Briefing Paper on

»Responsibility to Protect«

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Executive summary

The Responsibility to Protect (RtoP or R2P) is a normative concept adopted without a vote at the UN World Summit in 2005 to prevent and stop genocide, war crimes, ethnic cleansing and crimes against humanity being perpetrated by the government itself or by non-state actors, and rests on three pillars:

1. The State carries the primary responsibility for the protection of populations from mass atrocities.
2. The international community has a responsibility to assist States in fulfilling this responsibility.
3. The international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes. If a State manifestly fails to protect its populations or is in fact the perpetrator of crimes, the international community must be prepared to take stronger measures, including the collective use of force approved by the UN Security Council as a measure of last resort.

With war crimes and crimes against humanity being committed in Libya, it became clear that tough international action in response to the Libyan government’s manifest failure to uphold its responsibility to protect the population on its territory was needed to prevent a bloodbath. A range of peaceful and coercive measures were adopted by an array of international and regional actors, including the EU, and with unprecedented speed and decisiveness.

After brief presentation of the development of RtoP, highlighting the need to further clarify the substance and scope of RtoP, this paper discusses some of the possible ways of future action on international, regional and sub-regional levels to develop a more operational approach towards it as well as its practical implementation within the UN framework and in the EU and its Member States. Thus, some concrete suggestions for further action by the EU and its Member States on the universal level (within the UN), inter-regional level (in particular in cooperation with the AU) and intra-regional level (within the EU itself) are offered. After analyzing implications of references to RtoP in ongoing crises, in particular in Libya, the paper concludes by some final remarks on the current status of RtoP and challenges that remain for the future.
1. Introduction

From a widely criticized and renounced concept of humanitarian intervention to the manifest failure of the international community faced with the most horrifying examples of systematic and widespread human rights abuses which left thousands dead and homeless; from the new foundations of the international legal order, in which the use of force is prohibited and the fundamental principles of humanity must be protected, to the first ideas announcing that sovereignty of States cannot be understood to allow the occurrence of unhindered humanitarian catastrophes; this is how the notion of responsible sovereignty has slowly emerged, paving the way for the creation and recognition of the doctrine of Responsibility to Protect (RtoP or R2P) and its evolution towards a normative concept of international law (1).

At the 2005 World Summit the UN Member States reached a historical consensus according to which each individual State has the responsibility to protect its populations from genocide, ethnic cleansing, war crimes and crimes against humanity, in the exercise of which the international community should offer States encouragement, help and assistance. Additionally, the international community, through the United Nations, has the responsibility to use appropriate peaceful means and, as a last resort, should peaceful means be inadequate and should national authorities be manifestly failing to protect their populations, timely and decisive collective action through the UN Security Council, in accordance with Chapter VII of the UN Charter, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate.

This briefing paper, without any ambitions of being all inclusive, briefly analyzes the content and some implications, conceptual problems of RtoP and prospects of developing a more operational approach towards it as well as its practical implementation within the UN framework and in particular within the EU and its Member States. In particular, it includes a consideration of implications of references to RtoP in ongoing crises, in particular Libya, with special emphasis on the UN Security Council resolution 1973.

