



A Libyan man holds up a sign asking for a no-fly zone over Libya near the border town of Musa'id, Libya, 13 March 2011. Muammar Gadhafi's forces swept rebels from one of their final strongholds on Libya's main coastal highway, closing on the country's opposition-held eastern half after hours of strikes from warships, tanks, and warplanes. (Photo by Anja Niedringhaus, Associated Press)

# The Responsibility to (Selectively) Protect R2P's Dubious Future Post-Libya

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**O**n the afternoon of 17 March 2011, the United Nations Security Council (UNSC) overwhelmingly voted to establish a no-fly zone over the skies of Libya and demanded an immediate

cease-fire in the country's ongoing civil war.<sup>1</sup> UNSC Resolution (UNSCR) 1973 was seen as a historic measure that would establish an institutional precedent within the United Nations (UN) to address

future crimes against humanity that were endorsed and sanctioned by a state against its own citizens. The significance of UNSCR 1973 was not merely that it authorized the use of force, but as Matthias Dembinski and Thersea Reinold note, it authorized the use of force “against the will of an acting government of a functioning state for the first time in history.”<sup>2</sup>

An additional novelty associated with UNSCR 1973’s adoption was within its overall premise. Since its acceptance, the Responsibility to Protect (R2P) was inaugurally invoked and incorporated within a resolution aimed to militarily intervene to safeguard citizens amid civil strife. Regrettably, what was considered a key prime mover in ushering in an era of a more proactive and assertive UN in confronting atrocities, UNSCR 1973 and the disastrous aftermath of NATO’s intervention in Libya has impeded the comprehensive acceptance of R2P that it initially received.

This article examines R2P’s historical emergence and framework prior to showing how the norm’s

standing and status have significantly diminished in the years following NATO’s intervention in Libya. Moreover, it posits that R2P’s future is questionable, absent major reform.

## R2P’s Emergence

**The African variable.** In 2009, Paul Williams noted that R2P could very well be thought of as a “norm born out of Africa.”<sup>3</sup> In his work, Williams elaborates on the overall effect events throughout Africa in the 1990s had on the international community (IC) and in R2P’s conception. Mogadishu heralded such change.

The outbreak of the Somali Civil War in 1991 ushered in an unprecedented level of famine that worsened the ongoing warring amongst rival clans. The juxtaposition of these two developments resulted in hundreds of thousands of civilian deaths.<sup>4</sup> The crisis in Somalia prompted the UN to establish two separate but complementary operations to provide humanitarian relief and monitor a UN-brokered cease-fire.<sup>5</sup>

The UN eventually ended its mission soon after a disastrous U.S. military operation occurred within the country’s capital. Although guided by internationally accepted principles and intent, UN actions did not ameliorate the domestic situation in Somalia, and the country eventually collapsed into itself. However, a glimmer of a silver lining flickered amid the postconflict drab. The experience in Somalia provided a spark for a new international doctrine aimed at preventing such humanitarian disasters. A few years later, the developments within another East African country would fan that initial spark into an international zeal to prevent widespread suffering.

An independent report commissioned by UN Secretary-General Kofi Annan in the aftermath of the Rwandan genocide showed that although the UN amassed credible evidence of an impending genocide, the institution failed to prevent and protect Rwanda’s minority Tutsi population.<sup>6</sup> The failures to prevent and halt such atrocity stained the UN as an institution and generated serious policy discussions to prevent such violence in the future. R2P’s foundation was thus formed.

**New century, new doctrine, new norm.** In the year 2000, Canada spearheaded an international initiative to close the IC’s warning-response gap regarding future atrocities. The International Commission on Intervention and State Sovereignty (ICISS) was established and tasked with developing a preventative model. The ICISS published its inaugural 108-page report in 2001 titled *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* to introduce a new international methodology aimed at addressing future humanitarian challenges such as those witnessed in Somalia, Rwanda, and Kosovo.<sup>7</sup> Although the ICISS’s report was the first time the IC collectively codified R2P, it was not the first time the principle was expounded upon. In fact, the ICISS notions on R2P

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were grounded in the concept as originally articulated by Francis Deng, I. William Zartman (my former professor), and company in their 1996 book titled *Sovereignty as Responsibility*.

