

Libya and Syria:

R2P and the spectre of the swinging pendulum

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For UN Secretary General (UNSG) Ban Ki-moon, the NATO-led, UN-mandated intervention in Libya in Spring 2011 marked the ‘coming of age’ of the ‘Responsibility to Protect’ (R2P) concept which the organization had endorsed at its 2005 World Summit.¹ Others who have followed the evolution of R2P with keen interest expressed similar sentiments: for Ramesh Thakur, R2P was a ‘game-changer’ which acted ‘as a powerful new galvanising norm’ over Libya; for Alex Bellamy, the concept ‘played an important role in shaping the world’s response to actual and threatened atrocities’ there.² But a shadow soon began to loom over those basking in the light of humanitarian success. As the United Nations Security Council (UNSC) continued to debate the ongoing crisis in Libya, the UNSG was forced to divert his gaze elsewhere, and what he saw impelled him to warn of the need to ‘prepare ourselves for the next test of our common humanity’ before lamenting that ‘the test is here—in Syria’.³ The intensity of Ban’s concern was exacerbated by the UN’s historical record in such matters. ‘Remember’, he counselled, that

our chief failing as an international community has been the reluctance to act in the face of serious threats. The result, too often, has been a loss of lives and credibility that haunt us ever after. Let us not let the pendulum swing back to the past. Let us not make the best the enemy of the good.⁴

This article considers the proposition that intervention in Libya marks the furthest point in the swing of the R2P pendulum and suggests a radical means by which the toxic effects on the concept of events following the Libya intervention might be mitigated. It makes four core claims. The first is that the current debate over the armed intervention in Libya exaggerates the role played by R2P in the UNSC’s deliberations and subsequent decision to provide a UN mandate for NATO’s intervention. Second, it is argued that despite the very limited use of

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¹ United Nations World Summit Outcome, A/RES/60/1, 24 Oct. 2005.

² Ramesh Thakur, ‘Rebalancing interests in the shifting global order: R2P was the game-changer in the decision to impose a no-fly zone’, *Canberra Times*, 22 March 2011; Alex J. Bellamy, ‘Libya and the responsibility to protect: the exception and the norm’, *Ethics and International Affairs* 25: 3, 2011, p. 263.

³ SG/SM/14068, 18 Jan. 2012.

⁴ SG/SM/14068.

R2P as a basis for action in Libya, NATO's chosen means of implementing its UN mandate has been seized upon by those sceptical towards R2P in order to delegitimize the concept. Third, in the light of the Libyan and Syrian cases, the article argues that the prospects for future invocations of R2P as a basis for intervention by force are now significantly diminished, although the extent and nature of this curtailment remain uncertain, and will depend in part on changes in the global distribution of power. Finally, it is argued that R2P's international standing can best be preserved through the excision of its most coercive elements; R2P should be reconstituted as a standard of acceptable sovereign behaviour and a mechanism geared towards the provision of international guidance and support, while decisions over coercive military intervention, inevitably infused with considerations of strategic interest, should be made outside the R2P framework.

The article proceeds as follows. After a brief clarification of key methodological points, it sets out the normative and historical contexts within which uses of force for humanitarian purposes have to be considered. It then considers NATO's recent intervention in Libya, briefly analysing the factors which facilitated the granting of authorization to intervene, before examining justifications given by Security Council members for their voting behaviour, and in particular the extent to which they cited R2P as a basis for action. Next, the article considers the apparent impact of the Libyan case on UNSC member states' attitudes towards intervention in Syria, focusing on the ways in which UNSC members justified their policy positions and the apparent relevance of R2P to these. The article then contemplates the implications of the Libyan and Syrian cases for R2P, before, in conclusion, advocating the disaggregation of coercive intervention from the other aspects of the concept.

Norms, justifications and motives

This article is concerned with normative developments and the justifications for actions given by states, rather than with underlying motives.⁵ Adopting Jeffrey Legro's definition of norms as 'collective understandings of the proper behaviour of actors',⁶ the article proceeds on the basis that because 'norms ... embody a quality of "oughtness" [they] prompt justifications for action[/inaction]';⁷ that such justifications matter because they are crucial to the securing of collective legitimation for a course of (in)action; and that such legitimation matters because, in its absence, (in)action will be perceived as 'violat[ing] other collectively legitimated norms and [will therefore] call forth counteraction that will make it costly or ineffective or both'.⁸ In this sense a norm can have a powerful enabling effect on

⁵ Nicholas J. Wheeler, *Saving strangers: humanitarian intervention in international society* (Oxford: Oxford University Press, 2000), pp. 4–11.

⁶ Jeffrey W. Legro, 'Which norms matter? Revisiting the "failure" of internationalism', *International Organization* 51: 1, 1997, p. 33.

⁷ Martha Finnemore and Kathryn Sikkink, 'International norm dynamics and political change', *International Organization* 52: 4, 1998, p. 892.

⁸ Gregory Flynn and Henry Farrell, 'Piecing together the democratic peace', *International Organization* 53: 3, 1999, p. 511.

state behaviour, whereby the securing of collective legitimation eases the pursuit of particular policies. And yet norms also constrain behaviour, for while justifications offered will not necessarily provide a complete or indeed genuine account of behaviour, as Quentin Skinner has pointed out, a 'course of action ... [will be] inhibited from occurring if it cannot be legitimated ... [in terms of] the prevailing morality of the society in which the agent is acting'.⁹ In this sense norms serve to prescribe the bounds within which agents may initially act; but it should also be noted that they continue to limit behaviour thereafter, since even if an actor is 'not in fact motivated by any of the principles ... professed ... [it] will nevertheless be obliged to behave in such a way that [its] actions remain compatible with the claim that these principles genuinely motivated [it]'.¹⁰

The enabling and constraining effects of a norm will depend on the extent to which it is embedded within what is often highly contested normative space in which alternative conceptions of rightful behaviour compete for the high ground. Where, to use the now familiar terminology of Martha Finnemore and Kathryn Sikkink, a norm has become so widely cascaded among states and so deeply internalized by them that it has become the 'prevailing standard of appropriateness' against which behaviour is judged, its enabling and constraining effects will be high.¹¹ Conversely, where cascade is limited and/or internalization is shallow, a norm will be ineffective, either as a basis on which justification for behaviour can be proffered or as a standard against which actors can be held to account. But levels of cascade and internalization are both variable and hard to measure; and consequently, it is rarely possible to be certain how strong a justification for action citation of a particular norm will provide.

This latter point is readily apparent in the discussions of R2P which follow, but before proceeding to these one further point must be noted. What exactly constitutes a reference to a norm, such as R2P, is itself always likely to be a matter of debate. This article adopts an expansive view of what constitutes an R2P-based justification, and so in assessing UNSC debates eschews too literal an interpretation of what constitutes an invocation of the concept. Hence in the analysis which follows, not only is explicit use of the phrase 'responsibility to protect' taken to constitute an R2P-based justification, along with clearly identifiable variations (for example, 'it is the responsibility of a state to protect'), but direct references to obligations arising from the 2005 summit document are also so considered. The use of language commonly associated with R2P (for example, 'mass atrocity prevention/response') would also be perceived as a justificatory resort to the concept, although in the UNSC debates over Libya and Syria no UNSC members actually resorted to such language. However, flexibility of interpretation has to be subject to reasonable limits; the UNSC debated action to protect grievously endangered populations long before R2P entered its lexicon, and hence more general references to actions geared towards such ends are not here considered to be R2P-based justifications.

