to what are, arguably, the principal events of the Arab Spring: events in Egypt,[3] Libya and Syria. We begin by outlining some of the key features of the *RtoP* doctrine, and highlighting some uncertainties in its scope and status, before considering its application to these three situations. From the international community's response to these key events, lessons are then drawn for the current status of the *RtoP* and its possible development.

THE DOCTRINE OF THE RESPONSIBILITY TO PROTECT

The *responsibility to protect* doctrine was first formally set out in the report of the International Commission on Intervention and State Sovereignty (ICISS) in 2001,[4] and was endorsed by the UN General Assembly at its 2005 world summit.[5] In a nutshell, the doctrine holds that states have a responsibility to protect their populations from harm, and that where they are unable or unwilling to do so, a secondary responsibility falls upon the international community to step in and fulfil this responsibility. While regarded as a prominent

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[3] While Egypt has not degenerated into the kind of humanitarian crisis seen in Libya or Syria, it is included here due to the 'unfinished' nature of that country's 'revolution', following the removal from power of President Morsi, subsequent uprisings, and the unsettled nature of the Egyptian civil and political apparatus.

[4] Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, available at http://responsibilitytoprotect.org/ICISS%20Report.pdf

[5] UN Doc. A/Res/60/1.

development of the new millennium in humanitarian and human rights discourse,[6] the

adoption of the R2P arguably represented a natural culmination of the evolution of thinking

on human security which gathered momentum during the second half of the twentieth

century.[7] The expansion of international human rights law had already led to increased

emphasis being placed in international policy-making fora on the well-being of civilian

populations,[8] and from the 1990s onwards notions of human security had come to find

themselves at the very heart of the UN Security Council's collective security agenda.[9] Most

recent determinations by the Council under Article 39 of the existence of a threat to the peace

have concerned situations with a considerable humanitarian dimension, and the authorisation

of military enforcement measures and deployment of peacekeeping operations often occurs,

at least in part, to further goals related to the protection of civilians.[10]

The immediate impetus for the ICISS' consideration of the principles upon which the R2P

doctrine were founded stem from the perceived failure of the international community,

embodied within the form of the UN, to respond adequately to major humanitarian crises

during the 1990s, the most catastrophic of which was the Rwandan genocide of 1994,[11]

together with continuing debates over the legality of the controversial doctrine of

humanitarian intervention, brought to the fore again following NATO's military intervention

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[6] A huge volume of literature has been generated upon the R2P. See, for example, Genser,J & Cotler, I (eds.), *The Responsibility to Protect* (Oxford: OUP, 2012); Arbour, L., 'The Responsibility to Protect as a Duty of Care in International Law and Practice', *Review of International Studies*, 2008, v.34, n.3, pp.445-58; Bellamy, A.J., *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009); McClean, E., 'The Responsibility to Protect: The Role of International Human Rights Law', *Journal of Conflict and Security Law*, 2008, v.13, n.1, pp.123-52; Pattison, J., *Humanitarian Intervention and the Responsibility to Protect* (Oxford: OUP, 2010).

[7] See Axworthy, L., 'RtoP and the Evolution of State Sovereignty', in Genser & Cotler, ibid, pp.3-16.

[8] See supra n4, paras.2.16-2.20. See also Gierycz, D., 'The Responsibility to Protect: A Legal and Rights-based Perspective', *Global Responsibility to Protect*, 2010, v.2, pp.250-266.

[9] See supra n4, para.2.21.

[10] See Wilson, G., *The United Nations and Collective Security* (London & New York: Routledge, 2014), pp.175-77.

[11] See *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, UN Doc. S/1999/1257.

against the Federal Republic of Yugoslavia in 1999 in response to atrocities perpetrated
against the Albanian population of Kosovo,[12] an action not sanctioned by the UN Security
Council,[13] albeit one which received considerable international support.[14]

The ICISS report seeks to reconceptualise state sovereignty as entailing "responsibility",[15]
and summarises the notion of the *R2P* in the "idea that sovereign states have a responsibility
to protect their own citizens from avoidable catastrophe…but that when they are unwilling or
unable to do so, that responsibility must be borne by the broader community of states."[16] The
*R2P* is broken down into three key duties which correlate to the different stages of a situation
giving rise to severe humanitarian suffering: the responsibility to prevent, the responsibility
to react, and the responsibility to rebuild.[17] Military intervention within a state is only the
most severe of the possible means for giving effect to the *R2P*, and will only be justified
where there is a large scale loss of life which is the product of deliberate state action, neglect
or inability to act, or state failure, or where there is large scale ethnic cleansing.[18] For military
action in support of the R2P, it has been established that one of the international crimes of
genocide, war crimes, ethnic cleansing, or crimes against humanity, must have been
committed.[19] Significantly, however, the doctrine does not purport to affect the existing

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[12] See The Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: OUP, 2000), pp.33-83.

