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Article in *Law* · April 2021

DOI: 10.5281/zenodo.4682155

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## WHITHER THE RESPONSIBILITY TO PROTECT AND THE SYRIAN CRISIS?\*

### ABSTRACT

The Responsibility to Protect (R2P) is an intricate and developing norm of international law that seeks to provide a means for the international community to prevent crimes against humanity occurring within the boundaries of a sovereign state. Under R2P the use of force is reserved for actions within the United Nations Charter's Chapter VII framework. As the Syria crisis has demonstrated, this position hinders efforts by the international community to protect populations from grave breaches of human rights. Hence, this article will analyse R2P with reference to the crisis in Syria with a view to arguing that when peaceful measures have been exhausted and the Security Council is deadlocked, the General Assembly should act.

### I) INTRODUCTION

The world is faced with an unprecedented increase in the number of internal conflicts and complex emergencies with a parallel increase in the need for humanitarian assistance. With some 120 'active' wars and more starting each year than are ending, the world is a much less safer place than 10 years ago<sup>1</sup>. Most of these wars are intra-state conflicts. Former United Nations Secretary-General, Boutros Boutros Ghali describes them as a new breed of civil war in which civilians have become the main targets<sup>2</sup>. It is estimated that civilian casualties now constitute ninety per cent of the victims of armed conflict<sup>3</sup>: 1 million Igbos killed in Biafra in the 1960s<sup>4</sup>, 2 million Cambodians in the 1970s, and 800,000 Rwandans in the 1990s<sup>5</sup>.

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<sup>1</sup> Antonio Donini: 'The Future Of Humanitarian Assistance', *Proceedings of the Inaugural Symposium on the United Nations System in the Twenty-first Century 21-22 November 1995, UNU Headquarters, Tokyo, Japan*.

<sup>2</sup> United Nations, *Report of the Secretary-General on the Work of the Organization: Supplement to an Agenda for Peace*, UN Doc. A/50/60-S/1995/1, 3 January 1995.

<sup>3</sup> Weiss Thomas, *Military Civilian Interactions: Intervening in Humanitarian Crises*, (Rowman and Littlefield, Publishers Inc., Lanham, Maryland) 1999 at pg 1.

<sup>4</sup> 'Nigerian Civil War', Polynational War Memorial. Available at <http://www.war-memorial.net/Nigerian-Civil-War--3.140>. Accessed 10 February, 2014.

<sup>5</sup> Human Rights Watch and Federation International des Ligues des Droits de l'Homme, '*Leave None to Tell the Story: Genocide in Rwanda*', (New York/Paris, 1999).

R2P emerged in 2001 in the wake of humanitarian tragedies in Bosnia, Rwanda and Sudan. After its first ever implementation in Libya, in the last three years, R2P has halted in Syria. Why is there no R2P action on Syria? R2P supporters point to unethical postures and actions by Russia and China that use their veto to stop Security Council resolutions on Syria<sup>6</sup>, while, critics argue that R2P heavily hinges on moral advocacy and is susceptible to the unfolding nature of power politics of the Security Council permanent five (P5), which has its acute reflections on Syria<sup>7</sup>.

## II) BACKGROUND TO THE HUMANITARIAN INTERVENTION DOCTRINE

It is instructive to revisit the disputed doctrine of humanitarian intervention from which the doctrine of R2P emerged. States have acted both unilaterally<sup>8</sup> and within the United Nations system<sup>9</sup> to stop gross violations of human rights and international humanitarian law. The right of states to intervene militarily in another state, without Security Council authorisation, in order to prevent gross violations of internationally recognized fundamental human rights and international humanitarian law is the main bone of contention with reference to the concept of humanitarian intervention<sup>10</sup>.

The problem with humanitarian intervention is that there is no mechanism for the protection of human rights in the United Nations Charter<sup>11</sup>. Protection of human rights via humanitarian intervention bring to the fore tension and conflict between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty, non-intervention, and self determination which are considered essential factors in the maintenance of peace and international security<sup>12</sup>.

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<sup>6</sup> International Coalition for the Responsibility to Protect, 'UN Security Council Fails to Uphold its Responsibility to Protect in Syria', 7 October 2011. Accessed at: <http://icrtopblog.org/2011/10/07/un-security-council-fails-to-uphold-its-responsibility-to-protect-in-syria/>. Accessed 13 February 2014.

<sup>7</sup> Aidan Hehir, 'Syria and the Responsibility to Protect: Rhetoric Meets Reality', *E-International Relations*, 14 March 2012. Accessed at: <http://www.e-ir.info/2012/03/14/syria-and-the-responsibility-to-protect-rhetoric-meets-reality/>. Accessed 10 February 2014.

<sup>8</sup> NATO's intervention in Kosovo.

<sup>9</sup> NATO's intervention in Libya.

<sup>10</sup> Penelope C. Simons, 'Humanitarian Intervention: A Review of Literature',. Available at: [http://ploughshares.ca/pl\\_publications/humanitarian-intervention-a-review-of-literature/#Weiss](http://ploughshares.ca/pl_publications/humanitarian-intervention-a-review-of-literature/#Weiss). Accessed 10 February 2014.

<sup>11</sup> Murphy, Sean D., *Humanitarian Intervention: The United Nations in an Evolving World Order*, (University of Pennsylvania Press, Philadelphia) 1996.

<sup>12</sup> Danish Institute of International Affairs 1999, pp. 14-15.