⁹ Quentin Skinner, 'Some problems in the analysis of political thought and action', in James Tully, ed., *Meaning and context: Quentin Skinner and his critics* (Princeton, NJ: Princeton University Press, 1988), p. 117.

¹⁰ Skinner, 'Some problems', p. 116.

¹¹ Finnemore and Sikkink, 'International norm dynamics', p. 895.

Forcible intervention in the UN era

A cardinal principle of the UN Charter—the key foundational document of the post-1945 international legal order against which the actions of states are primarily judged—is the prohibition of the use of force found in article 2(4). In the context of a discussion about humanitarian intervention and R2P it is crucial to understand that, from its inception, this article was deemed to proscribe the *international* use of force. Consequently, states were free to ‘us[e] force within [their] metropolitan area[s] to put down ... revolution[s] or other disturbance[s]’,¹² but at the same time the exercise of military means to protect imperilled populations within other states was outlawed.¹³ By virtue of article 2(7) this international–domestic dichotomy was corporatized,¹⁴ with the UN being prohibited from ‘interven[ing] in matters which are essentially within the domestic jurisdiction of any state’. During the Cold War these rules were applied in such a way that the UN and its membership invariably became passive bystanders in the face of widespread human rights abuses and episodic mass killing.¹⁵

Such inaction appeared all the more conspicuous against standard-setting, welfare-promoting instruments such as the Universal Declaration of Human Rights, the Genocide Convention, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, to which all states pledged fidelity at the time.¹⁶ Occasional unilateral uses of force, such as those by India against Pakistan in 1971, Vietnam against Cambodia in 1978–9 and Tanzania against Uganda in 1979, gave rise to limited debate over the rightfulness of humanitarian intervention, but cases such as these served largely to reinforce international society’s opposition to the concept rather than to herald acceptance of its legitimacy.¹⁷ Similarly, in those rare cases such as South Africa and Southern Rhodesia where human suffering was evident and the UN did take (at least some) action, it is evident that security and/or territorial concerns were paramount, while humanitarian issues were deliberately eschewed.¹⁸ Reflecting on such an amalgam of practices, Gareth Evans is surely right to conclude that this was a period in which ‘sovereignty was seen essentially as a license to kill’.¹⁹

The end of the Cold War heralded a process of rebalancing of sovereign rights against internationally recognized standards of human protection, especially when

¹² Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations: commentary and documents* (Boston: World Peace Foundation, 1949), p. 103.

¹³ Christine Gray, *International law and the use of force* (Oxford: Oxford University Press, 2008), pp. 30–66; Anthony Clark Arend and Robert J. Beck, *International law and the use of force* (Abingdon: Routledge, 1993), pp. 112–37.

¹⁴ Gray, *International law*, pp. 254–366.

¹⁵ Barbara Harff and Ted Robert Gurr, ‘Toward empirical theory of genocides and politicides: identification and measurement of cases since 1945’, *International Studies Quarterly* 32: 3, 1988, pp. 359–71.

¹⁶ Jack Donnelly, *Universal human rights in theory and practice* (Ithaca, NY: Cornell University Press, 1989); Leo Kuper, *Genocide: its political use in the twentieth century* (New Haven, CT: Yale University Press, 1981).

¹⁷ Wheeler, *Saving strangers*, pp. 55–136. See also ICISS, *The responsibility to protect: supplementary volume* (Ottawa: International Development Research Centre, 2001), pp. 49–79.

¹⁸ Justin Morris, ‘The United Nations: collective security and individual rights’, in M. Jane Davis, ed., *Security issues in the post-Cold War world* (Cheltenham: Edward Elgar, 1996), pp. 113–35.

¹⁹ Gareth Evans, ‘Ending mass atrocity crimes: a hopeless dream?’, 10 May 2013, <http://gevens.org/speeches/speech513.html>, accessed 29 July 2013.

it came to the use of force.²⁰ A propitious global distribution of power enabled the securing of a series of interventionary UNSC mandates, leading the then UNSG Kofi Annan to claim that there was a 'developing international norm' forcibly to protect endangered populations and defend the most rudimentary levels of human welfare.²¹ This assertion is not without merit, although it must be noted that the breadth and depth of support for, and the exact nature and extent of, this new mode of international practice were highly contested.²² So too was the level of success achieved through its pursuit, and in this regard even the most optimistic of readings would be forced to acknowledge the salutary signals sent by two cases in particular: those of Rwanda and Kosovo. In the former, the UNSC's failure to act to prevent and then stop genocide resulted not from normative concerns over infringing the sovereignty of a UN member state but from the unwillingness of those with the capacity to act to become embroiled in the conflict.²³ Conversely, Kosovo saw the full might of the NATO alliance engaged in a military humanitarian intervention, but forced to do so in the absence of UNSC authorization as consensus among the veto-bearing permanent members buckled in the face of Russian and Chinese opposition to action.²⁴

Determined to ensure the avoidance of future Rwandas and Kosovos, the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) produced its report on the 'responsibility to protect'.²⁵ The 'primary task' of the Commission's work, according to its co-chair Gareth Evans, was to find a mechanism which 'built bridges, rather than burned them, between North-perceptions and South-perceptions'.²⁶ Crucial to success in this endeavour was the construction of a formulation which discarded "'humanitarian intervention[s]'" privileg[ing of] the perspectives, preferences, and priorities of ... intervening states' in favour of a 'victim- and people-centred' approach.²⁷ The UN's adoption of R2P as part of its unanimous approval of the 2005 World Summit outcome document, and the concept's subsequent endorsement by the UNSC in 2006,²⁸ bear witness to the Commission's success. Enshrined in paragraph 138 of the outcome document is the acceptance of the entire UN membership that '[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity'; paragraph 139 declares that '[t]he

²⁰ See e.g. Wheeler, *Saving strangers*; Jennifer Welsh, *Humanitarian intervention and international relations* (Oxford: Oxford University Press, 2004).

²¹ Kofi Annan, 'Secretary general's annual report to the UN General Assembly', 20 Sept. 1999, <http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>, accessed 29 July 2013.

²² Nicholas J. Wheeler and Justin Morris, 'Justifying the Iraq War as a humanitarian intervention: the cure is worse than the disease', in Ramesh Thakur and Waheguru Pal Singh Sidhu, eds, *The Iraq crisis and world order: structural, institutional and normative challenges* (Tokyo: UN University Press, 2006).

²³ Wheeler, *Saving strangers*, pp. 219–41.

²⁴ Ken Booth, *The Kosovo tragedy: the human rights dimension* (London: Frank Cass, 2001); Alex J. Bellamy, *Kosovo and international society* (Basingstoke: Palgrave Macmillan, 2002).

²⁵ ICISS, *The responsibility to protect: report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001).

²⁶ Evans, 'Ending mass atrocity crimes'.

