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The Responsibility to Protect (R2P) as an international norm-in-the-making has been promoted and supported by the United States, the European Union as well as other Western countries such as Australia and Canada. After over a decade since its inception, to what extent and how is R2P becoming as globally accepted norm defining whether and how to respond to mass atrocities? In particular, to what extent are non-Western powers, notably the BRICS (Brazil, Russia, India, China and South Africa) endorsing R2P? This paper explores transatlantic leadership in the promotion of R2P and its relative success in entrenching R2P at the global level by analysing the recent conflict cases of Libya and Syria.

Europe, the United States and Global Human Rights Governance: The Responsibility to Protect in Libya and Syria

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EU   US   BRICS   Responsibility to Protect (R2P)   Libya   Syria

Introduction

Values, prime amongst which human rights and fundamental freedoms, democracy, and free market capitalism, have traditionally been the lynchpin of the transatlantic bond. During the Cold War, the transatlantic relationship hinged on the notion of the "West" as an identity community based on a mutual commitment to liberal values, along with strong societal connections, and common security and economic interests. With the end of the Cold War, this powerful constellation of norms and interests informed a shared vision of a Western-led liberal order that met no credible external challenge and bore primary responsibility for spreading its values across the globe (Huntington 1991). At the turn of the century, while disputes across the Atlantic were in no short supply, the bedrock of shared liberal values remained the most compelling reason to assume that the transatlantic partnership would endure in future (Risse 2012). This belief remains strong across the Atlantic to this day.

On the basis of this broadly shared bedrock of liberal values, this paper gauges the effectiveness of the transatlantic partners to enshrine individual human rights in the global governance architecture. In particular, it concentrates on a political norm in-the-making – the responsibility to protect (R2P) – whose globally contested nature is such that it remains far from being an accepted international legal norm (Francioni and Bakker 2013). To what extent are the European Union and its member states on the one hand, and the United States on the other, in partnership and/or independently, and along with other major Western proponents of R2P such as Canada and Australia, succeeding in entrenching R2P as an accepted political norm at the global level? In particular, to what extent are non-Western powers, notably the BRICS (Brazil, Russia, India, China and South Africa) endorsing R2P?

In what follows, this article first briefly recounts the evolution of R2P as a political norm. It then turns to its application, or otherwise, to two recent international crises: Libya and Syria. The analysis finally turns to an explanation of the divergent outcomes in these two crises, and in particular to the reasons found both within and beyond the transatlantic relationship to explain the uncertain predicament of R2P in future.

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1. Liberal Intervention: From Humanitarian Intervention to the Responsibility to Protect

The idea of intervening to "protect strangers" is not new. Its roots run deep in Western legal theorizing, from Cicero to Hugo Grotius. Indeed it was only in later legal theory – grounded on Emmerich de Vattel's writings in the mid-18th century – that the principle of non-intervention was affirmed in international law, becoming mainstream in the 20th century with the Covenant of the League of Nations and the Kellogg-Briand Pact, and then more explicitly with the UN Charter. With the end of the Cold War, the notion that "human rights outrank sovereignty" (Luttwak 2000:60) started gaining ground in Western circles and the United Nations. Sovereignty could be violated on humanitarian grounds. Crises in the 1990s such as Iraq, Somalia, Bosnia, Kosovo and East Timor became testing grounds to challenge the norm of non-intervention. Preventing gross and large scale violations of human rights attained the status of peremptory norms (or *jus cogens*) of international law. They were recognized as crimes affecting the international community and often associated with *erga omnes* obligations.

Beyond the West, the response was virulent. What became known as humanitarian intervention was largely viewed as selective, hypocritical, guided by national interests and thus riddled with irreconcilable controversy (Matthews 2008). At the heart of the controversy was not the mere infringement of Westphalian sovereignty, but the precise form such infringement could take. Debates revolved around the permitted degrees of coercion, where "soft" forms of intervention to provide technical, economic and even political assistance were more acceptable than "hard" ones ranging from political conditionality to sanctions and outright military operations. Instances such as the 1999 Kosovo war added fuel to the fire. In the 1990s humanitarian intervention was inscribed on the global normative map, but never acquired a critical mass of consensus.

In the 21st century – and partly in response to the above critiques – the humanitarian intervention discourse has been overtaken by that on the Responsibility to Protect which, while contested, has become organic to the global conversation. Like humanitarian intervention, R2P unequivocally originated in the "Global North", through the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS 2001). Its roots lie in liberal international ethics (Doyle 2011). According to some, it even represents a new form of Western imperialism (Bush et al. 2011). The ICISS report identified three responsibilities in cases of large-scale loss of life: the responsibility to prevent, the responsibility to react and the responsibility to rebuild. The report pushed further the normative envelope (Weiss 2004) by adding to the crystalizing norm of "sovereignty as responsibility," the notion that if the state is "unable or unwilling" to halt serious harm, non-intervention should yield to the responsibility to protect (ICISS 2001:16). In specifying the responsibility to react, the ICISS report drew from just war theory. Reaction through military means would be justified only when the conditions of just cause, right intention, proportionality, last resort, right authority, and reasonable prospects for success were met (Bellamy 2011).

R2P garnered supporters beyond the Global North (Serrano 2011:432). The ICISS report led to the work of the UN High Level Panel on Threats, Challenges and Change (2004) and UNSG Kofi Annan's *In Larger Freedom* (2005), which endorsed R2P. Most importantly, a revised notion of R2P was endorsed in the World Summit Outcome Document (2005) and UNSC resolution 1674 on the protection of civilians (Bellamy 2006). The norm went through further revisions in UNSG Ban Ki Moon's 2009 report on the implementation of R2P (UNSG 2009) and the 2010 UNSG report on Early Warning, Assessment and the Responsibility to Protect (UNSG 2010). In these iterations, the criteria legitimizing intervention were set aside, while a three pillar structure of R2P was laid out (Weiss 2004): the responsibility of the sovereign to protect its subjects, the responsibility of the international

community to assist the state to protect its citizens, and the responsibility of the international community to intervene under a United Nations Security Council (UNSC) mandate to protect civilians against the crimes of genocide, ethnic cleansing, war crimes and crimes against humanity. Only when the state "manifestly fails" to protect civilians would external "residual" responsibilities kick-in (Glanville 2012).

