The new politics of protection?

Côte d'Ivoire, Libya and

the responsibility to protect

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The international responses to recent crises in Côte d'Ivoire and Libya reveal a great deal about the UN Security Council's approach to human protection.[1] The Council has long authorized peacekeepers to use 'all necessary means' to protect civilians, in contexts including Haiti, the Democratic Republic of Congo (DRC), Sudan, Liberia, Sierra Leone, Burundi and Côte d'Ivoire. But Resolution 1973 (17 March 2011) on the situation in Libya marked the first time the Council had authorized the use of force for human protection purposes against the wishes of a functioning state. The closest it had come to crossing this line previously was in Resolutions 794 (1992) and 929 (1994). In Resolution 794, the Council authorized the Unified Task Force to enter Somalia to ease the humanitarian crisis there, but this was in the absence of a central government rather than against one—a point made at the time by several Council members. In Resolution 929 (1994), the Security Council authorized the French-led Operation Turquoise to protect victims and targets of the genocide then under way in Rwanda; this mission enjoyed the consent of the interim government in Rwanda as well as its armed forces. In passing Resolution 1973, the Council showed that it will not be inhibited *as a matter of principle* from authorizing enforcement for protection purposes by the absence of host state consent. Although its response in Libya broke new ground, it grew out of attitudes and processes evident well before this particular crisis. Most notably, the Council had already accepted—in Resolutions 1674 (2006) and 1894 (2009)—that it had a responsibility to protect civilians from grave crimes, and this was evident in a shift in the terms of its debates from questions about *whether* to act to protect civilians to questions about *how* to engage.

Consensus on the use of force against Libya was enabled by several exceptional factors, in particular a putative regional consensus and the poor international standing of Qadhafi's regime, as well as the clarity of the threat and short timeframe for action. Messier circumstances, such as those in Côte d'Ivoire, are more likely to be the norm; but here too political differences developed over how to respond. Most notably, Russia argued that the use of UN helicopters against heavy weapons was not directly protecting civilians and therefore exceeded

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1 On the centrality of human protection to the work of the UN, see Ban Ki-moon, 'Human protection and the 21st century United Nations', Cyril Foster Lecture, Oxford University, 2 Feb. 2011.

the mandate set out in Resolution 1975 (30 March 2011). There are also difficult operational issues. How can the most effective means of protection be predicted in advance? How should international society engage with the complicated local political dynamics in such conflict zones? What operational guidance can be given to forces tasked with implementing human protection mandates? And how can international society manage the longer-term implications of its actions?

We submit that the Council's consensus on the principle of human protection will hinge upon the performance and legitimacy of the missions it authorizes. Indeed, the Council's informal consultations on the killing of civilians by the Syrian government in May 2011 suggest that disagreements about how to interpret Resolutions 1973 and 1975, concerns about the UN's role in ousting Laurent Gbagbo's regime in Côte d'Ivoire and doubts about the efficacy of coercive means are already making it more difficult to find consensus on human protection. So while the Council's response to the crises in Côte d'Ivoire and Libya might reflect a new politics of protection, it is clearly much easier to agree on the principle that people should be protected from serious crimes than it is to agree on what to do in specific circumstances.

We argue that the 'new' politics of protection displays four principal characteristics and several unresolved questions, all of which emerged gradually over the past decade and did not spring out of the blue in 2011. First, international society is now explicitly focused on civilian protection. This is evident not only in the formal consensus on the 'responsibility to protect' (R2P) but also in the Council's practice in relation to peace operations.[2] The UN Secretary General and other arms of the Secretariat have played a particularly important role in establishing this focus. Second, the Council has repeatedly proven willing to authorize the use of military force for human protection purposes. Third, the relationship between the Security Council and other stakeholders, particularly relevant regional arrangements, has proved crucial. While some regional arrangements have become important peacekeepers in their own right, of more significance here is their emerging role as 'gatekeepers'—influencing which issues get debated in the Council, how they are framed and the range of possible Council responses. Fourth, both activist and more cautious states have agreed to respond to crises through the Security Council and relevant regional organizations. Among other things, unresolved questions concern the interpretation of Council resolutions, the relationship between protection and other goals, the relationship between the Security Council and regional organizations, and how protection mandates can be effectively implemented.

The article proceeds in four parts. The first contextualizes recent developments by briefly summarizing the history of Security Council practice on human protection. The second and third sections examine international society's response to the crises in Côte d'Ivoire and Libya respectively. The final section draws some

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[2] The fact that the Security Council's work is increasingly focused on protection was recognized by several member states at the Council's May 2011 meeting on the issue. See UN Security Council, S/PV.6531, 10 May 2011.

tentative conclusions about the new politics of protection and identifies future challenges.

The politics of protection

As is now well known, R2P was unanimously adopted by UN member states at the 2005 World Summit. This recognized that states had a responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity; that international society had a duty to assist states to fulfil their R2P; and that, should a state 'manifestly fail' to protect its populations from these crimes, international society would take 'timely and decisive' action through the various provisions set out in the UN Charter.[3] Since then, R2P has been reaffirmed in Council resolutions—including 1674 (2006) and 1894 (2009)—in reports of the UN Secretary General,[4] and in the establishment of a new joint office for R2P and the prevention of genocide.[5] As we demonstrate below, the political consensus on R2P and these modest steps towards institutionalizing the principle helped shape international reactions to the crises in Côte d'Ivoire and Libya.

Although the formal adoption of R2P was undoubtedly important, the Security Council has engaged with human protection issues since the late 1990s and has developed a thematic civilian protection agenda related to but distinct from R2P. This encompasses demands for compliance with international humanitarian law, operational issues connected to peace operations and humanitarian access, the Council's role in responding to emergencies, and disarmament issues.[6] In 1999 the Council unanimously adopted Resolution 1265, which expressed its 'willingness' to consider 'appropriate measures' in response 'to situations of armed conflict where civilians are being targeted or where humanitarian assistance to civilians is being deliberately obstructed'; called on states to ratify key human rights treaties and work towards ending the 'culture of impunity' by prosecuting those responsible for genocide, crimes against humanity and 'serious violations of international humanitarian law'; and expressed the Council's willingness to explore how peacekeeping mandates might be reframed to afford better protection to endangered civilians.[7] In 2004, the Council issued an aide-memoire on civilian protection, which was subsequently adopted and developed by the UN's Office for the Coordination of Humanitarian Affairs (OCHA).[8] In April 2006,

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[3] UN General Assembly, '2005 summit outcome', A/60/L.1, 20 Sept. 2005, paras 138–40; Gareth Evans, *The responsibility to protect* (Washington DC: Brookings Institution, 2008); Alex J. Bellamy, *Responsibility to protect* (Cambridge: Polity, 2009); Ramesh Thakur, *The responsibility to protect* (London: Routledge, 2011).

[4] Most notably *Implementing the responsibility to protect*, A/63/677, 12 Jan. 2009.

[5] See Global Centre for the Responsibility to Protect, 'ABACQ and the fifth committee negotiations on the joint office', Jan. 2011.

[6] See UN Security Council, *Protection of civilians*, Cross-Cutting Report no. 2 (New York, 14 Oct. 2008).

[7] While the resolution enjoyed broad support within the Council and the wider membership, there was some scepticism about the Secretary General's approach, notably from India and Egypt. See S/PV.4046 (resumption 1), 17 Sept. 1999.

[8] OCHA Policy Development and Studies Branch, *Aide-memoire for the consideration of issues pertaining to the protection of civilians* (New York, 2004). OCHA proposed a revised version in early 2009, which was welcomed by the Security Council. See S/PV.6066, 14 Jan. 2009.

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the Council issued a further resolution (1674) on the protection of civilians which reaffirmed R2P, reiterated the Council's demand for humanitarian access in crisis zones and indicated its preparedness to act in cases where civilians are deliberately targeted. In 2007, Secretary General Ban Ki-moon created a working group to explore avenues for translating the Council's commitment to protection into tangible outcomes for endangered populations.[9]

The Council also supported human protection by crafting relevant mandates for peace operations. Protection is now widely seen as one of the primary functions of peace operations and central to their legitimacy.[10] Although some early peacekeeping operations contained human rights components, it was very rare for civilian protection to be considered a core objective of the mission. Starting in 1999 with the UN mission in Sierra Leone (UNAMSIL), the Security Council has regularly invoked Chapter VII of the UN Charter to create protection mandates.[11] Shortly thereafter, the Brahimi Report argued that peacekeepers who witness violence against civilians should officially 'be presumed to be authorized to stop it, within their means'.[12] Since then, peace operations in Haiti (MINUSTAH), Burundi (ONUB), Liberia (UNMIL), Sudan (UNMIS, UNAMID) and the DRC (MONUC/MONUSCO), as well as UNOCI in Côte d'Ivoire, have been mandated under Chapter VII to use 'all necessary means' to protect civilians, though usually with the insertion of some important geographical, temporal and capabilities-based caveats. The regular use of Chapter VII to mandate peace operations to protect civilians represented an important development in the Council's thinking. But it is important to stress that each one of these missions operated with the consent—albeit sometimes coerced and unreliable—of the recognized government.[13] Indeed, for at least one permanent member of the Security Council—China—host state consent was a necessary prerequisite for all such deployments. In practice, the caveats and problems related to consent resulted in peace operations employing force to protect civilians infrequently and in most cases only against non-state actors (despite the fact that government forces were often equally culpable).