[13] See further, eg., Kritsiotis, D., 'The Kosovo Crisis and NATO's Application of Armed Force against the Federal Republic of Yugoslavia', *International & Comparative Law Quarterly*, 2000, v.49, n.2, pp.330-359; Simma, B., 'NATO, the UN and the use of force: legal aspects', *European Journal of International Law*, 1999, v.10, n.1, pp.1-22; Cassese, A., 'Ex iniuria ius oritur: are we moving towards international legitimation of forcible humanitarian countermeasures in the world community?', *European Journal of International Law*, 1999, v.10, n.1, pp.23-30.

[14] Arguably evidenced by the Security Council's 12-3 defeat of a Russian/Chinese draft resolution condemning the NATO intervention as unlawful. See UN Docs. S/1999/328; S/PV.3989.

[15] Supra n4, paras.2.14-2.15.

[16] Supra n4, p.VIII.

[17] Supra n4, p.XI.

[18] Supra n4, para.4.19.

[19] Supra n5. See Chhabra, T & Zucker, J.B., 'Defining the Crimes', in Genser & Cotler (eds.), supra n6, pp.37-61.

norms of international law concerning the use of force.[20] On the contrary, the ICISS explicitly

states that there is "no better or more appropriate body than the Security Council to deal with

military intervention issues for human protection purposes."[21] Security Council authority

must be sought wherever military intervention is proposed.[22] Although the P5 are encouraged

to adopt a code of conduct to restrict the use of the veto in cases where the *R2P* is invoked,[23]

this has yet to be achieved. Although the responsibility to protect has not generally been

regarded as entailing a legal duty on the part of the international community to respond to

situations involving large scale loss of life, this could potentially be achieved through a

process of its evolution into a norm of customary international law.[24]


The nature of the responsibility to protect doctrine is such that it has given rise to numerous

challenges in terms of its practical application, not least the problem of selectivity and double

standards.[25] At most, the R2P doctrine provides a framework against which the Security

Council ought theoretically to be able to assess the merits of providing chapter VII military

enforcement authority in any given situation. The occurrence of one of the situations to which

the R2P is applicable should, arguably, raise a presumption that military intervention under

chapter VII be at least considered appropriate. However, that the doctrine enjoys no legal

force means that its application is subject to the political dynamics of UN Security Council

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[20] While the doctrine is not generally regarded as imposing any new legal obligations, some commentators have suggested that it might be regarded as enjoying the status of 'soft law' in light of its adoption by the UN General Assembly. See, for example, Welsh, J & Banda, M., 'International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?', *Global Responsibility to Protect*, 2010, v.2, n.3, pp.213-31. See, however, Strauss, E., 'A Bird in the Hand is Worth Two in the Bush – On the Assumed Legal Nature of the Responsibility to Protect', *Global Responsibility to Protect*, 2009, v.1, pp.291-323.
[21] Supra n4, para.6.14.
[22] Supra n4, para.6.15.
[23] Supra n4, para.6.21.
[24] See, eg., Evans, G., *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington: The Brookings Institution, 2008), p.44.
[25] See Deller, N., 'Challenges and Controversies', in Genser & Cotler (eds.), supra n6, pp.62-84, at pp.78-9.

decision-making, and the consequent dangers of double-standards and selectivity in its approach to responding militarily to serious humanitarian crises.

Three main inter-related problems threaten to prevent a consistent application of the *R2P* in Security Council decision-making. Firstly, the particulars of any event are subject to interpretation by the individual Council members, and these interpretations do not necessarily always accord with one another. Disagreement can arise in relation to *who* is responsible, and for *what*, or the stage at which such judgments are possible. The recent international response to the alleged use of chemical weapons in the Syrian civil war is a good case in point. While the US and its allies were quick to pronounce that the weapons *had* been used *by* the Assad regime, other states, led by Russia, preferred to await the report of UN weapons inspectors on their findings.[26] For the Western bloc there, thus, arguably existed a prima facie moral or political case for some form of military action; for other states, this was a premature conclusion to draw. Secondly, decisions of the Security Council are inherently political. For this reason, there is inconsistency in its approach to situations which may give rise to issues related to the R2P as permanent members can wield their power of veto to protect states whom they may enjoy key relationships with, as arguably occurred when Russia and China vetoed resolutions condemnatory of the Syrian regime.[27] Thirdly, the robust implementation of the R2P doctrine through military measures is not as unreservedly accepted by all states, some of which remain wedded to more traditional notions of state sovereignty and non-intervention, which militate against rushing to sanction military action too swiftly. This is, arguably, particularly true of China which, although broadly supportive of the R2P doctrine,

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[26] See, eg., 'Syria: Putin rubbishes chemical attack claims', The Guardian, 31 August 2013, available at http://www.theguardian.com/world/2013/aug/31/syria-un-weapons-inspectors-leave
[27] See below.

has displayed reluctance to use it is a basis for non-consensual intervention in states.[28] With these problems in mind, we now consider the relevance of the R2P for the international response to the key events of the Arab Spring.