²⁷ Ramesh Thakur, 'R2P after Libya and Syria: engaging emerging powers', *Washington Quarterly* 36: 2, 2013, p. 65.

²⁸ S/RES/1674, 28 April 2006. See also S/RES/1894 and S/PV.6216, 11 Nov. 2009.

international community, through the United Nations ... [is] prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII' to protect populations from the four enumerated acts.²⁹

Yet however adept the ICISS's bridge-building, significant diplomatic compromise was required in order to secure the endorsement of R2P.³⁰ First, the specification of the four acts falling within the concept's remit narrowed its potential application in comparison to the report's original reference to 'a population ... suffering serious harm'. Second, the outcome document did not affirm the Commission's suggestion that the General Assembly and/or regional organisations might, in certain circumstances, act to legitimize 'military intervention for human protection purposes' if the Security Council proved either unable or unwilling to do so.³¹ These compromises reflected the determination of certain states, particularly those from the global South to which Evans refers, to protect their sovereign prerogatives. More specifically, as Nicholas Wheeler has explained, they resulted from a concern on the part of 'states like China, India and Russia, all too conscious of the massive disequilibrium in global power ... that nothing be done that would further restrict the UN Charter's restraints on the use of force'.³² Such anxieties have been a constant thread through the debate over intervention, but international fallout from the unauthorized US-led use of force against Iraq in 2003 served to heighten the hurdle over which those who sought to entrench R2P within the UN's rulebook had to climb, and in this context the concept's dilution was the inescapable price to be paid for global consensus.

In 2008 the Secretary General called upon UN members to 'turn the promise [of their 2005 endorsement of R2P] into action, words into deeds', and in his report on implementing the responsibility to protect the following year he set out in considerable detail a framework through which this might be achieved.³³ This took the form of a three-pillared mechanism in which:

Pillar one is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement ... Pillar two is the commitment of the international community to assist States in meeting [these] obligations ... [and] Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection.³⁴

True to the spirit of the ICISS's victim- and people-centred approach and the adage that prevention is better than cure, the UNSG's report did much to distance R2P from more militaristic notions of humanitarian intervention, emphasizing

²⁹ A/RES/60/1.

³⁰ ICISS, *The responsibility to protect*, pp. xi, 53–5; Alex J. Bellamy, *Responsibility to protect: the global effort to end mass atrocities* (Cambridge: Polity, 2009), pp. 66–97; Aidan Hehir, *The responsibility to protect: rhetoric, reality and the future of humanitarian intervention* (Basingstoke: Palgrave Macmillan, 2012), pp. 29–56.

³¹ ICISS, *The responsibility to protect*, pp. 53–5.

³² Nicholas J. Wheeler, 'A victory for common humanity? The responsibility to protect after the 2005 World Summit', *Journal of International Law and International Relations* 2: 1, 2005/6, p. 100.

³³ SG/SM/11701, 15 July 2008; A/63/677, 12 Jan. 2009.

³⁴ A/63/677, para. 11.

the preventive and supportive aspects of pillars one and two. Nevertheless, it also stressed the importance of pillar three, not simply as a route through which to employ coercive force under Chapter VII of the Charter—what we might call ‘hard’ pillar three—but also as involving a ‘reasoned, calibrated and timely response’ entailing ‘soft’ pillar three approaches such as ‘peaceful measures under Chapter VI ... and/or collaboration with regional and subregional arrangements under Chapter VIII’.³⁵ In advocating a broad, integrated, flexible and non-sequential application of R2P, the Secretary General sought to address the inadequacies of a post-2005 approach to it which placed disproportionate emphasis on state responsibility as enshrined in paragraph 138 of the outcome document. Nowhere were the shortcomings of such a stance more evident than in Darfur where, since 2003, the deaths of 250,000 civilians and the displacement of a further 2 million failed to trigger effective remedial international action and reference to R2P actually ‘enabled *anti-interventionists* to legitimize arguments against action by claiming that primary responsibility in certain contested cases still lies with the state, and not (yet) with an international body’.³⁶ It was with the aim of avoiding repetition of this one-dimensional approach that the UNSG had set out his implementation plan, and it was in embracing this that, at least for a brief while, the UNSC’s decision to mandate intervention in Libya assumed such significance.

Intervention in Libya: R2P’s ‘coming of age’?

In passing Resolution 1973 in March 2011, and authorizing the establishment of a no-fly zone and the taking of ‘all necessary measures ... to protect civilians and civilian populated areas under threat of attack’ in Libya,³⁷ the UN mandated, for the first time in its history, military intervention in a sovereign state against the express will of that state’s government. As with all such decisions to intervene, a complex combination of strategic, political and operational factors coalesced with the humanitarian imperative to act,³⁸ especially once the Gaddafi regime had failed to heed the Council’s earlier ‘[d]emand ... [for] an immediate end to the violence’ and urging of ‘utmost restraint [and] respect [for] human rights and international law’.³⁹ A detailed analysis of such underlying motivating variables is beyond the remit of this article, but consideration of those factors declared by the UNSC to be decisive to the manner in which votes were cast over Resolution 1973 is itself revealing as it demonstrates the ways in which states sought to legitimize their positions.

Council members were unanimous in condemning the Libyan government’s repressive and violent behaviour, and all acknowledged that this gave grounds for

³⁵ A/63/677, para. 11.

³⁶ Alex J. Bellamy, ‘Responsibility to protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq’, *Ethics and International Affairs* 19: 2, 2005, p. 33 (emphasis in original).

³⁷ S/RES/1973, 17 March 2011.

³⁸ Justin Morris and Nicholas J. Wheeler, ‘Human welfare in a world of states: reassessing the balance of responsibility’, in James Connelly and Jack Hayward, eds, *The withering of the welfare state: regression* (Basingstoke: Palgrave Macmillan, 2012), pp. 186–8.

³⁹ S/RES/1970, 26 Feb. 2011.

UNSC action. For the ten states that chose to support the resolution, its provision for military and other measures, subject to the explicit 'exclu[sion of] a foreign occupation force of any form',⁴⁰ constituted an appropriately balanced means by which to bring an end to such conduct. For the five states that chose to abstain, however, it went too far. The greatest obstacle to the attainment of a wider consensus was divergence of opinion over the need to use force. Germany and Brazil questioned the efficacy of such a step and contemplated the possibility that it might actually make matters worse, while India suggested that the mandating of force was a premature move and voiced concerns over the ambiguities of the authorization. China, declaring itself to be 'always against the use of force', shared India's latter anxiety, as did Russia, which perceived a 'morphing' of the pro-interventionary position into something which could 'potentially open the door to large-scale military intervention'.⁴¹

What proved crucial to the passing of the resolution was the level of regional support for a more robust UNSC response. The African Union, the League of Arab States, the Gulf Cooperation Council and the Organization of the Islamic Council all condemned the actions of Gaddafi's regime, with the latter three groupings explicitly calling on the UNSC to impose a no-fly zone over Libya. Such support was cited by all Council members as influencing their voting behaviour; in the crucial case of the United States it was the vital palliative to intra-administration division over the use of force,⁴² while with equal significance at the other end of the interventionary spectrum, it was most explicitly cited by China as grounds for abstention rather than veto.⁴³

Conversely—and contrary to most commentary on Libya—the official record of the UNSC's deliberations over Resolution 1973 gives little support to assertions that R2P was a major influencing factor on decisions over the most appropriate form of intervention. Throughout the Council's deliberations only France and Colombia referred to the concept, and even then only in respect of Libya's responsibility to protect its citizens. This practice of referring only to R2P's pillar one elements was mirrored in the textual composition of the Council's resolutions on Libya, with Resolutions 1970, 1973, 2016 and 2040 all referring to the responsibility of the state, but making no mention of the broader responsibility said to fall on the wider international community when states fail to meet their pillar one responsibilities. Moreover, examination of the records of other UNSC meetings on Libya shows a similar pattern of linguistic usage. During the ten publicly recorded meetings between February 2011 and May 2013 at which the Council discussed the situation in Libya, explicit or clear references to R2P were made by only six Council members, with respect to Libya's pillar one responsibility by the United

⁴⁰ S/RES/1970.