An interesting issue is whether the provision ‘in any matter inconsistent with the United Nations Charter<sup>13</sup>’ can include humanitarian intervention? Greenwood would argue it can be used to justify cases like those of, protection of nationals’ abroad, breach of the United Nations Charter and humanitarian intervention<sup>14</sup>. Traditionalists like Brownlie would say no. War without United Nations authorisation is illegal unless your territory has been invaded. Brownlie uses Article 1(1), which states the purpose of the United Nations and Article 2(3), which is about collective security to boost his view.

Nonetheless, it has been suggested that human rights can no longer be considered a purely domestic concern and the concept of sovereignty cannot be used by governments to shield themselves from responsibility for gross violations of these rights, or from shirking their obligations with respect to the protection and treatment of civilians in situations of intra-state conflict<sup>15</sup>. This has been succinctly summed up by former United Nations Secretary-General Kofi Annan when he said:

‘(the) conflict in Kosovo raised equally important questions about the consequences of action without international consensus and clear legal authority.... On the one hand is it legitimate for a regional organization to use force without a United Nations mandate? On the other, is it permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked’<sup>16</sup>?

As such, there is emerging consensus that respect for fundamental human rights are now a matter of international concern. The human rights imperative underlies the concepts of state and government and the precepts that are designed to protect them, most prominently Article 2(4)<sup>17</sup>. The rights of states recognized by international law are meaningful only on the assumption that those states minimally observe individual rights. The United Nations purpose of promoting and protecting human rights found

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<sup>13</sup> Adopted 26 June 1945 and entered into force 24 October 1945. United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

Available at: <http://www.un.org/aboutun/charter/index.html>. In addition, the Charter of the United Nations is always reprinted in the most current Volume of the Yearbook of the United Nations. See Article 2(4).

<sup>14</sup> Christopher Greenwood, ‘International Law and Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq’, 4 *San Diego Jnl Int L* 7. *Op.cit.*, see note 6.

<sup>15</sup> Penelope C. Simons, ‘Humanitarian Intervention: A Review of Literature’, Available at: [http://ploughshares.ca/pl\\_publications/humanitarian-intervention-a-review-of-literature/#Weiss](http://ploughshares.ca/pl_publications/humanitarian-intervention-a-review-of-literature/#Weiss). Accessed 10 February 2014

<sup>16</sup> *Ibid.*

<sup>17</sup> *Op.cit.*, note 13. See Article 2(4).

in Article 1(3) and by reference in Article 2(4)<sup>18</sup> as a qualifying clause to the prohibition of war, has a necessary primacy over the respect for state sovereignty. Force used in defense of fundamental human rights is therefore not a use of force inconsistent with the purposes of the United Nations<sup>19</sup>.

However, this international concern is often outweighed by realpolitik and can be exemplified by the gross violations of fundamental human rights that occurred in Rwanda in 1994 and are occurring in many countries such as Afghanistan, Ethiopia, Sudan, Syria and Zaire. This is because the North is only willing to intervene when it has an interest such as in Kosovo, thus, the North Atlantic Treaty Organization (NATO) military operations in Libya did not promote the R2P norm. As such, France, the United Kingdom and United States (the P3) would not intervene in situations like Syria where the costs of intervention outweigh their strategic benefits<sup>20</sup>. This effectively means that the commitment to human rights that humanitarian intervention supposedly entails does not mean equality of rights worldwide. The human rights of some people are more worth protecting than those of others<sup>21</sup>.

In addition, the Security Council is hampered by a lack of political will among its members. The 2000 Declaration of the South Summit by the G77 composed of about 130 states, 'reject the so-called 'right' of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law'<sup>22</sup>. In the *Legality of the Use of Force*<sup>23</sup>, only the United Kingdom and Belgium expressly relied on the doctrine of humanitarian intervention, other NATO countries did not. Likewise, although the United Kingdom accepts the doctrine of humanitarian

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<sup>18</sup> *Ibid.* See Articles 1(3) and 2(4).

<sup>19</sup> Tesón, Fernando 1997, *Humanitarian Intervention: An Inquiry into Law and Morality*, (2nd ed., Transnational Publishers Inc., Irvington-on-Hudson, NY) 1997.

<sup>20</sup> David Carment and Joe Landry, 'R2P in Syria: Regional Dimensions', *E-International Relations*, 8 February 2014. Available at: <http://www.e-ir.info/2014/02/08/r2p-in-syria-regional-dimensions/>. Accessed 10 February 2014.

<sup>21</sup> Chinkin Christine, 'Kosovo: A 'Good' or 'Bad' War?' *American Journal of International Law* 93, 841-847, 1999.

<sup>22</sup> Group of 77 South Summit: Declaration of the South Summit. See para. 54. Available at: [http://www.g77.org/summit/Declaration\\_G77Summit.htm](http://www.g77.org/summit/Declaration_G77Summit.htm). Accessed 10 February 2014.

<sup>23</sup> The Legality of the Use of Force by NATO in Yugoslavia. International Court of Justice Website: Available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=yuk&case=113&k=e3&p3=0>. Accessed 10 February 2014.

intervention, it is increasingly weary of the impact of European Union Policies on its sovereignty. In the world of today, it is noticeable that Russia, in its post-Soviet era and especially under the current leadership, and China under its current leader are trending to be increasingly authoritarian in their oil/gas-motivated or military-geopolitical expansionist diplomatic offensives against their trading or neighboring countries. Such authoritarian behavior seems to be backed by a strong sense of sovereignty, similarly the developing countries see the concept of humanitarian intervention as a guise for colonialism.<sup>24</sup>.