EGYPT

In comparison to events in Libya and Syria, the Arab Spring, at least initially, impacted upon Egypt in relatively peaceful terms. Uprisings against the longstanding regime of Hosni Mubarak, which began on January 25, largely took the form of peaceful protests for reform and Mubarak's resignation. After failing to appease the protestors' demands with a series of concessions, and following the loss of support of the powerful military elite, on February 11 Mubarak stood down.[29] Egypt fell under interim military rule pending democratic elections. In those elections, finally held in June 2012, the candidate of the Islamist Muslim Brotherhood's 'Freedom & Justice Party', Mohammed Morsi, was elected President, with the same party acquiring control of the largest single bloc of seats in the Parliament. However, amid concerns over autocratic actions on Morsi's part, in particular the drafting of a new constitution,[30] support for the new regime began to ebb. Following the outbreak of mass protests on 30 June 2013, the army issued an ultimatum, demanding that protestors' demands be met,[31] before removing him from office three days later.[32] Egypt remains under military rule pending a new round of fresh elections, with a new constitution approved in a

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[28] See Teitt, S., 'Assessing Polemics, Principles and Practices: China and the Responsibility to Protect', *Global Responsibility to Protect*, 2009, v.1, pp.208-236.

[29] '18 days or protest culminate in Mubarak's ouster', CNN News Online, 12 February 2011, available at http://edition.cnn.com/2011/WORLD/africa/02/11/egypt.protests/

[30] 'Mohamed Morsi signs Egypt's new constitution into law', *The Guardian*, 26 December 2012.

[31] 'Egypt: pressure on Morsi rises as military reiterates ultimatum', *The Guardian*, 2 July 2013.

[32] See Brown, N.J., 'Egypt's Failed Transition', *Journal of Democracy*, 2013, v.24, n.4, pp.45-58.

referendum during January 2014.[33] While relatively stable compared to Libya and Syria, since the removal of Morsi and his subsequent placement on trial for murder, the humanitarian situation in Egypt has degenerated as repeated outbreaks of violence have pitted pro-Morsi protestors and their opponents against one another. Such episodes have met with international outcry.[34]

It is difficult to regard the effects of the Arab Spring in Egypt as representing an instance of the application of the R2P. The Mubarak regime was toppled in a peaceful 'revolution' largely free of external pressures. Although the Mubarak regime was widely held to be responsible for the perpetration of human rights abuses during its three decades in power, these could not realistically serve as the basis for invocation of the R2P, which was clearly conceived to apply to more severe and systematic atrocities resulting in large scale loss of human life. A more subtle external influence upon the outcome of events was evident, however, demonstrating a shared belief in the relevance of the wider values embodied in and underpinning the *R2P*, for example human rights more broadly, as world leaders appealed for the demands of the protestors to be acknowledged.[35]

Although the humanitarian situation in Egypt has given rise to greater concern since the removal from power of Mohammed Morsi, as a consequence of increased violence between state authorities and opposition factions, there has been no suggestion that it has approached

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[33] 'Egypt referendum: 98% back new constitution', BBC News, 19 January 2014, available at http://www.bbc.co.uk/news/world-middle-east-25796110

[34] See, eg., 'Secretary-General, Alarmed by violence in Egypt, strongly condemns attacks on churches, hospitals, other public facilities as 'unacceptable'', 17 August 2013, UN Doc.SG/SM/15221; 'Condemning Deadly Terror Attack in Egypt, Secretary-General says he is 'Troubled' by Deteriorating Human Rights Situation, Political Climate', 24 December 2013, UN Doc.SG/SM/15558.

[35] See, eg., 'Egypt unrest: Obama increases pressure on Mubarak', BBC News, 5 February 2011, available at http://www.bbc.co.uk/news/world-us-canada-12371479

the level at which the R2P becomes a relevant point of reference for the wider international community. That is not to say, however, that continued deterioration of the situation may not prevent such a stage being reached.

LIBYA

Events in Libya began with protests against the Gaddafi regime on February 15th 2011, and the country soon became embroiled in civil war as opposition forces quickly began to assume control of parts of the country.[36] Counter-offensive military operations by the regime prompted international concern at the use of force against civilian populations, human rights abuses, and the ensuing humanitarian crisis,[37] which was reported by May 2011 to have produced over 600,000 refugees from Libya.[38] International condemnation of events in Libya included the Human Rights Council's call upon Libya to meet its responsibility to protect its population and its recommendation that its membership of the Council be suspended,[39] subsequently effected by resolution of the UN General Assembly.[40] Libya was also suspended by the Arab League.

