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**The Political Reality of Humanitarian Rhetoric:
Addressing the Dangers of R2P-interventions**

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INTRODUCTION

Following the end of the Cold War, phrases such as: ‘humanitarian intervention’, ‘collective action in the light of mass atrocities and crimes against humanity’, ‘protection of civilians’, and ‘responsibility to protect’ have resonated at every international forum. The frequency of humanitarian concerns has increased drastically and with them the number of military interventions. After the failure to halt genocide in Rwanda in 1994, as well as provide protection to people at Srebrenica in Bosnia in 1995, members of the international community declared that no other cases of unpunished mass-scale massacre should ever take place. They consequently began to advocate for stronger frameworks of civilian protection, as well as for the adoption of a workable model for humanitarian interventions. In 2001, the International Commission for Intervention and State Sovereignty (ICISS) released the report introducing the doctrine of ‘Responsibility to Protect’, or R2P. The doctrine received full international support four years later, in 2005, when at the World Summit it was included in the World Summit Outcome Document in paragraphs 138-139. The doctrine reaffirmed that it is a state’s domestic duty to protect its people from the four types of crimes, such as genocide, ethnic cleansing, war crimes and crimes against humanity. It also highlighted that there is an international responsibility to assist others in capacity-building and react to the outlined crises with appropriate means, including militarily, if a state concerned manifestly fails to provide adequate civilian protection.

As the most recent development in military humanitarianism, R2P came under severe criticism in a number of areas. Firstly, it inherited the legacy of past humanitarian interventions, whose genuineness was always challenged. Particularly, following the

Kosovo bombing in 1999 and the invasion of Iraq in 2003, many in the international community became skeptical and hesitant to advance the dialogue on the use of force for civilian protection purposes. While the Iraq intervention can hardly be called humanitarian, the seemingly legitimate NATO intervention in Kosovo has also provoked doubts. Not only it undermined the importance of the Security Council and was invoked without legal authorization, but also it adopted questionable means of ensuring the protection of civilians. The high-altitude bombing with high explosives and anti-personnel weapons, causing massive infrastructural and civilian damage of Kosovo, left many critics wondering whether the campaign had a truly civilian purpose.¹ Both interventions, in Iraq and Kosovo, have put into question the genuineness of humanitarian interventions and highlighted a common tendency of mixing humanitarianism with politics. The humanitarian doctrine of R2P faces a similar risk of being misused for political purposes.

Secondly, the way, in which the doctrine was worded, left it with significant caveats. The broad language of R2P is somewhat ambiguous and makes it susceptible to various interpretations, some of which are not necessarily related to genocide, ethnic cleansing, war crimes and crimes against humanity. This has led states to interpret and purposefully apply the doctrine in cases beyond its scope. Two of the most controversial examples are the French proposal to intervene in Myanmar in the aftermath of the cyclone in 2008 and the Russian intervention in Georgia in 2008. They serve as a confirmation of how differently states envision the doctrine and how its presence in international law can give

¹ Ian Brownlie, Memorandum presented in the House Of Commons Select Committee On Foreign Affairs, Fourth Report (1999), Appendix 2, Para 102

rise to more dubious interventions, beyond the scope of R2P crimes. Both case studies will be examined in this paper.

The third major challenge for the doctrine is the way in which it has been applied in practice. The argument of civilian protection has been frequently used by the United Nations (UN) Security Council. It was a key part of the discussion when the Council addressed armed violence in Haiti, Sudan, the Democratic Republic of Congo, Liberia, Sierra Leone, Burundi, Darfur and the Ivory Coast. However, in the mentioned contexts humanitarian concerns were resolved through extensive deployment of peacekeeping troops.² The real practical test for R2P-intervention happened in 2011 with the ‘Arab spring’, when Arab upheavals in the Middle East and North Africa placed R2P in the spotlight and pushed states to revisit the framework of civilian protection. Following regime changes in Tunisia and Egypt, anti-establishment rallies erupted in Libya. These rallies quickly evolved into armed opposition against the Gaddafi regime, who responded by heavily suppressing any civilian dissidence. For the first time since the official endorsement of R2P in 2005, the Security Council authorized a forced military intervention, albeit in the airspace, against the recalcitrant regime with a purpose of protecting civilians that supposedly faced an imminent threat. As the first ‘Kosovo-style’ intervention of the 21st century, the Libyan campaign was in contrast to the hitherto habitual deployment of peacekeepers.

Almost simultaneously with Libya, armed violence flared up in Syria. Yet, its severity escalated only half a year later. Human suffering in the Syrian civil war has also been addressed through the lens of R2P and protection of civilians. But while in Libya

² Alex J. Bellamy, Paul D. Williams, “The New Politics Of Protection? Côte d’Ivoire, Libya And The Responsibility To Protect”, *International Affairs* 87:4 (2011), P.825

the Security Council resorted to the use of force, in Syria - at the moment of writing this research paper - references to R2P have not transformed into anything more than rhetoric. Both conflicts and international attempts to resolve them emphasized yet again the persisting divide between those in favor and those against humanitarian interventions. Despite being accepted at the largest gathering of states in 2005, the R2P doctrine of humanitarian interventions still has not garnered universal support. The way, in which it was applied in Libya and used in discussions respecting Syria, has exacerbated the earlier suspicions that R2P can be used for political purposes and regime change.

Given that R2P has become an often-cited tool in international response to a man-made crisis, this paper aims to investigate whether or not the doctrine constitutes an effective and pertinent model for protecting civilians and stopping mass atrocities. What value does R2P add to international law and what are the implications of its existence on the global political order? Here, the effectiveness of the doctrine will be judged against the theory and practice of R2P-interventions, examining both legal and political arguments. The recent civil unrest in Libya and Syria will be the main case studies, upon which the determination of whether or not R2P's words transform into deeds will be based. This will be complemented by the analysis of intervention in Georgia and the proposal to intervene in Myanmar, as each of them has had an impact on R2P and provided the basis to explore its limits.

The utility of the R2P doctrine will be assessed from three perspectives. Firstly, the paper will scrutinize legal aspects of effectiveness - does the doctrine constitute a binding norm and impose new obligations on states to protect their own citizens, as well as those in other states? It will be demonstrated that the doctrine has no real legal utility and does

not impose any further responsibilities on states to protect civilians. Secondly, the doctrine will be addressed from a theoretical standpoint. The paper will examine whether the underlying logic of the doctrine is meaningful and if R2P should be preserved as a source of guidelines for international humanitarian response. It will be shown that the broad language of R2P allows states to stretch the doctrine through associations with the principle of 'sovereignty as responsibility'. This wide-ranging principle seeks to apply the doctrine to wrong cases, e.g. instances unrelated to the four identified types of crimes. Lastly, the R2P doctrine will be explored from a practical standpoint. The analysis of the Libyan intervention will show that the rightful application of the doctrine in practice is severely challenging. Interveners rarely abide by the normative and verbal commitments and tend to deviate from the humanitarian mandate. The analysis of the Syrian crisis and manipulation of the argument of civilian protection will further support the claim that the humanitarian language of R2P can be used for the wrong purpose.

In summarizing the findings from three perspectives, it will be concluded that R2P does not provide an effective framework for civilian protection against mass slaughter and other crimes against humanity. Although the concept of humanitarian interventions is meaningful, the current model of interventions under R2P is not effective. Despite numerous claims that the use of force should be a measure of last resort and only in circumstances when atrocities reach the overwhelming levels, more commonly states are calling for interventions in internal conflicts with lower levels of violence. Humanitarian justifications, especially the protection of civilians, are used as a cover-up for political interventions. If the doctrine, which was designed with the altruistic intention to protect civilians, is misused and misapplied, then its presence and role in international law must

be reconsidered. Despite the strong efforts of R2P proponents to convince others that R2P reinforces and strengthens sovereignty and ensures a “good international citizenship”,³ the doctrine has a potential to undermine the global political order by compromising state sovereignty, especially when dubious opportunities present themselves.

³ Gareth Evans quoted in Thomas G. Weiss “The Humanitarian Impulse” In David M. Malone (Ed.), *The UN Security Council: From The Cold War To The 21st Century* (Lynne Rienner Publishers, Inc., 2004), P.43

1. THE POST-COLD WAR DEBATES ON HUMANITARIANISM

The idea of foreign protection of civilians, residing in other states is not limited to recent history. The advocacy for humanitarian interventions dates back to the 15th-16th centuries. At that time, Francisco De Vitoria and Hugo Grotius recognized the duties of states before their people and promoted the idea that foreigners should have the right to wage wars on behalf of the oppressed.⁴ Specifically, they advocated for interventions in “backward” states to end inhuman practices, such as cannibalism, human sacrifice, atheism, and sexual immorality.⁵ Interestingly, the enterprise of humanitarian interventions did not receive widespread support and expansion until 1991, when the end of the Cold War changed the nature of humanitarian dialogue and led to a greater scrutiny of state’s domestic and international responsibilities.

The 1990s were marked by a notable humanitarian awakening. According to Thomas Weiss, no humanitarian references were made in any Security Council resolution from 1945 until the Six-Day War in 1967. “The Security Council had a virtual humanitarian tabula rasa,”- Weiss says, - “when, suddenly from 1990 to 1994, twice as many resolutions were passed as were during the first forty five years of the UN history.”⁶ The so-called ‘humanitarian impulse’⁷ ran through the body of the international community and determined that atrocities, which ‘shock the conscience’, should no longer be left to continue and unpunished. Humanitarian intervention gradually started to be regarded as an acceptable tool of the international response to crisis.

⁴ Simon Chesterman, *Just War Or Just Peace?* (Oxford University Press, 2001), Pp.8-16

⁵ Eve Massingham, “Military Intervention For Humanitarian Purposes: Does The Responsibility To Protect Doctrine Advance The Legality Of The Use Of Force For Humanitarian Ends”, *International Review Of The Red Cross*, Volume 91 Number 876 (December 2006), p.811

⁶ Thomas G. Weiss, “The Sunset Of Humanitarian Intervention? The Responsibility To Protect In A Unipolar Era”, *SAGE Publication Security Dialogue*, Vol. 35, No. 2, (June 2004), P.136

⁷ this term was introduced by Thomas G. Weiss in “The Humanitarian Impulse” in David M. Malone (Ed.), *The UN Security Council*, Pp.37-54

The failure to prevent genocide in Rwanda in 1994 and the inability to provide protection to people in Bosnia in 1995 pushed members of the international community to reconsider the existing framework of civilian protection. States sought to create a better model, which would provide protection to civilians caught in a violent conflict in a timely and effective manner. In 2001, the International Commission for Intervention and State Sovereignty (ICISS) released the report, *Responsibility to Protect*, which highlighted that each state has a responsibility to protect its people from avoidable catastrophes, such as mass murder, rape, and starvation. It was suggested that in case the state is unable or unwilling to do so, the responsibility should be borne by the international community.⁸ This new principle was called the ‘responsibility to protect’, or R2P.

The new doctrine generated further distrust of the use of force for civilian protection purposes. Although R2P drafters reframed the question in moral terms, shifting the language from the ‘right to intervene’ to the ‘responsibility to protect’, it did not eliminate the fears and suspicions. The international relations scholars and commentators still cannot agree on the definition and the original purpose of the doctrine. While R2P drafters adamantly focus on the application of diplomatic means to resolve the conflict and view intervention as a last resort, there are skeptics, who equate R2P primarily with military intervention. This confusion stems from the very ICISS report, which compressed three types of responsibilities (to prevent, to react, and to rebuild) under the umbrella of R2P doctrine. The responsibility to prevent suggested that the international community should address “both the root causes and direct causes of internal conflict and

⁸ The Report Of The International Commission For Intervention And State Sovereignty (ICISS), *The Responsibility To Protect* (December 2001), P. Viii

other man-made crises putting populations at risk.”⁹ The responsibility to react implied that states should respond to a man-made crisis with “appropriate measures”, including the use of force if necessary. Finally, the responsibility to rebuild suggested that the international community should provide full assistance with “recovery, reconstruction and reconciliation” to a failed state in the aftermath of military intervention.¹⁰ Despite the incorporation of three distinct responsibilities under R2P, the ICISS report elaborated comprehensively only on the responsibility to react: two-thirds, or 32 pages, were dedicated to military intervention, while the responsibility to prevent and the responsibility to rebuild were insufficiently described in only 16 pages.¹¹ David Chandler claims that the responsibilities to prevent and to rebuild “have a character of add-ons, tactically designed to win greater support for the core concern of enabling military intervention.”¹² This is why the entire report is seen as an attempt to “muddy water” over the right to intervention.¹³

Changing the terms of debate has not solved the core points of disagreement: the altruism and genuineness of humanitarian interventions remain highly contested. Many skeptics see in the doctrine a Trojan horse, suspecting that behind humanitarian arguments stand political motivations. And indeed, analysis of the past humanitarian interventions reveals that most of them were not humanitarian in nature, despite being portrayed as such. If this issue is addressed from the standpoint of political realism, it becomes clear why humanitarian justifications do not match the non-humanitarian

⁹ The ICISS report, p.XI

¹⁰ Ibid., p.XI

¹¹ Christina Gabriela Badescu, *Humanitarian Intervention And The Responsibility To Protect. Security And Human Rights* (Routledge, 2011), P.10

¹² David Chandler, “Understanding The Gap Between The Promise And Reality Of The Responsibility To Protect” in *Critical Perspectives On The Responsibility To Protect. Interrogating Theory And Practice*, (Ed.) Philip Cunliffe (Routledge, 2011), P.26

¹³ Ibid, P.25

behavior of intervening states on the ground. *Realpolitik* determines that all states act out of considerations of self-interest. According to Michael Walzer, when it comes to humanitarian interventions, “states don’t send their soldiers into other states only in order to save lives.”¹⁴ The humanitarian motive is usually one among several. The degree of political, economic, or some other interest determines the probability of intervener’s involvement, explains the gap between rhetoric and reality, and clarifies the existing selectivity in humanitarian interventions. Several commentators note that historically, humanitarian language has been used to camouflage political interventions. For example, Noam Chomsky argues that almost every use of force in the 20th century has been justified in humanitarian terms. This includes Japan’s attack on Manchuria in 1931, Mussolini’s invasion in Ethiopia in 1935 and Hitler’s invasion of Czechoslovakia in 1939.¹⁵ Anthony Arend and Robert Beck also state that between 1945 and 1990 there were no genuinely humanitarian interventions. Moreover, when states relied on their right to interventions so as to alleviate human suffering, it has always been ambiguous.¹⁶ This is why, when it comes to the R2P doctrine, the critics believe that humanitarian language will be manipulated to open doors for non-humanitarian interventions.

Political realism also implies that “relations between states depend on the might rather than the right”¹⁷ and that “the strong of this world do as they wish and the weak suffer as they must.”¹⁸ According to Aidan Hehir, the hypothetical altruistic scenarios of international response to humanitarian crisis crash, when they come into contact with the

¹⁴ Michael Walzer, *Just And Unjust Wars: A Moral Argument With Historical Illustrations* (Basic Books Inc., 1977), P.101

¹⁵ Noam Chomsky, “The Skeleton In The Closet. The Responsibility To Protect In History” In *Critical Perspectives*, (Ed.) Cunliffe, P.11

¹⁶ Anthony Arend And Robert Beck, *International Law And The Use Of Force* (London: Routledge, 1993), P.135

¹⁷ Leo Strauss, *The City And Man*, (Chicago: Rand McNally, 1964), P.139

¹⁸ Chomsky, *The Skeleton In The Closet*, P.11

power politics and self-interest of states. Hehir claims that the international legal framework was not designed “to neutralize the asymmetries of power”, but rather “to privilege certain militarily and economically powerful states.”¹⁹ Thus, the neutral existence of the R2P doctrine in international law and the implication that it would not be misused by powerful states is deemed highly unlikely. Philip Cunliffe also does not see R2P as a tool for protecting the “wretched of the Earth” and instead views it as a mechanism to extend state’s power over the weaker states.²⁰ Tom Farer claims that R2P is hypocritically invoked as political or ethical justification for carrying out short-term military operations in other states.²¹ Weiss regards R2P-interventions as a “smokescreen for bullies” and states that “when humanitarian and strategic interests coincide, a window of opportunity opens for coalitions of the willing to act on the humanitarian impulse in the Security Council, or elsewhere.”²²

Concerns with regards to power politics, humanitarian interventions and R2P were particularly stirred by controversial interventions in Kosovo in 1999 and Iraq in 2003. Although these interventions were embraced prior to the official endorsement of R2P in 2005 and the Iraq war especially can hardly be deemed humanitarian, they left a large impact on the discourse surrounding humanitarian interventions in general. Their ethics and legality discredited the altruistic promises of the doctrine.²³ The Kosovo crisis is an illustrative example of how the minority group of Kosovar Albanians fought for their independence with violent means and ultimately provoked the severe suppression by the

¹⁹Aidan Hehir, “The Responsibility To Protect And International Law,” In *Critical Perspectives*, Ed. Cunliffe, P. 96

²⁰ Philip Cunliffe, “A Dangerous Duty: Power, Paternalism And The Global ‘Duty Of Care,’” In *Critical Perspectives*, Ed. Cunliffe, P.51

²¹ Tom J. Farer, “The Ethics Of Intervention In Self-Determination Struggles” (*Human Rights Quarterly*, Vol. 25, No. 2, May, 2003), P.383

²² Weiss, *The Sunset Of Humanitarian Intervention*, P.147

²³ Tara McCormack, “The Responsibility To Protect And The End Of The Western Century,” In *Critical Perspectives*, Ed. Cunliffe, P.37

government forces. The suppression shortly evolved into large-scale ethnic cleansing, which triggered unauthorized response by NATO forces. The unilateralism of foreign powers provoked an array of different reactions. Some commentators saw the NATO response and support of the Kosovo Liberation Army (KLA) as legitimate, albeit illegal.²⁴ Others focused, however, on the unilateral and illegal nature of the intervention, which was not permitted by the Security Council.²⁵ Yet, both sides acknowledge the high civilian and infrastructural damage that the intervention left behind.

