

RESPONSIBILITY TO PROTECT AS AN INSTRUMENT FOR HUMANITARIAN INTERVENTION: AN APPRAISAL

Dissertation submitted to National Law University and Judicial Academy, Assam

in partial fulfilment for award of the degree of

MASTER OF LAW

Submitted by

Siddhant Sarangi

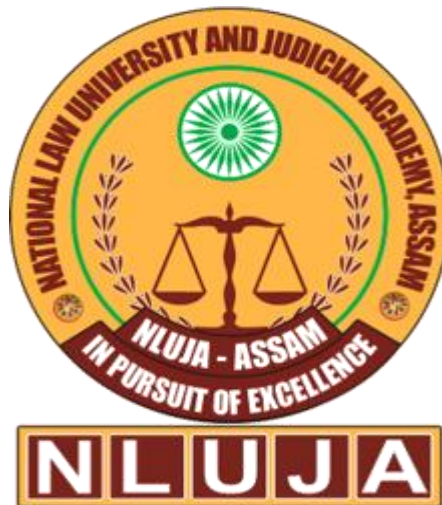
SM0219026

LL.M.

Supervised by

Dr. Diptimoni Boruah

Associate Professor of Law

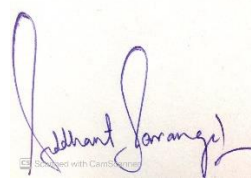


National Law University and Judicial Academy, Assam

(August 2020)

DECLARATION

I, Siddhant Sarangi, pursuing Master of Law, from National law University and Judicial Academy, Assam do hereby declare that the Dissertation titled “**RESPONSIBILITY TO PROTECT AS AN INSTRUMENT FOR HUMANITARIAN INTERVENTION: AN APPRAISAL**” is an original work of research and has not been submitted either in part or full anywhere else for any purpose Academic or otherwise to the best of my knowledge.

A handwritten signature in blue ink, reading "Siddhant Sarangi", is positioned above a small, faint watermark that says "Scanned with CamScanner".

Date 16 August, 2020

Siddhant Sarangi
SM0219026

CERTIFICATE

This is to certify that Siddhant Sarangi has completed his Dissertation titled **“RESPONSIBILITY TO PROTECT AS AN INSTRUMENT FOR HUMANITARIAN INTERVENTION: AN APPRAISAL”** under my supervision for the award of the degree of Master of Laws/One Year LL.M Degree Programme. This research work is found to be original and suitable for submission for the award of the degree of Master of Law (One Year LL.M Degree Programme)



Date: 16 August 2020

Dr. Diptimoni Boruah
Associate Professor of Law
NLUJAA

ACKNOWLEDGEMENT

The Success of the project depends on the encouragement and guidance of a lot of people. Firstly, I would like to take this opportunity to thank Dr. Diptimoni Boruah, Associate Professor of Law, NLUJAA, who guided me and supported me in this venture.


I would also like to take this opportunity to thank my parents and my sister and brother in law who gave me their constant support and motivation throughout the project. I would like to extend my thanks to my peers at National Law University and Judicial Academy for all the support they have provided throughout the last year.

I would also like to express my heartfelt thanks to the Librarian and the staff of the NLUJAA Library for their help and cooperation in making available the relevant materials. I would also like to take this opportunity to thank the System administrator who helped overcoming the technical problems related to the availability of materials during this time of pandemic

I would also like to extend my deepest gratitude to Ms. Atika Singh Rawal, Ms. Ashna Siddiqui, Ms Palak Jawa, Mr. Apurv Shaurya and Ms. Sai Sneha Das for the constant uplifting and for helping me through these times

Finally, I would like to take this opportunity to express my gratitude for all my teachers for their encouragement in this venture.

Thank You



Date: 16 August, 2020

Siddhant Sarangi

SM0219026

TABLE OF ABBREVIATIONS

AU	African Union
CIL	Customary International Law
ECOWAS	Economic Community of West African States
EU	European Union
ICJ	International Court of Justice
IHL	International Humanitarian Law
IIC	-Independent Investigation Commission
ICSISS	- International Commission on Intervention and State Sovereignty
ICL	-International Criminal Law
LON-	League of Nations
LAS	-League of Arab States
MINUCI-	Mission in Cote d' Ivoire
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
OHCHR	Office of the High Commissioner of Human Rights
PBC	Peace Building Commission
R2P	Responsibility to Protect

R2R	-Responsibility to React
RtoP	RtoP-Responsibility to Prevent
R2RB	R2RB-Responsibility to Rebuild
UDHR	UDHR-Universal Declaration of Human Rights
UNGA	UNGA- United Nations General Assembly
UNSC	UNSC-United Nations Security Council
UNAMIS	UNAMIS-United Nations Assistance Mission in Syria
UNASMIL	UNASMIL United Nations Assistance Mission in Libya
UNOCI	UNOCI United Nations Mission in Cote D' Ivoire
UNAG	UNAG United Nations Action Group
VCLT-	Vienna Convention on Laws of Treaty
WWI	World War I
WWII	World War II
WSOD	World Summit Outcome Document.

TABLE OF CASES

Armed Activities in the Territory of Congo (DRC v. Uganda), ICJ
Corfu Channel Case (UK v. Albania) ICJ
Legality of The Threat or Use of Nuclear Weapons, (Advisory Opinion), ICJ
Military and Paramilitary activities in and Against Nicaragua (Nicaragua v. Us), ICJ
Oil Platforms Case (Iran v. Us) ICJ

Table of Contents

DECLARATION	I
SUPERVISOR CERTIFICATE	II
ACKNOWLEDGEMENT	III
TABLE OF ABBREVIATIONS	IV
TABLE OF CASES	VI
PREFACE	IX
CHAPTER 1: INTRODUCTION	1
1.1 RESEARCH BACKGROUND	1
1.2 STATEMENT OF PROBLEM	2
1.2 AIMS AND OBJECTIVES	3
1.3 SCOPES AND LIMITATIONS	3
1.4 LITERATURE REVIEW.	3
1.5 HYPOTHESIS	7
1.6 RESEARCH QUESTION	8
1.7 METHODOLOGY	8
1.8. CHAPTERS	9
CHAPTER 2: THE LEGALITY-LEGITIMACY DEBATE	10
2.1 THE PRINCIPLE OF USE OF FORCE	10
2.1.1 Pre-Second World War.	10
2.1.2 Post Second World War.	13
2.2 HUMANITARIAN INTERVENTION.	18
2.2.1 India's Intervention in East Pakistan (1971)	18
2.2.2 NATO Led Intervention in Kosovo.	23
2.3 HUMANITARIAN INTERVENTION AGAINST AGGRESSION.	26
CHAPTER 3: IMPLEMENTING R2P: LIVES OVER BOUNDRIES	30

3.1 THE ICSISS REPORT.	32
3.1.1 Responsibility to Prevent.	33
3.1.2 Responsibility to React	36
3.1.3 Responsibility to rebuild	39
3.2 WSOD, 2005.	41
3.2.1. Responsibility to Prevent.	44
3.2.2 Responsibility to react	45
3.2.3 Responsibility to rebuild	46
CHAPTER 4: CASE STUDIES	48
4.1 DARFUR	49
4.1.1 Responsibility to prevent	53
4.1.2 Responsibility to React.	57
4.1.3 Responsibility to Rebuild	60
4.2 LIBYA	62
4.2.1 Responsibility to Prevent.	64
4.2.2 Responsibility to React	65
4.2.3 Responsibility to rebuild.	68
4.3 COTE D'IVOIRE	70
4.3.1 Responsibility to Prevent.	72
4.3.2 Responsibility to react	76
4.3.3 Responsibility to Rebuild	77
4.4 SYRIA	79
4.4.1 Responsibility to prevent.	83
4.4.2 Responsibility to React.	93
4.4.3 Responsibility to Rebuild	97
CHAPTER 4:THE CONTROVERSIES SURROUNDING R2P	99
5.1 THE LIBYAN INTERVENTION	99
5.2 SYRIA AND R2P	102
CHAPTER VI :CONCLUSION	110
6.1 RECOMMENDATIONS	114
BIBLIOGRAPHY	XIV

Statutes and Convention	xiv
Resolutions	xv
Reports	xvi
Books.	xvii
Articles	xviii
Press Reports and Press Releases	xx
Others	xxviii

PREFACE

The dissertation sheds light on the norm of Responsibility to Protect famously known as R2P. It studies the development of the norm and its evolution from the concept of Humanitarian intervention by using the Indian intervention in East Pakistan and the NATO intervention in Kosovo as the basis for the discussion of the legality- legitimacy debate. It analyses the responses of the international community towards the two interventions and the reason why the international community felt the need to develop a norm to protect civilian populations from grave violations of human rights. The norm first introduced by the ICSISS report in the year 2002 was adopted into the international system by the United Nations members vide the World Summit Outcome Document 2005. The World Summit outcome document authorised the United Nations Security Council to invoke the norms of R2P providing no alternative measures as a result there is no alternative measure to protect the civilians against atrocities carried out against them by their own governments. I compare the two documents in the third chapter and critically discuss the loopholes surrounding the norms and hope to address them. The norm was shortly put to use by the United Nations Security Council in multiple cases. In this paper I shall be analysing the human rights atrocities in Darfur, Libya, Cote d Ivoire and Syria and the differential reaction to the conflict by the international community specifically the UNSC. Following that the study shall focus on the use and abuse of the norms of R2P by the international community by analysing the reactions of the international community to the atrocities in Libya and Syria. The reactions present two cases where R2P was invoked and the other where R2P was not invoked.

CHAPTER 1: INTRODUCTION

1.1 Research Background

The atrocities of Nazi Germany against the Jews of Europe saw the grave crimes criminalised by the allied trials of Nuremburg and Tokyo. These crimes shocked the conscience of mankind and states across the world avowed that crimes of such magnitude shall never happen again.

However, these crimes have been committed since then in East Pakistan, Libya, Syria Rwanda. There have been multiple interventions over the period, including both unilateral and UN backed interventions sparking a debate over the legality of it.

Art. 2(4)¹ of the Charter provides for respect for “territorial integrity and sovereignty of member states” outlawing any form of aggression against another state. Therefore, the actions of the NATO in Kosovo, India in East Pakistan all raised questions as to the legality of it. The NATO led intervention was criticized by many states such as the USSR, China and other members of the NAM.

The debate in the beginning of the 21st century revolved around the Humanitarian Intervention of NATO in Kosovo. This was basis for the growth of a new doctrine under the principles of international law, and a method of protection provided to civilians from human rights violations. However, Humanitarian Intervention often dubbed as ‘Right to Intervene’ was seen as a mode to threaten the political independence of newly independent member states and many nations treated it as a threat to the “political independence and territorial integrity” of member states. Therefore, it necessitated the need for a new approach which would tackle the issues of sovereignty and intervention.

Humanitarian intervention paved way to Responsibility to Protect (R2P) which was first introduced by “International Commission of Intervention and State Sovereignty in

¹Charter of the United Nations (adoption 24 October, 1945, came into force 24 October, 1945) 1 UNTS XVI. (Charter)

2001”² and was adopted by the head of states of Member nations under the “2005 World Summit Outcome Document” under paragraphs 138 and 139.

It became a solemn promise of States that they shall intervene in case of mass atrocities, when the home state fails to protect. It reconciled the principles of sovereignty and human rights and provided a careful and comprehensive solution to the problems and the controversies surrounding it.

R2P highlighted sovereignty as a responsibility.³It stipulates that the primary duty to protect lies with the states to which the citizens belong to. However, if they fail to act appropriately or the mass atrocities are state sponsored then the duty to protect the people of that nation shifts to the rest of the world. The principle first emphasizes on preventive action rather than coercive measures. Coercive measures can be used as a last resort. R2P sits on 3 pillars of “Responsibility to prevent, Responsibility to react and Responsibility to rebuild”.⁴

1.2 Statement of Problem

Sovereignty is always associated with freedom. The freedom to do anything without fearing for its consequences. Many states since the end of the second world war have indulged in crimes so heinous. With time the Indo Pakistan War in 1971 and the NATO led unilateral Humanitarian Intervention during the Serbian Genocide in Kosovo brought into picture the shortcomings of the international human rights framework to protect Human Rights. However, this action of the NATO brought into picture the various questions related to the Legality-legitimacy debate and the other questions related to the protection of state and the use of force.

R2P though answers a critical question related to state sovereignty the problem arises due the abuse of this principle to justify illegal interventions by states as against other states.

²International Commission on Intervention and State Sovereignty, ‘Responsibility to protect’ (2005, Ottawa) accessed on <http://responsibilitytoprotect.org/ICISS%20Report.pdf> 25 March, 2020.

³Francis M. Deng, ‘Reconciling Sovereignty with Responsibility: A Basis for International Humanitarian Intervention in Africa in World Politics: Post-Cold War Challenges’, John W Harbeson and Donald Rothchild (eds), (Westview Press, 1995).

⁴ ICSISS Report (n.2).

1.2 Aims and Objectives

The research focuses on answering questions related to Sovereignty. It analyses the existing norms under the legal system surrounding humanitarian system and norms of R2P. The document analyses the interventions in East Pakistan, Kosovo, Syria, Cote d'Ivoire, Libya and Darfur and to recommend suggestions to improve the system as a whole.

Secondly the research aims to answer a number of questions related to the use of the veto by the permanent members of the UNSC, to find the differences between the ICSISS report's recommendation on the norms of R2P and what the states adopted under the WSOD 05.

The project further aims to analyse how the norms surrounding R2P have been used to further national interests by states. It studies their use and abuse by the states by analysing the intervention in Libya and non-intervention in case of Syria.

1.3 Scopes and Limitations

The scope of the study is to study the norms of interventions and to analyse its development from the humanitarian intervention to its current form of R2P. The research shall investigate the crisis in Libya, Cote d' Ivoire, Syria and Darfur to study.

The research shall analyse the differences between the recommendations of the ICSISS report and its adoption in the WSOD 05 highlighting the loopholes surrounding the norms under R2P.

The research is a limited in scope and analyses only 4 interventions in Libya, Cote d' Ivoire, Syria and Darfur from 2000 to until 2014.

1.4 Literature Review.

To understand the legality legitimacy debates surrounding humanitarian intervention and R2P, it is important to understand how the norm related to it developed and the prohibition against force its history and the concepts of just and unjust war is explained

in detail and in Shaw.⁵ Shaw traces the concept of Just and Unjust war since the Christianisation period until the prohibition of all forms of war. Shaw refers to the writings of various jurists like St. Augustine, St Thomas Aquinas, Grotius and Peter Haggenmacher who argue about the existence of the concepts of Just and unjust war up until the 19th Century.

Shaw further discusses the causes for WWI and the principle of use of force under the League's Charter and how the Charter reinforced with the Kellogg Briand Pact condemned the recourse to war and the criticism of the LON in light of its inability to prevent wars across Europe. The Chapter on use of force in Shaw then discusses the reasons for the outbreak of WWII and the development of the norm of absolute prohibition of use of force under the Charter mechanism.

This prohibition of force in the Charter is discussed with the commentary of the UN Charter and the various resolutions of the UNGA. This paper studies the relationship between the provisions of the UN charter and the various declarations and resolutions of the UNGA which make the prohibition of use of force customary international law. Declarations such as "the Declaration on the Granting of Independence to Colonial Countries" the Declaration on the principles of International law and friendly relations" and the "Declaration on The Inadmissibility of Intervention in The Domestic Affairs" are few of states relations all build a consensus towards the prohibition as customary international law.

This prohibition of force is further discussed by the ICJ in cases such as Nicaragua v. USA⁶ where the court held that the training, arming financing and supplying the contra forces to be against the obligation of international law and held the USA responsible for the attacks in Nicaragua. The ICJ in UK v. Albania⁷ (Corfu Channel case) the ICJ found Albania liable for the explosions in the Channel which caused loss of life and damage to the UK. This was about the.

In the case of the DRC v. Uganda⁸, DRC argued that Uganda had engaged in acts of armed aggression in the DRC. It had argued that Uganda had engaged in military

⁵ Malcolm Shaw, 'International Law' (first published 2008, 6th ed CUP 2008), 855.

⁶ Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. Us), merits, (1986).

⁷ Corfu Channel Case (UK v. Albania) (merits) [1949], ICJ REP 4.

⁸ Armed Activities in the Territory of Congo (DRC v. Uganda), (merits) [2005], ICJ REP 2005.

activities and had occupied territory within DRC. The Ugandan a government had provided with logistical, financial and economic support to the armed groups against the DRC government. The court found the moment consent was withdrawn from the intervention the Ugandan a military it amounted to the breach of sovereignty and was in violations of Article 2(4).

In the Legality of Nuclear weapons case⁹ the ICJ discussed about the threat of force with regards to the possession of nuclear weapons and its use in armed conflict would be violative of international humanitarian law, possession of nuclear weapons does not amount to the threat of force.

In Portugal v. India, the actions of the Indian military when it blocked the Portuguese right to passage to its enclaves of Dadar and Nagar haveli. Portugal claimed that it had the right to passage. India argued that the right to passage didn't include military personnel. The ICJ held that though Portugal had the right to passage it didn't extend to military personnel.

The Humanitarian intervention in East Pakistan by India is one of the first instances where military force was used to protect citizens of another country from human rights violations. Gary Bass in his article¹⁰ discusses this intervention and how the legal debates surrounding the intervention was torn between the morality of the intervention and the violation of the prohibition of use of force which was customary international law. He discusses in details the situations and circumstances leading up to the intervention in erstwhile East Pakistan. He goes on to discuss the arguments put forth by India post its intervention in East Pakistan and how India's actions led the groundwork for the future humanitarian interventions in Tanzania, Somalia, Haiti and Kosovo.

The intervention in Kosovo led to the establishment of the ICSISS which came out with its report in 2001 set up the norm of R2P The ICISS first sanctioned by the Government of Canada to develop the norm which later came to be known as "responsibility to protect." The report discusses the problem and provides a suitable alternative to the challenges of humanitarian intervention.¹¹

⁹ Legality of The Threat or Use of Nuclear Weapons, (Advisory Opinion), ICJ REP 1996.

¹⁰ Gary J Bass, "The Indian Way of Intervention" 40 YJIL 227.

¹¹ ICSISS Report [n.2].

Following the discussion of the ICISS report the UNGA in 2005 adopted the “Worked Summit Outcome Document in 2005”¹² which formally established the principle of R2P under paragraphs 137 and 138 of the documents. Though this limited the grounds of invocation of the principle and left behind huge ambiguities to the situation of where R2P can be invoked it was the first step towards providing a solution to stop the atrocities against civilian populations carried out by their own governments. This principle finds its support in the writings of Bellamy, Breakay, Strauss and Peters who talk about State Sovereignty and reinforce that sovereignty is not absolute.

Bellamy in his book “The Responsibility to Protect: A defence”¹³ talks about the various aspects of R2P including its development. He provides context by providing an historical analysis of the atrocities since the end of WWII. He in his book further highlights the double standards related to the R2P norms along with the factors which affect the protection regime under international law. In this book he discusses about the promise that R2P holds under the international legal system which are the highlights of this book. He has authored multiple articles on R2P. In the article titled “The Responsibility to Protect and the Crisis in Darfur”¹⁴ with Paul D. Williams, the authors discuss the concept of “sovereignty as responsibility” and how the governments who had previously endorsed this concept do little to protect Sudanese citizens who are suffering from atrocities carried out by the Sudanese Government. The authors further discuss why the advocates of the above-mentioned norm failed to take any actions and failed to contemplate military actions. The authors in their conclusion conceded that the norm of humanitarian intervention is weak. Bellamy further in his article “Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian intervention after Iraq”¹⁵ discusses the atrocities in Darfur and the lack of consensus towards the doctrine of R2P. He provides three different perspectives to R2P. Firstly he states that the intervention in Afghanistan makes it more probable that states will act to halt humanitarian crises, His second perspective runs directly in contradiction to his first. He argues that the American intervention in Iraq set back the development of the

¹² UNGA Res 60/1, (16 September, 2005) UN Doc A/Res/ 60/1. (WSOD 2005)

¹³ Alex Bellamy, ‘The Responsibility to Protect: A Defence’ (OUP, 2015).

¹⁴ Paul Williams and Alex Bellamy, ‘The Responsibility to Protect and the Crisis in Darfur’ (2005) 36 Sec Dia 127.

¹⁵ Alex J. Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq (2005) 19 EIA 31.

international consensus by many years. While in his third perspective he argues that R2P can be misused and hence requires strengthening. Bellamy along with Williams in another article titled “The new politics of Protection Cote d’ Ivoire, Libya and the responsibility to protect” analyse the interventions that took place in Libya and Cote D’ Ivoire. They discuss about the UNSC’s approach to deal with humanitarian crises. They discuss the Resolutions 794 and 929 where forces were sent into Somalia and Rwanda to protect the civilian populations from genocide and other atrocities. They discuss in detail the Resolution 1973 which set precedent for military actions authorised by the UNSC. Bellamy in another article titled “Libya and the Responsibility to Protect: The Exception and the norm” discusses the role R2P has played to shape the response of the international community towards atrocities. He talks about the “all necessary measures” authorised by the UNSC invoking R2P for humanitarian procedures.

Scott Strauss in his article “Rwanda and Darfur: A comparative analysis”¹⁶ in the first part of the article discusses the patterns of the violence in both cases of Rwanda and Darfur and in the second half of the article he focuses on international response to the genocide in Rwanda. Both the responses showed that the response strategy was ineffective.

Gary J. Bass in his article “The Indian Way of Humanitarian intervention”¹⁷ critically analysed the situation leading up to the Indian Intervention of East Pakistan in 1971. He discusses the claims of India and Pakistan for and against. Furthermore, he discusses the actions taken by the International community against India for violating the sovereignty of Pakistan.

1.5Hypothesis

The entire case behind the development of the norms of R2P has been that it needs to replace the concept of Humanitarian intervention which multiple times has been used as an instrument to forward national interests.

¹⁶ Scott Strauss, ‘Rwanda and Darfur: A comparative analysis’ (2006) 1 GSP 41, 45.

¹⁷Gary J Bass, ‘The Indian Way of Intervention’ 40 YJIL 227.

In this paper after studying the events in Libya, Syria, Cote d' Ivoire and Darfur, all of which fit the criteria for the application of R2P, the application of the norm only in the cases of the Ivory Coast and Libya and skipping Darfur and Syria.

Hence under the circumstance it is assumed that the international community uses R2P as a tool to forward its own interests.

1.6 Research Question

1. Does Veto hinder the use of R2P?
2. What are the differences between the norms of R2P under WSOD 2005 and the ICSISS Report?
3. How can the R2P system be improved following the interventions in Libya and Cote d' Ivoire?

1.7 Methodology

This study shall be doctrinal in nature. It shall analyse the various aspects of humanitarian interventions in erstwhile East Pakistan and then in Kosovo drawing parallels from the both and then comparing them with the norms of R2P.

The study shall also focus on the development of the system of R2P by studying the founding documents i.e. the ICSISS Report and the WSOD 05 and carefully analysing the shift from humanitarian intervention to R2P.

R2P which developed in the late 2000's by the ICSISS and then adopted into the legal system with the WSOD 05. The study shall focus on has the system significantly improved since Kosovo or is it still an offshoot of the intervention system. This will be studied in the fourth chapter which will include 4 case studies.

After this I shall address the question as to the use and abuse of the norms of R2P by analysing the use of the norms in Libya and Syria with critical analysis of Interventions in Georgia, Kosovo, Syria, Rwanda, and East Timor. This study will the present research would be doctrinal in nature and would be using a comparative approach towards the issue, holding comparative studies between the laws of different countries in contrast to the Indian scenario.

In this dissertation, I have followed 4th Edition OSCOLA Uniform Citation method.

1.8. Chapters

Chapter 1 – Introduction.

The first chapter shall introduce along with the research object, the research questions, the statement of problem, the hypothesis, the topic in general and shall provide the base from which the other chapters shall be drawn.

Chapter 2 –The Legality-Legitimacy Debate Over Humanitarian Intervention the Second Chapter shall discuss the events that letup to the invocation of R2P by the international community. It shall discuss in details the situations that lead to the involvement of the International Community in internal matters of States.

Chapter 3 – The third Chapter shall study the development of the norms of intervention. It shall critically analyse the ICISIS report and the WSOD 05 to understand how the norms of R2P came into being

Chapter 4–The fourth chapter would be a case study into R2P being used as a principle to prevent the gross violations of states against their populations, critically analysing the situations of conflict in Syria Libya, Darfur and Cote d' Ivoire,

Chapter 5–The fifth chapter would discuss the use and the abuse of R2P as a political tool against member states to justify acts of aggression. I

Chapter 6–ConclusionThe final chapter would be making a conclusion by summarising the discussion above and would be making a set of recommendations that would be the result of an honest research with bonafide intent.

CHAPTER 2: THE LEGALITY-LEGITIMACY DEBATE

2.1 The Principle of Use of Force

2.1.1 Pre-Second World War.

The prohibition against force is a central tenant to international law. This principle is read along with those of sovereignty, territorial integrity, independence and equality of states. These principles along with the prohibition of force build the framework for the circumstances under which force can or cannot be used by one state against another.

The use of force that is allowed to governments in the domestic setup and is a totally different case under international Law. Under the system the use of force seeks to regulate and minimise the use of force by states and is reliant on multiple factors as well as the state of law in those states.

The abandonment of pacifism allowed for the use of force if it met the criteria of divine will. This brought in the concept of just and unjust war which was used as the instrument to maintain an ordered society. St Augustine¹⁸ defined just war as “avenging the injuries suffered where the guilty party refused to make amends.” He further said that “aggression was unjust, and that war was to be embarked upon to restore the peaceful status quo. He further said that “the recourse to violence had to be controlled”

St Thomas Aquinas¹⁹ justified war if it was done under sovereign authority with a just cause. The rise of European Nation states the doctrine of just war saw a shift from just causes to being linked with issues of sovereignty. The use of force against other states, posed numerous challenges and threatened the existing legal order. Vitoria²⁰ emphasises that “not every kind and degree of wrong can suffice for commencing war.”

¹⁸Leslie C. Green, ‘The Contemporary Law of armed conflict’, 2nd edn, MUP 2000.

¹⁹Joachim Von Elbe, ‘The Evolution of the concept of just war in international’, 33 AJIL, 1939, 669.

²⁰Francisco de (O.P) Vitoria, ‘De Indis Et De Jure Belli Relectiones’ 29

Grotius²¹, the father of International Law tried excluding ideological considerations as basis of just war and tried to redefine war “in terms of self-defence, protection of property and punishment for the wrongs suffered by the citizens of a particular state.”

With the treaty of Westphalia, 1648, with states being considered as sovereign equals, no other state could be a judge to the cause the cause of war. States were honour bound to abide by the agreements to respect the independence and of other states and resolve disputes.²² However, that doesn't mean that war didn't occur, when it did it had serious legal consequences. This made the cause of war irrelevant with the basic problem centred on the existence of a state of war.

The period since 1884-1914 was in a state of transformation, the preceding years having challenged the existing structures of International Law in Europe. Western imperialism and economic globalisation along with scientific and technical revolutions had changed the way states perceived the use of force. The Darwinist ideologies in the late 19th Century Germany and Italy Amalgamated by economic imperialism, nationalism and scientific advances in weaponry and transport which had unprecedented destructive power were all part of the balance of power system existing in Europe.

Contemporary scholars of the day all agreed that international law required a legitimate reason for waging of war and any war against the political independence was illegitimate. The law of neutrality was to prohibit third party intervention between two states. In addition to the basic rules, states had to adhere to the principles of humanitarian law, specifically the distinction between combatants and civilians. Notably apart from the Crimean war from 1853-56 and the Franco Prussian War of 1871, 1814-1914 were a relatively peaceful time in Europe.

Peter Haggenmacher argues that throughout the 17th and 18th century there co-existed two concepts of war one which was based on the “bellum istum” theories and the other was based on a duel like Roman Conception of war and both of them existed in legal literature.

Though the immediate causes of the outbreak of the WWI was the assassination of Archduke Franz Ferdinand by a Bosnian Serb escalated the crisis between Austria

²¹ Ian Brownlie, 'International Law and Use of force' (first published 1981, Clarendon 1981)13.

²²Peace of Westphalia (Osnabruck-Munster) 15 May 1648.

Hungary and Serbia. This was later joined by Russia, Belgium, France Germany, the Ottomans and Great Britain. The series of diplomatic clashes that followed between the Great Powers over colonial issues were the reasons for the outbreak of the First World War.

WWI culminated in the defeat of the Axis Powers and the Treaty of Versailles was signed by the Axis powers, marking the end of the power system in Europe. It resulted in efforts to rebuild through international institutions that would conduct world affairs differently. As regards to the problems of use of force, the LON was established at the end of the war. The Covenant of the LON provided for alternative measures for the peaceful settlement of disputes by judicial settlement and other alternative measures. It provided that under no circumstance members were to resort to war under any circumstance until after 3 months of the decision. The Covenant not outlawing war, provided for a cooling off period.

The Kellogg-Briand pact²³ closed the gaps in the Covenant and it condemned the recourse to war and called upon state parties to give it up as an instrument of national policy and this treaty having never been terminated and with its widespread acceptance it made the prohibition to war customary principle.. However, prohibition didn't mean that the treaty outlawed all forms of use of force. Reservations to the treaty, included the right to use self-defence which is recognised as a principle of international Law.

This period saw multiple wars starting with the Russian Invasion of Finland, Japanese invasion of Manchurian. This period also saw German aggression against Czechoslovakia. The gaps of the League became quite prominent when Japan decided to walk out of the League following a condemnation for the use of force in Manchurian. Lack of political will and in order to avoid another full-scale war, the great powers of the time like France, the Great Britain signed a pact with Nazi Germany to restrict itself from capturing territories in Eastern Europe. However, the invasion of Poland in 1939 saw the outbreak of the Second World War.

The killing of over 15 million people by Nazi Germany in gas chambers, by mass executions and the systematic ghettoization of Jews before sending them to concentration camps were all perpetrated by the Nazi government in Germany across

²³General Treaty for Renunciation of War (signed 17 August 1928) 94 LNTS 57.

Europe. The official records state that the period between 1936-1945 saw the deaths of at least 6 million Jews and the number could go much higher, except for the destruction of records by German soldiers before these camps fell in the hands of allies. These acts shocked the conscience of mankind, the Nuremberg and Tokyo trials laid down the groundwork for criminalising acts of Genocide, crimes against humanity, war crimes and ethnic cleansing.

2.1.2 Post Second World War.

The UN was negotiated in 1943 between the big three who would have the primary responsibility to maintain peace and security. This was in contrast to the Covenant but also a reflection of reality that the Anglo-American-soviet forces had saved the world from Axis domination. There was no going back to the LON, however, it was recognised that the new organisation would need a secretariat to carry out the administrative duties. The preparations for the formulation of the UNO was very extensive and all the powers at the “Dumbarton Oaks Conference” and “San Francisco Conference knew that for a better organization they would need to avoid the mistakes of the League. With this in mind the UN Charter was signed by 52 member states in San Francisco which led to the establishment of the United Nations Organisation.

Article 2(4) of the Charter²⁴, in absolute terms prohibits the use of force in international relations. Though embedded in the Charter it didn't end the use of force. At the San Francisco conference the discussions included the prohibition” to other types of forces apart from the armed forces. Brazil proposed the prohibition of economic force while Ecuador sought to repudiate moral or physical force²⁵. In this context, Brazil recommended the addition of the following provision ““All threats or acts of violence committed by any state to the detriment of any other state shall be considered as acts of aggression committed against all the other members of the Organization.”²⁶ New Zealand, Ecuador and Bolivia all advocated for the inclusion of acts of aggression as a separate paragraph, however, this was opposed by China, UK and USA on the grounds that it would narrow the scope of Article 2(4).

²⁴ *ibid* art 1.

²⁵ UNCIO, vol 6, 559. Earlier Brazil submitted a lengthier amendment covering a comprehensive prohibition of non-intervention (vol 3, 237); UNCIO, vol 6, 561 and vol 3, 399 and 423 (Ecuador).