2. The development of the notion of RtoP

The path to adoption of RtoP led through many attempts at redefining sovereignty as responsibility, among which the Francis Deng’s redefinition had the most galvanizing influence on the creation of RtoP. The International Commission on Intervention and State Sovereignty (ICISS) established in 2000 issued its Report in 2001, which was the first document to offer a doctrinal solution to accommodate both, the urgent needs of a population suffering serious harm on the one hand and the principles of sovereignty of States and non-intervention into domestic affairs of States on the other. This marks the birth of RtoP, which incorporated three specific responsibilities the world community of States owed to their populations: to prevent, to react and to rebuild. The emphasis was laid on the aspect of prevention while at the same time a new, yet crucial, element of rebuilding was introduced into the discussion. The latter entails the commitment of the intervening powers to help States even after a crisis has been quelled. In this respect development assistance and capacity building shall focus also on education, job-creating infrastructure investments and crucial social services like health care. Nevertheless, it was expectable that the main point of contention for the international community remained the issue of military intervention which was conceived as part of the responsibility to react when a State is unable or unwilling to protect its population. The report proposed a list of principles which ought to be fulfilled before the decision for military action could be made. The first on the list is the threshold criterion of a just cause in the form of large scale loss of life or ethnic cleansing. It is followed by a group of four precautionary principles which serve to indicate when military action is required, while the last principle prescribes that the decision for a military intervention ought to be made by the right authority. It is the latter which represented the bone of contention already in the debate on humanitarian intervention. The report does not negate that the UN and especially the Security Council is the most competent forum to decide on such matters. For that reason it argues that the credibility and legitimacy of the UN Security Council lies in the hands of the permanent members which have to a find a way of avoiding a veto being cast when action is essential for preventing a humanitarian crisis. Otherwise the political reality tends to find a way to bypass the legal system, even in the form of unilateral interventions. Thus, the ICISS constructed a broad concept which primarily focuses on prevention and described military intervention only as an instrument of last resort. But it was unable to surmount the absence of a legal solution in the case of a standstill in the Security Council.

RtoP was then gradually taken aboard by the UN and was reshaped into what it stands for today. The report of the High-level Panel on Threats, Challenges and Change and the Report of the Secretary-General ‘In Larger Freedom: Towards Development, Security and Human Rights for All’ followed by numerous discussions paved the way for the World Summit Outcome Document of 2005, which in paragraphs 138 and 139 synthesized the new concept of the R2P into its current form. The States accepted the responsibility of each individual State to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity and agreed that this responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. Furthermore, they confirmed that together with this, the international community should, as appropriate, encourage and help States to exercise this responsibility and support the UN in establishing an early warning capability and that the international community, through the UN, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, the States declared that they were prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.
Soon after the World Summit RtoP was confirmed by the Security Council in its resolution 1674 on the Protection of Civilians in Armed Conflict, adopted unanimously in 2006, and used in practice with its Resolution 1706 regarding the situation in Darfur. August of 2007 marked the creation of a new position on the level of Assistant Secretary-General, namely the Special Adviser on RtoP with the task of consensus building and conceptual development of the new doctrine. Mr. Edward Luck, who was appointed as the Special Adviser, had the leading role in the preparation of one of the most significant documents regarding RtoP, issued in January 2009, namely the Secretary-General’s Report – Implementing the Responsibility to Protect. This Report clarified the meaning of the concept as embodied in the two paragraphs of the Outcome Document, introducing a three pillar structure of RtoP. According to this framework, RtoP consists of:
1) the protection responsibilities of the State,
2) international assistance and capacity building, and
3) timely and decisive response to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity.

Thus, the focus of RtoP according to the three-pillar structure has shifted from the set of three responsibilities (prevention, reaction, rebuilding) to the subject who bears the responsibility in a given situation: the State under pillar one, the international community in cooperation with the State under pillar two and lastly, the international community under pillar three. Another important change relates to the change in the threshold upon which the responsibility shifts to the international community: from the subjective criteria of a State being unable or unwilling, to the objective test of a manifest failure by a State to fulfill its responsibility. Furthermore, the consensus in 2005 exhaustively enumerated the mass atrocities to which RtoP applies: genocide, war crimes, crimes against humanity, ethnic cleansing. Broadening the concept to other examples of humanitarian catastrophes (such as natural disasters or epidemics) would at the present stage represent a dangerous precedent and threaten the achievement of concept’s universal recognition.
3. Operationalizing RtoP

The first pillar of RtoP embodies the essence of the modern concept of sovereignty as responsibility. It is the State which is the first and foremost bearer of the responsibility to protect its populations from the four crimes. The wording contains an unambiguously clear acceptance of this responsibility by every UN Member State and a commitment to fulfill it. While this acceptance represents a great accomplishment of the international community, it remains to be seen what exactly is expected from each State to act in accordance with it. Regardless of this deficit, the first pillar rests on the existing instruments and mechanisms of international law. As the Secretary-General's Report – Implementing the Responsibility to Protect points out, it is essential, as a first step, for States to become parties to the relevant international instruments on human rights, refugee law, international humanitarian law and the Rome Statute of the International Criminal Court (ICC).