The invasion of Iraq, initially justified with a threat of the weapons of mass destruction (WMDs) and linkages with Al-Qaeda, also had far-reaching negative implications on international willingness to embrace military interventions. Alex Bellamy and Tara McCormack agree that it killed any interest in further discussion of these issues, as R2P became strongly associated with the coercive use of military force outside of the Security Council with no humanitarian justification.²⁶ Gareth Evans similarly admitted that “Iraq almost choked at birth the emerging R2P norm.”²⁷ R2P drafters have since done their best to distance R2P from the Iraq war, claiming that it is an example of how the doctrine *should not* be implemented.²⁸ They expressed a deep regret that the doctrine, which contains multiple responsibilities and responses to crisis, became just “another name for humanitarian intervention” due to constant associations with the use of force.²⁹

²⁴ James Pattison, *Humanitarian Intervention And The Responsibility To Protect. Who Should Intervene?* (Oxford University Press, 2010), P.44

²⁵ Clara Portela, “*Humanitarian Intervention, NATO And International Law. Can The Institution Of Humanitarian Intervention Justify Unauthorized Action?*” (Berlin Information - Center For Transatlantic Security (BITS), Research Paper 00.4, Dec. 2000), Pp. 1-25

²⁶ Alex J. Bellamy, *Responsibility To Protect. The Global Effort To End Mass Atrocities* (Polity Press, 2009); McCormack, *The Responsibility To Protect* (2011)

²⁷ Alex J. Bellamy, “The Responsibility To Protect And The Problem Of Regime Change” In *The Responsibility To Protect: Challenges And Opportunities In Light Of The Libyan Intervention* (E-International Relations, November 2011), P. 21

²⁸ McCormack, *The Responsibility To Protect*, P.38

²⁹ Chandler, *Understanding The Gap*, P.23

When combined, the lack of clarity as to what the relation between R2P and military intervention is and the interventions in Kosovo and Iraq have set a negative tone and spurred more distrust and suspicion around the doctrine. These incidences demonstrate that humanitarian interventions have become the privilege of powerful states, which unilaterally assess the gravity of crises in other states and occasionally intervene with dubious humanitarian justifications or authority. Weiss highlighted the persisting opinion amongst R2P critics that “the self-appointed intervening powers as custodians of morality and human conscience as well as guarantors of international order and security have undermined the credibility of the whole [humanitarian] enterprise.”³⁰

Given that the interventions in both Kosovo and Iraq resulted in a change of state administration, R2P naysayers became concerned with the link between military humanitarianism and regime change. These concerns were further exacerbated by the overthrow of Gaddafi in Libya in 2011, as well as strong international condemnation of the regime of Bashar al-Assad in Syria in 2012. Thomas Franck explains that in the post-Cold War era, the right to self-determination and political freedom from oppressive regime becomes widely recognized and supported.³¹ Consequently, “there is developing a consensus around what constitutes such an illegitimate regime and a growing acceptance of the permissibility to use force, if necessary, to remove such a regime.”³² Michael Ignatieff also admits the close link between R2P and political interference of foreign

³⁰ Weiss, *Military-Civilian Interactions*, P.8, also see the Supplementary Volume To The Report Of The International Commission On Intervention and State Sovereignty, “The Responsibility to Protect, Research, Bibliography, Background”, (December 2001), P.17

³¹ Thomas Franck, *The Secret Warfare: Policy Options For A Modern Legal And Institutional Context*, Paper Presented To The Conference Of Policy Alternatives To Deal With Secret Warfare: International Law, US Institute Of Peace (March 16-17, 1990), P. 17 Cited In Arend And Beck, *International Law*, P. 192

³² Arend And Beck, *International Law*, P. 193

powers, because in certain instances aggression needs to be prevented and punished.³³ A report by the Panel on United Nations Peace Operations confirms that there are cases where “local parties consist not of moral equals but of obvious aggressors and victims and peace keepers may not only be operationally justified in using force but morally compelled to do so.”³⁴ Ignatieff explains it with the UN failure in Bosnia in 1995, which has eliminated the future possibility of “autonomous, apolitical humanitarian action in the middle of a battlefield.” According to the critic, “[e]ither you helped one side to win (...) or you used humanitarian relief to fatten up populations for slaughter.”³⁵ This is why contemporary humanitarianism no longer represents the traditional provisions of humanitarian aid to civilians and mediating ceasefires, but rather involves air strikes and ground troops “to roll back ethnic aggression” and “provide military assistance to victims seeking to defend themselves.”³⁶

This so-called “marriage of convenience” between the military force and humanitarianism created reasonable discomfort among traditional humanitarian actors, such as the ICRC, who generally resist any political involvement in humanitarian work.³⁷ Walzer furthers this sentiment by arguing that with respect to a nation’s self-determination, the international community cannot determine the political structure of the target state. This task has to be left upon the people themselves.³⁸ By a similar token, Cunliffe claims that the state, as an institution, is created in and gains its legitimacy from the will and judgment of its people, and as such is inherently representative and

³³ Michael Ignatieff, *Empire Lite: Nation-Building In Bosnia, Kosovo And Afghanistan* (Penguin Canada, 2003), Pp.58-59

³⁴ Report Of The Panel On United Nations Peace Operations, (A/55/305–S/2000/80) Section II E (50)

³⁵ Ignatieff, *Empire Lite*, Pp.58-59

³⁶ *Ibid.*, P.58

³⁷ *Ibid.*, P.58

³⁸ Walzer, *Just And Unjust Wars*, Pp.86-108

legitimate. As soon as the international community demands accountability and makes a state justify its political authority, the representative relationship between the state and its people becomes undermined and no longer exhibits the principles of “legitimate statehood”.³⁹

It becomes evident that one of the main stumbling blocks to reaching consensus on an appropriate doctrine for humanitarian interventions is the current inability to consistently reconcile intervention with sovereignty. Many in the international community still view the R2P doctrine as a tool for use by the strong against the weak and associate it with a threat to a state’s only true shield - sovereignty. Proponents of R2P look at the doctrine broadly and claim that it includes an array of both coercive and non-coercive measures to mitigate conflicts. For them, R2P is a *humanitarian* doctrine as it focuses on the needs of people, caught amidst violent conflict, and does not infringe on sovereignty because sovereignty means ‘responsibility and protection’, rather than just ‘control’. Yet these R2P supporters do not dedicate much attention to the ramifications of foreign interventions on legitimate statehood.⁴⁰ These ramifications, however, are vitally important to many R2P opponents’ arguments, because for them humanitarian interventions destroy state sovereignty and extend Western dominant power.⁴¹ R2P skeptics regard the doctrine as a way to intervene in a failing state under a humanitarian pretext. They argue that self-interest plays a key role in the decision to intervene in the first place. Also, skeptics commonly note that politically motivated R2P-interventions may violate citizen’s right to self-determination.

³⁹ Cunliffe, *A Dangerous Duty*, Pp.52,55

⁴⁰ James Pattison, *Humanitarian Intervention And The Responsibility To Protect. Who Should Intervene?* (Oxford University Press, 2010)

⁴¹ Chomsky, *The Skeleton In The Closet*, P.11

Thereby, in the absence of ideological and political consensus the world has divided into two distinguishable camps: one in favor of, and one against, the doctrine of humanitarian interventions. At the 2005 World Summit, participating states adopted a new version of R2P, which departed from the ICISS report and included more changes. The subsequent chapters will assess whether the above-mentioned concerns are still applicable to the 2005 R2P doctrine and how R2P drafters and opponents address them. It will be examined whether provisions of the new, internationally accepted doctrine are as ambiguous, as the ICISS report. A three-dimensional analysis will investigate the gap between R2P's promises and reality and analyze impediments to its practical application. The application of the R2P's rhetoric to civil unrests in Libya and Syria will help to answer the question of whether post-Cold War humanitarian interventions go hand in hand with regime change. Ultimately, it will be concluded whether the formally endorsed R2P doctrine is practically useful and effective, setting a positive precedent for future humanitarian interventions under its name.

2. LEGAL PERSPECTIVES

2.1. Two R2Ps: the ICISS report and the World Summit Outcome Document

As the R2P doctrine evolved from a suggestion of the ICISS to an internationally recognized and accepted principle, it is important to analyze the legal contribution the doctrine has made to international law and specifically to the protection of civilians in armed conflict. The forthcoming analysis will compare provisions of two versions of the R2P doctrine and examine whether the final R2P, adopted at the World Summit, imposed new legal restrictions on state behavior or clarified the existing ones. Given that the use of force is coordinated by the Security Council, the Council's relationship with the doctrine will be investigated independently.

When released in 2001, the ICISS report referred to the principles of the UN Charter and the Universal Declaration of Human Rights, which “restrict the authority of states to cause harm to their own people within territorial borders.”⁴² It emphasized the need to deliver “practical protection” to vulnerable populations who “remain at the mercy” of insurgencies, civil wars, or state repression.⁴³ Highlighting the importance of mitigating human suffering during armed conflict, the report also suggested to address humanitarian crises that result from economic degradation, state collapse or environmental cataclysms.⁴⁴ In terms of an appropriate ‘trigger’ for the use of force, the report suggested a violence threshold of either large-scale loss of life or ethnic cleansing, both actual and apprehended. Beyond the violence threshold, the report provided detailed criteria for intervention, including the precautionary and operational principles and guidelines for the right authority. It was suggested that states should embrace intervention, when diplomatic

⁴² The ICISS Report, P.49

⁴³ Ibid, P. 11

⁴⁴ Ibid, P. 33

means exhausted themselves leaving military force as the only measure to halt violence. When authorized by the right authority, intervention should seek to alleviate human suffering, resisting any political interference. Additionally, it was recommended that interveners should respect the boundaries of proportionality and ensure that they do not cause more harm than good. The threshold requirements were set notably high in order to prevent potential bias of states, who might seek to misuse the doctrine and invoke non-humanitarian interventions under its name. If a proposal to intervene were to meet the ICISS's bar, it would not only be classified as a *bona fide* humanitarian undertaking, but also soften opposition from states, such as Russia or China, because as members of the international community they have committed to international protection against genocide, ethnic cleansing and other large-scale loss of life.⁴⁵

Acknowledging the primacy of the Security Council in authorizing the use of force, the ICISS report has nonetheless incorporated alternative provisions for international action in case of a Council's deadlock. If members of the Council fail to agree on the course of collective action, it was suggested to 1) transfer the issue for consideration to the General Assembly under the Uniting for Peace procedure or 2) to undertake intervention by regional or sub-regional organizations within an area of their jurisdiction with authorization of the Security Council, including *ex post facto*.⁴⁶ This was one among several other provisions, for which the ICISS report was severely criticized and which prevented R2P from becoming the internationally recognized principle prior to 2005.

In 2005, at the World Summit states refused "to adopt the ICISS's recommendations wholesale and to frame the new principle around the idea of sovereignty as

⁴⁵ Alex Bellamy, "The Responsibility To Protect And The Problem Of The Military Intervention," *International Affairs* 84: 4 (2008), P.621

⁴⁶ The ICISS Report, Pp. 53-54

responsibility.”⁴⁷ The doctrine had to be modified, for which it was sometimes called ‘R2P Lite’. The new R2P was included in the World Summit Outcome Document and adopted by the General Assembly in resolution A/60/L.1. Paragraphs 138 and 139 of the Outcome Document highlighted the main duty of states ‘to protect’ their populations from genocide, ethnic cleansing, war crimes and crimes against humanity.⁴⁸ In the opinion of the Outcome Document, the primary role of the international community should be in assisting states with “diplomatic, humanitarian and other peaceful means” in order to meet their R2P. Should peaceful measures fail, the international community reserves the right of collective response with authorization of the Security Council.⁴⁹ In 2006, the Security Council passed resolution 1674 on the protection of civilians in armed conflict, which reaffirmed paragraphs 138-139 of the Outcome Document. Therefore, the official doctrine of R2P is encapsulated in the Outcome Document rather than the ICISS report. The latter remains nothing but a mere proposal.

Unlike the intervention-oriented ICISS report, the Outcome Document shifted the attention away from the use of force to state’s ‘responsibility to protect’ its people and international assistance in capacity-building. This reformulation eliminated the first associations of the doctrine with military intervention as an immediate response to emergency. Some believe that the deliberate focus on capacity-building was developed in order to gain more support from reluctant states, which generally oppose interference in their affairs.⁵⁰ The Outcome Document, however, did not elaborate on exactly how states

⁴⁷ Alex J. Bellamy And Ruben Reike, “The Responsibility To Protect And International Law” In *The Responsibility To Protect And International Law* (Eds.) By Alex J. Bellamy, Sara E. Davies, Luke Glanville (Martinus Nijhoff Publishers, Leiden 2011), P. 86

⁴⁸ UN General Assembly, A/60/L.1, *2005 World Summit Outcome Document*, 15 September 2005, pp.31-32

⁴⁹ Ibid, p. 31

⁵⁰ Jennifer Welsh Quoted In Alex Bellamy, *Global Politics And The Responsibility To Protect. From Words To Deeds*, (Routledge, 2011), P. 40

should assist each other and how they should respond to emergency, as there are multiple ways to achieve the same goal.⁵¹ The 2005 R2P also dismissed the criteria for intervention and excluded the proposed code of conduct for the permanent members of the Security Council not to use their veto.

One of the remarkable achievements of the 2005 R2P is that it emphasized the centrality of the Security Council, unlike its 2001 counterpart. As was noted before, critics accused the ICISS report for trying to read beyond the Charter and bypass the Security Council, encouraging illegal, albeit ethically legitimate, interventions. Especially the provision on the *ex post facto* authorized interventions raised suspicions that with a formal adoption of the R2P doctrine a number for controversial illegal interventions would rise. Mary Ellen O’Connell argued that if the ICISS’s version of R2P had been adopted during the Kosovo crisis, it could have been used as a legal justification for NATO’s non-authorized campaign.⁵² However, at the World Summit states dismissed the earlier ICISS’s provisions by stating:

“We reaffirm that the relevant provisions of the Charter are sufficient to address the full range of threats to international peace and security. We further reaffirm the authority of the Security Council to mandate coercive action to maintain and restore international peace and security.”⁵³

Thus, the new R2P, encapsulated in the Outcome Document, further supported the ban on unilateral humanitarian interventions and confirmed exclusive powers of the Security Council to authorize the use of force.

The new R2P, as in the Outcome Document, significantly departed from the ICISS report. The new R2P doctrine has become both more broad and more narrow at the same

⁵¹Alex Bellamy, *Global Politics And The Responsibility To Protect. From Words To Deeds*, (Routledge, 2011), Pp.36-38

⁵² Mary Ellen O’Connell, “Responsibility To Peace: A Critique Of R2P” In *Critical Perspectives*, (ed.) Cunliffe, P. 74

⁵³ The UN General Assembly Resolution A/60/L.1, *2005 World Summit Outcome Document*, 15 September 2005, Para.79, P.22

time. It is narrow due to the targeted focus on the four types of crimes, as opposed to the general cases of a large-scale loss of life. It is simultaneously broad, because its general language does not provide the detailed guidelines for international response, unlike the detailed ICISS report. The doctrine states very little about what constitutes international responsibility to assist others in capacity-building and to respond to crisis. The 2005 R2P becomes increasingly ambiguous as it incorporates a variety of notions (to protect, to assist and to react) in one concept. Moreover, it does not identify criteria and thresholds for interventions, guidelines for seeking authority, procedures, early warning indicators, etc. Due to the fact that the doctrine says so little, much is left to interpretation regarding the Outcome Document and R2P at large. This may represent significant challenges for the doctrine, as states may disagree about how to apply it and what should signify the need for an international response.