²⁶ *Ibid*.

The third discussion revolved around the final part of the draft which states “in any other manner inconsistent with the purposes of the United Nations”.²⁷ Several states expressed concern with regard to the interpretation as it provided an interpretation that states could on their own decide whether or not force can be used. Therefore, delegations led by Costa Rica moved a proposal to delete this so as to make the prohibition clear. All these amendments faced resistance from the UK and the USA. The final text of Article 2(4) was adopted on 5 June 1945 prohibiting any form of aggression against other states.

There are multiple Charter provisions which directly related to the use of force. The Preamble of The UN states that “to ensure by the acceptance of principles and institutions of methods that armed force shall not be used save in the common interest”.²⁸ Article 1(1) states “the purposes of the organization is to take effective and collective measures for the prevention of peace and the suppression of acts of aggression and other breaches to the peace”.²⁹The UN Charter “vest Security Council with the power to take necessary action by air, sea or land as necessary to restore international peace and security.”³⁰ Article 51 provides the “right to self-defence or collective self-defence to member states in case of armed attack.”³¹ The Charter under Articles 53³² and 107³³ deals with the “issues of actions against former enemy states”. “It states that the Charter shall not invalidate or preclude any action taken against an enemy of any signatory during World War 2”. The relationship of the articles is not clear.

The General Assembly, through multiple resolutions has clarified on the principle of no use of force. Though UNGA resolutions are not binding, they are considered as interpretations of the Charter. Among the important resolutions relating the use of force is the “Declaration on the Granting of Independence to Colonial Countries and peoples” states “that all armed action or measures of all kinds, an against dependent peoples shall

²⁷ Charter (n.1) art 2(4).

²⁸ Charter (n.1) preamble.

²⁹ Charter (n.1) art 1(1).

³⁰ Charter, (n.1) art 42.

³¹ Charter, (n.1) art 51.

³² Charter, (n.1) art 53.

³³ Charter, (n.1) art 107.

cease to enable their peaceful existence and complete independence and integrity of territory must be respected.”³⁴

“The Declaration on the Principles of International Law concerning Friendly relations” reflects the consensus among members states so as to the meaning of the principles of the Charter.³⁵ Principle 1 states “that the use of force is violation of international law and the Charter”.³⁶ It provides a duty not to use force over conflicts over boundaries and not deprive people of rights through reprisals and to refrain from engaging in acts of state sponsored terrorism.³⁷

This is again reiterated in the “Declaration on the Inadmissibility of Intervention in the Domestic Affairs of the States and the protection of their independence and Sovereignty”³⁸ the definition of aggression, though didn’t have the acceptance like the others but they played a role in the growth of the jurisprudence of the non-use of force.

The WSOD 2005 reiterated the GA’s determination to refrain from use of force in international relations.³⁹ The document further laid down that “peace and security, development and human rights are the three pillars of the United Nations system and also the foundations of collective security.”⁴⁰It strengthened the UNSC mandate to take coercive action to maintain international peace and security.⁴¹ The GA also recognised the role of United Nations Peace Keeping measures that plays a vital role in resolving conflicts and ending hostilities. It emphasised the need to carry out operations with adequate capacities and broad mandates so as to effectively and efficiently resolve conflicts and end hostilities. ⁴²

³⁴Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) (adopted by 89 votes to none; 9 abstentions).

³⁵Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance to the Charter of the United Nations’, UNGA Res 2625 (XXV) (24 October, 1970) (adopted without vote).

³⁶Ibid.

³⁷ Ibid.

³⁸Declaration on the Inadmissibility of Intervention in the Domestic Affairs of the States and the Protection of their independence and Sovereignty, UNGA Res 2131 (XX) (21 December 1965) (adopted by 109 votes to none; 1 abstention)

³⁹ “UNGA Res 60/1, (16 September, 2005) UN Doc A/Res/ 60/1 (WSOD 2005).

⁴⁰Ibid.

⁴¹Ibid.

⁴²Ibid.

The UNSC had its hands tied and hence was unable to react to the intervention in Hungary, Czechoslovakia, the American actions in Cuba in 1962 nor the Vietnam war from 1964-75. The inactions of the UNSC demonstrated the paralysis of the collective security system of the use of force and made it clear that the system would only work if the P5 reached an agreement to work in cooperation with each other. There are multiple examples of UN action for the cessation of hostilities. Its action in Korea following the invasion of North Korea in the South, the UNSC called for a coalition to repeal armed attacks against a member of the UN.⁴³

The interpretation of the term “international peace and security” widened during cold war. It started to include internal conflicts within its ambit to threats to peace. It imposed a wide variety of sanctions and intervened militarily numerous times. The phrase “all necessary means” evolved as a standard system of use of military force by the UNSC to maintain international peace and security. It authorised the use of force in many cases including Kuwait-Iraq war, Haiti, East Timor, Afghanistan, Libya etc.

The ICJ had a very active role in the consolidation of what constituted as the use of force⁴⁴. The most important judgement of ICJ on the prohibition of force was in the Nicaragua case⁴⁵ where the ICJ based its judgment on the principles of customary international law. It held “that the prohibition of use of force under Article 2(4) of the Charter is similar in essence to customary international law with respect to practice and opinion juris”. It further held that “the US had breached its obligations under international law to not use force against another state”.⁴⁶ The court referred to principle has been pivotal in prohibiting a third world war and has been a time honoured philosophy since the end of the World Wars in the 20th Century.⁴⁷

Other interpretations related to the use of force came in the Corfu Channel case⁴⁸ in ‘the Advisory opinion on the issue of Legality of Nuclear Weapons’,⁴⁹ the “Oil Platforms

⁴³UNSC Res 83 (27 June, 1950) UN Doc S/RES/83.

⁴⁴Claus Kerb, ‘the International Court of Justice and the Principle of Non-Use of Force’, (Mark Weller, OUP 2000).

⁴⁵Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. Us), merits, (1986) paras [189–90].

⁴⁶ *ibid*, [292].

⁴⁷ *ibid*, [190].

⁴⁸Corfu Channel Case (UK v. Albania) (merits) [1949], ICJ REP 4.

⁴⁹Legality of The Threat or Use of Nuclear Weapons, (Advisory Opinion), ICJ REP 1996.

case⁵⁰ and the “Armed Activities case”.⁵¹ The court in the oil platforms case held and reiterated that “self-defence is allowed only in response to an armed attack as specified in the UN Charter”⁵² and it has to be necessary and proportionate. In the Legality of the threat of Nuclear weapons case it held that “Article 2(4) doesn’t refer to specific weapons and they neither prohibit nor permit the use of any specific weapon”. It clarifies that the use of force is not permitted and is similar to the actual use of force.⁵³

In the Armed Activities case while dealing with the question of violation of the use of force by Uganda the ICJ held “that consent of the DRC was not open-ended and Uganda had expanded the scope of its activities and the DRC had withdrawn its consent by accusing Uganda”.⁵⁴ The court concluded that “by engaging in military activities in the territory of the DRC and by extending support to irregulars, Uganda had violated the prohibition of use of force under Article 2(4) of the UN Charter”.⁵⁵

It can be concluded that article 2(4) is the culmination of the process of regulating *ius ad bellum*.⁵⁶ It can further be ascertained that the prohibition of use of force since has attained the status of customary international law and, therefore, a norm of *Jus cogens*. The ICJ held that the prohibition is a fundamental and cardinal principle of law.⁵⁷ “The Vienna Convention on the Law of treaties”⁵⁸ describes the concept of *jus cogens* as a peremptory norm from which no derogation is possible

In view of the frequent violations and numerous outcries to respond to humanitarian crisis the principle under Article 2(4) is constantly attacked. The NATO led intervention in Kosovo in light of the genocide in Kosovo by Serbia raised questions for exceptions to use of force by way of Humanitarian Intervention.

⁵⁰Oil Platforms Case (Iran v. Us), (merits), [2003] ICJ REP 2003.

⁵¹Armed Activities in the Territory of Congo (DRC v. Uganda), (merits) [2005], ICJ REP 2005.

⁵² Nuclear Weapons Case, [37]– [50].

⁵³ Ibid.

⁵⁴Armed Activities Case (n.52)

⁵⁵Ibid.

⁵⁶Nico Schrijver, ‘The Ban on the Use of Force in the UN Charter’ in Marc Weller and others (eds), “The Oxford Hand Book of the Use of Force in International law” (OUP 2015).

⁵⁷ Kerb (n.30), 190.

⁵⁸Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) UNTS 1155 (VCLT), art 64.

2.2 Humanitarian Intervention.

The prohibition against force is absolute and is a peremptory norm. However, the grave violations taking place in parts of Africa and Europe, the bickering among the p5 of the UNSC saw failures in the peacekeeping missions for Rwanda and Yugoslavia. The UNAMIR⁵⁹ and the UNPROFOR,⁶⁰ both had weak mandates and hence, instances like the Srebrenica massacre happened right under the noses of the Peacekeeping missions. This necessitated a strong and robust response to these grievous violations of human rights taking place in the form of Genocide in Rwanda and Kosovo.

Two years prior to the ICSISS report on R2P, the intervention in Kosovo, was considered as illegal due to lack of UNSC authorisation. Saved thousands of lives in Bosnia and Herzegovina. The International Independent commission of Kosovo termed this action as legitimate but not legal. NATO's actions raised questions as to the legal status of an intervener, if they are successful in stopping the gross violations of human rights.

Similarly, in 1971, India's intervention in east Pakistan was termed as illegal even when it fit all criteria for being humanitarian intervention in light of Pakistan's systematic targeting of the Bengali population in East Pakistan. India face international isolation and sanctions due to its actions. Hence it raised another question that an illegal intervener's action is legal use of force.

The argument for the legality of effective humanitarian intervention can be made by studying India's actions against Pakistan in 1971, and the NATO intervention in Kosovo.

2.2.1 India's Intervention in East Pakistan (1971)

Thousands of people were killed in the atrocities by the Pakistani Military against its own Bengali citizens. These atrocities were even worse than what the World saw in Bosnia, almost equal in scale to those in Rwanda. Thousands died while fleeing the Pakistani borders into India. This period leading up to the India-Pakistan saw the deaths over three million prior to the Indian Intervention in Bangladesh. This war was the first of its kind. It was the first ever humanitarian intervention that took place. Mahmudullah

⁵⁹UNSC Res 872 (5 October 1993) UN Doc S/RES/872.

⁶⁰UNSC Res 871 (13 August 1992) UN Doc S/RES/871.

Khan very appropriately stated that “A number of International Law concepts have been put to a severe test-a fiery ordeal; one is tempted to say over the struggle for national liberation in Bangladesh.”⁶¹

The debate surrounding Humanitarian Intervention is usually around the political and legal aspects of it. It also emphasises on the comparison of the actions of UK and the USA in Kosovo and actions of India in erstwhile East Pakistan which was the first kind of humanitarian intervention post the establishment of the UN. This is considered as the first ever case of what today is called the responsibility to protect. Post its action India was condemned for violating Pakistani sovereignty and threatening the entire International social order. India’s actions at the time was compared to the invasions in Czechoslovakia and Manchuria by jurists. However, the violations of human rights are a mitigating factor which under the world’s eye were illegal.

50 years later, India’s action is seen as respectable. The UNSC sanctioned interventions in Libya, East Timor, Bosnia and this has granted a juridical legitimacy to humanitarian interventions. India put forth 4 main arguments to justify its actions in Bangladesh. It made an argument

- i. In favour of human rights
- ii. Against genocide
- iii. From self determination
- iv. And for Indian Sovereignty

India’s failure to get adequate humanitarian support was not because of the weakness in its argument but due to cold war politics. The reason behind the unilateral intervention of India was due to the opposition to any international action by the UN as all proposals before the UNSC were blocked by these and PRC.

Pakistan in December of 1970 held election in both parts of the country. East Pakistan elected the Awami League, and they won so decisively that they had the control of both parts the country. The military dictator of Pakistan General Yahaya Khan entered into

⁶¹Rahmatullah Khan, ‘Legal Aspects, In Bangladesh: A Struggle for Nationhood’ in Mohammed Ayoub Et (eds) (DLP, 1971) 85.

negotiation, which ended in deadlock.⁶²As a result of this deadlock with the aim to terrify the Bengali population, the Pakistani military launched a crackdown against the Bengalis which resulted in the death thousands and some ten million fleeing the persecution and seeking refuge in India. And due to this before full scale war broke out it started training and arming the Guerrillas along the eastern border.

General Yahya Khan attacked Indian Military positions on December 3, 1971.⁶³ India fought the 1971 war on two fronts and while maintain a cautious posture against Pakistan, Indian troops charged forward and ended the war within 14 days, with the Indian military deep inside Bangladeshi territory.

Pakistan claimed international law to be on its side. It argued that India was in violation Article 2(4) of the UN charter and further argued that though, the Charter calls for the protection of “human rights and fundamental freedoms”⁶⁴ it under no circumstance allowed for any form of intervention. The only exception to this was under Chapter VII and Pakistan was protected by the American and Chinese Vetoes. Thorough out the crisis Pakistan maintained its right to act in any matter it pleases. The Pakistani arguments for sovereignty were supported by USA, UK, West Germany and many other nations.

India was desperate to return the millions of refugees who had fled to seek refuge in India and since it had no policy on the refulgent process, any refolement would have interfered with the Pakistani foreign policy. India did have mixed motives. One was to fulfils some strategic goals against Pakistan and the other was to offer genuine humanitarian sentiments.

India justified it actions by giving a fourfold claim. It argued that the Pakistani military was carrying out systematic atrocities amounting to genocide against the Bengali populace. It further argued that the Population of the East Pakistan had the right to determine how and who shall govern them i.e. it argued for the right of self-determination of the people of east Pakistan. India further justified its action by saying

⁶²Archer. Blood, ‘The Cruel Birth of Bangladesh’ (first published 2002, University Press) 33, 114-19, 128-34, 146-49 (2002); see Owen Bennett Jones, “Pakistan: Eye of The Storm”, (first published 2002, 3rd ed. YUP 2009) 153-59.

⁶³Malcolm W. Brown, ‘Fighting reported on Kashmir line’ New York Times (New York, 4 December, 1971).

⁶⁴ UN Charter, art 1 para 3.

that these violations had spelt over and were interfering with the integrity of India by virtue of the mass exodus of refugees. All these arguments though flawed at the time; these still remain almost identical to what other powers have identically voiced in the UNSC. The UNSC didn't pass any resolutions on South Asia from the start of the slaughter till the outbreak of the India-Pakistan war in December.

India's progressive constitution which has had some inspiration from the UDHR and the bill of rights of the United States of America provided Fundamental rights under the constitution of India, protecting a collection of rights including life, liberty, speech, religion, association and equality. India was swift to speak up for those suffering under the tyranny of the Pakistani military forces.

India's representative to the ILA argued that "it is hard to find a case of violation of human rights of this nature and style." He further argued that "humanitarian interventions could be restrained by the requirements of necessity and proportionality as well as the immediacy of the violations of human rights after a prompt reporting the United Nations Security Council".⁶⁵

He further argued that prior to the UN, there existed traditional "principles of humanitarian intervention, it permitted the use of forcible self-help when a state maltreated its subjects in a manner which shocked the conscience of mankind".⁶⁶ He invoked Grotius and Gauchile to establish the legality of the intervention stating, "when another states acted contrary to the laws of humanity, it is the duty of the international community to protect."

He justified that those individual pointed to every single human rights instrument starting from the trials in Nuremberg and Tokyo to the Genocide Convention all have argued in favour of the recent developments in East Pakistan and he argued that the claims that human rights don't fall under the domain of state sovereignty, He traced the interventions throughout the 19th century. He summarised his arguments that when the rights of 75 million from 150 million questionable then it hardly becomes a matter of

⁶⁵Ved P. Nanda, 'Self-Determination in International Law: The Tragic Tale of Two Cities-Islamabad (West Pakistan) And Dacca (East Pakistan)' [1972] J. INT'L L. 321, 336 (1972).

⁶⁶ Khan (n.62) 103-06.

state sovereignty and that there is no explicit prohibition against humanitarian interventions under international law.⁶⁷

India described the gross abuse as genocide.⁶⁸ It invoked CIL standards to claim that the actions of Pakistan amounted to violation of norms of international law⁶⁹ and in that circumstance intervention should be considered as exercising self-help as due to the mass immigration of refugees it had become those atrocities.⁷⁰

While a certain group of jurists argue that the Genocide Convention allows the UN to take action outside the scope of its jurisdiction,⁷¹ they had only proposed international prosecutions against the perpetrators of Genocide. India's recourse to the Genocide Convention, as rightly pointed out by Franck and Rodley would have been violative of a right which doesn't automatically redress an illegal act by another act.⁷²

Today, India's argument for self-determination is considered to be weak as, India, though, has ratified the ICCPR, it has deposited reservations against Article 1 of the ICCPR. Hence when it argues for the right to choose for the people of East Pakistan and supports the decision of East Pakistanis to be independent. This claim by India falls flat with the International community with some countries wanting to delegitimize their own secessionist movements like that of China, which had recently annexed Tibet, and had excoriated the secessionist movements in Tibet as well as Taiwan.

Among India's arguments the argument that aimed to uphold India's sovereignty, one of it was that Pakistan's domestic affairs had started flood of refugees into India all of whom were Pakistani nationals. The argument for opened a Pandora's box in International law. It raised the question about how one's sovereignty could impose a burden on other states and whether this can act as a reason to validate Humanitarian Intervention. Franck says that mass atrocities are never internal problems, "people will always run from genocide or war crime and they cannot be expected to respect lines.

⁶⁷Ibid.

⁶⁸Sumit Ganguly, 'Pakistan's Forgotten Genocide-A Review Essay', (2014); 39 IS 169; see Martha Minow, 'Naming Horror: Legal and Political Words for Mass Atrocities' (2007) 2 GSP 37.

⁶⁹Bruno Simma & Philip Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, And General Principles', (1992). 12 AYBIL. 82.

⁷⁰Thomas M. Franck and Nigel S. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military force' (1973) 67 AJIL 135-36.

⁷¹M.K. Nawaz, 'Bangladesh and International Law' (1971) 1 Indian j. Int'l l. 251, 259-60.

⁷²Rodley (n.71), 133.

The Jews tried to flee to the US, Britain and Canada. Almost half of Bosnia was displaced. The Tutsi rebels defeated the Rwanda's Genocidal movement, which led to two million Hutus to destabilise the entire region."⁷³

In conclusion, even though India acted in good faith owing to the times, India as the leader of the Non-Aligned movement, lacked the international support in favour of its action against Pakistan. The US President, President Nixon termed the civil war in Pakistan as an internal matter for Pakistan to solve. Malaysia, Japan and Thailand all of them though privately agreed that the matter was no longer internal but they didn't support India in Public.⁷⁴ This lack of support in the International forum led to India's international isolation for many years to come.

This action of India led to other possible cases of Humanitarian intervention in varying degrees of legality. Tanzania's over throwing Amin from Uganda,⁷⁵ and the unauthorised NATO invasion in Kosovo.

2.2.2 NATO Led Intervention in Kosovo.

Almost 30 years later, the NATO led by the USA intervened on the ground of protection of civilians in Kosovo against the ongoing genocide and ethnic cleansing being carried out by Serbs in Kosovo.

The Actions of Serbian and Yugoslav authorities in Kosovo prior to 24 March, 1999 made the situation intolerable. Though there has been debate as to what happened but there is a universal recognition that the behaviours of the authorities were morally and legally unacceptable. What further raised the controversy was NATO's intervention as an effective means to stop the egregious violations of human rights taking place against the Kosovo Albanians.

Kosovo was a province in erstwhile Socialist Federal Republic of Yugoslavia, with almost 80% of inhabitants of Kosovo were Albanians making the Serbs minority in Kosovo. Kosovo had some of the most important cultural heritages of the Serbian Orthodox Church. The 1990's saw the Albanians rise against the government and the

⁷³Franck (n.71) 136.

⁷⁴Siddhartha Ray, Minister of Education., India, to Indira Gandhi (June 25, 1971) (on file with nmml, haksar papers, subject file 168).

⁷⁵ Hassan Farooq, 'Realpolitik in International Law: After Tanzanian-Ugandan Conflict Humanitarian Intervention Re-examined', (1981). 17 WLR. 859.

Serbian government in Kosovo movement in the Albanian majority, and they started boycotting the official institutions and by 1998, this movement had a Kosovo Liberation Army which undertook violent activities against the Police and the military. This led to repressive action against Albanian populations which led to the death of 58 Albanian Civilians. The UNSC adopted resolution 1160 condemning actions of the police and terrorist activities by the KLA and it imposed an embargo on Yugoslavia. During the following months the UNSG reported the intensification of violence and the increasing number of displaced Kosovars in neighbouring states. He further reported in a sharp escalation of military operations in Kosovo in an offensive launched by the Serbian Forces.

The UNSC adopted resolution 1199 called for a ceasefire and called on the military to stop all action against the civilian population and called for effective and continuous international monitoring along with facilitating an agreement with UNHCR along with the return of refugees. Three days following the resolution, 18 Kosovo civilians were killed and the NATO issued orders for airstrikes against the FRY. But this didn't happen because of last minute agreement between the USA and the FRY which required FRY to withdraw forces and setting up the Kosovo Verification mission, which on 15 January 1999 reported that the soldiers and Serbian police had massacred the village of Racak in Kosovo killing 45 Albanians and the FRY refused access the prosecutor of the ICTY access to Kosovo to investigate the massacre and declared the head of the KVM persona non grata.

These actions led to the Rambouillet rounds between the two parties to in Albanian parties with what came to be known as the contact group. The Contact group provided proposals including ceasefire, a peace settlement, autonomy to Kosovo and presence of an international military force⁷⁶and these came to be known as the Rambouillet Accords.⁷⁷

The Serbian delegation pulled out from the Second round of talks, following the failure of Richard Holbrooke to negotiate a solution. the NATO Secretary General was authorised for airstrikes. China vetoed the resolution to extend the mandate of UNPROFOR. Following which the NATO air campaign began on 24 March 1999 and

⁷⁶UNSC. Presidential Statement 5 (29 January 1999) UN. doc. S/PRST/1999/5.

⁷⁷Rambouillet Agreement (Federal Republic of Yugoslavia and Kosovo Albanians).

continued till 10 June 1999, on 26 March, Russia, Belarus and India proposed a resolution to the UNSC to adopt a resolution which would categorise the actions of NATO to be against the Charter and the actions constituted a threat to international peace.

Serbia moved to ICJ in an application against the ten NATO states for illegal use of force and requested the court for provisional measures which was rejected by the Court.

The UNSC adopted the resolution 1244(1999)⁷⁸ which marked the end of the conflict and this created the UN civil administration (UNMIK) and authorised the deployment of the KFOR.

The United Kingdom defended NATO's actions on the grounds "that International Law recognizes an exception to the right to take military action in the face of humanitarian necessity". There is convincing evidence that there was an impending humanitarian catastrophe in the FRY.

Comparing this to the Indian defence of Humanitarian Intervention in Pakistan, the grounds are the same, however, the difference of reaction to India's intervention and this was that India's intervention happened in the height of the Cold war. International politics and international relations governed International law during that period. With India having been a leader of the NAM, the reaction from the West was in favour of Pakistan and because of which India faced international isolation. The narrow interpretation of the UN Charter and the decolonisation process of the new members when they signed the Charter were aware of their sovereign rights and considered Article 2(4) as a guarantee against their colonial masters. Hence Humanitarian Intervention is not authorised under the UN Charter. So, the question arises if it is not authorised under the UN Charter then do acts of Humanitarian Intervention amount to acts of aggression. India's intervention in Bangladesh laid the groundwork for the development of R2P. India's action though was illegal and were in violation of the Charter it brought into limelight the lack of humanitarian measures in the UN Charter. Michael Reisman observed "When constitutive changes such as these are introduced into a legal system while many other struts of the system are left in place, appliers and interpreters of current cases cannot proceed in a piecemeal and mechanical fashion and

⁷⁸UNSC. Res. 1244 (10 June 1999) UN. Doc. S/RES/1244.

precisely because the human rights norms are constitutive, other norms must be reinterpreted in their light, lest anachronisms be produced”⁷⁹

Following India’s intervention there have been other possible cases of Humanitarian intervention such as Tanzania’s action against Idi Amin in Uganda, Rwanda, East Timor and Bosnia were all interventions backed by the UNSC. Though India’s action against Pakistan was considered illegal and in violation of the UN Charter. However, the sympathy for India’s actions lent it some legitimacy and became a precedent for future interventions. Goldsmith notes “The precedential value of an action under international law cannot be established at the time of the action, but rather is determined by how the action is interpreted and used in the future.”⁸⁰

The actions of India can be considered as the ground work for NATO’s intervention in Kosovo where the legitimacy of the use of military force contrary to the UN Charter and it lacked the authorisation of the UNSC. This led to many questions regarding the progressive nature of the UN Charter.

The International Commission on Kosovo termed NATO’s action as illegal but legitimate. Similarly Judge Cassese concluded that the actions though were illegal were morally correct and the lack of censure of NATO by the UNSC all paved the way for development of R2P as a norm in International law.

2.3 Humanitarian Intervention Against Aggression.

Crimes of aggression were criminalised in 2010.⁸¹ This was adopted in 2017 with the ICC invoking its jurisdiction over these crimes. Aggression as a crime was inserted into the Rome Statute by an amendment. Article 8(Bis) of the ICC statute defines aggression as

“For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an

⁷⁹W. Michael Reisman, ‘Sovereignty and Human Rights in Contemporary International Law’ 84 AJIL 866.

⁸⁰Jack Goldsmith, ‘The Self-Defeating International Criminal Court’, (2003) 70 UCLR 89, 93.

⁸¹The Rome Statute of the International Criminal Court, (adopted 17 July 1998, entered into force 1 July 2002) art 8(bis).

act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”

And acts of aggression as

“act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.”

Article 8bis (2) also laid down the circumstances which would amount to acts of aggression. The invasion by armed forces, however, temporary, the bombardment by armed forces of one state on another, blockade of ports and coasts, attack on marine, air or forces on land of another state, use of armed forces of one state within the territory of another, the action of a state to allow another state for perpetrating crimes of aggression and the sending of different non state actors such as mercenaries or irregulars against another state.⁸²

The Rome Statute also criminalises many gross violations of human rights such as Genocide, War Crimes and Crimes against Humanity. It calls for punishment to the perpetrators of these acts with the jurisdiction exercised by the ICC. The first argument in favour of Humanitarian Intervention is not aggression is that, these actions are taken by nations to prevent the human rights violations in other countries. The authority of the Court extends towards determining the criminal responsibility of individuals who can be attributed to some acts that can be attributable to them. Crimes of aggression are however different from other crimes defined under the Rome statute. The intention of the e system is to establish that the crimes are done by men and not by abstract entities⁸³

The definition of aggression has two aspects, one of which talks about the manifest violations of the UN Charter. The United Nations was established with the intention of prohibiting any kinds of wars in the future. The Charter in its preamble reads to prevent wars which are the scourge of mankind⁸⁴, it protects sovereignty of states by not allowing the use of any kinds of force against them⁸⁵. It also calls for equality among

⁸² Ibid.

⁸³Dapo Akande and Antonios Tzanakopoulos, ‘The Crime of Aggression in the ICC and State Responsibility’ (2017) 58 HJIL 33 <<https://harvardilj.org/2017/04/the-crime-of-aggression-in-the-icc-and-state-responsibility/>>.

⁸⁴ Charter (n.1) Preamble.

⁸⁵ Charter (n.1) art 2(4)

states in the Charter. The prohibition against force is absolute. Any violations of these principles would invoke Chapter VII of the Charter. Chapter VII not only gives powers to the UNSC to determine and take actions for the existence of any threat but also determine the provisional measures such as sanctions and embargoes to threat the state to refrain from further use of force.

The origin of the crime of aggression can be traced back to the Treaty of Versailles. The German Emperor Kaiser Wilhelm I was to stand in trial for “the supreme offence against international morality and sanctity of treaties.”⁸⁶ This was one of the first definitions of “acts of aggression”. However, the first actual actions against aggression were taken by the Nuremberg and the Tokyo tribunals which deemed war criminals to be liable for acts against peace. Both the tribunals indicted many officials of the civilian government as well as the military for their involvement in aggressive war.⁸⁷ This language of the tribunal is echoed in the Kampala discussions to criminalise aggression.

Aggression has not been defined by the Charter, but the violations of article 2(4) amounts to illegal the use of force. The definition that was adopted in 1974 vide the UNGA Resolution 3314⁸⁸ which stated that the acts of aggression “is the use of armed forces against the sovereignty, territorial integrity or political independence of any state or in any manner inconsistent with the UN Charter”⁸⁹ Article 2 of the same resolution states that the first use of force is the prima facie evidence for acts of aggression. The UNSC has been reluctant to act upon the acts of aggression which was slowly replaced with the terms breach of peace as was seen in its action in Resolution 660 of the UNSC.

This definition of aggression was held to be CIL. in the Nicaragua⁹⁰ judgement of the ICJ. It further emphasised that not all use of force constituted aggression. This was again reiterated by the ICJ in the DRC v. Congo.⁹¹

This threat to peace is includes situations such as terrorism, human rights situations and democracy. It is a safety net where the situations didn’t fulfil the criteria for breach of

⁸⁶Treaty of Versailles (adopted 28 June 1919, entered into force 10 January 1920) 2 U.S.T. 43, art 227.

⁸⁷Judgement of the Nuremberg International Military Tribunal (1946) 41 AJIL 172.

⁸⁸UNGA Resolution 3314(XXIX) (14 December 1974).

⁸⁹ Ibid.

⁹⁰ Nicaragua Judgement (n. 46).

⁹¹ Armed Activities Case (n. 51).

peace.⁹²This discussion is limited to the its interpretation related to human rights. The UNSC while determining the suppression of the Kurds by the Iraqi regime discussed about the relation of human rights violations to international security. This view of the UNSC has been reinforced in multiple situations where the grave violations have led to threats to international security framework. Somalia in the 1990's, Kosovo in 1999, Haiti in 1994 Rwanda in 1992 Libya in 2010, the Syrian Civil war in the past decade all have been humanitarian crises which have evolved into grave threats to international peace and security.

Humanitarian Intervention is a way of protecting these breaches of human rights. India's action against Pakistani military in 1971, the Kosovo intervention, the interventions in East Timor, Rwanda, Somalia all were actions taken by the international community to protect those who were being threatened by their own governments. Hence Crimes of aggression when pit against Threats to international peace and security, the latter stands against the former.

As we have established earlier that sovereignty is not only the freedom to act in any manner deemed fit but also comes with the RtoP own citizens against the violations of their human rights. Sovereignty cannot be termed as absolute when there is violation of human rights. Right to life is protected under multiple international human rights documents such as the UDHR, the ICCPR among others. Similarly, the prohibition of slavery is considered as a crime against humanity and it is prohibited in all its forms.

In Conclusion bonafide Humanitarian Interventions such as acts by India in East Pakistan, Australia in East Timor and the NATO bombings in Kosovo though not legal were legitimate. Therefore, human rights pips sovereignty and that humanitarian intervention is an instrument to protect human rights and hence Humanitarian Interventions are not crimes of aggression nor are prohibited by the UN Charter.

⁹²Malcolm Shaw, 'International Law' (first published 2008, 6th ed CUP 2008), 855.

CHAPTER 3: IMPLEMENTING R2P: LIVES OVER BOUNDRIES

“Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity”⁹³

⁹³ WSOD (n.13), [138]

Moving beyond the complications surrounding humanitarian intervention, the UN and the state parties moved towards developing the principle of R2P. Analysing the controversy surrounding humanitarian intervention stands, the principle stands on thin ice.