Moreover, humanitarian intervention is made unlikely by the geopolitical realities of relations between the Permanent Five members of the Security Council. The veto power of the permanent five can stop any authorization of the use of force for humanitarian intervention: as seen in Syria today. This internal paradox of the United Nations is the main obstacle to the doctrine of humanitarian intervention<sup>25</sup>.

From the foregoing, it is clear that to date there is no international legal mechanism for unilateral humanitarian intervention by a state or regional organization when it is apparent that there are gross violations of human rights and the Security Council is paralyzed to act<sup>26</sup>. As Roberts<sup>27</sup> argues:

‘to many commentators, unilateral humanitarian intervention poses the dilemma of what states should do when there is a great divide between what international law requires and what morality dictates. This issue was brought into sharp relief by NATO’s bombing campaign in Kosovo in 1999. Most western international lawyers concluded that NATO’s use of force was both morally justified and incompatible with international law. In short, NATO’s actions were ‘illegal but justified’. The ‘illegal but justified’ approach provides an intuitively attractive way of maintaining the prohibition on unilateral uses of force while permitting justice in individual cases. However, it is ultimately not a sustainable position given the role of state practice in developing international law. This approach also shifts the focus away from questions of legality and towards questions of legitimacy, which can undermine the law and risk manipulation’.

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<sup>24</sup> Gareth Evans, ‘The Responsibility to Protect: An Idea Whose Time Has Come and Gone?’, *E-International Relations*, 22, no. 3 (2008): 283-298.

<sup>25</sup> Russia v Chechenya with no action taken by the Security Council, likewise, the situation in Kosovo when it became apparent that any authorization to use force will be vetoed by either Russia or China or both.

<sup>26</sup> See the case of Rwanda in 1994.

<sup>27</sup> Anthea Roberts, Legality Vs Legitimacy: Can Uses of Force be Illegal but Justified? *Human Rights, Intervention and the Use of Force*, P. Alston, E.Macdonald, eds., (Oxford University Press) 2008.

The issue of retrospective authorisation such as in the Kosovo case is an uncomfortable one. Implied authority is usually referred to in ‘Operation Haven’ where the United Kingdom justified the 1993 Iraqi invasion via implied authorisation from Resolution 688<sup>28</sup> and humanitarian intervention. Liberia in 1990, Iraq in 1991-1992 and Kosovo in 1999<sup>29</sup> are the main disputed Humanitarian Intervention cases.

The legal foundations of Humanitarian Intervention are shaky. There is no consensus on the legality of unilateral or regional authorization on the use of force for humanitarian intervention<sup>30</sup>. State practice has not acquiesced to such a doctrine. The best that can be made in support of Humanitarian Intervention is that it cannot be said to be unambiguously illegal<sup>31</sup>. Nonetheless, the issue of collective humanitarian intervention via Security Council authorization has gotten acknowledgement in the principle of responsibility to protect.

### III) THE EMERGENCE OF THE RESPONSIBILITY TO PROTECT DOCTRINE

The main bone of contention with military intervention to safeguard human rights was the perceived tension and conflict between intervention and sovereignty<sup>32</sup>. Former United Nations Secretary Kofi Annan called for change and reform via a moral duty of the Security Council to authorize action for the international community to prevent such atrocities:

‘But to the critics I would pose this question: if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?’<sup>33</sup>

Against this background the Canadian government commissioned the *International Commission on Intervention and State Sovereignty*, and in 2001 it provided its

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<sup>28</sup> Security Council *Resolution 0688* of 5 April 1991.

<sup>29</sup> It is highly arguable whether the situation in Kosovo was more peaceful after the intervention!

<sup>30</sup> *Op.cit.*, see note 24. Evans highlights the standard understanding of ‘humanitarian intervention’ as being too wide in scope – responsive to concerns about democracy and suchlike, and notes also its narrow focus on military intervention, rather than the diverse ways that R2P can respond to human security issues

<sup>31</sup> *United Kingdom Foreign Office Policy Document No. 148, reprinted in 57 BYBIL (1986) 614.*

<sup>32</sup> Adam Roberts, ‘The So-Called ‘Right’ of Humanitarian Intervention’, *Yearbook of International Humanitarian Law*, 3, No. 3 (2000).

<sup>33</sup> Kofi Annan, *We the Peoples: Millenium Report to the General Assembly* (New York: United Nations, 2000) pg.48.

report<sup>34</sup> based on two premises. The first is sovereignty as responsibility rather than sovereignty as control<sup>35</sup>. This means the main aim of sovereignty is the protection of people's fundamental right. As such, instead of sovereignty conferring a right on states to perform whatever internal actions they want, sovereignty confers a responsibility for the protection of basic human rights on states.

The second is, while the state has primary responsibility for protecting its citizens, if the state should be unwilling or unable to fulfill that mandate, then the responsibility shifts to the international community<sup>36</sup>. The international community is on this basis called upon to remedy the responsibility deficit that arises when the state fails to fulfill its primary obligation<sup>37</sup>. This is because Article 1(3) of the United Nations Charter, the 1948 Universal Declaration of Human Rights and the worldwide application of International Criminal Tribunals have rendered human rights law without borders<sup>38</sup>. This means that sovereignty must be fitted into the aim of the United Nations to save succeeding generations from the scourge of war<sup>39</sup>.