The second pillar is activated when the humanitarian situation is so dire that the State is not capable of coping with it by itself. It connotes the measures of international assistance and capacity-building in different forms, from encouraging States to meet their responsibilities under pillar one and helping them to exercise this responsibility, to helping States to build their capacity to protect and assisting the ones under stress before crises and conflicts break out. All of these forms could benefit from the existing institutional network provided by international and regional organizations. The UN, with its close to universal character, has, understandably, a central role to play in this respect. Different organs, like the Office of the High Commissioner for Human Rights or the UN High Commissioner for Refugees have already shown positive results, while the UN peace operations seem to be one of the most effective means of implementing the second pillar. It appears, however, that there is still extensive work to be undertaken with respect to this pillar, including close monitoring and research, in order to come to a better understanding of how to approach the cooperation regarding capacity building and conflict prevention.

Even though the aspect of prevention, as envisaged by the first and second pillars, is essential for RtoP, the worst atrocities in the history of mankind have taken place exactly because the timely prevention was inadequate or even non-existent. Conscious of this, the third pillar provides for a timely and decisive response of the international community, regardless of the State’s consent. It envisages two kinds of measures the international community can pursue in this respect. First, there is a plethora of peaceful measures that can be used in accordance with chapters VI and VIII of the UN Charter, and which can be very effective due to their flexibility and variations of their application, e.g. fact finding missions and different diplomatic measures. Should, however, peaceful means be inadequate and should a State be manifestly failing to protect its populations, the international community can also resort to coercive measures under Chapter VII of the UN Charter. In any case, the Security Council remains the sole organ competent to authorize coercive measures undertaken by States under article 42 of the UN Charter, or by regional organizations pursuant to article 53 of the UN Charter. However, under the General Assembly’s Resolution Uniting for Peace, the General Assembly maintains its subsidiary role, and shall, when Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security, consider the situation immediately with a view to making appropriate recommendations to UN Members for collective measures.

The whole structure of RtoP is thus firmly based on the existing normative framework of international law with all the envisioned measures being in accordance with the UN Charter, including any military action which remains dependent on the support of the permanent members of the Security Council.

But RtoP entails also some broader implications, including the activities of the UN Peacebuilding commission and Human Rights Council, and encompass also issues of State responsibility and individual criminal responsibility, as well as the protection of refugees, internally displaced and
Stateless persons – a problem almost without exceptions caused by the situations of grave and systematic human rights violations. The latter needs to be further addressed in discussions on RtoP as it is an undisputable fact that a large number of refugees and internally displaced persons is one of the most visible early indicators of the human suffering taking place within a State. Consequently, for a successful application of RtoP, the importance of close monitoring of (sudden) emergence of refugees and internally displaced persons is unparalleled. After all, the ability to identify signs, signaling the threat of genocide, ethnic cleansing, war crimes or crimes against humanity, is vital for implementing RtoP in practice.

Furthermore, a careful observation of the responsibilities within all three pillars of the conceptual structure of RtoP leads to the conclusion that the prosecution of those who are responsible for committing any of the relevant crimes at national and international level is indispensable for the effective implementation of RtoP in practice. Invoking individual criminal responsibility and insuring an effective trial and punishment for grave and systematic violations of human rights is thus an important element of a State’s responsibility towards its own population, of international assistance and cooperation and also of the responsibility of the international community for timely and decisive response. The mechanisms offered to address individual criminal responsibility range from the exercise of national criminal jurisdiction to the prosecution and trial before internationalized and international criminal tribunals, both permanent (ICC) and ad hoc, and include also other procedures such as truth and reconciliation commissions, as well as civil litigation and immigration procedures. While the implementation of individual criminal responsibility concerns all three pillars of R2P, the practice shows a different picture – in many States the impunity of the perpetrators of atrocities remains a normal course of (non)action.