The intervention in Kosovo was illegal but legitimate use of force. The success of the NATO campaign in Kosovo prevented large scale deaths due to systematic ethnic cleansing carried out by the forces of the Serbian government. This triggered the debate on R2P

Based on the principle of ‘Vindicae Contra Tyrannos’ which stood for the duty of a prince to defend the subjects of another Prince from tyranny and oppression. The development of the norms of R2P found its support with the UNSG Kofi Annan who summarised the future challenges of the UN as

“The inability of the international community in Kosovo to reconcile their two equally compelling interests – universal legitimacy and effectiveness in defence of human rights – has revealed the core challenge to the Security Council and the United Nations as a whole in the next century: to forge unity behind the principle that massive and systematic violations of human rights – wherever they make take place – should not be allowed to stand.”⁹⁴

The attention received by this norm through the various UNSC reports and other debates were substantial in its quick development as a norm of international law which since has been the guiding force for the protection of citizens by the international community.

To understand the events that have transpired since, it is important to understand the principle which represents a change to the accepted ‘absolute’ norm of the prohibition of use of force. The development of this norm can be studied by analysing the ICISS report⁹⁵ and the 2005 WSOD⁹⁶ which will provide the context for the creation of R2P.

⁹⁴Kofi Annan, ‘Two concepts of Sovereignty; Addressed to the 54th session of the General Assembly the Question of Intervention Statements of the Secretary General’ (1999) New York, [39]

⁹⁵ ICSSS Report (n.2)

⁹⁶ WSOD 2005 (n.13)

3.1 The ICSISS Report.

The failures to provide adequate response in Rwanda and the Serbia by the UNSC led to an intervention by NATO to stop the atrocities against civilian populations in Kosovo. However, the international community and members of the UNSC were divided on the intervention as some alleged that the intervention caused more deaths and suffering than it averted. The UNSG made some compelling arguments to the international community on how to approach the issues and to forge unity. He in his 1999 address to the UNGA said

“...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 affect every precept of our common humanity?”⁹⁷

Following this the Canadian government called for the establishment of ICSISS with the mandate to discuss the various aspects of R2P.

The report tried to distinguish R2P from the existing practices and norms of humanitarian intervention. It emphasised the point that R2P was different from the existing concepts of interventions as it showed a perspective of the victims to mass atrocities rather than from the view of the states which want to intervene.⁹⁸

Secondly, it introduced a notion of shared duty between the home state and the international community as a whole, where the home state is primarily accountable to protect its people and when the state fails this responsibility shifts to the international.⁹⁹

Thirdly it expanded the parameters of intervention by including measures to prevent conflict and the duty to rebuild and included three primary responsibilities on the intervening parties. Those responsibilities include: -

- i. “Responsibility to prevent” (R2PT)
- ii. “Responsibility to react” (R2R)

⁹⁷ Annan, (n.95), [22]

⁹⁸ ICSISS Report (n.2), [1.41]

⁹⁹ *ibid*

iii. “Responsibility to rebuild” (R2RB)

The principle is perceived in many ways. It is perceived as innovative¹⁰⁰ and ground breaking in many ways. Unlike the norms surrounding humanitarian intervention R2P revolves around human security. It merges two requirements, the security perspective and the circumstances which warrant humanitarian intervention. The report changed the terminology from right to intervene to responsibility to protect.

R2P integrates the prevention and rebuilding mechanisms emphasising on these two as much as the military aspect of intervention. The report directly addressed the causes of conflict that puts human security at risk. The responsibility to react doesn't just include the military aspect of protection but it includes all measures including the economic, diplomatic and political measures to prevent. Military intervention is considered as the final resort once all other measures fails. It also includes the R2RB mechanism which focuses on the post conflict recovery reconciliation and is aimed to prevent future crises.

3.1.1 Responsibility to Prevent.

The report identifies the R2P as one of the most important principles under the R2P norms. It states “prevention options should always be exhausted before intervention is contemplated and resources must be devoted to it”.¹⁰¹ The report states that “sovereignty implies responsibility and the primary responsibility protection of the people lies with the state itself.”¹⁰² Implying that the home state must be accountable to its people before the responsibility shifts. It indicates that internal war, insurgency repressions and state failures are all instances ‘where populations might suffer serious harms’.¹⁰³

The importance of conflict prevention has been stated by the OCED as “actions undertaken to reduce tensions and to prevent the outbreak or recurrence of violent

¹⁰⁰Thomas G. Weiss, ‘Cosmopolitan Force and the Responsibility to Protect’ (2005) 19 INT’L REL. 234 (2005).

¹⁰¹ ICSISS Report (n.2), XI [4A].

¹⁰²Ibid

¹⁰³ Ibid [2.31].

conflict. Beyond short term actions, it includes the notion of long-term engagement.”¹⁰⁴. The former UNSG Annan called upon the international community to “move from a culture of reaction to a culture of prevention.”¹⁰⁵ This was advanced by the ICISS report.¹⁰⁶ Annan further talked about short and long term measures in a comprehensive prevention strategy.¹⁰⁷ These include economic, cultural, political and even humanitarian measures to prevent conflict prevention. According to him, one of the objectives of the preventive mechanism is to address the deep-rooted issues within cultures, socio-economic policies, environmental degradation all of which underlie with political conflict.¹⁰⁸

Effective prevention can only be done with the knowledge of the situation.¹⁰⁹ The report called for an early warning system and its development within the United Nations Secretariat. The ICISS report also called for greater regional cooperation and participation in the early warning efforts.

The report drew a distinction between the root causes and the direct causes that put populations at risk. A further distinction was drawn between the prevention efforts as well. Direct measures which include coercive measures while the root cause measures addressed other causes such as poverty and other environmental issues. It, however, didn't differentiate between conflict prevention and atrocity prevention. Throughout the report, it assumed that conflict prevention would lead to atrocity prevention. This has been criticized by Bellamy, who was of the opinion that the major problem of the report was the wide scope of prevention and that there was a lot of conceptual work that was to be done on prevention.¹¹⁰ This was argued against by Evans who saw the prevention of mass atrocities as an extension of conflict prevention.¹¹¹ He opined that effective

¹⁰⁴OECD (2012), “Evaluating Peacebuilding Activities in Settings of Conflict and Fragility: Improving Learning for Results, DAC Guidelines and References Series, OECD Publishing”. <<http://dx.doi.org/10.1787/9789264106802-en>>.

¹⁰⁵ UNSC, ‘Security Council committee says those inciting violence, undermining peace in Central African Republic could meet sanction criteria’ (24 July 2020) SC/1461.

¹⁰⁶ ICSISS Report (n.2), 27 [3.42].

¹⁰⁷ UNSC, ‘Conflict prevention must be cornerstone of conflict prevention in the 21st century, Secretary General tells members, as council discusses armed conflict’ (20 July 2000) SC/6892.

¹⁰⁸ Ibid.

¹⁰⁹ ICSISS Report (n.2), 19 [3.5].

¹¹⁰Alex Bellamy, ‘The Responsibility to Protect: A Defence’ (OUP, 2015) 96.

¹¹¹Gareth Evans, ‘The Responsibility to protect: Ending Mass atrocity crimes Once and For All’ (Brooking Institutional Press, 2008) 87.

prevention begins with the identification of situations with the potential to generate mass atrocities which usually occur during the war.

The first and foremost responsibility of conflict prevention is of the sovereign state which also includes the communities and institutions. This responsibility is entrenched throughout international law. The human rights law framework imposes the obligations on states to protect individuals from human rights violations. These obligations are clearly indicated in the UDHR, the ICCPR, and the ICESR. These obligations are derived from responsibilities under IHRL, IHL or ICL human rights law, humanitarian law and the international criminal law. These norms are jus cogens or have peremptory status, such as the prohibition of torture which is both a war crime and crime against humanity. Some of these obligations are erga omnes. Furthermore, conflict prevention is not a local or a national issue. Other states have a responsibility to help those in need of conflict prevention¹¹² along with the responsibility to help prevent human rights violations in another state. This is reiterated in the Genocide Convention.¹¹³ Hence the idea behind the accountability of other states to protect is not new.

This report identified the role of the UN in conflict prevention.¹¹⁴ Chapter V states that “the primary responsibility for the maintenance of international peace and security on the UNSC.”¹¹⁵ Neither the WSOD nor the ICISS report prohibit individual states to take preventive actions without UNSC authorisation.

This report didn't specify the scope of the responsibility to prevent. Furthermore, it didn't specify who had the responsibility to prevent .it also didn't make clear the international processes thorough which decisions were made to invoke the responses of the international community or any of the monitoring mechanisms.

The lack of a clear agenda for the prevention of mass atrocities against civilian. The prevention and rebuilding measures though attractive are highly unrealistic. It is nothing but a superficially attractive name to what amounts to humanitarian

¹¹²UNGA, 'Report of the Secretary General 68/947' (2014) UN Doc S/2014/449

¹¹³Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, Entered into force 12 January 1951).

¹¹⁴ ICSS report (n.2) [3.5].

¹¹⁵ UN Charter, art 24(1).

intervention.¹¹⁶ Bellamy further argues that even after being stressed on the point of conflict preventions there was a lack of concrete proposals to centralise the prevention efforts. He further points out that centralisation would help in developing a greater capacity for early warning.¹¹⁷ Bellamy points out that the ICISS continued to avoid the discussion of the single most pressing dilemma which is the question of translating the early warning signs into commitments to act and building a consensus on how to act.¹¹⁸

3.1.2 Responsibility to React

The most controversial aspect of the R2P norms. R2P norms use a wide variety of economic, political and diplomatic measures¹¹⁹ in short to any measures short of military measures that can be used to avert the crisis. Military intervention is used as a last resort after everything else fails and in situations which shock the conscience of mankind. According to the ICSISS report R2P is triggered in the case of serious harm to human lives due to internal war, insurgency, repression and the state is unwilling to stop it, then the principle of non-intervention replacing it with the principle of R2R.¹²⁰

The report proposed 6 principles which are called the ‘precautionary principles.’ These principles had to be met so as to recognise a situation which required coercive measures. The reason behind these 6 principles was that they needed to introduce a threshold criterion to move from an era of humanitarian intervention norms to R2P norms. These 6 precautionary principles stated in the report¹²¹ are: -

- i. Just Cause
- ii. Right Authority
- iii. Right Intention
- iv. Last Resort
- v. Proportional means
- vi. Reasonable protection.

¹¹⁶Thomas Weiss and Don Hubert, “The Responsibility to Protect, Research, Bibliography, Background 367” (Intern Development Research Centre, 2001) 367.

¹¹⁷ Bellamy (n.111) 100

¹¹⁸ Ibid.

¹¹⁹ ICSISS Report (n.2) [3.18]

¹²⁰ Ibid [2.31]

¹²¹Ibid.

Another intention behind this was to change the intervener-based perspective or the approach into a victim centric one. The 6-fold criterion was to be applied on the intervener rather than the victims.

None of the criteria mentioned in the ICSISS report were new, rather old norms of international law some of which are customary international law or peremptory norms. For example, in the Mahabharata, it was one of the first times when concept of proportionality, just cause, treatment of prisoners was mentioned. Similarly, the criterion of just war was borrowed from the concepts developed by St. Augustine and St. Thomas Aquinas and used by Grotius. Another jurist Bynon said that the concepts of 'jus ad bellum' and jus ad Bello' limited the use of force to the violation of state sovereignty and territorial integrity.

The scope of the responsibility to react was unclear as it didn't specify when it should be invoked. It didn't have uniform guidelines as to how and when the international community could react. This further created a problem with regard to the perception of the threat which could be perceived differently by international actors and local actors. It was also ambiguous as to who had the responsibility to carry out the intervention i.e. whether regional organisations or individual countries were responsible to carry out the intervention. The report also didn't indicate the consequences on the failure to act.

Though the report specifically authorised the UNSC to take military actions, it didn't provide the same power to any alternative entity, should the UNSC failed to act. It provided for alternative measures under the "uniting for peace" procedure where the General Assembly could consider the situation. It also allowed for the invocation of Chapter VII by regional organisations, subject to the approval of the UNSC.

The ICSISS left open possibility of unilateral actions if and when the UNSC failed in its exercise of its duty to protect populations against violations which would shock the conscience. The Report states

“[I]f the Security Council expressly rejects a proposal for intervention where humanitarian or human rights issues are significantly at stake, or the Council fails to deal with such a proposal within a reasonable time, it is difficult to argue

that alternative means of discharging the responsibility to protect can be entirely discounted.”¹²²

Though unilateral action or action by a coalition of states is not recommended, the ICSISS report did not explicitly prohibit it.

According to some jurists like Pattinson the ICSISS report is vague on multiple grounds. One of which is that it is not clear as to who has the authority to take actions, the UNSC or any other individual actor.¹²³ He acknowledges that it has changed the nature of humanitarian interventions, the appeal of R2P to the international community is a general one. He further states that it is unclear on which actors the responsibility of R2P is associated with. he also questions the morality of possible interveners.

Another jurist Tan calls R2P as the imperfect duty which is unassigned.¹²⁴ According to him, the report is unclear in identifying the agents even informally. He states that the norm allowing for ‘most legitimate intervener’ leaving room for the actors to join.¹²⁵ According to him there isn’t enough clarity as to the grounds under which states have to intervene and protect populations from mass atrocities. However, this was not adopted formally into the UNSC procedures but as an informal rule to stop intervention resolutions from being blocked.

Addressing one critical issue is the use of the veto in the UNSC due to divergent geopolitical interests and ideologies. The French minister for foreign affairs Hubert Verdaine emphasised on the responsibility not to veto. He called upon the UNSC to not exercise its veto powers in case of R2P proposals intended to combat the grave violations of human rights.

This idea was supported by the ICSISS which stated that the permanent five members should not veto under the following grounds which are: -

- i. The proposal is supported by the majority of the UNSC
- ii. Genocide or mass atrocities

¹²²ICSISS Report (n.2) [6.28]

¹²³James Pattison, ‘Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?’ (OUP 2010) 284.

¹²⁴Kok-Chor Tan, ‘The Duty to Protect, In Humanitarian Intervention’ (Terry Nardin & Melissa Williams eds., NYUP 2006) 84.

¹²⁵ Ibid.

- iii. permanent member does not have “vital security interests” at stake¹²⁶

It identified the 6 criteria which have to be met for the authorising force. Though similar criterion was already in place. The report has its flaws like it didn't expressly include any positive duties neither any penalties for failing at it. Furthermore, the scope of Responsibility to react remains unclear, as the report provides for both UNSC authorised military intervention as well as unilateral intervention.

3.1.3 Responsibility to rebuild

This is inherent and indispensable part of the prevention norms under R2P. it is very essential post the military intervention and this is part of a clear post intervention strategy.¹²⁷ There are three strategies under the responsibility to rebuild. All of which are interlinked. The first is that the intervener force has the responsibility to provide protection for all citizens of the state where the military intervention is taking place in. Further, it has the duty to prevent revenge killings and revenge ethnic cleansing. One of the other responsibilities under this is the responsibility to disarm, demobilise, reintegrate and rebuild the forces of the state, as far as possible with the members of the compelling factors.

The second strategy of rebuilding is to build the justice system in the state. It is the duty of the intervener to provide for transitional courts and other judicial bodies.¹²⁸ It is a fundamental process of peace building. The intervener party should also ensure that there are proper mechanisms in place for rehabilitation of the refugees who are returning and ensuring that the refugees are well protected.

Thirdly, the report highlights the importance of economic growth and sustainable development. It stipulated and called for the end of sanctions and other economic measures, on the state before and during the hostilities. The report also called for the transfer of development projects and their implementation to be transferred to the local leaders and these development activities must be undertaken in conjunction with the security efforts.

¹²⁶ ICSISS Report (n.2) XIII [3D].

¹²⁷ Ibid [5.1].

¹²⁸ Ibid [5.4].

The vagueness of the report to meet target goals with regards to the rebuilding commitments and that ensuring sustainable development with close cooperation meant the intervener staying in the country for a period of time after the objective has been achieved. Furthermore, the ICSS report didn't specify about who shall undertake the rebuilding efforts. It further didn't identify any legally binding obligation as to states for supporting rebuilding efforts and that the international community's reaction to rebuilding has been insufficiently recognised and most of the efforts have been mismanaged by the interveners.

Against the report doubted an effective and sustainable post conflict rebuilding effort. It stated

“[T]here is always likely in the UN to be a generalized resistance to any resurrection of the “trusteeship” concept, on the ground that it represents just another kind of intrusion into internal affairs. But “failed states” are quite likely to generate situations which the international community simply cannot ignore, as happened - although there the intervention was less than successful - in Somalia. The strongest argument against the proposal is probably practical: the cost of such an operation for the necessarily long time it would take to recreate civil society and rehabilitate the infrastructure in such a state”¹²⁹

The lack of interests of intervener governments to provide the huge resources necessary for rebuilding and the uncertainty of the responsibility to rebuild are all problems that the report and the norm faced in the beginning days.

Summarily the report attempted to develop a political consensus on the questions of Humanitarian intervention and reformulated it in terms of R2P. The report summarised R2P as a threefold process which included prevent, react and rebuild. There have been multiple criticisms of the report as to it didn't specify when to intervene or invoke the three sub norms. It claimed that though mass atrocities triggered R2P it didn't clear about the threshold of atrocities. It did not indicate the procedures regarding R2P and there was no clarity on how decisions happen. It didn't impose any new responsibilities but reiterated the criterion which were also responsibilities during the pre R2P era of humanitarian interventions.

¹²⁹ ICSS Report (n.2) [5.24].

Notably it didn't strongly argue for intervention without the UNSC authorisation, however, it didn't resolve the controversy as it still allowed states to intervene without UNSC authorisation. But despite its problems it was the first step towards the development of R2P.

3.2 WSOD, 2005.

The idea of R2P was debated in September of 2003 during the discussions on the institutional reforms of the United Nations. Following which the member states came up with the report titled "A more secured World; Our Shared responsibility" where they reiterated that the primary responsibility of states is to take care of its populations and when it fails to that, the responsibility shifts to the international community which shall undertake all possible measures to prevent atrocities and rebuild.¹³⁰ The high panel referred to this as the "right to intervene" in states experiencing humanitarian crises. Following this report in the UNSG report "In Larger Freedom: Towards Development, Security and Human Rights for All" it recommended measures to ensure human security. According to the report threats to humanity can only be addressed through international cooperation and collective actions.¹³¹ The report further recommended that R2P should be used whenever and wherever necessary to protect human lives.

Prior to the WSOD 05, the US was unwilling to accept the norms of R2P on the grounds that the UNSC was not obliged to protect civilians and that the responsibility of the international community was not similar to that of the country of origin. The norm also found resistance from Russia and China. For the Chinese, humanitarian intervention was a myth and that the norm posed huge problems for international law and international security. The Russian Federation considered it as a threat to sovereignty and against the principles of the United Nations Charter. The Non-Aligned Movement and the G-77 also had strong reservations against the R2P. India argued that the "UNSC was already authorised to take actions during humanitarian emergencies and that the failure to act was due to a lack of political will and not authority", Malaysia viewed R2P as identical to humanitarian interventions. Hostility towards these norms were also shown by the Latin American Countries. Cuba interpreted it as "a right to intervention

¹³⁰Report of the Secretary General 'A more secured World; Our Shared responsibility' (2004) UN Doc A/59/565 [201].

¹³¹Report of the Secretary General 'In Larger Freedom: Towards Development, Security and Human Rights for All' (2005) UN Doc A/59/2005

crafted by economic and military dictatorships of a super-power seeking to impose its own model on society”¹³² Venezuela stated that

“Let’s not allow a handful of countries to try to reinterpret, with impunity, the principles of International Law to give way to doctrines like pre-emptive war. How do they threaten us with pre-emptive war? And the now so called ‘responsibility to protect,’ but we have to ask ourselves who is going to protect us, how are they going to protect us?”¹³³

However, few of Latin American countries supported the norms. The biggest supporter of the norms of responsibility to protect came from Europe. EU was concerned with the situation in Africa. It stated that the inaction or failure to take action can be traced back to the lack of political will and reduced enforcement capacity. They emphasised support for R2P in cases of Genocide and ethnic cleansing.

Africa was also reluctant to interfere in the internal matters of other states, however, the support came from the AU Charter which under Article 4(b) states “that the Union shall function in accordance to the principles including the right of the union to intervene in a member states pursuant to the decision of the Assembly with respect of grave circumstances namely war crimes, crimes against humanity, genocide and crimes against humanity.”¹³⁴ To this Bellamy observed that the AU didn’t refer the matter to the UNSC but rather permitted the existing institutional mechanism to act quickly and decisively. This is one of the arrangements which were forwarded by the R2P principles. However, the AU was reluctant to undertake forceful interventions. However, the AU leadership pushed for the R2P principle during the 2005 World Summit, though few African nations rejected and expressed reservations against the principles and called it similar to the concept of Humanitarian interventions, while some nations like Tanzania, prioritised mass atrocities above the daily sufferings of Africa

¹³² Ibid.

¹³³Institute of Global Policy, “Government statements on the responsibility to protect Latin-American region” 2005-07’

<<http://www.responsibilitytoprotect.org/files/R2P%20Government%20statements%20Latin%20America%202005-2007.pdf>>accessed on 19 April 2020.

¹³⁴Charter of the African Union, art 4(b).

due to poverty.¹³⁵ South Africa also expressed its reservations to the lack of international consensus for the core principles of R2P.¹³⁶

Even with the diverse reception of the norms related to R2P, the final version in the World Summit Outcome Document. 2005 was a compromise, with the African states totally opposed to the principles of R2P along with the Russian Federation, and the People's Republic of China. India wanting the UNSC to be authorised for any R2P actions and however, leading up to the document there was no clear consensus between the members of the UN on the R2P principle.

This principle finds its place under paragraphs 138 and 139 of the documents. Para 138 asserts the responsibility of the protection of the state from “genocide, crimes against humanity, war crimes and ethnic cleansing” and emphasised on the role of states to encourage the development of an early warning system.¹³⁷ While paragraph 139 stated that “when a state fails to protect its citizens from obligations laid down under paragraph 138, the duty to protect shifts to the international community through the UN and the UN has to take measures under Chapters VI and VII of the Charter.” The paragraph further asserted that the actions should be taken in a timely and decisive manner in accordance to the UN Charter, through the security council. The paragraph further stated that it is the responsibility of the member states to assist their populations at risk before these conflicts break out. It authorised the international community to take any action, diplomatic, humanitarian or military on failure of all peaceful measures to ensure the safety of human lives.

In comparison to the ICSISS report the WSOD '05 it would appear under the paragraphs 138 and 139 omit the responsibility to rebuild, however, paragraphs 97-105 provide the framework for the peace building commissions needed to address rebuilding.¹³⁸

¹³⁵Benjamin William Mkapa, President of United Republic of Tanzania, Statement at the G. A. Debate on the 2005 World Summit Outcome (Sept. 16, 2005)
<<http://www.un.org/webcast/summit2005/statements/tanz050914eng.pdf>>accessed on 19 April 2020.

¹³⁶Thabo Mbeki, President of Republic of South Africa, Statement at the G. A. Debate on the 2005 World Summit Outcome (Sept. 16, 2005),
<<http://www.un.org/webcast/summit2005/statements15>>accessed on 19 April 2020.

¹³⁷ WSOD (n.13) [138].

¹³⁸ Ibid [139].

3.2.1. Responsibility to Prevent.

In comparison to the ICSISS report, the WSOD is inadequate in respect to the protection mechanisms provided under it. The ICSISS recommended stronger measures to be taken not limited to the collective use of force, authorised by this while the WSOD under paragraph 139 confers the heads of governments to be prepared to take such actions, the paragraphs don't also specify any legal consequence entailing from failure to act, hence the WSOD didn't recognise any new legal right nor obligations concerning the use of force against gross violations of human rights. It just reinforced the existing norms of humanitarian intervention making it lawful.

Again the ICSISS report specified that the prerequisites of the Just war threshold must be met in a six fold criterion discussed earlier before undertaking any military actions, however the WSOD narrowed the approach by limiting it to grave violations of human rights in place of the "serious and irreparable harm occurring to human beings or imminently likely to occur" which had a wider scope than the existing norm under the WSOD.

The WSOD though, left the decision making in the hands of the member states it was ambiguous in terms of the scope of military measures that could be taken during the intervention and when can the responsibility to react be invoked. Further it didn't address the ambiguities that existed in the pre R2P era of humanitarian intervention. Though advocates of R2P differentiate it from earlier norms of humanitarian intervention, it still faces the same problems which were and still are connected with humanitarian intervention.

The omission of the military aspect of R2P in the WSOD is a glaring gap in the norms of R2P. Enforcement being the responsibility of the United Nations Security Council under Chapter VII of the UN Charter, it laid down that the UNSC authorised military action didn't grant authority to take military action to individual states, which was allowed by the ICSISS report which stated that if the UNSC failed to take actions then member states were allowed to undertake military campaigns to protect.

The WSOD omission of any statement on the role and the possibility of regional organisations to undertake humanitarian intervention is another failure on top of it failing to address the question on as to who can react to the crisis if and when the UNSC

fails to act. Though it provides for preparedness to take collective action the gap still remains as to the role of the above-mentioned regional organisations to undertake military interventions. Hence, the question remains unanswered on whether it is allowed or not.

The WSOD laid the responsibility on the General Assembly for the development of R2P in accordance to the existing framework of international law and the UN Charter. Stahan noted that “the languages in paragraph 130 was not sufficiently clear in conceptual terms and needed more consideration by the UNGA before its acceptance and implementation.”¹³⁹

3.2.2 Responsibility to react

The WSOD 2005, shifts the duty from the home state to the other states, when the home state fails to protect its populations from atrocities. The document states that if the peaceful measures are unsuccessful then collective force should be used Chapter VII of the UN Charter.¹⁴⁰ However, it is not mandatory to take actions on part of the governments. There is no legal duty entailing from the non-fulfilment of the responsibilities laid down under the WSOD. It called upon the states to take actions on a case by case basis and the only organ authorised to invoke R2P is the UNSC.

Under the ICSISS report any intervention needed to fulfil the just war criteria before taking military action in cases where “serious and irreparable harm occurring to human beings or imminently likely to occur including the large scale loss of life or large scale ethnic cleansing”¹⁴¹ However, the WSOD restricted the approach by limiting the grounds to “genocide, war crimes, crimes against humanity and ethnic cleansing”¹⁴²

Both the documents, however, didn’t define the scope of intervention or the kind of military measures that can be taken. It further didn’t address concerns as to when R2P can be invoked, who takes the decisions to invoke, how to invoke. These questions led to the questioning of ambiguity over the use of force. Hence the failure of the documents

¹³⁹Carsten Stahan, “Responsibility to protect: Political Rhetoric or emerging legal norm?” (2007) 101 AJIL. 109, 110.

¹⁴⁰ WSOD (n.13) [138].

¹⁴¹ICSISS Report (n.2) [4.19].

¹⁴² WSOD (n.13) [139].

to provide concrete answers to the questions indicate that R2P couldn't clearly break away from the problems related to humanitarian intervention.

However, unlike the ICSISS report, the WSOD doesn't discuss a criterion. The WSOD required enforcement *vide* Chapter VII of the UN Charter.¹⁴³ Hence it placed the responsibility to react on the UNSC to funnel actions under Chapter VII.¹⁴⁴ Hence only the UNSC has the power to authorise military action under the norms of R2P. the WSOD also fails in providing an alternative measure to authorise action and further doesn't answer what happens when there is a logjam in the Security Council. R2P advocates term this as disappointing.¹⁴⁵

The WSOD didn't take into account the role of regional organizations or coalitions willing to engage in humanitarian interventions. Though nit provides for preparedness to take "collective actions" it, however, didn't recognise a right to intervene nor did explicitly prohibit unilateral interventions without authorisations.

3.2.3 Responsibility to rebuild

The R2RB doesn't find the prominence it received in the ICSISS report. There is no explicit reference for this in the WSPD. Post intervention responsibility was addressed by proposing a separate peace building commission, hereinafter, called the PBC. The PBC established in December 2005, by the GA and the UNSC. It is an intergovernmental body made of 31 states mandated to facilitate and provide advice on post conflict rebuilding efforts. The first session of the PBC was convened in July 2006, with Burundi and Sierra Leone on its agenda and since the agenda has expanded to Central African Republic, Guinea Bissau, and so on. Any request for PBC assistance is to be requested to the UNSG or can be referred to the PBC by the UNSC, the GA or the ECOSOC.

It has been since recognised as an important tool under the norms of R2P as post conflict reconciliation and rebuilding as a tool of prevention. Due to its non-controversial nature

¹⁴³ Ibid

¹⁴⁴ *ibid*

¹⁴⁵Gareth Evans, 'The Responsibility to Protect: Ending Mass Atrocities Once and for all' (first published 2008, BIP) 268.

it has received support across blocs in the General Assembly, where several members stated recommended the strengthening of the PBC.

However, there the states are no obliged to support the PBC. Its resources are generated from the top 15 contributions to the UN as well as voluntary contributions to the UN Funds.

Summarily, both the documents recognised the responsibility of states to protect their populations from mass atrocities and encouraged the international community to help states in capacity building as well as be accountable to their own populations. Both the documents further recognised the responsibility of the international community to use force to protect populations as well as rebuild after.

The adoption of the WSOD was the political elevation of the R2P norms. But these norms have not been able to overcome the issues associated with humanitarian intervention and hence the change of international norms is doubtful.

State responsibility is deeply rooted in the principles of international law.¹⁴⁶ Paragraph 138 assigned the primary responsibility under WSOD but they didn't impose any legal penalties for failure to exercise the responsibility to prevent. Furthermore, the paragraphs didn't specify the scope of the prevention, reaction and rebuilding responsibilities. The paragraphs in the WSOD gave a narrower interpretation of the situations where in R2P could be exercised in comparison to the ICSISS report. The WSOD authorised the UNSC to authorise R2P actions, but it didn't explicitly prohibit any unilateral R2P action when the UNSC failed to act. It also didn't create any new right.

Though a number of issues regarding R2P and humanitarian intervention are unanswered, the WSOD aimed at creating a political consensus to act where there are grave threats to human security. These two documents since have been reinforced by multiple GA and UNSC resolutions. The analysis of these documents is insufficient to conclude whether the norms of R2P have changed any international law or still are a synonym of humanitarian interventions.

¹⁴⁶Responsibility of State for internationally wrongful acts, UNGA Res 56/83 (LVI) (28 January 2002).

CHAPTER 4: CASE STUDIES

The Chapter analyses the crises that invoked the Responsibility to protect from the years 2004 to 2014. This chapter sheds light on how state practice and UN activities have affected the norms of R2P and its relationship with international law. This Chapter shall discuss R2P interventions in Darfur (2004), Libya (2011), Cote D Ivoire (2011), Syria (2011) . These crises occurred between 2005 to 2014 and they are some of the worst humanitarian crises of the 21st century, with some crises having still not ended.

4.1 Darfur

Ethnically diverse and home to many indigenous tribes in Sudan, Darfur, a remote region located in the western corner of Sudan bound by Libya, Chad and the Central African Republic, has been at the centre stage of numerous ethnic conflicts which date back to 1939. Darfur was once an independent sultanate and then was incorporated into Sudan in 1916 under British rule. It was marginalised and it lacked sufficient infrastructure, economic or educational development. Sudan gained its independence in 1956. Usually the conflicts were disputes on access to natural resources but, since the influx of weapons from has led to the increase in the loss of lives and the causes of such conflicts have been due to the polarisation on the basis of ethnicity. Darfur has been a region of instability and a source of conflict. Though the majority had an affinity towards Sudan, there was a minority of groups who were aligned to the neighbouring Chad.

The drought in 1980's caused a movement of Darfur is into Sudan, who declared them as refugees and sent them off to Kurdufan without water and food to survive which led to the formation of an Arab militia with the support of the Khartoum government. Between 1987-89the local tribes fought with Arab origin groups for access to water and land which deepened the division of the non-Arab tribes and the Arab tribes. The Rizzaquat Militant groups backed by the Sudanese government attacked the non-Arab ethnic villages to which the SLA retaliated against.