⁴¹ S/PV.6498, 17 March 2011. See also Paul D. Williams and Alex J. Bellamy, 'Principles, politics, and prudence: Libya, the Responsibility to Protect, and the use of military force', *Global Governance* 18: 3, 2012, pp. 273–82; Bruce D. Jones, 'Libya and the responsibilities of power', *Survival* 53: 3, 2011, pp. 53–7.

⁴² Alex J. Bellamy and Paul D. Williams, 'The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect', *International Affairs* 87: 4, July 2011, pp. 839–41.

⁴³ Luke Glanville, 'Intervention in Libya: from sovereign consent to regional consent', *International Studies Perspectives*, forthcoming 2013 (available as 'early view' online), pp. 1–18.

States,⁴⁴ France (twice),⁴⁵ Columbia (twice)⁴⁶ and Germany,⁴⁷ and with respect to the international community's pillar three responsibilities by France (twice),⁴⁸ Lebanon⁴⁹ and Rwanda.⁵⁰ Such limited invocation of R2P is all the more notable given the Secretary General's explicit citation before the Council of the responsibilities to protect which attach to *both* national governments *and* the international community.⁵¹ Having been clearly reminded of their obligations, the majority of UNSC member states chose not to draw on such language in justifying their approaches to the crisis in Libya.

Assessed against this evidence, the claims over Libya made by Ban, Thakur and Bellamy—and notably absent from commentary on other cases often associated with R2P—are difficult to maintain. Likewise, while the UNSG's Special Adviser on R2P, Ed Luck, is correct to stress that over Libya 'the Council employed RtoP for the first time in a Chapter VII context',⁵² his failure to acknowledge that in so doing the UNSC made reference only to pillar one of the concept is a significant omission. Two possible explanations as to why the invocation of R2P was so limited seem plausible. First, it is conceivable that while R2P provided a conceptual framework through which some states framed their policy options, and that for some of them it even served as a motivating factor, it was nevertheless deemed inexpedient to cite the concept, especially in pillar three guise, given the controversy which still surrounds it.⁵³ If this is a correct reading of the Libya case, then it accords with a now observable trend within the UNSC to cite R2P in thematic resolutions, but not in relation to specific cases.⁵⁴ What this in turn suggests is that R2P remains controversial and contested, and subject to a far lesser level of norm-cascade than is often suggested in scholarly literature.⁵⁵

An alternative explanation is that states did not cite R2P in the debates over Libya simply because it did not figure significantly in their thinking. This may seem somewhat implausible given the prominence afforded the concept in recent years, but there is evidence to suggest that, even in the case of an actively pro-R2P state such as the UK, over Libya the concept played little part in determining policy.⁵⁶ For example, in the evidence submitted to and deliberations of the Defence Committee's inquiry into the UK's operation in Libya, the concept was paid little heed,⁵⁷ and R2P only made it into the pages of the committee's final report 'as

⁴⁴ S/PV.6491, 26 Feb. 2011.

⁴⁵ S/PV.6491, S/PV.6498.

⁴⁶ S/PV.6491, S/PV.6498.

⁴⁷ S/PV.6647, 2 Nov. 2011.

⁴⁸ S/PV.6528, 4 May 2011; S/PV.6647.

⁴⁹ S/PV.6620, 16 Sept 2011.

⁵⁰ S/PV.6962, 8 May 2013.

⁵¹ S/PV.6490, 25 Feb. 2011.

⁵² Edward C. Luck, 'The responsibility to protect: the first decade', *Global Responsibility to Protect* 3: 4, 2011, p. 6.

⁵³ Tim Dunne and Jess Giffkins, 'Libya and the state of intervention', *Australian Journal of International Affairs* 65: 5, 2011, p. 521.

⁵⁴ Alex J. Bellamy, 'The responsibility to protect—five years on', *Ethics and International Affairs* 24: 2, 2010, p. 145.

⁵⁵ Jennifer M. Welsh, 'Implementing the "responsibility to protect": where expectations meet reality', *Ethics and International Affairs* 24: 4, 2010, p. 426.

⁵⁶ This view has been expressed by Foreign and Commonwealth Office officials during confidential interviews undertaken while researching this article.

⁵⁷ House of Commons Defence Committee, *Operations in Libya*, 9th Report of Session 2010, HC950.

an afterthought'.⁵⁸ The United States is another interesting case in point. The fervency of the debate within the Obama administration over whether to intervene is now well documented, with the ultimate success of pro-interventionists such as Hillary Clinton, Susan Rice and Samantha Power often depicted as an intra-administration victory not simply for those advocating action but also for the R2P concept itself.⁵⁹ Yet however swayed he may have been by the merits of the case for intervention in Libya, President Obama went to great lengths to publicly justify the action in terms of case-specific circumstances, and did so in a manner which, as Saira Mohamed notes, 'suggest[ed] that the decision was driven more by singular national interests than by any sense of responsibility'.⁶⁰ The absence of R2P or R2P-related language from US contributions to Council debates over Libya supports this conclusion. The UK and US examples, therefore, give credence to the notion that R2P was not cited as a justification for action because either it was not active in policy-makers' minds or, if it was, it was outweighed by other considerations. If proven, this suggests that even among those to whom the concept clearly *has* cascaded, internalization is far from complete.

Irrespective of how one interprets the Libyan case, its credentials as an example of R2P in action, and the possible reasons for the lack of references to R2P in the official record of UNSC meetings, it is now a matter of historical fact that Libya served as the highly significant backdrop for the UNSC debates over how to respond to the situation in Syria. In this context it soon became clear that the shadow it cast was a dark one, both for the people of Syria and for the concept of R2P.

Non-intervention in Syria: the price of excess

The UNSG first briefed the UNSC on the deteriorating situation in Syria on 27 April 2011,⁶¹ but it was another five months before a badly fractured Council met formally to discuss the matter. An attempt by France, Germany, Portugal and the UK to secure passage of a non-coercive resolution '[s]trongly condemn[ing] the continued grave and systematic human rights violations and the use of force against civilians by the Syrian authorities'⁶² was thwarted by the casting of Chinese and Russian vetoes, despite the fact that all in the Council expressed grave concerns over the humanitarian crisis in the country. Explaining its exercise of the veto, Russia declared that it reflected 'not so much a question of acceptability of wording as a conflict of political approaches' regarding

⁵⁸ Interview with Rt Hon. James Arbuthnot MP, Chair, House of Commons Defence Committee, Portcullis House, London, 8 Nov. 2012.