The key to the greater acceptance at the global level of R2P versus humanitarian intervention was threefold. First was the presentation of the norm as an ally of state sovereignty. Hence, the focus on the first pillar of R2P, particularly in UNSG (2009). Second was the narrowed focus from "large-scale loss of life" to the four specific crimes of ethnic cleansing, genocide, war crimes and crimes against humanity. Third was the notion that the third pillar – the responsibility of the international community to intervene militarily if necessary – requires UNSC consent. This dilution of R2P with respect to its initial specification by the ICISS allowed the norm to become more widely shared (Bellamy 2010). The UNSC made explicit reference to R2P on a number of occasions. As discussed below, the intervention in Libya in 2011 was the most explicit endorsement of R2P by the UN Security Council.

This is not to say that a clear global consensus on R2P is crystallizing. Not only does the academic debate on the merit of the norm rage on – see Kuperman (2008) versus Weiss (2011) – but more importantly, the degree of support for and the specific interpretation of the norm vary widely locally, regionally and internationally. Doyle (2011:73) indeed argues that "R2P has contributed to the increasing pluralism, contested and contestable, of the normative architecture of world politics."

2. Libya and Syria on Opposite Ends of the R2P Spectrum

UNSC Resolution 1973 on Libya was the first of its kind. Never before had the UNSC mandated a military intervention in a functioning state with the explicit aim of protecting civilians against their own government. In 1991 UNSC Resolution 688 was expressly aimed at protecting Iraqi civilians. But while it ultimately gave way to a no-fly zone over Northern Iraq, the no-fly zone itself was not mandated by the resolution. 1992 UNSC Resolution 781 authorized a no-fly zone in Bosnia, but with the sole objective of providing humanitarian assistance rather than protecting civilians. The same year, UNSC Resolution 794 mandated a unified task force to enter Somalia, but did so in the absence of a central government in Mogadishu. In 2008, following the eruption of post-election violence in Kenya, the UN was guided by the principle of R2P, but rather than authorizing a military intervention, the international community succeeded in mediating a power-sharing agreement. In 2011, recalling the responsibility of each state to protect its citizens, UNSC Resolution 1975 demanded that Laurent Gbagbo step down in Côte d'Ivoire, imposing sanctions on him and his inner circle. Yet only in Libya did UNSC Resolution 1973 enhance an arms embargo and asset freeze, establish a ban on flights and, most notably, authorize "all necessary measures" to enforce a no-fly zone with the explicit purpose of "protect[ing] civilians and civilian populated areas under threat of attack" by their government (UNSC 2011a). In April 2011, Gareth Evans, co-chair of the 2001 ICISS, defined Libya as a "high watermark of the application of [R2P]" (Evans 2011).

Never before did the Security Council react so rapidly and consensually as in the case of Libya (Bellamy and Williams 2011). Violence in Libya broke out in mid-February when Gaddafi's regime sought to violently suppress protesters. The protest rapidly turned violent, with rebels taking over Benghazi and opening the way to armed confrontation between the sides. On 22 February UN High Commissioner for Human Rights Navi Pillay condemned crimes against humanity in Libya. The next day UNSG Ban reminded the Libyan government of

its responsibility to protect endangered civilians. On 25 February the UN Human Rights Council established an International Commission of Enquiry on Libya. On 26 February the UNSC approved unanimously Resolution 1970, which demanded an immediate end to the violence, imposed an arms embargo, as well as a travel ban and asset freeze on select individuals, and referred the case of Libya to the prosecutor of the International Criminal Court. As violence persisted, the UNSC reconvened a fortnight later. On 17 March 2011, UNSC Resolution 1973 authorized a military intervention to enforce a no-fly zone and protect civilians in Libya. The resolution was voted by ten members of the Council and five abstentions.[1] On 24 March, NATO assumed responsibility for the implementation of the arms embargo and the no-fly zone and, a few days later, for the protection of civilians as well. The whirlwind of decisions in New York was unprecedented. As put by then US Ambassador to the UN Susan Rice: "I can't remember a time in recent memory when the Council has acted so swiftly, so decisively, and in unanimity on an urgent matter of international human rights" (US Mission to the UN 2011).

The international response to Syria could not have been more different (Zifcak 2012, Nanda 2013). Just as world powers were convening in New York to pass Resolution 1973 on Libya, protest broke out in the southern Syrian town of Dara'a. What had begun as a peaceful demonstration against government corruption and human rights violations, rapidly spiraled out of control. By April 2011 the Assad regime had deployed the army across the country and engaged in a violent suppression of the protest. Following the military crackdown, the rebels took up arms against the regime. The country descended into a vortex of violence, as the conflict acquired increasingly militarized, regional and sectarian tones. Three years later, with deaths nearing the 200,000 mark, millions of refugees and a mounting threat to regional stability, the Syrian civil war rages on. Neither the war's end nor its outcome are in sight. The only thing that can be safely concluded is that the Syria that once was has gone for good. The magnitude of the Libyan uprising pales into insignificance when compared to Syria (Kuperman 2013).