Omar Hassan al-Bashir, came to power in 1989, Bashar backed by the Arab militia created a policy of hatred against non-Arab tribes in Darfur and enacted new administrative boundaries frustrating the African farmer more leading them to join the problems remained localised as Western Sudan was politically and economically side-lined by the central government.¹⁴⁷ Two rebel groups called the “Sudan Liberation Army” (SLA) and the “Justice and Equity Movement” (JEM) started attacking the government, with the objective to force the government to look into the political and economic issues faced by non-Arabs in Darfur. The government retaliated against these attacks with a series of brutal attacks against the ethnic African tribes, which included

¹⁴⁷International Crisis group, ‘Conflict History: Sudan’
<http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=10>
(Accessed on 24 April 2020).

civilians using conventional military as well as the Arab militia. Following this the Sudanese government started using cluster bombs against the belligerents. The government forces along with the Arab militia employed genocidal tactics against the ethnic African tribes which included aerial bombings, shelling, ground attacks, kidnapping, torture and extra-judicial executions.¹⁴⁸

By 2004 the situation had worsened and the government withdrew all police force and other officials leaving the Janjaweed to fill in the vacuum which continued with the atrocities. Darfur was then compared to “Rwanda in slow motion.”¹⁴⁹

The UN characterised Darfur as the most serious humanitarian emergency in the world.¹⁵⁰ With report pouring in about the tens of thousands of people displaced and the constant harassment by the Sudanese government made all humanitarian work totally ineffective. This sudden deterioration of the situation in Darfur made it clear that this crisis needed an urgent military intervention.¹⁵¹

Darfur was the test case for R2P and it failed. It is argued there was lack of sufficient political will to mount and sustain an international response which included the deployment of peacekeepers to protect the Darfur civilian populations. It is criticised further that the implementation of R2P failed due to the inherent problems within the norm itself. The attention that the conflict garnered revolved around the question whether it was Genocide or not. Some jurists believed that from a legal stand point, there was no genocide and another school believed that terming Darfur as a Genocide would have been political hara-kiri for the UNSC. Though some scholars believe that it is not necessary to apply R2P, but it is necessary to apply the Genocide Convention.¹⁵²

It is important for Genocide to occur and to qualify for the crimes laid out both in the ICSISS report as well as the WSOD, genocide is the most serious of the crimes recognised by both the documents and the recognition of Darfur as a genocide would have been a failure on part of the UNSC and states to implement R2P. It was anyway a failure as the international community failed to act and prevent the atrocities in Darfur.

¹⁴⁸ Ibid.

¹⁴⁹Scott Strauss, ‘Rwanda and Darfur: A comparative analysis’ (2006) 1 GSP 41, 45, 46.

¹⁵⁰Paul Williams and Alex Bellamy, ‘The Responsibility to Protect and the Crisis in Darfur’ (2005) 36 Sec Dia 127.

¹⁵¹BBC, ‘UN’s Darfur death estimate soars’ BBC News (London, 14 March,2005).

¹⁵² International Coalition (n.148).

Under the standard norms, genocide increases the responsibility of the international community to respond to it and provide adequate response. As mentioned earlier the whole genocide question distracted the international community from providing an adequate response to the conflict. So, the next question asked is what is the threshold to determine what amounts to genocide.

Genocide was first described by a Polish-Jewish lawyer who defined genocide as “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups with the aim of annihilating the groups themselves.”¹⁵³ The International Military Tribunal included the word ‘genocide’ in the indictment of Nazi war criminals.

The Genocide Convention recognised the 5 characteristics of Genocide as “a) the killing of a members of a particular ethnic group; b) causing seriously bodily or mental harm to members of the group; c) forcibly transferring children of a group to another; d) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction; and e) imposing measures intended to prevent births within the group.”¹⁵⁴

The Rome Statute further defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national ethnic, racial or religious group) the killing of a members of a particular ethnic group; b) causing seriously bodily or mental harm to members of the group; c) forcibly transferring children of a group to another; d) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction; and e) imposing measures intended to prevent births within the group.”¹⁵⁵

Many international scholars and politicians referred to the situation as Genocide. Secretary of State Colin Powell referred to it as Genocide. The U.S House of Representatives adopted a resolution referring the Darfur crisis as a Genocide.¹⁵⁶This

¹⁵³United States Holocaust Memorial Museum, ‘Holocaust Encyclopaedia’ , <<http://www.ushmm.org/wlc/en/article.php?ModuleId=10007043>>accessed on 24 April 2020.

¹⁵⁴ Genocide Convention, art II.

¹⁵⁵ Rome Statute, art 6.

¹⁵⁶Glen Kesler and Colum Lynch, ‘US Calls killings in Sudan Genocide, Khartoum and Arab Militias are responsible, Powell says’ <<https://www.washingtonpost.com/wp-dyn/articles/A8364-2004Sep9.html>>accessed on 25 April 2020.

resolution called upon the Bush administration to consider multilateral or unilateral actions to prevent the genocide.¹⁵⁷The Bush administration had stated that along with humanitarian assistance it was pressuring the Sudanese government to end atrocities. However, at the end, the Obama administration concluded this as not genocide.

Strauss said that by applying the criteria of genocide to Darfur highlights two points which are that firstly the events in Darfur meet the standards of genocide; and that the targeted violence against the groups were systematic and intentional and they were supported by the government and secondly the term would triggers international intervention to prevent further atrocities.

The UN International Commission on Darfur concluded in its report that the pattern of killings and forced displacement didn't constitute genocide but should have been sent to the ICC for prosecution. It further alleged that though genocide didn't happen the acts against the populations but the acts were grievous and more heinous than genocide.¹⁵⁸It suggested that the government acted with 'genocidal intent' and that it strongly recommended to the UNSC that it should refer Darfur atrocities to the ICC.

The Holocaust and Rwanda are the only two times that are recognised as genocides. Other occurrences in Bosnia, Armenia, Cambodia or the DRC are all documented as mass killings but not as genocide. Though thousands of civilians were killed and displaced the international community could not agree to call the actions in Darfur as genocide and hence failed collectively.

The eruption of the crisis led to the African Union to take a number of measures to prevent the mass atrocities and then the UN adopted a number of resolutions urging the parties to the conflict to take all possible and all necessary steps to end the atrocities taking place and stop the violations of IHL. Few other resolutions tried to garner the support of nations to resolve the conflict diplomatically and finally the UN established the peacekeeping mission in Sudan to end the mass atrocities and to safeguard human lives. Even though almost all measures taken by the UN and the AU failed, it is important to analyse the state practices related to R2P principle during this crisis.

¹⁵⁷Darfur Peace and Accountability Act 2006, Clause 3.

¹⁵⁸Report of the Secretary General, 'Report of the International Commission of Inquiry on Darfur to the United Nations Security General' (2005).

4.1.1 Responsibility to prevent

The objective of the international community since the beginning of the conflict was to prevent atrocities and to which a number of measures were taken by the AU as well as the UN to bring peace to the region. There were multiple UN resolutions calling out for the cessation of violence, and further threatening stringent actions under Chapter VI to prevent further escalation.

The primary responsibility to protect is on the state. As has been reiterated by the ICSISS as well as the WSOD 2005. The report states that “state sovereignty implies responsibility” and states that “the primary responsibility to protect its populations lies with the individual state”. This was reiterated in the WSOD which also stated that “it is the duty of the international community on failure of the state to act in the best interests of its population”. This was again stated by the Special Representative of the UNSG for Sudan who stated that that “it was the Sudanese government which had the primary responsibility for ending the crisis”. Pronk further argued that “if the government is unable to fully protect its citizens by itself then it should request and accept assistance from the international community”.¹⁵⁹

AU spent many years seeking a solution for this crisis. The first agreement also called the N’Djamena Humanitarian ceasefire agreement of April between three parties to the conflict,¹⁶⁰ though was rushed allowed to a ceasefire and monitoring mechanisms for the protection of civilian populations. Under this a monitoring mission was established with some 60 monitors and 300 soldiers¹⁶¹ mandated to monitor and ensure compliance to the ceasefire agreement and also to contribute to the security situation in Sudan and to provide a safe environment for the of aid. This agreement was rushed and was not accepted by the AU. The lack of troops and the continuous harassing attacks by the Janjaweed militia was a challenge for the AIM, hence it could not meet its objectives. There were many other reasons some of which were the restricted mandates, inadequate military financing, Lack of financial support and other logistical issues.

¹⁵⁹UNSC Resolution 5027 (2004), SCOR Resolution and Decision 3.

¹⁶⁰Darfur Peace Agreement, (Government of Sudan, SLA and JEM).

¹⁶¹Alex J. Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ (2005) 19 EJA 31, 40.

Following the failure of AMIS, UNSG Annan stated that “the world’s peacekeeping strategy was not working and it had failed to protect civilians”. The UNSC authorised the UN advance mission in Sudan (UNAMIS) with the mandate to facilitate interactions between the concerned parties and to prepare for a UN Peacekeeping mission.¹⁶² Pronk was appointed as the Head of the UNAMIS¹⁶³, and these efforts led to the Abuja peace talks and the establishment of the UN assistance cells in Addis Ababa.

The UNSC members were reluctant to discuss the Darfur issue. Countries like Pakistan, Algeria and China disagreed to discuss the issue in the UNSC. Sudan didn’t want the UNSC interference in the issue either. The Algerian Ambassador to the UN stated that there was “disagreement about whether or not we should address the situation concerning Darfur, but we got a letter from the Secretary General last week saying we cannot ignore the western part of Sudan and so we reached an agreement to include it.”¹⁶⁴ Pakistan, China and Russia all agreed that the scale of violations in Sudan was not sufficient to declare Sudan as having failed to perform its duties towards the population with Pakistan stating that as a member of the UN and had all the rights and privileges under the UN Charter. These views were clearly against the possible intervention against a sovereign nation.

The UNSC adopted resolution 1556¹⁶⁵ expanding the mandate of the UNAMIS.¹⁶⁶ And further highlighting that the primary responsibility of the Sudanese government and its failure to do so the resolution 1556 was adopted under Chapter VII. The resolution demanded that the militia be disarmed and prosecuted for the violations of human rights. It further asked the government to meet all the commitments made in the communiqué with the UNSG

It also called for respect IHL and finally to facilitate humanitarian relief removing all prohibitions on restrictions that hinders assistance. The resolution also requested that the government carry out independent investigations on the human rights violations and

¹⁶²UNSC Resolution 1547 (June 11, 2004) UN Doc S/Res/1547.

¹⁶³UNSG, ‘Secretary General appoints Pronk Special representative for Sudan’ (June 21, 2004) Press release SG//A/877

¹⁶⁴Jonathan Wald, ‘Security Council endorses resolution on Sudan, Plan Aims to end Conflict in South Darfur region’ CNN (New York, June 11, 2004)

¹⁶⁵UNSC Resolution 4988 (2004) UN Doc S/Res/4988

¹⁶⁶UNSC Resolution 1556 (2004) UN Doc S/Res/1556

breach of humanitarian law.¹⁶⁷ The resolution passed with a support of 13 votes for and 2 abstentions by Pakistan and China, with many states expressing their support for immediate steps to stop the atrocities in Darfur.

The USA proposed to move for sanctions and embargo against Sudan but this proposal met with stiff resistance from multiple countries arguing that the actions would violate Sudan's sovereignty.¹⁶⁸ The Arab League, China and Russia also opposed the sanctions against Sudan and argued that the Sudanese government was still accountable to protect its populations.

However, Sudan's failure to adhere to the previous UNSC resolutions, the UNSC adopted resolution 1564¹⁶⁹, where it recalled the previous resolutions and threatened the imposition of sanctions against Sudan. An international investigation commission was established to investigate the violations of human rights in the region.¹⁷⁰ Though the resolution passed Russia along with China abstained from voting. They had reservations towards the legitimacy of enforcement measures against Sudan and argued in favour of Sudan's sovereignty, while Russia, China and Pakistan who argued that the situation in Sudan had improved. Brazil and other nations supported the resolution and expressed belief that it would save lives.

The UNSC in resolution 1574¹⁷¹ at meeting in Nairobi, Kenya expressed concern about the insecurity and violence in Darfur and highlighted the failure of the Sudanese government's responsibility to protect its populations, though it welcomed political and diplomatic efforts to resolve the Darfur conflict. The resolution further extended the mandate of the UNAMIS for another three months.

The Sudanese government and the SPLM signed a comprehensive peace treaty meant to end the Sudanese Civil war between the forces in the north and the south. It further aimed that both the states shall develop democratic governance country wide and also agreed to share the oil revenues. The parties to the CPA also agreed to a timetable set

¹⁶⁷ *ibid*

¹⁶⁸UNSC, 'Security Council declares intention to consider Sanctions to obtains Sudan's full compliance with Security Disarmament Obligations on Darfur' (18 September 2004) Press Release SC/8191

¹⁶⁹UNSC Resolution 1564 (2004) UN Doc S/Res/1564

¹⁷⁰ Press Release (n.169)

¹⁷¹UNSC Resolution 1574 (2004) UN. Doc. 1574.

by South Sudan to have a referendum on its independence but it didn't address the conflict in South Sudan.

The UNMIS was established with UNSC resolution 1590,¹⁷² under which it allowed the deployment of almost 10,000 military personnel as well as a civil component of 715 civilian police personnel.¹⁷³ It further called upon the UNMIS to liaise with the AMIS with the objective to quickly foster peace between the conflicting parties. However, the resolution 1590, didn't involve the deployment of UNMIS in Darfur but invited the UNSG to investigate the type of assistance UNMIS could provide to AMIS.

However, atrocities didn't end there, following which the UN took a number of actions aimed to prevent the violence and protected civilian lives in Darfur. The UNSC resolution 1674¹⁷⁴ was adopted unanimously reaffirmed the need to protect civilians during situations of armed conflict and called on better cooperation between the UN and regional organisations. Referring to R2P, UNSC resolution 167 reaffirmed the provisions in the WSOD regarding the responsibility to protect populations from grave violations. It further highlighted the importance of preventing mechanisms.

Following the limited mandate and resources allotted to the UNMIS, the UNSC vide UNSC resolution 1679 allowed the takeover of the peacekeeping operations of the AMIS. It invoked R2P to protect civilian lives in conflict. It emphasized on the reconstruction and development of Darfur. The UNSC expressed grave concern about the results and consequences of a long-drawn conflict on the population. Concerns also rose about the effect the conflict would have on rest of Sudan and other neighbouring countries with Africa being volatile as it is. Sudan threatened the continent as a whole.

Subsequent resolutions of UNSC prolonged the mandate of the UNAMIS until 2007, but even with all the efforts of the UN to bring peace and stability to Darfur, violence between the government and the belligerents didn't end. The call for ceasefire was rejected at the end of 2007, until the JEM and Sudanese government signed a ceasefire with President Bashir declaring a cessation of hostilities, but the clashes between the two groups continued.

¹⁷²UNSC Resolution 1590 (2004) UN. Doc. 1590.

¹⁷³ Ibid.

¹⁷⁴UNSC Resolution 1674 (2004) UN. Doc. 1674.

Both the peacekeeping missions were constrained by their own mandates. With both the missions functioning under the permission of the government of Sudan, and hence without their cooperation and consent neither mission could effectively support the responsibility to prevent. The missions anyway had limited security mandate, so from the very beginning the security for civilians remained unsettled and the distrust in the missions by either party. Effectively, the missions had no credibility among the parties in conflict.

These are some of the constraints which delayed an adequate response to the situation in crisis which could effectively have been the trail for R2P, the international community stood divided to fulfil their political interests rather than unite to stop the grave violations of human rights.

4.1.2 Responsibility to React.

4.1.2.1 International Inquiry commission

The international community reacted to the situation in Sudan by establishing an inquiry commission, referring matters to the International Criminal Court for crimes committed under the Rome Statute and the imposition of sanctions.

The UNAMIS's failure to protect civilian populations and the continuous violation of ceasefires by either party, the failure to disarm the militias all led to the escalation of violence in Darfur.¹⁷⁵The UNSG, pursuant to SC resolution 1654 appointed an international commission of inquiry which assembled in Geneva in October, 2004. It presented its report to the UNSC stating two irrefutable facts. It states “ Firstly, according to UN Estimates there are 1.65 million internally displaced persons in Darfur and more than 200,000 refugees from Darfur in neighbouring Chad; secondly there has been large scale destruction of villages throughout the three states in Darfur.”¹⁷⁶ It conducted extensive investigations and fact finding missions on multiple incidents of violence in villages and towns across Darfur.

¹⁷⁵Human Rights Watch, ‘Donors must address Atrocities Fuelling Crisis’ (September 27, 2004) <<http://www.hrw.org/news/2004/09/26/darfur-donors-must-address-atrocities-fueling-crisis>>accessed on 26 April 2020.

¹⁷⁶ International Commission of Inquiry (n. 135), preamble.

Based on the information, the commission held the government and the Janjaweed militia responsible for human rights violations and other crimes.¹⁷⁷ It further concluded that the Janjaweed militia conducted attacks on civilians including rape, torture, enforced disappearances, pillaging, sexual violence and forced displacement throughout Darfur in a systematic and widespread basis. It concluded that these acts amounted to crimes against humanity. But interestingly enough despite these findings by the commission it didn't conclude that the events transpiring in Sudan didn't amount to Genocide.

It argued that to qualify for Genocide there needed to be *actus reus* of consistent killing and the presence of a group intentionally targeted through authors of criminal conduct.¹⁷⁸ The report of the commission stated that there was a lack of genocidal intent. However, it also did conclude that some officials might have committed acts with genocidal intent.

To this Bellamy noted that the report ignited the debate about where to prosecute. The EU along with the UK wanted the matter referred to the ICC, while Nigeria wanted the formation of a tribunal under the aegis of the AU. While the UNSC argued for the creation of a special tribunal in line of the ICTY and ICTR.¹⁷⁹

4.1.2.2 Referring the matter to the ICC

The UNSC resolution 1593 referred the matter to the ICC and requested all members to cooperate fully. USA, Algeria, Brazil and Algeria abstained to this. Sudan not being a state party to the Rome Statute refused to accept the jurisdiction of the ICC stating that it had no place in the crisis.¹⁸⁰

Although US abstained in the vote to 1593, it provided extensive support to penalise those responsible and to hold the violators of IHRL and IHL must be held accountable. Though it expressed objections over the jurisdiction of the ICC, it supported the idea of a tribunal created under the UNSC.

Algeria took a stand that the AU was better equipped to carry out the tribunal. China noted that the situation in Darfur needed a political solution, though it deeply deplored

¹⁷⁷ Ibid [522], [556].

¹⁷⁸ Ibid [459].

¹⁷⁹ Bellamy (n.168) 17.

¹⁸⁰ UNSC Resolution 1593 (2005) UN Doc S/Res/1593.

the violations of IHL and IHRL, it wanted the perpetrators to face justice. China recommended that the perpetrators to stand trial in Sudanese court.¹⁸¹

The ICC issued arrest warrants for the Sudanese President Omar-al Bashir.¹⁸² He faced 10 counts for crimes against humanity and genocide. The pre-trial chamber believed that the President was responsible for at least three counts of genocide against the Fur, Masalit and Zaghawa groups. Arrest warrants were also issued against the defence minister, the North Kordofan governor and militia leader all of whom remained at large. Furthermore, the UNSC resolutions didn't impose any obligation on the UN members to facilitate assistance in arrests. Hence the purpose of the ICC remained unfulfilled.

4.1.2.3 Sanctions

There was no military intervention in Darfur as of yet. But it was continuously followed and monitored. The possibility of sanctions was debated upon by the DNSC, but as Bellamy notes "first, there was a debate about whether to refer the case of Darfur to ICC. Second the conclusion of the peace agreement for the south of Sudan initiated debates on whether the UN force created to police the peace agreement would be a Chapter VI or a Chapter VII mission."¹⁸³

The adoption of UNSC resolution 1591 imposed sanctions against Sudan over Darfur.¹⁸⁴ It condemned the continued violations of the CPA by all sides in Darfur.¹⁸⁵ It further established a committee of all UNSC members to identify individuals who could be a threat to peace and stability in Darfur and violate international humanitarian law or human rights law.¹⁸⁶ it imposed embargoes and froze assets of those individuals who were identified by the committee.¹⁸⁷ Algerian, Russia and China, expressed their reservations against international sanctions by abstaining from voting on the resolution.

¹⁸¹UNSC 'Security Council refers situation in Darfur, Sudan to Prosecutor of International Criminal Court' (March 31, 2005) U.N Press Release SC/1593.

¹⁸²UN, 'Darfur ICC Charges Sudanese President with Genocide' (UN News Center, <<http://www.un.org/apps/news/story.asp?NewsID=35293#.UqqOOzKA1dg;>>accessed on 26 April 2020.

¹⁸³ Bellamy (n.136) 49.

¹⁸⁴UNSC Resolution 1591, (2005) UN Doc S/Res/1591.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

This was followed up by UNSC resolution 1672 which placed sanctions on Sudanese government officials who were responsible for the crimes against humanity in Darfur.¹⁸⁸ The UNSC imposed travel and financial sanctions on 4 Sudanese individuals for their role in the conflict.

4.1.3 Responsibility to Rebuild

The ICSISS report highlighted the importance of rebuilding as a post conflict peace building mechanism after a military intervention targeted at the causes which the intervention aimed to avert. These activities have to take place after prevention has failed and reaction has started. They needn't necessarily follow military actions. However, in Darfur there was no military intervention nor any effective arms embargo. However, a UNPK mission was authorised by the UNSC to restore necessary security conditions.

There was disagreement between the UNSC members as to the intervention or even an arms embargo against the Sudanese government, though there was authorised UNSC deployment of a UNPK force to restore the necessary security conditions for facilitating full scale humanitarian access and other monitoring , observing compliance and verification of the compliance to the ceasefire agreements to secure an environment safe for rebuilding.

With this objective the UNSC adopted resolution 1769 under Chapter VII to establish an hybrid AU-UN mission called the United Nations Assistance Mission for Darfur (UNAMID) comprised of almost 20 thousand military personnel, 7 thousand police personnel, mandated to protect IDPs, civilians and humanitarian workers if necessary.¹⁸⁹ It recognised that there could be no military solution to Darfur and it was also authorised to assist in peace process, to monitor agreements and to promote human rights and the rule of law.¹⁹⁰ This resolution showed the acceptance of the responsibility to rebuild by emphasising on focusing on the preparations for undertaking reconstruction and development in Darfur.¹⁹¹

¹⁸⁸UNSC Resolution 1672 (2006) UN Doc S/Res/ 1591.

¹⁸⁹UNSC Resolution 1769 (2007) UN Doc S/Res/ 1769.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

This resolution was also questioned by China. It requested all the parties to abide strictly by the tripartite approach of the UN, the AU and government of Sudan to increase the credibility of the mission. It further questioned the division between protecting sovereignty and the use of force raising similar concern as during pre R2P days.

Despite the efforts of the UNAMID, the situation in IDP camps worsened and insecurity loomed. Humanitarian workers were attacked by the Janjaweed militia and violence erupted once again. The Sudanese government claimed that these were tribal skirmishes but the attacks by the JEM in west Darfur in early 2008 aggravated with Sudan supporting the coup in Chad. However, by the end of 2009 the violence lessened. The UNAMID could neither adequately protect the civilians nor could it contribute to humanitarian assistance. It failed in all its aspects of the mandate it was authorised to do.

UNAMID was not given adequate support or resources. The UNAMID was dependant on donor contributions for everything starting from military personnel to infrastructure development and it was woefully underfunded.¹⁹² The Sudanese government undermined decisions by participating nations to the UNAMID in sending troops to Darfur. Therefore, UNAMID was not able to carry out its expected tasks.

The UNAMID also depended on the Sudanese government's assistance for logistics and there was almost no cooperation from the government.¹⁹³ It continuously objected and blocked to the UNAMID deployment of non-African troops except those from China and Pakistan.¹⁹⁴ It also obstructed in other areas of cooperation on seemingly inconsequential matters. The Sudanese forces attacked the UNAMID soldiers. Its mandate was weak and incomplete in the sense that it was not given a mandate to disarm the Janjaweed militia but to monitor the government's disarmament exercise.

UNAMID failed to protect civilians from mass atrocities during its peacekeeping and rebuilding efforts. The UNAMID could not fulfil its objectives due to a restricted mandate and due to the lack of financial and military contributions. The lack of political will of the UNSC to address this was also a failure on its part to act and rebuild. Though

¹⁹²UNSC, 'Security Council authorises deployment of the United Nations-African Union Hybrid Peace Operation in bid to Resolve Darfur Conflict' (July 31, 2007) UN Press Release SC/9089.

¹⁹³Jair Van Der Lijn, "To paint the Nile Blue: Actors for Success and Failure of UNMIS and UNAMID" (2008), NIIR 14, 15.

¹⁹⁴ Ibid.

the conflict in Darfur had already died down by 2013, it still remains a powder keg for the region.

It therefore, can be concluded that due to the lack of political will to take military actions to protect populations against gross violations of human rights, highlighted the redundancies in the norms of R2P. The norms of R2P being unclear as to the legality of unilateral action without UNSC sanctions. It further highlighted the drawback of the limited interpretation of the WSOD, limiting intervention to cases of grave violations as against the acts mentioned in the ICSISS. The use of the norms of R2P in Darfur was a failure.

4.2 Libya

The uprising in Libya against the Gaddafi regime in 2011 and the use of military forces against the civilian populations by Col. Gaddafi led to an intervention by states backed by the UNSC. under the norms of R2P the civilians from the mass killings, the war crimes and other crimes being perpetrated by the government forces loyal to Gaddafi. The failure of diplomatic efforts by the USNC led to the first ever authorisation of military force under the R2P norms and the intervention in Libya was the first ever use of R2P.

As we have discussed in the previous chapters that the use of these norms to some extent may be considered as the abuse of the norms of R2P but that doesn't take away the fact that the UNSC when it acts has the potential to fulfil the objectives as to why the UN was established in the first place.

With the view of protecting the populations the UNSC adopted resolution 1970 while condemning the use of lethal force by the regime it also imposed a series of sanctions¹⁹⁵and three weeks later vide UNSC resolution 1973 it authorised the use of military force under the R2P principle.¹⁹⁶ This led to an NATO led intervention in Libya.

Having discussed the drawbacks of the intervention in the previous chapter, the case study shall be limited to the three norms which are R2P, R2R and R2RB.

¹⁹⁵UNSC Resolution 1970 (2011) UN Doc S/Res/1970.

¹⁹⁶UNSC Resolution 1973 (2011) UN Doc S/Res/1973.

Libya which gained its independence from Italy in 1959¹⁹⁷, came under dictatorial rule of Col Gaddafi following a coup in 1969. He rejected the party system and ruled under a system called Jamahiriya or a state of masses combining elements of communism and capitalism.¹⁹⁸

The highlights of his regimes were the human rights violations and abuses. Multiple human rights organisations including the Human Rights Watch, the Amnesty international along with many others have often criticized the Gaddafi regime for the suppressing persons who have opposed the regime. Having refused any freedom of expression, freedom of association and assembly, banning political activities the regime gained its notoriety.¹⁹⁹ This continuous suppression of freedoms and basic human rights led to a series of protests linked to the Arab Spring that had already toppled governments in Egypt and Tunisia. The demonstrations were initiated by the families of the victims of the Abu Salim prison massacres demanding a respect for human rights and freedom. In the second round of protests Gaddafi used disproportionate force to repeal the protesters leading to an increase in the death toll.²⁰⁰ It further imposed media blackouts and blocked the internet.

The protesters were further provoked by Saif al Islam, who threatened all those civilians warning them that ‘rivers of blood will flow’ and referring to them as ‘cockroaches and rats’ inciting supporters of the Gaddafi regime to attack them. This led to an increase in the violence by the insurgents which turned the entire situation into an internal armed conflict. The threats of Genocide by Gaddafi led to the fragmentation of the government with some ministers breaking from the government and formed the interim opposition government called the ‘National Transitional Council’ (NTC).

The dramatic rise in deaths and the brutality of the Gaddafi regime attracted regional and international actors. The AU, LAS, OIC, EU and UN launched several measures to

¹⁹⁷BBC, ‘Libya Profile’ (London, 8 June 2020) <<https://www.bbc.com/news/world-africa-13754897>>accessed on 8 June 2020.

¹⁹⁸ Ibid.

¹⁹⁹Human Rights Watch ‘Libya at risk’ (2 September 2008).

<https://www.hrw.org/sites/default/files/reports/libya_rights_risk_090808.pdf>accessed on 8 June 2020.

²⁰⁰ Amnesty International, ‘The State of the World’s Human Rights’ (London, 13 May 2011) <<http://www.amnesty.org/en/documents/POL10/001/2011/en/>>accessed on 8 June 2011.

bring the crisis to an end and when they failed the UNSC authorised military actions in Libya.

4.2.1 Responsibility to Prevent.

The primary R2P was with the government of Libya but the Libyan government was the primary violator of the rights of the civilians in Libya and hence the responsibility was transferred to the international community to undertake the R2P the population from the mass atrocities being perpetrated against them. The EU undertook many efforts to stop the escalation of violence. The first came from the EU urging the Libyan government and condemning the repression against peaceful protests. It also deplored the death of the civilians.²⁰¹ With the death toll increasing daily, the EU suspended the EU-Libya framework agreement and terminated all cooperation contracts.²⁰² On March 11 the EU urged Gaddafi to step down and as the situation deteriorated further the EU voted to resume all humanitarian work by reopening an liaison office in Benghazi.²⁰³

The AU, the LAS and the OIC condemned the human rights situation in Libya calling for mediation to the conflict. The LAS condemned the regime and its violations and suspended the Libyan delegation to participate in the league meetings.²⁰⁴ The Peace Council of the AU expressed its intention to deploy a mission to assess the on-ground situation and condemned the regime of using excessive force.

The UN reacted to this by expressing its concern over the violations of human rights and the atrocities Libya. The UNHCHR expressed concerns to the situation in Libya and affirmed that the “protection of civilians should be the principal consideration in maintaining the rule of law”.²⁰⁵ Following the inch by inch speech of Gaddafi the UN

²⁰¹EU, ‘Declaration by the High Representative, Catherine Ashton, On behalf of the European Union on Events in Libya’ (20 February 2011) Doc 6795/1/11-PRESSE 33.

²⁰² Ibid.

²⁰³ Nichole Koeing, “The EU and the Libyan Crisis: In quest of Coherence” (2011) 13 IAIWP 11.

²⁰⁴ Olga Galal, ‘Arab League Bars Libya from meetings: Citing Forces Crimes’ (Bloomberg News, 22 February 2011) <<http://www.bloomberg.com/news/2011-02-22/arab-league-bars-libya-from-meetings-citing-forces-crimes-.html>>accessed on 10 June 2020.

²⁰⁵OHCHR, ‘Bahrain and Libya: UN Experts urge Authorities to guarantee Right to Protest without fear of being injured or killed’ (18 February 2011)

Special Advisor on Genocide termed the violations in Libya as crimes against humanity and reiterated the pledges in the WSOD by the member states.²⁰⁶

The Libyan Mission to the UN renounced Gaddafi holding him accountable for the crimes and the mass shootings in Libya.²⁰⁷ The Deputy permanent representative to the UN called for Gaddafi to step down. He went on to state that the UNSC's statement was not strong enough. While the permanent representative distanced himself from the statements calling Gaddafi 'my friend.'²⁰⁸

The UNSC in a press communiqué condemned the Libyan government for its violent campaigns against peaceful protesters and called upon the authorities to end the violence, respect human rights and honour principles of IHL.²⁰⁹ It used R2P to caution the Libyan government and reiterated the responsibility of the government of its primary responsibility to protect the populations.

This was followed up by a condemnation by the UNHRC. The UNHRC adopted Resolution S-15/1 by consensus. It called upon the Libyan government to release all arbitrarily detained persons and called for the immediate cessation of intimidation, persecution and arbitrary arrests of individuals and to ensure the safety of all civilians.²¹⁰ Furthermore, it requested the UNHRC to set up an Independent International Inquiry Commission (IIIC) to investigate all allegations of human rights violations. In an unprecedented move the UNGA suspended Libya from the membership of the UNHRC. Despite multiple diplomatic measures the Libyan authorities continued with the human rights violations. This failure triggered responsibility to react.