⁵⁹ Saira Mohamed, 'Taking stock of the responsibility to protect', *Stanford Journal of International Law* 48: 2, 2012, pp. 319–39; Simon Chesterman, 'Leading from behind': the responsibility to protect, the Obama doctrine, and humanitarian intervention after Libya', *Ethics and International Affairs* 25: 3, 2011, pp. 279–85; Stewart Patrick, 'A new lease on life for humanitarianism', *Foreign Affairs*, 24 March 2011, <http://www.foreignaffairs.com/articles/67674/stewart-patrick/a-new-lease-on-life-for-humanitarianism?page=show>, accessed 29 July 2013.

⁶⁰ Mohamed, 'Taking stock', p. 320.

⁶¹ S/PV.6524, 27 April 2011.

⁶² S/2011/612, 4 Oct. 2011 (emphasis in original).

respect for the national sovereignty and territorial integrity of Syria as well as the principle of non-intervention, including military, in its affairs; the principle of the unity of the Syrian people; refraining from confrontation; and inviting all to an even-handed and comprehensive dialogue aimed at achieving civil peace and national agreement by reforming the socioeconomic and political life of the country.⁶³

Expressions of similar concerns by Russia and China have since come to characterize the Security Council's deliberations over Syria, leading to the vetoing by both of two further, similarly non-coercive, resolutions submitted to the chamber.⁶⁴

Given the complex array of strategic, religious and political factors that bear on Syria and its immediate neighbours, and the direct interests in the country of China and, more especially, Russia, divisions over how best to react to the violence emanating from Damascus were always destined to be deeper than those over Libya.⁶⁵ Moscow's ties to the Assad regime and consequential concerns over ulterior Russian strategic interests have rarely been far from the surface of Council debate. France, for example, accused Russia of 'merely want[ing] to win time for the Syrian regime to crush the opposition' after it had vetoed a resolution which 'included only a mere threat of [non-military] sanctions'.⁶⁶ Any analysis of the Syrian case must, therefore, be undertaken in full cognizance of such case-specific variables. Nevertheless, what is striking about the Council's deliberations over Syria is the extent to which these have been influenced by parallels drawn with Libya. Since the chamber has been simultaneously seized of these two matters this was perhaps to some extent inevitable, but when Russia insisted to fellow Council members that 'the situation in Syria cannot be considered in the Council separately from the Libyan experience'⁶⁷ it was making far more than a point about chronology. Hence criticisms made in debates over Libya of the manner in which NATO had implemented its Council mandate there⁶⁸ came to contaminate discussions over Syria.

Chinese and Russian statements over Syria concur with those of other Council members in calling for an end to the repression and killing, but diverge from them in three key ways: first, in their demand that criticism of the Assad regime's behaviour be more evenly balanced by criticism also of anti-Assad forces; second, in their insistence that any settlement reached must eschew force and be negotiated and fully consensual; and third, in their evident suspicion that the ultimate goal of Assad's critics is to intervene militarily in order to bring about regime change, just as had occurred in Libya.⁶⁹ This last accusation persists despite an insistence from NATO members—the particular targets of Russian and Chinese criticisms—that they have no intention of engaging militarily with Assad. As James Joyner of the

⁶³ S/PV.6627, 4 Oct. 2011.

⁶⁴ S/2012/77, S/PV.6711, 4 Feb 2012; S/2012/538, S/PV.6810, 19 July 2012.

⁶⁵ Caitlin Alyce Buckley, 'Learning from Libya, acting in Syria', *Journal of Strategic Studies* 5: 2, 2012, pp. 81–104; Emile Hokayem, *Syria's uprising and the fracturing of the Levant* (London: International Institute for Strategic Studies, 2013), pp. 105–49.

⁶⁶ S/PV.6810.

⁶⁷ S/PV.6627.

⁶⁸ See e.g. S/PV.6620, S/PV.6731, 7 March 2012.

⁶⁹ S/PV.6627; S/PV.6710, 31 Jan. 2012; S/PV.6810; S/PV.6826, 30 Aug. 2012.

Atlantic Council concedes, similar assurances were given prior to action in Libya, but in the Syrian case the danger of doing more harm than good, in terms of both the internal humanitarian situation and the potential for triggering a wider regional conflagration (with a frightening religious dimension), militates far more strongly against intervention.⁷⁰ Nevertheless, fears that the threat of placing even the mildest of sanctions on Syria would constitute the thin end of the interventionary wedge persist in the justifications for veto-wielding offered by Russia and China. Moreover, in their statements to the Council both states intimated that their concerns were not merely based on and restricted to an extrapolation from Libya to Syria, but rather extended to include western interventionary practices more broadly. Debate was no longer simply about specific cases, however they might be linked; it was about a wider normative agenda. As such, it appears to bode ill for R2P.

Despite references to R2P featuring infrequently in the UNSC's debates over Libya, when the Council first met to discuss the situation in Syria, Russia suggested that the 'international community [was] alarmed' by the prospect that Libya might become 'a model for future actions of NATO in implementing the responsibility to protect'.⁷¹ This is the only explicit reference to R2P made in the Council so far by either Russia or China in relation to Syria (or Libya, for that matter). However, through (Russia's) further criticism of western powers' 'use of pseudo-humanitarian arguments' and (China's) stated opposition to 'military intervention under the pretext of humanitarianism' and 'externally imposed solution[s] aimed at forcing regime change',⁷² both states have made clear the difficulties which would-be interveners are likely to face when attempting to secure UNSC authorization for interventionary action in future cases.

Citation of R2P by other Council members in debates over Syria has also been limited. During the twelve publicly recorded meetings between October 2011 and April 2013 at which the Council discussed the situation, explicit or clear references to the concept were made by only seven Council members: Colombia,⁷³ France,⁷⁴ Togo,⁷⁵ Rwanda,⁷⁶ Japan (twice)⁷⁷ and Brazil⁷⁸ all cited Syria's pillar one responsibilities, while Guatemala spoke to affirm its support for the principle more generally.⁷⁹ It is also notable that during these debates no member state referred to the pillar three responsibilities of the international community, and Colombia, a relatively vociferous advocate of R2P over Libya, became markedly more circumspect in its citation of R2P as the debates over Syria continued.⁸⁰

⁷⁰ James Joyner, 'Why NATO won't intervene in Syria', 6 June 2013, http://www.acus.org/new_atlanticist/why-nato-wont-intervene-syria, accessed 29 July 2013; Harlan Ullman, 'Syrian supernova?', 30 May 2013, http://www.acus.org/new_atlanticist/syrian-supernova, accessed 29 July 2013.

⁷¹ S/PV.6627.

⁷² S/PV.6826.

⁷³ S/PV.6627.

⁷⁴ S/PV.6710.