Concerned by the humanitarian situation in Libya, the UN Security Council initially condemned "the violence and use of force against civilians",[41] demanded their end, and

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[36] For an account from the ground, see Crawford, A., *Colonel Gaddafi's Hat* (London: Collins, 2012).
[37] On the course of events in Libya, see Wilson, G., 'The United Nations Security Council, Libya and Resolution 1973: Protection of Civilians or Tool for Regime Change?', in Panara, C & Wilson, G (eds.), *The Arab Spring: New Patterns for Democracy and International Law* (Leiden & Boston: Martinus Nijhoff, 2013), pp.101-121, at pp.104-106.
[38] *Time Magazine*, 9 May 2011, p.11.
[39] UN Doc. S-15/1, A/HRC/RES/S-15/1.
[40] UN Doc. A/65/PV.76.
[41] SC Res 1970 (2011), para.1.

imposed a range of sanctions against the regime.[42] Significantly, the situation was also referred to the ICC prosecutor,[43] with a view to consideration whether charges ought to be brought against Libya's leadership for crimes against humanity. Subsequently, the Council determined that the situation continued to constitute a threat to international peace and security, and provided authority for all necessary measures to be taken "to protect civilians and civilian populated areas under threat of attack",[44] as well as imposing a no-fly zone.[45] Acting upon this authority, NATO conducted wide-ranging air strikes against regime targets, indirectly aiding rebel forces in their advance and ultimately successful overthrow of Gaddafi.[46]

In some respects, concern for the implementation of the *R2P* appeared to lie at the very heart of the UN sanctioned intervention in Libya.[47] Both resolutions 1970 and 1973, in expressing concern at events in Libya, recalled Libya's "responsibility to protect its population". The referral of the situation in Libya to the ICC demonstrated a perception that international crimes of the kind envisaged by the R2P had been perpetrated during the ongoing conflict there, the Council explicitly entertaining in both relevant resolutions the possibility that "widespread and systematic attacks…against the civilian population may amount to crimes against humanity." Significantly, this was the first occasion upon which the Security Council had invoked the R2P in a resolution authorizing military intervention, making it the first official instance of the Council potentially effecting its implementation via the military

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[42] Ibid, paras.9-10, 15, 17.
[43] Supra n41, para.4.
[44] SC Res 1973 (2011), para.4.
[45] Ibid, paras.6, 8.
[46] See, eg., Daalder, I.H & Stavridis, J.G., 'NATO's Victory in Libya: The Right Way to Run an Intervention', *Foreign Affairs*, 2012, v.91, n.2, pp.2-7.
[47] See Helal, M.S., 'Middle East', in Genser & Cotler (eds.), supra n6, pp.225-230.

enforcement route under chapter VII of the UN Charter.[48] UN secretary-general Ban Ki

Moon also stated that resolution 1973 demonstrated clearly the determination of the

international community to "fulfil its responsibility to protect civilians from violence

perpetrated upon them by their own government."[49]

A number of factors militated favourably to make intervention in Libya possible,[50] but the

action was not, however, unanimously and unquestionably supported. Although not voting

against military intervention, Russia and China displayed a degree of caution and evidently

took the view that NATO's actions ultimately went too far.[51] This, arguably, had some

bearing upon their decision to veto a draft resolution condemnatory of Syria at a later date.[52]

As Helal has noted, "In essence, the military operations undertaken by the international

community in Libya exceeded the protection of civilians and expanded to include the

overthrow of a ruler and his regime."[53] While considering this unavoidable in the

circumstances, the risk is that this "collapses the distinction between RtoP and other concepts

that have been employed to legitimize the use of force in international relations, such as pro-

democratic intervention."[54] Although a change in regime may conceivably result from action

taken primarily in support of the protection of civilians, this is different to action taken with

this purpose specifically in mind. There are indications that those states leading the case for

intervention in Libya were very much wedded to efforts to bring about the replacement of the

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[48] Of course, the Council had sanctioned military action under chapter VII on several previous occasions in support of humanitarian objectives. See Wilson, supra n10, pp.175-177.
[49] UN Press Release, 'Secretary-General says Security Council Action on Libya Affirms International Community's Determination to Protect Civilians from Own Government's Violence', 18 March 2011.
[50] See Helal, supra n47, pp.227-8.
[51] See Wilson, supra n37, pp.110-113.
[52] UN Doc. S/2012/77. See further below.
[53] Helal, supra n47, p.230. For a questioning analysis of the legality of NATO actions, see Ulftsein, G & Christiansen, H.F., 'The Legality of the NATO Bombing in Libya', *International and Comparative Law Quarterly*, 2013, v.62, n.1, pp.159-171. See also Wilson, supra n37, pp.116-120.
[54] Helal, supra n47, p.230.

Gaddafi regime, albeit stopping short of making this a formal objective of the NATO action.[55] For critics of the Libyan intervention, however, the NATO action came too close to an instance of deliberate regime change.