Despite the absolute and relative magnitude of the Syrian crisis, the UNSC has dismally failed to agree on a resolute response. In over three years, the UNSC has seen three vetoed resolutions, and four adopted resolutions that have not, however, decisively contributed to sealing an end of the Syrian civil war and ensuring the protection of Syrian civilians. Whereas in the case of Libya, the UNSC agreed on a resolute response in less than one month into the uprising, in Syria the first failed attempt to pass a resolution came in October 2011, six months after the outbreak of violence. The resolution condemned the regime's crackdown and called on it to protect its citizens. There was no explicit threat of sanctions, although the draft did refer to the possibility of punitive measures in case of noncompliance. Despite the dilution of the language on sanctions, the three non-permanent BRICS – Brazil, India and South Africa – abstained, while Russia and China vetoed the resolution. The next failed attempt to forge consensus at the UNSC came in early 2012. The resolution, tabled by Morocco, called for a political transition in Syria through the formation of a national unity government. In order to assuage the BRICS's concerns, it explicitly ruled out coercive measures. This time the resolution did win the support of India and South Africa.[2] Russia and China again exerted their veto.

Then came a first and short-lived moment of international consensus. In February 2012, the UNSG and the Arab League appointed Kofi Annan as their Joint Special Envoy. Annan devised a six-point plan aimed at ending violence. The Syrian regime accepted the plan and the UNSC unanimously approved Resolution 2042 in April 2012 that authorized the dispatch of thirty unarmed observers to monitor the fragile ceasefire. This was followed by the Russian-sponsored UNSC Resolution 2043 establishing a ninety-day United Nations Supervision Mission

1 Bosnia, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, South Africa, UK and US voted in favor. Brazil, China, Germany, India and Russia abstained on UNSC Resolution 1973.

2 By then Brazil was no longer a non-permanent member of the Council.

in Syria (UNSMIS) to monitor the ceasefire. Yet the quiet was not to last. By May 2012 both sides resumed the fighting and the UNSC was called on to respond. In this context came the third failure at the Security Council. In July 2012 the Western draft would have extended the mandate of UNSMIS and threated sanctions in case of the regime's non-compliance with the six-point plan. While India voted in favor of the resolution, South Africa abstained. Russia and China cast their vetoes.

After the failure of UNSMIS and Special Envoy Annan's mission, over a year was to pass before the UNSC could find new common ground. This time the impulse came from Russia. After the August 2013 chemical attack on Gouta, a US-led military intervention seemed to be in the offing. Yet no sooner had US President Barack Obama declared his intention to respond to the chemical attack with the use of force than a powerful constituency within and beyond the West mobilized against the imminent war. The momentum was halted when Russia proposed a plan, which the Assad regime accepted, to place Syria's chemical weapons under international supervision. In September 2013 the UNSC unanimously approved Resolution 2118, which endorsed the Organization for the Prohibition of Chemical Weapons' (OPCW) plan for the destruction of Syria's chemical arsenal. UNSC Resolution 2118 was critical in averting a military intervention and dealing with the longstanding problem of Syria's chemical weapons. Yet to the extent that the Syrian civil war has been primarily a conventional weapons war, international consensus over the destruction of chemical weapons was only marginally consequential to the resolution of the crisis and the protection of Syrian civilians.

The chemical weapons agreement was followed by momentum to launch negotiations between the Syrian parties in Geneva. In January-February 2014, negotiations between the Syrian regime and opposition forces mediated by Special Envoy Lakhdar Brahimi centered largely on humanitarian access. Whereas the opposition, backed by the Friends of Syria, called for unfettered humanitarian access, the Syrian regime and Russia feared this could have opened the way to safe zones, no-fly zones and eventually a military intervention. The Geneva negotiations ended in failure, but were followed by a flurry of diplomatic activity in New York. Despite deadlock in Geneva, in February 2014 the UNSC unanimously approved Resolution 2139 demanding all parties, in particular the Syrian authorities, to allow access for UN humanitarian agencies, calling for an immediate end to violence, and condemning the rise of al-Qaeda-affiliated terror. After three years of violence, Resolution 2139 was the first moment of UNSC consensus on the humanitarian dimension of the Syrian conflict. On the ground, the war rages on.

3. Transatlantic Leadership in Global Human Rights Governance: Lessons From Libya and Syria

What do these seemingly diametrically opposite stories of Libya and Syria tell us about transatlantic leadership on global human rights governance? What are the reasons found both within and beyond the transatlantic relationship that explain such different outcomes, and what does this tell us about the enduring ability of the transatlantic bond to spread liberal human right norms at the global level?

3.1 Wavering Transatlantic Leadership on R2P

In order to gauge the effectiveness of the transatlantic partners – in particular the EU and its member states, and the United States – to promote liberal norms such as R2P at the global level, let us begin by assessing the degree to which the EU and the US, both independently and in partnership, have succeeded in providing

global leadership in this field. The balance is mixed at best.

The European Union as a whole has rhetorically supported the general principle of R2P. The 2008 report on the implementation of the EU Security Strategy was unequivocal: "Sovereign governments must take responsibility for the consequences of their actions and hold a shared responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (Council of the EU 2008:2). At the same time, the EU consensus while resting on solid turf as far as the second pillar of R2P is concerned – the international community's responsibility to assist the state to protect its citizens through conflict prevention and post-conflict peacebuilding – crumbles when it comes to the third pillar of R2P: the international community's responsibility to react, through military force if necessary, to halt mass atrocities. Neither is there a solid EU consensus on the precise criteria to be met for international intervention for the sake of halting mass atrocities, nor is there agreement on what course of action to take when specific crises surface on the international agenda. The cases of both Libya and Syria highlight these divisions starkly.

