

International Herald Tribune

Libya and the responsibility to protect

The U.N. must act quickly if the concept of RtoP is more than just a lofty principle.

**Irwin Cotler
Jared Genser**

In response to Muammar el-Qaddafi's continued assaults on civilians in Libya, the United Nations Security Council adopted a unanimous and historic resolution in an unusual Saturday night session.

It imposed an arms embargo on Libya, targeted financial sanctions and travel bans against Qaddafi, his family members and senior regime officials, and referred the situation to the International Criminal Court for investigation and potential prosecution of those involved in what was referred to as possible crimes against humanity.

In its statement condemning the violence, the Security Council included a critical reference to Libya's "responsibility to protect" (RtoP) its own citizens from mass atrocities.

At the U.N. World Summit in 2005, more than 150 heads of state and government unanimously adopted a declaration on the responsibility to protect authorizing international collective action "to protect [a state's] population from genocide, war crimes, ethnic cleansing and crimes against humanity" if that state is unable or unwilling to protect its citizens, or worse, as in

the case of Libya, if that state is the author of such criminality.

Since then, the doctrine has been only applied once — in the case of Kenya's post-election violence in 2007-2008. And this is the first time it has been explicitly invoked by the Security Council regarding the situation in a specific country.

Since the crisis in Libya began, the question hanging over these fast-moving events has been whether the condemnations coming from all quarters would be followed by concrete action.

Experience suggested reasons for skepticism. Given divisions among the permanent members of the Security Council (Britain, China, France, Russia and the United States), avoiding a veto has often required an ineffective low-est-common-denominator approach.

So the Libya resolution is a major step forward, both for the people of Libya and in the international community's stated commitment to end mass atrocities.

But lest we get too excited too early about what is happening in regard to Libya, it is important to understand these developments and how much more needs to be done.

First, the firm response to the situation in Libya has only been possible because of the combination of Qaddafi's horrific actions targeting civilians, his self-destructive comments

demonstrating both his intent and disconnection from reality, and the mass defection of his ambassadors, military and civil servants in Libya and around the world.

Collectively, there is just no one left to defend him. Any resistance to tough action in the Security Council was reportedly overcome by a strong and unequivocal letter in support of the proposed resolution by Libya's permanent representative to the United Nations, who later broke down in tears begging the body to save his country.

Second, although the Security Council has taken stronger action in a shorter period of time than it ever has before on any other mass-atrocity situation, travel bans, financial sanctions and international criminal investigations won't have a demonstrable impact on civilians on the ground in the short-term. Qaddafi, his family and his regime are fighting for their lives, and these are far-off consequences that only begin to matter if they survive in power.

Third, while critical steps have been taken, more must be done to complete the transition of power and avoid the chaos and loss of life that would be caused if the world watches Libya descend into a full-blown civil war.

Specifically, by losing control of his territory, Qaddafi can legally be de-

scribed as no longer being the leader of the country.

In this context, the Security Council should adopt a new resolution to immediately extend recognition to the nascent provisional government of the country, authorize a NATO-supported no-flight zone over Libya to preclude any bombing of civilians, and permit all U.N. members to provide direct support to the provisional government. Such support might include, for example, the rapid deployment of an African Union-European Union force to the country.

The situation in Libya is a test case for the Security Council and its implementation of the RtoP doctrine. Yet it remains the case that, as the U.N. secretary general, Ban Ki-moon, put it, "loss of time means more loss of lives." The Security Council must do more — and fast. It is our collective responsibility to ensure RtoP is an effective approach to protect people and human rights.

IRWIN COTLER is a member of the Canadian Parliament and a former minister of justice and attorney general of Canada. JARED GENSER is a lawyer and teaches a seminar on the Security Council at the University of Pennsylvania Law School. They are co-editors of the forthcoming "The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Times."