The biggest challenge with operationalization of RtoP, however, is to achieve an agreement among all actors on its definition and implementation. When developing early-warning mechanisms, special attention should be accorded to the question of more detailed criteria for the determination whether an RtoP situation is occurring or imminent. States that support the concept of RtoP should play a lead role in gathering support for the concept in their regions and should develop strategies for that purpose, while taking into account relevant regional balances. The EU as a whole should consider joining the informal networks supporting the concept of RtoP, such as the New York-based group of friends of the Responsibility to Protect, as many of its Member States already participate in it, or even chair it. In addition, it seems extremely important to ensure not only long-term cooperation between States and international organizations, but also between them and civil society organizations.
4. Practical implementation of RtoP within the UN framework and in the EU Member States

RtoP has already been applied in practice several times since the World Summit in 2005 (2).

The examples stress the importance of comprehensive approach and constant cooperation between national and international actors for a successful application of RtoP in practice, as well as the significance of early action for the effective prevention of a humanitarian catastrophe. However, situations in practice are rarely clear-cut and the principal difficulty lies in the identification of a situation as one which might trigger the application of RtoP. Since the underlying causes for humanitarian crises are diverse, it is not always clear whether the application of RtoP would be most suitable, given the circumstances of each particular case. Without doubt, a necessary prerequisite for the application of RtoP is the existence or imminent threat of at least one of the four mass atrocity crimes which has to be determined on a case-by-case basis.

Thus, although human suffering is, unfortunately, neither rare nor insignificant, a situation must always be evaluated while bearing in mind that RtoP relates only to the prevention of genocide, ethnic cleansing, war crimes and crimes against humanity. However, each of these four crimes develops slowly, through different factors and incidents, which are specific in each particular case. It is therefore extremely difficult to predict whether mere tensions in a State could later turn into a mass-scale atrocity. At the same time, this early assessment is vital for a successful application of RtoP, especially its foremost purpose of early prevention. In this discrepancy lies the challenge the implementation of RtoP represents in practice. Similarly, but from the other perspective, early prevention is difficult in instances when a humanitarian crisis breaks out suddenly and surprises the international community. Close monitoring of troubling humanitarian situations long before they reach the proportions of the four relevant crimes and the capability of assessing their meaning and probable implications is thus of crucial importance. Also, States should themselves establish efficient internal capacities for peaceful resolution of tensions and unrest within their borders and welcome the assistance of the international community for the prevention of a deteriorating humanitarian crisis, which includes also peacekeeping missions with the appropriate mandates.

However, the realities in practice are often complex, rendering implementation of RtoP virtually impossible, due to a lack of will of governments to cooperate with international actors. On the other hand, where the implementation of measures within the second pillar of RtoP in practice, especially in the form of the establishment of peacekeeping missions, was allowed, logistic difficulties often render the measures inefficient.

Lastly, there exists also a danger of misapplication of RtoP, which might undermine its legitimacy among the skeptical States.

While the legality of international action under RtoP depends upon the Security Council’s authorization, its legitimacy might intensify if the intervening actors are regional or sub-regional organizations (e.g. AU, ECOWAS), in which case the populations in need are more prepared to accept international assistance. Perhaps the solution lays in the deployment of hybrid missions, which would include the assistance of the UN, as for example the UNAMID mission in Darfur. This way, sufficient capacities and resources would be accompanied by the understanding of local population and way of life, which would ultimately contribute to a better accomplishment of the mandate of peacekeeping missions.

Keeping in mind the purposes of this briefing paper some suggestions for further action of the EU and its Member States on the intra-regional (within the EU), inter-regional (in particular, but not only, in

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The EU, in many respects a role model for regional cooperation, should promote regional and inter-regional cooperation with the purpose to implement RtoP and support it either financially or otherwise. To establish its own normative framework for diverse activities in this field the EU should conceptualize and adopt a common position on the entire issue of RtoP. Furthermore, the EU could contribute to the operationalization of RtoP also by developing and adopting the European Union Guidelines on operationalisation of the Responsibility to Protect (1), following the example of the European Union Guidelines on promoting compliance with international humanitarian law (IHL), as updated (2009/C 303/06). In this respect, special emphasis should be put on early warning mechanisms. To help in implementation of both, the Common position and the Guidelines on RtoP, the EU could commission the elaboration of RtoP Manual for the EU and its Member States.

By formation of such normative framework, the EU would, among others, ensure also proper, accurate, and last but not least, justified references to RtoP (4).