2.2. International law and state responsibilities

While the ICISS report proposed to address human suffering in various contexts and to extend the powers of the General Assembly in authorizing the use of force, the Outcome Document reconfirmed the authority of the Security Council and focused exclusively on the four types of crimes. By reaffirming state's protection against genocide, ethnic cleansing, war crimes and crimes against humanity, R2P simply restated existing norms and did not create new legal duties for states to protect civilians in armed conflict.

Prior to the endorsement of R2P, the protection of civilians regime had already been embedded within international humanitarian, criminal, human rights and refugee law, as well as customary international law. The state's duty to protect against genocide, ethnic

cleansing, war crimes and crimes against humanity is enshrined in the Convention on the Prevention and Punishment of the Crime of Genocide (The Genocide Convention), the Universal Declaration for Human Rights, the Geneva Conventions and its Additional Protocols, two International Covenants, and the Rome Statute of the International Criminal Court (ICC).⁵⁴ Each of the four crimes under R2P “ha[s] fairly precise legal meanings grounded in existing international law,”⁵⁵ and each of them warrants international jurisdiction.

All four crimes fall under the jurisdiction of the ICC. Article 6 of the Rome Statute is related to the crime of genocide, while Articles 7 and 8 protect against crimes against humanity and war crimes respectively.⁵⁶ The Genocide Convention prohibits the crime of genocide, obliges countries to prevent it and punish the perpetrators.⁵⁷ Each state has a duty to prosecute or extradite for prosecution those individuals, who are complicit in committing the crime of genocide.⁵⁸ The Statute of the International Criminal Tribunals for former Yugoslavia and Rwanda also adopted the definition of genocide.⁵⁹ International humanitarian law (IHL) imposes on each state a responsibility to protect its population from war crimes. War crimes are defined in the Rome Statute as “grave breaches of the 1949 Geneva Conventions and their protocols and other serious violations of laws and customs applicable in armed conflict.”⁶⁰ IHL imposes positive obligations on states to punish the perpetrators, care for the wounded, protect civilians, cooperate with

⁵⁴ Jennifer Welsh, Maria Banda, “International Law And The Responsibility To Protect: Clarifying Or Expanding States’ Responsibilities?” In Bellamy, Reike, *The Responsibility To Protect*, P.122

⁵⁵ Bellamy, Reike, *The Responsibility To Protect*, P. 87

⁵⁶ Dorota Gierycz, “The Responsibility To Protect: A Legal And Rights-Based Perspective” In Bellamy, Reike, *The Responsibility To Protect*, P.111

⁵⁷ The Genocide Convention, Article 1

⁵⁸ Orna Ben-Naftali, Miri Sharon, “What The ICJ Did Not Say About The Duty To Punish Genocide. The Missing Pieces In A Puzzle”, *Journal Of International Criminal Justice* 5 (2007), P.873

⁵⁹ Alex J. Bellamy, Ruben Reike, “The Responsibility To Protect And International Law” In Bellamy, Reike, *The Responsibility To Protect*, P. 90

⁶⁰ Ibid, P. 91

the ICRC, etc. Resembling the wording of R2P in the Outcome Document, IHL and the Genocide Convention propose that a state's responsibility is to "encourage", "assist" and "ensure compliance" of others with international law.⁶¹ Unlike the crime of genocide, crimes against humanity do not have a specialized convention, which would clarify their scope and establish a duty to prevent them. States that are signatories to the ICC (120 member states), have a duty to investigate the alleged crimes against humanity and punish the perpetrators.⁶² Otherwise, there is only a negative duty to refrain from committing such crimes. Some legal scholars, including Dorota Gierycz, take this argument further and insist that both "genocide and crimes against humanity fall under universal jurisdiction with an obligation of local trial or extradition."⁶³ Therefore, the four crimes outlined in the Outcome Document are prohibited by international law. State protection against these crimes is deemed peremptory, and the R2P doctrine has not discovered new duties and areas of civilian protection beyond the existing ones.

Similarly, R2P has not introduced new legal responsibilities for members of the international community to protect civilians in other states. According to the former US Ambassador to the UN, John Bolton, while the responsibility of a state before its people is first and foremost and is legally encapsulated, the same does not apply to the international community.⁶⁴ This, of course, does not mean that the international community has no legal obligations, because customary international law contains provisions for states to prevent the four crimes from happening and prosecute the perpetrators. As was noted earlier, each state has a duty to prosecute those complicit in

⁶¹ Ibid, Pp. 92-95

⁶² Ibid, Pp. 92-93

⁶³ Gierycz, *The Responsibility To Protect*, P. 111

⁶⁴ the abstract from the letter of John Bolton to UN member states dated August 30, 2005 and cited in Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" (*The American Journal Of International Law*, Vol. 101, No. 1, Jan., 2007), p.105

genocide or extradite them for prosecution in other states, irrespective of where the crime was committed.⁶⁵ Thus, the duty of foreign involvement exists, albeit it is weak.⁶⁶ In 2006, Bosnia filed a case before the International Court of Justice (ICJ) regarding Serbian inaction in preventing genocide in Bosnia in 1995. It was assumed that Serbia had a stronger duty to undertake preventive measures as it manifestly had influence over the Bosnia Serb forces, who were committing war crimes in Bosnia. But in its ruling, the ICJ determined that although states are required to prevent genocide with all ‘reasonable’ means, those means are not limited exclusively to military intervention and should encompass a wider range of non-coercive diplomatic mechanisms. But it is the decision of each state to choose which means are reasonable or appropriate.⁶⁷ Even if an attempt to prevent has failed, the state has factually fulfilled its responsibility. When analyzing the ruling of the Court, Bellamy argued that “whilst states are not obliged to use coercive measures or to actually succeed in preventing genocide, they must be able to show that when furnished with influence and information they have taken the initiative and attempted prevent genocide.”⁶⁸

In such a way, prevention of mass atrocities constitutes a controversial grey area, where states can engage different resources and tactics. Given that each state imagines appropriate means of genocide prevention differently, ‘when to react’ and ‘how to react’ becomes subject to individual discretion. While international law prevents states from doing nothing at all in times of atrocious crises in other states, because there is an obligation to undertake some preventive measures, it does not suggest responding to

⁶⁵ Ben-Naftali, Sharon, *What The ICJ Did Not Say*, P.873

⁶⁶ Bellamy, Reike, *The Responsibility To Protect*, P.94

⁶⁷ The International Court of Justice, Summary of the Judgment of 26 February 2007, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)

⁶⁸ Bellamy, Reike, *The Responsibility To Protect*, P.95

every emergency with the use of military force. Yet, if states do decide to intervene in order to prevent genocide, there is limited authority to stop them from implementing military force, too. In practice we see that the argument of unfolding genocide, even where not justified, becomes a deciding factor in embracing an intervention. It will be discussed in later sections how Russia responded to Georgian air strikes against a Russian peacekeeping base in South Ossetia in 2008 with military intervention, justifying it with a presumably unfolding genocide against South Ossetians. In a similar vein, the Security Council imposed a no-fly zone in Libya in 2011 in response to the threat of Gaddafi to hunt down dissenters “alley by alley, house by house,”⁶⁹ which has been interpreted as a threat of upcoming mass-scale civilian massacre. Both interventions, in Georgia and Libya, were embraced under the banner of R2P, which deems prevention as “the single most important dimension of the responsibility to protect.”⁷⁰

The indeterminacy of responsibilities to assist and to prevent complements the vagueness of international law with regards to interventions on behalf of prevention. As Bellamy noted, “it is difficult, if not impossible, to know with any certainty what is required by R2P and therefore the extent to which actors are satisfying shared expectation of appropriate behavior.”⁷¹ Provisions of paragraphs 138-139 further confirmed that there is no duty to intervene and empowered the Security Council to authorize interventions on a case-by-case basis. This made each decision to intervene subject to the discretion of members of the Council. In the absence of a duty to intervene, states can do so on their own as they find appropriate under the pretense of violence prevention. Recalling the

⁶⁹ Ramesh Thakur, “Libya And International Politics As The Struggle For Competing Normative Architectures” (September 2011) In *The Responsibility To Protect: Challenges & Opportunities In Light Of The Libyan Intervention*, (E-International Relations, November 2011), P.15

⁷⁰ The ICISS Report, P.Xi

⁷¹ Bellamy, *Global Politics*, P. 86

words of Evans, sometimes it might be a mistake to go to war, but all too often is the occurrence “the even bigger mistake of not going to war.”⁷²

2.3. R2P and the Security Council

Although the doctrine of R2P reflects international law, it does not provide a source of legality for humanitarian interventions. As a non-binding recommendation of the General Assembly, it does not constitute law.⁷³ No state can invoke intervention under the name of R2P and claim that it is legal. Only those interventions, which have been authorized by the Security Council, meet the legality requirement.

The relationship between R2P and the Security Council is particularly interesting. In recent years, the Council has started to use humanitarian language more frequently when addressing internal conflicts and deteriorating human rights conditions in various states. For example, the Council responded to extreme violence and human rights violations in Somalia,⁷⁴ Angola,⁷⁵ and East Timor.⁷⁶ In all three cases a human rights crisis was regarded as a threat to international peace and security. The President of the Security Council clarified that “the mere absence of war and military conflict among states does not itself ensure international peace and security—rather, intrastate humanitarian situations can also become threats to peace and security.”⁷⁷ After the formal endorsement of R2P in 2005, the Council continued to condemn human rights violations and started to

⁷² Gareth Evans, “From Humanitarian Intervention To The Responsibility To Protect”, Keynote To Symposium On Humanitarian Intervention, University Of Wisconsin, Madison (31 March 2006)

⁷³ Ekkehard Strauss, “A Bird In The Hand Is Worth Two In The Bush – On The Assumed Legal Nature Of The Responsibility To Protect” in Bellamy, Reike, *International Law*, Pp.27

⁷⁴ S.C. Res. 794, U.N. Doc. S/RES/794 (Dec. 3, 1992)

⁷⁵ S.C. Res. 1127, U.N. Doc. S/RES/1127 (1997)

⁷⁶ S.C. Res. 1264, U.N. Doc. S/RES/1264 (Sept. 15, 1999)

⁷⁷ Note By The President Of The Security Council, U.N. Doc. S/23500 (Jan. 31, 1992) quoted in Mehrdad Payandeh, “With Great Power Comes Great Responsibility? The Concept Of The Responsibility To Protect Within The Process Of International Lawmaking”, *The Yale Journal Of International Law*, Vol. 35:469 (2010), P.495

refer to the resolution 1674, which reaffirmed paragraphs 138-139 of the Outcome Document and focused on the protection of civilians in armed conflict. This is evident in the resolutions on Sudan,⁷⁸ Somalia,⁷⁹ and Ivory Coast.⁸⁰ The Council also began the practice of endorsing military interventions in internal conflicts, such as in Ivory Coast and Libya. Subsequently, the frequent practice of the Security Council to interpret internal conflicts as threats to international peace and intervene in them, justifying it with humanitarian language, can in itself constitute emerging norm of international customary law.

One of the larger challenges the Council faces with its evolving practice is that authorization for the use of force in internal conflicts and gross violations of human rights falls beyond Council's traditional sphere of competency. According to the Charter, the use of force is restricted to circumstances of individual and collective defense. Individual application of force implies that a state can militarily attack another in self-defense, but "the need for self-defence must be overwhelming, leaving no choice of means, and no moment for deliberation."⁸¹ In all other cases, when the threat is not imminent, states are supposed to address the Council. The Council can also authorize interventions under Chapter VII as a measure of collective defense, when a crisis represents a threat to international peace and security. Conventionally, interstate conflicts represented such a threat. Provisions on the use of force under the Charter exhaust themselves with the circumstances of collective and individual defense, and do not include interventions for humanitarian purposes. The Security Council, however, most frequently invokes Chapter

⁷⁸ U.N. Doc. S/RES/1706 (2006) and U.N. Doc. S/RES/1996 (2011)

⁷⁹ U.N. Doc. S/RES/1814 (2008)

⁸⁰ U.N. Doc. S/RES/2000 (2011)

⁸¹ Marjorie Cohn, "The Responsibility To Protect – The Cases Of Libya And Ivory Coast", *Global Research* (June 10 2012)

VII as a justification for military interventions in internal conflicts or in cases of gross violations of human rights.

Some commentators believe that drafters of the UN Charter may have intentionally left the definition of what constitutes a threat to international peace vague, in order to allow the Security Council to determine these threats on a case-by-case basis. The Document of the UN Conference on International Organization leaves “to the Council the entire decision, and also the entire responsibility for that decision, as to what constitutes a threat to peace, a breach of the peace, or an act of aggression.”⁸² This is why the term ‘threat to international peace and security’ is described as “open-textured” and “broad” and can potentially allow associations with human rights violations.⁸³ Others criticize the Council’s behavior and emphasize that Chapter VII should not be applied to internal conflicts or human rights violations. It is argued that intrastate violence is not necessarily an act of aggression of one state against the other, and thus, it cannot trigger a self-defense response. Nor does it endanger international peace and security in its traditional understanding. Humanitarian catastrophes, internal conflicts, refugee flows and violations of human rights represent threats to *human*, rather than international, security.⁸⁴ Thus, embracing the language of Chapter VII in internal crises “subvert[s] the very purpose for which the Chapter was written.”⁸⁵ Concerned with the Council’s apparent affinity for

⁸² United Nations Conference On International Organization, Volume XI Commission III Security Council, S.F., U.S., Apr. 25-June 26, 1945, P.6

⁸³ Mehrdad Payandeh, “With Great Power Comes Great Responsibility? The Concept Of The Responsibility To Protect Within The Process Of International Lawmaking”, (*The Yale Journal Of International Law*, Vol. 35:469, 2010), P. 495

⁸⁴ Weiss, *The Humanitarian Impulse*, p.45

⁸⁵ Mohammed Ayoob, “Humanitarian Intervention And State Sovereignty”, *The International Journal Of Human Rights*, 6:1(2002), P.95

expanding its list of potential threats to international peace and security,⁸⁶ the representative for Cuba has reminded of the Charter's provisions and insisted that,

“...[T]he International Humanitarian Law does not provide the right to intervene for humanitarian purposes as an exception to the principle of non-use of force. Humanitarian assistance cannot be related to the work of the Security Council, since the non-coercive character of it contrasts with the ability of the Council to take coercive decisions.”⁸⁷

Similarly, gross violations of human rights, unlike the crime of genocide, are commonly seen as insufficient reason to justify a military intervention.⁸⁸ Specifically, it is argued that human rights violations, resulting from the suppression of demonstrations and armed civilian protestors in Libya in 2011 (prior to the intervention), did not constitute a threat to international peace and security, and thus did not jeopardize any state reasonably enough to provoke a defensive military response.⁸⁹ Nonetheless, both resolutions of the Security Council criticized the non-adherence to human rights in Libya, and the subsequent intervention was purposed with ensuring civilian protection and restoring respect for human rights. But according to the Special Adviser of the UN Secretary-General, Edward Luck, the protracted human rights abuse, uncharacterized by deliberate large-scale violence, should not represent a concern for R2P and the use of force, as the doctrine was not designed for this purpose.⁹⁰ By incorporating human rights violations into interventionist decisions under an R2P banner, states can easily misapply the doctrine. Moreover, if the Council continues to intervene in internal crises, which in fact do not constitute a threat to international peace and security, and support it with R2P's

⁸⁶ Ibid., P. 86

⁸⁷ Statement By First Secretary, Anet Pino Rivero, Representative Of Cuba, At The Plenary Meeting Of The General Assembly 63rd Session, Regarding The Report Of The Secretary-General A1631677 "Implementing The Responsibility To Protect". New York, 23 July, 2009, P. 2

⁸⁸ Conor Foley, *The Thin Blue Line: How Humanitarianism Went To War* (Verso, 2008), Pp.50-51

⁸⁹ Lawrence Emeka Modeme, *The Libya Humanitarian Intervention: Is It Lawful In International Law?*, Academia.Edu (2011), P. 7

⁹⁰ Lecture By Edward Luck "Implementing The Responsibility To Protect At The UN", P. 10-11 In Bellamy, *Global Politics*, P. 68

rhetoric, it can set a dangerous precedent by giving the doctrine legal applications and turning it into an emerging norm of customary international law.

Conclusion

The doctrine of R2P has not revolutionized international law since its formal acceptance in 2005. It did not develop new responsibilities of a state to its people and was unable to impose any further legal obligations on members of the international community as to protect citizens in other states. The doctrine merely restated and emphasized old commitments to the prohibition of the crime of genocide, ethnic cleansing, war crimes and crimes against humanity. Hence, from a legal perspective, the doctrine is not very useful and does not add much to international law.