Over the past decade, the Security Council has also delegated authority to regional arrangements in order to protect civilians, as in the French-led Operation Artemis deployed to eastern DRC in 2003 and the African Union (AU) Mission in Sudan deployed in 2004. Like UN missions, these operations enjoyed the nominal consent of the de jure authorities in the respective countries.

The Security Council's response to the crises in Côte d'Ivoire and Libya needs to be seen in the context of its increasing willingness to authorize coalitions and 'blue-helmet' peacekeeping operations to use all necessary means for

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[9] *Report of the Secretary-General on the protection of civilians in armed conflict*, S/2007/643, 28 Oct. 2007. For the Security Council's reaction, see S/PV.5781, 20 Nov. 2007.

[10] Siobhan Wills, *Protecting civilians: the obligations of peacekeepers* (Oxford: Oxford University Press, 2009).

[11] See Victoria K. Holt and Glyn Taylor with Max Kelly, *Protecting civilians in the context of UN peacekeeping operations* (UN DPKO/OCHA, 2009).

[12] *Report of the Panel on UN Peace Operations*, A/55/305-S/2000/809, 21 Aug. 2000.

[13] Ian Johnstone, 'Managing consent in contemporary peacekeeping operations', *International Peacekeeping* 18: 2, 2011, pp. 168–82.

human protection purposes. This trend has become established in the context of international debate about R2P and the Council's own willingness to reaffirm the principle. However, there were clear limits to what the Council and international society more generally were prepared to do: the Council remained reluctant to authorize the use of force against states, while international society remained reluctant to provide UN operations with the capacity to implement protection mandates or supply more robust multinational operations for anything other than small and limited missions such as Operation Artemis.

Côte d'Ivoire

The latest crisis in Côte d'Ivoire has raised for international society a set of challenges not entirely dissimilar to those faced in several other parts of Africa, including Sierra Leone, Liberia, the DRC and Sudan. Specifically, UN peacekeepers were deployed to oversee the implementation of the Linas–Marcoussis Accords of January 2003 and to use 'all necessary means' to protect civilians. They were not, however, provided with sufficient resources to enforce the peace agreement, to protect all civilians or to serve as a substitute for state authority, and in some senses played a more traditional interposition role between the conflicting parties.[14] UNOCI was also supported by several thousand French soldiers stationed in Côte d'Ivoire prior to the outbreak of armed conflict.

The latest phase of the conflict came to a head after the principal parties disputed the results of the long-postponed presidential election of 28 November 2010. Shortly thereafter armed conflict reignited between the supporters of incumbent President Laurent Gbagbo and his challenger Alassane Ouattara. Within days of Gbagbo claiming an election victory, the Economic Community of West African States (ECOWAS) and the UN Secretary General concluded that Ouattara had in fact prevailed, yet Gbagbo and his supporters refused to step aside. As fighters from both sides began to commit atrocities, UNOCI and France confronted difficult political and operational questions about how to protect civilians.

After independence from France in 1960, Côte d'Ivoire was ruled by Félix Houphouët-Boigny and the Parti Démocratique de Côte d'Ivoire (PDCI). Houphouët-Boigny resisted democratization but forged strong patronage ties with France, encouraged foreign investment, achieved economic growth, and built a degree of national unity based largely on the balancing of competing groups and interests.[15] Côte d'Ivoire became the world's largest exporter of cocoa, creating a demand for labour satisfied by immigration from neighbouring countries.[16] But the economic benefits were distributed very unevenly, creating significant inequities between the economically active south and the largely impoverished

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[14] See S/PV.6427, 22 Nov. 2010.
[15] Abu Bakarr Bah, 'Democracy and civil war: citizenship and peacemaking in Côte d'Ivoire', *African Affairs* 109: 437, 2010, p. 601.
[16] Ruth Marshall-Fratani, 'The war of "who is who": autochthony, nationalism and citizenship in the Ivoirian crisis', *African Studies Review* 49: 2, 2006, pp. 9–43; Daniel Chirot, 'The debacle in Côte d'Ivoire', *Journal of Democracy* 17: 2, 2006, pp. 63–77.

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north. After Houphouët-Boigny's death in 1993, economic disparities were used by politicians to exacerbate ethnic, cultural and religious divisions within the country. Under the terms of the constitution, the presidency passed to the PDCI's speaker of the National Assembly, Henri Konan Bédié. Bédié opposed democratic reform, thereby losing the support of the PDCI's reformist wing, Rassemblement des Républicains (RDR), which broke away and offered Alassane Ouattara as an alternative leader. The PDCI's stranglehold on power was also challenged by Laurent Gbagbo's opposition party, the Front Populaire Ivoirien (FPI), which had contested and lost an election against Houphouët-Boigny's PDCI in 1990.

Facing potential defeat at the polls in 1995, Bédié resorted to sectarian politics by espousing the doctrine of *Ivoirité*. This played on existing divisions and conflicts rooted in economic inequality and held that certain groups could not claim to be Ivoirian or enjoy citizenship rights. In 1994 he forced through a law demanding that candidates for public office prove that their parents were Ivoirian by origin, which he then used to disqualify Ouattara's candidacy for the presidency on the grounds that his father was allegedly from Burkina Faso. The FPI also boycotted the 1995 election, allowing Bédié to claim a mandate to govern. Thenceforth *Ivoirité* guided many aspects of national policy, including land tenure and public employment, adding to economic and political exclusion and exacerbating inter-group tensions.[17] In 1999 General Robert Guéï launched a military coup against Bédié, promising to move towards civilian and inclusive government. However, Guéï also proved reluctant to relinquish power, and his attempt to legitimize his rule through rigged elections in 2000 failed thanks to street protests organized by the FPI (which championed the extension of *Ivoirité*) and the RDR (which opposed the policy). Gbagbo claimed an electoral victory, Guéï fled the country, and the FPI and RDR turned on each other. Gbagbo retained power and used *Ivoirité* to discredit Ouattara and the RDR.

In September 2002 the Patriotic Movement of Côte d'Ivoire (MPCI), led by disgruntled army officers from marginalized groups in the country's north, launched an armed insurrection which quickly assumed control of the north, though an attack on the commercial centre Abidjan was repelled. The MPCI was joined by two other armed groups, the Mouvement Populaire Ivoirien du Grand Ouest (MPIGO) and the Mouvement pour la Paix et la Justice (MPJ), in establishing the Forces Nouvelles led by Guillaume Soro. The rebels demanded recognition of their Ivoirian citizenship, an end to *Ivoirité*, and transparent elections.[18] In the face of this challenge Gbagbo's government established militia groups. Both sides recruited former combatants from Liberia and Sierra Leone as mercenaries and committed major violations of international humanitarian law on a widespread and systematic basis, including massacres, extrajudicial executions, the recruitment and use of child soldiers, and various forms of sexual violence.[19] In

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[17] Bah, 'Democracy and civil war', p. 602.
[18] Bah, 'Democracy and civil war', p. 605.
[19] Human Rights Watch, *Afraid and forgotten: lawlessness, rape and impunity in western Côte d'Ivoire* (New York, Oct. 2010), p. 15. On the wider pattern of abuses, see Human Rights Watch, *Trapped between two wars: violence against civilians in western Côte d'Ivoire* (New York, Aug. 2003).

2011 it was commonly thought that a renewal of civil war would mean a resumption of violence against civilians.

International society's response to the conflict was relatively rapid, facilitated by the presence of French troops and the activism of ECOWAS. In October 2002 Gbagbo requested French assistance in suppressing the uprising. France responded swiftly to his request, but, chastened by international criticism of its past support for authoritarian governments such as those in Rwanda, Zaire and Chad, Paris opted for a peacekeeping response and established a buffer zone between the belligerents.[20] In May 2003, under Resolution 1479, the Security Council established a political mission (MINUCI) to observe and facilitate implementation of the accords. Later that year, and with substantial French support, ECOWAS deployed a peacekeeping mission (ECOFORCE/ECOMICI) to help stabilize the situation. After protracted French lobbying, which won over its African members, the Security Council reached a compromise in Resolution 1528 on the establishment of a medium-sized operation, UNOCI, comprising some 8,000 troops. This absorbed the ECOWAS force and MINUCI and was to operate alongside French forces. France had initially called for the UN to deploy a larger force, but this was opposed by the Bush administration as unnecessary and costly.[21] Among other things, UNOCI was given a Chapter VII mandate to 'protect civilians under imminent threat of physical violence, within its capabilities and areas of deployment'. The resolution also authorized French forces to use 'all necessary means' to support UNOCI and 'help protect civilians'.