⁷⁵ S/PV.6826.

⁷⁶ S/PV.6906, 23 Jan. 2013.

⁷⁷ S/PV.6906, S/PV.6950, 24 April 2013.

⁷⁸ S/PV.6950.

⁷⁹ S/PV.6710.

⁸⁰ S/PV.6826, S/PV.6841, 26 Sept. 2012.

Statements made during UNSC debates over Syria suggest, therefore, that R2P did little to galvanize states. Moreover, the propensity to cite R2P in justification of greater Council involvement is even weaker in the Syrian case than it was in Libya where, as has already been shown, the R2P effect was far smaller than is often claimed. Why the inclination to draw on R2P should have so diminished is, at this stage, a matter requiring further research, but the preliminary conclusion that it represents a recoil from its justificatory use in the face of Russian—and subsequently, if slightly more ambiguously, Chinese—criticism of the concept and its potential to lead to regime change does not seem unreasonable. If this is correct, then the Syrian case indicates that Libya marked less R2P’s ‘coming of age’ and more a potentially fatal injury to an already fragile consensus.

RIP R2P?⁸¹

The cases of Libya and Syria present us with a curious paradox: a policy which in Libya was rarely justified in terms of R2P has come, in the eyes of some, to demonstrate the dangers inherent in the concept, while in UNSC debates over Syria the linking of R2P to action over Libya has been employed to justify inaction. Reflecting on this irony, Ramesh Thakur determined that ‘it would be premature to conclude that R2P can be branded “RIP”’;⁸² but that he should even contemplate such a point bears testament to the precarious situation in which R2P and the wider humanitarian agenda which it embodies now find themselves. Thakur may be correct, but in terms of Ban’s swinging pendulum, R2P does currently seem woefully short of forward momentum. If this is the case, then only one result can follow and the Secretary General’s worst fears will be confirmed.

Key to understanding this paradox is an appreciation of the extent to which R2P has actually come to be accepted within international society. In this respect the record is chequered: the 2005 World Summit document containing R2P was universally endorsed by the UN membership, but in the following years the attitudes towards it of many members were such that Gareth Evans was inclined to contemplate the possibility that R2P might be ‘an idea whose time had come ... and gone’.⁸³ The 2009 General Assembly debate over the UNSG’s R2P implementation paper raised a number of points of contention, key among them ‘the perennial question of the potential for RtoP to legitimize coercive interference and the lack of clarity about the triggers for armed intervention’.⁸⁴ Ultimately, as Bellamy has shown, the debate ‘helped identify a broader consensus than was thought possible’;⁸⁵ but among a significant swath of the UN membership, crucially including two of the Council’s veto-bearing permanent members, China and Russia, the concept’s breadth of cascade and depth of internalization remained

⁸¹ This epithet was coined by David Reiff, ‘R2P, RIP’, *New York Times*, 7 Nov. 2011, <http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html?pagewanted=all>, accessed 29 July 2013.

⁸² Thakur, ‘R2P after Libya and Syria’, p. 61.

⁸³ Gareth Evans, ‘The responsibility to protect: an idea whose time has come ... and gone?’, *International Relations* 22: 3, 2008, pp. 283–98.

⁸⁴ Bellamy, ‘The responsibility to protect—five years on’, p. 148.

⁸⁵ Bellamy, ‘The responsibility to protect—five years on’, p. 148.

a matter of significant contention.⁸⁶ Moreover, since it is, as Jennifer Welsh has observed, misguided to view the development of norms as a linear process,⁸⁷ even such limited cascade and internalization as has been achieved should not be viewed as irreversible; what once seemed like a good (or at least acceptable) idea may, in the light of changed circumstances, understandings or facts, come later to be viewed with suspicion and hence to warrant opposition. In the context of such long-held and lingering concerns over R2P and in particular its more coercive elements, and faced with NATO's apparent willingness to use a Chapter VII mandate designed to facilitate civilian protection to bring about regime change, it seems unsurprising that Russia and China would seize upon even the thinnest of R2P threads in order to discredit the concept. What remain less clear are the longer-term implications of their choice to do so.

As veto-bearing members of the UNSC, Russia and China have the ability to prevent any (non-procedural) resolution from being adopted. The extent to which they will choose to exercise this power over R2P-related issues remains a matter of conjecture at present, but their behaviour in the Council over Syria does not bode well in this regard. Such blocking behaviour must, of course, be contextualized in terms of both its chronological proximity to NATO's action in Libya and the specific strategic links which Russia in particular has with the Assad regime. It is possible, therefore, that Russia and China will relent in their attitude to R2P, at least when being asked to support—or at least not block—resolutions built upon its first and second pillars. Since the end of the Cold War, both states have made a practice of abstaining even on matters over which they have reservations, often doing so in a coordinated manner because 'neither country want[s] to stand out as having singly blocked council action'.⁸⁸ As highly adept diplomatic actors, neither Beijing nor Moscow will be blind to the fact that such conspicuousness is particularly unwelcome where thousands are dying, for, as the ICISS declared, 'it is unconscionable that one [or even two] veto[es] can override the rest of humanity on matters of grave humanitarian concern'.⁸⁹ A veto-blocked Council devoid of moral standing and potentially sidelined by states choosing to act outside it serves the interests of neither China nor Russia, and consequently diplomatic acuity may yet serve to ensure that R2P does not lose all of the ground gained so far.

Since the preceding logic is dependent on the dominance of particular ethical viewpoints, the boldness of the stance adopted by R2P-sceptics such as Russia and China may ultimately come to owe as much to the dynamics of global power distribution as to specific normative bearings. If, as is now commonly foretold, power shifts from its traditional western moorings towards China, Russia and the

⁸⁶ Andrew Garwood-Gowers, 'China and the "responsibility to protect": the implications of the Libyan intervention', *Asian Journal of International Law* 2: 2, 2012, pp. 375–93; Sarah Teitt, *China and the responsibility to protect* (Brisbane: Asia-Pacific Centre for the Responsibility to Protect, University of Queensland, 19 Dec. 2008), http://responsibilitytoprotect.org/files/China_and_R2P%5B1%5D.pdf, accessed 29 July 2013; Roy Allison, 'Russia and Syria: explaining alignment with a regime in crisis', *International Affairs* 89: 4, July 2013, pp. 795–823.

⁸⁷ Welsh, 'Implementing the "responsibility to protect"', p. 426.

⁸⁸ Jones, 'Libya and the responsibilities of power', p. 54.