4.2.2 Responsibility to React

²⁰⁶UNSG, 'UN Secretary General's Special Advisor on the Prevention of Genocide, Francis Deng and Special Advisor on the Responsibility to Protect, Edward Luck on the situation in Libya' (22 February 2011) UN Press Release.

²⁰⁷ Colin Moynihan, 'Libya's UN Diplomats break with Ghaddafi' New York Times (New York, 21 February 2011).

²⁰⁸Ibid.

²⁰⁹UNSC, 'Security Council on Libya' (22 February 2011) UN Press Release SC/10180.

²¹⁰UNHRC Res 15 (2011) Un Doc A/HRC/S-15/1.

The adoption of two resolutions by the UNHRC and the UNSC which showed the government's failure to fulfil its duty to protect. The resolutions also condemned the violations terming it as deplorable. The UNSC specifically called for an immediate end to hostilities and set up an arms embargo, travel bans on the members of the Gaddafi family and other officials. The resolution also froze all overseas assets and called for progress review of the situation in Libya after 120 days. The UNSC further referred the matter to the ICC for review.²¹¹

The imposition on non-military measures and other actions by the UNSC was to coerce the Libyan authorities to stop the atrocities. In response to the UNSC resolution, Libya called it premature and called for it to be suspended till the alleged claims could be substantiated. Russia stated that "A settlement of the situation in Libya is possible only through political means. In fact, that was the purpose of the resolution which imposes clearly expressed, restrictive measures with regard to those guilty of violence against the civilian populations. However, it does not enjoin sanctions even indirect, forceful interference in Libya's affairs which could make the situation worse"²¹²

China supported the resolution considering the circumstances in Libya, but it emphasized on the importance of affirming Libya Sovereignty.²¹³ Though it was adopted unanimously there was not any indication of the UNSC members supporting the use of force instead of imposing non coercive measures.

The UNSC was called upon by the other regional organisations to take immediate actions to stop the atrocities in Libya. The Gulf Cooperation Council asked the UNSC to enforce a no fly zone over Libya.²¹⁴ The LAS called upon the UNSC reiterated the call for a no fly zone and also called for the imposition of a no fire zone.²¹⁵ This no fly zone was endorsed by the AU but they didn't support military intervention.

²¹¹UNSC Res 1970.

²¹²Alex Bellamy and Paul D. Williams, 'The new politics of Protection? Cote d' Ivoire, Libya and the Responsibility to protect' (2011) 87 IA 850.

²¹³ UNSC, 'In swift decisive action, Security Council imposes tough measures on Libyan regime adopting Resolution 1970 in the wake of crackdown on protesters' (26 February 2011) UN Doc SC/10187.

²¹⁴Paul D. Williams, 'Briefing: The Road to Humanitarian War in Libya' (2011) 3 GR2P 248. 251

²¹⁵Council of the League of Arab States 'Report on the Implications of the Current events in Libya and the Arab Position' (12 March 2011)

<<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%207360.pdf>>accessed on 12 June 2020.

The weeks following UNSC resolution 1970 saw a dramatic escalation in the atrocities against civilian populations which made the UNSC adopt resolution 1973²¹⁶ authorising states to use all necessary means to protect civilians under threat in Libya and further called upon the LAS to cooperate with the UN so as to implement a no-fly zone over Libya. The resolution also noted the failure of the diplomatic measures and demanded the Libyan authorities to comply with their international law obligations.²¹⁷

Resolution 1973 authorised military intervention in three different ways. Firstly, it recommended that the military force be used to protect the protected areas from the threat of attack.²¹⁸ Secondly it recommended the to set up of a no-fly zone across Libyan airspace. It also authorised members states to act unilaterally and as well as with regional cooperation to enforce the flight ban.²¹⁹ Thirdly it strengthened the arms embargo and authorised members states to use all measures commensurate to the situation. The purpose of this was to force the Libyan government to stop the atrocities.

Though the member states were divided on the question of authorising military intervention in Libya, ten member states voted in favour of the resolution while 5 member states abstained. The ten member states were clear on the very beginning that the intervention was based on humanitarian considerations. While China and Russia emphasised on peaceful means to resolve the conflict peacefully. The abstention to the UNSC resolution clearly showed the long-standing opposition of the countries to the use of force for humanitarian purpose.

The significant role of regional organisations played a role in the UNSC's decision. Resolution 1973 reiterated the condemnation of the Gaddafi regime by the LAS, AU and the OIC. Following the adoption of UNSC resolution 1973 military action headed by the North Atlantic Treaty Organisation (NATO) which announced that it would take over all military aspects of Resolution 1973²²⁰ and it began enforcing the UNSC mandated no-fly zone. 5 months after NATO's intervention Tripoli was liberated. NATO believed that the only way to protect the civilian population was to remove

²¹⁶UNSC Resolution 1973 (2011) UN Doc S/Res/1973.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰Florence Gaub, 'The North Atlantic Treaty Organization and Libya: Reviewing Operation Unified Protector' (2011) SSI , < <http://www.strategicstudiesinstitute.army.mil/files/1161-summary.pdf>>accessed on 12 June 2020.

Gaddafi and hence, the NATO decided that without a complete military victory civilian in Libya could not be protected.²²¹ NATO flew more than 26,000 sorties and destroyed approximately 6,000 military targets.

The military intervention was authorised under the R2P norms and that the criteria in Libya sufficiently fulfilled the criteria under the ICSISS report as well as the WSOD. It stipulated that the intervention fit the six criteria of intervention.

The regime change controversy has been discussed in Chapter V under the chapter “Uses and abuses of R2P”

4.2.3 Responsibility to rebuild.

Bellamy and Williams note that R2P’s robust use in the crisis saved thousands of lives. The note

“The international community’s response to the crisis in Libya reflected a new politics of protection and had four principle characteristics: first, the Security Council had framed this crisis in terms of human protection; second, the Security Council had demonstrated the willingness to authorize the use of military force for protection purposes even without the consent of the host state; third, the regional stakeholders had become important gatekeepers influencing the Security Council and; finally, the international community had exhibited a commitment to working through the Security Council to fashion a response to a human protection crisis.”²²²

Though this only finds mention in the ICSISS report and the WSOD skipping the entire discussion on the responsibility to rebuild, is an integral to the norms of R2P as it requires the intervening actors to establish a post intervention strategy.²²³

The intervening forces have the responsibility to protect populations from mass atrocities but post the intervention in Libya, there was political instability leading to

²²¹NATO, ‘NATO and Libya’ (Brussels, 09 November 2015)

<https://www.nato.int/cps/en/natolive/topics_71652.htm>Accessed on 12 June 2020.

²²² Bellamy and Williams (n. 213) 844.

²²³ Ibid.

large scale violence. Gaddafi loyalists engaged in a killing campaign making it difficult for groups to relinquish their arms in a post intervention Libya.

The responsibility to rebuild requires efforts to be undertaken for reconciliation between parties and access to justice which necessitates those responsible for war crimes and crimes against humanity to be punished before rebuilding efforts can take off. This is supported by the ICSISS report the responsibility to rebuild entails a responsibility to encourage economic growth and sustainable development.²²⁴ Though after the fall of Gaddafi the EU lifted all the sanctions on its ports, oil, firms and banks but these didn't help immediately. All economic activities had witnessed dramatic decline in 2011. With Oil being the driving force of the Libyan Economy, the sanctions had a huge impact on the economy.

UNSC resolution 2009 established the UNSMIL was mandated to help the Libyan national efforts to rebuild, restore political dialogue, and restore public security. The mission comprised of over 40,000 personnel including military as well as police to protect the IDPs, civilians and humanitarian workers by any means necessary.

In conclusion the international community's non-coercive response to the atrocities in the form of travel ban, embargoes failed. The UNSC authorised the use of force to protect civilian populations.

There was international consensus as to the Libyan government's failure to prevent and its role in the atrocities against its populations. This consensus led to preventive action which led to preventing further loss of life and with undertaking these measures the international community was fulfilling its R2P duties.

The UNSC resolution for non-coercive measures and the subsequent resolutions allowing for the use of force and the referral of the matter to the ICC showed the synergy between R2P and the crimes under the Rome Statute. Resolution 1973 was not actively opposed by any of the members states which made it stand apart from the rest of the cases of humanitarian intervention and it was the first time R2P was authorised.

The entire reaction of the UNSC as well as that of the international community was grounded along the principles of R2P as a result when the UNSC decided to intervene in Libya, it had already made a case for the application of the principles of R2P. The

²²⁴ ICISS Report (n.2) [5.1].

members states argued for a case for R2P rather than against as was seen in the case of Darfur.

Though the controversy over the application of the principles of R2P in Libya revolved around the regime change controversy and that the three weren't sufficient efforts taken under the responsibility to prevent aspect of R2P. Even after all the controversies, Libya showed that the application of R2P if done correctly could prevent the large-scale loss of lives due to atrocities perpetrated by the governments against their peoples.

4.3 Cote D' Ivoire

Cote D' Ivoire situated in West Africa bordering Liberia, Guinea, Mali, Burkina Faso is made up with 7 different tribes and was a French colony until 1970. The military coup overthrew the sitting President and installed General Robert Guei as the military dictator of Cote D' Ivoire which resulted in the termination of foreign aid and assistance.²²⁵

A power struggle started between Laurent Gbagbo who challenged the military dictator in the Presidential elections in October 2000. This led to a civil and military unrest due to the disagreements between the forces loyal to Guei and to Gbagbo.

There were multiple efforts towards reconciliation in Cote D' Ivoire, but this was disrupted by an armed uprising in 2002. When a large group of military personnel defected from the armed forces and took up arms against the government which was the sixth attempted coup against the elected government. The reason behind this was the government's decision to demobilise hundreds of soldiers and they captured a huge chunk of territory in the northern part of the country. These forces rose in support of Alassane Ouattara who was disqualified from contesting in the elections by the country's Supreme Court in 2002.

Following a request from the US ambassador to Cote D' Ivoire US Special Forces were deployed to protect those caught in the firing and to rescue the children stuck in the middle of the battle. Following a defence agreement between France and Cote D' Ivoire, the French deployed troops in September 2002 and the struggle for power between Gbagbo and Ouattara continued until 2010.

²²⁵ Bellamy and Williams (n.189)

The crisis, however, took a turn for the worse with the 2010 presidential elections when the Ivorian Commission of Electorate Independent (CEI) announced the provisional results showing that Ouattara had won by withheld the results the Constitutional Council held that the CEI had no authority to announce the results and that the passing deadline meant that the Constitutional Council had the authority to determine the Presidential elections. Following this announcement, the Council further cancelled results in seven northern regions and announced that Gbagbo had won the elections. Ouattara had himself sworn in as the President.

A United Nations Peacekeeping mission was already operating out of Ivory Coast with the support of the French Soldiers deployed there. The UN Operations in Cote D Ivoire (UNOCI) was established in 2004 with a limited mandate which didn't allow the use of force to protect civilians.²²⁶

An upsurge in violence post the 2010 elections, the UNSC with a view to protect civilian populations from violence framed its response in terms of R2P and adopted Resolution 1975 in 2011²²⁷ authorising the UNOCI to use all necessary means to protect civilian populations from imminent threat of physical violence in Cote d' Ivoire.²²⁸

Following the announcement of results and the swearing in of Gbagbo and Ouattara as President, Gbagbo demanded that the French troops withdraw and leave the country to which the UN made it clear that it didn't recognise Gbagbo as the President of Cote d' Ivoire. Only two countries, Angola and Lebanon recognised Gbagbo as president.²²⁹The United States of America, the EU, ECOWAS and the UN recognised Ouattara as the duly elected president and this sparked violence across the country which the situation quickly turning into a powder keg with millions of lives in danger.

Between 2010 and 2011, in 3 months spreading from December to March, a series of violent protests between the supporters of Ouattara and militia of Gbagbo led to hundreds of deaths. Further clashes in the capital Abidjan and Yamoussoukro resulted

²²⁶ MINUCI, 'Cote d' Ivoire Background'

<<https://peacekeeping.un.org/sites/default/files/past/minuci/background.html>>accessed on 14 June 2020.

²²⁷ UNSC Resolution 1975 (2011) UN Doc S/Res/1975.

²²⁸ MINUCI (n.227).

²²⁹Voice of America, 'Despite growing Pressure, Ivory Coast Incumbent Gbagbo still has outside allies' (26 December 2010) <<https://www.voanews.com/africa/despite-growing-pressure-ivory-coast-incumbent-gbagbo-still-has-outside-allies>>accessed on 14 June 2020.

in many more deaths and these atrocities continued against civilian populations. Gbagbo's supporters attacked foreign business centres and the UN Offices in 2011 and by mid-march Gbagbo had banned all French and UN aircrafts from Ivorian airspace²³⁰ and then launched a military offensive killing hundreds of civilians in Duekoue. Both sides have been accused to have participated in the massacre in Duekoue.²³¹

The conflict between the two parties displaced hundreds and thousands of people who sought refugees in neighbouring countries and with the crisis worsening by the day the international community responded differently under the R2P norms with the intention to stop the atrocities being carried out by both parties in conflict.

4.3.1 Responsibility to Prevent.

The primary duty to protect populations belongs to the state to which they belong to. Both documents state that when the states responsible to protect fail to fulfil or are unwilling to fulfil their responsibilities then the duty shifts to other states to protect the civilians from atrocities.²³² Considering these norms of R2P, the Cote D' Ivoire government had the primary duty and the disagreement about the lawful leadership of the government in Cote D' Ivoire with Gbagbo governing most of the territory and was responsible for most of the atrocities, hence, making it clear that the government had failed to protect its citizens from atrocities and that it was the perpetrator of the violence against them.

Responding to these atrocities the ECOWAS in a meeting established a contact group to promote talks among parties in conflict along with Ghana, Guinea-Bissau, Mali, Niger, Nigeria Togo and the AU.²³³ The ECOWAS agreed to deploy a ECOWAS peacekeeping troops mandated to monitor the proposed ceasefire and disarm the rebel groups.²³⁴ Both parties, after continuous discussions accepted the proposal and Gbagbo invited France to assign forces to monitor the ceasefire.

²³⁰ BBC, 'Ivory Coast's Laurent Gbagbo Bans UN and French Flights', (Webcitation.Org 10 March. 2011), <<http://www.webcitation.org/5x7SA99J5>. >accessed on 14 June 2020.

²³¹ Human Rights Watch, 'Côte d'Ivoire: Ouattara Forces Kill, Rape Civilians During Offensive' (Human Rights Watch Apr. 9, 2011), <<http://www.hrw.org/news/2011/04/09/c-te-d-ivoire-ouattara-forces-kill-rape-civilians-duringoffensive>. >accessed on 14 June 2020.

²³² ICSISS Report (n2).

²³³ Background (n.227)

²³⁴ Ibid.

On the basis of this, the negotiations between both the parties began under the close watch of the President of Togo.²³⁵ The talks stalled with them MPCCI demanding the resignation of President Gbagbo along with demands to review the Ivorian constitution along with new elections. Efforts to break the stalemate happened in the form of a round table conference which resulted in the signing of the Linas-Marcoussis Agreement by the Ivorian political parties which among other clauses provided for the appointment of a prime minister who shall oversee the government of national reconciliation. The UNSC endorsed the above-mentioned agreement and adopted Resolution 1464 reaffirming the SC's commitment towards respect for sovereignty, unity and territorial integrity of the Ivory Coast.²³⁶

The UNSC reinforced its position for non-interference of states and called upon the regional partners to support in resolving the crisis. It considered and took note of the decision of the ECOWAS to deploy peacekeepers and supported the organisational efforts for a peaceful end of the conflict.²³⁷ It condemned the human rights situation in the country and authorised the ECOWAS and French forces to use all possible means to ensure protection and movement of civilians.

The resolution 1479, established the UNOCI, which was mandated to observe and facilitate the Linas- Marcoussis Agreement.²³⁸ The resolution appointed and authorised 26 military liaison officers for deployment. The resolution 1514 further extended the mandate of the MINUCI until 2004 and deployed a UN multi departmental assessment mission to examine the possibility of transforming the ECOWAS forces into a UN Peacekeeping mission.²³⁹

There were multiple efforts by French government and other regional international organisations to find solutions for the conflict. During this period, the rebels attacked the state television in Abidjan killing 19 people.²⁴⁰ The UNSG called for the leaders to increase troop strength of MINUCI and bring it under the banner of the UN.

²³⁵ Ibid.

²³⁶ UNSC Resolution 1464 (2011) UN Doc S/Res/1464.

²³⁷ Ibid.

²³⁸ UNSC Resolution 1479 (2003) UN Doc S/Res/1464.

²³⁹ UNSC Resolution 1514 (2003) UN Doc S/Res/1514.

²⁴⁰ Background (n.227)

The UNSC considered the situation in the Ivory Coast as a threat to international security. It adopted resolution 1528,²⁴¹ which established the UNOCI effectively replacing the peacekeeping missions from MINUCI and ECOWAS.²⁴² The mandate of the UNOCI was to facilitate the operation of the 2003 peace agreement and coordinate with the French forces to re-establish trust between all Ivorian political factions.²⁴³ However, there was no action taken by either France nor the UNSC to use R2P. The UNOCI despite a robust mandate was unsuccessful in preventing the escalation of conflict. It started an air campaign against the rebel forces as a result the French air force entered into the fray. This resulted in anti-French protests. The Resolution 1572 imposed an arms embargo and threatened more sanctions if Ivorian parties didn't comply with their political commitments.²⁴⁴

With the conflict worsening the UNSC also adopted many other resolutions extending the mandate of the UNOCI which repeatedly called upon the parties to cease the violence and renewing both the arms and financial embargoes. The crisis took a turn for the worse post the 2010 elections. The election results led to the outbreak of violence in the country. With both Gbagbo and Ouattara claiming the presidency, many states took a number of measures which were just short of military actions to resolve the situation. In this aftermath of this the AU sent the former President of South Africa Thabo Mbeki to mediate. There were multiple negotiation efforts that were not successful in bringing an end to the violence. This escalated into Ouattara's forces starting a fresh military offensive and gained most of the country including Abidjan.

The UN drew criticism from the AU mediator Thabo Mbeki who stated that the UN had overstepped its authority. Many West African leaders threatened to use force if Gbagbo refused to cease power. The AU suspended Cote D' Ivoire from the organisation and threatened to use military force if Gbagbo didn't comply with international law.²⁴⁵ The demands by the AU seemed to be grounded to enforce democracy rather than human protection. With this, the AU and other African leaders

²⁴¹UNSC Resolution 1528 (2004) UN Doc S/Res/1528.

²⁴²Ibid.

²⁴³ Ibid.

²⁴⁴ UNSC Resolution 1572 (2004) UN Doc S/Res/1572.

²⁴⁵ CNN, 'West African Leaders threaten Use of force against Laurent Gbagbo' (CNN, 25 December 2010) <<http://edition.cnn.com/2010/WORLD/africa/12/24/ivory.coast.conflict/>> accessed on 16 June 2020.

moved away from the core objective of humanitarian protection and instead engaged in an attempt to change the government in Ivory Coast. It was also suspended from the ECOWAS and all its decision-making bodies²⁴⁶ and the US announced the possibility of expanding UN Forces in the Cote. The EU and the USA imposed a travel ban and an asset freeze on Gbagbo and his associates.²⁴⁷

The UNHRC vide Resolution S-14/1 which condemned the ongoing human rights violence in Cote d' Ivoire. Nigeria on behalf of the AU expressed its concern about the worsening conditions in Cote d' Ivoire. The efforts of the UN and the HRC to enforce the election results²⁴⁸ drew criticism from China and Russia who argued that it was in violation of article 2(4). They called upon all parties to resolve the crisis through diplomatic means. These concerns drew attention towards the perception over any form of intervention against the sovereignty and territorial integrity of states. In December 2010, the UN Special Advisors to the UNSG on the Prevention of Genocide and R2P in a statement expressed their “grave concerns about the situation in Cote d' Ivoire.”²⁴⁹ They further highlighted about the increasing atrocities in Cote d' Ivoire and reminded all the parties about their R2P duties. This was further emphasized to the UNSC vide a letter from the UNSG who called upon the member state to consider the grave threat to civilians and the failure of the government to fulfil its responsibility. Following this the resolution 1967 was adopted authorising the deployment of an additional 2000 troops to the UNOCI.²⁵⁰

The atrocities against Civilians continued throughout 2011. Various Human Rights organisations reported and implicated Gbagbo and his allies in crimes against humanity under the Rome Statute.²⁵¹ Human Rights Watch, a Human Rights Organisation

²⁴⁶ IRIN, ‘Cote d' Ivoire: Briefing on AU and ECOWAS’ (Iran, 15 February 2011) <<http://www.irinnews.org/report/91930/cote-d-ivoire-briefing-on-au-and-ecowas>>accessed on 16 June 2020.

²⁴⁷ Voice of America, ‘US in talks on boosting UN Force in Ivory Coast’ (VOA, 21 December 2010) <<https://www.voanews.com/content/us-in-talks-on-boosting-un-force-in-ivory-coast-112338489/132642.html>>accessed on 16 June 2020.

²⁴⁸ UNHRC Resolution S-14/1 (2010) UN Doc A/HRC/Res/S-14/1.

²⁴⁹ UNSG, ‘Security Council, Secretary General’s special Advisers on the prevention of Genocide and the Responsibility to protect on the situation in Cote d' Ivoire’ UN Press release

²⁵⁰ UNSC, ‘Letter dated 7 January to the President of the UNSC’ (2011) UN Doc S/2011/5.

²⁵¹ Human Rights Watch, ‘Cote d' Ivoire: Crimes against Humanity by Laurent Gbagbo Forces’ (HRW 15 March 2011 <<http://www.hrw.org/news/2011/03/15/c-te-d-ivoire-crimes-against-humanity-Laurent>>accessed on 16 June 2020.

reported about Gbagbo's forces opening fire on unarmed peaceful protesters which killing at least 25 women protesters.²⁵² The UNOCI reported over a thousand deaths including the killing of children. Meanwhile, the failure of the demands of the international community for Gbagbo to step down and Gbagbo's non participation in the negotiation processes the AU recommended to the UNSC to take forceful actions under Chapter VII. The ECOWAS, following the death of hundreds of civilians and rape carried out by the pro-Gbagbo forces, made a formal request to the UNSC to enhance the UNOCI's mandate to allow the use of all necessary means to protect to protect lives and ensure the transition of power to Ouattara.²⁵³

4.3.2 Responsibility to react

The UNSC on March 30 2011, adopted UNSC resolution 1975²⁵⁴ where it invoked the principles of R2P, and authorised intervention in Cote d'Ivoire. The highlight of the resolution was that firstly it condemned the atrocities and cited the government's failure in its primary responsibility. Secondly it recognised Ouattara as the President and finally it condemned the refusals of Gbagbo refusals to negotiate.²⁵⁵

Though the resolution 1975 was adopted unanimously, it was interpreted and perceived differently by different nations. India, Russia and China argued towards the partial treatment shown towards Gbagbo's forces when both sides were responsible for the atrocities against civilians.²⁵⁶ China further argued and expressed its concern related to the deterioration of security in the Cote d'Ivoire and called upon to maintain neutrality in the civil war. India expressed its concern against peacekeepers being made instruments of regime change.²⁵⁷ It also argued against taking sides in the Civil war and called upon to maintain neutrality in the war. This resolution was supported by both UK and the USA., UK specifically argued that the UNOCI was already mandated to

²⁵² Ibid.

²⁵³ UNOCI, 'Post Election violence claims more than 1000 lives in Western Cote d'Ivoire' (UN 26 May 2011).

https://www.un.org/en/peacekeeping/missions/unoci/documents/unoci_pr_elections26052011.pdf
>accessed on 16 June 2020.

²⁵⁴ UNSC Resolution 1975 (2011) UN Doc S/Res/1975.

²⁵⁵ Ibid.

²⁵⁶ UNSC Resolution 1975 (2011) SCOR Resolution and Decisions 6508.

²⁵⁷ Ibid.

use all necessary means and resolution 1975 just reaffirmed the UNOCI's role in protecting civilians,

Following this, the UNOCI and French Forces attacked the camps of Gbagbo's forces destroying the heavy weapons and other weapon stockpiles. Later on, the same day, the forces attacked the Presidential Palace and arrested Gbagbo. Ouattara was sworn in as the President in May of 2011.

Gbagbo was put to trial in the Hague to be tried for crimes against Humanity. Cote d' Ivoire in April had submitted a declaration to the ICC accepting the jurisdiction of the court. Ouattara had also submitted a declaration to the court in December 2011 and another in May 2011.²⁵⁸In October 2011 the ICC authorised the prosecutor to start investigating the alleged violations in Cote d' Ivoire for crimes since November 2011.²⁵⁹ However, the investigation mandate was expanded to investigate crimes since 2002.²⁶⁰

Despite a general agreement that the UNOCI mandate fulfilled all the criterion related to the invocation of R2P laid down in the ICSISS report. However, it faced criticism on the ground that the UNOCI used its mandate for regime change and went beyond the mandate of the UNOCI.

4.3.3 Responsibility to Rebuild

Despite the ousting of Gbagbo, the unrest continued and hampered the rebuilding process. The UNSG declared support from the Peace building fund in 2008. With a number of measures undertaken by the UN, a total amount of 18 Million USD has been allocated towards the rebuilding of Cote d' Ivoire.

The UNOCI received another extension to its mandate until June 30,2014²⁶¹vide UNSC resolution 2112. The UNSC resolution authorised the use of all necessary means within the capabilities and areas of deployment to carry out its mandates.²⁶²With Civilian protection still being its primary mandate, the mandate was expanded to support the

²⁵⁸ Human Rights Watch, 'Laurent Gbagbo and the International Criminal Court' (HRW, 12 February 2013) <<https://www.hrw.org/news/2013/02/12/qa-laurent-gbagbo-and-international-criminal-court>>accessed on 17 June 2020.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ UNSC Resolution 2112 (2013) UN Doc S/Res/2112.

²⁶² Ibid.

government and to collect weapons. This was done with the objective to gradually transition security responsibilities from the UNOCI to the Ivorian government.

The UNOCI also aided to ensure the welfare and stability of refugees and other displaced persons.²⁶³ it continued to monitor and investigate the various human rights violations across the country and it also provided human rights training to improve the situation.²⁶⁴ It further supported in the development of the electoral process with a view of a speedy democratic transition in the Cote d' Ivoire.

Despite all this the human rights situation in the Cote d' Ivoire is still on shaky grounds. The truth and reconciliation commission established in 2011, submitted its report in 2014, following which the Ivorian government created a compensation fund of 15 Million Euros. The government also established the National Program for Social Cohesion to execute the repartition programme. The report however, till date has not been made public by the Ouattara government. Among the many criticism of the report by civil societies, victim groups and NGOs are that it made little progress to achieve its mandates. The groups also criticized Ouattara for not publishing the final report.

The 2 years following Ouattara's inauguration as President, the government made little progress to address the root causes of the violence. No charges were brought against pro-Ouattara forces nor any investigations were conducted when both sides had a hand in the human rights violations during the conflict. The failure to disarm, demobilize and reintegrate ex combatants was completed in 2017 and until then they posed a threat until then. The threat intensified the national insecurity and multiple organised attacks by Gbagbo forces against military installations.

In addition to the UN's efforts, individual countries as well as financial institutions helped Ouattara's rebuilding efforts. France offered assistance of 578 million dollars, with 250 million as loan in support of budgetary air. The EU offered 180 Million Dollars on a grant-based package focused on health, water, sanitation and agriculture rebuilding efforts. the World Bank offered a 100-Million-dollar loan in support of rebuilding.

²⁶³ Human Rights Watch, 'World Report 2013: Cote d' Ivoire' (HRW) <<https://www.hrw.org/world-report/2013/country-chapters/cote-divoire>>accessed on 17 June 2020.

²⁶⁴ Ibid.

The UNOCI successfully completed its mandate in 2017. These measures and the monetary help provided by the UN and other nations had a long-term impact with the Cote d' Ivoire regaining stability since the 2010-11 post-electoral war. It's on its way to hold the 2020 Presidential elections. With Gbagbo being acquitted by the ICC, there is a possibility to him joining the bandwagon.

This was one of the more successful R2P intervention carried out under the auspice of the UN. Though it has its critics, it successfully brought a halt to the violence in the Cote d' Ivoire and saved millions from atrocities being carried out by both parties.

4.4 Syria

The Jasmine Revolution spilled into the Syria by the end of 2010. The demand for Assad to step down by the Syrian population turned into a full blown international and humanitarian crisis, which continues till date. It's been 10 years since the fighting in Syria began and there is no indication that the fighting will end anytime soon. The failure of the international community to stop the crisis makes it highly ineffective for international cooperation to rebuild Syria post conflict.

This crisis undermined the R2P principle under international law and relations. It highlighted the controversy of use of force without UNSC sanction for humanitarian purpose. It opened the can of worms raising questions asked since India's intervention in East Pakistan and the NATO bombing campaign in Kosovo. The use of R2P as a toll for regime change were the reasons why the UN failed to take effective action. Russia and China vetoing multiple resolutions for authorising the use of force. The UNSC couldn't also agree on the humanitarian relief issues in the crisis. This crisis underlined the problems faced by R2P.

Syria gained its independence from France in 1946. Post-independence it lacked political stability and went through a number of coups until Hafiz Al-Assad, the leader of an Alwite Minority group seized power through a bloodless coup in 1970. Following his death, his son Bashar Al-Assad was appointed the President in 2000 following a referendum.

President Assad belonged to the minority Shi'ite group while the country's majority is Sunnite.²⁶⁵ This sectarianism has been one of the characteristic features of the conflict. The Syrian government uses the Shabia militia as a tool for crackdown since the 1970s. The numerous opposition groups against the Syrian government led to formation of several armed organisations under the banner of the Free Syrian Army (FSA). The rebels called for the regime's resignation since 2011. The Syrian National Council called for regime change in Syria and rejected any dialogue with the Assad regime. They further requested for international protection for the Syrian population.

Initial round of protests began, demanding for reform to the government system including legalisation of the multi-party-political system and the release of the various political prisoners along with the removal of corrupt local officials.²⁶⁶ The protests were met with retaliation from the government forces. In mid-March the Assad regime introduced new laws which permitted the establishment of political parties,²⁶⁷ Protests again broke out in the southern province of Dar'a where a group of children were arrested and tortured by the government forces.²⁶⁸ The Syrian Armed forces (SAF) in a violent response to the protests attacked a funeral procession,²⁶⁹ killing many. Protests erupted in other cities including Damascus, Homs, Hama and Idlib.²⁷⁰ In a series of reforms the Assad government swore in a new government, removed the emergency and recognised the right to peaceful protests and released hundreds of detainees.²⁷¹

The protests continued throughout the country. In retaliation thousands of soldiers backed with tanks and snipers opened fire on civilians. Essential services were cut off. As the protests continued to spread the Assad regime reacted with more violence. The Assad regime implemented door to door arrest campaigns, executed raids against hospitals killing and arresting medical personnel.²⁷²

²⁶⁵ Globalede.org, 'Syria: history' (Global edge)

<<https://globalede.msu.edu/countries/syria/history>>accessed on 18 June 2020.

²⁶⁶ New York Times 'Events in Syria: A Chronology'

<<https://archive.nytimes.com/www.nytimes.com/ref/timestopics/syriatimeline.html?pagewanted=all>>accessed on 18 June 2020.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

The brutality of the Assad regime continued. On December 28, 2011, the Syrian Army opened fire on peaceful protesters killing hundreds of civilians in the city of Hama.²⁷³ As the protests began to spread across the country. This sparked battle between the government forces, the pro Assad militia and rebels in the suburbs of Damascus. A new referendum was held on a new constitution, the violence, however continued with the government launching severe assaults against civilians and rebel forces.