Despite its robust mandate, UNOCI proved unable to prevent Gbagbo's forces from attacking the Forces Nouvelles in late 2004 or to protect civilians from periodic abuses. Indeed, some of its personnel were themselves accused of sexually abusing and exploiting the locals. In late 2004, tensions between France and pro-Gbagbo forces escalated when nine French peacekeepers were killed by the Ivoirian air force. France retaliated by destroying Gbagbo's air force, seizing the key airport at Yamoussoukro, and deploying heavy armour near Gbagbo's home. After that, political progress stagnated and planned elections were repeatedly delayed, not least because of radical disagreements about the meaning of Ivoirian citizenship and failures to implement disarmament and demobilization plans. In response, Security Council Resolution 1739 (2007) moved—at French insistence—to strengthen the position of prime minister as a counterbalance to the president. Although Gbagbo accused France of neo-imperialism, he entered into dialogue with Guillaume Soro which eventually produced the Ouagadougou agreement. This established a transitional government of national unity with Soro appointed as prime minister, paved the way to national elections, created a process for resolving citizenship disputes, and called for the phased withdrawal of UNOCI and French forces concluding

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[20] See Maja Bovcon, 'France's conflict resolution strategy in Côte d'Ivoire and its ethical implications', *African Studies Quarterly* 11 : 1, 2009, p. 7; Moya Collett, 'Foreign intervention in Côte d'Ivoire: the question of legitimacy', in Tony Coady and Michael O'Keefe, eds, *Righteous violence* (Melbourne: Melbourne University Press, 2005), pp. 160–82.
[21] Bovcon, 'France's conflict resolution strategy', p. 11.

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after the presidential election.[22] After several delays, the first round of presidential elections was held on 31 October 2010 and widely judged successful.[23]

The presidential run-off, which began on 27 November 2010, did not go smoothly. Disputes about citizenship and ethnicity resurfaced; both sides used violence and intimidation, and dozens were killed in pre-election violence. Using this as a pretext, Gbagbo imposed a curfew during the election. When Ouatta-ra's supporters in Abidjan took to the streets to oppose the move, security forces opened fire, killing five people and injuring many others.[24] With early election results suggesting a Ouattara victory, Gbagbo's representatives prevented the dissemination of the result. In the meantime, the Constitutional Council declared that there had been massive vote-rigging in the north and cancelled 660,000 votes for Ouattara, thereby handing the election to Gbagbo. On 16 December security forces fired on demonstrators, leaving at least eleven civilians dead. Reports also emerged of a wider pattern of killings across the country, and UNOCI reported that government forces had denied access to the site of suspected mass graves.[25] According to Scott Straus, there were two main dynamics of post-election violence: urban repressive violence directed against demonstrators, northern Muslims and West African nationals by Gbagbo's forces; and rural violence between indigenous and ethnic minority groups in the country's west, which followed a spiral pattern of reprisals.[26] As violence escalated, in Abidjan Ouattara was confined to the Golf Hotel, where he was protected by UNOCI peacekeepers.[27]

By this stage the Security Council had already come to a consensus that Ouattara had won the November election and was the rightful president of Côte d'Ivoire. After receiving a briefing from the Secretary General's Special Repre-sentative for Côte d'Ivoire, who insisted that Ouattara had prevailed, the Council formally supported this view in Resolution 1962 (20 December 2010) and urged the parties to respect this result. Among other things, at the Secretary General's urging the Council decided to strengthen UNOCI by requesting the deployment of Ukrainian helicopters.

The Council's decision to call the election result was politically significant for both New York and Abidjan. In doing so, the Security Council dismissed the validity of the Ivoirian Constitutional Council's decision—a significant step for those Council members formally committed to working on the basis of host state consent. It is difficult to know why Council members chose this course of action, because no formal statements were offered after the adoption of Resolution

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[22] Bah, 'Democracy and civil war', p. 613; Bovcon, 'France's conflict resolution strategy', p. 13.
[23] For example, International Crisis Group (ICG), *Côte d'Ivoire: finally escaping the crisis?*, Africa Briefing no. 77 (Brussels, 25 Nov. 2010).
[24] ICG, *Côte d'Ivoire: is war the only option?*, Africa Report no. 171 (Brussels, 3 March 2011), p. 1.
[25] ICG, *Côte d'Ivoire: is war the only option?*, p. 8.
[26] Scott Straus, 'It's sheer horror here: patterns of violence during the first four months of Côte d'Ivoire's electoral crisis', *African Affairs*, advance access 19 May 2011, http://afraf.oxfordjournals.org/content/early/2011/05/19afraf.adr024.extract, accessed 17 June 2011.
[27] For a useful guide to the order of post-election events, see Rebecca Friedrichs, 'Timeline: election crisis in Côte d'Ivoire' (Washington DC, Stimson Center), http://www.stimson.org/images/uploads/research-pdfs/Timeline_Election_Crisis_in_Cte_dIvoire.pdf, accessed 12 June 2011.

1962.[28] The resolution itself, however, recalls the prior recognition of Ouattara as president-elect by the African Union and ECOWAS. As in Libya, therefore, the attitude of regional arrangements was a critical determinant of Security Council action. It seems unlikely that China and Russia would have effectively dismissed the Constitutional Council's decision without prior regional support. The decision also had a significant impact in Abidjan because, as McGovern explained, 'such unanimity countered Gbagbo's strategy of playing for time, hoping that African–European or inter-African schisms would provide him with some sort of mitigated legitimacy'.[29] It thus quashed any hope Gbagbo or his allies may have harboured of securing a power-sharing agreement such as those negotiated in the wake of disputed elections in Kenya and Zimbabwe. The decision also legitimized economic sanctions against Gbagbo's supporters. Most notably, ECOWAS members moved to suspend the government's access to banking services, undercutting Gbagbo's ability to pay civil servants and soldiers and thereby reducing his allies to a small coterie of dedicated followers.[30] Finally, the decision rendered Gbagbo's consent for the deployment of UN and French peacekeepers legally obsolete. A few days prior to the passage of Resolution 1962, Gbagbo had demanded the immediate withdrawal of all foreign forces on the grounds that they were biased in favour of the rebels. The UN Secretariat responded with a press statement insisting that Gbagbo's statements were inconsequential because ECOWAS, the AU, France, the US and others recognized Ouattara as the de jure president and—tellingly, in the light of what we have said about the place of consent in Council decision-making—because it was for the Security Council alone to determine whether to extend or terminate UNOCI.[31]

Concerns about the potential for mass atrocities appeared shortly thereafter. On 29 December, the Special Advisers to the Secretary General on the Prevention of Genocide and R2P (hereafter 'Special Advisers') issued a statement expressing 'grave concern' at the situation in Côte d'Ivoire, highlighting concerns about the incitement of atrocities, and reminding all the parties of their responsibility to protect.[32] The Special Advisers reiterated their 'grave' concerns in a second statement issued on 19 January 2011 that also specifically identified a series of clashes which 'if not checked, could culminate in mass atrocities'.[33] Protection was not the only concern, but it was part of the equation early on in the post-election crisis and the UN Secretariat played a leading role in placing it on the agenda.

By early 2011, international society confronted a highly complex situation: there was an imminent threat to the civilian population; UN and French forces

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[28] UN Security Council, *Update report: Côte d'Ivoire*, 14 Jan. 2011. The position of Russia and China is particularly interesting given that both had expressed concern about this policy in informal consultations and preferred a technical resolution focusing on UNOCI and leaving political matters aside.

[29] Michael McGovern, 'The Ivoirian endgame', *Foreign Affairs*, 14 April 2011, http://www.foreignaffairs.com/articles/67728/mike-mcgovern/the-ivoirian-endgame, accessed 12 June 2011.

[30] McGovern, 'Ivoirian endgame'.

[31] Voice of America, 'UN spokesman: Gbagbo not Ivory Coast president', 18 Dec. 2010.

[32] UN press release, 'Secretary General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the situation in Côte d'Ivoire', 29 Dec. 2010.

[33] UN, statement attributed to Secretary General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the situation in Côte d'Ivoire, 19 Jan. 2011.