One of the critical points carried over to the ICISS report first promulgated by Deng concerned the redefinition of sovereignty. For Deng, the notion of sovereignty must incorporate certain responsibilities for which governments would be held accountable.<sup>8</sup>

seemed to dismiss the ICISS report's more far-reaching and detailed framework. However, a major congruency between both documents involved preventing specific atrocities. Both documents argue that specific crimes (e.g., genocide, war crimes, ethnic cleansing, and crimes against humanity) warrant R2P's enactment. Another key similarity is the emphasis both documents make on prevention efforts to contain or quell violence rather than resorting to military intervention at the onset

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The ICISS commission agreed. In its report, the ICISS carried this notion forward by formally arguing that a nation's sovereignty was no longer purely based on the Westphalian concept. On the contrary, the ICISS report used Deng's redefinition to argue that a state's sovereignty was instead premised on a responsibility toward its population. In other words, as former UN Secretary General Kofi Annan himself argued, for a state to be legitimate, sovereignty must demonstrate responsibility.<sup>9</sup>

During the final days of the 2005 UN World Summit, the UN unanimously adopted the 2005 World Summit Outcome document that recognized R2P as an official norm. However, the summit outcome resolution condensed the 108-page ICISS report into merely two paragraphs. Questions soon emerged as to what responsibilities and obligations the outcome document incurred on member states.

## R2P as a Norm

**What does R2P entail?** Articles 138 and 139 in the 2005 World Summit Outcome Document were the only provisions that codified R2P. Although the document carried over key themes from the ICISS report, it severely lacked detail. As Noele Crossley notes, the 2005 World Summit reflected the “lowest common denominator” and truncated the ICISS report to the “crudest form of consensus.”<sup>10</sup> Although the United Nations had officially endorsed R2P, its sheer ambiguity generated a plethora of questions, and its terseness

of a conflict's life cycle. As the 2005 World Summit Outcome document states, “The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.”<sup>11</sup> The ICISS report strikes a similar tone. In its synopsis, the report unequivocally states, “Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated.”<sup>12</sup> Rather than simply serving as a vehicle to justify armed intervention, R2P was intended to limit the use of force, strengthen the international order, and provide guidelines for concerted international action to protect populations from mass atrocities.<sup>13</sup> Conceptually, R2P's doctrine was formulated to provide a continuum of responses which includes preventative efforts, non-coercive and coercive actions, and reconstructive measures in that sequence.<sup>14</sup> This rubric, informed by a zealous notion to prevent widescale atrocity and anchored by the idea that the use of force would be a last resort, would be novel additions to the international *jus cogens* moving forward.<sup>15</sup> However, the sheer lack of detail in the World Summit document generated more questions than answers.

Amid mounting confusion, an effort was made in 2009 by Edward Luck, special advisor for the Responsibility to Protect, to add more substance to R2P as a doctrine. In his report to the UN, Luck outlined a “three pillars approach” for implementing R2P.



Member states vote to approve a resolution that would impose a no-fly zone over Libya during a meeting of the United Nations Security Council at the UN headquarters in New York on 17 March 2011. In addition to the no-fly zone, the resolution authorized “all necessary measures” to protect civilians from attacks by Muammar Gadhafi’s forces. (Photo by Jason DeCrow, Associated Press)

Luck’s approach emphasized (1) the protection responsibilities of the state, (2) international assistance and capacity building, and (3) timely and decisive response from the IC.<sup>16</sup> Luck’s report answered some of R2P’s doctrinal inquiries; however, one key point of contention remained unresolved that generated uneasiness among the developing world: sovereignty.

**A house built on an unstable foundation.** R2P proponents sought to advance a progressive vision of global order that emphasized collective security, multilateralism, and global governance, much like the human security agenda does.<sup>17</sup> However, such an ambition risked eroding traditional definitions of sovereignty. It was the pioneer of R2P, Francis Deng, who recognized this change and accepted it as a pivotal prerequisite to the notion. The traditional principles associated with Westphalian sovereignty are captured in Article 2, paragraphs 4 and 7, of the UN Charter.<sup>18</sup> These articles codify the concept of sovereignty along two principles: territoriality and the exclusion of external actors from

domestic authority structures. R2P erodes these concepts by declaring that if a government fails to fulfill its part of the social contract, that is in protecting its citizenry, then its claim to sovereignty may be voided. Thus, sovereignty implies responsibility.<sup>19</sup> The UN’s endorsement of R2P in 2005 ended the Westphalian ideals of sovereignty.