Although the Outcome's R2P eliminated many controversies of the ICISS report, it did not get rid of all of them. The doctrine comprises three different responsibilities in one concept of R2P. But only a state's responsibility 'to protect' its own people is outlined in a straightforward manner, whereas the responsibilities 'to assist' and 'to prevent' have not been adequately elaborated on. Their vague and broad description makes the doctrine subject to various interpretations. This is particularly concerning with regard to crisis prevention, for which R2P could open the doors to many conflicts globally.

The fears, associated with R2P and military humanitarian interventions, have been particularly exacerbated by the fact that the Security Council began using humanitarian language more frequently when seeking to authorize the use of force in instances of civil conflicts and gross violations of human rights. The Council has been criticized for

reading beyond Article 39 and expanding the definition of ‘threats to international peace and security’. In case of the Libyan unrest in 2011, for example, the Council authorized military intervention against intrastate violence, which did not live up to genocidal levels and did not threaten international peace.⁹¹ Although the Security Council can authorize any use of force, and to do so it does not need to rely on the doctrine of R2P, incorporation of R2P’s provisions in coercive resolutions, as well as public justifications for the use of force, can assign to the doctrine importance, as well as support and encourage more controversial interventions in internal affairs of various states.

3. POLICY PERSPECTIVES

The previous chapter demonstrated that the R2P doctrine is not of significant legal importance. Nonetheless, should states retain it in international law as a set of guidelines for future international responses to humanitarian emergencies? Is the underlying logic of the doctrine meaningful?

⁹¹ Cohn, “The Responsibility To Protect”

The R2P doctrine was originally inspired by the principle of ‘sovereignty as responsibility’, whose philosophy was embedded in the ICISS report. Due to its encompassing nature, the principle itself was rejected at the World Summit and excluded from the text of the Outcome Document. This did not, however, eliminate all associations between the doctrine and ‘sovereignty as responsibility’. To date, some states still address R2P through the lens of ‘sovereignty as responsibility’ and seek to apply the doctrine beyond genocide, ethnic cleansing, war crimes and crimes against humanity in the contexts, which are only remotely related to R2P. Later in this chapter it will be demonstrated how the skillful utilization of the doctrine, given its flexible nature, can be misapplied where there is an underlying ‘sovereignty as responsibility’ agenda.

The principle of ‘sovereignty as responsibility’ represented the third revolution of the notion of sovereignty, following the Peace of Westphalia in 1648 and adoption of the UN Charter in 1945.⁹² This new approach departed from traditional views that the state has absolute authority and instead assumed that “sovereignty does not only constitute a right of a state against intervention from other states but also encompasses a state’s responsibility to protect the people under its control.”⁹³ In case a state fails, its sovereignty will be suspended and the so-called ‘protective role’ will be transferred to the international community. Supporters of ‘sovereignty as responsibility’ insist that ‘legitimate statehood’ should incorporate respect for human rights, which then becomes the fourth pillar of sovereignty along with territory, population and control.⁹⁴ Accordingly, the perceptions of states with regard to humanitarian intervention have changed in response to the fourth pillar. Following this change in perception, liberal

⁹² Badescu, *Humanitarian Intervention*, P. 56

⁹³ Payandeh, *With Great Power Comes Great Responsibility?*, P.485

⁹⁴ Weiss, *Military-Civilian Interactions*, p. 214

interventionists announced the decline of the era of absolute sovereignty, when governments could hide behind a screen of sovereignty and let crimes against humanity go unpunished. “The old orthodoxy was never absolute,”- the UN Secretary-General, Kofi Annan, declared. - “The Charter protects the sovereignty of peoples. It was never meant as license for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power.”⁹⁵

The approach of ‘sovereignty as responsibility’ is wide-ranging and outlines numerous state responsibilities. According to one of the R2P creators, Francis Deng, states have a responsibility “to preserve life-sustaining standards for its citizens”, establish order, provide protection, and guarantee security and justice.⁹⁶ Only through meeting these responsibilities can states claim legitimacy. Conversely, the inability to provide protection has far-reaching negative implications for state’s legitimacy. In reference to Africa, Deng suggests that if local authorities “fail to exercise the responsibility to protect citizens, they cannot legitimately complain against international humanitarian intervention.”⁹⁷ As Bellamy described, “Only those states that cherish, nurture and protect the fundamental rights of their citizens and thereby fulfill their sovereign responsibilities are entitled to the full panoply of sovereign rights.”⁹⁸ Supporters of ‘sovereignty as responsibility’ perceive the doctrine to be a remedy against most world ills. They advocate for humanitarian interventions not only in cases of genocide, ethnic cleansing, war crimes and crimes against humanity, but also in cases of

⁹⁵ Kofi Annan, *Intervention*, The Ditchley Foundation, Lecture XXXV, (June, 26 1998)

⁹⁶ Francis Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, I. William Zartman, *Sovereignty As Responsibility: Conflict Management In Africa* (The Brookings Institution, 1996)

⁹⁷ Francis Deng quoted in Anne Orford, *International Authority And Responsibility To Protect* (Cambridge University Press, 2011), P.15

⁹⁸ Bellamy, *The Global Effort*, P. 19

state failure, such as poverty, starvation,⁹⁹ and diseases (primarily HIV/AIDS),¹⁰⁰ as well as environmental catastrophes.¹⁰¹ If approached from the perspective of ‘sovereignty as responsibility’, almost every state failure can provoke an international military response.

Claiming that much violence comes from fragile states with low levels of security, supporters of ‘sovereignty as responsibility’ started to pay close attention to weak and failing states.¹⁰² This is particularly apparent with the British and American governments, who in the 1990s introduced their own approaches to state sovereignty and humanitarian interventions. Tony Blair spoke on behalf of contemporary interventionists:

“We are all internationalists now, whether we like it or not. We cannot refuse to participate in global markets if we want to prosper. We cannot ignore new political ideas in other countries if we want to innovate. We cannot turn our backs on conflicts and the violation of human rights within other countries if we want still to be secure.”¹⁰³

Stewart Patrick explains the increasing tendency for foreign involvement in one’s domestic failures by noting that “[fragile states] generate – and frequently export – horrific violence, producing humanitarian catastrophes that can spread across porous boundaries, destabilizing nearby countries and even entire regions, such as West and Central Africa.”¹⁰⁴ According to Patrick, transnational threat of failing states includes “terrorism, organized crime, trafficking in drugs and human beings, pandemic diseases, mass migration, environmental degradation, and economic instability.”¹⁰⁵ They all are seen as determinants of state collapse, endangering security situation in the region and the

⁹⁹ The ICISS Report, P.viii

¹⁰⁰ Statement By First Secretary, Anet Pino Rivero, Representative Of Cuba, P.3

¹⁰¹ The ICISS Report, P.33

¹⁰² Bellamy, *The Global Effort*, p.24

¹⁰³ Tony Blair quoted in Bellamy, *The Global Effort*, P. 25

¹⁰⁴ Stewart Patrick, “The Role Of The U.S. Government In Humanitarian Intervention” (Remarks To The 43rd Annual International Affairs Symposium, *The Suffering Of Strangers: Global Humanitarian Intervention In A Turbulent World*, Lewis And Clark College Portland, Oregon April 5, 2004)

¹⁰⁵ Ibid

world as a whole.¹⁰⁶ Therefore, the role of the international community is to prevent weak states from failing. It was additionally suggested that states should encourage counterterrorism cooperation and non-proliferation of the WMDs.¹⁰⁷ States that fail to eliminate the aforementioned threats to their citizens, as well as the threat to the international community, will be stripped off their sovereignty as an act of self-defense on behalf of the others.¹⁰⁸

Over time, it was commonly agreed by proponents of humanitarian interventions that it is “unacceptable for regimes to use the principle of sovereignty as a shield behind which they can claim to be free to engage in activities that pose enormous threats to their citizens, neighbors, or the rest of the international community.”¹⁰⁹ This is why Anne-Marie Slaughter declared that UN member states have a “conditional sovereignty”, meaning that they will enjoy their rights under the Charter as long as they meet “their minimum human rights obligations and their international legal obligations toward fellow states.”¹¹⁰ Humanitarian intervention is thus seen by proponents to be a tool for the prevention of state collapse and the emergence of violence. As can be expected, when members of the international community began to use this tool more frequently, R2P skeptics were highly dissatisfied. For example, Jose Alvarez actively condemned the largest military and economic players for being “all too ready to deploy the ‘preventive’ use of force anywhere and everywhere”, as well as the Security Council for being “all too

¹⁰⁶ Jose Alvarez, “The Schizophrenias Of R2P”, Panel Presentation At The 2007 Hague Joint Conference On Contemporary Issues Of International Law: Criminal Jurisdiction 100 Years After The 1907 Hague Peace Conference, The Hague, The Netherlands (June 30, 2007), Pp.10-11

¹⁰⁷ Bellamy, *The Global Effort*, P. 24

¹⁰⁸ *Ibid*, P.24

¹⁰⁹ *Ibid*, P. 24

¹¹⁰ Alvarez, *The Schizophrenias Of R2P*, P, 6-7

ready to impose legal obligations on all sovereigns with respect to counter terrorism and WMDs.”¹¹¹

The ideas of ‘sovereignty as responsibility’ and their realization through the prism of R2P have touched on the old international debates regarding human rights and state duties. The question of what kind of protection a state should offer to its citizens has always worried international authorities. Should a state provide only targeted protection against genocide and other mass-atrocities – in other words, simply promise not to kill? Or should a state be also responsible for more general and encompassing protection, including economic stability and social security? Moreover, should the inability to provide the latter be a matter of international involvement? Struggling to answer these questions, states came to accept two separate drafts of international covenants – the International Covenant for Economic, Social and Cultural Rights (ICESC) and the International Covenant for Civil and Political Rights (ICCPR). Each describes citizen’s rights and the state duty to respect them. Yet, ensuring state’s compliance does not (and should not) always come at the expense of state sovereignty. Humanitarian intervention is not always an appropriate tool as a means of foreign ‘assistance’ to the failing state. When the ICISS report emphasized the root cause prevention and suggested tackling economic deprivation and the lack of opportunities, improving the terms of trade, encouraging economic reforms, and development assistance,¹¹² it was rejected by states. Scrutinized through the wide-ranging lens of ‘sovereignty as responsibility’, states found themselves highly susceptible to external violations of sovereignty. This is why at the World Summit only the negative duty of a state not to kill its own people was reaffirmed

¹¹¹ Ibid, P. 7

¹¹² The ICISS Report, P. 23

and encapsulated in the Outcome Document. There was no other agreement of the positive duty to do something more than not to kill. Hence, as such R2P should not be engaged through the lens of ‘sovereignty as responsibility’ as it falls beyond agreement at the Summit.

One must admit, however, that since ‘sovereignty as responsibility’ inspired R2P and lies at its very core, it is difficult to separate the doctrine and the principle. Despite being excluded from the Outcome Document, the principle was not explicitly prohibited either. This is why some states interpret the doctrine based on their own perceptions and associate it with ‘sovereignty as responsibility’. For example, in 2008, when the cyclone Nargis struck Myanmar leaving tens of thousands of people dead and displaced, then French Foreign Minister Bernard Kouchner suggested invoking the R2P doctrine to deliver humanitarian aid. However, the military regime in Myanmar at the time opposed the proposition and limited the access to foreign aid, focusing instead on implementing a constitutional referendum.¹¹³ Seeking to help people in the middle of the post-cyclone destruction, humanitarian crisis and political instability, Kouchner called for a humanitarian intervention despite the lack of state permission. The call was met with opposition and was ultimately rejected for the reason that the humanitarian crisis in Myanmar was the result of a natural catastrophe, rather than deliberate man-made violence. As per the 2005 World Summit R2P was narrowly defined to include only four violent crimes, the doctrine was inapplicable of assisting in response to the natural catastrophe in Myanmar.

¹¹³ Asia-Pacific Centre For The Responsibility To Protect, “Cyclone Nargis And The Responsibility To Protect”, Myanmar/Burma Briefing No. 2 (May 2008), P. 2

While it could be suggested that Myanmar was an exceptional example of misinterpreting R2P, it is more likely that the incident was a consequence of the doctrine's wording. As was demonstrated earlier, in developing the Outcome Document language was left vague and indeterminate, when describing responsibilities to assist and prevent. It is this very vagueness that allows the existence of linkages between R2P and policy agendas, such as state capacity, security, economic development, human rights and protection of civilians,¹¹⁴ even though these agendas are not specifically concerned with the doctrine itself. Ultimately, states-supporters of 'sovereignty as responsibility' can embrace interventions in pseudo-R2P cases that are not characterized by high levels of violence, so long as they maintain humanitarian concerns of some other significance.

In 2001, the ICISS report highlighted that armed conflicts cannot be understood without reference to root causes, such as "poverty, political repression, and uneven distribution of resources."¹¹⁵ As to prevent armed conflicts and the associated violence, the report suggested the promotion of human rights, protection of minority rights and creation of representative democratic institutions. Furthermore, at the meeting of the General Assembly in 2009, several governments, including New Zealand, Australia, South Korea and Viet Nam, also stressed the link between development assistance and crisis prevention. They argued that "the root causes of armed conflict and the four R2P crimes lay in poverty and underdevelopment and that the international community should address these issues as part of its commitment to R2P."¹¹⁶ Those who would want to extend the argument of development assistance and militarily intervene to meet their commitment to R2P in practice can claim that low development indicators (including

¹¹⁴ Bellamy, *Global Politics*, P. 43

¹¹⁵ The ICISS Report, Pp.22-23

¹¹⁶ Bellamy, *Global Politics*, P. 94

poverty, economic and social crisis, political suppression, diseases, etc.) can result in armed violence, which R2P seeks to suppress. Hence, preventative interventions could assist states in capacity-building and strengthen their foundation. By intervening, external powers can meet their R2P, of which responsibility ‘to prevent’ or ‘to assist’ is part.

Although development assistance is indeed vital for the stability and security of a state, it is questionable whether underdevelopment should trigger military action as a preventive response to future humanitarian crises. Otherwise, almost any use of force, so long as it is purposed with assistance or prevention, can be justified under the R2P doctrine. Ultimately, economically fragile states, such as Myanmar, find themselves under risk of intervention. Their weak economic situation, exacerbated by poverty, political authoritarianism, climate change and diseases, can be viewed as a precondition of violence. It becomes even more dangerous for *war-torn* fragile states, because it is easier to justify an intervention in order to ‘prevent’ in the context of existing armed conflict. The combination of a ‘sovereignty as responsibility’ agenda and existing armed conflict (or some other deteriorating situation that may be threatening stability in the region) simplifies justification for the intervention. Had there been an armed conflict in Myanmar in the area where the cyclone hit, the nature of international dialogue surrounding the humanitarian crisis in Myanmar could have been different.

Thereby, the skillful utilization of the doctrine can lead to more interventions justified under humanitarian pretexts in situations, which in certain situations are the far-away echoes of the R2P principle. If every state failure opens a door to intervention, then weak states lose any immunity whatsoever and the UN Charter, intended to protect each state’s sovereignty, no longer serves as a protective mechanism. Placing the whole

‘human security’ agenda under the umbrella of R2P dilutes and stretches the doctrine, suggesting too many reasons for the use of force. This supports the fears of those, who see R2P as “the thin end of a totally interventionist wedge”: the doctrine essentially becomes “an open invitation for the countries of the North to engage to their hearts content in the *missions civilisatrices* ...”¹¹⁷ Given “the readiness of states to invade one another”, the revisionism of international rules with regards to the use of force is a “risky business”.¹¹⁸ Potential misuses of the doctrine could further unsettle political and diplomatic instabilities. Therefore, R2P should be used in exceptional circumstances in response to conscience-shocking crimes, and its significance should not be diluted by other policy agendas.

Conclusion

The fact that R2P has been agreed upon and adopted at the largest gathering of states carries in itself immense political weight,¹¹⁹ but it did not free the doctrine of challenges. Despite efforts to distance the doctrine from the principle of ‘sovereignty as responsibility’, it proves difficult to do so. Many states struggle to differentiate between these often competing, but similar, concepts and remain influenced by the ICISS report and its expansive scope. As such, the R2P doctrine has become widely cited, meaning “too many things to too many different people.”¹²⁰

Interpreted in the context of ‘sovereignty as responsibility’, R2P compromises sovereign equality of states and makes them vulnerable to the interventionist decisions of

¹¹⁷ Gareth Evans, “The Limits Of State Sovereignty: The Responsibility To Protect In The 21st Century”, Speech At The Meeting Of The International Crisis Group, (29 Jul 2007)

¹¹⁸ Walzer, *Just And Unjust Wars*, P. 90

¹¹⁹ Bellamy, Reike, *The Responsibility To Protect*, P.87

¹²⁰ Alvarez, *The Schizophrenias Of R2P*, P. 4

the few world powers.¹²¹ It seeks to rearrange the world order due to the constant attacks on the UN Charter to incorporate more provisions on the use of force and to “reflect ‘contemporary’ values of human rights and human security.”¹²² In the context of ‘sovereignty as responsibility’ R2P extends to many areas of human insecurity far beyond the Outcome Document and makes more states susceptible to interventions irrespective of the nature of crisis. From the standpoint of ‘sovereignty as responsibility’, almost every state failure can trigger a military response.