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were mandated to protect civilians; but although they enjoyed the support of the de jure authorities, Gbagbo's de facto regime in Abidjan viewed the peacekeepers as partisan opponents. There was also little agreement about what should be done to resolve the crisis and protect civilians, and a palpable absence of viable avenues for breaking the deadlock.[34]

Diplomatic efforts to resolve the crisis proceeded on two fronts. First, in early December ECOWAS had suspended Côte d'Ivoire's membership, called on Gbagbo to step aside and threatened that it might 'use … legitimate military force' if he did not; and in early January it dispatched a delegation of presidents to Abidjan to talk Gbagbo down. But Gbagbo called their bluff and stood firm. Although ECOWAS tasked its military chiefs of staff to examine the available military options, its political leaders were well aware that they were in no position to mount an effective military intervention and instead called for the UN Security Council to take more forceful action. Meanwhile, on the second front, UN officials pursued quiet mediation. Fourteen rounds of negotiation made little headway, largely because Gbagbo was not prepared to concede defeat and Ouattara, with strong international support, was not prepared to make fundamental concessions. In early January UN Secretary General Ban Ki-moon publicly called on Gbagbo to step down and indicated that any attempt to attack Ouattara or harass UNOCI troops would be 'unacceptable'.[35] In a letter to the Security Council, the Secretary General also emphasized the potential risk to civilians, noting that 'the precarious security situation could quickly degenerate into widespread conflict' and pointing to the 'state media's incitement of hostility and violence against particular Ivorian ethnic, religious and political groups'.[36]

On the ground, the situation deteriorated, pushing the UN and French towards more obviously partisan positions. In late February, the Forces Nouvelles seized two western towns, Zouan Hounien and Binhouye. On 17 March, a rocket attack on a pro-Ouattara part of Abidjan killed or maimed at least 100 people. UNOCI issued a statement indicating that 'such an act, perpetrated against civilians, could constitute a crime against humanity'.[37] Ouattara's forces, now calling themselves the Republican Forces of Côte d'Ivoire (RFCI), took several more western towns and then, on 28 March, launched a general offensive. Forces associated with the RFCI massacred an estimated 800–1,000 civilians in the town of Duékoué (at the time of writing the UNHCR had confirmed that it had recovered 244 bodies).[38] Pro-Gbagbo Liberian mercenaries were thought to be responsible for massacres in Blolequin and Guiglo, where up to 100 civilians were killed.

On 30 March the Security Council unanimously passed Resolution 1975. This recognized Ouattara as president, condemned Gbagbo's refusal to negotiate a resolution, and authorized UNOCI to 'use all necessary means' to protect civilians, including by 'prevent[ing] the use of heavy weapons against the civilian

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[34] Authors' conversations with UN officials, Feb. 2011.
[35] Thalif Deen, 'Côte d'Ivoire: UN tight lipped on use of military force', Inter Press Service, 7 Jan. 2011.
[36] S/2011/5, Letter from the Secretary General of the United Nations to the Security Council, 7 Jan. 2011.
[37] 'Ivory Coast shelling in Abidjan a war crime—UN', BBC News, 18 March 2011.
[38] 'Ivory Coast: more than 100 bodies found', BBC News, 8 April 2011.

population'.[39] At the time, Council members offered different interpretations of this text, differences which became very significant in the light of what followed. The UK said the resolution did 'not alter' UNOCI's 'robust mandate … under which the Operation is already authorized to use all necessary means to protect civilians', but that it did 'reaffirm UNOCI's role in protecting civilians and preventing the use of heavy weapons against civilians'. China, in contrast, said 'peacekeeping operations should strictly abide by the principle of neutrality' and UNOCI should 'help to peacefully settle the crisis … and avoid becoming a party to the conflict'. India, meanwhile, emphasized that peacekeepers 'cannot be made instruments of regime change'; as a consequence, its representative said that UNOCI 'should not become a party to the Ivorian political stalemate [and] should also not get involved in a civil war, but [should] carry out its mandate with impartiality and while ensuring the safety and security of peacekeepers and civilians'.[40]

The following day, RFCI forces entered Abidjan and, although most of Gbagbo's army melted away, he remained in his stronghold. On 4 April the UN evacuated its civilian personnel, and UN helicopters as well as French attack helicopters assaulted military camps and destroyed heavy weapons and weapons stockpiles. This helped turn the tide of battle decisively in Ouattara's favour, although Gbagbo was able to hold out for another week, with his forces attacking UN positions on 10 April.

This use of force by UN peacekeepers and French troops blurred the lines between human protection and regime change and raised questions about the role of the UN in overriding Côte d'Ivoire's Constitutional Council, about the proper interpretation of Resolution 1975, and about the place of neutrality and impartiality in UN peacekeeping. One vocal critic was the former South African President. Thabo Mbeki, who argued that the UN had overstepped its authority by overriding the Constitutional Council, that Ban Ki-moon had exceeded his mandate by declaring Ouattara to be the winner of the elections, and that UNOCI had fallen short of its mandate by failing to prevent or stop ceasefire violations by the Forces Nouvelles and then by failing to protect civilians in Duékoué. The source of these failings, he maintained, lay in the abandonment of impartiality by the UN and the undue influence exerted by France.[41]

The Russian Foreign Minister Sergei Lavrov also criticized the role played by the UN, arguing that 'UN peacekeepers and supporting French forces in Côte d'Ivoire have started military action, taking the side of Ouattara, carrying out air strikes on the positions held by supporters of Gbagbo. We are now looking into the legality of this situation, because the peacekeepers were authorized to remain neutral, nothing more.'[42] Russia sustained this line of criticism at the Security Council's May 2011 debate on the protection of civilians. In a thinly veiled refer-

[39] The specific reference to heavy weapons was an unusual addition to a civilian protection mandate and may have been deliberately inserted by France to foreground its planned military action in conjunction with UNOCI.

[40] All quotes from S/PV.6508, 30 March 2011.

[41] Thabo Mbeki, 'What the world got wrong in Côte d'Ivoire', *Foreign Policy*, 29 April 2011, http://www.foreign policy.com/articles/2011/04/29/What_the_world_get_wrong_in_cote_d_ivoire, accessed 12 June 2011.

[42] 'Russia lashes out at UN military action in Côte d'Ivoire', Associated Press, 6 April 2011.

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ence to UNOCI, Russia insisted: 'We believe that it is necessary once again to clearly reaffirm that it is unacceptable for United Nations peacekeepers to be drawn into armed conflict and, in effect, to take the side of one of the parties when implementing their mandate.'[43] At the same meeting, Brazil maintained that 'the use of force by peacekeepers to protect civilians must be carried out with utmost restraint. This is necessary to ensure that blue helmets are not perceived as parties to the conflict. Avoiding such a perception is crucial for the continued success of peacekeeping.'[44]

Responding to these criticisms, Ban Ki-moon argued that 'in line with its Security Council mandate, the mission [UNOCI] has taken this action in self-defence and to protect civilians'.[45] This argument was reiterated in the Secretary General's keynote address in Sofia, where he argued that 'at no time has the UN exceeded its Security Council mandates. In Côte 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 our own headquarters and peacekeepers.'[46] In relation to the self-defence argument, UNOCI reported that on 31 March its headquarters in Abidjan had been attacked by forces loyal to Gbagbo and had returned fire, and that three UN convoys had also been attacked, with three peacekeepers being injured.[47] In line with past UN practice—especially MONUC's campaign against the Democratic Liberation Forces of Ruanda (FDLR) in the DRC—UNOCI explained that on 4 April it had responded to these attacks with limited force aimed at degrading Gbagbo's capacity to attack peacekeepers. A few days later, peacekeepers protecting Ouattara and his staff came under attack by forces loyal to Gbagbo. One Bangladeshi peacekeeper was killed and another injured. According to Bangladesh's Permanent Representative to the UN, his government demanded an urgent response from the UN, and both the deputy head of the Department for Peacekeeping Operations (DPKO), Atul Khare, and Ban Ki-moon himself advised that UNOCI was planning to respond with force soon afterwards. The second, and more intense, use of force by UNOCI was therefore portrayed as a response to the killing of a UN peacekeeper and accordingly an act of self-defence. The civilian protection argument appears somewhat weaker, given that UNOCI did little to prevent or punish massacres by RFCI forces and their allies. Nevertheless, the proclivity of Gbagbo forces to fire on unarmed protesters and fire rockets into civilian areas gave grounds for thinking that they posed a threat to civilians and were prepared to employ heavy weapons against them.

International society's engagement with the crisis in Côte d'Ivoire included human protection as a core goal, permitted the use of force to that end, and proceeded through the Security Council. The situation became more controver-

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[43] S/PV.6531, 10 May 2011, p. 9.
[44] S/PV.6531, 10 May 2011, p. 11.
[45] Quoted in 'Ivory Coast: UN forces fire on pro-Gbagbo camp', BBC News, 4 April 2011.
[46] Ban Ki-moon, 'Address to the Sofia platform', 6 May 2011, http://www.un.org/News/Press/docs/2011/sgsm13548.doc.htm, accessed 12 June 2011.
[47] 'Ivory Coast: Gbagbo troops "hit" Ouattara HQ', BBC News, 10 April 2011.

sial once the UN Secretariat and Council had defined Ouattara as Côte d'Ivoire's legitimate president, enabling UNOCI to reject demands for its withdrawal made by Gbagbo's de facto regime. Finally, regional arrangements played a crucial 'gatekeeping' role in defining the problem and terms of engagement. In particular, the Security Council's judgement about the election result was explicitly conditioned by the prior statements of ECOWAS and the AU; the UN Secretary General was clearly guided by that regional support; and the specific language on the use of force for protection purposes in Resolution 1975 was facilitated by ECOWAS's earlier announcement that force could be a legitimate means of responding to the crisis. Without strong regional support it is very unlikely that events would have unfolded in this manner.