The ICISS R2P 2001 has three main elements<sup>40</sup>. The first is the *Responsibility to Prevent*, which gives primary responsibility to the host state to prevent substantial loss of life via gross human rights violations. It applies to both direct prevention and root causes of conflicts. The responsibilities of the international community at this stage include diplomacy, mediation, development of an effective early warning, developmental assistance, halting hate speech and the removal of damaging restrictive trade policies<sup>41</sup>. The second is the *Responsibility to React*. This includes both

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<sup>34</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Ottawa, December 2001. Available at: <<http://www.iciss.ca/pdf/Commission-Report.pdf>>. Accessed 12 February 2014.

<sup>35</sup> Ibid, see p. 14.

<sup>36</sup> Ibid.

<sup>37</sup> Ramesh Thakur, 'Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS', *Security Dialogue*, 33, no. 3 (2002): 323-40, p. 324.

<sup>38</sup> Op.cit, note 34. See p. 14; ICISS, *Supplementary Volume*, See p. 8.

<sup>39</sup> Op.cit, note 34, See p. 1; ICISS *Supplementary Volume. Research Essays*, pp. 7-9; On a humanitarian basis, the Economic Community of West African States (ECOWAS) had taken action in Liberia and Sierra Leone

<sup>40</sup> McClean, 'The Role of International Human Rights Law', pp. 143-150. On a legal footing, McClean has opined that *International Human Rights Law* can both support and specify R2P, on all three of its pillars of Prevention, Reaction and Rebuilding.

<sup>41</sup> ICISS, *The Responsibility to Protect*, pp. 19-20; UN Secretary-General, *Report of the Secretary-General: Early Warning, Assessment and the Responsibility to Protect*, A/64/864, 14 July 2010.



interventionist and non-interventionist measures and the third is the *Responsibility to Rebuild*<sup>42</sup>. This means that post intervention, the state is left in such a condition that it will not swiftly return to hostilities and renewed threats to civilians. Measures must be taken to ensure the safe and secure return of refugees and to prevent reverse ethnic cleansing, likewise, disarmament, demobilization and reintegration of local armed forces.

The ICISS R2P 2001 led to the Responsibility to Protect 2005 (R2P 2005). R2P 2005 is found in the 2005 World Summit Outcome Document<sup>43</sup> in Section IV: Human Rights<sup>44</sup> at paragraphs 138-140<sup>45</sup>. R2P 2005 is a specified and to some extent diluted form of R2P 2001, though retaining much of its spirit and substance. Para. 139 of the document provides for collective action, through the Security Council, when peaceful means fail. This means that R2P 2005 has an explicit Security Council mandate criteria. The envisaged R2P intervention could only happen with the authorisation of the Security Council. Just like the doctrine of humanitarian intervention, R2P2005 made no mention of regional bodies or other avenues of authorising intervention<sup>46</sup>. In addition, there is a change of scope to specific crimes. The ICISS R2P 2001 builds on the idea of human protection in situations of civil wars, insurgencies, state repression and state collapse, whereas R2P in the World Summit Outcome Document explicitly limits the responsibility to protect to instances of four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity<sup>47</sup>.

There have been two United Nations Secretary-General reports solely on R2P in 2009<sup>48</sup> and in 2010<sup>49</sup>. The purpose of the reports 'is not to reinterpret or renegotiate

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<sup>42</sup> *Ibid*, see chapt. 5; The creation of the Peacebuilding Commission in the 2005 Millenium Summit Document may be seen as acknowledging the Responsibility to Rebuild.

<sup>43</sup> The World Summit Outcome Document was adopted by the General Assembly by a resolution, which is a non-binding recommendation for member states. However, resolutions can make an important contribution to the development of international treaties by promoting main principles for future agreements.

<sup>44</sup> This is a shift from earlier documents. In the High Level Panel, *A More Secure World*, R2P was placed in Part 3 on *Collective Security and the Use of Force*.

<sup>45</sup> General Assembly *Resolution 60/1* of 24 October 2005.

<sup>46</sup> However, R2P2005 does not *explicitly* rule out other types of authorization. In the Secretary-General, *2009 UNSG Report: Implementing the Responsibility to Protect*, Former United Nations Secretary General Ban Ki-Moon backed the ICISS position regarding the potential for General Assembly action under the 'Uniting for Peace' resolution, in the face of the Security Council's failure to exercise its responsibility.

<sup>47</sup> World Summit Outcome Document, Section IV: Human Rights, Paras 138-140.

<sup>48</sup> Secretary-General, *2009 UNSG Report: Implementing the Responsibility to Protect*. A/63/677.

the conclusions of the World Summit but to find ways of implementing its decisions in a fully faithful and consistent manner'<sup>50</sup>. The Reports provide for a three-pillar approach to R2P:

1. The first pillar entails the protection responsibilities of the state which, includes inculcating appropriate values, building institutions that facilitate protection and considering the use of various learning devices and training capacities;
2. The second pillar entails international assistance and capacity building so that individual states to perform their Pillar One duties. An important innovation of the Report is the addition that the International Community might have duties to provide troops and police units in order to support the state against violent non-state-actors<sup>51</sup>; and
3. The third pillar involves timely and decisive response via the use of pacific measures or the coercive use of force<sup>52</sup>.

R2P thinking has been found in Peace Support Operations documents and guidelines, and been used in international legal arguments concerning state culpability under the Genocide Convention<sup>53</sup>. R2P enjoys substantial popularity within not only the citizens of Western states but of many non-Western countries<sup>54</sup>.

#### IV) RESPONSIBILITY TO PROTECT AND THE SYRIAN CRISIS

In spite of acknowledging and adopting R2P in principle in 2005, the international community still proved hesitant to act upon it when situations of humanitarian crisis

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<sup>49</sup> Secretary-General, *2010 UNSG Report: Early Warning, Assessment and the Responsibility to Protect*. A/64/86A.