The ambiguity of responsibilities ‘to assist’ and ‘to prevent’ can create loopholes for those states that want to use the doctrine for the wrong purpose and apply it to cases, which are only remotely related to the R2P-type of crimes. The logic of ‘sovereignty as responsibility’ encourages more interventions under R2P for broad ‘human security’ reasons. As Weiss rightly notes, R2P “is not about the protection of everyone from everything. Broadening perspectives has opened the floodgates to an overflow of appeals to address too many problems (...) If R2P means everything, it means nothing.”¹²³ By embracing ideas of ‘sovereignty as responsibility’ and applying them in practice with the help of the R2P doctrine, potential interveners can not only stretch the doctrine, but also undermine its credibility. If *realpolitik* allows states to independently determine the content of the doctrine and thus loosen the restrictions, imposed by traditional international legal documents, the doctrine should be dismissed as an ineffective and destructive model of military humanitarianism.

¹²¹ Mohammed Ayoob, “Humanitarian Intervention and International Society” (Global Governance 7, 2001), pp.225-230

¹²² Alvarez, *The Schizophrenias Of R2P*, P. 6

¹²³ Thomas G. Weiss, “Whither R2P?” (August 2011) In *The Responsibility To Protect: Challenges & Opportunities In Light Of The Libyan Intervention*, E-International Relations (November 2011), P.8

4. PRACTICAL IMPLICATIONS

4.1. The post-Cold War perspectives on humanitarian interventions

Historically, the practice of humanitarian interventions has been the most challenging and controversial. The interventions of the past several decades, in particular, have been the opposite of the idealist standard, to which many academics refer. It proved difficult, if not

impossible, to separate a ‘good cause’ from the political agendas of interveners. Often, the humanitarian rhetoric is used as a cover-up for political war. As more weak developing states find themselves under the threat of intervention, the idea of sovereign equality of states, ensured by the UN Charter, becomes more utopian. The analysis of contemporary humanitarian interventions indicates that almost all of them were carried out by developed states against their much weaker, developing counterparts.¹²⁴ The likelihood of a humanitarian intervention against a member of the Security Council seems to be negligible.¹²⁵ This has pushed some critics to believe that “[h]umanitarian interventions are now the ‘acts of power’ of western democracies in illiberal countries in an age in which the former have an indisputable military, economic, political and cultural hegemony over the latter.”¹²⁶

Admittedly, although many developing states oppose humanitarian interventions, not all of them do. The African Union has incorporated provisions on humanitarian interventions in its Charter and declared “the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”¹²⁷ However, since most of the post-Cold War interventions were carried out by major Western powers (and they form the focus of this research), it will be asserted that R2P can be manipulated namely by Western states and members of the Security Council. The ethics and legality of the wars some of these states waged in other, non-humanitarian, contexts, such as Iraq,

¹²⁴ Pattison, *Humanitarian Intervention*, P.1

¹²⁵ Badescu, *Humanitarian Intervention*, Pp 43-44

¹²⁶ Daniele Archibugi, “Cosmopolitan Guidelines For Humanitarian Intervention,” *Alternatives. Global, Local, Political*, Vol 29, No. 1 (Spring 2004), P.3

¹²⁷ Article 4(h) of the Constitutive Act of the African Union

Afghanistan, and Pakistan, has damaged their credibility and undermined the genuineness of their humanitarian concerns in Arab upheavals of 2011-2012.

Thereby, the doctrine of R2P emerged in the context of an asymmetrical and hierarchical political reality. R2P's official endorsement strengthened the fears of weak states that the doctrine will become a commonly accepted tool to compromise state sovereignty. Pinpointing the vagueness of the doctrine and the persistent associations with 'sovereignty as responsibility', the representative for Cuba posed a series of important questions at the meeting of the General Assembly in 2009:

“Who is to decide if there is an urgent need for an intervention in a given State, according to what criteria, in what framework, and on the basis of what conditions? Who decides it is evident the authorities of a State do not protect their people, and how is it decided? Who determines peaceful means are not adequate in a certain situation, and on what criteria? Do small States have also the right and the actual prospect of interfering in the affairs of larger States?”¹²⁸

China also complained that Western powers have set themselves up “as both judge and jury” and started to manipulate the argument of human rights to put political pressure on certain governments and justify the use of military force.¹²⁹ The position of the Cuban and Chinese governments reflected common fears of developing states, which believe that R2P is reserved only for powerful states and can ultimately lead to a re-emergence of colonialism.¹³⁰

History has very few, if any, examples of genuine humanitarian intervention. Since the interveners frequently manipulated humanitarian language, and failed to translate their verbal commitments into practice, they discredited the promising name of humanitarianism and impeded the progress in international talks with regard to R2P. The

¹²⁸ Statement By First Secretary, Anet Pino Rivero, Representative Of Cuba, p.3

¹²⁹ UN Commission On Human Rights, “Responses Of Governments And Agencies To The Report Of The Un Special Representative For Internally Displaced Persons” Quoted In Bellamy, *The Global Effort*, P. 27

¹³⁰ Ayoob, *Humanitarian Intervention and International Society*, pp.225-230

image of humanitarian doctrine was further undermined by dubious practical applications beyond its scope. In 2008, tensions grew in South Ossetia, which since the times of the Soviet Union was an autonomous territory of Georgia, protected by the Russian peacekeeping troops. In light of the growing Russia-Georgia animosity, the traditionally warm and improving relations between Russia and South Ossetia were regarded by Georgia as encouragement of secessionist movements and a threat to Georgian sovereignty. At the apogee of the diplomatic crisis, Georgia launched air strikes against the Russian peacekeeping base. In response, Russia moved its troops into South Ossetia and then into Georgia. Having defeated the Georgian army and occupied several cities in five days, Russia finally declared the independence of South Ossetia and Abkhazia.

Russia justified its intervention in South Ossetia/Georgia with a fear of “the commission and imminent commission of mass atrocities by the Georgian army against the South Ossetians.”¹³¹ Russia also intended to protect its own nationals residing in South Ossetia.¹³² Having embraced the language of R2P, the Russian authorities stated:

“According to our Constitution there is also responsibility to protect – the term which is very widely used in the UN when people see some trouble in Africa or in any remote part of other regions. But this is not Africa to us, this is next door. This is the area, where Russian citizens live. So the Constitution of the Russian Federation, the laws of the Russian Federation make it absolutely unavoidable to us to exercise responsibility to protect.”¹³³

The R2P-intervention in South Ossetia/Georgia raised multiple questions. The first was related to the ‘just cause’ argument, as there was no evidence that a threat of genocide was imminent. According to the report of the Fact-Finding Mission from the European

¹³¹ Bellamy, *Global Politics*, P.55

¹³² The Report Of The Independent International Fact-Finding Mission On The Conflict In Georgia (IIFFMCG), Volume I (September 2009), P.21

¹³³ Global Centre For The Responsibility To Protect, “The Georgia-Russia Crisis And The Responsibility To Protect: Background Note”, New York (August, 19 2008), P.1

Union, the initial number of civilian casualties was overestimated and claimed to be 2,000 civilians. However, later it was drastically reduced to 162 persons.¹³⁴ Contrary to the argument of upcoming genocide, the Russian campaign intended to protect its own peacekeepers and the Russian nationals in South Ossetia. Yet, neither of these concerns falls within the scope of the R2P doctrine. Although the immediate reaction to protect its peacekeepers or nationals is understandable, Russia should have provided another justification for the use of retaliatory force.

Another challenge that R2P met in Georgia was unilateralism. At the World Summit states agreed that any use of force for humanitarian purposes under R2P should be authorized by the Security Council. This was not the case in the Russian-Georgian crisis. Russia acted unilaterally and, in this, contravened provisions of R2P. Some commentators insist that the occasional unilateralism, which the world witnessed in Iraq in 2003 and South Ossetia/Georgia in 2008, is due to the intervention in Kosovo in 1999.¹³⁵ Kosovo was the original sin that made the subsequent illegal interventions possible. Finally, the amount of force used by the Russian side was disproportionate to the goal of protecting civilians¹³⁶ and “went far beyond the reasonable limits of defense”.¹³⁷

The application of R2P in Georgia became an illustrative example. It demonstrated how references to the doctrine made it easier to justify the intervention in humanitarian terms, even if a state will not abide by them entirely. The specificity of the Russian-Georgian conflict was that both states found themselves amidst, not a humanitarian crisis,

¹³⁴ The Report Of The IIFMCG, P.21

¹³⁵ Badescu, *Humanitarian Intervention*, p.10

¹³⁶ Global Centre For The Responsibility To Protect, *The Georgia-Russia Crisis*, Pp.1-3

¹³⁷ The Report Of The IIFMCG, P.24

but a protracted political confrontation, which they failed to resolve through diplomacy. Although the humanitarian language was applicable to the first stages of the crisis, the rapid advancement of the Russian military in Georgian territories did not answer the purpose of protecting the peacekeepers, the South Ossetians, or the Russian nationals. The R2P-intervention helped Russia demonstrate to the recalcitrant neighbor its military might and dominance, and extend its presence in the region.

Similar to the French suggestion to intervene in Myanmar in 2008, the Russian interpretation of the R2P doctrine confirms the fact that powerful states often refer to the doctrine in cases of human suffering, even if they are not necessarily related to the four crimes outlined in R2P. By seeking to frequently use military force, states-interveners breach the scope of the doctrine. Moreover, they reinforce the fears of weak states that R2P is a tool of powerful states to be applied whenever it is convenient. While the national interest of France in Myanmar was not at stake as much as the Russian interest was in Georgia, the latter intervened regardless of the threshold requirements. Although R2P sought to depoliticize the debate around the ‘right to intervene’, and was deliberately framed in moral terms,¹³⁸ its humanitarian rhetoric does not match with practice. The analysis of the intervention in Libya will further support this argument.

4.2. R2P and Libya

The end of the Cold War was an important historical moment, marked by the growing international intolerance of anti-democratic regimes and strong support of pro-democracy movements. Some commentators explain it with a fear of a “regressive return to the

¹³⁸ Tara McCormack, *The Responsibility To Protect*, P.42

authoritarian view of states”,¹³⁹ this is why they seek to forfeit state sovereignty as a “quasi-totalitarian concentration of power”¹⁴⁰ and support democratization. Accordingly, many humanitarian interventions have transformed into undercover operations of regime change.

The international resistance to anti-democratic regimes became particularly obvious in early 2011, when the anti-establishment rallies swept the Middle East and North Africa. Some of the Arab upheavals were accompanied by armed violence, pushing members of the international community to revisit the R2P doctrine. The civil unrest in Libya and the threatened massacres in Benghazi provided a favorable ground for the application of the doctrine. Relying on the argument of civilian protection, the Security Council authorized the intervention in the Libyan airspace. In resolution 1973 the Council called “to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians.”¹⁴¹ The ban excluded only humanitarian flights, which aimed to deliver or facilitate the delivery of assistance to the Libyan people. This became the first real test for the forced military intervention under R2P. Almost simultaneously with Libya, disturbances started in Syria. The language of R2P, or specifically the protection of civilians, became applicable to the Syrian conflict, too. Both Libya and Syria are not only remarkable examples of armed struggle against longstanding authoritarian regimes, but also a litmus test of the Western attitude towards these regimes once their existence comes at stake. The forthcoming pages will illustrate how the relatively similar types of conflict were addressed through the prism of R2P. The way, in

¹³⁹ Orford, *International Authority*, P.210

¹⁴⁰ Cunliffe, *A Dangerous Duty*, P.60

¹⁴¹ Security Council Resolution S/RES/1973 (2011), p.3

which the R2P doctrine was interpreted and applied in each context, will determine how workable and efficient the doctrine is in addressing civilian violence in armed conflict.

As was noted before, there have been expressed concerns with the lack of threshold requirements for military action under R2P. For example, the CARICOM states wondered “At what stage and under which circumstances will the Security Council be authorized to take action under Chapter VII of the Charter, including authorizing the use of force?”¹⁴² Admittedly, R2P as in the Outcome Document failed to incorporate criteria for the use of force. However, the ICISS report did. The precautionary principles, listed in the report, address the possible concerns of authority, timeline, violence threshold, methods of coercion, etc. and summarize them under six main principles. They include ‘right authority’, ‘just cause’, ‘last resort’, ‘proportional means’, ‘right intention’, and ‘reasonable prospects’. To satisfy all requirements and proceed as *bona fide* humanitarian, the intervention should be authorized by the Security Council in the context of mass-scale violence, when all non-coercive conflict resolution techniques have failed. The intervention should engage proportional means of coercion and have a purpose of protecting civilians without political interference with a state in question. Finally, states should assess the risks of foreign intervention and make sure it does not worsen the humanitarian situation on the ground. These criteria will be used for the examination of R2P’s practical efficiency in Libya. They will help to understand whether the doctrine was invoked in accordance with international law.

Just cause

¹⁴² The Report Of The Global Centre For The Responsibility To Protect, *Implementing The Responsibility To Protect The 2009 General Assembly Debate: An Assessment* (AUGUST 2009), P.7

In the beginning of February 2011, the anti-government demonstrations spiked in Libya and shortly after evolved into the armed conflict between the pro-Gaddafi forces and the rebels of the National Transitional Council (NTC). Less than two weeks after the outbreak of violence, on February, 26, the Security Council passed resolution 1970, condemning the violence and systematic violations of human rights committed by Gaddafi forces, imposing sanctions on his government and referring the situation to the ICC.¹⁴³ Less than a month later, on March, 17, the Council passed its second resolution 1973, which demanded an immediate ceasefire, authorized a no-fly zone and empowered member states “to take all necessary measures to protect civilians under threat of attack in the country.”¹⁴⁴ Both resolutions made indirect references to R2P, referred to the previously adopted Security Council resolution 1674 and recalled the duties of the Libyan government to protect civilian populations and adhere to human rights.

The level of violence in a war-torn state is the first criterion to be considered prior to the R2P-intervention. To satisfy this requirement, atrocities should amount to genocide, ethnic cleansing, war crimes or crimes against humanity. Only the overwhelming, or ‘conscience-shocking’, levels of violence justify the use of military force. It is contestable, however, whether the situation in Libya represented an appalling humanitarian emergency to incite the R2P discussion. Mary Ellen O’Connell claims that the argument of civilian protection was weak and the death toll in Libya was not comparable to the occurrences in Rwanda or Bosnia. “Before the rebels took up arms in Libya, fewer than 100 people had been killed. After the rebels chose war, the numbers

¹⁴³ see the Security Council Resolution S/RES/1970 (2011)

¹⁴⁴ see the Security Council Resolution S/RES/1973 (2011)

reached around 250.”¹⁴⁵ Patrick Cockburn reports that, “most of the fighting during the first days of the uprising was in Benghazi, where 100 to 110 people were killed, and the city of Baida to the East, where 59 to 64 were killed.”¹⁴⁶

The trigger for foreign intervention was Gaddafi’s threat to hunt down dissenters “alley by alley, house by house, room by room, with no mercy or pity.”¹⁴⁷ Following this statement, civilian protection became the most cited justification for invoking R2P. Voting in favor of resolution 1973, the Foreign Minister of France declared, “we have very little time left – perhaps only a matter of hours”. He expressed the urgency with the intervention “adding that each hour and day that passed ‘increased the weight’ on the international community’s shoulders.”¹⁴⁸ Similarly, Barack Obama declared, “if we waited one more day, Benghazi, a city nearly the size of Charlotte, could suffer a massacre that would have reverberated across the region and stained the conscience of the world.”¹⁴⁹ This brings back the memories of the Kosovo intervention, when Milosevic claimed that it would take only ten days for the police to destroy the Kosovo Liberation Army (KLA). Since, Gaddafi also threatened to put down the uprising in short time frames, it triggered a preventive intervention. It is important to note that when defining the violence threshold for military intervention, the ICISS report referred to the large-scale killing, actual or *apprehended*.¹⁵⁰ The report suggested that those atrocities, which

¹⁴⁵ Mary Ellen O’Connell, “How To Lose A Revolution?” (October 2011) In *The Responsibility To Protect: Challenges & Opportunities In Light Of The Libyan Intervention*, (E-International Relations, November 2011), P.15

¹⁴⁶ Patrick Cockburn, “Amnesty Questions Claim That Gaddafi Ordered Rape As Weapon Of War”, (The Independent June, 24 2011)

¹⁴⁷ Ramesh Thakur, “Libya And International Politics As The Struggle For Competing Normative Architectures” (September 2011) in *The Responsibility To Protect: Challenges & Opportunities In Light Of The Libyan Intervention* (E-International Relations, November 2011), P.15

¹⁴⁸ The Security Council Statement “Security Council Approves ‘No-Fly Zone’ Over Libya, Authorizing ‘All Necessary Measures’ To Protect Civilians, By Vote Of 10 In Favour With 5 Abstentions” As Of 17 March 2011 Accompanying The Resolution 1973 (2011)

¹⁴⁹ Remarks By The President In Address To The Nation On Libya National Defense University, Washington, D.C., The White House, Office Of The Press Secretary, March 28, 2011

¹⁵⁰ The ICISS Report, P. Xii

are about to unfold, should also be addressed with R2P and halted with military intervention. Although the Outcome Document eliminated explicit provisions on prevention of imminent violence, it nonetheless allows preventive interventions under the ‘responsibility to prevent’.