Notwithstanding the references made to the R2P in discourse over the Libyan episode, we can question the extent to which the international response genuinely represented an instance of the R2P's application, as well its broader significance in the evolution of the R2P doctrine. Significantly, as Loiselle notes, neither resolution 1970 or 1973 actually referred to the responsibility of the international community to protect the Libyan population.[56] The emphasis was very much on the failure of Libyan authorities to fulfil their primary responsibility to protect it. The language within resolution 1973 which sanctioned the use of force for the purpose of affording protection to civilians made no reference to the R2P in this context.[57] In the actual debates preceding the adoption of resolutions 1970 and 1973 there was scant reference to the R2P,[58] and certainly no evidence that states felt any sense of legal obligation to intervene in support of the doctrine.[59] Primarily for these reasons, the weight of recent scholarly opinion has tended to cast doubt upon the significance of the Libyan episode for the development of the R2P.[60] One commentator has gone so far as to comment that, "From a legal standpoint…Resolution 1973 was hardly ground-breaking."[61]

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[55] See Wilson, supra n37, pp.118-119.

[56] Loiselle, M-E., 'The Normative Status of the Responsibility to Protect After Libya', *Global Responsibility to Protect*, 2013, v.5, pp.317-341, at p.332.

[57] Para.4.

[58] In the Security Council debates surrounding the adoption of the relevant resolutions, only France invoked the responsibility of "the international community to intervene when states fail in their duty" to protect their populations; see UN Doc. S/PV.6491, at p.5.

[59] Powell, C., 'Libya: A Multilateral Constitutional Moment?', *American Journal of International Law*, 2012, v.106, pp.298-316, at p.304.

[60] See, eg., Berman, D & Michaelson, C., 'Intervention in Libya: Another Nail in the Coffin for the Responsibility to Protect?', *International Community Law Review*, 2012, v.14, pp.337-358; Chesterman, S., 'Leading from Behind: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after

Apart from there being only scant formal references to the R2P in those official debates surrounding the Libyan intervention, other considerations cast doubt upon its significance in R2P terms. Three points are particularly pertinent in this regard. Firstly, resolutions 1970 and 1973 did not mark the first invocation of the R2P in a resolution adopted by the Security Council. This had occurred previously in resolution 1674, pertaining to the protection of civilians during armed conflict.[62] Secondly, notwithstanding the connection made between events in Libya and the prosecution of international crimes, other leaders had been indicted by the ICC for international crimes previously,[63] and the Security Council had already referred a serving head of state, President Bashir of Sudan, to the ICC prosecutor.[64] Finally, resolution 1973 in many respects simply represented the continuation of a trend within UN Security Council decision-making whereby the determination of the existence of threats to the peace and measures adopted in response to them had increasingly been concerned with the protection of civilians from the consequences of conflict. This trend can be traced back at least to the early post-Cold War period, where determinations under Article 39 of the UN Charter in responses to humanitarian crises in Somalia, former Yugoslavia, and Rwanda, and the authorisation of chapter VII military measures to alleviate them served to further objectives which are not at odds with those underpinning the R2P doctrine.[65]

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Libya', *Ethics and International Affairs*, 2011, v.25, n.3, pp.279-285; Morris, J., 'Libya and Syria: R2P and the spectre of the swinging pendulum', *International Affairs*, 2013, v.89, n.5, pp.1265-1283, at pp.1271-4.
[61] Chesterman, ibid, p.280.
[62] SC Res 1674 (2006), para.4.
[63] See Wilson, supra n37, pp.113-116. It was, however, only the second reference to the ICC made by the Council, the previous occasion being resolution 1593's referral of the situation in Darfur.
[64] SC Res 1593 (2005).
[65] In the words of Powell, resolution 1973 "built upon trends related to RtoP, especially trends towards enhancing the…protection of civilians"; Powell, supra n59, p.301. See also, Thielborger, P., 'The Status and Future of International Law after the Libya Intervention', *Goettingen Journal of International Law*, 2012, v.4, n.1, pp.11-48, at p.19.

SYRIA

Uprisings against the Assad regime in Syria also broke out in March 2011.[66] As in Libya, these escalated into a full scale civil war between government forces and a broad range of opposition groups which continues to rage to this day.[67] During the summer of 2013, the conflict attracted increased international attention as a result of the alleged use of chemical weapons against civilians.[68] Despite international condemnation of atrocities perpetrated in Syria,[69] there at least initially appeared to be only limited appetite for some form of military intervention, although this prospect was revisited in the aftermath of the use of chemical weapons.