<sup>50</sup> *Op.cit.*, See note 33.

<sup>51</sup> *Ibid*; The 'Boko Haram' situation in Northern Nigeria can be referenced here. The international community will have to provide support to help the Nigeria Government eradicate 'Boko Haram' before intervening with the use of force. This can be seen via the support of the UK, US, China, France and Israel.

<sup>52</sup> This means that coercive military intervention loses much of its centrality.

<sup>53</sup> The principle of Responsibility to Protect was used by Bosnia against Serbia before the ICJ. See Rosenberg, 'Responsibility to Protect: A Framework for Prevention', *Global Responsibility to Protect* 1 (2009) 442–477p. 471.

<sup>54</sup> R2P commitments of China and Asia-Pacific region: Ben Saul, 'The Dangers of the United Nations New Security Agenda: Human Security in the Asia-Pacific Region', *Asian Journal of Comparative Law*, 1, no. 1 (2006): 1-35, Alex Bellamy and SE Davies, 'The Responsibility to Protect in the Asia-Pacific Region', *Security Dialogue*, 40, no. 6 (2009); Alex Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', *Ethics and International Affairs*, 20, no. 2 (2006): 143-69; James Mayall, 'Humanitarian Intervention and International Society: Lessons from Africa', in *Humanitarian Intervention and International Relations*, ed. Jennifer Welsh (Oxford: Oxford University Press, 2004).

emerged<sup>55</sup>. The death of 300,000 civilians in the Darfur war<sup>56</sup> is a glaring instance of this.

Before analysing the crisis in Syria, it is important to briefly revisit the Libyan intervention. For the first time in its history, the Security Council in March 2011 approved the use of military intervention in a sovereign state against the express will of that state's government by passing resolution 1973<sup>57</sup>. The 2011 Libya crisis showcased the mobilising power of R2P as a new norm that led China and Russia to abstain, rather than veto, Resolution 1973. The initial response to the crisis is a textbook example of R2P pillar three military intervention.

Resolution 1973 authorized the establishment of a no-fly zone in order 'to protect civilians and civilian populated areas under threat of attack'.<sup>58</sup> However, the NATO operation soon exposed a critical gap between the proclamation of a no-fly zone, the prohibition of regime change, and the effective provision of civilian protection, which required regime change that would break the Security Council consensus<sup>59</sup>.

As the NATO led intervention in Libya went on, western powers overreached the civilian protection mandate they had been given by the Security Council by settling for nothing less than the complete destruction of the Gaddafi regime. The charge sheet includes the interveners rejecting ceasefire offers that may have been serious, and which certainly should at least have been explored; striking fleeing personnel that posed no immediate risk to civilians; striking locations that had no obvious military significance (like the compound in which Gaddafi relatives were killed); and, more generally, comprehensively supporting the rebel side in what rapidly became a civil war, ignoring the very explicit arms embargo in the process<sup>60</sup>. There also developed a significant gap in communications, expectations, and accountability between those

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<sup>55</sup> Robert W. Murray and Alasdair McKay 'Introduction' *Into the Eleventh Hour: R2P, Syria and Humanitarianism in Crisis*, (E-International Relations Bristol, UK) January 2014. Edited By Robert W. Murray & Alasdair McKay. ISSN 2053-8626.

<sup>56</sup> Olivier Degomme, 'Patterns of mortality rates in Darfur conflict', *The Lancet* 375 (January 2010), 9711; named by Kofi Annan as the first genocide of the twenty first century.ghgb

<sup>57</sup> Security Council *Resolution 1973* of 17 March 2011.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Op.cit.*, note 55, See Ramesh Thakur, 'Syria And The Responsibility To Protect'.

<sup>60</sup> *Op.cit.*, note 55, See Gareth Evans, 'The Consequences Of Non-Intervention In Syria: Does The Responsibility To Protect Have A Future'.

who authorised and those who implemented Resolution 1973. The above issues, including the post-Gaddafi turmoil and volatility in Libya complicated international responses to the ongoing crisis in Syria by raising doubts about the long-term results of R2P<sup>61</sup>.

Though historically rooted, Syria's situation was sparked on premise of the Arab Spring. As of December 2013, 9.3 million people inside Syria needed humanitarian assistance, including 6.5 million who had been forced to flee their homes and faced one of the harshest winters ever in Syria; the number of Syrian refugees in neighbouring countries was approaching 2.3 million; 3 million people were unemployed and 3 million children had been forced to leave their education<sup>62</sup>.

Reports have documented human rights abuses from both sides. The government and Shabiha have been accused of using civilians as human shields, intentionally targeting civilians, and adopting a scorched earth policy. Likewise, anti-government rebels have been accused of torture, forced displacement, kidnapping, unlawful detention, and execution of civilians, Shabiha, and soldiers<sup>63</sup>. The world watched in shock when a rebel commander filmed himself eating the heart of a government soldier. There is also the added problem of almost half the rebel fighters being jihadists<sup>64</sup>.

On 21<sup>st</sup> August 2013, a series of videos, photographs, and reports from within Syria showed that a chemical weapons attack had killed civilians' including a large number of children. Casualty estimates varied widely, from 500 to over 1,300<sup>65</sup> in what has been described as the world's most lethal chemical weapons attack since the 1980s. A United Nations investigation team led by Ake Sellstrom confirmed, without

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<sup>61</sup> Op.cit, note 55.