In Libya, EU actors clearly affirmed R2P in principle, but in practice were deeply divided. The European Parliament (2011) stressed that "the EU and its Member States must honour their Responsibility to Protect, in order to save Libyan civilians from large-scale armed attacks." With the passing of the UN arms embargo in UNSC Resolution 1970, the EU followed suit with an embargo on the supply of armaments to Libya, as well as the prohibition of trade with Libya in equipment which might be used for internal repression. The EU also imposed a visa ban and an assets freeze on Gaddafi and his associates. But when it came to the prospects of an armed intervention to prevent bloodshed in Benghazi, the EU was thoroughly divided. France and the UK, as permanent UNSC members, were adamantly in favour of an R2P intervention. France in particular openly acknowledged the residual responsibility of the international community when endorsing UNSC Resolution 1973 on Libya: "every hour and day that goes by increases the burden of responsibility on our shoulders" (UNSC 2011a). Most member states followed the French and British lead. But not all agreed. Notoriously, Germany abstained alongside most BRICS, citing the risks involved in the operation and the likelihood of large-scale loss of life. Bitter intra-EU division between France and the UK on the one hand and Germany on the other meant that all the EU as a whole could muster was EUFOR-Libya, a Common Security and Defence Policy (CSDP) mission to support humanitarian efforts that would be activated only if requested by the UN, a condition that everyone knew was highly unlikely to materialize.

On Syria, the lack of intra-EU consensus took a different form. The United Kingdom and France as permanent members of the UNSC, followed by all member states, have been unanimous in condemning Bashar al-Assad's violent repression of his people and advocating a resolute international response, foreseeing the possibility of economic sanctions. The first failed resolution presented at the UNSC in October 2011 had been sponsored by European countries, notably France, Germany, Portugal and the UK. As the conflict deepened, EU consensus on the imperative to protect Syrian civilians and sanction the regime for its failure to live up to its sovereign responsibilities remained firm. The same cannot be said for the member states' propensity to embark on a coercive response to the Syrian civil war. As in the case of Libya, the EU was divided. But whereas on Libya the majority of member states endorsed an intervention, on Syria most, but not all, did not. France, despite a palpably hostile domestic public opinion, firmly backed an intervention following the chemical weapons attack in September 2013. But all other member states opposed, to different degrees and with different motivations, a military attack without a UN Security Council resolution. Even the United Kingdom moved to the sidelines, after David Cameron's government was defeated with a 285-272 vote in the Commons, due to resistance not only from the Labour opposition but also from the Liberals and his own Conservative Party. Most other member states either refrained from taking a clear line – Spain –, or more commonly declared they would support an

intervention only after international inspections verified the culpability of the Syrian regime and it received UNSC backing – Austria, Belgium, Denmark, the Netherlands and Sweden. Some member states went beyond. Italy, for instance, beyond insisting on the imperative of waiting for the result of inspections and respecting international law, expressed clear doubts about the political desirability of an intervention, claiming that a diplomatic solution remained first best. Germany went a step further, delaying its endorsement of the G20 statement calling for an international, but not necessarily military, response in Syria until the EU informal foreign ministers meeting in Vilnius a day later on 7 September 2013.

While the EU's wavering global leadership on R2P has been the product of well-known intra-EU divisions, in the case of the United States it has been an ambiguous commitment to R2P itself. Both the Bush and the Obama administrations endorsed the moral principle that mass atrocities that take place in one state concern all states. Perhaps the most explicit manifestation of such endorsement can be found in the May 2010 National Security Strategy, which openly endorsed the three pillar R2P structure: "The United States and all member states of the U.N. have endorsed the concept of the 'Responsibility to Protect.' In so doing, we have recognized that the primary responsibility for preventing genocide and mass atrocity rests with sovereign governments, but that this responsibility passes to the broader international community when sovereign governments themselves commit genocide or mass atrocities, or when they prove unable or unwilling to take necessary action to prevent or respond to such crimes inside their borders" (White House 2010:48). This endorsement was reaffirmed in the Quadrennial Diplomacy and Development Review in 2011 (US Dept of State 2010:128).

However, the United States, often the most sanguine in responding to crises, has led the effort to refute R2P as a legal duty of the international community. Across US administrations, and notably under the G.W. Bush and Obama presidencies during which R2P has crystallized as a global norm, the US has on occasions affirmed the right, never the automatic, let alone legally binding, duty, to respond (Reinold 2011). The US has affirmed the qualitative difference between the first and the third pillars of R2P, with the former approximating a duty, while the latter at most a right. In particular, the US has consistently refused a generalized code of conduct as regards pillar III, which would either oblige it to intervene under certain circumstances, or, more likely, prevent it from doing so when conditions were not met. The US indeed led the effort to dilute the language of the UN World Summit Outcome document, which specified that R2P interventions would be considered on a "case-by-case" basis.

In both the Libya and Syria cases, the United States, like the EU, was internally divided. On Libya, the US like most EU member states ultimately converged on the appropriateness of an intervention. But there were significant internal disagreements within the administrations. Of note is a highly contentious meeting at the While House in March 2011, in which R2P "hawks" Hillary Clinton, Samantha Power, Gayle Smith and Michael McFaul won the argument over the intervention sceptics Tom Donilon and Robert Gates. US President Obama ultimately accepted the intervention, but a residue of scepticism was evident in his words. The American President, well aware of his war weary public (Mohamed 2011:77-8), went out of his way to emphasize that the Libya intervention was not the product of an R2P duty, but was rather dictated by exceptional circumstances and constituted an American "national interest" (Obama 2011).

In the case of Syria, intra-American divisions, like for the EU, tilted in favour of the non-interventionists and revealed themselves in one of the most striking instances of US foreign policy indecisiveness and backtracking. After the attack on Gouta, President Obama, who had previously defined a chemical weapons attack in Syria as a "red line" for an international response, announced his intention to pursue a limited military attack on the country. And yet prior to doing so he declared that he would seek approval for the attack from Congress.