Understandably, changes to long standing norms bring about angst and suspicion—especially if such changes challenge a state’s sovereignty. Soon after the 2005 World Summit, strong opposition arose from postcolonial countries who argued that R2P could serve to justify military action or foreign interference in domestic affairs. For these states, R2P was an unsavory attempt to “justify an already inherently unequal international system.”<sup>20</sup> Furthermore, this coalition of nations argued that weaker countries would be even less able to influence their own affairs and would always feel as if stronger powers could intervene at any time. Such a dichotomy would allow the strong

to judge the weak. In essence, R2P exacerbated the cleavage between the Global South and the Global North. Ultimately, such concerns emanating from the Global South not only were justified but foreshadowed future developments.

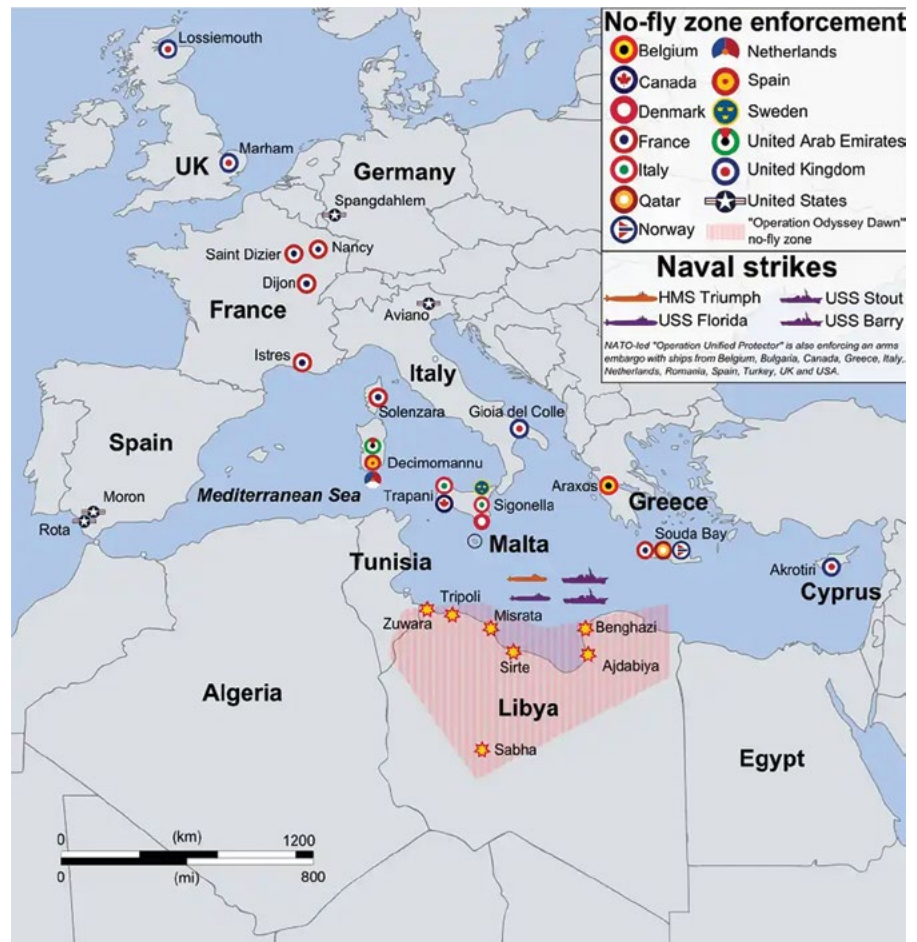
## A Novel Norm in Action: Libya

With the ground situation worsening during the Libyan uprising of 2011, the UN faced a dilemma. Should it heed the warnings and threats promulgated on national radio of then Libyan President Muammar Gadhafi to protesters and proactively intervene? Or should it simply choose to monitor the situation from the sidelines? As the situation deteriorated and Gadhafi's forces appeared intent on conducting a large-scale massacre throughout the city of Benghazi, the UN decided to step in at the invitation of the African Union and League of Arab States using a novel *jus ad bellum* principle—R2P.