Some scholars nevertheless insist that a threat to civilians and the upcoming ‘bloodbath’ were grossly exaggerated. Having started as a confrontation between peaceful protestors and government forces, the conflict promptly evolved into armed insurrection with an objective to overthrow the regime. In his speech threatening to hunt down “dissenters”, Gaddafi did not talk of unarmed civilians, but those who were incited by the West and jeopardized his rule.¹⁵¹ Moreover, he promised amnesty for those who would give up fighting and offered them the escape route to Egypt.¹⁵² As the rebels acted on a military offensive and gained control over more territories, the government legitimately responded with force, as the state’s primary purpose is to maintain political stability. The rebels-provoked violence reinforced the legitimacy of the measures used by the Libyan state in retaliation.¹⁵³ As a result, civilian casualties were not a product of deliberate targeting, but a residual effect of the armed struggle between the state and the opposition. For example, one source reports that as of March, 10 2011 the total casualties in the cities of Derna, Baida, Brega, Benghazi, Ras Lanuf and Bin Jawad, amounted to 400 people. Of those, only one civilian woman was killed.¹⁵⁴ Alan Kuperman further states that in Misrata, the rebel-held city in the west of Libya, over the span of two months of war 257 people, including combatants, were reported dead. The number of

¹⁵¹ Translated Speech Of Muammar Gaddafi As Of Feb, 22 2011

¹⁵² Alan Kuperman, “False Pretense For War In Libya?”, *The Boston Globe* (April 14, 2011)

¹⁵³ Alan Kuperman, “5 Things The U.S. Should Consider In Libya,” *USA Today*, Op-Ed, (March 22, 2011)

¹⁵⁴ Noah Tucker, “Death By Humanitarianism”, *21st Century Socialism* (May 1 2011)

wounded was claimed to be 949 people, of which 22, or less than 3%, were women. Based on this evidence, Kuperman concludes that indiscriminate targeting of civilians was not the objective of Gaddafi, otherwise there would have been thousands of deaths and women would have constituted a far larger share.¹⁵⁵ Moreover, the numbers of casualties differentiate poorly between combatants and civilians. Directly participating in hostilities, rebels represent lawful targets and their death toll does not count as civilian. As such, intervention with a purpose to protect rebels does not satisfy the ‘just cause’ requirement.

Several members of the Security Council also expressed concern with the coercive resolution that was not supported by reliable data or evidence of the atrocious human rights abuse. Although the Security Council requested the Human Rights Council to “urgently dispatch an independent international commission of inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya”,¹⁵⁶ the Council proceeded to resolution 1973 prior to receiving the report and confirmation of the ongoing violence.

It is important to note that foreign interferences in conflicts, which are not characterized by genocidal intent, shifts the balance of power between the warring parties and impedes the natural process of political determination. Intervention should not always be justified whenever there is a civil war or a revolution.¹⁵⁷ Only the crime of genocide, ethnic cleansing, war crimes and crimes against humanity should trigger the international jurisdiction. However, there was no strong evidence to suggest that such

¹⁵⁵ The Interview With Alan Kuperman On *Russia Today* Network, (19 Apr 2011)

¹⁵⁶ see the Security Council Resolution S/RES/1970 (2011)

¹⁵⁷ Walzer, *Just And Unjust Wars*, P. 89

atrocities actually took place in Libya before the Security Council passed resolution 1973.

Right authority

The ‘right authority’ criterion is supported by both the ICISS report and the Outcome Document. It requires that, as the sole international body responsible for maintaining peace and security, only the Security Council can authorize humanitarian interventions.¹⁵⁸

Although the intervention in Libya in the form of a no-fly zone was authorized by the Council and thus technically met the legal requirement, it nonetheless provoked the criticism. Critics believe that the Council started to step outside its mandate to resolve the situations of human rights violations. Judged against the provisions of the UN Charter, the Libyan conflict did not constitute a breach of or a threat to international peace and security. It did not amount to an act of aggression to trigger collective or individual response. Instead, it was a domestic suppression of protestors and rebels with no international implications.¹⁵⁹ The ICISS report suggested that “human rights violations falling short of outright killing or ethnic cleansing, for example systematic racial discrimination, or the systematic imprisonment or other repression of political opponents” are insufficient elements to trigger a military response.¹⁶⁰ Given that the crisis in Libya did not represent a threat to international peace and security, as well as was not supported by reliable evidence of unfolding genocide, the Security Council exceeded its mandate in attempting to resolve the Libyan internal conflict with military means.

Last resort

¹⁵⁸ ICISS Report, P.xii; the World Summit Outcome Document, p.

¹⁵⁹ Modeme, *The Libya Humanitarian Intervention*, P. 7

¹⁶⁰ The ICISS Report, P.34

It is widely assumed that “military intervention can only be justified when every non-military option for prevention or peaceful resolution has been explored.”¹⁶¹ With respect to Libya, members of the international community did conduct their due diligence to a peaceful conflict settlement. On the contrary, they demonstrated a lack of diplomacy and a constant yearning for military action.

Resolution 1970 imposed sanctions on the Libyan government in the form of an arms embargo, an asset freeze, a ban on flights and travel restrictions on Libyan officials.¹⁶² However, these measures were given little time to take effect. Although neither Hilary Clinton, nor David Cameron visited Libya to negotiate a peace plan with Gaddafi directly, Western powers soon announced diplomatic failure with Libya. Moreover, they largely ignored the peace-brokering efforts, waged by the African Union.¹⁶³ When the Security Council furthered the action against Libya and authorized a no-fly zone, five member states - Russia, China, Brazil, India and Germany - abstained from the vote. Particularly the former two expressed skepticism that “many questions had not been answered in regard to provisions of the resolution.”¹⁶⁴

Not only have the critics pinpointed a 20 days time frame between two resolutions, but they also condemned the prompt beginning of the NATO operation. It started two days after the adoption of resolution 1973, or a month after the beginning of the Libyan civil war.¹⁶⁵ The speed of international response is particularly notable when compared to the intervention in Bosnia, which took place only 3 years after the start of hostilities, or to Darfur, where even acknowledgment by some states, including the US, of genocide failed

¹⁶¹ Ibid, P. Xii

¹⁶² see the Security Council Resolution S/RES/1970 (2011)

¹⁶³ Alan Boswell, “Why Is Much Of Africa Giving Libya's Rebels The Cold Shoulder?”, (*Time World*, Friday, Aug. 26, 2011)

¹⁶⁴ see the Security Council Resolution S/RES/1973 (2011)

¹⁶⁵ O’Connell, *How To Lose A Revolution?*, P.15

to trigger a full-scale international military response.¹⁶⁶ The prompt response of the Security Council and NATO to the Libyan crisis demonstrated how rapid prevention has begun to substitute diplomacy as a method for international mediation.

Proportional means

The ‘proportional means’ requirement insists that interveners should use no more force than needed to reach the humanitarian objective, act in compliance with international law and limit the effect on the political system of the state concerned.¹⁶⁷ However, in Libya this requirement was also violated.

Prior to the intervention, Russia raised concerns related to the limits of international action in Libya. The main question was, “how and by whom the measures would be enforced and what the limits of the engagement would be.”¹⁶⁸ As was later confirmed, the Russian fears proved not to be groundless. Resolution 1973 authorized member states “to take all necessary measures” for the protection of “civilians and civilian-populated areas under threat of attack in the Libyan Arab Jamahiriya”,¹⁶⁹ but it did not incorporate more specific limitations on the international role. As a result, NATO unilaterally redefined the operation as a political battle against Gaddafi. It contravened not only provisions of the resolution, designed exclusively for civilian protection, but also the UN Charter, which prohibits political interference in domestic affairs of states.

Comparative analysis of both NATO campaigns in Kosovo and Libya reveals multiple similarities. In 1999, NATO turned into an air proxy of the KLA and helped it to defeat the Serbian army. The analogous tactic was used in Libya. Since a no-fly zone

¹⁶⁶ Paul D. Williams, Alex J. Bellamy, “The Responsibility To Protect And The Crisis In Darfur”, *Security Dialogue* Vol. 36(1), (March 2005), Pp.31-32

¹⁶⁷ The ICISS Report, P.37

¹⁶⁸ Security Council Statement Of 17/03/11 Accompanying Resolution S/RES/1973 (2011)

¹⁶⁹ see the Security Council Resolution S/RES/1973 (2011)

sought to incapacitate Gaddafi's air force to prevent attacks on civilians, NATO fired at Gaddafi's military targets both by air and sea¹⁷⁰ and destroyed "the government's fighter jets, anti-craft guns, airports and airstrips, and launching pads."¹⁷¹ Having eliminated the greatest threat for civilians from air, NATO proceeded to bomb other military targets so as to damage positions of Gaddafi on the ground. They included "telecommunication installations, command and control capabilities, government troops, and other softer targets such as Gaddafi's compound and his home town of Sirte even though no fighting was going on there."¹⁷² In light of the increasing naval use by pro-Gaddafi forces, NATO also targeted the Libyan navy in the ports of Tripoli, al-Khums and Sirte.¹⁷³ Russia additionally accused NATO of targeting civilian objects.¹⁷⁴ In the cities of al-Khums and Sirte some sources reported the destruction of private cars, water supply and sewage systems,¹⁷⁵ while in the city of Majer several civilian compounds were demolished.¹⁷⁶ Some dual-use targets were also destroyed, such as the radar tower at Tripoli International Airport¹⁷⁷ and the factory that makes pipes for the Great Man-Made River.¹⁷⁸ The essentiality of the latter facility is particularly important, as 70% of Libyans rely on water piped through the desert and the destroyed factory was one of the two pipe-producing entities in the whole country.¹⁷⁹

¹⁷⁰ Gadhafi Blasts 'Crusader' Aggression After Strikes American And European Forces Attack Libya's Air Defences

¹⁷¹ Modeme, *The Libya Humanitarian Intervention*, P. 20

¹⁷² Ibid, P. 20

¹⁷³ NATO Official Homepage, "NATO Targets Libyan Navy In Tripoli, Al Khums And Sirte" (May 20 2011)

¹⁷⁴ RIA Novosti, "Russia Urges NATO To Lay Off Libyan Civilian Targets" (April 25 2011)

¹⁷⁵ NATO Airstrike Hits Military, Civilian Targets In Tripoli, *Xinhua News: World* (2011-04-24)

¹⁷⁶ Human Rights Watch, "NATO Investigate Civilian Deaths In Libya. At Least 72 Dead In Air Attacks On Unclear Targets" (MAY 14, 2012)

¹⁷⁷ Mahdi Darius Nazemroaya, "Libya: NATO Continues To Bomb Civilian Targets", *Global Research* (July 31, 2011)

¹⁷⁸ Ibid

¹⁷⁹ Human Rights Investigations, NATO Bombs The Great Man-Made River, (July 27, 2011)

In total, NATO made more than 7000 strikes.¹⁸⁰ This created a big discontent among critics, including Russian officials, who insisted that the resolution “did not mandate the use of stealth bombers, cruise missiles and predator drones to target civilian centres and infrastructure.”¹⁸¹ NATO interpreted the resolution as “permission for the use of airpower to assist the Transitional National Council of Libya to overthrow the Gaddafi regime.”¹⁸² Given the exclusive focus of resolution 1973 on the protection of civilians, it is questionable why NATO did not engage less controversial means of protection, such as humanitarian corridors, for example. Robert Johansen suggested that a humanitarian corridor should have been established “in an area of Libya already controlled by the rebels and near the coast where it can be readily secured by a coalition of international military forces mandated by the Security Council strictly for the purpose of protecting civilians.”¹⁸³ Establishment of the corridor would have provoked a less aggressive reaction by Gaddafi compared with his reaction to the foreign invasion of his country.¹⁸⁴ Recalling the fate of Gaddafi’s presidential counterparts in Iraq and Kosovo after foreign invasion, one might explain his increasing aggression and defensiveness. Had he attacked the corridor and engaged in deliberate mass killings of civilians, this would have provoked a different response and would have fit better within the R2P framework. However, this option was not explored. By engaging in numerous unauthorized strikes,

¹⁸⁰ Carla Stea, “World War And The Russia-China Veto: Towards A Break Point At The UN Security Council?”, *Global Research* (February 8, 2012)

¹⁸¹ Yohannan Chemerapally, “Libya: Western Double Standards”, *India Current Affairs*, (June 12, 2011). See Also RIA Novosti, “Russia Urges NATO To Lay Off Libyan Civilian Targets”

¹⁸² Alex Bellamy, “Responsibility To Protect And The Problem Of Regime Change” (September 2011) In *The Responsibility To Protect: Challenges & Opportunities In Light Of The Libyan Intervention*, (E-International Relations, November 2011), P.20

¹⁸³ Robert C.Johansen, “How To Save Lives In Libya. Establish A Humanitarian Corridor Where Libyans Can Avoid Violence”, (*Globalpost: Opinion*, March 13, 2011)

¹⁸⁴ Ibid

NATO discredited their argument of civilian protection and brought into question the purpose of the intervention.

Right intention

There are numerous international documents, which prevent foreign involvement in domestic affairs of other states. Specifically, the ICISS report outlines that:

“The primary purpose of the intervention must be to halt or avert human suffering. Any use of military force that aims from the outset, for example, for the *alteration of borders* or the *advancement of a particular combatant group’s claim to self-determination*, cannot be justified. *Overthrow of regimes* is not, as such, a legitimate objective...”¹⁸⁵

In other words, humanitarian intervention should represent a short-term use of force “to exclusively re-establish respect for human rights without affecting political independence to territorial integrity of the state.”¹⁸⁶

The ‘right intention’ requirement has always been the most controversial. Humanitarian interventions have often been accused of manipulating the humanitarian arguments in order to camouflage the hidden political goals. Similarly, interventions with a purpose of regime change are by no means new in history. Among others, Panama (1989), Iraq (2003), Haiti (2004) lived through the forced regime change. In Kosovo (1999), too, critics witnessed a mix of humanitarianism and self-interest, which helped to reconstruct the Balkans and eliminate the communist influence in the region.¹⁸⁷ While these cases of regime change were more or less obvious, Western involvement in Libya had a more covert character. The earlier concerns associated with principles of ‘just cause’, ‘proportionality’ and ‘last resort’ all together point at the violation of the ‘right

¹⁸⁵ The ICISS Report, P.35

¹⁸⁶ Ahmad M. Ajaj, “Humanitarian Intervention: Second Reading Of The Charter Of The United Nations,” (*Arab League Quarterly* 7, 1992-1993), P. 217

¹⁸⁷ Ignatieff, *Empire Lite*, P.69

intention' requirement. The absence of direct negotiations with Gaddafi for a peace settlement, NATO's rush to take a proactive military action and the subsequent deviation from the authorized mandate, all suggest an ulterior motive. Additionally, targeting multiple military and dual-use objects and supporting Gaddafi's fall further cast doubt on a righteous motive for the Libyan intervention.