But the episode also highlights some of the unresolved challenges associated with this new politics of protection. First, Security Council members offered different interpretations of UNOCI's mandate. Compared to the Secretary General and some other Council members, India, China and Russia adopted a restrictive interpretation and were particularly concerned that by using force only against Gbagbo's forces and not against the RFCI—which had also breached the ceasefire and massacred civilians—UNOCI had abandoned impartiality.

Second, the episode raised questions about whether the Secretary General's role should be more 'secretary' or 'general'.[48] Critics complained that the UN Secretariat exceeded its mandate by challenging the Constitutional Council's announcement about the election result and permitting the use of force by UN peacekeepers in collaboration with French forces without the specific authorization of the Security Council. Indeed, it has been suggested that Russia was so incensed by the Secretary General's actions that it considered vetoing Ban Ki-moon's second term as Secretary General.[49] Clearly, if the UN is serious about being in the human protection business, peacekeepers must be able to take decisions quickly; but this needs to be done in a way that ensures Council mandates are implemented in a manner consistent with its wishes.

A third challenge relates to coordination across and outside the UN system. In this case the International Criminal Court's chief prosecutor, Luis Moreno-Ocampo, was criticized for undermining attempts to negotiate a resolution to the crisis by issuing a statement on 21 December 2010 in which he promised that 'those leaders who are planning violence will end up in The Hague'.[50] According to Michael McGovern, 'with one sentence, Moreno-Ocampo ensured that Gbagbo would reject any negotiated solution and instead fight to the end'.[51]

Finally, the human protection agenda clearly requires international actors to engage in messy and complicated national and international politics. In cases like this, peacekeepers will have to make difficult judgements about how to balance

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[48] See Simon Chesterman, ed., *Secretary or general? The UN Secretary-General in world politics* (Cambridge: Cambridge University Press, 2007).

[49] Authors' correspondence with Western diplomat in New York, 28 April 2011.

[50] Statement by ICC prosecutor Luis Moreno-Ocampo on the situation in Côte d'Ivoire, 21 Dec. 2010, http://www.icc-cpi.int/NR/exeres/EB76851B-C125-4E70-8271-D781C54E2A65.htm, accessed 12 June 2011.

[51] McGovern, 'The Ivoirian endgame'.

potentially contradictory aspects of their mandate. Would human protection have been best served by enforcing the ceasefire with equal vigour against all the parties—in effect, pitting UNOCI against all the armed groups in Côte d'Ivoire? Would things have been better had UNOCI tried to remain neutral, or in that case would we now be writing about a protracted civil war and mounting civilian deaths and displacements? Should the UN have accepted the judgement of the Constitutional Council and proceeded to cooperate with a Gbagbo-led government? Should the UN have cooperated so closely with French forces? Should UNOCI have done more to prevent and punish massacres by the RFCI? In our view, the course set by UNOCI's leadership and the UN Secretariat helped to stabilize the situation and minimize casualties, but things could have turned out very differently. More thinking is required about the operational guidance and capabilities required to fulfil human protection mandates.

Libya

The March 2011 crisis in Libya was unexpected and escalated rapidly. Indeed, none of the world's existing genocide/atrocity risk assessment frameworks identified Libya as being at risk, despite some of those lists extending to 68 countries.[52] To their credit, the UN's Special Advisers warned of the risk of crimes against humanity in Libya *before* most non-governmental agencies did so, but even this was very late in the day.

The roots of Libya's crisis lie in the political upheavals associated with the 'Arab Spring' protests that spread from Tunisia to Egypt and beyond in the early months of 2011. After some initial protests in mid-January, demonstrations quickly turned violent. This was partly because of the regime's crackdown and partly because defections from the government and army facilitated the establishment of an armed opposition group under the Interim Transitional National Council (henceforth referred to as the Interim Council). Initially the rebels enjoyed rapid successes, establishing a firm hold over the cities of Benghazi and Tobruk and declaring they had taken control of most of the country's other major cities. In late February and early March, however, Qadhafi's forces retook much of the country and by mid-March were threatening to crush the rebellion's eastern epicentre in Benghazi. In words that bore direct echoes of the 1994 Rwandan genocide, Qadhafi told the world that 'officers have been deployed in all tribes and regions so that they can purify all decisions from these cockroaches' and 'any Libyan who takes arms against Libya will be executed'.[53]

As in Côte d'Ivoire, senior UN officials framed the problem as one of human protection, warning of the imminent threat to civilians in Libya. On 22 February

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[52] The 'Mass Atrocity Crime Watch List' did not include Libya in its list of 33 'at risk' countries (http://www.preventorprotect.org/overview/watch-list.html); nor did Barbara Harff's list of 27 countries (http://globalpolicy.gmu.edu/genocide/CurrentRisk2008.pdf). Minority Rights Group International did not list Libya among the 68 countries posing a risk to minorities in 2010 (http://www.minorityrights.org/9885/peoples-under-threat/peoples-under-threat-2010.html), and Libya was not an 'area of concern' for the Genocide Intervention Network (http://www.genocideintervention.net/), all last accessed 12 June 2011.
[53] 'Defiant Gaddafi issues chilling call', ABC (Australia), 23 Feb. 2011.

the UN's High Commissioner for Human Rights, Navi Pillay, called on the authorities to stop using violence against demonstrators, which 'may amount to crimes against humanity'.[54] On the same day, the Special Advisers said the regime's behaviour could amount to crimes against humanity and insisted that it comply with its 2005 commitment to R2P.[55] The Secretary General reiterated this point the following day, thus framing the crisis as a human protection problem and reminding both the Libyan authorities (to no effect) and the Security Council (to good effect) of their responsibilities. On 25 February, the UN Human Rights Council established a commission of inquiry to investigate the situation and urged the General Assembly to suspend Libya from the Human Rights Council—which it duly did on 1 March.

As in Côte d'Ivoire, regional organizations played a 'gatekeeping' role by establishing the conditions under which the Security Council could consider adopting enforcement measures. The first sign that relevant regional arrangements would facilitate a robust international response came on 22 February when the League of Arab States (LAS)—an organization traditionally wedded to the principle of non-interference—suspended Libya's participation until the violence was stopped.[56] On 23 February, the AU's Peace and Security Council issued a communiqué which condemned 'the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law', in response to the 'legitimate' 'aspirations of the people of Libya for democracy, political reform, justice and socio-economic development'.[57]

Activism by the UN Secretariat and the relatively tough stance taken by regional organizations thus set the context for the Security Council's discussions on the crisis. From the outset, the UK and France supported a tough line while the US administration was more reticent, especially with regard to potential military options. The Council held informal consultations on 22 February and was briefed by the Under-Secretary General for Political Affairs, Lynn Pascoe, after which it issued a press statement that welcomed the LAS statement earlier that day, expressed grave concern about the situation in Libya, condemned the use of force against civilians, called on the government to meet its responsibility to protect and promised to monitor the situation closely.[58] Four days later, after further consultations, the Council unanimously passed Resolution 1970. Among other things, this condemned 'the widespread and systematic attacks' against civilians, which, it noted, 'may amount to crimes against humanity'; welcomed the earlier criticisms of the Libyan government's actions by the LAS, the AU and the Organization of the Islamic Conference (OIC); and underlined the Libyan government's responsibility to protect its population. Acting under Chapter VII

[54] 'Libya attacks may be crimes against humanity: UN', Reuters, 22 Feb. 2011.
[55] UN press release, statement by the UN Secretary General Special Adviser on the Prevention of Genocide, Francis Deng, and the Special Adviser on the Responsibility to Protect, Edward Luck, on the situation in Libya, 22 Feb. 2011.
[56] See Arabic original statement, http://www.arableagueonline.org/lasimages/picture_gallery/bayan22–2-2011. doc, accessed 12 May 2011.
[57] AU document PSC/PR/COMM(CCLXI), 23 Feb. 2011.
[58] SC/10180-AFR/2120, 22 Feb. 2011.

of the UN Charter, the Council demanded an immediate end to the violence; urged Qadhafi's government to ensure safe passage for humanitarian and medical supplies; referred the situation in Libya since 15 February to the Prosecutor of the International Criminal Court;[59] established an arms embargo on the country; imposed indefinite travel bans on 16 individual members of the Libyan regime; froze indefinitely the assets of six members of the regime; established a sanctions committee to monitor the implementation of these measures; and called upon member states to make available humanitarian and related assistance for Libya.