Clear *responsibility to protect* issues arise in respect of events in Syria. Although there have been little by way of formal pronouncements in relation to the doctrine's application, the factual situation in Syria to a large extent mirrors that in Libya: civil war between government and opposition factions, with the inevitable humanitarian consequences. At an early stage in the conflict, the Secretary-General's own advisors on the *responsibility to protect* suggested that crimes against humanity may have been committed in Syria, and urged the government there to fulfil its responsibility to protect its population.[70] An Independent Commission of Inquiry found the Syrian government responsible for the commission of crimes against humanity,[71] and the Arab League suspended Syria's membership and imposed sanctions. The Human Rights Council was highly critical of actions taken by Syrian

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[66] On their causes, see Phillips, C., 'Syria's Torment', *Survival*, 2012, v.54, n.4, pp.67-82, at pp.68-71.
[67] For background, see Robinson, G.E., 'Syria's Long Civil War', *Current History*, 2012, v.111, n.749, pp.331-336.
[68] 'Syria conflict: chemical weapons blamed as hundreds reported killed', *The Guardian*, 22 August 2013, available at http://www.theguardian.com/world/2013/aug/21/syria-conflcit-chemical-weapons-hundreds-killed
[69] See, eg., UN Doc. S/PV.6524.
[70] 'Special Advisors of the United Nations Secretary-General on the Prevention of Genocide, Francis Deng, and on the Responsibility to Protect, Edward Luck, on the Situation in Syria (Press Release, 21 July 2011).
[71] UN Doc. A/HRC/S-17/2/Add.1, para.100.

government forces,[72] although the UN Assistant Secretary-General for Political Affairs, however, noted that both government and rebel forces were at fault for failing to protect civilians.[73] The sheer scale of the humanitarian crisis witnessed in Syria, regardless of the attribution of blame, has been obvious. According to UN data, by the beginning of 2014, 9.3 million Syrians were dependent upon humanitarian assistance, 6.5 million were internally displaced, and 2.3 million had fled the country. It is estimated that at least 100,000 deaths have been caused by the conflict.[74]

Notwithstanding the blunt realities of the situation in Syria, giving robust application to the R2P has proven problematic. A draft resolution critical of Syria and recalling its responsibility to protect its population was rejected by the Security Council in late 2011 due to the Chinese and Russia vetoes,[75] although four other states abstained from voting.[76] They regarded the resolution as essentially one-sided and falling foul of the principle of non-intervention.[77] A later draft resolution was also vetoed in February 2012,[78] prompting deep divisions among the permanent membership.[79] Former UN Secretary-General Kofi Annan was despatched as the UNSG's special envoy to promote peaceful settlement of the conflict,[80] but resigned in frustration after having made little progress in the pursuit of this objective.[81]

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[72] UN Doc. A/HRC/RES/S-18/1.
[73] UN Doc. S/PV.7020, p.4.
[74] See Ban Ki Moon, Remarks at opening of High-level segment of the Geneva Conference on Syria, available at http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=2111
[75] UN Doc. S/2011/612.
[76] Brazil, India, Lebanon, and South Africa.
[77] UN Doc. S/PV.6627, pp.3-5.
[78] UN Doc. S/2012/77.
[79] UN Doc. S/PV.6711.
[80] UN Doc. SG/SM/14124.
[81] UN Doc. SG/SM/14441.

Developments took on a new sense of urgency with the revelations in August 2013 that there had been an alleged chemical weapons attack, killing hundreds of civilians, in a suburb of Damascus.[82] This provoked fresh pronouncements from all of the major international players, in particular the US, UK and France, all of which lay the responsibility at the door of the Assad regime and entertained the prospect of military intervention in terms unspoken previously.[83] UN inspectors were despatched to ascertain the facts on 26th August 2013. Their report confirmed that chemical weapons had indeed been used.[84] Pending the outcome of this report, the UK Parliament had voted to rule out the participation of UK forces in any military intervention,[85] France expressed a willingness to participate in US led action,[86] and President Obama implicitly suggested that any US action would be limited in nature and that congressional approval would be sought.[87] However, while efforts to obtain UNSC authority were not ruled out, indications were that some form of action was a distinct possibility whether this was forthcoming or not.

Military action under UN auspices, however, seemed unlikely given Russian opposition to forcible intervention. In the event, a new international consensus on tackling the chemical weapons issue appeared to be reached following a Russian engineered proposal for Syria's chemical weapons to be placed under international control. This course of action was

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[82] See, eg., 'More than 1,400 killed in Syrian chemical weapons attack, U.S says', *Washington Post*, 30 August 2013, available at http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5_story.html

[83] See, eg., 'Obama assembles fragile alliance blaming Assad for chemical attacks', *The Guardian*, 6 September 2013, available at http://www.theguardian.com/world/2013/sep/06/obama-alliance-assad-chemical-weapons

[84] UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, *Report on Allegations of the Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013*.