In April 2011, the New York Times published a joint article by Obama, Cameron and Sarkozy, who declared that "Qaddafi must go and go for good." Acknowledging that resolution 1973 authorized only the protection of civilians, the leaders nonetheless found it difficult to "imagine a future for Libya with Qaddafi in power". They wrote,

"It is unthinkable that someone who has tried to massacre his own people can play a part in their future government (...) So long as Qaddafi is in power, NATO must maintain its operations so that civilians remain protected and the pressure on the regime builds. Then a genuine transition from dictatorship to an inclusive constitutional process can really begin, led by a new generation of leaders."¹⁸⁸

The leaders implied that NATO would not leave the Libyan airspace, because this would represent a betrayal of the Libyan people and turn the country into a failed state and a haven for terrorists. Not surprisingly, after Gaddafi's capture and execution, Sarkozy finally announced that "NATO's military intervention had reached its conclusion."¹⁸⁹

Furthermore, the US, the UK, France and Italy were found complicit in funding, training and equipping the Libyan rebels.¹⁹⁰ These Western states purposely strengthened the military positions of the opposition and limited Gaddafi's ability to go on offensive. When the African Union brokered a ceasefire proposal, Gaddafi accepted it and expressed the readiness to peace and political dialogue. Yet, NATO refused to halt air

¹⁸⁸ Barack Obama, David Cameron, Nicolas Sarkozy, "Libya's Pathway To Peace" (*The New York Times*, The Opinion Pages, April, 14 2011)

¹⁸⁹ BBC, News Africa, "Row Over Muammar Gaddafi's Body Delays Burial Plans" (Oct. 2011)

¹⁹⁰ Boris Dolgov, "Situation In Syria: Internal And External Factors", online portal *Perspectives, Fund of Historical Perspectives* (2011) (Борис Долгов, "Ситуация в Сирии: Внутренние и Внешние Факторы", онлайн портал перспективы, Фонд Исторической Перспективы)

strikes and engage in negotiations with Gaddafi, because the sincerity of his promises of peace seemed false.¹⁹¹ Driven by the objective of the government's fall, the rebels similarly rejected the ceasefire proposal. They refused to participate in negotiations until the Libyan leader was gone.¹⁹² The determinacy and bravery of the rebels can be explained by moral and physical support, provided by the foreign presence in the country. However, articles 2(4) and 2(7) of the UN Charter prohibit foreign involvement in any state, including the support of the anti-government groups.¹⁹³

By promising civilian protection through intervention, the R2P doctrine can have a counter-effect from what its drafters initially desired. Some commentators highlight the risk of 'strategic victimhood' – a phenomenon characterized by rebels cautiously prolonging the bloody fighting, aware that it will trigger the R2P-intervention.¹⁹⁴ In Kosovo, for example, the KLA was accused of using terror and violence to secede from Serbia.¹⁹⁵ In Libya, the rebels were also accused of war crimes and crimes against humanity, such as murder and torture.¹⁹⁶ There are additional suspicions that the victory of the Libyan rebels pushed the anti-government opposition groups in Syria to move from peaceful struggle to armed. If military intervention becomes a habitual response to any civil conflict and peaceful means are not given a just opportunity, R2P can encourage the "opportunistic secession and insurgency, generating the very conflict that it purports to

¹⁹¹ BBC, "Libya: Rebels And NATO Dismiss Gaddafi Ceasefire Offer", News: Africa (30 April 2011)

¹⁹² BBC, "Libya: Benghazi Rebels Reject African Union Truce Plan," News: Africa, (11 April 2011)

¹⁹³ Chapter I of the UN Charter

¹⁹⁴ the term was introduced by Alan Kuperman in relation to the violence in Sudan in his article "Strategic Victimhood In Sudan"(The New York Times: Opinion, May, 31 2006) . See also Dolgov, "Situation In Syria: Internal And External Factors" and Cunliffe "A Dangerous Duty: Power, Paternalism And The Global 'Duty Of Care'"

¹⁹⁵ Ignatieff, *Empire Lite*, P.70

¹⁹⁶ Amnesty International, "*The Battle For Libya: Killings, Disappearances And Torture*," (September 2011)1, Pp.70-78

suppress.”¹⁹⁷ Ultimately, ‘strategic victimhood’ can transform into an effective plan to topple any unfavorable regime.

The Libyan campaign finished on October, 23 2011. With strong assistance from NATO forces, the rebels overthrew the 42-year-old regime of Muammar Gaddafi. However, NATO violated the strict mandate of civilian protection and stepped beyond it. The alliance did not meet its test on the ‘right intention’ and contributed to regime change in Libya.

Reasonable prospects

The ‘reasonable prospects’, or the probability of an intervention’s success, is the most vague, undetermined and subjective criterion. It assumes that the intervention should not do more harm, than good, and exacerbate the conflict even more.

No risk assessment was conducted prior to the intervention in Libya.¹⁹⁸ It was already noted that some states were dissatisfied with the absence of the reliable data on casualties, as well as the premature declaration of diplomatic failure. This questioned the positive prospects of intervention. India highlighted the risks of causing more harm to civilians, which the resolution sought to protect in the first place by pointing out that “protecting civilians, ensuring lasting settlement and addressing the legitimate demands of Libyan citizens demanded a political process.”¹⁹⁹ Germany also expressed concerns that aerial bombardments could end in larger civilian casualties. This circumstance pushed Germany to abstain from the vote and not to provide its troops for the campaign.

¹⁹⁷ Cunliffe, *A Dangerous Duty*, P.56

¹⁹⁸ Modeme, *The Libyan Intervention*, P. 19

¹⁹⁹ Security Council Statement Of 17/03/11 Accompanying Resolution S/RES/1973 (2011)

Along with India and Germany, Brazil also “warned against unintended consequences of armed intervention.”²⁰⁰

Assessment of the situation in Libya during and after the intervention indicates that in late August the death toll was between 30,000-50,000 people, plunging the state into a deeper humanitarian crisis with a mass number of killed, injured, displaced and fleeing.²⁰¹ Violence of the opposition groups also increased. They were accused of killing and torturing the pro-Gaddafi loyalists, looting and burning the villages under their control and generally failing to protect civilians.²⁰² During the NATO-led operation, approximately 60 people were reported dead directly from NATO strikes and 55 injured.²⁰³ By some estimates the figure of civilian casualties is 72 people.²⁰⁴ For a long time NATO refused to hold responsibility for these deaths,²⁰⁵ meanwhile Human Rights Watch raised the questions of at “what exactly NATO forces were striking.”²⁰⁶ Although the death toll is in no comparison with civilian casualties in Kosovo, it nonetheless raises the ethical argument of whether the interveners have a right to kill a few people so as to protect the human rights of many others.

Having prevented further violence, the foreign intervention has plunged Libya into deep political chaos. To date, dozens of military groups control Libya and fight for dominance. They are still accused of brutality against Gaddafi loyalists, imprisoning and torturing them. As a new representative of the Libyan people, the NTC does not express

²⁰⁰ Ibid

²⁰¹ O’Connell, *How To Lose A Revolution?*, P.15

²⁰² Human Rights Watch, “Libya: Opposition Forces Should Protect Civilians And Hospitals. Looting, Arson, And Some Beatings On Captured Western Towns,” (JULY 13, 2011)

²⁰³ Report Of The International Commission Of Inquiry On Libya, Human Rights Council Nineteenth Session Agenda Item 4, Advance Unedited Version, A/HRC/19/68, 2 March 2012 P.17

²⁰⁴ Human Rights Watch, NATO: Investigate Civilian Deaths In Libya (May,14 2012)

²⁰⁵ C.J.Chivers, Eric Schmitt, “In Strikes On Libya By NATO, An Unspoken Civilian Toll”, *The New York Times: Africa*, (December,17 2011)

²⁰⁶ Human Rights Watch, *NATO: Investigate Civilian Deaths In Libya*

“both the willingness and the capability to wrest control from armed groups.”²⁰⁷ The militia groups also claim competency to run the ad hoc military tribunals and try the crime perpetrators.²⁰⁸ This puts into question the impartiality and fairness of the upcoming trials.

The examination of the Libyan intervention through the prism of the ICISS-inspired criteria leads to the conclusion that the Security Council authorized and implemented a no-fly zone prior to peaceful means being fully exhausted. The time between both resolutions was short and did not provide Gaddafi with an opportunity to find a compromise and/or leave the country. Although the intervention was authorized by the right authority and met the legality requirement, it proceeded with military action too soon. NATO entered Libya one month after the beginning of the civil war and prevented the Libyan people from finding a compromise through a fair struggle. The argument of overwhelming civilian casualties was not supported by factual evidence from a credible authority and thus was not convincing. Having agreed to limit Gaddafi’s air force to prevent attacks on civilians, NATO embraced the role of the air proxy of the rebels and proceeded with bombing the extensive amount of military and non-military targets, leading to infrastructural and civilian damage. This undermined the argument of proportionality, which required the interveners to resort to a minimum force, necessary to fulfill the humanitarian objective. Neglecting the restrictions on political involvement, NATO provided the rebels with a military advantage and simultaneously undermined positions of the government forces. This ultimately led to the overthrow of the Libyan leader.

²⁰⁷ Vivienne Walt, “Why Libya Is Becoming More Dangerous After Gaddafi's Fall”, *Time World*, (Feb. 17, 2012)

²⁰⁸ *Ibid*

The decision to intervene in Libya failed to meet almost any of the ICISS requirements. With the exception of the ‘right authority’, all tests for the intervention’s legitimacy were failed. The R2P doctrine was conveniently used to create political pressure on the Libyan crisis and push states ‘to do something’. However, the humanitarian language of the doctrine opened the door to the dubious intervention and unauthorized regime change. Political reconstruction of the Libyan state under the guise of civilian protection has heavily undermined the credibility and future implementation of R2P.

4.3. R2P and Syria

After the Libyan intervention ended with Gaddafi’s fall, the international attention shifted to Syria. The human suffering in the context of its civil war also provoked contested international discussions and references to R2P. The humanitarian language of the doctrine, particularly the state’s ‘responsibility to protect’ its own citizens, has become increasingly relevant. Although at the time of writing this paper no military intervention was authorized in Syria, the verbal references to R2P have nonetheless determined how members of the international community interpret and apply the doctrine to armed conflicts, especially those that involve anti-democratic regimes. Analysis of R2P’s rhetoric being used in the context of Syrian civil war will demonstrate the common tendency of Western states to wrap humanitarian arguments around political goals and incite regime change.

Development of domestic unrest in Syria was much slower than in Libya. For several months, it maintained the form of peaceful protests, which only by the end of 2011

evolved into large-scale violent clashes between the government and armed groups. In contrast to Libya, the anti-government opposition in Syria was more fractured. Being an ethnically diverse state, Syria is home to the Arabs, the Kurds, the Armenians, the Circassians and the Turkmans. There are at least four different religions coexisting in the country.²⁰⁹ There are multiple groups within the Syrian society that fight for different agendas. This includes the Free Syrian Army (FSA), Salafist bands, Farouq fighters and Islamist groups in Syria.²¹⁰ Each driven by different ideas, these armed groups have never spoken with a unified voice. Yet, in contrast to Gaddafi, Bashar al-Assad enjoyed significantly more support from the Syrian population. Considering the fragmentation of the opposition and a fair share of pro-government supporters, members of the international community proved to be more hesitant with a rapid intervention in the Syrian crisis.

The contested discussions about the situation in Syria at the early stages of its domestic unrest were also grounded in the protection of civilians and support of pro-democratic movements. The Syrian government was accused of and criticized for violent suppression of protestors and civilians. Human Rights Watch released several publications of how government security forces deliberately murdered, arrested, arbitrarily detained or tortured peaceful protestors.²¹¹ In an attempt to halt the violence and bring the warring parties to the table of negotiations, two international mediation campaigns were launched. The first was the Arab League Observer Mission, which began in December 2011. In one month, reportedly in the light of “the critical deterioration of

²⁰⁹ The US Department Of State, Background Note, (March, 9 2012)

²¹⁰ Pierre Piccinin, “From The Alawite Fantasy To The Surrealism Of The UN: The Syrian Mirage”, *Counterpunch*, (March, 6 2012)

²¹¹ The Report By Human Rights Watch, “*By All Means Necessary!*” *Individual And Command Responsibility For Crimes Against Humanity In Syria* (December 2011), P.16

the situation” several states of the Persian Gulf started to call off their ambassadors from Syria, putting the mission’s existence and overall effectiveness at stake.²¹² The Russian government not only criticized states for suspending the mission, but also for doing so on the same day the mission’s report should have been considered by the Security Council.²¹³ This is why some critics tend to see in the report a reason for the Arab League mission’s withdrawal.²¹⁴

One of the main findings of the report was a claim that the opposition forces were also responsible for violence, which provoked the retaliatory action of the Syrian government.²¹⁵ In one of the epicenters of the violence, the city of Homs, the Mission observed

“[the] armed groups committing acts of violence against Government forces, resulting in death and injury among their ranks (...) The observers noted that some of the armed groups were using flares and armour-piercing projectiles... There had been instances of kidnapping and sabotage of Government and civilian facilities. Food was in short supply owing to the blockade imposed by armed groups, which were believed to include some 3000 individuals.”²¹⁶

Human Rights Watch also issued supporting statements accusing the Syrian opposition groups of kidnappings, detention, murder, and torture of government supporters.²¹⁷

Therefore, in the complex Syrian civil war both, the government and opposition groups, were complicit in grave crimes. However, not all authorities, critics or activists acknowledged it.

²¹² Ayman Samir, Erika Solomon, “Arab League Suspends Syria Mission As Violence Rages”, (January 28 2012)

²¹³ Ella Ivanova, “Ministry Of Foreign Relations: Russia Is Concerned With The End Of The Arab League Mission In Syria” (Элла ИВАНОВА, МИД: РФ Озабочена Прекращением Деятельности Наблюдателей ЛАГ В Сирии, Мангазея Информационное Бюро, 30.01.2012. See Also Voice Of America, “Arab League Suspends Syria Observer Mission,” News: Middle East (January, 27 2012)

²¹⁴ Finian Cunningham, “How the Arab League Has Become a Tool of Western Imperialism”, *Global Research*, (February,9 2012)

²¹⁵ Stea, *World War And The Russia-China Veto*

²¹⁶ League Of Arab States Observer Mission To Syria, Report Of The Head Of The League Of Arab States Observer Mission To Syria For The Period From 24 December 2011 To 18 January 2012 (27/01/12 259.12D, Mcauley 12-21687), Pp.2,4

²¹⁷ Human Rights Watch, “Syria: Armed Opposition Groups Committing Abuses,” (March 2012)

From the beginning of the Syrian unrest, certain Western and Middle Eastern states demonstrated their discontent with the Syrian regime. The US, the UK, France, Saudi Arabia and Turkey among others, blamed nearly all of the atrocities on the Syrian government and insisted that Assad should step down. David Cameron held that the Assad government is fully responsible for the violent outbreak, which threatens regional and international security. He noted, “Far from fulfilling their commitments, the [Syrian] regime is cynically exploiting the window of diplomatic negotiations to crack down even harder on its own people.”²¹⁸ This is why Cameron encouraged the Security Council to take a more proactive stance against Syria. In February 2012, the General Assembly adopted resolution 66/253, which condemned violations of human rights and violence of the Syrian government, called to halt hostilities and supported “the Arab League’s decision to facilitate a Syrian-led political transition to a democratic, pluralistic political system.”²¹⁹ After adoption of the resolution, Susan Rice highlighted the “isolation” of Assad and his impending demise from power. “A rapid transition to democracy in Syria has garnered the resounding support of the international community,”- she said. - “Change must now come.”²²⁰

The second international mediation campaign confirmed the anti-government position of its many participants, despite being called the ‘Friends of Syria’. Led by the US, France, Saudi Arabia and Qatar, the initiative took place in February 2012 and sought to find solution to the Syrian crisis outside the Security Council. However, the campaign was accused of trying to isolate the Assad regime even more. At one of the

²¹⁸ Daniel Bentley, “Assad Threatens Peace In Middle East, Says David Cameron”, *The Independent*, (April, 11 2012)

²¹⁹ The General Assembly Resolution “The Situation In The Syrian Arab Republic”, Sixty-Sixth Session, Agenda Item 34, A/RES/66/253

²²⁰ “General Assembly Passes Resolution On Syria As Deaths Mount” (CNN, February 16, 2012)

meetings, Hilary Clinton noted that Friends of Syria needs to “keep Assad off balance” through such means as a global arms embargo and other Chapter VII sanctions. Abstaining from explicit calls for intervention, she nonetheless encouraged states “to work and move toward a Security Council authorisation so that [they] have the authority to proceed when the times are right.”²²¹

In order to keep Assad “off balance”, certain Western and Middle Eastern states actively engaged in funding and training rebels of Syria. For example, Saudi Arabia and Qatar funded the FSA, while France trained its fighters. Turkey also provides support to the FSA,²²² and Libya opened a training centre for Syrian revolutionaries, for which was heavily criticized.²²³ Additionally, at the ‘Friends of Syria’ meeting in April 2012, Clinton announced that the US plans to double non-lethal aid to the Syrian rebels and send more communication equipment to Syria.²²⁴ As has been noted previously, foreign sponsorship of anti-government armed groups goes in contravention of international law. It also makes a peaceful conflict resolution less likely. As the Russian Foreign Minister noted, “it’s impossible to expect a cessation in fighting when you are openly arming, training and funding an insurgent proxy army that is hell-bent on toppling the government.”²²⁵ By funding and equipping the rebels, foreign states encourage and provoke the very violence and chaos that they try to resolve through mediation campaigns.