Resolution 1970 proved relatively uncontroversial, although several Council members intimated in the informal consultations that they were not prepared to endorse more coercive measures. Russia argued publicly that

a settlement of the situation in Libya is possible only through political means. In fact, that is the purpose of the resolution … which imposes targeted, clearly expressed, restrictive measures with regard to those guilty of violence against the civilian population. However, it does not enjoin sanctions, even indirect, for forceful interference in Libya's affairs, which could make the situation worse.[60]

It was widely thought at the time that China, India and probably Brazil shared this view, making the adoption of further, more coercive, measures highly unlikely. In response, on 2 March, Qadhafi's regime wrote to the UN Security Council declaring its condemnation of Libya to be premature and requesting that Resolution 1970 be suspended until the allegations against Libya were confirmed.[61]

After Resolution 1970, three factors helped persuade the Security Council to overcome its differences and adopt enforcement measures, albeit with the abstention of five members. The first was Libyan intransigence, along with the deterioration of the situation inside Libya, with the imminent fall of rebel-held Benghazi and fears that Qadhafi's forces would commit a massacre there. On the diplomatic front, the Qadhafi regime rejected the demands set out in Resolution 1970 and refused to permit humanitarian aid convoys into besieged towns such as Misrata and Ajdabiya. The UN Secretary General personally contacted the Libyan leader and in a 40-minute conversation tried—and failed—to persuade him to comply. Thus, while the search for a diplomatic solution through the UN Special Envoy and the AU High-Level Committee enjoyed widespread support, many governments, commentators and UN officials alike were coming to the view that diplomacy alone would not prevent a massacre.

Second, the UK and France stepped up their calls for a tougher international response, introducing a draft resolution on a no-fly zone several days before serious negotiations on Resolution 1973 began.[62] This proposal was opposed by Germany and regarded with considerable caution by the United States. On 10 March, however, NATO announced that it was moving additional ships into the region to support humanitarian assistance efforts and its own ability to monitor the crisis

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[59] On 3 March, the ICC prosecutor said his office was investigating crimes against humanity that may have been committed by Qadhafi's regime.
[60] S/PV.6491, 26 Feb. 2011.
[61] Cited in Security Council, *Update report no. 1, Libya*, 14 March 2011.
[62] Bruce D. Jones, 'Libya and the responsibilities of power', *Survival* 53: 3, 2011, p. 53.

effectively. Its Secretary General also revealed that the alliance was discussing how an arms embargo and/or no-fly zone over Libya might be enforced.[63]

The deteriorating situation and Anglo-French activism ramped up the rhetoric, but with the US decidedly uncommitted and with authorization from the UN Security Council thought highly unlikely owing to Russian, Chinese, Indian, Brazilian and German opposition, the prospects for military action appeared slim. The political game-changer came with the third key factor—the positions taken by relevant regional organizations. Once again regional organizations served as 'gatekeepers' by framing the issues and defining the range of feasible international action.

On 7 March the Gulf Cooperation Council (GCC) called on the UN Security Council to 'take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya', and condemned 'crimes committed against civilians, the use of heavy arms and the recruitment of mercenaries' by the Libyan regime. The following day, the OIC echoed the GCC position when it called for a no-fly zone over Libya, although it explicitly excluded foreign military operations on the ground.[64] On 10 March the GCC claimed that Qadhafi's regime had lost all legitimacy and urged the Arab League to initiate contact with the Interim Council. That same day, France, Italy and EU foreign affairs head Catherine Ashton also opened dialogue with the Interim Council. It was the 12 March declaration by the LAS that proved decisive, however. This called on the UN Security Council 'to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighbouring States', and to '*cooperate and communicate* with the Transitional National Council of Libya and to provide the Libyan people with urgent and continuing support as well as the necessary protection from the serious violations and grave crimes committed by the Libyan authorities, which have consequently lost their legitimacy'.[65] Given subsequent debates about what was meant by a 'no-fly zone', it is important to stress that the LAS statement called for a no-fly zone *and the establishment of safe areas* to protect civilians from shelling.

Unfortunately, we do not have a good understanding of *why* the LAS, a longstanding opponent of humanitarian intervention, adopted this decision; but there are a number of factors that may have played a role.[66] First, several immediate

[63] 'NATO ready to support international efforts on Libya', NATO, 10 March 2011, http://www.nato.int/cps/en/natolive/news_71446.htm, accessed 12 June 2011.

[64] 'Final communique issue by the emergency meeting of the Committee of Permanent Representatives to the Organization of the Islamic Conference on the Alarming developments in Libyan Jamahiriya, 8 March 2011, http://www.oic-oci.org/topic_detail.asp?t_id=5022&x_key=, accessed 12 June 2011..

[65] Council of the League of Arab States, Res. no. 7360, 12 March 2011, paras 1 and 2.

[66] Thanks to Louise Fawcett for helpful advice on some of these points. On Arab attitudes towards humanitarian intervention and R2P, see Gulf Research Centre, *Arab perspectives and formulations on humanitarian intervention in the Arab countries* (Dubai, UAE, Gulf Research Council Event Papers, 2005), esp. pp. 68–87; Bassma Kodmani, 'The imported, supported, and homegrown security of the Arab world', in Chester Crocker, Fen Osler Hampson and Pamella Aall, eds, *Rewiring regional security* (Washington DC: US Institute of Peace Press, 2011), pp. 240–42.

contextual factors might have influenced the decision: the meeting was driven by the pro-US GCC grouping; only eleven LAS members were present, with the GCC in the majority; and the meeting was held in Cairo in the immediate aftermath of the overthrow of Hosni Mubarak and chaired by the new Egyptian government. It would be unwise to exaggerate the role of the GCC's pro-US orientation in this instance, since the Obama administration was yet to endorse the idea of a no-fly zone and remained unenthusiastic about military options in general; nevertheless, it is not difficult to see how this context might have helped facilitate the decision. Although LAS statements are taken by consensus, two non-GCC members—Algeria and Syria—were reportedly opposed to the statement, though Algerian diplomats later advised the Congressional Research Service that Algeria had not in fact objected.[67]

Second, although Qadhafi's regime was an important donor to the AU and a variety of African states, it was widely distrusted across Africa and the Middle East, not least for its role in fuelling conflicts in Liberia, Sierra Leone and Chad, as well as the radical Popular Front for the Liberation of Palestine. Qadhafi was also a prominent rival for regional influence with Saudi Arabia and other Gulf states. He had personally insulted key Arab personalities: in 1988 he blew cigar smoke into King Fahd's face, and at a 2003 LAS summit he launched a widely publicized tirade against Saudi Crown Prince Abdullah, declaring him 'a product of Great Britain and protected by the United States' and a man 'whose past is a pack of lies and who is facing death'. Qadhafi also proclaimed himself African 'king of kings'—annoying many African leaders by inflating the status of their traditional chiefs—and 'Imam of the Muslims'.[68] It is therefore not difficult to see why the GCC supported measures against Libya and why few countries were prepared to defend Qadhafi.

Third, a combination of genuine humanitarian solidarity and opportunism may have played a role. Al-Jazeera's reporting of Libyan abuses and mobilization of opposition groups across North Africa and the Middle East prompted demands for action on Libya within the Arab world itself, while Qadhafi's unpopularity in the region made an activist stance relatively easy to adopt. Indeed, some regional governments might have calculated that turning the international spotlight on Libya would divert attention from their own troubles. Alternatively, they might have worried about being portrayed as obstacles to human rights in a way that might have encouraged internal opposition.

The position of the AU's Peace and Security Council was more cautious and rather less generous to the Interim Council than that of the LAS. Although it defined the situation in Libya as 'a serious threat to peace and security in that country and in the region as a whole', it condemned 'the indiscriminate use of force and lethal weapons … and the transformation of pacific demonstrations into an armed rebellion'. It also emphasized its 'strong commitment to the respect of

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[67] Christopher Blanchard, *Libya: unrest and US policy* (Washington DC: Congressional Research Service, 29 March 2011), p. 19.
[68] 'Libya's Gaddafi hurls insults at king', *The Age* (Australia), 31 March 2009.

the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention, whatever its form'.[69]

As it turned out, LAS activism had more of an impact at the UN Security Council than AU caution. Indeed, Resolution 1973 would have been unthinkable without the LAS resolution. The most immediate effect was on US policy. The Obama administration had been cautious about the prospect of military action in Libya—because of concerns about military overstretch, potential casualties, budgetary implications, the potential for mission creep, absence of a clear exit strategy, and concerns about alienating states in the Middle East and elsewhere in the Muslim world—but the LAS resolution strengthened the hand of the interventionists within it. On 15 March senior officials held what was described as an 'extremely contentious' White House meeting which resulted in President Obama accepting the case for intervention argued by Hillary Clinton, Samantha Power, Gayle Smith and Mike McFaul over the more cautious positions expressed by Robert Gates, Tom Donilon, Denis McDonough and others.[70] Having decided to support stronger measures against Libya, the US expended a lot of diplomatic energy trying to persuade Security Council members to accept the proposed resolution, a factor that proved particularly important in relation to the votes of Russia and South Africa.[71]