The precise reason for this unconventional choice by the US Commander in Chief has been subject of ample speculation, as the ensuing decision – once it became increasingly clear that support from the House of Representatives would not be forthcoming – to pull back from the brink of war. Suffice it to say here that Obama's conditional move on Syria in September 2013 and his ultimate backtracking a few weeks later revealed the significant US scepticism about the desirability of an intervention.

Insofar as the EU and the US have been only conditionally supportive of R2P, and their conditional support has often manifested itself thorough deep internal divisions, their partnership on R2P has been functional at best. There have thus been instances, of which Libya stands out as the clearest example, in which particular constellations of US and European actors have coalesced on the desirable action course. In the Libyan case, it was the French-British-US trio, endorsed and followed suit by NATO, that led the way. Hence, the US, alongside France and the UK, were instrumental in the initial stage of the UN-authorized intervention in Libya. The US suppressed Libyan air defences and coordinated international forces in the establishment of the no-fly zone, before handing over command responsibility to NATO in late March 2011. During the intervention, the US provided more than 70 percent of the surveillance, intelligence and reconnaissance capabilities, and flew 70 percent of refueling missions. France and the UK played pivotal roles, with British naval forces firing cruise missiles, the British, French and Canadian air forces undertaking sorties across Libya and conducting air strikes against Libyan tanks, and the coalition as a whole enforcing the no-fly zone and naval blockade on Libya and providing logistical assistance. In the case of Syria, no such transatlantic consensus, however partial, has materialized in favour of an intervention or any other form of decisive action.

3.2 R2P and the Rise of the "Rest"

Transatlantic leadership on R2P has been wanting. But alone it cannot account for the contested evolution of the norm at the global level. Beyond the positions adopted by European and US actors, the Libyan and Syrian crises are marked by divergent positions by non-Western powers, notably the BRICS. In the case of Libya, none of the BRICS opposed UNSC Resolution 1973 authorizing a military intervention for the sake of protecting civilians. Noteworthy, was the fact that all five BRICS were members of the Council at the time. By contrast, the BRICS virulently opposed military intervention aimed at protecting Syrian civilians. Indeed, they opposed, to different degrees, any formulation by the UNSC that could have been construed as opening the way to coercive international action, including sanctions.

One basic observation that follows is that the positions of non-Western actors in the international responses to humanitarian crises increasingly matter. In Libya, while it is true that European states and the US ultimately converged on the desirability of an R2P intervention conducted by NATO, would the intervention have happened without the consent of the BRICS and thus without UNSC legitimization? Likewise, while it is true that on Syria the transatlantic partners have been sceptical, to say the least, of an intervention, had the BRICS – led by Russia – not been so determined to prevent a Western-led attack, may this have happened? Definitive answers to these counterfactual questions cannot be provided. Suffice to say here that the many question marks they raise suggest that the role of (re)emerging powers is becoming increasingly consequential in shaping both the normative debate over R2P and its practice in international politics.

In turn, the position of the BRICS on R2P is crucial to understand the evolution of global human rights governance. In the 1990s, the BRICS (not grouped together as such) unanimously resisted humanitarian intervention. Colonial and nationalist legacies underpinned their stance. Brazil, since the 1950s – and largely in response to

the US Monroe Doctrine – was strongly bound by the norm of non-interference. It was thus quick to denounce humanitarian intervention as an unveiled neocolonial ploy by the strong to interfere selectively in the affairs of the weak (Kenkel 2012). When R2P was first presented in 2004, it was lambasted by Brazilian Foreign Minister Celso Amorin as a "*droit d'ingerénce*" in new clothing (Kenkel 2012:15). Brazil's line was echoed by others. India's colonial, non-aligned and Ghandian legacy (Chakrabarty 2008) meant that New Delhi was also deeply wary of any challenge to the norm of non-interference by (neo)liberal alternatives. Likewise, China's deep-seated reluctance to embrace liberal peace norms can be traced to the 19th century Opium Wars, coupled with pending territorial challenges over Taiwan, Xinjiang and Tibet. As in the case of Brazil and India, when it was first presented, China rejected R2P, and in particular the notion that legitimate interventions could take place without the consent of the host state.

As years went by, the BRICS did not become champions of R2P, but have all gradually manifested, to different degrees, greater openness towards the norm (Bellamy and Williams 2011). South Africa has been the most explicit in its endorsement of R2P. In 2003 South African President Mbeki acknowledged openly that absolute sovereignty no longer applies. Indeed, South Africa is embedded in the African Union (AU), which is the first regional organization which implicitly endorses R2P. The AU's Charter, while recognizing the norm of non-interference (Article 4(g)), qualifies this by presenting the rival norm of non-indifference, and consequently laying out the provisions for intervention in the internal affairs of its member states in the event of genocide, war crimes and crimes against humanity (Article 4(h)). The AU's Peace and Security Council is responsible for the application of non-indifference, although both the AU in general and South Africa in particular have interpreted this principle as mandating primarily diplomacy and peacebuilding measures. In other words, while supporting R2P, there is a clear preference for the non-military application of the principle (Landsberg 2010:446).

Brazil and India, while initially deeply sceptical of R2P, have gradually endorsed conditionally the notion, again emphasizing its non-military interpretation. India ultimately accepted R2P as specified in the World Summit Outcome Document, supporting keenly pillars I and II, while emphasizing that pillar III should in no way provide a pretext for humanitarian intervention (Hall 1996). Brazil has followed suit, with its greater openness towards R2P coming alongside its growing involvement in UN peacekeeping. In 2004 Brazil authorized the country's largest military deployment since World War II to command a UN mission in Haiti.