Responding to calls for intervention from regional security organizations such as the African Union and League of Arab States as well as other UN bodies, the UNSC unanimously adopted Resolution 1970, which asserted Libya's "right to protect" its citizens and imposed an arms embargo and travel ban on the Gadhafi family and on key members of the government.<sup>21</sup> However, with progovernment forces rapidly advancing on rebel positions, calls for the UN to establish a no-fly zone gained traction. Within a month of Resolution 1970's adoption, the UNSC adopted Resolution 1973, which established a no-fly zone and authorized states to "take all necessary measures to protect civilians and civilian populated areas under threat."<sup>22</sup> As then UN Secretary-General Ban Ki Moon stated, "Resolution 1973 affirms, clearly and unequivocally, the international community's

determination to protect civilians from violence perpetrated upon them by their own government."<sup>23</sup> For the first time since its establishment, R2P was invoked and incorporated within a UN resolution aimed to militarily safeguard citizens amid civil strife without the approval of the respective sovereign.

After Resolution 1973's adoption, a coalition of nations primarily composed of NATO members volunteered to enforce the no-fly zone in the skies above Libya. After the coalition successfully destroyed Gadhafi's anti-air defense systems, it quickly evolved to supporting rebel forces on the ground. What started off as a moral crusade justified in protecting civilians quickly added one additional objective: regime change.<sup>24</sup> Eight months later, Gadhafi was found in a drainage pipe, beaten, sodomized with a bayonet, and killed by rebel forces. His body was publicly displayed as a "trophy" inside a Misrata meat store.<sup>25</sup>



A map from 21 March 2011 shows coalition intervention events in Libya. (Map by Jolly Janner via Wikimedia Commons)



A Qatar Emiri Air Force Mirage 2000-5 takes off 25 March 2011 in support of a Joint Task Force Odyssey Dawn mission. Qatar was the newest member of the coalition supporting the no-fly zone over Libya. (Photo by Paul Farley, U.S. Navy)

## The Aftermath of Libya and the Delegitimization of R2P

NATO ended its mission soon after Gadhafi's death against the wishes of the Libyan National Transitional Council. Many were left bewildered at how quickly NATO's mission evolved from R2P to regime change and questioned the logic of NATO's intervention and its true purpose. For many, NATO reinterpreted the UN mandate to achieve its true ulterior motive.<sup>26</sup> Rather than protecting Libyans, NATO used Resolution 1973 as a cover to oust Gadhafi from power. Furthermore, NATO stymied the African Union's mediating efforts which might have led to a political power-sharing arrangement that kept Gadhafi in power. The rejection of such peaceful solutions by NATO calls into question the prevention responsibilities enshrined within R2P. The rejection of a regionally orchestrated outcome by NATO and its absence postintervention illuminates the most glaring failures of R2P in Libya. Although military intervention is intended to be a last resort in R2P's framework, NATO and the UN's decision to resort to hard power by circumventing Luck's first two doctrinal pillars is exactly

what postcolonial states warned against. These actions, coupled with NATO disregarding the rebuilding aspect of R2P's postintervention pillar, and the overall worsening situation in the country postintervention, corroborated the anxieties the Global South had expressed and consequently dealt a significant blow to R2P writ large.

When ICISS first expanded upon R2P, the principle emphasized the importance of prevention and rebuilding rather than military intervention. NATO's campaign in Libya proved that the Global North could use R2P as a façade for pursuing underlying core objectives. Furthermore, it can be argued that if NATO's priority were the protection of civilians, it would have been sufficient to operate within the parameters of Resolution 1973.<sup>27</sup> Even if one were to argue that protecting civilians necessitates regime change in certain instances, then such a policy still must be enacted as a *last resort* as stated in both the ICISS report and in the World Summit resolution, and it must be enshrined within a requisite UNSC mandate. As Giselle Lopez notes, "While it is debatable whether the intervention fulfilled the 'right intention' requirement, it is apparent



A bomb dropped by a warplane explodes 11 March 2011 on the outskirts of Ras Lanuf, Libya. Activity resumed at a key refinery nearby in Zawiyah that supplied the capital and western Libya after clashes between pro- and antiregime forces had forced it shut. (Photo by Alfred/Sipa via Associated Press)

that it did not fulfill the requirement of armed intervention as a last resort.”<sup>28</sup>