While imposing its own sanctions under certain circumstances may positively contribute to the implementation of RtoP in practice, the EU should strive to gather broader support for introducing such sanctions in the General Assembly, especially after it has gained a special status in this arena (5).

The EU should also further develop its rapid reaction capability and educate, train and instruct its battlegroups to act in accordance with RtoP in all relevant situations. Where the EU participates in military operations the mandates should always include clear operational instructions for the protection of civilians (although protection of civilians and RtoP are in many respects overlapping, they are distinct concepts and should not be confused with one another). The rules of engagement should include also a reference to RtoP and thus a model clause could be elaborated for such purposes.

In light of broader EU Human rights strategy, the EU could consider using the mechanism of conditionality clauses referring to respect and protection of human rights also for promotion of RtoP, and in the future consider inclusion of explicit pledge to compliance with and support for RtoP in cooperation agreements with third States.

Among activities in which the EU, in addition to the already ongoing efforts of the UN, could take a lead role are also organization of and participation in outreach events on the implementation of paragraphs 138 and 139 of the Outcome Document at the international, regional, subregional, and, as appropriate, national level, and promote the refinement of these outreach efforts to focus on specific thematic and regional issues related to implementation. EU Members States shall also individually or within the framework of competent international organizations/bodies (such as the International Criminal Court) promote investigations of allegations of committed crimes and ensure prosecutions of responsible individuals.

The EU Member States, and the EU should, to the extent possible, engage in an active support, with provision of necessary financial means, for the functioning of the relevant UN joint office of the

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3 In this regard it should take into consideration also the European Commission’s Checklist for Root Causes of Conflict with its eight early warning indicators.

4 The European Parliament (EP) already at several occasions referred to RtoP (e.g. EP resolution of 10 March 2011 on the Southern Neighborhood, and Libya in particular; EP resolution of 11 May 2011 on the EU as a global actor: its role in multilateral organizations; EP resolution of 11 May 2011 on the development of the common security and defence policy following the entry into force of the Lisbon Treaty). In same cases more appropriate language could have been used and such normative framework could contribute to achieve this goal.

5 See General Assembly resolution A/RES/65/276.
Special Adviser on the Prevention of Genocide and the Special Adviser with a focus on RtoP within the Secretariat, which shall become a focal point for all actors involved in implementation of RtoP. Taking into account widespread EU representations, ensuring close to global presence and thus ability to closely observe developments in all parts of the world, the EU could consider appointing a special adviser on RtoP within the European External Action Service. In any case, his/her close cooperation and exchange of information, if need be on daily-basis, with the special adviser of the UN Secretary-General on RtoP would be required.

The EU and its Members States should use the opportunity to take a proactive role at the Interactive Dialogue of the General Assembly on RtoP to be held on 12 July 2011 during the 65th session of the General Assembly and advocate for:
- drafting of guidelines for implementation of RtoP also at the UN level and revival of the debate on establishing criteria for military intervention as a measure of last resort;
- formation of an independent panel of eminent persons from different regions within the UN with the task to identify the risk situations as early as possible. This would contribute to avoid potential for polarization. In this respect, the EU should identify experts on RtoP from its Member States and advocate for their inclusion in such panel;
- establishment of a special monitoring mechanism for implementation of RtoP in practice, which would issue regular reports on measures taken in light of RtoP and assess their compliance with RtoP requirements;
- enhancing the role of the UN Peacebuilding commission and continuance of the use of Human Rights Council, including through special procedures (rapporteurs, working groups, commissions of inquiries).

Bearing in mind the challenges lying ahead for RtoP advocates in Africa, the EU should when discussing peace and security matters with the African Union among others:
- establish closer cooperation on RtoP issues and strive to consistently include RtoP into relevant agendas (and not only the AU’s non-indifference principle);
- clarify the roles and division of work between the EU Special Representative to the AU and the EU Special Adviser for African Peacekeeping Capabilities;
- ensure continuance of reliable, predictable and sustainable funding source for AU activities applying RtoP (such as in the African Peace Facility established in 2004), avoiding overlaps among different financial mechanisms and efforts by individual Member States;
- provide training programmes for relevant AU actors aiming at operationalisation of RtoP in practice.
5. Implications of references to RtoP in ongoing crises, in particular Libya (6)