China and Russia have been the most sceptical. Sovereignty remains sacrosanct in Chinese foreign policy, elevated as one of the five guiding of Zhou Enlai's Peaceful Coexistance. Yet China's 2002 security concept for the first time included issues such as terrorism, transnational crime, environmental degradation and drug trafficking, all transnational issues linked to human security. By 2010 China had deployed over 2000 troops in UN peacekeeping missions, supported a UNSC-mandated intervention in East Timor (Prantl and Nakano 2011:11), and became the first non-African state to contribute to the AU-UN mission in Darfur in 2008. Sovereignty continues to be viewed as the prime guarantor of human security. Yet when states fail, the international community may be called upon to shoulder such sovereign responsibilities, provided it does so in strict compliance with the UN Charter and in sync with regional states and organizations. Russia too, while deeply sceptical of R2P, has itself invoked the principle – albeit opportunistically – in the advent of the August 2008 war with Georgia (Allison 2009).

Norm replacement is not on its way. For none of the BRICS R2P is supplanting the norms of sovereignty and non-intervention (Capie 2012, Bellamy 2011). Likewise however, none of the BRICS fall in the category of outright opponents of R2P such as Algeria, Belarus, Cuba, Venezuela, Sudan, Iran, Pakistan or Syria (Quinton-Brown 2013). All, in different shades, accept the notion that sovereignty is conditional on its responsible implementation and that human suffering within a given state is a legitimate concern to all.

The Libyan crisis erupted against this backdrop. None of the BRICS opposed external intervention for the sake of protecting civilians. UNSC Resolution 1970 authorizing an arms embargo, sanctions and Gaddafi's referral to the International Criminal Court passed unanimously. Consequently, Russia suspended all contracts for the supply of military hardware to Libya. China in principle also subscribed to the UN embargo, despite rumors of supplying arms to the Libyan regime, which Beijing flatly denied. All other BRICS states approved and complied with the embargo.

UNSC Resolution 1973 on a no-fly zone instead passed with the abstention of four BRICS countries – Brazil, Russia, India and China. In justifying their abstention (rather than rejection), the BRICS highlighted the imperative of protecting civilians (UNSC 2011a). Russia declared: "we are consistent and firm advocates of the protection of the civilian population." South Africa claimed that UNSC Resolution 1973 indicated that the the Council had acted responsibly to answer the call of Libyan people. Brazil affirmed the "need to protect civilians and respect their rights." India expressed great concern over the "welfare of the civilian population" of Libya, a point echoed by China too.

The decision to authorize a military intervention was not taken lightly by the BRICS. South Africa was deeply torn on the Libyan crisis (Africa and Pretorius 2012). On 10 March 2011 South Africa chaired a High Level Ad Hoc Committee that had been tasked by the African Union to find a diplomatic solution to the crisis. Yet a week later, South Africa voted in favor UNSC Resolution 1973 authorizing a military intervention that made the work of the Ad Hoc Committee physically impossible (Dembinski and Reinold 2011:11). Within the other BRICS states the balance tilted against an intervention, but opposition was ambivalent and not sufficiently strong to stand up against the no-fly zone. Hence, although China asserted it "is always against the use of force in international relations," it refrained from vetoing the resolution (UNSC 2011a). Russia too did not prevent the resolution, but was convinced that an "immediate ceasefire" was the best way to stop the loss of life. Brazil affirmed that "the use of military force […] may have serious repercussions […] Protecting civilians, ensuring a lasting settlement and addressing the legitimate demands of the Libyan people require diplomacy and dialogue" (UNSC 2011a). Reservations aside however, ultimately, the balance turned in favour of an intervention as a result of the specific constellation of domestic, regional and global conditions (Hehir 2012:19).

On Syria too, the BRICS expressed deep concern for the plight of the civilian population. In October 2011, Russia defined the violence in Syria as "unacceptable;" China claimed it was "highly concerned about the developments in Syria" and called on all parties there to avoid further bloodshed (UNSC 2011c). India deplored "all violence, irrespective of who its perpetrators are," and "urged [the Syrian authorities] to exercise restraint, abjure violence and pay heed to the aspirations of their people" (UNSC 2011c). South Africa expressed deep concern at the "humanitarian situation in Syria," condemned the loss of life and called "for maximum restraint on the part of all parties" and for "an immediate end to all violence" (UNSC 2011c). Brazil "called for violence to cease and humanitarian access to be granted" (UNSC 2011c).

And yet unlike on Libya, they were firm in their determination to avoid external intervention. In comparison to Libya, the importance attached by the BRICS to sovereignty/non use of force in Syria was markedly higher. In justifying its veto in October 2011, Russia claimed it would only support a resolution, at the core of which lied the "respect for the national sovereignty" and non-intervention into State affairs, "the unity of the Syrian people," as well as the "the non-acceptability of foreign military intervention" (UNSC 2011c). China emphasized the imperative of respecting Syria's sovereignty and territorial integrity as well as the UN's principles of non-interference in internal affairs. South Africa stressed the need to preserve the unity, sovereignty and territorial

integrity of Syria and explained its abstention on a resolution that had not explicitly ruled out military intervention in Syria. Moreover, the BRICS placed considerable emphasis on the imperative to contrast regime change in Syria. In the failed October 2011 resolution on Syria, Russia asserted that "a significant number of Syrians do not agree with the demand for a quick regime change;" India added that the international community should facilitate dialogue "and not complicate the situation by threats of sanctions [or] regime change," while South Africa affirmed that the Council should not be part of any "hidden agenda" for regime change" (UNSC 2011c).