In March of 2012, the SNC formed a military council unifying all armed groups. On the first anniversary of the protests, protesters who marched in Damascus were subject to military retaliation which killed thousands of protesters.²⁷⁴

In mid-2012, the Assad government threatened the use of chemical and biological weapons in case of a foreign attack.²⁷⁵ The Syrian Army started testing weapons outside Aleppo.²⁷⁶ By 2013, there was sufficient evidence for the presence of chemical weapons. Both the parties accused the other of using chemical weapons which killed hundreds in Aleppo. Following which the UNSG appointed a technical mission to investigate the allegations.²⁷⁷

As the investigators reached Syria to investigate the attack, a Chemical attack took place in an opposition-controlled site of Ghotua, Syria.²⁷⁸ The area was struck by rockets believed to be comprised of Sarin. Hundreds were killed in this attack. Following this the US Secretary of State showed evidence that the attack was carried out by the Assad regime. The report also showed that the government had manufactured several types of

²⁷³ Associated Press 'Syrian uprising, timeline of Key events' (Ap Politico, 09 April 2013) <<http://www.politico.com/story/2013/09/syria-timeline-96270.html>>accessed on 17 June 2020.

²⁷⁴ Ibid.

²⁷⁵ Elizabeth A Kennedy and Paul Schumm, 'Syria threatens to use Chemical biological weapons' (Philly.com 24 July 2012) <http://articles.philly.com/2012-07-24/news/32828818_1_chemical-weapons-assad-regime-jihad-makdissi>accessed on 17 June 2020.

²⁷⁶ Haaretz, "Report: Syria tested Chemical Weapons Delivery System in August" (Haaretz.com, 18 September 2012)

<<https://www.haaretz.com/report-syria-tested-chemical-weapons-delivery-systems-1.5163777>>accessed on 17 June 2020.

²⁷⁷ UNSC, "Letter dated 22 March 2013 from the Secretary General to the President of the United Nations Security Council" (2013) UN Doc. S/2013/184.

²⁷⁸ Patrick J McDonnell and Sashank Bengali, "Syrian rebels allege New gas Attack" (L.A Times 21 August 2013)

<<https://www.latimes.com/world/la-fg-syria-poison-gas-20130822-story.html#axzz2vODNQAqM>>accessed on 17 June 2020.

chemical weapons, including Sarin, Tabun along with the potent nerve agent VX and mustard gas.²⁷⁹

The use of Chemical weapons became the focal point of discussion against Syria. It triggered strong international response with the contemplation of military intervention without the UNSC authorisation.²⁸⁰ The USA and its allies concerned over the use of chemical weapons, considered it to be in violation of international norms and threatened to use force.²⁸¹

The threat of chemical weapons along with the increased atrocities against civilians by the Syrian regime led to the USA to supply arms to the rebels. France and Saudi Arabia along with the USA justified limited military strike against Syria. In response to the American threat, Russia proposed that Syria ratify the Chemical Weapons Convention.²⁸² Syria accorded to the CWC, accepting the jurisdiction of the IAEA which is the monitoring authority for chemical weapons. The day Syria ratified the convention, the USA and Russia proposed a timeline for the destruction of chemical weapons in Syria.

In spite of all the atrocities against civilians, the international community failed to react and take actions to protect the civilian populations. Though the international community at the beginning was concerned about the atrocities against civilians. The attention of the international community shifted to the use of the chemical weapons.

Though this conflict made a case for itself, fulfilling all the criteria for a R2P. From the very start, the state committed mass atrocities against its civilian populations. The State never attempted to protect civilians instead was responsible for the human rights violations against its own populations. This was reiterated by the Independent Investigation commission of Inquiry. It concluded that the violations were done by both

²⁷⁹ Global Security, “Chemical Weapons” (Global Security.org)

<<https://www.globalsecurity.org/wmd/world/syria/cw.htm>>accessed on 17 June 2020.

²⁸⁰ Oliver Holmes, ‘Syria’s Chemical Weapons Wild Card: Chlorine Gas’ (Reuters 22 April 2014) <<http://www.reuters.com/article/2014/04/22/syria-crisis-chlorine-idUSL6N0NE3WM20140422>>accessed on 17 June 2020.

²⁸¹ Ibid.

²⁸² Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their destruction(adopted 13 January 1993 entered into force 29 April 1997) 1974 UNTS 45, art 1 (Chemical weapons Convention) ;see CBS, ‘Syria says it welcomes Russian proposal to place Chemical weapons under International Control’ (CBS News 9 September 2013)

parties in the conflict.²⁸³These atrocities which should have triggered R2P, the international community failed to act.

4.4.1 Responsibility to prevent.

The crisis was first discussed by the UNSC in April, while discussing the Israel-Palestine negotiations. Soon after the UNSC undertook actions in Libya and Cote d'Ivoire. The atrocities against the civilians began in March, when the Assad government started shooting civilians triggering mass protests and sparking of a civil war. The international community expressed their concerns over the atrocities taking place in Syria.²⁸⁴But the matter was not discussed as Russia made it clear that it will not that it didn't wish to hinder another country's matters.²⁸⁵

In light of the violent retaliations against the civilian populations, the first session of the UNSC on Syria took place in 27 April, 2011. Though the Syrian government faced condemnation for the human rights violations. The USA addressing the UNSC strongly condemned the violence and atrocities against its civilian populations.²⁸⁶The UK in its response highlighted upon the Syrian government's failure in its duty to protect its citizens and stressed upon ending the violence against them. Russia defended the actions of the Syrian government and stated that at this point of time the situation in Syria didn't threaten international peace and security.²⁸⁷

The UNSC wanted to release a press statement condemning the violence in Syria, however, it could not do so due to Russia and Lebanon being at odds. Russia argued that any statement from the UNSC would be "undue influence in the internal affairs of Syria."²⁸⁸

²⁸³ UNHRC 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (23 December 2011) UN Doc A/HRC/S-17/2/ Add.1.

²⁸⁴ Syria History (n.266).

²⁸⁵ Syrian Uprising (n.274).

²⁸⁶ UNSC Verbatim Record (2011) UN Doc S/PV.6524.

²⁸⁷ Syrian history (n.266)

²⁸⁸ Neil MacFarquhar, 'Push in UN for Criticism of Syria is rejected' (NYT 28 April 2011) <http://www.nytimes.com/2011/04/28/world/middleeast/28nations.html?_r=0>accessed on 18 June 2020.

The UNHRC in Resolution 16/1²⁸⁹ condemned the acts against the civilian populations and expressed grave concerns regarding the human rights situations in Syria. The resolution further called upon for the UNHCHR to dispatch a fact-finding mission to investigate and inquire into the alleged atrocities against civilians. This was adopted by a majority of votes but was opposed by China, Russia, Pakistan and Malaysia while Saudi Arabia and Nigeria abstained from voting.²⁹⁰

Following the HRC Resolution 16/1, the UNHCHR set-up a fact-finding mission in order to investigate the alleged violations and to establish the facts of the perpetrated crimes. The fact-finding mission started its work in May 2011, despite a number of requests from the High Commissioner as well as the HRC, the Syrian government didn't cooperate with the mission.²⁹¹

There were multiple efforts on part of the international community to condemn the atrocities by the Syrian government but they failed due to resistance from many nations.²⁹² Though the resolutions recognised the acts of the Syrian government as crimes against humanity, it didn't mention the R2P principle anywhere for preventing these atrocities. The states who resisted did it on the grounds that what was happening in Syria was an internal matter and that the UNSC should not interfere with the internal affairs of Syria.²⁹³

As the crisis started spilling over into Turkey in form of a refugee movement, with more than 2.5 million refugees taking refuge in Turkey and other neighbouring countries. This created a serious challenge for Syria's neighbours. With the increase in violence the UNSG's special advisor on the prevention of Genocide, in a statement urged the

²⁸⁹ UNHRC Resolution S-16/1 (2011) UN Doc A/HRC/RES/S-16/1.

²⁹⁰ Ibid.

²⁹¹ OHCHR, 'Fact finding Mission for Syria, Call for Submissions' (UN 24 May 2011) <<http://www.ohchr.org/EN/Countries/MENARegion/Pages/SyriaFactFindingMission.aspx>> accessed on 18 June 2020.

²⁹² Dan Bilefsky, 'New Move to Condemn Syria in the UN' (NYT 9 June 2011) <https://www.nytimes.com/2011/06/09/world/middleeast/09nations.html?_r=0> accessed on 18 June 2020.

²⁹³ ICRtoP, 'The Crisis in Syria' (ICRtoP) <<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria>> accessed on 18 June 2020.

Syrian government to fulfil its R2P and emphasized that the atrocities amounted to crimes against humanity.²⁹⁴

The UNSC in a presidential statement expressed its concern about the human rights situation and called for unhindered access for humanitarian workers.²⁹⁵ The statement reaffirmed the importance of political approach to the crisis rather than a military approach. It stressed on the need to respect Syria's territorial integrity and political independence.²⁹⁶

The LAS first responded to the crisis in Syria in August of 2011. It called upon the Syrian government to end the violence immediately²⁹⁷ making no reference to R2P. With no end to the violence in Syria, the UNHRC established the IIC on Syria vide HRC Resolution 17/2.²⁹⁸ The Mission was provided with a wide mandate to investigate the breaches to IHRL in Syria, identify those responsible and to classify those breaches which amount to crimes against humanity. This resolution of the HRC was adopted with 33 in favour with 9 abstentions and 4 against. The votes clarified the continuous opposition towards any diplomatic measures against Syria.

The LAS, proposed a 13-point plan directing Bashar Al-Assad to hold elections within 3 years. This was followed up by a meeting of the President of LAS with Assad to discuss the proposal; and an agreement was reached.²⁹⁹

The UNSC was presented with a proposal for an embargo and to establish a new sanctions committee.³⁰⁰ The draft resolution was toned down due to opposition and resistance it faced during the negotiations. Despite multiple revisions and changes it

²⁹⁴ UNSG, 'Francis Deng and Edward Luck, Special Advisors to the United Nations Secretary General on the Prevention of Genocide, Francis Deng and on the Responsibility to protect, Edward Luck on the Situation in Syria' (21 July 2011) UN Press release.

²⁹⁵ UNSC Verbatim 6598 (2011) UN Doc S/PV.6598.

²⁹⁶ UNSC, 'In Presidential Statement, Security Council gives full support to the efforts of Joint Special Envoy of the United Nations, Arab League to end violence in Syria' (21 March 2011) UN Doc UN Press Release SC/10583.

²⁹⁷ Isabel Coles and Yasmine Saleh, 'Arab League expresses growing concern about Syria' (Reuters 7 August 2011) <<https://www.reuters.com/article/us-syria-league/arab-league-expresses-growing-concern-about-syria-idUSTRE7761H720110807>>accessed on 20 June 2020.

²⁹⁸ UNHRC Resolution S-17/2 (2011) UN Doc A/HRC/S-17/2 [25].

²⁹⁹ Haaretz, 'Arab League Chief urges stability in Syria during Assad Meet' (haaretz.com 10 September 2011) <<https://www.haaretz.com/1.5169185>>accessed on 20 June 2020.

³⁰⁰ UNSC Res 612 (2011) UN Doc S/2011/612.

could not be adopted due to Russia and China's veto³⁰¹, while many countries including Brazil, India abstained. Russia deemed the threat of sanctions and ultimatums as unacceptable.³⁰² It argued that the Libyan experience could not be held separate from this and the SC actions in Libya should not be a precedent for future actions for the implementation of R2P. This was asserted by China who reaffirmed the need to respecting Syrian sovereignty and further stated that the threat of sanctions would not help Syria.³⁰³ India towed a similar line. It highlighted that all states are accountable to their people to protect their rights and they need to address the legitimate concerns of the people and respond to their grievances through a slew of economic, political and other measures.³⁰⁴It asked the UNSC to give the Syrian government ample time to implement the reforms.³⁰⁵

Those in support to the UNSC resolutions, expressed their regrets at the UNSC's failure to prevent atrocities and human rights violations. The USA stated that "the Security Council has squandered an opportunity to shoulder its responsibilities to the Syrian people and the crisis in Syria will stay before the Security Council and the United States will not rest till the Security council rises to meet its responsibilities."³⁰⁶

The LAS adopted a resolution calling upon the parties in conflict to immediately cease all of violence. It set up an Arab ministerial Committee under Sheikh Jabr Al-Thani, the PM and the foreign affairs minister of Qatar as a liaison with Syria. Following this the committee met with Assad and conveyed the decisions of the LAS.³⁰⁷

Syria, accepted the LAS action plan and signed the plan on November 2, 2011.³⁰⁸ This plan asked the parties to end violence and take a slew of measures including releasing political prisoners and to further withdraw all military from its cities. However, the

³⁰¹ UNSC, 'Security Council fails to adopt draft Resolution condemning Syria's crackdown on Anti-government protesters owing to Veto by Russian Federation; China' (4 October 2011) UN Press release SC/10403.

³⁰² UNSC Verbatim (2011) UN Doc S/PV.6627.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶Ibid.

³⁰⁷ League of Arab States Res 7453 (2011.)

³⁰⁸ Ian Black 'Syrian acceptance of Arab League ceasefire plan met with Skepticism' (Guardian 2 November 2011) <<https://www.theguardian.com/world/2011/nov/02/syrian-acceptance-of-arab-league-ceasefire-plan>>accessed on 20 June 2020.

Syrian government didn't comply with the proposals and did not engage in dialogue with the opposition forces. This response by the Assad regime triggered the need for an international response.

The violation of the agreement led to a slew of measures against Syria. The LAS suspended the membership of Syria.³⁰⁹ This was approved with 18 votes in favour. Following this an observer mission was sent into Libya vide the LAS Resolution 7439.³¹⁰ Even after all this the LAS plan of action made no mention to the R2P.

The UNGA SOCHUM, adopted a resolution and called upon the Syrian government to end all abuses against its people.³¹¹ The resolution found support in 122 members while 41 abstained and 13 voted against the resolution. The resolution further urged the Assad regime to implement the LAS November peace plan.³¹²

The LAS adopted another resolution 7441, requesting the UNSG to deploy an observer mission to Syria.³¹³ It further proposed economic sanctions against Syria vide the same resolution.³¹⁴ It further proposed travel bans on senior officials of the Assad regime and froze assets of the Syrian government including ending all commercial exchanges with the government.

The Independent Inquiry Commission established vide UNHRC Resolution 17/1 submitted its report to the UNHRC.³¹⁵ It held the Syrian military and security forces accountable for the human rights violation at the protests in March. It further reported that multiple accounts of crimes against humanity were committed across Syria. It emphasized the failure of the Syrian government to protect its populations. The report

³⁰⁹ Neil MA Farquhar, 'Arab League votes to suspend Syria over crackdown' (New York Times 12 November 2011) <<https://www.nytimes.com/2011/11/13/world/middleeast/arab-league-votes-to-suspend-syria-over-its-crackdown-on-protesters.html?pagewanted=all>> accessed on 20 June 2020.

³¹⁰ League of Arab States Resolution 7439 (2011).

³¹¹ UNGA Resolution 4033 (22 November 2011) UN Doc GA/SHC/4033.

³¹² UNGA, 'Third Committee approves Resolution condemning Human Rights Violations in Syria by vote of 122 in favour to 13 against and 41 abstentions' UN Press Release GA/SHC/4033.

³¹³ League of Arab Nations Resolution 7441 (2011).

³¹⁴ Ibid.

³¹⁵ UNHRC, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (23 November 2011) UN Doc A/HRC/S-17/2 Add.1.

reiterating the previous resolutions called upon the government to halt all atrocities and bring the perpetrators to justice.³¹⁶

The UNHRC, after receiving the report, appointed a Special Rapporteur on Syria vide UNHRC Resolution S-18/1.³¹⁷ This passed the council with 37 in favour, six abstains and 4 against.

The UNSC discussed the situation in Syria in December. The High Commissioner of Human Rights addressing the UNSC stated that an estimate of 5000 people was killed since March 2011. The High Commissioner highlighted the failure of the Syrian government as well as the international community to take effective measures to protect lives in Syria. She further informed the UNSC about the ongoing refugee crisis along the Turkish-Syrian border.³¹⁸

Following this the UNGA adopted resolution 66/176 calling upon Syria to immediately stop violations and fulfil its obligations under law.³¹⁹

Meanwhile, the Syrian government started to buckle under the pressure and signed a peace deal with the LAS³²⁰ agreeing for an observer mission to be deployed for a month.³²¹ It initiated a round of talks with the rebels related to the release of prisoners and more importantly for the cessation of violence. This deal was welcomed by China and Russia.

This was, however, criticized by the Syrian opposition leaders who called for foreign military intervention. ³²²the regarded the “mission as a farce”³²³ and pointed towards

³¹⁶Ibid.

³¹⁷UNHRC Resolution S-18/1 (2011) UN Doc A/HRC/S-18/1.

³¹⁸Security Council, ‘Syria: Pillay calls for urgent action to halt violence, High Commissioner of Human Rights’ (Security Council Report 12 December 2011)
<<https://www.securitycouncilreport.org/chronology/syria.php?page=all&print=true>>accessed on 20 June 2020.

³¹⁹UNGA Resolution 66/176 (19 December 2011) UN Doc A/Res/66/176.

³²⁰Erik Solomon, ‘Syria to Let in Arab Monitors as Deaths Mount’ (Reuters 19 December 2011)
<<https://www.reuters.com/article/us-syria-arabs/syria-to-let-in-arab-monitors-as-deaths-mount-idUSTRE7BIOH520111219>>accessed on 20 June 2020.

³²¹Hamza Hendawi, ‘Syrian Opposition criticizes Arab League Observers’ (Associated Press 29 December 2011)
<<http://www.deseretnews.com/article/700210927/Syrian-opposition-criticizes-Arab-League-observer.html>>accessed on 20 June 2020.

³²² Ibid.

³²³Ibid.

the continuous increase in violence against protesters despite the presence of the mission. USA reacted sceptically towards the agreement and Syria's compliance.

The mission was led by Mustafa al-Dabi, who himself was accused of war crimes in Darfur led to the questioning of the reliability of the mission. Despite all this the observers established contacts with both sides. Dabi called situation in Homs as normal,³²⁴ though the missions report recommended to extend the agreement this was opposed by the Saudi delegation as a result rest of the countries withdrew their observers.³²⁵

With the failure of the peace treaty the situation was referred to the UN and which presented a peace plan to Assad asking him to transfer power to his deputy. This plan was supported by almost all of the Arab countries but the plan did not gain any traction in the UNSC.³²⁶

Despite the negotiations, China and Russia continued to oppose any action that had even the slightest hint for regime change and other coercive measures or any form of interference. This was despite the fact that the crisis now had spelt over to neighbouring countries bordering Syria.

The UNSC resolution S/2012/77 failed once again owing to the vetoes of Russia and China.³²⁷ In this case, however, it was supported by rest of the UNSC. Russia argued that the resolution would have been "undermined by some members of the international community."³²⁸ China was concerned that the resolution would complicate the situation in Syria.³²⁹

³²⁴Al Arabia, 'Head of Syrian Monitors Reports Homs is calm but calls for further Inquiry' (Al Arabia 22 January 2012) <<https://english.alarabiya.net/articles/2011/12/28/184952.html>>accessed on 20 June 2020.

³²⁵Al Arabia, 'Saudi Arabia withdraws its monitor from Syria: Arab League calls for power transfer (Al Arabia 22 January 2012) <<https://www.alarabiya.net/articles/2012/01/22/189842.html>>accessed on 20 June 2020.

³²⁶UNSC Verbatim 6710 (2012) UN Doc S/PV.6710.

³²⁷UNSC Resolution 2012/77 (2012) UN Doc S/2012/77.

³²⁸UNSC 'Security Council members diverge over path towards implementation of Draft Resolution backing Arab League Proposal on resolving crisis in Syria' (31 January 2012) UN. Press. Release SC/10534

³²⁹UNSC 'Security Council fails to Adopt draft Resolution on Syria as Russian Presidents, China veto text supporting Arab League's proposed peace plan' (4 February 2012) UN Press Release

Following the failure of the UNSC to act, the Kingdom of Saudi Arabia sponsored a resolution at the UNGA condemning the violence.³³⁰ This was adopted with an overwhelming majority of 137 nations with 12 against and 17 abstentions. Following the adoption of this resolution the UNSG appointed Kofi Annan, former UNSG as the special representative to Syria.³³¹

A second report was submitted to the UNHRC by the Inquiry Commission established vide UNHRC resolution S-17/1.³³² It observed that the forces of the Syrian government had committed widespread systematic human rights violence. The commission also reported that though atrocities were carried out by the rebels as well those were incomparable in scale to the SAF and other pro government groups.³³³

The HRC in the same session adopted Resolution 19/1 condemning the “widespread and systematic and gross violations of human rights committed by the Syrian authorities”. In the opening remarks the President of the UNGA highlighted the image provided by the IIIC. He stated that “the government had failed in its duty to protect people.” The HCHR called for an “humanitarian ceasefire” to end fighting and cooperate with the international mechanisms including Kofi Annan. The HCHR also requested the Syrian government to establish an OCHCR in Syria.³³⁴

The UNSC in March 21, 2012 called upon the Syrian government to cease the violence.³³⁵ The UNSC in April unanimously adopted Resolution 2042 emphasising on the responsibilities of the government of Syria to protect its populations authorised the deployment of 30 unarmed military observers as liaisons and further mandated to report on the implementation of the cessation of armed violence by both sides in the conflict.

³³⁰UNGA Resolution 66/253 (21 February 2012) UN doc A/Res/55/253.

³³¹UNSG, ‘Kofi Annan appointed Joint special envoy of United Nations League of Arab States on Syrian Crisis’, (21 February 2012) UN Doc A/Res/66/254

³³²UNHRC Resolution 19/69 ‘Report of the Commission of Inquiry on the Syrian Arab Republic’ UN Doc A/HRC/19/69.

³³³ Ibid.

³³⁴UNHRC Resolution S-19/1 (2012) UN Doc A/HRC/Res/19/1.

³³⁵UNSC ‘In Presidential Statement Security Council gives full support to efforts of Joint Special envoy of United Nations, Arab League to end violence in Syria’, (21 March 2012) UN Press Release SC/10583.

The resolution also requested a supervision mechanism or the cessation of armed violence.³³⁶ Though the resolution was not supported by the Syrian government it supported the Annan Mission to restore stability in Syria.³³⁷

Subsequently the UNSC adopted Resolution 2043³³⁸, setting up a UNSMIS to monitor the implementation of the Special Envoy's plan. But in June 2012, following a massacre in El-Houleh the UNHRC on request on request of the EU and some other countries convened a special session. In the session it condemned the mass killings in EL Houleh.³³⁹ The member states asked that the Syrian government cooperate with the Annan Mission and the Inquiry Commission. They demanded that the UNSC must refer the situation to the ICC.

Following the massacre, the Annan Mission briefed the situation in Syria and by mid-June the UNSMIS had suspended its activities. Following this a resolution was sponsored in the UNSC. It authorised the UNSC to demand compliance of the Syrian government within 10 days of the adoption of the resolution. However, this was vetoed by China and Russia.³⁴⁰

With the continuous failures of the UNSC, the GA adopted a resolution in August deploring UNSC's inaction and called for a peaceful transition of power. Kofi Annan resigned as the mediator. He blamed the Syrian government's lack of cooperation towards reaching a peaceful resolution to the conflict and the escalation of military campaign of the Syria. He also pointed out the lack of unity in the UNSC.³⁴¹ Following Annan's resignation, Lakhdar Brahimi replaced Annan as the representative to Syria.³⁴²

³³⁶UNSC Resolution 2042 (2012) UN Doc S/Res/ 2042.

³³⁷ Ibid.

³³⁸UNSC Resolution 2043 (2012) UN Doc S/Res/ 2043.

³³⁹UNHRC, 'Letter dated 30 May 2012 from the permanent representatives of Denmark, Kuwait, Qatar, Saudi Arabia and Turkey, the Ambassador of the European Union to the United Nations Office in Geneva and the Ambassador of the United States of America to the Human Rights Council addressed to the President of the Human Rights Council' UN Doc A/HRC/S19/1

³⁴⁰UNSC, 'Security Council fails to adopt Draft Resolution on Syria that would have threatened sanctions, due to negative votes of China, Russia' (19 July 2012) UN Press Release SC/10714

³⁴¹UNSG, "Press Conference by Kofi Annan, Joint Special Envoy for Syria" (2 August 2012) UN Press Release.

³⁴²UNSG, 'Secretary General announces appointment of Lakhdar Brahimi as Joint Arab League-United Nations Special Representative for Syria' 17 August 2012 UN Press Release SG/SM/14471

He proposed the Eid al-Adha ceasefire, which could not be implemented due to the escalation of violence in Syria.

The UNHRC, further adopted Resolution 24/22 condemning the use of chemical weapons and termed it as “gross, systematic and widespread violations of human rights” by Syrian government.³⁴³ Multiple UN Organs held continuous meetings discussing Syria. On all its forums it faced resistance from Russia, China and some other countries.

With the possession of chemical weapons being proven against the Syrian government, Russia and the USA presented the disarmament plan to the UNSC.

Though the resolution did form a part towards resolving the chemical weapons issue, it paid no attention to the atrocities carried out by the Syrian regime. The resolution in fact drew the entire narrative from the protection to human rights perspective to the possession of chemical weapons as a threat to international security. UNSG Ban hailed the resolution and termed it as the “first hopeful news on Syria in a long time.”³⁴⁴ He further stated that “though this was an important step we must never forget that the catalogue of horrors in Syria continues with bombs and tanks, grenades and guns.”³⁴⁵ The UNSG stressed that the perpetrators of the chemical attack must be brought to justice.³⁴⁶

The UN And the OPCW established a joint mission to support, monitor and verify the destruction of the chemical weapons. Under its supervision, Syrian military personnel began destroying the stockpiles. However, the destruction could not be completed as plan due to the lack of cooperation from the Syrian government. By the end of January 2014, only 4% of the entire stockpile had been destroyed.

Despite efforts of the international community, the violence kept increasing with helicopter gunships being reported in rebel strongholds. By the end of February, the refugee crisis saw an influx of over hundreds of thousands of refugees from Syria. The efforts to end the civil war by the international community came to a standstill. The

³⁴³UNHRC Resolution 23/22 (2013) UN Doc A/HRC/24/22.

³⁴⁴UNSC, ‘Security Council requires Scheduled Destruction of Syria’s Chemical weapons, unanimously adopting resolution 2118’ (27 September 2013) UN Press Release SC/11135

³⁴⁵ Ibid.

³⁴⁶ Ibid.

USA government blamed Russia for the inaction against Syria. It called for multilateral action in Syria with its other allies, to respond to the crisis.

4.4.2 Responsibility to React.

The entire point behind the development of the norms of R2P was to shift the debate from humanitarian intervention towards R2P. From the facts and circumstances, it was clear that not only the Assad regime had failed in its primary responsibility to prevent and protect, but it was the perpetrator behind the atrocities against its citizens.

With the Chinese and Russians maintaining a hard-line against any form of military intervention or solutions which would involve military action of any kind. This is made clear from the statement of the Chinese foreign ministry who stated that

“Syria is a country of major influence in the Middle East Region. China believes that when it comes to properly handling the current Syrian situation, it is the correct direction and the major approach to resolve the internal differences through political dialogue and to maintain its national stability as well as the overall stability and security of the Middle east. The future of Syria should be independently decided by the Syrian people themselves free from external interference.”³⁴⁷

This was in contrast to the American policy, which considered Assad responsible for the atrocities in Syria and the USA and its allies believed that any resolution with or without coercive measures should lead to regime change.

The Chinese and the Russian policy were based on the experiences in Libya and Cote d’Ivoire where they claimed that the mandate of the peacekeeping mission had been exceeded. The ousting of Gaddafi and Gbagbo by the use of force under the R2P norms was the main reason behind these countries constantly exercising their veto.

China continually reaffirmed its support against resolutions. It argued that the sovereignty, independence and territorial integrity must be respected. It didn’t support any form of armed intervention or regime change nor believed in the use of

³⁴⁷China, ‘Foreign Ministry spokesperson Jiang Yu’s regular Press Conference’ 24 May 2011 Chinese Ministry of foreign affairs Press Release.

sanctions.³⁴⁸It insisted multiple times that the principles of the UN Charter must be adhered to under all circumstances.

Russia, on the other hand, since the beginning of the conflict was reluctant to condemn the actions in Syria. It had a natural partner in Syria and it had supplied weapons to the Assad regime. It had regularly maintained direct contact with the Assad regime. Russia, like China, did not want a repeat of the Libyan regime change. The foreign minister stated:

“it is not in the interests of anyone to send messages to the opposition in Syria or elsewhere that if you reject all reasonable offers, we will come and help you as we did in Libya. It’s a very dangerous position.”³⁴⁹

Due to the vetoes by China and Russia, UNSC could not exercise its responsibility to react to protect the civilian populations. The inaction on part of the UNSC was criticized by various countries, organisations etc.

In direct contrast stood the rest of the world. The USA and its allies favoured the use of force in Syria. They threatened to use force following after the Syrian Chemical weapons attack. However, these nations didn’t justify the action under R2P but against the use of chemical weapons.

The UK threatened the Syrian regime with the threat of force for stopping the production of chemical weapons as well as to stop the atrocities against civilians. The British government laid down the legal position justifying military action in a government note. It stated “Under the doctrine of humanitarian intervention it would be lawful for the United Kingdom to use force against another state without a Security Council resolution authorizing the use of force, if the Security Council cannot agree to authorize the use of force and if the conditions are not met.” The Document set out three conditions

- a) the evidence for extreme humanitarian distress has to be convincing and accepted by the international community

³⁴⁸ Ibid.

³⁴⁹³⁴⁹H. Meyer, B. Cook and I Arkhipoz, ‘Russia warns US, NATO against Military aid to Syria protests after Libya’ (Bloomberg 3 June 2011) <<http://www.bloomberg.com/news/2011-06-01/russia-warns-u-s-nato-against-military-aid-to-syria-protests-after-libya.html>>accessed on 21 June 2020.

- b) there must be no other alternative to the use of force
- c) the proportional use of force.³⁵⁰

Answering questions posed by the House of Commons Foreign Affairs Committee on the question of legality of humanitarian intervention the British foreign office submitted a document which highlighted three main propositions: -

- a) “R2P and the WSOD involve political commitments aimed at UNSC taking actions.”
- b) “Neither the report nor the WSOD document addressed the question of unilateral state actions in the face of overwhelming humanitarian catastrophe.”
- c) “Unilateral humanitarian intervention is lawful when UNSC fails to act.”³⁵¹

The UK, since the very development of the norms of R2P has argued that forced humanitarian interventions and R2P go hand in hand. It argued that when the UNSC fails to take actions, then the position under international law permits the use of force.

Harold Koh reiterating the arguments out forth by Sir Daniel Bethlehem stated “in the case of the law of humanitarian intervention, an analysis that simply relies on the prohibition of the threat or use of force in Article 2(4) of the UN Charter, and its related principles on non-intervention and sovereignty are overly simplistic.”³⁵² He further justifies that humanitarian intervention in Syria is legal without UNSC authorisation because of the human rights situation in the country.³⁵³ Criticizing the vetoes of Russia and China as an absolute bar he states that the “per se illegal” rule is bad in law. According to him nations can lawfully threaten or even use force for genuine humanitarian purposes sans UNSC authorisation.³⁵⁴

³⁵⁰BFC, ‘Legal Case for UK Action against Syria’ (British forces News 29 August 2013) <<https://www.bfbs.com/news/legal-case-uk-action-against-syria-64412.html>>accessed on 20 June 2020.

³⁵¹Government of the UK ‘Chemical Weapon Use by Syrian regime’ (Gov.UK 29 August 2013) <<https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>>accessed on 20 June 2020.

³⁵²Harold Hongju Koh, ‘Syria and he Law of Humanitarian intervention (Part II: International Law and the way forward)’ (2013) JS <<http://justsecurity.org/2013/10/02/koh-syria-part2/>>accessed on 20 June 2020.