5.1. Application of RtoP to the recent case in Cote d’Ivoire

The 2010 presidential election in Cote d’Ivoire resulted in a political stalemate and violent conflict after incumbent Laurent Gbagbo refused to honor the results that declared the opposition member Alassane Ouattara the winner. As of April 2011, Secretary-General Ban Ki-moon reported that over 1000 civilians had died as a result of clashes, and the UN High Commissioner for Refugees stated that more than 500,000 Ivorians were forcibly displaced, and 94,000 Ivorians fled to neighboring Liberia out of fear of violence. Forces loyal to both Gbagbo and Ouattara were failing to protect civilians and were accused of gross human rights violations that could amount to crimes against humanity. In an effort to protect the people of Côte d’Ivoire from further atrocities, a military operation began on 4 April following a statement by the UN Secretary-General in which he instructed UN Operations in Côte D’Ivoire (UNOCI) to ‘take the necessary measures to prevent the use of heavy weapons against the civilian population.’ Gbagbo was arrested on April 11, 2011 by Ouattara’s forces after days of fighting with involvement of UNOCI and the French military.

However, the situation in Cote d’Ivoire remains critical as there are allegations and reports of further atrocities falling under RtoP being committed by both sides. Thus, engagement of international community to prevent their future occurrence and ensure punishment of those responsible for their commitment is of crucial importance in light of protecting population as required by RtoP.

In this respect, the close monitoring of the situation and prompt responses remain essential.

5.2. Humanitarian crisis in Libya

In the case of Libya, the government of Libya, with its indiscriminate and widespread use of force against peaceful civilian protesters committed war crimes and crimes against humanity, crimes which fall under RtoP framework (7). Muammar Gaddafi called on his supporters to go out and attack protesters, which he labeled "cockroaches" (words used by the perpetrators of the genocide in Rwanda for Tutsis before they massacred them), and to “cleanse Libya house by house” and announced to Benghazi residents that his forces would show “no mercy” to rebels. By this Gaddafi expressed clear intent to continue committing massive human rights violations falling under RtoP and it became clear that tough international action in response to the Libyan government’s manifest failure to uphold its responsibility to protect was needed to prevent a bloodbath.

Beginning in mid-February (8), a range of peaceful and coercive measures (diplomatic incentives, asset freezes, travel bans, arms embargo, expulsion from intergovernmental bodies, ICC referral (9)) were adopted by an array of international and regional actors, including the General assembly and its

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6 For more information on specific responses by individual actors see the International Coalition for the Responsibility to Protect (ICRtoP) website: http://www.responsibilitytoprotect.org/.
8 On February 22, 2011 the UN Secretary-General Special Adviser on the Prevention of Genocide and Special Adviser on the Responsibility to Protect issued a press release on the situation in Libya in which they reminded the Libyan government of its responsibility to protect its population and called for an immediate end to the violence. The UN Secretary-General also appointed former Foreign Minister of Jordan, Abdelilah Al-Khatib, to the position of special envoy to Libya on March 5 in an effort to address the humanitarian crisis and prepare for a transition of power.
9 The Prosecutor of the ICC, Luis Moreno-Ocampo, unexpectedly quickly reacted to the decision of the UN General Assembly and decided on March 2, 2011 to launch an investigation after a preliminary examination of available information.
Human Rights Council (10), Security Council (11), Arab League, African Union, Gulf Cooperation Council, NATO and the European Union (12), and with unprecedented speed and decisiveness.

Individual States also displayed strong political will to react quickly to the humanitarian crisis in Libya and took unilateral actions against Gaddafi, such as freezing financial assets, and imposing travel bans and sanctions.

In follow-up to Resolution 1970, the Security Council met on 17 March to confront the increasing threat to populations and voted on a landmark Resolution 1973, calling for a no-fly zone as well as a ceasefire. And while the ultimate adoption of a no-fly zone on March 17 is the first time the Security Council has authorized a military response to protect populations in a non-consenting state, this was likely due to the influence that regional organizations had in supporting stronger measures (13). The comprehensive 1973 resolution also included provisions for a more robust arms embargo and called for travel bans and asset freezes on additional Libyan individuals, companies, banks and other entities.