The way the BRICS interpreted NATO's operation in Libya is critical in explaining the distinctly higher importance attached by them to the norms of sovereignty and non-use of force, as well as to the imperative not to instrumentalize R2P for the sake of regime change in the case of Syria. The BRICS did not criticize the initial military response aimed at destroying the Libyan air force infrastructure and the Libyan army's heavy weapons near embattled towns, as well as the air attacks on Libyan ground forces advancing on Benghazi. All these measures were viewed as compatible with the UNSC's no-fly zone and protection mandates. Had the NATO operation come to a halt when the Libyan forces ended attacks against civilian populated areas, withdrew to bases and permitted unhindered humanitarian access, the BRICS would have likely been comfortable with the implementation of UNSC Resolution 1973. NATO would have done a great service to R2P.

But the operation did not stop there. The intervention persisted despite Gaddafi's call for a ceasefire, which the Libyan Transitional National Council rejected unless it was accompanied with the Colonel's resignation. The range of NATO's targets was extended to installations like Gaddafi's compound, which neither posed an immediate threat to civilians nor had any military significance. Over time, NATO also increased direct support for the rebels. The impression soon became that NATO would not halt its attacks until the regime was toppled. Declarations of prominent NATO members confirmed the suspicion. In a letter jointly signed by British Prime Minister David Cameron, French President Nicolas Sarkozy and US President Obama, the three leaders argued that "it is impossible to imagine a future for Libya with [G]addafi in power […] so long as [G]addafi is in power, NATO must maintain their operations so that civilians remain protected and the pressure on the regime builds" (Obama et al. 2011). The enforcers of UNSC Resolution 1973 were persuaded that R2P in Libya could only be achieved with the toppling of Gaddafi. Regime change had become the definition of the mission's success.

As such, the implementation of UNSC Resolution 1973 became the object of acute criticism by all BRICS states. In May 2011, Russia criticized the "disproportionate use of force," China opposed "any arbitrary interpretation of the Council's resolutions or of any actions going beyond those mandated by the Council," while South Africa questioned "whether the actions of the implementing States have been consistent with the letter and the spirit" of the resolutions (UNSC 2011b). By the fall of 2011, the tone was distinctly harsher. South Africa claimed that "[a]busing the authorization granted by the Council to advance a political regime-change agenda does not bode well for the future action of the Council in advancing the protection of civilians agenda" (UNSC 2011d). Russia deplored that "[t]he demand for a quick ceasefire [had] turned into a full-fledged civil war [...] The arms embargo had morphed into a naval blockade in western Libya" (UNSC 2011c) and stated that "[a]ttempts to manipulate Council mandates are unacceptable, even when proclaiming the noblest of goals" (UNSC 2011d). China echoed: "[n]o party should wilfully misinterpret resolutions, let alone take action that goes beyond the mandate given by the Security Council" (UNSC 2011d). Brazil, China and India were particularly irked by the fact that their questions regarding the enforcement and accountability of the Libya campaign were brushed aside by NATO members (Pattison 2013). Transparency on the operation, in their view, had not been forthcoming.

Criticism of the Libya campaign in reference to R2P spilled over into Syria. As put by Evans: "We have to frankly recognize that there has been some infection of the whole R2P concept by the perception, accurate or otherwise,

that the civilian protection mandate granted by the Council was manifestly exceeded by that [Libya] military operation" (Evans 2012). Indian Ambassador to the UN Hardeep Singh Puri put it bluntly: "Libya has given R2P a bad name" (Bolopion 2011). Russia was the most explicit in "drawing lessons" from Libya to the unfolding Syrian crisis. In October 2011 Russian Ambassador Churkin stated: "The situation in Syria cannot be considered in the Council separately from the Libyan experience [...] It is easy to see that today's 'Unified Protector' model could happen in Syria" (UNSC 2011c). In reference to the Libya-Syria link, a Russian source close to the Kremlin reportedly stated: "we were naïve and stupid [...]trust this: that was the last mistake of such type" (Jentleson 2012:419). In Russian eyes, Libya was part of a continuum, one more domino falling after Kosovo, Afghanistan and Iraq (Benner 2013:4). The priority was to prevent Syria from following suit (Menkiszak 2013).

As put by Mead (2011), the imperative for the BRICS was not to "fall for that trick again." When it came to Syria, all steps that were either punitive, that may have eventually led to an infringement of state sovereignty, or that were implicitly aimed at regime change were flatly rejected by the BRICS in the Council. None of the three failed UNSC resolutions on Syria included the hint of military intervention. In fact, the February 2012 failed resolution explicitly ruled out such intervention. But they did include the possibility of sanctions and/or made explicit recommendations for a political transition, unlike the UNSC Resolutions on Syria that were subsequently approved. This was the "trick" the BRICS were determined to avert: they would not agree to measures, no matter how seemingly well-intentioned, that could have sparked what they feared would be an irreversible trend towards intervention. The US, frustrated with Russian and Chinese obstinacy, defined these concerns as paranoid and disingenuous (UNSC 2012). But truth of the matter is that since the summer of 2011, the US and key EU member states had been on record calling upon President al-Assad to step down (Charap 2013:39). In the eyes of the BRICS, given the Libyan precedent, why would their acquiescence on Syria have not led down the Libyan path?

Conclusions

The Responsibility to Protect, as a liberal norm grounded on the primacy of individual human rights has made in onto the broad panorama of global human rights governance. It is a political norm which has been formulated, advocated and endorsed by Western actors, notably the European Union and its member states, the United States, alongside other key states such as Canada and Australia. Some elements of the norm have received broad global endorsement, as by evidenced by the near unanimous support for the 2005 World Summit Outcome Document. Yet beyond these broad principles, the specific steps guiding implementation remain hotly contested.