³⁵³ Ibid.

³⁵⁴ Ibid.

Though under Article 2(4) of Charter, the UNSC has the responsibility to act where the acts are a threat to international peace and security, it is, however, not the exclusive responsibility of the UNSC. The Charter is silent as to who has the responsibility in case the UNSC fails to act, where urgent action is required to respond to a humanitarian crisis. The US and its allies kept the option to use force open after the Syrian chemical weapons attack, even without the authorisation of the UNSC.³⁵⁵

President Barack Obama addressing the UNGA explained the USA's legal position. He in his address stated

“We live in a world of imperfect choices. Different nations will not agree to the need for action in every instance, and the principle of sovereignty is at the centre of our international order. But sovereignty cannot be a shield for tyrants to commit wanton murder, or an excuse for the international community to turn a blind eye. While we need to be modest in our belief that we can remedy every evil, while we need to be mindful that the world is full of unintended consequences, should we really accept the notion that the world is powerless in the face of a Rwanda or Srebrenica? Of that's the world that people want to live in, they should say so and recon with the cold logic of mass graves. But I believe we can embrace a different future and if we don't want to choose between inaction and war, we must get better-all of us-at the policies to prevent the breakdown of basic order. Through respect for the responsibilities of nations and the rights of individuals. Through meaningful sanctions for those who break the rules. Through dogged diplomacy that resolves the root causes of conflict, not merely its aftermath. Through development assistance that brings hope to the marginalised. And yes sometimes-although this will not be enough-there are going to be moments where the international community will acknowledge that the multilateral use of military force may be required to prevent the very worst from occurring.”³⁵⁶

³⁵⁵Assaf Aboud ‘ US Ready to launch Syria strike says Chuck Hagel’ (BBC 27 August 2013) <<https://www.bbc.com/news/world-us-canada-23847839>>accessed on 20 June 2020.

³⁵⁶White House, “Barack Obama, President of the United States of America, address to the United Nations General Assembly” (White House, 24 September 2013) <<http://www.whitehouse.gov/the-press-office/2013/09/24/remarks-president-obama-address-united-nations-general-assembly>>accessed on 20 June 2020.

Since its beginning in 2011, the Syrian crisis has affected over 9 million people. It has displaced even more. The failure to resolve the crisis by the international community led to the birth of the Islamic State of Iraq and Syria who established a caliphate controlling almost half of Iraq and Syria and at one time were the richest terror group in the World. The ISIS attacked countries across the world killing hundreds of people. The atrocities against the civilians and especially women and children. The human rights violations of the Kurds.

This situation in Syria even complicated the situation even more. The USA started aerial bombings on ISIS strong holds while the Syrian regime invited Russia to intervene in its war against terrorism. Few of the rebel groups broke away from the FSA and joined the ISIS.

The regime used chemical weapons again in 2018 in the Douma region. This prompted a military response from the USA and its allies. The HRW provided a report stating that almost 85 documented chemical weapons attack had occurred.³⁵⁷ The Syrian regime as well as the ISIS both had used Chemical weapons on civilian populations.

The international community failed to intervene and the crisis escalated. The ISIS was finally defeated in Syria and Iraq in 2019. But the rebuilding process still has not started. With Bashar Al- Assad still the President of the regime the attacks against the civilians continue. With the USA pulling out its troops from Kurdistan region of Syria, Syria was attacked by Turkey. With the possibility of the situation turning into a genocide of the Kurds in the hands of the Turkish.

4.4.3 Responsibility to Rebuild

It has been 10 years since the conflict began and the international community has not come closer to resolve the crisis. Hence, even after 10 years it is still impossible to predict about the rebuilding efforts in Syria. This crisis destroyed the economic, social and human capital of Syria and the losses had a huge impact on the performance in Syria.

³⁵⁷AFP, 'Syria warned by Chemical warfare watchdog over Sarin Attacks' (Defense Post, 9 July 2017) <<https://www.thedefensepost.com/2020/07/09/syria-condemned-sarin-attacks/>>accessed on 30 June 2020.

With an estimated loss of 227 Billion USD up until 2017³⁵⁸, and the crisis in addition having an impact on the lives of over 9 million people since 2011 caused widespread displacement of people. With an estimate of over 6.5 million people displaced and more than 3 million still stranded in hard to reach areas, the hope for aid is minimal.

The UN Peacebuilding Commission even after 11 years to the start of the crisis still has not discussed any post conflict rebuilding strategies. UN backed efforts may face a number of obstacles including the lack of support from traditional donors such as the USA, the UK and the European Union.

Now recognised as one of the worst tragedies of the century. The failure of the UN to implement measures to protect civilian populations against atrocities and its failure to prevent the use of chemical weapons. These raise the question what are the fundamental lacunas behind the norms of R2P and what are the better ways they can be implemented when the UNSC fails to act.

³⁵⁸ET, 'War has cost \$226 billion to Syrian Economy: World Bank' (Economic times 10 July 2017) <<https://economictimes.indiatimes.com/news/defence/war-has-cost-226-billion-to-syria-economy-world-bank/articleshow/59532701.cms>>accessed on 20 June 2020

CHAPTER 4: THE CONTROVERSIES SURROUNDING R2P

The Doctrine of R2P has advocates in favour and against and those against, routinely advise about the potential abuse of R2P. apart from the 3 kinds of intervention that can be considered as misuse of R2P, this Chapter shall also refer to the use of R2P by the International Community in Libya, Syria and Iraq.

Among the many controversies that surround the norms of R2P

5.1 The Libyan Intervention

A peaceful demonstration that began in the city of Benghazi in 2011, demanding the former President Colonel Muhammad Ali Gaddafi to step down, in a matter of 9 months had blown into a civil war, which followed a NATO led military intervention which ultimately led to the death of Gaddafi and a change of regime in Libya.

This revolution was the culmination of a various factors. The ongoing wave of revolutions in neighbouring countries like Libya, Tunisia, Yemen among few others encouraged the Libyan population to rise against Gaddafi. The discriminatory economic policies of Gaddafi against the Eastern part of the country and the low levels of economic progress all led to the revolution against Gaddafi in Libya.

Unlike the other revolutions in the region, the Libyan revolution was quick. In a period of 9 months the international attention, the reaction and the quick consolidation of the Libyan populace saved over a million of lives in Libya. The invocation of R2P in a timely manner helped prevented a lot of atrocities. However, even after cessation of hostilities the questions remain as to whether the international community acted responsibly or not and whether R2P leads to regime change.

There were multiple stakeholders involved in the quick action that was taken against Libya. The various regional bodies such as the AU and the LAS along with France, UK and the USA all looked at their strategic interests before authorising the use of force. It is evident from the French attack on Libyan tank column hours before the beginning of the NATO campaign. Before authorising any form of intervention, the first step is to allow for diplomatic initiatives to resolve the issue, the AU called for a diplomatic solution. Resolution 1973(2011) called for dialogue to find a solution. It stated

“Stresses the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and notes the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution.”³⁵⁹

The call for force by states was to forward their interests. Some countries wanted to correct the failures of Tunisia.³⁶⁰ Having expected migration movements during the crisis, it was also served an interest to reduce the flow to the Europe. UK’s intervention was due to political pressure faced by the then Cameron led government for reduction of military budgets and the intervention showed that the British Military was not affected by the budget cuts.³⁶¹

Many argue that even though this was viewed as an ideal situation for R2, a case can be made against. There are two arguments why it was an abuse of the principle of R2P. First an argument can be made that ample time was not given for a peaceful resolution and secondly it ended with the ousting of the government which is beyond the mandate of the UNSC.

There are multiple stages to be taken before the recourse to R2P can be taken, the first is the peaceful settlement, failing which embargoes and sanctions and as a last measure, the use of force is a last resort. The international action in Libya skipped the first two stage. Though, Gaddafi was moving fast and didn’t allow time for a peaceful settlement, there are some UNSC documents which suggest that the African Union would have been successful to broker a deal with Col. Gaddafi.

This leads us to whether the UN use double standards and was R2P misused in this case. The UN Secretary general explained in his report that how every R2P situation is distinct and how every distinct situation should be addressed by the United Nations.³⁶²

³⁵⁹UNSC 1973 (2011) UN Doc S/Res/1973.

³⁶⁰Royal United Service Institute for Defence and Security Studies ‘Short War, Long Shadow Whitehall Report’, UK, 2012 1, 12.

³⁶¹Ibid. 7.

³⁶²UNSG ‘Report of The Un Secretary General, Responsibility to Protect: Timely and Decisive Response’, (2012) UN Doc, A/66/874 2012.

Paragraph 2 of resolution 1973(2011) makes it evident that the perspectives of the UNSC and the LAS were different. The Arab League sought a political solution while the UNSC sought a coercive option. This perspective of the LAS though was considered and the UNSC enforced a no-fly zone.

The Council's resolution called upon the UNSC to enforce a no-fly zone to protect civilian areas from pro government forces.

“To call on the Security Council to bear its responsibilities towards the deteriorating situation in Libya, and to take the necessary measures to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighbouring States.”³⁶³

Bellamy argues that the UN's reaction toward Libya, the acceptance of the R2P norm by the international community. He credits resolution 1973 by stating that it was the first authorised use of force for protecting human lives.³⁶⁴

The UNSC resolution 678 which had authorised members to take all necessary means to “bring Iraq into compliance with the previous SC resolutions if it did not do so by January 15th, 1961”³⁶⁵ lacked the mandate to bring in regime change which is similar to the UNSC resolution 1973(2011). However, the circumstances surrounding the death of Gadaffi, were different from the Iraq- Kuwait war. The entire Libyan intervention happened against the demand for Gadaffi to step down. However, any action for regime change would have meant the coalition losing support.

Weiss describes that the diplomatic efforts to gather support for an intervention was because that they could gather international consensus to stop atrocities against civilian populations and the regime change was just collateral benefit.³⁶⁶

Resolution 1973 credits the support of the LAS and the AU. However, the support to the LAS is more than to the AU. The AU having been closer to the Libyan regime

³⁶³League of Arab States Resolution 7360(12 March, 2011).

³⁶⁴Alex Bellamy, “Libya And the Responsibility to Protect: The Exception and The Norm” (2011) 25 EIA 2, 2.

³⁶⁵UNSC Resolution 678 (1990), UN Doc S/Res/678.

³⁶⁶Thomas G Weiss, ‘Rtop Alive and Well After Libya’ (2011) 25 EIA 2, P6

wanted to negotiate and resolve the situation peacefully, however, the LAS supported the rebels and their participation in the air campaign without any offer for support for any political solution to the Libyan situation.

The United Nation's wilful negligence for a peaceful settlement can be observed from the reading of the letters to the UNSC and the UNSG from the AU, NATO the Libyan transnational Council. The gap between transferring the first letter from the AU and the second letter from the TNC where the TNC had stated that it welcomed the establishment of a UN support mission in Libya. The TNC was then recognised as an interim representative of Libya.

The NATO led bombings which began after a speech of Gaddafi threatening to go door to door to kill the rebels intensified the crisis. The African Union viewed it as a fast and unstoppable reaction from the NATO which didn't give time or space to negotiate a peace settlement with Gaddafi. Even during the campaign, the AU was still working towards working out a peace deal with the Libyan government.

The interplay of international relations with international law, was visible to the eyes. With the derogating relations of the members of the LAS and the good relations of the members of the AU with the Libyan Government. The relationship of the United States and the threat of mass migration to Europe motivated these nations to undertake military intervention in Libya.

Though considered successful and used as a tool to stop the egregious violations of human rights it seemed to have been misused by the P3 at the UNSC to serve certain interests which makes R2P less credible to the international community. The lack of support to the AU, makes it clear that the UN misused the norms and makes the double standards of the UNSC clear.

5.2 Syria and R2P

A month after the protests that began in Libya, it soon spread to Syria. The peaceful demonstrations that began demanding the release of political prisoners and demand for basic rights in the country. The brutal crackdown by the government against the unarmed protesters killing many and preventing the injured from being treated at hospitals and torture across detention centres. This was followed by the crackdown by

the government backed militia who used heavy arms to suppress civilian protesters. The President also authorised the use of artillery against civilian populations.

There have been mass atrocities against the civilian populations including the use of chemical weapons against them and other grave violations against its own citizens all of these allegations have been denied by the Assad Government. According to the government these atrocities are being done by some terror group against the Civilian populations. It further denied the UN access to populations and to areas affected in military operations.

9 years later, there has been no genuine action in Syria, A US led bombing campaign. An intervention by invitation by Russia, the Turkish invasion in Kurdistan, the civil war in Syria since has become an internationalised armed conflict. However, there were multiple efforts for a legitimate UNSC backed R2P in Syria in light of the gross atrocities against the civilian populations.

The United States backed Free Syrian Army took up arms against the Syrian government. The FSA is a well organised group comprising of Syrian Military officers who defected from the Syrian Army. Other groups aligned themselves with the Al Qaida and the ISIS which ended up becoming the Islamic State and other armed groups. The FSA was, however, formed with intention to form a “democratically elected” government created by the participation of Syrians in free elections to replace the dictatorship.

Syria made the perfect case for a R2P. it is important to note that the crisis in Syria was very much different from that in Libya and another crisis in the Arab world. the crisis was complicated by Syria’s close proximity with Syria and its relations with the Russian federation made it difficult for the UNSC to take any action.

The arguments were all in favour of an R2P in Syria. The government had failed to protect its citizens and there was enough evidence against the regime that it was perpetrating the acts against its civilians from the very beginning. The crisis in its 3rd year had already escalated to alarming numbers yet the regime had kept declining humanitarian assistance to those victims.

One of the criteria for R2P is “Just cause”. The large-scale deaths of civilians and the unwillingness of the government to protect its populations from atrocities all leads to

the conclusion that states should undertake action according to the world summit document 2005. In this above case all the arguments were made in favour of a R2P however the response of the states shows the double standards of the UN.

Bellamy writes that the crisis in Syria escalated due to the failure of the government to protect its own people. He accused the Syrian government as the main perpetrator of the violations.³⁶⁷ Similarly Ramesh Thakur notes failure of the UN to deliver and the uselessness of the UNSG reports to stop the crisis in Syria.³⁶⁸

The first LAS response to the crisis was in form of a criticism from the Secretary General of the League, who had previously criticized the Syrian government for its crackdown against the protesters. In comparison to its response to Libya, its response might be considered as inadequate and it was. The office of the LASSG against criticized the growing violence against its civilian populations.

Foreign minister of the LAS urged the council to carry out a mission to spread the Arab initiative to resolve the crisis in Syria. It further called for an immediate halt for military campaigns against the civilians and to execute political reforms and called for immediate withdrawal of the armed forces. A follow up meeting in September 2011 in Cairo, the then foreign minister declared

“We are keen to protect the unity of Syria, prevent foreign interference, stop the bloodshed and violent acts in addition to the army withdrawal from all the Syrian cities soon. I wish from the bottom of my heart a dialogue will be established to achieve the ambitions of the Syrian people”³⁶⁹

The plan was accepted by the Syrian government. The plan called for a military withdrawal and ceasefire along with the release of prisoners. However, Syria didn't

³⁶⁷Alex J. Bellamy, 'Global Politics and The Responsibility to Protect: From Words to Deeds', LONDON (first published 2010 Routledge),2.

³⁶⁸Ramesh Thakur, 'The Responsibility to Protect Norms, Laws and The Use of Force in International Politics' (first published 2010, Routledge) 77.

³⁶⁹Marty Harris, 'International Responses to the Syrian uprising March 2011- June 2012' (Australian Government 13 July 2012)

<https://www.aph.gov.au/ABOUT_PARLIAMENT/PARLIAMENTARY_DEPARTMENTS/PARLIAMENTARY_LIBRARY/PUBS/BN/2012-2013/SYRIANUPRISING?PRINT=1#_FTN3>accessed on 31 June 2020.

meet the agreement set out by the LAS following which the LAS imposed multiple sanctions and suspended its LAS membership.

Fearing international attention, Syria allowed an Arab observer to monitor the crisis from different locations that were the hotspots for the human rights violations. A second peace plan was presented before all the concerned parties in the conflict which was then rejected by the Syrian Government. Following the failure of the peace plan the LAS moved to the UNSC with a resolution of a peace proposal which was vetoed by Russia and China. The response to the crisis by LAS is a clear indication of the approach taken by it as against that of Libya. The delay in response of the LAS, for moving to the UNSC shows the unwillingness of the LAS for international intervention.

The United States of America called for an emergency session of the UNHRC to discuss the humanitarian crisis in Syria. Though this makes it clear that the US was not in the same page with the others, but the question still arises why it didn't move to the UNSC which could have had a better outcome than the UNHRC.

The UNHRC resolution 16/1 while acknowledging the peaceful protests condemned the crack down by the government.³⁷⁰The resolution called for sending a fact finding mission "to investigate the alleged violations of IHRL and to establish the facts and circumstances of such violations and the crimes perpetrated."³⁷¹The fact finding body was denied access into Syria.

A second mission was also denied entry into Syria, however in its report of August 18, the report found systematic patterns of human rights violations which would amount to crimes against humanity. The report stated

"The Mission found a pattern of human rights violations that constitutes widespread or systematic attacks against the civilian population, which may amount to crimes against humanity as provided for in article 7 of the Rome Statute of the International Criminal Court.124."³⁷²

³⁷⁰UNHRC, 'Report Of The Human Right Council On Its Sixteenth Special Session' UN Doc A/HRC/S-16/2 .

³⁷¹ Ibid.

³⁷²UNHCHR, 'Report of The Fact-Finding Mission on Syria Pursuant to Human Rights Council Resolution S-16/1', UN Doc A/HRC/S-16/1.

The UNHRC further mandated the establishment of the IIC on Syrian to investigate the alleged violations human rights and to find the root causes. The report found that though both sides were responsible for the abuses in Syria, the abuse by the anti-government protesters were not in comparison to the scale of the abuse by the government.

The UNSC took almost 5 months to respond, as compared to the Libyan Crisis this was slow. The Syrian Crisis was addressed 6 times and out of these 6 only 3 resolutions were adopted. The others being vetoed by China and Russia. The repeated calls for all sides to exercise restraint fell to deaf ears. The peace brokered was very fragile.

The United Nations General Assembly appointed the former UNSG as the Joint Special Envoy for the UN and the LAS. He met the Syrian President Assad and laid out a six-pronged plan of action which was accepted by the Syrian government. The Ceasefire that took place was not respected by either side.

The massacre of Houla on May 25 forced other nations to take diplomatic actions. Led by Australia, Syrian Ambassadors were declared persona-non grata and expelled.

The resolution to impose Economic sanctions was again vetoed by Russia and China. Failing which Mr. Annan called for a UNAG on Syria which included the P5 members along with Turkey, Iraq, Kuwait and Qatar. The purpose behind this was to get the stakeholders to agree on the guidelines for the political transition in Syria. On June 30th a communiqué was received which called upon the parties to recommit to the six-point plan and allow the access to aid.

Following the failure of the talks, Mr. Annan along with the team of observers resigned and suspended the mission. Blaming both sides for the failure to compromise and also the P5 for taking partial or almost no interest in taking sides to find a peaceful solution to the crisis. Following the resignation, Mr. Lakhdar Brahimi was appointed as the joint envoy.

The Syrian regime faced against 1200 fighting groups who were not unified under a command and this made it difficult for the special envoy to get them to the negotiating table. Also, this was an advantage to the regime side, as this provided ample time to push its military into the lost territories. The rise of the ISIS provided an excuse to the regime, as an explanation it provided to the international community was that it was

fighting terror groups and not the political opposition as was pictured and this explanation was supported by Russia, China and Iran. This Crisis since has been recognised as one of the worst humanitarian crises in recent history.³⁷³

The first use of Chemical weapons happened in Damascus. All parties concerned with the crisis condemned the attack and the West was put to test as they had previously mentioned that the use of Chemical weapons in Syria would be the last straw. However, since allegedly chemical weapons have been used 14 times in the period between 2012 to 2014. The UNSC reaction to this was the launch of the IIC to investigate alleged use of chemical weapons.

A ceasefire of 5 hours was agreed between the parties so as to enable the investigations to be done. The report which was submitted in Sept. 2016 reports that chemical weapons were used. There was conclusive evidence that surface to surface missiles containing nerve agents were used in the attack on Damascus. Though the mission didn't mention who was responsible for the attack as it was not mandated to do so, however, the intelligence community of the P3 had assessed the available information that it was done by the Regime.

It was around this time, the world expected the P3 to intervene militarily even without authorisation of the UNSC, like it had done previously in Kosovo, however, lack of public support in the UK made other NATO allies like the US and France to reconsider their decision. US decided on a limited military intervention which would not include boots on the ground in Syria. This move by the US was countered by Russia who threatened to provide S-300 air defence systems to Syria to protect Syrians if US did anything without backing of the UNSC. However, Russia called for the disarmament of the Syrian regime of its chemical weapons capabilities was welcomed by all other parties. Syria soon ratified the Chemical weapons Convention³⁷⁴ to further the agreement between Russia and the USA.

The adoption of UNSC resolution 2118(2013), which included the threat of imposing measures under Chapter VII for non-compliance, Brahimi pushed for conditions of a second Geneva Conference with the stakeholders. The opposition and the government both participated in the conference. During the period of the conference the Syrian

³⁷³Report of The UNHCR 2014 Syria Regional Response Plan.

³⁷⁴ Chemical Weapons Convention

forces escalated the tactics and seized many villages and cities making the populations starve and denying aid to those living in inaccessible areas. As the UNSC remained undivided the on the path to be taken as the friction between the parties increased.

Following the failure of the Geneva II, the crisis and the instability in the region led to the formation of the Islamic State of Iraq and Syria, which quickly captured and controlled large tracts of territory in the two countries and declared itself as the Caliphate. Following which the United States starts bombing IS targets in Syria and Iraq. Major cities fell to the IS. Acknowledging the failures of the Syrian military, Assad invited Russia to intervene.

Though since the IS has been defeated in Syria and Iraq the question still remains whether the international community missed out a chance to prevent the mass atrocities, which till date are continuing in Syria. Syria made a wonderful case to further the norms of R2P. the staggering number of lives that have been lost since the beginning of protests, the influx of refugees, the states failed to keep its vow of “never again”. National interests took over humanitarian concerns.

There were efforts for peaceful negotiations and for escalation of conflict in Syria, however, there was no timely and decisive action that took place. The failure of the international community to invoke R2P with regard to the Syrian crisis is a failure of international law and the United Nations as well.

Analysing the two situations above one where one can argue that the R2P norms were misused to the other situation where there was a failure to invoke R2P. The quick and decisive reactions by the international community along with the pro-activeness of the LAS ensured that the conflict in Libya didn't slipover.

Backed by a UNSC resolutions, the NATO led air bombings against the government provided air support to the rebel groups. The criticism of the Libyan R2P intervention is that it led to a regime change which is not the purpose of R2P. Also, the responsibility to prevent which calls for diplomatic and political solutions should be tried before military intervention was not adhered to. The efforts of the African Union were wasted.

R2P in Libya though had its drawbacks and fair share of controversies, but it was a successful, in terms of meeting the mandate set up by the UNSC which was to prevent

the gross atrocities against humans that was being carried out by the Gaddafi regime. However, many R2P advocates see the invocation of R2P as a success.

Compared to Syria, which is a clear failure of application of the norms of R2P. Even after the failure of peaceful mechanisms being exhausted. The UNSC was crippled to take any actions due to Veto of China and Russia. The logjam in the UNSC due to international politics will see the Syrian crisis escalate even further after almost 9 years since the first protest began. The only positives that is drawn from this crisis is that the early warning systems of R2P function. This also proves that when the UNSC is in a deadlock over a situation, the UNGA should be empowered to take actions, a suggestion which was omitted in the WSOD 05.

The two cases mentioned here constitute to a degree, the abuse of R2P. though there was to an extent the proper use of the pillars of R2P. for example in the case of Libya the third pillar of quick and decisive action remains a success. In comparison to Libya, where the peaceful measures were not exhausted, in the response to the situation in Syria where the peaceful measures were exhausted and were insufficient there was no coercive action in Syria and showed the failure of the UN system in general. It showed that the international relations and international politics still had a higher standing than protection of lives of people in a humanitarian crisis.

The importance of the VETO has a negative impact in hindering the proper use of R2P. It is an expression where national interests outweigh the responsibilities of the international community towards protection of populations against the 4 crimes.

In conclusion R2P as a norm is still taking baby steps in its development. There are and there will be many lessons to be learnt from the application of R2P in the future. However, for now it still remains one of the best ways to practically promote the protection of human rights.

CHAPTER VI :CONCLUSION

Comparing Humanitarian intervention with R2P, it can very well be concluded that R2P is an offshoot of the principles of Humanitarian Intervention. Humanitarian interventions were undertaken by nations without the authorisation of the UNSC. Be it the Indian Intervention in East Pakistan or the NATO led intervention in Kosovo, the actions were taken by the members states without UNSC backing.

The criticism behind humanitarian intervention was that it was in violation of Article 2(4) of the UN Charter which prohibited the members states to use force against the territorial integrity and the political independence of member states. The only exceptions provided under international law was intervention with UNSC authorisation or for self-defence under Article 51 of the UN Charter.

The principle of Humanitarian intervention was based on the just cause principles. Before the codification of international law, just because principles allowed state parties to use force against other states. This was supported by many scholars of international law including Aquinas, St. Augustine, and Hugo Grotius. It was not until the treaty of Westphalia ideological considerations were taken out of the concept of war. The treaty established the concept of sovereign equality of states.

The end of the First World War saw the establishment of the League of Nations. The LON failed in its duties to prevent the outbreak of the Second World War. The UN was established in 1945. The UN Charter outlawed any form of use of force. However, the Indian intervention of East Pakistan was the first Humanitarian intervention since the coming of the United Nations. India justified its actions.

India put forth a threefold argument as its justification for intervening in East Pakistan. Firstly, it argued that the UN had failed in protecting the citizens in East Pakistan and hence, the responsibility fell on the Republic of India to protect citizens from atrocities being carried out by the Pakistani government in East Pakistan. Secondly it argued about self-determination. The strongest argument that India made to make its case was that the actions of the Pakistani government breached India's sovereignty with the refugee crisis it faced on its eastern borders.

The Humanitarian Intervention raised multiple questions about the legality legitimacy and justification behind India's actions. India's actions set a precedent. Subsequent interventions in East Timor and Kosovo. The interventions led to the establishment of the ICSISS which came out with a report on the R2P.

Before discussing the two documents regarding R2P, the norm saw its use in Libya and Cote D' Ivoire saw the implementation of R2P principles. The use of R2P as an instrument of regime change was one of the reasons why the principles weren't used in Syria in the first place. The difference in the reaction of the international community to the violence in these two countries and Syria are that, they didn't have a P5 ally to block out any resolution against them like Syria. Russia and China vetoed almost all resolutions which talked about any form of coercive action against Syria.

Resulting from the gap arising from the WSOD document, R2P has been used as a tool to forward national interests by the permanent 5 in the UNSC. In hindsight as we study the case studies in Libya, the Ivory Coast, Syria and Darfur it is clear as day that the P5

have avoided using the norms of R2P against countries with which they have their interests. This also includes regional organisations whose reaction times are comparatively quicker against states with whom their interests are not aligned. Hence in ways the norms of R2P has been mis utilised to promote national interests as against the greater cause of protecting human lives.

The ICSISS report expanded the concept of sovereignty. It re-characterized this concept moving from a control-based approach towards a responsibility approach in external as well as internal duties. The report set the standards for conduct of states on human rights in the Post Second World War Stage. In the concept of “sovereignty as responsibility” it included the meeting of international legal obligations under the International Human Rights Law system not limited to the UDHR, the ICCPR, the ICESR, the Genocide Convention, the Geneva Conventions and their additional protocols, the Rome Statute. Secondly it included the concept of Human Security as an integral part of sovereignty as responsibility. Thirdly it called for a greater role of the UNSC and other regional organisations. The debate surrounding this was not about right to intervene but the responsibility to protect. The report gave the primary responsibility of protection to the State to which the people belong. However, on failure of the state to protect its populations from suffering serious harm as a result of internal war, insurgency, repression or state failure and the state is either the perpetrator or fails to stop it then the principle of non-intervention yields to the international responsibility to protect.

The report further established a set of precautionary principles for military intervention to be used as a last resort, within proportional means, must have reasonable prospects and the authorised by the right authority. It called upon the permanent members of the UNSC to not use the veto in matters where their state interests are not involved. The report further stated that if the UNSC fails to act within a reasonable time, the alternative options to be considered by the UNGA in an emergency special session under the “uniting for peace” procedure.

However, the World Summit Document, 2005, in Para 139 provided the sole power to the UNSC to enforce R2P. This creates a gap between the proper enforcement of the R2P principles. The WSD’05 didn’t include an alternative for the implementation of R2P on failure of the UNSC to act. \

These loopholes were visible during the UNSC's failure to act during the Darfur crisis and again during the Syrian crisis. The UNSC was divided along the lines of the use of R2P as an instrument for regime change. As was seen in the Cote d' Ivoire and Libya, where R2P interventions led to regime change.

The doctrine further fails to account for acts of terrorist organisations where they are also the perpetrators of atrocities. Be it the Janjaweed in Cote d' Ivoire, or the ISIS in Syria the doctrine doesn't provide any protection in those cases. Its legal premise is limited to the extent of holding the perpetrators of the violations to accountable institutional structures.

Testing Of Hypothesis

With Darfur being the first crisis that could have been addressed using the R2P principles, and with the UNSC's failure to act at a reasonable time led to thousands of deaths and uncountable atrocities that were carried out by civilian populations. The crisis which began in 2004 it still hasn't seen a proper end to it. With Sporadic violence still being seen even after the division of the country into two.

Similarly, the Syrian crisis has been termed as one of the worst crises in modern times. With thousands of deaths and millions displaced in the crisis which began in 2011, the Syrian crisis, 10 years hence has seen no end to it. The crisis which began as a civil war exploded into an all-out war. One of the most unstable regions in the world, Syria has become the hot spot for terror activities. The rise of the Islamic State in the region which captured vast areas including oil fields in Syria. The use of Chemical weapons multiple times, against civilian populations in Syria also didn't warrant any military action from the UNSC.

Observing the pattern of voting in the UNSC by the permanent 5 it can clearly be seen that at the times when the resolution either tries to take action against the state which is an ally to one of the P5 members, usually the resolution is blocked as has been seen multiple times in the case of Syria and Darfur as against those countries which are not important for the P5 to forward their interests i.e. Libya and Cote d' Ivoire.

Hence the hypothesis that the states only use the norms of R2P to forward their self-interest is true.

Therefore, in conclusion the way the norms of R2P are used by the international community it is clear that only the name has changed for the concept of Humanitarian Intervention but the principle is still the same. Hence it is concluded that the R2P is nothing but an instrument of Humanitarian Intervention

6.1 Recommendations

1. In order to improve the R2P framework ensuring the effective action on part of the home state to protect its populations from mass atrocities goes a long way. But as has been observed in recent crises in Syria or Libya, it has been the government which has been behind the atrocities against its civilian populations. Hence the first step towards improving the system is to improve the international human rights law framework. Improving the framework would mean better accountability of states towards ensuring the protection of rights of its citizens. It would also imply that the efficiency of the working of the treaty systems would also need to be improved.
2. The breach of international humanitarian law by member states during international and non-international armed conflicts should be treated as an international crime and this necessitates the coordination and cooperation of the international community to promote the respect for the laws of war. All of this will require increased political will on part of member states to improve the human rights framework all together.
3. The bar for political will is enhanced in situations where the legitimate government is against UNSC intervention. Hence the bar is either set too high in the situation mentioned above or too low in cases where the legitimate government wants intervention. This can be further clarified with the examples of Cote D' Ivoire and Libya where the legitimate government of the former was in support of intervention and in case of the latter the political will of the USA and its allies along with the support of regional actors saw a quick end to the crisis in Libya.
4. In contrast lies the cases of Sudan and Syria where even the political will of some of the P5 countries failed due to interests of other P5 members namely

Russia and China who vetoed almost every other resolution which proposed action against the Syrian government.