⁸⁹ ICISS, *The responsibility to protect*, para. 6.20.

other BRICS (Brazil, India and South Africa), opposition to R2P may become more mainstream. As Jennifer Welsh explains:

Arguably, RtoP was born in an era when assertive liberalism was at its height, and sovereign equality looked and smelled reactionary. But as the liberal moment recedes, and the distribution of power shifts globally, the principle of sovereign equality may enjoy a comeback.⁹⁰

Hence a shift in global power may be as significant for the normative maelstrom to which it gives rise as for the material changes which it entails. Nowhere is this likely to be more apparent than where forcibly imposed solutions to humanitarian crises are being contemplated, since the BRICS, whatever their own military proclivities, 'share a long-held mistrust of western-led military action'.⁹¹ In this context Brazil's 'Responsibility while Protecting' (RwP) initiative on the authorization, implementation and review of uses of force for humanitarian purposes offers an interesting insight into how such concerns may manifest themselves and impact on the development of R2P.⁹² Presented to the UNSC after the Libyan intervention as a 'constructive, conceptual contribution' to the debate on protection of civilians and R2P,⁹³ the proposal nevertheless 'leaves no doubt as to the scepticism which Brazil entertains regarding military action',⁹⁴ or its perception that R2P may act as a cloak for regime change.⁹⁵

A realignment in global power in favour of those normatively predisposed towards sovereign rather than individual rights is likely, therefore, to augur badly for R2P.⁹⁶ Exactly how one interprets what this means for the concept depends on how one conceives of it in the first place. As Bellamy puts it, the question is whether R2P is primarily a 'policy agenda in need of implementation [or a] "red flag" to galvanize the world into action'.⁹⁷ For Bellamy the answer is the former, with R2P 'best employed as a diplomatic tool, or prism, to guide efforts to stem the tide of mass atrocities, [but with] ... little utility in terms of generating additional international political will in response to such episodes'.⁹⁸ Yet others, such as Thomas Weiss, have long spurned this view, considering that it is 'hard to fathom' why R2P should be diverted from the key role it has to play as a potential antidote to international policies which 'over the last decade' have resulted in the use of 'not too much but rather too little armed force to protect human lives'.⁹⁹

⁹⁰ Welsh, 'Implementing the "responsibility to protect"'.

⁹¹ Daniel Wagner and Daniel Jackman, 'BRICS form unstable foundation for multilateral action', *Foreign Policy Journal*, 2 April 2011, <http://www.foreignpolicyjournal.com/2011/04/02/brics-form-unstable-foundation-for-multilateral-action/>, accessed 29 July 2013. See also Jones, 'Libya and the responsibilities of power', p. 57.

⁹² A/66/551-S/2011/701, 11 Nov. 2011.

⁹³ S/PV.6650, 9 Nov. 2011.

⁹⁴ Andreas S. Kolb, 'The responsibility to protect (R2P) and the responsibility while protecting (RwP): friends or foes?', GGI Analysis Paper 6/2012 (Brussels: The Global Governance Institute, Sept. 2012). For a more positive view of RwP, see Thorsten Benner, 'Brazil as a norm entrepreneur: the "Responsibility while Protecting" initiative', GPPi working paper (Berlin: Global Public Policy Institute, March 2013).

⁹⁵ A/66/551-S/2011/701, para. 10.

⁹⁶ Chris Keeler, 'The end of the responsibility to protect?', *Foreign Policy Journal*, 12 Oct. 2011, <http://www.foreignpolicyjournal.com/2011/10/12/the-end-of-the-responsibility-to-protect/>, accessed 29 July 2013.

⁹⁷ Bellamy, 'The responsibility to protect—five years on', p. 166.

⁹⁸ Bellamy, 'The responsibility to protect—five years on', p. 166.

⁹⁹ Thomas G. Weiss, 'RtoP alive and well after Libya', *Ethics and International Affairs* 25: 3, 2011, pp. 288–9.

Adopting a holistic view of R2P, the Secretary General's 2009 framework explicitly rejected the notion that one aspect of R2P could be favoured over any other, let alone that it could exist in *à la carte* form with certain courses off the menu, a position he markedly reasserted after the Libyan intervention in his R2P report of 2012.¹⁰⁰ Unfortunately for Ban and like-minded R2P advocates, in a post-Libya and potentially post-liberal world, what once appeared a counsel of reasonable conceptual holism may come to resemble more a plea for unattainable perfection.

Conclusion

This article has shown that, contrary to extensive comment suggesting otherwise, R2P was rarely cited by UNSC members during debates over Libya. It has also shown that, somewhat counter-intuitively, Russia (explicitly) and China (implicitly) seized upon the manner in which NATO implemented its UN mandate in Libya to discredit R2P in Council debates over action on Syria. In the light of these cases, the idea that R2P has now 'come of age' seems more than a little optimistic. Indeed, if anything, these two cases suggest that the future of R2P will be fraught with difficulty.

A number of factors support this prognosis. First, as a still developing norm R2P is neither as widely cascaded nor as deeply internalized as is commonly suggested. Second, Libya has served less as a showcase for the potential of R2P and more as a warning of its dangers. Among R2P-sceptics it has stoked the embers of long-held suspicions over the trustworthiness of western powers with neo-imperial proclivities not to use force to violate the sovereignty of weaker states, igniting overt opposition to western interventionary agendas which may well burn for the foreseeable future. Third, within this rank stand powerful international actors, namely the BRICS and most notably Russia and China. By virtue of their material strength and privileged position in the Security Council, these two states are able to block future attempts to initiate action which they perceive to be related to R2P. Finally, any migration in the balance of global power towards the BRICS will enhance their ability to compete in the highly contested normative space of international politics. Emboldened, with voices amplified, and more able to resort to side-inducements such as promises of future diplomatic, financial or military support where normative argument fails, these states look better positioned than ever to instigate a reassessment of the balance between sovereign and individual rights which is central to the R2P debate. The concept's entrenchment in UN instruments may go some way towards countering the ability of the BRICS to cascade their more statist viewpoint, but it offers no cast-iron protection.

Only time will tell how these factors will play out and what their implications for R2P will be. The constant danger of reading too much into current events and the temptation to exaggerate the inductive potential of individual (and particularly infrequent) cases must be guarded against. Moreover, Syria was always likely to be hostile terrain for a debate on R2P—whether referred to by name or

¹⁰⁰ A/66/874-S/2012/578, 25 July 2012.

not—given the close and valuable strategic ties between Damascus and Moscow. As such it may prove a poor test case. Time is also a great healer, and as diplomatic challenges as yet unseen appear and have to be addressed, there may be good reason for the five permanent members of the UNSC and other influential actors to rebuild relations. So in a different place at a different time and against a different backdrop of prior events, R2P may look like a stronger normative proposition. Against this, the concerns harboured by the BRICS, the non-aligned states and others about the use of force by western powers are deep-seated, and from this perspective the manner in which NATO enacted its UN mandate in Libya was highly problematic. Such normative concerns, combined with short-term variations in prosperity and confidence, and the prospect of more fundamental shifts in power, suggest that the Council may for some time be a challenging venue in which to attempt to generate a consensus over R2P. The diplomatic and reputational costs of standing out against some forms of R2P activity—crucially those under pillar two—might still look too high, unless powerful strategic drivers decree otherwise. Even proposals for ‘soft’ pillar three responses to humanitarian crises may meet with Chinese and Russian approval—or at least acquiescence. But the fate of coercive ‘hard’ pillar three responses looks significantly less promising.