This article has explored the reasons for this enduring global contestation, seeking these both within and beyond the confines of the transatlantic relationship. Whereas both the EU and the US have openly endorsed R2P, they have been frequently internally torn on its actual implementation. In view of this, particularly the US has adamantly resisted enshrining R2P as a legal duty, insisting on the "case-by-case" application of the norm. Internal divisions and selectivity have in turn hampered the transatlantic partnership's ability to exert global leadership in this field. Yet reasons for the contested nature of the norm lie also, and above all, beyond the West. Most non-Western actors and in particular the BRICS, have accepted, to different degrees, the conditionality of sovereignty and the notion that human suffering within national borders is a legitimate concern for all. But they, along with most members of the "Global South", have been deeply sceptical of R2P's third pillar allowing for external military intervention if necessary in order to halt mass atrocities.

The fact that none of the BRICS have been outright R2P opponents and have thus been open to endorsing R2P on a case-by-case basis is highlighted by the contrasting stories of Libya and Syria. The two crises however also highlight another crucial lesson. Precisely in view of the contested yet "open" nature of R2P as a political norm in-the-making, its actual implementation case-by-case and the manner in which this is perceived will be crucial to defining the future evolution of the norm. In particular, the precise ways in which (generally) Western actors will go about R2P's implementation in specific crises will determine the global acceptability of the norm. In this respect, the broadly shared perception across the non-Western world of NATO's mission creep in Libya, not only had a tangible impact on the ensuing crisis in Syria, but is likely to have left a more lasting and diffuse mark on R2P as a whole.

Does this suggest that R2P is dead? Arguably not. The dynamic between the Libya and Syria cases suggests that while intra- and inter-state divisions on *how to react* to crises are likely to persist, the normative ambiguity regarding *how not to react* may have diminished significantly. Counterintuitively perhaps, the Libya-Syria dynamic, by narrowing the space for ambiguity, may have moved forward the global normative conversation on the adequate international response to mass atrocities. The interconnected stories of Libya and Syria suggest that we are unlikely to see a consensual and UN-legitimized military intervention under R2P any time soon. The international community will strive to respond to crises, particularly when these have a serious humanitarian dimension, but to the extent that the international community will respond in concert, such responses are likely to focus on the preventive and rebuilding, rather than reactive, dimensions of R2P. Not only are the BRICS far more comfortable with these dimensions of R2P, but they also reflect the comparative strengths of Western actors, notably the EU and its member states, and, increasingly, a war-weary United States.

This is not to say that military intervention under the third pillar of R2P is to be ruled out. But the global conversation post-Libya and Syria is likely to focus on the enhanced prudential conditions to be met in order for military action to take place. Alongside the traditional just war criteria raised by the International Commission on Intervention and State Sovereignty in 2001 – just cause, last resort, right intention, proportionality, legitimate authority, probability of success – what conditions would need to be met in order for the internationally community to consensually embark on a military intervention for the sake of protecting civilians? In this spirit, Brazil proposed in November 2011 its "Responsibility while Protecting" (RwP) doctrine, which emphasized precisely the prudential criteria to be met before, during and after an operation (Brazil Mission to the UN 2011). Delving deeper in the last resort criterion, Brazil proposed the sequencing of the three R2P pillars. Related to right intention, RwP specified that any intervention should be strictly limited to the objectives set out by the UNSC mandate. As regards proportionality, RwP affirmed not only that any intervention should be in strict compliance with international law, but also that it should not generate more harm than what it was authorized to prevent. Finally regarding legitimate authority, RwP suggested that beyond authorizing an intervention, the UNSC should develop enhanced procedures to closely monitor the unfolding of an intervention. UNSC authorization would be necessary both before and during an intervention.

Brazil's RwP proposal was met with scepticism both by Western actors – that found it too restrictive – and the rest of the BRICS – that found it too permissive. While opposition mellowed in time, Brazil itself lost interest in the initiative over time. And yet the proposal could have represented an important bridge between the transatlantic partners and (re)emerging powers. Indeed, in this spirit the UNSG had seen the value of the initiative at the time, defining it as "a useful pathway for continuing dialogue about ways of bridging different perspectives and forging strategies for timely and decisive responses to crimes and violations relating to [R2P]" (UNSG 2012).

To move forward in a global context of wavering transatlantic leadership and growing assertiveness and contestation by non-Western actors, the US and Europe would be well advised actively engage (re)emerging powers on a discussion regarding the future of international responses to potential (or ongoing) mass atrocities. In activating these discussions, the transatlantic partners should signal their willingness to cede ground on R2P's extant form, taking up for instance the debate on RwP. While far from perfect, RwP addresses many of the emerging powers' concerns with R2P, especially its potential to be politicized and misused in the pursuit of other aims as the Libyan case demonstrated. It does so by grounding in international law the criteria required for the international community to engage in such operations, stipulating that interventions comply with the associated UN Security Council mandate. Emerging powers' scepticism is not only increasingly consequential. It has also at least partially been fed by the West's implementation of R2P. If the norm, which originated in the West, is to flourish in a polycentric world, the onus is on Western leadership to engage relevant non-Western actors in the refinement of the norm's specification and its ensuing implementation.

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The Project

In an era of global flux, emerging powers and growing interconnectedness, transatlantic relations appear to have lost their bearings. As the international system fragments into different constellations of state and non-state powers across different policy domains, the US and the EU can no longer claim exclusive leadership in global governance. Traditional paradigms to understand the transatlantic relationship are thus wanting. A new approach is needed to pinpoint the direction transatlantic relations are taking. TRANSWORLD provides such an approach by a) ascertaining, differentiating among four policy domains (economic, security, environment, and human rights/democracy), whether transatlantic relations are drifting apart, adapting along an ad hoc cooperation-based pattern, or evolving into a different but resilient special partnership; b) assessing the role of a re-defined transatlantic relationship in the global governance architecture; c) providing tested policy recommendations on how the US and the EU could best cooperate to enhance the viability, effectiveness, and accountability of governance structures.

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