It was in this context that Security Council members debated whether to authorize the use of force to establish a no-fly zone and to protect civilians.[72] There were, however, a number of sticking points. Most significantly, two permanent members (China and Russia) and three non-permanent members (India, Brazil and Germany) of the Security Council were unconvinced of the need to use military force and sceptical about the motives of those calling for it. Their rationale was in part principled—for instance, China's long-established 'five principles of foreign policy' emphasize non-interference and the non-use of force, as did Brazil's 1996 and 2005 statements on national defence policies. But they also presented prudential and pragmatic objections, including that the use of military force might exacerbate an already bad situation and that the decision to impose a no-fly zone could quickly lead to more military commitments and might prolong the conflict. An additional problem identified by China, Russia and India revolved around procedural and pragmatic questions which were left unanswered in the resolution. How would the no-fly zone be enforced? What assets would be used? What would the coalition's rules of engagement be? And what would the political end-game entail? A further complaint levelled by the Russian delegation was that new provisions had been added to the resolution which went beyond the LAS request and opened the door to more large-scale military intervention. India's representative also questioned the timing of the decision to use force, pre-empting the delivery of the UN Special Envoy's report to the Council. Brazil's represen-

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[69] AU document PSC/PR/COMM.2(CCLXV), 10 March 2011.
[70] Josh Rogin, 'How Obama turned on a dime toward war', 18 March 2011, http://thecable.foreignpolicy.com/posts/2011/03/18/how_obama_turned_on_a_dime_toward_war, accessed 12 June 2011.
[71] Jones, 'Libya and the responsibilities of power', p. 54.
[72] See S/PV.6498, 17 March 2011.

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tative questioned whether the use of external military force would change the nature of the rebellion's home-grown narrative and thereby inhibit long-term conflict resolution.

Despite these concerns, the Council having repeatedly expressed its determination to accept its duties under R2P and accepted the legitimacy of international engagement by unanimously adopting Resolution 1970, and being confronted with advice from the UN Secretariat and elsewhere about the imminence of mass atrocities, the sceptics had little diplomatic room for manoeuvre. A Russian draft resolution calling for political dialogue gained little momentum, in part because of the level of support behind the French–UK–Lebanon draft,[73] and in part because it seemed dangerously out of step with the rapidly evolving situation on the ground. Combined with the forceful calls for action by the LAS, GCC and OIC, and the supportive voices of the Council's three African members and sole Middle Eastern member, these considerations prompted Russia and China (along with Brazil, India and Germany) to decide to abstain in the vote. Simply put, those Council members that remained sceptical about the use of force abstained because they believed that they could not legitimize inaction in the face of mass atrocities.

Brazil, for instance, stated that its vote 'should in no way be interpreted as condoning the behaviour of the Libyan authorities or as disregard for the need to protect civilians and respect their rights', but that it remained unconvinced 'that the use of force … will lead to the realization of our common objective—the immediate end to violence and the protection of civilians'. Russia's delegation still claimed they were 'consistent and firm advocates of the protection of the civilian population' but argued 'that the quickest way to ensure robust security for the civilian population and the long-term stabilization of the situation in Libya is an immediate ceasefire'. China welcomed attempts to protect civilians but also noted its principled objection to using force and the fact that 'we and other Council members asked specific questions [about Resolution 1973]. However, regrettably, many of those questions failed to be clarified or answered. China has serious difficulty with parts of the resolution.'[74]

When the vote took place on 17 March, Resolution 1973 was passed with ten votes in favour and five abstentions (Brazil, China, Germany, India and Russia). It reiterated the Council's concern that crimes against humanity might have been committed, deplored the ongoing humanitarian crisis, and took note of the criticisms of Qadhafi's regime made by a variety of international organizations (discussed above), particularly the LAS call for a no-fly zone and safe areas to protect civilians. Once again, it defined the situation in Libya as a threat to international peace and security; and, acting under Chapter VII of the UN Charter, it demanded, among other things, an immediate ceasefire and intensified efforts to find a political solution to the crisis. In operative paragraph 4, the Council authorized the use of 'all necessary measures … to protect civilians and civilian populated areas under threat of attack … while excluding a foreign occupation

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[73] Lebanon was acting as the representative of the LAS.
[74] All quotes from S/PV.6498, 17 March 2011.

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force of any form on any part of Libyan territory'. In operative paragraph 6 it established 'a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians', excepting only those necessary to enforce the no-fly zone and those 'whose sole purpose is humanitarian'. It also refined the arms embargo and asset freeze detailed in Resolution 1970, in part by creating a panel of experts to assist in their implementation.

Almost as soon as the resolution was passed, differences emerged as to how it should be interpreted. NATO and several key allies, including Qatar and Jordan, interpreted the mandate as providing the basis for a wide range of military activities including the suppression of Libya's air defences, air force and other aviation capacities, as well as the use of force against Libya's fielded forces, its capacity to sustain fielded forces, and its command and control capacities, on the basis that Libya's armed forces constituted a threat to civilians. This interpretation seems consistent with a plain text reading of Resolution 1973 as noted by several prominent international lawyers, including Philippe Sands, Malcolm Shaw and Ryszard Piotrowicz.[75] Others disagreed. Perhaps with one eye on his candidacy for the Egyptian presidency, LAS Secretary General Amr Moussa suggested that NATO's action 'differ[ed] from the goal of imposing a no-fly zone' and stated that 'what we want is the protection of civilians and not bombing other civilians'.[76] Although Moussa backtracked the following day, using a joint press conference with Ban Ki-moon to reiterate his support for Resolution 1973, other Security Council members echoed his initial view. Russia, for example, noted that NATO bombing had caused 'civilian casualties' and emphasized 'that any use of force by the coalition in Libya should be carried out in strict compliance with Resolution 1973 (2011). Any act going beyond the mandate established by that resolution in any way or any disproportionate use of force is unacceptable.'[77] China also stated that it wanted to see an immediate ceasefire and was 'not in favour of any arbitrary interpretation of the Council's resolutions or of any actions going beyond those mandated by the Council'.[78] South Africa, a cautious supporter of Resolution 1973, later joined the chorus of criticism, arguing that the Council's decision to refer the situation in Libya to the ICC in Resolution 1970 should trigger consideration of 'any actions that may have been committed in the purported implementation of Resolution 1973'.[79]

The future of protection politics will clearly be influenced by how the situation in Libya is resolved. But there is evidence of what we have called the new politics of protection in the decision-making that produced Resolution 1973 as well as the challenges associated with its implentation. International society framed the situation in Libya in human protection terms almost from the outset of the crisis, with the UN Secretariat—in this case the Special Advisers, High Commissioner for Human Rights and Secretary General—playing a central role. Second, the

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[75] See http://www.ejiltalk.org/what-does-un-security-council-resolution-1973-permit/, accessed 12 June 2011.
[76] Cited in 'Arab League criticises western strikes in Libya', *Straits Times*, 20 March 2011.
[77] S/PV.6528, 4 May 2011, p. 8.
[78] S/PV.6528, p. 9
[79] S/PV.6528, p. 11.

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Security Council proved willing to authorize the use of force for human protection purposes. Indeed, it did so, for the first time in its history, against the wishes of the host state. Third, regional arrangements acted as gatekeepers. Before the LAS resolution calling for the imposition of a no-fly zone and safe areas to protect civilians, British and French diplomats were pessimistic about the chances of the Council being persuaded to authorize enforcement action and the US remained uncommitted to the idea of enforcement measures. Without the LAS statement it is unlikely that what became Resolution 1973 would ever have been tabled for a vote. Whatever the reasons behind the LAS decision, it changed the Council's dynamics: it made opposition to enforcement more difficult; it brought the US on board, adding to the feasibility of the military option; it helped persuade the African Council members; and ultimately it pushed the remaining sceptical members towards abstention. One important question to emerge from the Libya case, though, is which regional organization can legitimately claim the mantle of 'gatekeeper'. In adopting Resolution 1973, the Council—and not only those members that supported the resolution—privileged the attitudes of the LAS over those of the AU. Particularly significant in this regard was the decision of the three African members (Nigeria, Gabon and South Africa) to support the resolution rather than abstain. Had two of the three African members chosen to faithfully reflect the AU position in their voting, Resolution 1973 would not have been adopted because it would have fallen short of the required nine affirmative votes. If regional organizations continue to play a gatekeeping role, questions about which organizations the Council should give priority to and the potential for 'forum shopping' will come to the fore. Finally, as with Côte d'Ivoire, major powers and other relevant actors demonstrated a preference for working through the Security Council.

As for the challenges raised by the new politics of protection in the Libyan theatre, four stand out. First, as noted above, NATO has been widely criticized for what some states see as an overly expansive interpretation of Resolution 1973 and for causing civilian casualties. Second, questions have been raised about the relationship between human protection and other goals, particularly regime change. Critics contend that while protection is a legitimate activity it must not become synonymous with regime change. Third, the case of Libya raises questions about which regional organizations should be given the gatekeeping role in situations where relevant institutions adopt different positions on the use of force. Finally, although it is too early to draw definitive conclusions about the effectiveness of the protection measures adopted by the Security Council, past experience from Kosovo and elsewhere and evidence from the first phases of enforcement operations in Libya suggest that while air power can help stem the tide of mass killing, it provides only indirect protection and may come at the cost of some unintended additional harm to civilians.