<sup>62</sup> United Nations Office for the Coordination of Humanitarian Affairs, "Humanitarian Bulletin: Syrian Arab Republic," Issue 39 (3-16 December 2013). Available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/Syria%20Humanitarian%20Bulletin%20No%2039.pdf>. Accessed 12 February 2014.

<sup>63</sup> Report of the United Nations High Commissioner for maggagistic Human Rights on the situation of human rights in the Syrian Arab Republic," UN Human Rights Council (15 September 2011). Accessed 12 February 2014.

<sup>64</sup> Ben Farmer, 'Syria: nearly half rebel fighters are jihadists or hardline Islamists, says IHS Jane's report', The Telegraph, London (15 September 2013).

<sup>65</sup> Dominic Evans and Khaled Yacoub Oweis, "Syria gas 'kills hundreds,' Security Council meets," Reuters (Aug 21, 2013). Accessed at <http://www.reuters.com/article/2013/08/21/us-syria-crisis-idUSBRE97K0EL20130821>. Accessed 12 February 2014.

attributing responsibility to any party, that chemical weapons had been used in five instances during the Syrian civil war<sup>66</sup>. Hersh argues that, like Bush in Iraq in 2003, Obama had cherry-picked facts and intelligence, presenting assumptions as facts, implying a sequence that reversed reality, and omitting important intelligence pointing to the jihadist al-Nusra's capability to make and mount a chemical weapon attack with sarin<sup>67</sup>.

After the allegations of chemical warfare, President Barack Obama and Secretary of State John Kerry clamoured for Syria to submit to United States authority and surrender to American might. What Russia did, instead, was subject Syria to international law and United Nations authority to get rid of its chemical weapons, at the price of no regime change<sup>68</sup>. President Vladimir Putin's op-ed in the New York Times laid out a narrative of the United States as an international rogue state, addicted to bullying weaklings in the global backyard, who refuses to kowtow to its dictates<sup>69</sup>. Thakur opines that the morally dubious provenance of the author could not take away the sharp sting of his analysis<sup>70</sup>. Notwithstanding the power politics, prior to the adoption of Resolution 2118<sup>71</sup>, the Security Council adopted Resolutions 2043<sup>72</sup> and 2059<sup>73</sup> in 2012, which established and then renewed, the mandate of the United Nations Supervision Mission in Syria (UNSMIS), as well as condemned violations of human rights by both sides<sup>74</sup>.

In comparison with Libya, the 'why not' of R2P in Syria was clear: the politics in the country and at the United Nations were totally different- demonstrated by several

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<sup>66</sup> Interim report in September 2013, '*Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013*', United Nations, A/67/997-S/2013/553 (16 September 2013). Available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/997](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/997). Accessed on 12 February 2014; Ban Ki Moon, 'Those guilty of chemical weapons attacks in Syria must be held accountable' UN News Centre (13 December 2013). Available at <http://www.un.org/apps/news/story.asp?NewsID=46739>. Accessed on 12 February 2014.

<sup>67</sup> Seymour M. Hersh, 'Whose Sarin?', London Review of Books 35:24 (19 December 2013), 9-12. Accessed at <http://www.lrb.co.uk/2013/12/08/seymour-m-hersh/whose-sarin> (Jan. 14, 2014).

<sup>68</sup> Ramesh Thakur; Security Council Resolution 2118 of 27 September 2013 requires the scheduled destruction of Syria's chemical weapons to be carried out by a joint United Nations and Organisation for the Prohibition of Chemical weapons team.

<sup>69</sup> Vladimir V. Putin, 'A plea for caution from Russia', The New York Times (11 September 2013).

<sup>70</sup> Op.cit, note 55. See Ramesh Thakur, 'Syria And The Responsibility To Protect'.

<sup>71</sup> Security Council Resolution 2118 of 27 September 2013.

<sup>72</sup> Security Council Resolution 2043 of 21 April 2012.

<sup>73</sup> Security Council Resolution 2059 of 20 July 2012.

<sup>74</sup> Nevertheless, three stronger draft resolutions were vetoed by Russia and China in 2011-12.

actual or threatened double vetoes from Russian and China- as well as the geography and the demography; the military challenge was far tougher; and the potential costs by 2013 appeared to outweigh the benefits of coercion<sup>75</sup>. Individual states display at best an inconsistent commitment, and at worst a flagrant disregard, for these duties. A central part of the problem here is one of political will<sup>76</sup>. The NATO military operations in Libya did not promote the R2P norm and the P3 are not willing to intervene on the basis of R2P in situations like Syria where the costs of intervention outweigh their strategic benefits<sup>77</sup>.

Thakur<sup>78</sup> argues that the failure to protect Syrian civilians stems from five sets of factors:

‘conceptual conundrums in relation to an armed civil war; the difficulty of establishing culpability for atrocities with sufficient clarity; parallel difficulties of satisfying the balance of consequences test; NATO excesses in Libya linked to the West’s reluctance to share a rule-writing role with the new emerging powers; and the latter’s reticence in accepting the burdens of being joint managers of the world order, which requires a mix of power, norms, and ideas for good global governance’.