[85] 'Syria crisis: Cameron loses Commons vote on Syria action', BBC News, 30 August 2013, available at http://www.bbc.co.uk/news/uk-politics-23892783

[86] 'France's Hollande backs US on Syria action', BBC News, 30 August 2013, available at http://www.bbc.co.uk/news/world-middle-east-23897775

[87] 'Obama to seek Congress vote on Syria military action', BBC News, 1 September 2013, available at http://www.bbc.co.uk/news/world-middle-east-23916752

endorsed by the Security Council.[88] The main international strategy for addressing the conflict has taken the form of a peace conference in Geneva, involving the relevant parties, and spearheaded by the US and Russia in cooperation with the UN. This commenced on 22 January 2014 and remains ongoing at the time of writing.

A more cautious approach to the adoption of measures which advance the values underpinning the R2P is apparent in the case of Syria.[89] References to the R2P have been scarce in Security Council discussions, and as in respect of Libya have focused upon Syria's primary responsibility to protect its population.[90] The caution displayed by a number of key players can be grounded in various political considerations. Within the Arab world itself, the conflict has served as a "cockpit for regional rivalries",[91] with both the Assad regime and opposition factions enjoying close relationships with major regional powers.[92] Russia, the major critic of any efforts to effect the R2P via robust measures against Syria, not only was concerned at the prospect of Security Council resolutions in purported support of the R2P serving as cover for military action taken with the objective of regime change, particularly in light of the outcome of NATO's intervention in Libya,[93] but had enjoyed close political and economic ties with the Assad regime.[94] Arguably, even the US was wary of becoming engaged in a major military entanglement in Syria. This can be attributed to several factors, including war fatigue post involvement in major operations in Afghanistan and Iraq, but also

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[88] SC Res 2118 (2013).
[89] On obstacles to intervention, see Phillips, supra n66, pp.76-79.
[90] Morris, supra n60, p.1276-77.
[91] Carpenter, T.G., 'Tangled Web: The Syrian Civil War and Its Implications', *Mediterranean Quarterly*, 2013, v.24, n.1, pp.1-1, p.3. See also Zifcak, S, 'The Responsibility to Protect after Libya and Syria', *Melbourne Journal of International Law*, 2012, v.13, pp.1-35, at pp.27-28, 31-32.
[92] See Carpenter, ibid, pp.3-7; Zifcak, S., 'Falls the Shadow: The Responsibility to Protect from Theory to Practice', in Sampford, C & Thakur, R (eds.), *Responsibility to Protect and Sovereignty* (Farnham: Ashgate, 2013), pp.11-39, at pp.31-4.
[93] See Charap, S., 'Russia, Syria and the Doctrine of Intervention', *Survival*, 2013, v.55, n.1, pp.35-41; Ulftsein & Christiansen, supra n53, pp.170-1.
[94] See Carpenter, supra n91, p.9.

the uncertainty over the identity of any successor regime to that of President Assad should it be toppled, given the fragmented opposition forces which include elements closely aligned with Al-Qaida and other extremist Islamist factions.

## LESSONS OF THE ARAB SPRING

If the UN sanctioned military intervention against Libya in support of the objective of the protection of civilians gave rise to any optimism that the R2P doctrine would lay at the heart of Security Council decision-making in respect of military intervention to respond to situations of grave humanitarian crisis,[95] then such optimism has arguably been undermined by more recent developments in respect of the international response to the humanitarian situation in Syria. As Zifack notes, "The Security Council's paralysis with respect to Syria has clouded R2P's future considerably…the doctrine's implementation, particularly when coercive interventions are in contemplation, is likely to be more selective and circumstantially based than might have been thought in the wake of the Libyan action."[96] The events of the Arab Spring provided an ideal opportunity for the international community to re-evaluate the role which the R2P should play in decisions concerning intervention in response to humanitarian crises, one commentator observing that, "As was the case in 1945, the world today is faced with a constitutional moment – this time one in which the international community can choose whether or not to adopt the collective component of RtoP. This component would require collective assistance or even collective action by the

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[95] Whether this is so is, of course, debatable in light of the discussion above in respect of the Libyan episode.
[96] Zifcak, supra n91, p.33.

international community when individual states are unwilling or unable to meet their own responsibility to protect."[97]

There is certainly no evidence that the international community has come to accept any legal obligation to undertake action to address situations where civilian populations suffer harm at the hands of their government, or due to their government's inability or unwillingness to afford protection to them. However, although it is difficult to identify any major breakthrough in terms of the status enjoyed by the R2P doctrine as a result of the international response to the major events of the Arab Spring, this is not to say that it is, or has become, an irrelevant mechanism where tackling severe humanitarian crises of the kind witnessed in Libya and Syria is concerned. While it is difficult to detect any notable shift in the international community's treatment of the R2P doctrine in its response to the events of the Arab Spring, it remains possible nonetheless to draw a number of conclusions for the future of this doctrine from the episode. Six related observations are particularly pertinent.