Despite deep concern for protecting civilians and discontent with the Syrian regime, foreign powers did not make open suggestions for military intervention in Syria in spring

²²¹ “Friends Of Syria: Annan Plan Is Last Hope”, *Al Jazeera: Middle East* (April 20 2012)

²²² Joachim Guilliard, “Covert Operations In Syria”, IAC Centre, (March, 10 2012) (Translated By John Catalinotto)

²²³ “Russia Says Libya Training Syria Rebels”, I Central& South Asia (March, 8 2012)

²²⁴ “The Associated Press, Friends Of Syria To Fund Rebel Fighters, *CBC News: World* (April, 1 2012)

²²⁵ James Corbett, “From Libya to Syria: War Is A Racket, It Always Has Been”, *Global Research*, (April,14 2012)

2012. As of May 2012, they resorted to supporting the rebels instead of proposing an intervention. One of the reasons for this is the violence threshold. By different estimates it ranged from 6500 to 7000 civilians as of March 2012.²²⁶ Admittedly, a share of these deaths was a result of deliberate targeting and unjustifiable violence, committed by both government and opposition forces. However, there are also numerous deaths, which occurred in the context of the brutal civil war, largely incited from abroad, as collateral damage. Although the warring parties have been accused of committing war crimes, not all war crimes should trigger an international military response. The latter should depend on the scale and nature of killing. But at the moment of writing this research paper - spring 2012 - when the contested discussions of international mediation of the Syrian conflict proliferated, the level of intentional violence did not meet the overwhelming, 'conscience-shocking' bar, despite being several times higher than in Libya. As the fighting continued and tensions escalated, the level of civilian casualties increased to 10,000-17,000 dead as of June 2012, plunging the state into a violent protracted civil war.²²⁷ The accuracy of these estimates is heavily questioned, however, due to a big range in numbers and poor differentiation between fatalities of civilians, security forces and rebels.

The nature of the Syrian crisis also impedes decisive foreign action. As was discussed in the beginning of this chapter, multiple warring factions participate in the Syrian civil war. The Islamists (including the Muslim Brotherhood), the Kurds, the Assyrians, the Syrian National Council, and the Syrian National Coordination Committee

²²⁶ RIA Novosti, "More Than 9000 People Died In The Syrian Uprising – Human Rights Activists" (March, 15 2012) РИА Новости, "Более 9 Тысяч Человек Погибли В ходе Волнений В Сирии – Правозащитники"

²²⁷ Centre for Documentation of Violations in Syria, Statistics for the number of martyrs. See also the Syrian Revolution Database, Martyr Counts by Civilian/Military

- each of them fights under different motives and for different goals. Some opposition groups fight for purely religious reasons, some stand for sectarian political changes. Some groups support the government, while others severely oppose it. Yet, irrespective of political views, both the pro- and anti-government forces were found complicit in human rights violations, war crimes and crimes against humanity. In many instances it proves impossible to accurately determine who commits the crimes, as the government and opposition continue blaming each other.²²⁸ Therefore, the guilt of both sides should be equally considered, instead of being placed on the Syrian government alone.

In February 2012, when Kofi Annan launched a peace plan, the Syrian government accepted it and expressed willingness for political compromises. Assad agreed to stop the fighting and establish a ceasefire under the condition that rebels will do the same. Yet, the opposition fighters refused to negotiate, until Assad stepped down.²²⁹ While attacks of armed groups continued and Western states declared their determination to funnel more funds to support the rebels, the Syrian government did not change its military posture, because it continues to protect itself from what it sees as a foreign aggression. Due to the lack of compromise between both sides, the peace plan became heavily undermined. Expecting the government to embark on the road of peace first, Kofi Annan blamed the Syrian authorities for the peace plan failure as not all of its provisions had been implemented. Nonetheless, the Russian ambassador to the UN highlighted the notable steps in the implementation of the peace plan, made by the Syrian government, and criticized the opposition forces for refusing to fully participate in the peace plan.²³⁰

²²⁸ “Annan: Syria Peace Plan Not Being Implemented,” *Al Jazeera*: Middle East (June, 8 2012)

²²⁹ “Syria: Opposition Rejects Call For Dialogue - Friday 9 March”, (The Guardian, March, 9 2012)

²³⁰ Edith M.Lederer, “Kofi Annan Blames Syria For Peace Plan Failure”, *The Associated Press* (June 8 2012)

It is equally important to determine, whose voice external powers will represent, in case they decide to intervene in Syria. Conflicting objectives of opposition groups, as well as government supporters, prevent imposing a one-sided anti-Assad stance on the conflict, as it would not represent the legitimate demands of the entire Syrian population.²³¹ It has been documented, in fact, that a large share of the Syrian population opposes foreign involvement in their state. Citizens of some Syrian cities “believe the crisis should be resolved peacefully through Arab mediation alone, without international intervention.”²³² By authorizing intervention in Syria, the international community risks to repeat the same mistake it committed in Libya, where rebels represented a disorganized group of bandits with no coordination and central planning. Similarly, the Syrian opposition does not have a unified center. Foreign intervention and overthrow of Assad can plunge the country into a deeper civil war between different groups. Unlike Assad, who managed to maintain a multi-ethnic state of Syria in peace and order (admittedly, he succeeded to do so with dictatorial means), the warring factions can start fighting on religious, ethnic and other reasons. Thus, more killing can follow, if the Syrian central government is toppled. Moreover, examples of the past humanitarian interventions and regime change demonstrated that foreign interference cannot bring peace to the country torn by a civil war.²³³ Peace can be only achieved through political settlement, reached by all warring parties.

These factors have not allowed the international community to get involved in the Syrian crisis beyond diplomacy and the UN-led peace plan. As the R2P doctrine has not yet opened the door for intervention in Syria, it is too early to declare another practical

²³¹ Piccinin, *From The Alawite Fantasy To The Surrealism Of The UN*.

²³² The Arab League Report, p. 8

²³³ O’Connell, *Responsibility To Peace*, p.77

failure of R2P. If the Syrian crisis has a chance for resolution without foreign coercion, the image of the doctrine can be partly restored. However, combined with Libya, Syria proves the point that the decision to intervene remains subject to politics. Unlike in Libya, the Syrian civil war over the span of a year developed differently and did not trigger a rapid international military response, because Assad received strong support from Russia and China. Having learnt a lesson from the intervention in Libya, these two states threatened to veto any resolution imposing pressure on the Syrian regime. This even included the use of non-military tools, such as arms embargo, asset freeze and sanctions. Had Russia and China not supported the Syrian regime, it could have shared the same destiny as Gaddafi's regime, since the humanitarian situation and overall death toll in Syria are significantly worse, than they were in Libya. This does not call for military intervention in Syria, rather it emphasizes how easily R2P can be manipulated to justify intervention in a failing state under humanitarian pretext. When application of the doctrine depends on decisions of few world powers, this undermines R2P's credibility and validity. If R2P is applied on a selective basis, prioritizing some conflicts and neglecting others, this will result in a questionable world order, built on controversies and inconsistencies.

Conclusion

Application of R2P in practice proves to be very controversial. Sometimes states apply it in the wrong context, such as in Georgia, and with this they undermine the significance of the doctrine. In this regard, R2P runs the risk of becoming nothing but an often-cited justification for almost any pseudo-humanitarian intervention. On the other hand,

application of the doctrine in the real R2P-context, such as in Libya, appears to be not without shortcomings either. The implementation of R2P in Libya and the controversial discussions around the civil unrest in Syria have further exacerbated strong doubts with military humanitarianism. Together they put into question the utility of the doctrine, and prove that it can be used for rearranging the international order.

R2P's ambiguous language, and particularly the responsibility 'to prevent', turns the R2P-intervention in the first port of call. The interveners tend to use dubious humanitarian justifications to transgress state sovereignty and advance their political agenda. They frequently use the doctrine to contend human rights violations or crimes against humanity even if they do not reach the critical levels and at times are exaggerated. The discourse around protection of civilians in Libya and Syria in 2011-2012 demonstrated that some Western powers attempt to invoke R2P, when the crisis does not represent an outright deliberate killing and a complex humanitarian emergency. Analysis has also shown that foreign powers refuse to dedicate deserved attention to the fact that opposition groups also generate high levels of violence and impede the peace settlement process. Instead, some foreign states support the aggression of opposition groups by providing them with training, equipment and funds.

Application of R2P's language in the context of Libya and Syria once again highlighted how deeply humanitarianism has intertwined with politics. References to the protection of civilians and R2P go hand in hand with regime change or encouraging such. Although states did not use military coercion in exercising of their R2P in Syria, they tightly linked the argument of civilian protection with heavy criticism of the Assad government, citing his unwillingness and inability to halt the violence and provide

protection. While in Syria Western powers indirectly affected the regime through emboldening the rebels, in Libya they did it directly with the help of NATO. The Libyan intervention confirmed the fears of many R2P critics that the doctrine became a tool, which major powers can use at any time to garner international support and authorize military action. Under the cover of protecting civilians, R2P will open doors for foreign powers to enter a fragile state and engage in its political reconstruction.

CONCLUSION

This paper analyzed the effectiveness of the R2P doctrine as a guiding principle of international response to human suffering. For this purpose the doctrine was examined from three standpoints, which included the legal and policy perspectives, as well as practical implications. The three-dimensional analysis revealed that the doctrine has multiple shortcomings, which drastically undermine its credibility.

In abstract terms, the doctrine has a good purpose and represents a useful project of international response to crisis. It reminds states of their domestic and international responsibilities and directs more attention towards the protection of civilians. R2P serves the purpose of cross-reference, bringing together the hitherto existing international principles in one document. It includes provisions of the Genocide Convention, the Universal Declaration for Human Rights, four Geneva Conventions and Additional Protocols, two 1966 International Covenants, the Rome Statute of the ICC, etc.²³⁴ These documents recognize genocide, ethnic cleansing, war crimes and crimes against humanity as internationally punishable crimes. R2P reaffirmed protection against these crimes, but, in itself, did not offer new legal advancements.

One of the main shortcomings of R2P is its vague and general language. The lack of specificity with regards to responsibilities ‘to assist’ and ‘to react’ increases the risks that every state will interpret the doctrine in its own way, as there is an array of different reactions to the same crisis. The associated indeterminacy ultimately leads to limited compliance of states and R2P’s controversial application in practice. This particularly concerns ‘early prevention’. Given that members of the international community have officially declared that they do not want to see ‘another Rwanda’, it is reasonable to

²³⁴ Welsh, Banda, *International Law*, p.122

expect a rise in preemptive interventions. But the argument of prevention proves to be unreliable because almost any use of force can be justified with a fear of unfolding violence.

Another controversy, associated with R2P, rests in approaching the doctrine from the perspective of ‘sovereignty as responsibility’. Since the doctrine was built around this principle and nurtured by it, it proves difficult to separate the two. Guided by the agenda of ‘sovereignty as responsibility’, liberal interventionists call for interventions in cases of state failure, poverty, hunger, proliferation of diseases, and environmental catastrophes. There are additional suggestions to intervene in states, suspected of complicity in terrorism and possessing the WMDs. However, these humanitarian concerns are related to a broader agenda of ‘human security’, as opposed to the narrow R2P doctrine, which focuses solely on genocide, ethnic cleansing, war crimes and crimes against humanity. However, some states still link poverty and underdevelopment directly to R2P by claiming that low levels of socio-economic development in a state are the precursors of armed conflict. They recommend making an emphasis on ‘root cause’ prevention as part of a state’s commitment to R2P. But as there are multiple ways to fulfill the ‘responsibility to prevent’, there are increasing risks that military intervention will turn into a habitual response to any humanitarian emergency. Ultimately, all fragile states might find themselves under the risk of intervention. If every state failure opens the door for foreign involvement, then R2P can always be used against weak states. Therefore, associations of R2P with ‘sovereignty as responsibility’, and respective interventions under its name, misrepresent and stretch the doctrine. R2P was not intended to provide protection for everybody against everything and deal with all the world’s ills.

The practical implementation of the doctrine is also not without challenges. The endorsement of R2P has changed the pattern of international response to humanitarian emergency. R2P's language has become frequently cited by the Security Council, when it seeks to justify both coercive and non-coercive measures on a war-torn state or a deteriorating human rights situation. But many critics condemn Council's expansive reading of the Article 39 and attributing internal conflicts and gross violations of human rights to threats to international peace and security. If the Council continues to expand the definition of threats to international peace and intervene in internal conflicts and gross violations of human rights, simultaneously referring to R2P, this can turn the doctrine into emerging norm of international customary law.

It has been widely agreed that the value of R2P is political and rhetorical, rather than legal.²³⁵ It helps to focus international attention on certain conflicts and subsequently trigger international response, coercive or not. The humanitarian language of the doctrine, and particularly the argument of an unfolding threat to civilians, makes it easier for the Council to justify its coercive resolutions and for interveners to proceed with military action. The nature of conflict and true motives of interveners pale in light of a brighter, violence-free future, promised by R2P. Pushing states to always 'do something' when human suffering occurs, R2P symbolizes the beginning of the 'new politics of protection'.

The application of R2P in Georgia and Libya was chosen as an illustrative example for this research. The paper also touched on the French proposal to intervene in Myanmar and revised the debates about civil unrest in Syria. In all four cases humanitarian

²³⁵ Simon Chesterman, "Leading From Behind": The Responsibility To Protect, The Obama Doctrine, And Humanitarian Intervention After Libya" (2011). *New York University Public Law And Legal Theory Working Papers*. Paper 282, p. 4

language of the doctrine was applied to address human suffering. And in all cases the doctrine was embraced by powerful states. While R2P did not advance further than rhetoric in Myanmar and Syria, in Georgia and Libya Western states actually proceeded with intervention. The interveners manipulated the argument of prevention and intervened irrespective of threshold requirements. R2P skeptics always feared that the doctrine “would make it easier for states to justify self-interested invasions through spurious humanitarian arguments,”²³⁶ and today their fears have become a reality.

Addressing the gap between R2P’s promise and reality, Rodger Shanahan rightly emphasized that the doctrine was designed by theoreticians, albeit with significant practical experience. But its implementation heavily depends on practitioners, who think with a different mind. Practitioners operate in the world of *realpolitik*, characterized by “inconsistencies, relativities and competing national interests.”²³⁷ The implementation of R2P in Libya, and hesitancy to do so in Syria, demonstrated that interventionist decisions largely depend on the perceptions of the Security Council members.

The intervention in Libya, as the first real R2P-intervention, became subject to additional scrutiny. It helped to examine how R2P’s words translate into deeds. But the Libyan campaign discredited the altruistic promise of the doctrine. It did not meet the threshold requirements and did not abide by the targeted mandate of civilian protection. The seemingly legal campaign turned into one that was extra-legal and quasi-legal at the same time. After damaging Gaddafi’s air forces, so as to prevent his attacks on civilians, NATO proceeded with more strikes against government military and dual-use targets, which ultimately led to Gaddafi’s fall and regime change. In Syria, the R2P rhetoric and

²³⁶ Bellamy, *The Global Effort*, p. 17

²³⁷ Rodger Shanahan, “R2P: Seeking Perfection In An Imperfect World” (October 2011), p.27 in *The Responsibility To Protect: Challenges & Opportunities In Light Of The Libyan Intervention* (E-International Relations, November 2011)

the emphasis on the protection of civilians were similarly accompanied with the negative connotations against the government of Bashar al-Assad. This reaffirmed the earlier concerns that there is a short wedge between R2P and regime change. In both Libya and Syria, powerful states engaged in financing and training opposition groups, so as to presumably eliminate the democratic deficit in a failing state and help people fight for their freedom. However, these states neglected the fact that at the heart of democracy rests people's self-determination and their own struggle. To date, there has been no agreement to compromise peace as to promote democracy.²³⁸ As contemporary developed societies did not become democratic overnight, the same should not be expected from authoritarian regimes,²³⁹ which go through civil unrests and gradual political transformations.

The doctrine of R2P did not meet its three-dimensional test. While interventions with a purpose to avert human suffering represent a meaningful idea, the current model of humanitarian interventions under R2P is not effective. Not only does the doctrine not offer legal advancements or justifications for the use of force, but also it opens doors to many interventions beyond the scope of four R2P-crimes. R2P does not translate its idealistic promises into practice, as most of the time states resort to humanitarian language to advance their political agendas. Ultimately, the doctrine becomes a tool of powerful states to intervene into their weaker counterparts. The preservation of R2P as part of international law has damaging implications for the global political architecture and the sovereign equality of states, because the doctrine is addressed whenever it is

²³⁸ Simon Chesterman, *Just War or Just Peace?* (Oxford University Press, 2001), p.92

²³⁹ Ayoob, *Hum Intervention And State Sovereignty*, p. 94

convenient. If *realpolitik* rules R2P, then the doctrine's existence in international law should be reconsidered.

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