The dilemma about intervention in Syria raises the question of whether the R2P doctrine obliges a response from the international community. From the language of R2P 2005 there is no legal duty to act. Therefore, R2P relies on a moral duty to act and gives powerful states a discretionary liberty to invade weaker states. This means there is no difference between R2P and Humanitarian Intervention. Despite the civilian protection agenda trying to fill critical gaps in the existing normative architecture through the Responsibility to Protect (R2P) and protection of civilians (POC) as sibling norms<sup>79</sup>, the repertoire of the international community in dealing with civilian victims of armed conflicts, is not enough, as shown in several cases from

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<sup>75</sup> Thomas G. Weiss, ‘*Humanitarian Intervention and US Policy*’, *Great Decisions 2012* (New York: Foreign Policy Association, 2012), 59-70.

<sup>76</sup> Secretary-General, *2009 UNSG Report: Implementing the Responsibility to Protect*. A/63/677.

<sup>77</sup> David Carment and Joe Landry, ‘R2P in Syria: Regional Dimensions’, *E-International Relations*, 8 February 2014. Accessed at: <http://www.e-ir.info/2014/02/08/r2p-in-syria-regional-dimensions/>, 10 February 2014.

<sup>78</sup> See Ramesh Thakur, ‘R2P after Libya and Syria: Engaging Emerging Powers’, *The Washington Quarterly* 36:2 (Spring 2013), 61-76.

<sup>79</sup> Hugh Breakey, Angus Francis, Vesselin Popovski, Charles Sampford, Michael G. Smith, and Ramesh Thakur, *Enhancing Protection Capacity: Policy Guide to the Responsibility to Protect and the Protection of Civilians* (Brisbane: Institute for Ethics, Governance and Law; 2012). Accessed at <http://www.griffith.edu.au/criminology-law/institute-ethics-governance-law/research/responsibility-to-protect-protection-of-civilians-policy-guide> (Jan. 14, 2014).

Cyclone Nargis in Myanmar to Darfur and, most prominently in Syria<sup>80</sup>. This underscores the need for criteria to guide instances of R2P.

There are two schools of thought surrounding the case for criteria. On the one hand, there is a sceptical school of thought<sup>81</sup> that argue a formal criteria for military intervention is unlikely to be developed and will do little to resolve current issues. On the other hand, there is an optimistic school of thought<sup>82</sup> that proposes that guidelines on intervention can resolve current R2P problems<sup>83</sup>.

In a somewhat similar vein, despite the backlash over Libya, skeptical states: Brazil, Russia, India, China and South Africa (BRICS), have continued to engage with ideas of military intervention, seeking not to prohibit military intervention, but to ensure that when it occurs it is done the right way<sup>84</sup>. Brazil and China have developed the ‘responsibility while protecting’ (RwP) and ‘responsible protection’ (RP) notions, respectively<sup>85</sup>. Both of these proposals make the case for guidelines for intervention in order to improve the justifiability of interventions<sup>86</sup>.

The lack of military intervention in response to the ongoing crisis in Syria has been advocated by Garwood-Gowers<sup>87</sup> as evidence that R2P has no meaningful impact on the actual behavior of states, thus the intervention in Libya in 2011 was an aberration and the notion that a norm has emerged that allows military intervention in response to mass atrocities is incorrect. Garwood-Gowers reasoning is fundamentally flawed.

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<sup>80</sup> Ramesh Thakur, ‘Protection Gaps for Civilian Victims of Political Violence’, *South African Journal of International Affairs* 20:3 (December 2013), 321-38.

<sup>81</sup> For example, Alex Bellamy.

<sup>82</sup> For example, Gareth Evans.

<sup>83</sup> Gareth Evans, ‘R2P and RwP after Libya and Syria’, keynote address to GCR2P/FGV/Stanley Foundation Workshop, Responsibility While Protecting: What’s Next? Rio de Janeiro (23 August 2012).

<sup>84</sup> *Op.cit.*, note 55. See Luke Glanville, ‘Syria Teaches Us Little About Questions Of Military Intervention’.

<sup>85</sup> Brazil, ‘Responsibility while Protecting: Elements for the Development and Promotion of a Concept’, A/66/551–S/2011/701 (11 November 2011). Ruan Zongze, ‘Responsible Protection: Building a Safer World’, China Institute of International Studies (Jun 15, 2012). Available at: [http://www.ciis.org.cn/english/2012-06/15/content\\_5090912.htm](http://www.ciis.org.cn/english/2012-06/15/content_5090912.htm). Accessed 10 March 2014. See the discussion in Gareth Evans, ‘Mass Atrocity Crimes after Syria: The Future of the Responsibility to Protect’, public lecture at University of Queensland (6 November 2013). Available at: <http://www.gevans.org/speeches/speech537.html>. Accessed on 10 March 2014.

<sup>86</sup> *Op.cit.*, note 55. See James Pattison, ‘The Case For Criteria: Moving R2P Forward After The Arab Spring’.

<sup>87</sup> Andrew Garwood-Gowers, ‘The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm,’ *UNSW Law Journal* 36:2 (2013), 594-618.



This is because, prior to the chemical weapons attack no states and almost no advocates of R2P had argued in favor of military intervention to protect Syrian civilians<sup>88</sup>. They had refrained from doing so because military intervention at no stage appeared to be the right option. Syria was a very different crisis from Libya and it was very difficult to see how an external military intervention in Syria could do more good than harm<sup>89</sup>. In the absence of a plausible case for military intervention in Syria, the absence of intervention does not weaken the R2P.

Glanville further argues<sup>90</sup>:

‘if military intervention is warranted in Syria, the fact that Russia would have likely prevented the passage of any Security Council resolution authorizing the intervention would not have spelled the death of the intervention norm. Norms matter, but so do the material and strategic interests of great powers, and a norm is not rendered meaningless by the fact that it is sometimes trumped by interests. After all, no one has suggested that the norm of non-intervention in the affairs of sovereign states is dead or meaningless simply because Russia invaded Georgia in 2008. Sometimes norms are trumped by the interests of powerful states. This does not mean that the norm may not have a powerful impact in other cases’.