Firstly, despite its shortcomings, the R2P clearly exerts some influence over international decision-making where military intervention pursuant to chapter VII of the UN Charter in support of humanitarian objectives is given consideration. The invocation of Libya's responsibility to protect its population in resolutions 1970 and 1973 makes apparent the fact that R2P language was considered relevant here. Under the UN Charter framework, the Security Council could simply have labelled the situation in Libya to amount to a threat to the peace pursuant to Article 39 and move to sanction the NATO operation without ever invoking the R2P in any shape or form. That it did not do so is perhaps significant. Secondly,

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[97] Powell, supra n59, p.299.

irrespective of the formal justifications proffered or language used in connection with international responses to the humanitarian crises which escalated in Libya and Syria, states have undoubtedly demonstrated an attachment to the values which the R2P seeks to advance. The willingness of the Security Council to sanction NATO intervention in respect of Libya illustrates this well, the objective of military action being specifically to afford protection to civilian populations. Whether considered officially to be action in support of the R2P or action to address a threat to the peace under the Council's collective security apparatus, the fact remains that the situation giving rise to concern was exactly the type envisaged by the R2P doctrine. The limited support for intervention in Syria which did build up, and the more widespread general level of concern at events there, can also be found to lie in respect for the values inherent in the R2P: the protection of the civilian population.

Thirdly, the application of the R2P as a basis for military action under the auspices of the UN Security Council is likely to remain problematic due to the continued reluctance of some permanent members, namely China and Russia, to support steps which may be perceived as eroding further the notion of state sovereignty and permitting increased scope for intervention in response to situations that traditionally might be regarded as primarily internal to states. Notwithstanding the support of such states for the R2P doctrine in principle, its application via coercive measures remains met with caution. The lack of support on the part of these states for the Libyan intervention, and outright opposition to intervention in Syria underlines this.[98] More generally, states supportive of the Libyan intervention have been less eager to effect intervention in Syria. Fourthly, there is a real danger that the R2P becomes too closely related in practice with the controversial doctrine of regime change. Indeed, regime change

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[98] See further Garwood-Gowers, A., 'China and the "Responsibility to Protect": The Implications of the Libyan Intervention', *Asian Journal of International Law*, 2012, v.2, n.2, pp.365-393.

lay at the very heart of the demands of the instigators of the Arab Spring. This minimises the appeal of the R2P to those states which already have concerns over its implementation via military measures.[99] While in some respects the NATO intervention in Libya furthered the values underpinning the R2P, the end result was the overthrow of the Gaddafi regime. The statements of major international figures made it apparent that this was an objective, indirect or otherwise, which they wished to bring about.[100] Much has also been made in respect of the Syrian crisis of the argument that the regime of President Assad ought to be replaced.

Fifth, the old debates over humanitarian intervention outside of the UN Charter framework are not likely to go away, given that the Charter framework clearly appears unable to sustain the consistent application of the R2P within its parameters. Any military action in support of broadly humanitarian objectives which takes place in the absence of UNSC authority will undoubtedly be assessed against this controversial doctrine, in the same way that NATO's action against the Federal Republic of Yugoslavia was.[101] Finally, as the most recent efforts to resolve the Syrian chemical weapons issue via a system of UN control  and the ongoing civil war through an international peace conference demonstrates, implementing the R2P does not necessitate a military response as a matter of course. This form of initiative, if successful, may make it easier to build up international consensus behind implementation through other means.

CONCLUSIONS

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[99] Indeed, military interventions undertaken to serve humanitarian objectives have often resulted in the overthrow of regimes held responsible for atrocities giving rise to the situation of humanitarian concern. Consider, for example, interventions in Uganda and Cambodia during the 1970s. See generally Wheeler, N., *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: OUP, 2001), chs.3-4.
[100] See Wilson, supra n37, pp.116-120.
[101] See the references cited supra in n13.

The responsibility to protect doctrine represents a relatively recent development in international law and relations. From its inception to the outbreak of the events collectively labelled the Arab Spring, it had never formally featured in any UNSC decision-making in relation to the use of military force under chapter VII, making the humanitarian crises which resulted during the Arab Spring ideal opportunities to test, implement and develop it as a component of its chapter VII apparatus. Comparison of the Libyan and Syrian episodes in particular demonstrates that the R2P has not yet become engrained within the international community to the degree necessary to ensure its success as a concept designed to influence responses to mass human suffering. Continuing political divisions hinder its uniform and effective application; while there is some disagreement over the R2P conceptually, the inherent problems remain principally political rather than legal.

However, the responsibility to protect is not just concerned with military intervention. It takes on various forms, some more subtle than others, and has clearly impacted upon the nature of dialogue over means of responding to serious humanitarian crises. Only time will tell how this evolves. One obstacle to greater acceptance of the doctrine may arise from the manner in which it has become linked with pursuit of regime change, as for example arguably occurred in Libya, as well as adherence to more traditional notions of state sovereignty and non-intervention on the part of some major powers.