Conclusion: a new politics of protection

International society's response to the crises in Côte d'Ivoire and Libya reflects a new politics of protection which has developed over the past decade and has four principal characteristics. First, encouraged by the UN Secretariat, the Security Council has framed these crises in terms of human protection. Second, the Security Council has demonstrated a repeated willingness to authorize the use of military force for protection purposes and, with the adoption of Resolution 1973, has broken through the final constraint of principle on humanitarian intervention—the nominal consent of the host state. Third, regional organizations have become important 'gatekeepers', influencing how issues are framed and the range of plausible policy options available to the Security Council. Finally, international society has exhibited a commitment to working through the Security Council to fashion responses to human protection crises.

However, the cases of Côte d'Ivoire and Libya also make clear that this new agenda faces a range of unresolved challenges which could inhibit the establishment of consensus in responding to future protection crises and leave protection operations exposed to some critical vulnerabilities.

First, differences remain over how to interpret Security Council mandates. In the Libyan case this occurred in spite of the fact that, prior to the adoption of Resolution 1973, US diplomats in New York extensively briefed their counterparts from hesitant states about the activities that would be required to implement a 'no-fly zone' and protect civilians. Interpretation issues came up again in debate on the protection of civilians in May 2011. India, for example, asked, 'Who watches the guardians?' and noted a 'considerable sense of unease about the manner in which the humanitarian imperative of protecting civilians has been interpreted for actual action on the ground'.[80] Likewise, China opposed 'any attempt to wilfully interpret the resolutions or to take actions that exceed those mandated by the resolutions'.[81] Such concerns may lead to some Council members specifying more clearly the language they are prepared to support or tolerate and insisting that resolutions set out precisely what level and type of force is (and is not) authorized. This could have two potentially deleterious effects: it might make it more difficult for Council members to find common ground on human protection mandates; and, when resolutions are passed, the imposition of more constraints on UN peace operations or coalitions of the willing might exacerbate some of the operational problems experienced in Libya, making it more difficult to implement resolutions effectively.

A second and related challenge is the relationship between human protection and other goals such as regime change. Several Council members complained that civilian protection might be used as a façade for other agendas. As the Russian representative put it, 'the noble goal of protecting civilians should not be compromised by attempts to resolve in parallel any unrelated issues'.[82] Or, as the Brazilian

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[80] S/PV.6531, 10 May 2011, p. 10.
[81] S/PV.6531, p. 21.
[82] S/PV.6531, p. 9.

representative argued, 'excessively broad interpretations of the protection of civilians … could … create the perception that it is being used as a smokescreen for intervention or regime change.'[83] South Africa emphasized that actions should not go beyond the 'letter and spirit' of Council resolutions or advance 'political agendas that go beyond the protection of civilian mandates, including regime change. In our view, such actions will undermine the gains made in this discourse and provide ammunition to those who have always been sceptical of the concept.'[84] It is not difficult to see why some states might be concerned about the overlap between protection and regime change, and the potential for the former to be used as justification for the latter. Although many internet blogs and newspaper editorials have accused western states of pursuing their material interests in Libya, especially in relation to oil, we have found little evidence to support such an interpretation. Nevertheless, the *perception* of ulterior motives and agendas may make it more difficult in the future to forge a consensus on the use of force for protection purposes, within the context of either a peacekeeping operation or a potential humanitarian intervention. China summed up the basic principle that many states want to see fulfilled: 'There must be no attempt at regime change or involvement in civil war by any party under the guise of protecting civilians.'[85] The problem with this view is that it offers no answer to how the UN and/or coalitions might protect civilians from regimes that attack them without targeting, weakening and ultimately changing the behaviour of the regime in question.

The third challenge relates to the role of regional organizations as gatekeepers. Evidence from these and other recent cases, including Kenya and Guinea, demonstrates that international responses to protection crises are most effective when there is a strong partnership between the UN and relevant regional organizations. Moreover, the emerging gatekeeper role being played by regional organizations provides avenues for increased activism on human protection while (theoretically) ensuring that the Security Council acts in a manner that is consistent with regional norms and interests. Nevertheless, such gatekeeping presents at least two challenges. First, what should be done when regional organizations disagree, as the LAS and AU did in relation to Libya? In the future, Council members might be tempted to go 'forum shopping' to find regional organizations that better reflect their own positions in order to legitimize those views. Second, while regional gatekeepers can facilitate robust international responses to protection crises, they can also block decisive action. Thus, while the LAS and its representative on the Security Council, Lebanon, facilitated intervention in Libya, it prevented the Council from even condemning violence against civilians in Syria. Most notably, in April and May 2011 China and Russia were reportedly comfortable in principle with the idea of issuing a Council press statement criticizing the Syrian regime for killing unarmed protesters (though they were uncomfortable with the wording proposed by western states), and yet the initiative was blocked by Lebanon on the grounds that press statements require unanimity. Recall that the Council's

[83] S/PV.6531, p. 11.
[84] S/PV.6531, p. 18.
[85] S/PV.6531, p. 20.

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first response to the crisis in Libya was a press statement. By preventing it from taking this course of action again, Lebanon effectively halted movement towards tougher measures. Clearly, Syria's relationship with Hezbollah and that organization's capacity to destabilize Lebanon influenced this position, but Syria's generally better standing in the Middle East compared to Libya has thus far protected it from LAS criticism, thereby limiting the Security Council's engagement.

In this instance, then, the 'gatekeeping role' of a regional organization prevented a forceful international response to state-sanctioned killing in Syria, leaving protesters to their fate. The closing of Security Council avenues by regional gatekeepers also jeopardizes the international commitment to work through the Security Council when responding to protection crises. If the Security Council path is blocked, concerned states will look for alternative avenues to protect vulnerable populations—as the US and EU have done in the Syrian instance by imposing unilateral sanctions on the Syrian regime. Striking the balance between ensuring that Security Council decisions are legitimate in the regions in which they apply, consistent with regional norms and interests, and taken in conjunction with relevant regional organizations, and the need to keep Council pathways to protection open, will remain a difficult challenge.

Finally, human protection requires external actors to engage in local wars and politics, and this will blur the lines between protection and other agendas such as regime change. While the demand that these agendas be kept separate is politically understandable and conceptually appealing, it will often be hard to meet. When the principal threat to civilians comes from the regime, those demanding strict separation need to explain how peacekeepers or coalitions authorized to use force to protect civilians can do so effectively without facilitating regime change. More dialogue is thus needed on operational questions including: What do no-fly zones entail? How can civilians be protected from their own governments? What constitute safe areas and how can they be protected? What military resources, tactics and strategies are required to fulfil protection mandates?

To date, efforts to develop doctrine for civilian protection operations have followed in two main strands. The first, the Protection of Civilians agenda within contemporary peace operations, has influenced documents setting out guidelines, principles and to some extent peace operations doctrine within the UN, AU and EU in particular. The principal scenario for these efforts is when peacekeepers are deployed with the official consent of the host government but operate in environments where a plethora of threats to civilians remain, usually from insurgents, predatory government soldiers and/or criminal gangs.[86] Broadly speaking, these guidelines have sketched two types of protection activities: positioning military forces between the civilian population and those that threaten them in order to deter and respond to attacks; and taking measures designed to eliminate or restrict the activities of armed groups that threaten civilians.

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[86] See e.g. Holt et al., *Protecting civilians*; Alison Giffen, *Addressing the doctrinal deficit: developing guidance to prevent and respond to widespread or systematic attacks against civilians*, workshop report (Washington DC: Stimson Center, 2010).

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The second strand has emerged from attempts to develop new doctrine for the US military to conduct protection operations effectively.[87] Arguably the most useful example of this type of approach has been the Mass Atrocity Response Operations (MARO) military planning handbook, which sketches ways 'to halt widespread and systematic use of violence by state or non-state armed groups against non-combatants' in contexts characterized by multiparty dynamics between victims, perpetrators and bystanders rather than traditional contexts between enemy and friendly forces; where the intervening force will inevitably be seen as siding with the victims against the perpetrators; and where there is a tendency for mass killings to rapidly escalate once begun. The handbook has started an important debate about how civilians might be protected; but it needs significant development within the US and beyond if the new politics of protection is to live up to its stated objectives.

[87] Genocide Prevention Task Force, *Preventing genocide: a blueprint for US policymakers* (Washington DC: US Institute of Peace, 2008); Sarah Sewall, Dwight Raymond and Sally Chin, *Mass atrocity response operations: a military planning handbook* (Cambridge, MA: Harvard Kennedy School and US Army Peacekeeping and Stability Operations Institute, 2010).

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