While acquiring the cross-cultural political will is never going to be easy, Libya seems to be pivotal for the evolving norm of RtoP. It is important to note that the UN Security Council and other actors tried peaceful enforcement measures (e.g. economic sanctions) first, and only when there was good reason to believe that a bloodbath in Benghazi was imminent, the UN Security Council authorized the use of ‘all necessary means’. Both resolutions of the US Security Council (14) addressing the humanitarian crisis in Libya refer to RtoP. This is the first time that the Council has employed the enforcement provisions including the use of force of Chapter VII of the UN Charter to implement RtoP. For the future of RtoP it is essential that States and IOs involved in situation in Libya (NATO in particular) stay within the mandate of the SC resolutions. As some are warning ‘If the Libyan intervention goes well, it will put teeth in the fledgling RtoP doctrine; and if the Libyan intervention goes badly, it will redouble international opposition and make future decisions more difficult’ (15).

To minimize the chances of possible abuse the UN Secretary-General will regularly report to the Security Council about the steps the Coalition (NATO and individually involved States) is taking. In the words of UN Secretary-General Ban Ki-moon’s to the Sofia Platform on May 6, 2011, ‘at no time has the United Nations exceeded its Security Council mandates. In Cote d’Ivoire, UN forces undertook a limited military operation whose sole purpose was to protect innocent people. The only targets of armed action were the heavy weapons used by the former regime to attack civilians and UN headquarters and peacekeepers and the UN is observing the same discipline, and the same principles,

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10 On February 25 it opened a Special Session on ‘the situation of human rights in the Libyan Arab Jamahiriya’ and adopted Resolution S-15/2 which called for the Libyan government to cease all human rights violations; an international commission of inquiry to be established; and recommended that the General Assembly suspend Libya from the Council. In response the General Assembly unanimously suspended Libya’s membership to the Council on March 1, 2011. The HRC named the high-level panel on March 11, with the responsibility of gathering evidence and testimonies for a full report to the Council in June 2011 – see footnote 5.
11 The Security Council unanimously adopted Resolution 1970 on February 26 which, in addition to imposing an embargo and financial sanctions, made reference to Libya’s ‘responsibility to protect’ and referred the situation to the ICC. In Cote d’Ivoire, UN forces undertook a limited military operation whose sole purpose was to protect innocent people. The only targets of armed action were the heavy weapons used by the former regime to attack civilians and UN headquarters and peacekeepers and the UN is observing the same discipline, and the same principles,
12 For example the EU adopted a decision on February 26 to implement UN Security Council Resolution 1970 by imposing a travel ban and freezing the financial assets of government members. On 10 March, the European Parliament adopted a Resolution recognizing the Interim National Council as officially representing the Libyan opposition. On May 22 EU opened representative office in Benghazi.
13 Three African countries on the Security Council, Nigeria, South Africa and Gabon, supported the resolution. The support of Arab States led China and Russia to abstain, as well as Germany, India and Brazil.
in Libya.’

What is also important is that the resolutions of the UN Security Council clearly state that the arms embargo and the call for a truce apply to both sides of the conflict. However, the question remains if such measures were really the most appropriate due to the factual imbalance of military resources of the two sides involved in the conflict. The Bosnian experience seems to be of great relevance, but the SC seems to have missed this lecture of history. Under the resolutions the Coalition forces must make sure the military force is not used against civilian population by anyone. The air forces of the Coalition are not intended to support the military efforts of the opposition and the resolution 1973 explicitly reaffirms Libya’s territorial integrity. Nevertheless, disabling regime’s capacity to further harm the suffering population may be essential to discharging the mandate of protection. However, some decisions by individual States seem to be problematic even if trying to achieve the aforementioned goal. Thus, another resolution by the SC clarifying the situation in Libya would be warranted.

It is important to understand however, that military intervention is not supposed to last long and a political solution is to be found. However, a decisive intervention in Libya may serve as a warning to other regimes and while RtoP is a narrow, but deep concept, the global support for it used to be broad but shallow. Libya so far proved to be the perfect opportunity to convert the noble sentiments and words of RtoP into deeds (16).