## Syria's Descent into Chaos amid the Shadow of Libya

As NATO's intervention in Libya was ongoing, another humanitarian disaster occurred on a much larger scale within the Middle East/North Africa (MENA) region. What started off as antigovernment protests by Syria's youth during the Arab Spring rapidly escalated to all out civil war. Credible reports began emanating from Syria detailing indiscriminate bombings on civilian areas, mass rapes, prolific detention, and extrajudicial killings. As a result of such atrocities, Eastern Europe and the Middle East soon found itself inundated with Syrian refugees with estimates of up to 6.8 million Syrians forced to flee their country.<sup>29</sup> Facing an ever-deteriorating situation, the UNSC failed to garner enough votes to adopt a resolution that established sanctions on Bashar al-Assad's government with Russia

and China vetoing the measure. Vitaly Churkin, then Russia's ambassador to the UN, announced his rejection of the measure was due in part to the resolution's framing founded on “a philosophy of confrontation.”<sup>30</sup> China's ambassador expressed similar concerns. With the rejection of the measure, the situation was now up to individual countries on how to respond to the atrocities. If the situation in Libya justified invoking R2P, surely Syria would. In fact, when the resolution was rejected by the UNSC, it can be argued that Syrians were suffering vastly more at the hands of government forces than Libyan citizens were leading up to NATO's intervention. Unfortunately, the negative shadow cast on R2P via NATO's response in Libya reined in the IC from stepping in and protecting Syrians. Libya's fallout was beginning to reshape the IC's attitude and commitment to R2P's core principles.

In 2016, President Barack Obama sat down for an interview with Jeffrey Goldberg, editor in chief for *The Atlantic*. During the conversation, President Obama

admitted that both the Iraq War and Libya influenced his decision not to intervene in Syria. Obama candidly offered his justification for not intervening in by stating, “Any thoughtful president would hesitate about making a renewed commitment in the exact same region of the world with some of the exact same dynamics and same probability of an unsatisfactory outcome.”<sup>31</sup>

Obama’s response illuminates the point of conflict where ideological considerations clash with interventionist realpolitik. If the essence of R2P’s doctrine is to protect civilians, then the IC would have to muster the will in doing so in every instance in which atrocities occur, and not solely in circumstances that align with national interests. R2P was not designed to be used selectively and when convenient. On the contrary, its original intent was to provide security guarantees to civilians agnostic of what country they reside in. Instead, R2P has been used as a moral blanket to pursue hidden agendas in instances where doing so aligns with national security interests. In essence, R2P is UN-approved casuistry.

## R2P’s Dubious Future

As Robert Pape argues, if R2P were to be fully realized and implemented in line with the Libyan precedent, then R2P “requires intervention in a much larger number of cases, in this way corroding the norm of state sovereignty and undermining the present normative international order.”<sup>32</sup> Furthermore, Libya set the bar so relatively low that virtually every instance of anarchy and tyranny, or even the potential of, represents an opportunity for the IC to ignore the preventative tenants of R2P and violate the sovereignty of states. Thus, R2P threatens to “undermine, confuse, and potentially destabilize the existing normative framework structuring the international relations of states.”<sup>33</sup>

In addition to the issue of sovereignty, R2P raises other substantial issues that neither the ICISS report nor the 2005 World Summit document provides guidance for. Gareth Evans, a former cochair for the ICISS and president of the International Crisis Group, notes that neither publication quantifies what is “large scale,” to what extent peaceful options must be pursued, and how to ensure proportionality.<sup>34</sup>

Further degrading R2P is in the way the IC selectively invokes the concept. For example, if Libya was the litmus test, why not intervene in Syria, Yemen, Myanmar, or Haiti? Each of these examples are either on par with

the situation in Libya leading up to NATO’s intervention or worse. The answer of course is that neither of these reside within the intersection of the national interest and political will of the Global North.

Although I maintain that R2P’s future is dubious, I do think major reform would rehabilitate the principle and address key sources of apprehension. Such recommendations are as follows:

1. UNSC must conduct an after action report studying what led up to UNSC 1973 and regime change in Libya and what safeguards could be implemented to avoid similar mistakes.<sup>35</sup>
2. A mechanism to hold intervening states accountable for providing adequate support postconflict must be developed.
3. The UN must not support armed intervention without a concerted effort to adhere to Luck’s three pillars framework. Such preventative measures may include diplomacy, judicial measures, economic measures, peacekeeping, etc. Regardless, the UN must protect weaker states from stronger ones willing to use force without a sincere commitment to conflict prevention or postconflict rebuilding efforts.<sup>36</sup>
4. Empower regional organizations to act as gateways to international intervention to combat the imperialist critique of R2P. Such regional institutions can serve as an explicitly “anti-imperialist” function. Such a regional effort could help ease the tension in the Global South.<sup>37</sup>
5. The UN must clarify who holds the responsibility to protect and to rebuild. Does the latter fall onto the shoulders of those who intervene? Does the IC automatically assume NATO will form the core of the former? More specificity is needed in these areas.<sup>38</sup>
6. A framework must be developed to ensure states operating within a UN mandate abide by its parameters.
7. A renewed emphasis on peacekeeping forces would strengthen R2P’s conflict prevention model and could contain conflicts from escalating to the point where military intervention is required or resolve them prior to the conflict crossing the Rubicon of open warfare.
8. The UN must proactively monitor potential conflict areas and assess if any atrocities particular to R2P have been committed and to what extent.