Nonetheless, R2P is seen as a western concept<sup>91</sup> for increased self-interested invasions by powerful nations<sup>92</sup>. Despite formally endorsing R2P at the 2005 World Summit, each of the BRICS has, to varying degrees, retained misgivings about coercive measures under the doctrine’s third pillar. This is because R2P is a major challenge to the BRICS states’ traditional emphasis on a strict Westphalian understanding of state sovereignty and non-interference in domestic affairs. Overall, the BRICS’ ongoing resistance to intervention is unlikely to disappear quickly, indicating that further attempts to operationalize R2P’s third pillar may prove difficult. States of the non-aligned movement have accused R2P of being a Trojan horse and redecorated colonialism. However, Peter opines that this is unfounded because the era of globalization is post-imperial<sup>93</sup>.

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<sup>88</sup> Anne- Marie Slaughter, ‘Going to School on Syria’s Suffering’, *The Globe and Mail* (29 May 2013).

<sup>89</sup> *Op.cit*, note 55. See Luke Glanville *Syria Teaches Us Little About Questions Of Military Intervention*.

<sup>90</sup> *Ibid*.

<sup>91</sup> However, in 2000, the Constitutive Act of the African Union describes R2P as a right and not responsibility in the Constitutive Act of the African Union. Nonetheless, it is worthy to note that Western inaction in Rwanda was clearly a factor in the African Union founding document.

<sup>92</sup> For example, the 2003 US led war against Iraq and the treatment of Israel in comparism to Iraq.

<sup>93</sup> Peters, ‘Humanity as the  $A$  and  $\Omega$  of Sovereignty’, *European Journal of International Law*, 20, No. 3



No new enforcement powers or mechanisms have been agreed<sup>94</sup>, and any decision to apply the principles of R2P in a given situation depends on the existence of political will to do so. Although in the era of ‘humanitarian intervention’, the Security Council has stretched Article 42<sup>95</sup> to provide a justification for intervention, e.g. in Somalia in 1993 and Libya in 2011<sup>96</sup>, there is currently no basis for military intervention in Syria. As Thakur argues<sup>97</sup>:

‘no foreign country has been attacked by Syria. Other than self-defence against armed external attack, only United Nations authorisation provides legal cover for military strikes. Without United Nations authorisation, military strikes would be neither lawful nor legitimate, just another instance of vigilante justice by a trigger-happy and seemingly out-of-control West. The international community cannot be collapsed into a mini-NATO coalition of the willing’.

To reiterate, the experience in Libya fatally undercut efforts to build global support for military strikes on Syria. However, to date, there have been two discussions<sup>98</sup> in Geneva between the Assad regime and the Opposition for pacific modes of settling the discourse. The Geneva II discussions can be opined to be based on the first part of the third pillar of the R2P. Unfortunately both have ended in failure. The Assad regime has agreed to a third round of discussions. There is interest in clarifying the R2P norm further and tightening operational safeguards to prevent misuse. Protecting civilians is a ‘wicked problem’ with no solutions, only better or worse outcomes. Our common humanity demands an acceptance of a duty of care by all of us who live in zones of safety towards all of those trapped in zones of danger. If a government violates international law and, in particular, if it permits atrocities or perpetrates abuse, the Security Council may or may not act. As Glanville opined, expecting consistency, alas, is a fool’s errand<sup>99</sup>.

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(2009).

<sup>94</sup> An amendment of the United Nations Charter provision on no war is needed.

<sup>95</sup> Op.cit, note 13. See Article 42.

<sup>96</sup> Op.cit, note 55. Michael Aaronson, ‘Syria And The Crisis Of Humanitarian Intervention’

<sup>97</sup> Ibid. See Ramesh Thakur, ‘Syria And The Responsibility To Protect’

<sup>98</sup> The first was mediated by Annan in 2012 and the second was mediated by Brahimi on 24<sup>th</sup> January 2014- 31<sup>st</sup> January 2014.

<sup>99</sup> Thomas Weiss, ‘After Syria, Whither R2P’; Aidan Hehir, “The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect,” *International Security* 38:1 (2013), 137-59; The author’s views are Thomas G. Weiss, ‘RtoP Alive and Well after Libya,’ *Ethics & International Affairs* 25:3 (2011), 287-92.

## V) CONCLUSION

Since the unanimous endorsement of R2P by states at the World Summit in 2005, there has been only one clear case, Libya, in which it was widely agreed that military intervention would be a just and prudent response to the occurrence of mass atrocities, and in that case the international community did not fail to intervene. Notwithstanding the hurdles brought by the Syrian situation, Syria has not thrown out R2P. For all its paralysis over Syria, the Security Council has, since its March 2011 decisions on Côte d'Ivoire and Libya, endorsed ten other resolutions directly referring to R2P: one concerning trade in small arms, but the others adopting measures to confront the threat of mass atrocities in Yemen, Libya, Mali, Sudan, South Sudan, and the Central African Republic.

In conclusion, when peaceful measures have been exhausted and the Security Council is deadlocked or its legitimacy is in question, the General Assembly should act via the 'Uniting for Peace' procedure to enable R2P fulfill its primary purpose of preventing humanitarian atrocities similar to those witnessed in Bosnia, Rwanda, Darfur, and now Syria.