With the experience of Kosovo fresh in the mind and the foresight to anticipate its repeat, the ICISS had refused to discount the idea that there should be alternative models for authorizing action if the UNSC succumbed to veto-induced deadlock.¹⁰¹ However, as previously noted, the UN membership chose in 2005 not to endorse this element of the Commission’s report. This decision was always likely to be most significant in terms of potential ‘hard’ pillar three responses, since it is invariably when contemplating the use of coercive force that interests become most threatened and positions most entrenched. We are thus presented with a dilemma: those situations most likely to induce the use of a veto are also those deemed most unsuitable for consideration outside the Council. What makes this dilemma so acute is the fact, as Gareth Evans explains, that while

prevention has been from the beginning the most important element in the R2P concept ... we have to acknowledge that the hardest cases, the sharp-end cases, when the situation in question is so bad that the issue of military force has to be given at least some *prima facie* consideration, *are* the talismanic cases.¹⁰²

A series of unpalatable consequences follow from the characteristics which such ‘talismanic cases’ exhibit: they attract the most attention; they treacherously present the greatest chance for good ethical intentions to have bad humanitarian outcomes; and they are soluble only by the taking of extreme measures, including the removal from power of the perpetrators of the most egregious acts of inhumanity. Yet however high profile, operationally difficult and politically

¹⁰¹ ICISS, *Responsibility to protect*, paras 6.13–6.40; Nicholas J. Wheeler and Tim Dunne, ‘Operationalising protective intervention: alternative models of authorisation’, in W. Andy Knight and Frazer Egerton, eds, *The Routledge handbook of the responsibility to protect* (Abingdon: Routledge, 2012).

¹⁰² Gareth Evans, ‘The responsibility to protect: re-establishing consensus on the hardest cases’, 15 May 2013, <http://www.g evans.org/speeches/speech515.html>, accessed 29 July 2013 (emphasis in original).

sensitive these cases might be, they are ill-served by prevarication and half-measures. Chris Brown has argued that ‘there are no half-way houses in matters of this kind [and moreover] ... the impression [given by R2P] that “protection” is something that can be carried out a-politically without taking sides ... is clearly wrong’.¹⁰³ Yet against this a philosophy of ‘pick a side and go in hard’ is almost certainly not one that will meet with UNSC approval. The potential implications for those suffering are clearly dire, but prospects for R2P and the pro-interventionary agenda also look bleak since, as Evans notes, where ‘consensus has broken down ... at the highest political level ... there is a danger of flow-on risk to the credibility of the whole R2P enterprise, in all its multiple and nuanced dimensions’.¹⁰⁴

Such a risk would arguably be worth running if the inclusion of ‘hard’ pillar three responses within R2P enhanced the UN’s ability to deal with the most acute state violations of human rights, but the above analysis suggests that it does not. This should come as no surprise for, as Wheeler and Dunne have noted, ‘in relation to the use of force, it will always be politics all the way down, and decisions will always be contingent and subject to case-by-case considerations’.¹⁰⁵ According to this logic, the excision of hard pillar three responses from the R2P repertoire offers the best prospect for the future, removing a moribund element which carries with it little more than the danger of wider normative contamination. In this way the possibility of muscular humanitarianism is left no weaker, while R2P’s preventive, capacity-building and assistive elements are inoculated against the toxicity of debate over the non-consensual deployment of military forces. Where target state consent is readily available and wholehearted such decoupling may not be necessary, as the Council’s willingness to act over Mali has recently shown.¹⁰⁶ But where such consent is either limited or withheld, this severance will serve to assure those who harbour concerns over the use of force that R2P cannot, in itself, offer the potential for ‘pillar-creep’, ultimately resulting in coercive military action.

Exactly how deeply one should cut into pillar three in order to extract its harder aspects is debatable and would clearly be a matter for negotiation. Some facility for R2P recourse to Chapter VII of the Charter will remain necessary, since paragraph 139 of the 2005 outcome document makes explicit reference to it, and the UN General Assembly has shown itself to be very largely opposed to revisiting its 2005 decision.¹⁰⁷ An R2P implementation framework amending or replacing that offered by the UNSG in 2009 might, however, exclude the possibility of recourse to military sanctions under article 42 of the Charter, or pillar three could be further restricted by also excluding article 41 non-military sanctions. The latter option would still leave the Council with its article 40 power to ‘call upon the parties ... to comply with ... provisional measures’ such as a

¹⁰³ Chris Brown, ‘Difficult decisions lie ahead over Syria’, 9 Feb. 2012, <http://blogs.lse.ac.uk/politicsandpolicy/2012/02/09/syria-decisions-turkey-uk/>, accessed 29 July 2013.

¹⁰⁴ Evans, ‘The responsibility to protect: re-establishing consensus’.

¹⁰⁵ Wheeler and Dunne, ‘Operationalising protective intervention’.

¹⁰⁶ S/RES/2071, 12 Oct. 2012; S/RES/2100, 25 April 2013.

¹⁰⁷ Bellamy, ‘The responsibility to protect—five years on’, p. 147.

cessation of hostilities or withdrawal of armed forces, measures with which UN members would be legally bound to comply,¹⁰⁸ and the possibility of consensual military deployments would also remain.

Of course, the separation of 'hard' pillar three policy options from other R2P responses does not provide a guaranteed panacea. First, it will not palliate the concerns over interests, normative balance and operational appropriateness which perpetually bedevil decisions over the use of force. Second, it is clear that the removal of coercive reaction from the R2P toolbox runs contrary to the UNSG's 2009 implementation framework and its underlying premise that if R2P's three pillars are of 'unequal length' or strength, or if any becomes unavailable, then the 'whole edifice could implode and collapse'.¹⁰⁹ Finally, R2P's genesis in the inadequacies of the international responses to Kosovo and Rwanda encourages us to think that the essence of the concept lies in its ultimate ability to facilitate resort to force and hence to believe also that to take this away is to rob R2P of its core content. But the true essence of R2P is the understanding that sovereignty denotes responsibility rather than licence, and nothing in the preceding analysis offends against this key normative move. Moreover, understood in these terms, neither is the argument at odds with Ban's assertion that 'debates are now about how, not whether, to implement the responsibility to protect. No Government questions the principle',¹¹⁰ since whether to resort to coercive military force is itself a 'how' question. But it is precisely in this respect that, despite the efforts of the ICISS and the hopes of at least some of those who gathered at the 2005 World Summit, R2P has fallen short. It is highly questionable whether R2P can, in the most testing of cases such as Syria, provide a means by which normative agreement over sovereignty as responsibility can be translated into the necessary consensus over military action. The proposed decoupling of hard pillar three responses from other aspects of R2P reflects this, while leaving the normative core of the concept intact. Indeed, even after such decoupling, a crucial corollary of this normative core, namely the acceptance that in principle the UNSC may legitimately use force in response to mass atrocities rather than only in response to threats to international peace and security, will endure as a factor in Council debates over how best to respond to such situations. The proposal offered here may offend R2P conceptual purists, but it might nevertheless just offer the best prospect we have of avoiding the back-swing of the humanitarian pendulum which the UNSG implored the international community to guard against in the combined wake of events in Libya and Syria.

¹⁰⁸ Leonard C. Meeker, 'Defensive quarantine and the law', *American Journal of International Law* 57: 3, 1963, pp. 520–21.

¹⁰⁹ A/63/677.

¹¹⁰ SG/SM/13838, 23 Sept. 2011.