Such early warnings would allow the IC to develop conflict prevention options.

## Conclusion

R2P emerged from atrocity. The sheer levels of violence and suffering witnessed in Africa throughout the early 1990s galvanized the IC to develop a framework to prevent similar future catastrophes. Deng lobbied for a change to the international zeitgeist by championing a novel concept known as the Responsibility to Protect. For Deng, R2P's redefinition of sovereignty was warranted if the global community was to take conflict prevention seriously. In 2001, the ICISS commission codified an actionable framework using Deng's concept in its seminal report to the IC. The ICISS report established guidelines that were premised on prevention, reaction (noncoercive and coercive), and rebuilding. Additionally, the ICISS report emphasized R2P's guiding principle was to strengthen the international order by providing guidelines for concerted action to protect populations from specific atrocities

(genocide, war crimes, ethnic cleansing, crimes against humanity). Military intervention would only be warranted as a last resort if all prevention methods were exhausted. In 2005, the UN unanimously adopted R2P as a norm in the World Summit; however, its terse codification generated confusion among states. To provide more substance, Luck created an R2P framework in 2009 premised on three pillars: (1) the protection responsibilities of the state, (2) international assistance and capacity building, and (3) timely and decisive response from the IC. NATO's intervention in Libya manifested the Global South's collective concerns regarding R2P. For these countries, R2P could be used as a vehicle for regime change sought by stronger nations on smaller states in an era where the redefinition of sovereignty favors the more powerful. Furthermore, the IC's selective and blasé approach regarding atrocities that are on par, or surpass, Libya preintervention water down the principle's moral grounding and demolish its overall intended aim. Consequently, absent major reform, R2P's future is dubious at best. ■

## Notes

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3. Paul D. Williams, "The 'Responsibility to Protect,' Norm Localization, and African International Society," *Global Responsibility to Protect* 1, no. 3 (2009): 392–416.

4. John Norris and Bronwyn Bruton, *Twenty Years of Collapse and Counting: The Cost of Failure in Somalia* (Washington, DC: Center for American Progress, September 2011), accessed 10 March 2023, <https://www.americanprogress.org/article/twenty-years-of-collapse-and-counting/>. Norris and Bruton argue that since 1991 approximately 450,000–1.5 million Somalis have perished and upward of 800,000 Somalis have fled to neighboring countries amid the ongoing crisis.

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6. Ingvar Carlsson, Sung-Joo Han, and Rufus M. Kupolati, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda, S/1999/1257* (New York: UNSC, 1999), accessed 10 March 2023, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20S19991257.pdf>.

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10. Crossley, "Is R2P Still Controversial?"

11. UN General Assembly, Resolution 60/1, 2005 World Summit Outcome, A/RES/60/1 (24 October 2005), 30, accessed 10 March 2023, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_60\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf).

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14. Crossley, "Is R2P Still Controversial?"

15. Dembinski and Reinold, *Libya and the Future of the Responsibility to Protect*.

16. UN General Assembly, *Implementing the Responsibility to Protect: Report of the Secretary-General, A/63/677* (New York: UN, 1 December 2009), accessed 10 March 2023, <https://www.un.org/unispal/document/auto-insert-180580/>.

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22. Ibid. China, Russia, India, Germany, and Brazil abstained from the vote.
23. "Libya: Ban Welcomes Security Council Authorization of Measures to Protect Civilians," UN News, 18 March 2011, accessed 10 March 2023, <https://news.un.org/en/story/2011/03/369392-libya-ban-welcomes-security-council-authorization-measures-protect-civilians>.
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29. "Syria Refugee Crisis Explained," USA for the UN Refugee Agency, 8 July 2022, accessed 10 March 2023, <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>. In addition to the approx. 6.8 million Syrians that have been forced to flee the country, the UN High Commissioner on Refugees estimates that 6.9 million Syrians remain internally displaced.
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