It is unquestionably positive that the international response to crisis was firm and swift, with action being taken in a shorter period of time than ever before in a mass atrocity situation. With this RtoP is coming closer to being solidified as an actionable norm (17).

The nearly universal discussion of RtoP in the context of Libya has, however, had the unfortunate consequence of associating the concept almost solely with military intervention. Military response is very likely to be exercised rarely and only against states outside the sphere of influence of a major world power. The association of RtoP exclusively with military intervention means a complete misunderstanding of the concept and represents a wrong path, which is undermining its power and reach and allowing both the illegitimate and legitimate fears from many States of foreign invasion to come to the surface ever more strongly.

Furthermore, successfully protecting populations from mass atrocities requires a continuum of actions. Despite historic and unanimous reaction of the international community in the face of imminent mass atrocities in Libya, the threat to its population remains. Governments, regional institutions, and the UN must remain engaged and united in their efforts to protect civilians from the deteriorating humanitarian situation and stay involved even in the post-conflict phase to help the Libyan people to freely determine their future and rebuild their country. Regrettably, any successful act of prevention averting civilian deaths usually leads to a lack of media coverage and makes it difficult to follow what actions were taken in the name of RtoP after cameras turn the other way. However, RtoP is most effective if it succeeds to prevent mass atrocities from occurring or reoccuring with peaceful measures, while the military response is to remain a measure of last resort used very restrictively. To enhance the interest of general public and consequently media attention and coverage of such instances could have a positive effect on the implementation of RtoP.

17 Ramesh Thakur, UN breathes life into ‘responsibility to protect’, available at: http://www.thestar.com/opinion/editorialopinion/article/957664--un-breathes-life-into-responsibility-to-protect
6. Conclusion

Today, it still remains difficult to convincingly argue that the clear international legal obligation which would require of States to take all appropriate measures to prevent or stop all of the four mass atrocities covered by RtoP has been formed and consequently that the permanent members of the UN Security Council must refrain from using their veto power when voting on the most urgent measures to save the suffering population. Nevertheless, Libya’s example solidifies RtoP as a normative concept and contributes to its emerging status of an international law principle. In particular responses in situation of Libya seem to be important for the change in perceptions of States from no longer asking whether the world should act to stop mass atrocities to protect the suffering populations but how best to do so.

On the one hand, the case of Libya where numerous actors, including the UN Security Council, regional organizations and individual States consistently referred to RtoP and gradually implemented diplomatic, economic, humanitarian and coercive means, while arguing they have an obligation to prevent alleged mass scale atrocities, thus seems to be truly an historical case of application of RtoP. There are on the other hand still numerous instances of humanitarian crisis, including for example Syria, Yemen, Bahrain, and Abyei Region of Sudan, where States and international organizations are despite numerous reports of massive violations of human rights still slow in reacting and are hesitant or even persistently refuse to even use the term RtoP, let alone argue that they have a legal obligation under it to prevent such ongoing or imminent mass scale atrocities. Questions have thus been raised about how RtoP can be applied in a consistent manner to other contexts where mass atrocities are imminent or occurring. In this light, it is worth reiterating that, first, all states have a continuing responsibility to protect their populations from these crimes, and secondly, that RtoP toolbox contains a range of measures (diplomatic, economic, political), with use of force only as a last resort.

The question remains as to what the best course of action is to stop the killing of innocent civilians. RtoP requires that a range of measures be used from diplomatic to more coercive, if necessary. The formula, of which measures to use at what time, is not precise and each case requires a tailored response. Nevertheless, the central idea behind RtoP is to prevent or stop suffering of civilians, which requires careful balancing between potential victims of inaction in relation to those caused by inappropriate or premature enforcement operation. However, it is critical to eliminate double-standards and political bias from UN Security Council decisions when mass atrocities are occurring or threaten to occur. Thus, it is extremely important that appropriate action be taken when warranted, and the challenge ahead for RtoP advocates is to encourage consistency not only in the invocation of the language of RtoP but also in response. Member States and regional organizations, including the EU, must also remain mindful not to undermine RtoP by confusing civilian protection with other motives such as regime change or resource control.
7. Bibliography


All sources available on or from the webpage of the INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT (ICRtoP): http://www.responsibilitytoprotect.org/.