5. So, in these cases where humanitarian concerns should outweigh national self-interests. These members who were made permanent members of the UNSC were supposed to be the police men of the world. These permanent members should be made accountable for the failures of the UNSC to work.
6. Secondly the UN needs to have better cooperation with the regional organisations such as the EU, the LAS, the AU, the ECOWAS and other regional organisations to monitor and react quickly to situations which will threaten the international peace and security. As seen from responses in Libya and the Cote d' Ivoire, the UN acting in parlance with the regional organisations acted quickly and efficiently to save populations from atrocities. The lack of support from the AU led to an ineffective response to the Darfur conflict which dragged the conflict for almost a decade.
7. Along with increased regional cooperation, the UNSC reaction and response to the crisis needs to be immediate and effective. On an average the UN takes almost 6 months to deploy, by the time which the atrocities against civilian populations is at an all-time high. So, in cooperation with regional partners in the area is of utmost importance for a rapid response to prevent atrocities. Like was seen in the cases of Libya where along with regional parties, the USA and its allies deployed the necessary forces within a week. Similarly, in case of Cote d' Ivoire the presence of a mission on the ground enabled a quicker and effective response.
8. Along with all the other recommendations, it is necessary to formulate a system, where R2P can be implemented even after being vetoed by the UNSC. The second-best option would be an ESS of the UNGA which can authorize R2P as has been stated in the ICSISS report. The use and abuse of the veto has been the reason behind the failures of the UNSC to take substantive actions in order to protect populations from atrocities. National self-interest over political will to prevent, protect and rebuild.

BIBLIOGRAPHY

Statutes and Convention

- Charter of the United Nations (adoption 24 October, 1945, came into force 24 October, 1945) 1 UNTS XVI.
- Peace of Westphalia (Osnabruck-Munster) 15 May 1648
- General Treaty for Renunciation of War (signed 17 August 1928) 94 LNTS 57
- Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) (adopted by 89 votes to none; 9 abstentions
- Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance to the Charter of the United Nations’, UNGA Res 2625 (XXV)(24 October, 1970) (adopted without vote)”
- Declaration on the Inadmissibility of Intervention in the Domestic Affairs of the States and the Protection of their independence and Sovereignty, UNGA Res 2131 (XX)(21 December 1965)(adopted by 109 votes to none; 1 abstention)”
- Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) UNTS 1155 (VCLT), art 64
- Rambouillet Agreement (Federal Republic of Yugoslavia and Kosovo Albanians)
- The Rome Statute of the International Criminal Court,(adopted 17 July 1998, entered into force 1 July 2002).
- Treaty of Versailles (adopted 28 June 1919, entered into force 10 January 1920) 2 U.S.T. 43, art 227.”
- Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, Entered into force 12 January 1951)”
- Charter of the African Union,
- Responsibility of State for internationally wrongful acts, UNGA Res 56/83 (LVI) (28 January 2002) (adopted by votes to none; abstentions
- Darfur Peace and Accountability Act 2006
- Darfur Peace Agreement, (Government of Sudan, SLA and JEM).

- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their destruction”(adopted 13 January 1993 entered into force 29 April 1997) 1974 UNTS 45,

Resolutions

- UNGA Res 60/1, (16 September, 2005) UN Doc A/Res/ 60/1
- UNSC Res 83 (27 June, 1950) UN Doc S/RES/83
- UNSC Res 872 (5 October 1993) UN Doc S/RES/872
- UNSC Res 871 (13 August 1992) UN Doc S/RES/871
- UNSC. RES. 751 (24 April 1992) UN..doc. S/RES/751 (1992).
- UNSC. Presidential Statement 5 (29 January 1999) UN. doc. S/PRST/1999/5
- UNSC. Res. 1244 (10 June 1999) UN. Doc. S/RES/1244
- UNGA Resolution 3314(XXIX) (14 December 1974).
- UNSC Resolution 5027 (2004), SCOR Resolution and Decision 3
- UNSC Resolution 1547 (June 11, 2004) UN Doc S/Res/1547.
- UNSC Resolution 4988 (2004) UN Doc S/Res/4988
- UNSC Resolution 1556 (2004) UN Doc S/Res/1556
- UNSC Resolution 1564 (2004) UN Doc S/Res/1564
- UNSC Resolution 1574 (2004) UN. Doc. 1574.
- UNSC Resolution 1590 (2004) UN. Doc. 1590.
- UNSC Resolution 1674 (2004) UN. Doc. 1674.
- UNSC Resolution 1593 (2005) UN Doc S/Res/1593
- UNSC Resolution 1591, (2005) UN Doc S/Res/1591
- UNSC Resolution 1672 (2006) UN Doc S/Res/ 1591
- UNSC Resolution 1769 (2007) UN Doc S/Res/ 1769
- UNSC Resolution 1970 (2011) UN Doc S/Res/1970
- UNSC Resolution 1973 (2011) UN Doc S/Res/1973
- UNHRC Res 15 (2011) Un Doc A/HRC/S-15/1
- UNSC Resolution 1973 (2011) UN Doc S/Res/1973
- UNSC Resolution 1464 (2011) UN Doc S/Res/1464
- UNSC Resolution 1479 (2003) UN Doc S/Res/1464
- UNSC Resolution 1514 (2003) UN Doc S/Res/1514
- UNSC Resolution 1528 (2004) UN Doc S/Res/1528

- UNSC Resolution 1572 (2004) UN Doc S/Res/1572
- UNHRC Resolution S-14/1 (2010) UN Doc A/HRC/Res/S-14/1
- UNSC Resolution 1975 (2011) UN Doc S/Res/1975
- UNSC Resolution 1975 (2011) SCOR Resolution and Decisions 6508
- UNSC Resolution 2112 (2013) UN Doc S/Res/2112
- UNHRC Resolution S-16/1 (2011) UN Doc A/HRC/RES/S-16/1
- UNSC Verbatim 6598 (2011) UN Doc S/PV.6598
- UNHRC Resolution S-17/2 (2011) UN Doc A/HRC/S-17/2 [25]
- UNSC Res 612 (2011) UN Doc S/2011/612
- UNSC Verbatim (2011) UN Doc S/PV.6627
- League of Arab States Res 7453 (2011)
- League of Arab States Resolution 7441 (2011)
- UNSC Resolution 2042 (2012) UN Doc S/Res/ 2042
- UNSC Resolution 2043 (2012) UN Doc S/Res/ 2043
- UNSC Resolution 678 (1990),UN Doc S/Res/678.
- League of Arab States Resolution 7360(, MARCH 12, 2011
- UNSC 1973 (2011) UN Doc S/Res/1973.
- UNHRC Resolution 23/22 (2013) UN Doc A/HRC/24/22
- UNHRC Resolution S-19/1 (2012) UN Doc A/HRC/Res/19/1
- UNGA Resolution 66/253 (21 February 2012) UN doc A/Res/55/253
- UNSC Verbatim 6710 (2012) UN Doc S/PV.6710
- UNSC Resolution 2012/77 (2012) UN Doc S/2012/77
- UNGA Resolution 66/176 (19 December 2011) UN Doc A/Res/66/176.
- UNHRC Resolution S-18/1 (2011) UN Doc A/HRC/S-18/1

Reports

- International Commission on Intervention and State Sovereignty, ‘Responsibility to protect’ (2005, Ottawa) accessed
- <http://responsibilitytoprotect.org/ICISS%20Report.pdf> 25 March,2020”
- OECD (2012), “Evaluating Peacebuilding Activities in Settings of Conflict and Fragility: Improving Learning for Results, DAC Guidelines and References Series, OECD Publishing”. <<http://dx.doi.org/10.1787/9789264106802-en>>
- UNGA, ‘Report of the Secretary General 68/947’ (2014) UN Doc S/2014/449

- Report of the Secretary General “A more secured World; Our Shared responsibility” (2004) UN Doc A/59/565.
- Report of the Secretary General “In Larger Freedom: Towards Development, Security and Human Rights for All” (2005) UN Doc A/59/2005
- Report of the Secretary General, “Report of the International Commission of Inquiry on Darfur to the United Nations Security General” (2005)
- Council of the League of Arab States “Report on the Implications of the Current events in Libya and the Arab Position” (12 March 2011)
<<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%207360.pdf>> accessed 12 June 2020
- Human Rights Watch, “World Report 2013: Cote d’Ivoire” (HRW)
<<https://www.hrw.org/world-report/2013/country-chapters/cote-divoire>> accessed 17 June 2020
- UNHRC “Report of the Independent International Commission of Inquiry on the Syrian Arab Republic” (23 December 2011) UN Doc A/HRC/S-17/2/ Add.1
- UNHRC, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’(23 November 2011) UN Doc A/HRC/S-17/2 Add.1
- UNHRC, ‘Report Of The Human Right Council On Its Sixteenth Special Session’UN Doc A/HRC/S-16/2
- UNHCHR, ‘Report Of The Fact-Finding Mission On Syria Pursuant To Human Rights Council Resolution S-16/1’, UN Doc A/HRC/S-16/1
- REPORT OF THE UNHCR 2014 SYRIA REGIONAL RESPONSE PLAN
- Royal United Service Institute for Defence and Security Studies ‘Short War, Long Shadow Whitehall Report’, UK, 2012 1, 12
- UNSG ‘Report Of The Un Secretary General, Responsibility To Protect: Timely And Decisive Response’,(2012) UN Doc, A/66/874 2012.
- UNHRC Resolution 19/69 “Report of the Commission of Inquiry on the Syrian Arab Republic” UN Doc A/HRC/19/69

Books.

- Francis M . Deng, ‘Reconciling Sovereignty with Responsibility : A Basis for International Humanitarian Intervention in Africa in World Politics : Post Cold War Challenges’, John W Harbeson and Donald Rothschild (eds), (Westview Press, 1995)”

- . Green L.C, *The Contemporary Law of armed conflict*, (2nd edn, MUP 2000).
- Vitoria F., “De Indis Et De Jure Belli Relectiones” 29
- Brownlie I, ‘International Law and Use of force’ (first published 1981, Claredon 1981)13.
- Kerb C, ‘the International Court of Justice and the Principle of Non Use of Force’, (Mark Weller, CHAPTER 25 IN THIS VOLUME
- Schriver N., ‘The Ban on the Use of Force in the UN Charte’r in Marc Weller and others (eds), ‘The Oxford Hand Book of the Use of Force in International law’ (OUP 2015)
- Khan R., ‘Legal Aspects, In Bangla Desh: A Struggle For Nationhood’ in Mohammed Ayoob Et (eds) (DLP, 1971).
- . Blood A., ‘The Cruel Birth Of Bangladesh’ (first published 2002, University Press).
- Owen Bennett Jones O.B, ‘Pakistan: Eye Of The Storm’, (first ouldished 2002, 3rd ed. YUP 2009)
- Malcolm Shaw M. ‘International Law’ (first published 2008, 6th ed CUP 2008).
- Bellamy A., ‘The Responsibility to Protect: A Defence’ (OUP, 2015) 96.
- Evans G., ‘The Responsibility to protect: Ending Mass atrocity crimes Once and For All’ (Brooking Institutional Press, 2008) 87
- Pattison J., ‘Humanitarian Intervention and The Responsibility To Protect: Who Should Intervene?’ (OUP 2010).
- Tan K.C, ‘The Duty To Protect, In Humanitarian Intervention’ (Terry Nardin & Melissa Williams eds., NYUP 2006).
- Bellamy A., ‘Global Politics And The Responsibility To Protect: From Words To Deeds’, London (first published 2010 Routledge),2 \
- Thakur R., ‘The Responsibility To Protect Norms, Laws And The Use Of Force In International Politics’ (first published 2010, Routledge) 77

Articles

- Von Elbe J, ‘The Evolution of the concept of just war in international’, 33 AJIL, 1939, 669.
- “The Evolution of the concept of just war in international”, 33 AJIL, 1939, 669.

- Nanda V.P, 'Self-Determination in International Law: The Tragic Tale Of Two Cities-Islamabad (West Pakistan) And Dacca (East Pakistan)' [1972] J. INT'L L. 321, 336 (1972).
- Ganguly S., 'Pakistan's Forgotten Genocide-A Review Essay', (2014) 39 IS 169
- Minow M., 'Naming Horror: Legal And Political Words For Mass Atrocities', (2007) 2 GSP 37
- Simma B& Alston P, 'The Sources Of Human Rights Law: Custom, Jus Cogens, And General Principles', (1992). 12 AYBIL. 82
- Franck T.M and. Rodley N.S, 'After Bangladesh: The Law of Humanitarian Intervention by Military force' (1973) 67 AJIL. 135-36.
- Nawaz M.K, 'Bangladesh and International Law' (1971) 1 Indian j. Int'l l. 251,
- Crawford J, 'State Practice And International Law In Relation To Secession', (1998) 69 BRRR. Y.B. INT'L L.
- Reisman W.M , 'Sovereignty and Human Rights in Contemporary International Law' 84 AJIL 866
- Goldsmith J, "The Self-Defeating International Criminal Court", (2003) 70 UCLR 89,
- Akande D. and Tzanakopoulos A., 'The Crime of Aggression in the ICC and State Responsibility'
- Weiss T.G, 'Cosmopolitan Force and the Responsibility to Protect' (2005) 19 INT'L REL. 234 (2005)
- Weiss. T. and Hubert D, 'The Responsibility To Protect, Research, Bibliography, Background 367' (Intern Development Research Centre, 2001) 367
- Stahan C, 'Responsibility to protect: Political Rhetoric or emerging legal norm?' (2007) 101 AJIL. 109, 110
- Evans G., 'The Responsibility To Protect: Ending Mass Atrocities Once and for all' (2008).
- Strauss S., 'Rwanda and Darfur: A comparative analysis' (2006) 1 GSP 41, 45, 46
- Williams P. and Bellamy A., 'The Responsibility to Protect and the Crisis in Darfur' (2005) 36 Sec Dia 127

- Bellamy A., ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ (2005) 19 EJA 31, 40.
- Lijn J.V.D, ‘To paint the Nile Blue: Actors for Success and Failure of UNMIS and UNAMID’ (2008), NIIR 14, 15
- Koeing N. , ‘The EU and the Libyan Crisis: In quest of Coherence’ (2011) 13 IAIWP 11
- Bellamy A. and. Williams P.D, ‘The new politics of Protection? Cote d’ Ivoire, Libya and the Responsibility to protect’ (2011) 87 IA 850
- Williams P.D., ‘Breiging: The Road to Humanitarian War in Libya’ (2011) 3 GR2P 248. 251
- Weiss T.G: ‘Rtop Alive And Well After Libya’ (2011) 25 EIA 2, P6
- Bellamy A., ‘Libya And The Responsibility To Protect: The Exception And The Norm’ (2011) 25 EIA 2, 2
- Omorogbe,E., ‘The African Union, Responsibility To Protect And The Libyan Crisis’(2012) 59 NILR 2, 141, P.147
- Brown M., ‘Fighting reported on Kashmir line’ New York Times (New York, 4 December, 1971)

Press Reports and Press Releases

- UNSC, “Security Council committee says those inciting violence, undermining peace in Central African republic could meet sanction criteria” (24 July 2020) SC/1461
- BBC, ‘UN’s Darfur death estimate soars’ BBC News (London, 14 March,2005)
- United States Holocaust Memorial Museum, “Holocaust Encyclopaedia” <<http://www.ushmm.org/wlc/en/article.php?ModuleId=10007043>> accessed 24 April 2020
- Kesler G. and Lynch C., “US Calls killings in Sudan Genocide, Khartoum and Arab Militias are responsible, Powell says” <<https://www.washingtonpost.com/wp-dyn/articles/A8364-2004Sep9.html>> accessed 25 April 2020
- UNSG, ‘Secretary General appoints Pronk Special representative for Sudan’ (June 21, 2004) Press release SG//A/877
- Wald J., ‘Security Council endorses resolution on Sudan, Plan Aims to end Conflict in South Darfur region’ CNN (New York, June 11, 2204)

- UNSC, “Security Council declares intention to consider Sanctions to obtains Sudan’s full compliance with Security Disarmament Obligations on Darfur” (18 September 2004) Press Release SC/8191
- UNSC “Security Council refers situation in Darfur, Sudan to Procecutur of International Criminal Court” (March 31, 2005) U.N Press Release SC/1593
- UN, ‘ Darfur ICC Charges Sudanese President with Genocide’ (UN News Center,
<<http://www.un.org/apps/news/story.asp?NewsID=35293#.UqqOOzKA1dg;>> accessed 26 April 2020
- UNSC, “Security Council authorises deployment of the United Nations-African Union Hybrid Peace Operation in bid to Resolve Darfur Conflict” (July 31, 2007) UN Press Release SC/9089
- Human Rights Watch, “Donors must address Atrocities Fuelling Crisis” (September 27, 2004) <<http://www.hrw.org/news/2004/09/26/darfur-donors-must-address-atrocities-fueling-crisis>> accessed 26 April 2020
- BBC, “Libya Profile” (London, 8 June 2020)
<<https://www.bbc.com/news/world-africa-13754897>> accessed 8 June 2020.
Human Rights Watch “Libya at risk” (2 September 2008).
<https://www.hrw.org/sites/default/files/reports/libya_rights_risk_090808.pdf
> accessed 8 June 2020.
- Amnesty International, “The State of the World’s Human Rights” (London, 13 May 2011) <<http://www.amnesty.org/en/documents/POL10/001/2011/en/>> accessed 8 June 2011
- EU, “Declaration by the High Representative, Catherine Ashton, On behalf of the European Union on Events in Libya” (20 February 2011) Doc 6795/1/11-PRESSE 33.
- Olga Galal, “Arab League Bars Libya from meetings: Citing Forces Crimes” (Bloomberg News, 22 February 2011)
<<http://www.bloomberg.com/news/2011-02-22/arab-league-bars-libya-from-meetings-citing-forces-crimes-.html>> accessed 10 June 2020
- OHCHR, “Bahrain and Libya: UN Experts urge Authorities to guarantee Right to Protest without fear of being injured or killed” (18 February 2011)

- UNSG, “UN Secretary General’s Special Advisor on the Prevention of Genocide, Francis Deng and Special Advisor on the Responsibility to Protect, Edward Luck on the situation in Libya” (22 February 2011) UN Press Release
- Colin Moynihan, “Libya’s UN Diplomats break with Ghaddafi” “ New York Times (New York, 21 February 2011)
- UNSC, “Security Council on Libya” (22 February 2011) UN Press Release SC/10180
- UNSC, “In swift decisive action, Security Council imposes tough measures on Libyan regime adopting Resolution 1970 in the wake of crackdown on protesters” (26 February 2011) UN Doc SC/10187
- Florence Gaub, “The North Atlantic Treaty Organization and Libya: Reviewing Operation Unified Protector” (2011) SSI
<<http://www.strategicstudiesinstitute.army.mil/files/1161-summary.pdf>>
accessed 12 June 2020
- NATO, “ NATO and Libya” (Brussels, 09 November 2015)
<https://www.nato.int/cps/en/natolive/topics_71652.htm> Accessed 12 June 2020
- Voice of America, “Despite growing Pressure, Ivory Coast Incumbent Gbagbo still has outside allies” (26 Decemeber 2010)
<<https://www.voanews.com/africa/despite-growing-pressure-ivory-coast-incumbent-gbagbo-still-has-outside-allies>> accessed 14 June 2020
- BBC, “Ivory Coast’s Laurent Gbagbo Bans UN and French Flights”, (Webcitation.Org 10 March. 2011),<<http://www.webcitation.org/5x7SA99J5>. >
accessed 14 June 2020
- Human Rights Watch, “Côte d’Ivoire: Ouattara Forces Kill, Rape Civilians During Offensive” (Human Rights Watch Apr. 9, 2011),
<<http://www.hrw.org/news/2011/04/09/c-te-d-ivoire-ouattara-forces-kill-rape-civilians-duringoffensive>. > accessed 14 June 2020
- CNN, “West African Leaders threaten Use of force against Laurent Gbagbo” (CNN, 25 December 2010)
<<http://edition.cnn.com/2010/WORLD/africa/12/24/ivory.coast.conflict/>>
accessed 16 June 2020
- IRIN, “Cote d’ Ivoire: Briefing on AU and ECOWAS” (Irin, 15 February 2011)

- <<http://www.irinnews.org/report/91930/cote-d-ivoire-briefing-on-au-and-ecowas>> accessed 16 June 2020
- Voice of America, “US in talks on boosting UN Force in Ivory Coast” (VOA, 21 December 2010) <<https://www.voanews.com/content/us-in-talks-on-boosting-un-force-in-ivory-coast-112338489/132642.html>> accessed 16 June 2020
- UNSG, “Security Council, Secretary General’s special Advisers on the prevention of Genocide and the Responsibility to protect on the situation in Cote d’ Ivoire” UN Press release
- Human Rights Watch, “Cote d’ Ivoire: Crimes against Humanity by Laurent Gbagbo Forces” (HRW 15 March 2011 <<http://www.hrw.org/news/2011/03/15/c-te-d-ivoire-crimes-against-humanity-Laurent>> accessed 16 June 2020
- UNOCI, “Post Election violence claims more than 1000 lives in Western Cote d’ Ivoire” (UN 26 May 2011
- Human Rights Watch, “Laurent Gbagbo and the International Criminal Court” (HRW, 12 February 2013) <<https://www.hrw.org/news/2013/02/12/qa-laurent-gbagbo-and-international-criminal-court>> accessed 17 June 2020
- Globaledege.org, ‘Syria: history’ (Global edge) <<https://globaledege.msu.edu/countries/syria/history>> accessed 18 June 2020
- New York Times ‘Events in Syria: A Chronology’
- <<https://archive.nytimes.com/www.nytimes.com/ref/timestopics/syriatimeline.html?pagewanted=all>> accessed 18 June 2020
- Associated Press “Syrian uprising, timeline of Key events” (Ap Politico, 09 April 2013) <<http://www.politico.com/story/2013/09/syria-timeline-96270.html>> accessed 17 June 2020
- Associated Press “Syrian uprising, timeline of Key events” (Ap Politico, 09 April 2013) <<http://www.politico.com/story/2013/09/syria-timeline-96270.html>> accessed 17 June 2020
- Elizabeth A Kenedy and Paul Schemm, “Syria threatens to use Chemical biological weapons” (Philly.com 24 July 2012) <http://articles.philly.com/2012-07-24/news/32828818_1_chemical-weapons-assad-regime-jihad-makdissi> accessed 17 June 2020

- Haaretz, “Report: Syria tested Chemical Weapons Delivery System in August” (Haaretz.com, 18 September 2012)
<<https://www.haaretz.com/report-syria-tested-chemical-weapons-delivery-systems-1.5163777>> accessed 17 June 2020
- Patrick J Mc Donnell and Sashank Bengali, “Syrian rebels allege New gas Attack” (L.A Times 21 August 2013)
- Global Security, “Chemical Weapons” (Global Security.org)
<<https://www.globalsecurity.org/wmd/world/syria/cw.htm>> accessed 17 June 2020
- Oliver Holmes, “Syria’s Chemical Weapons Wild Card: Chlorine Gas” (Reuters 22 April 2014) <<http://www.reuters.com/article/2014/04/22/syria-crisis-chlorine-idUSL6N0NE3WM20140422>> accessed 17 June 2020
- CBS, “Syria says it welcomes Russian proposal to place Chemical weapons under International Control” (CBS News 9 September 2013)
- Neil MacFarquhar, “Push in UN for Criticism of Syria is rejected” (NYT 28 April 2011)
<http://www.nytimes.com/2011/04/28/world/middleeast/28nations.html?_r=0> accessed 18 June 2020
- OHCHR, “Fact finding Mission for Syria, Call for Submissions” (UN 24 May 2011)
<<http://www.ohchr.org/EN/Countries/MENARRegion/Pages/SyriaFactFindingMission.aspx>>accessed 18 June 2020
- Dan Bilefsky, “New Move to Condemn Syria in the UN” (NYT 9 June 2011)
<https://www.nytimes.com/2011/06/09/world/middleeast/09nations.html?_r=0> accessed 18 June 2020
- ICRtoP, “The Crisis in Syria” (ICRtoP)
<<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria>> accessed 18 June 2020
- UNSG, “Francis Deng and Edward Luck, Special Advisors to the United Nations Secretary General on the Prevention of Genocide, Francis Deng and on the Responsibility to protect , Edward Luck on the Situation in Syria” (21 July 2011) UN Press release

- UNSC, “In Presidential Statement, Security Council gives full support to the effort of Joint Special Envoy of the United Nations, Arab League to end violence in Syria” (21 March 2011) UN Doc UN Press Release SC/10583
- Isabel Coles and Yasmine Saleh, “Arab League expresses growing concern about Syria” (Reuters 7 August 2011)
<<https://www.reuters.com/article/us-syria-league/arab-league-expresses-growing-concern-about-syria-idUSTRE7761H720110807>> accessed 20 June 2020
- Haaretz, “Arab League Chief urges stability in Syria during Assad Meet” (haaretz.com 10 September 2011) <<https://www.haaretz.com/1.5169185>> accessed 20 June 2020
- UNSC, “Security Council fails to adopt draft Resolution condemning Syria’s crackdown on Anti-government protesters owing to Veto by Russian Federation; China” (4 October 2011) UN Press release SC/10403
- Ian Black ‘Syrian acceptance of Arab League ceasefire plan met with Skepticism’ (Guardian 2 November 2011)
<<https://www.theguardian.com/world/2011/nov/02/syrian-acceptance-of-arab-league-ceasefire-plan>> accessed 20 June 2020
- Neil Macfarquhar, ‘Arab League votes to suspend Syria over crackdown’ (New York Times 12 November 2011)
<<https://www.nytimes.com/2011/11/13/world/middleeast/arab-league-votes-to-suspend-syria-over-its-crackdown-on-protesters.html?pagewanted=all>> accessed 20 June 2020
- UNGA, ‘Third Committee approves Resolution condemning Human Rights Violations in Syria by vote of 122 in favor to 13 against and 41 abstentions’ UN Press Release GA/SHC/4033
- Marty Harris, ‘International Responses to the Syrian uprising March 2011- June 2012’ (Australian Government 13 July 2012)
<https://www.aph.gov.au/ABOUT_PARLIAMENT/PARLIAMENTARY_DEPARTMENTS/PARLIAMENTARY_LIBRARY/PUBS/BN/2012-2013/SYRIANUPRISING?PRINT=1#_FTN3> accessed 31 June 2020

- UNSC, “Security Council requires Scheduled Destruction of Syria’s Chemical weapons, unanimously adopting resolution 2118” (27 September 2013) UN Press Release SC/11135
- China, “Foreign Ministry spokesperson Jiang Yu’s regular Press Conference” 24 May 2011 Chinese Ministry of foreign affairs Press Release
- H. Meyer, B. Cook and I Arkhipoz, “Russia warns US, NATO against Military aid to Syria protests after Libya” (Bloomberg 3 June 2011) <<http://www.bloomberg.com/news/2011-06-01/russia-warns-u-s-nato-against-military-aid-to-syria-protests-after-libya.html>> accessed 21 June 2020
- BFC, “Legal Case for UK Action against Syria” (British forces News 29 August 2013) <<https://www.bfbs.com/news/legal-case-uk-action-against-syria-64412.html>> accessed 20 June 2020
- Government of the UK “Chemical Weapon Use by Syrian regime” (Gov.UK 29 August 2013) <<https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>> accessed 20 June 2020
- Harold Hongju Koh, “Syria and the Law of Humanitarian intervention (Part II: International ALw and the way forward)” (2013) JS <<http://justsecurity.org/2013/10/02/koh-syria-part2/>> accessed 20 June 2020
- Assaf About ‘ US Ready to launch Syria strike says Chuck Hagel’ (BBC 27 August 2013) <<https://www.bbc.com/news/world-us-canada-23847839>> accessed 20 June 2020
- White House, “Barack Obama, President of the United States of America, address to the United Nations General Assembly” (White House, 24 September 2013) <<http://www.whitehouse.gov/the-press-office/2013/09/24/remarks-president-obama-address-united-nations-general-assembly>>
- AFP, ‘Syria warned by Chemical warfare watchdog over Sarin Attacks (Defense Post, 9 July 2017) <<https://www.thedefensepost.com/2020/07/09/syria-condemned-sarin-attacks/>> accessed 30 June 2020
- ET, ‘War has cost \$226 billion to Syrian Economy: World Bank (Economic times 10 July 2017) <<https://economictimes.indiatimes.com/news/defence/war->

has-cost-226-billion-to-syria-economy-world-bank/articleshow/59532701.cms>

- UNSC, “Security Council fails to adopt Draft Resolution on Syria that would have threatened sanctions, due to negative votes of China, Russia” (19 July 2012) UN Press Release SC/10714
- UNSG, “Press Conference by Kofi Annan, Joint Special Envoy for Syria” (2 August 2012) UN Press Release
- UNSG, “Secretary General announces appointment of Lakhdar Brahimi as Joint Arab League- United Nations Special Representative for Syria” 17 August 2012 UN Press Release SG/SM/14471
- UNSG, “Kofi Annan appointed Joint special envoy of United Nations League of Arab States on Syrian Crisis”, (21 February 2012) UN Doc A/Res/66/254
- UNSC “Security Council members diverge over path towards implementation of Draft Resolution backing Arab League Proposal on resolving crisis in Syria” (31 January 2012) UN. Press. Release SC/10534
- Security Council, “Syria: Pillay calls for urgent action to halt violence, High Commissioner of Human Rights (Security Council Report 12 December 2011) <<https://www.securitycouncilreport.org/chronology/syria.php?page=all&print=true>> accessed 20 June 2020
- Erik Solomon, ‘Syria to Let in Arab Monitors as Deaths Mount’ (Reuters 19 December 2011) <<https://www.reuters.com/article/us-syria-arabs/syria-to-let-in-arab-monitors-as-deaths-mount-idUSTRE7BI0H520111219>> accessed 20 June 2020
- Hamza Hendawi, ‘Syrian Opposition criticizes Arab League Observers’ (Associated Press 29 December 2011) <<http://www.deseretnews.com/article/700210927/Syrian-opposition-criticizes-Arab-League-observer.html>> accessed 20 June 2020
- Al Arabia, ‘Head of Syrian Monitors Reports Homs is calm but calls for further Inquiry’ (Al Arabia 22 January 2012) <<https://english.alarabiya.net/articles/2011/12/28/184952.html>> accessed 20 June 2020
- Al Arabia, ‘Saudi Arabia withdraws its monitor from Syria: Arab League calls for power transfer (Al Arabia 22 January 2012)

<<https://www.alarabiya.net/articles/2012/01/22/189842.html>> accessed 20 June 2020

- UNSC “Security Council fails to Adopt draft Resolution on Syria as Russian Presidents, China veto text supporting Arab League’s proposed peace plan” (4 February 2012) UN Press Release

Others

- UNCIO, vol 6, 559. Earlier Brazil submitted a lengthier amendment covering a comprehensive prohibition of non-intervention (vol 3, 237); UNCIO, vol 6, 561 and vol 3, 399 and 423 (Ecuador).
- Siddhartha Ray, Minister Of Education., India, to Indira Gandhi (June 25, 1971) (on file with nmml, haksar papers, subject file 168)”.
• Judgement of the Nuremburg International Military Tribunal” (1946) 41 AJIL 172
- Kofi Annan, “Two concepts of Sovereignty; Addressed to the 54th session of the General Assembly The Question of Intervention Statements of the Secretary General” (1999) New York , [39]
- Institute of Global Policy, “Government statements on the responsibility to protect Latin-American region”
- Benjamin William Mkapa, President of United Republic of Tanzania, Statement at the G. A. Debate on the 2005 World Summit Outcome (Sept. 16, 2005), <<http://www.un.org/webcast/summit2005/statements/tanz050914eng.pdf>> accessed on 19 April 2020
- Thabo Mbeki, President of Republic of South Africa, Statement at the G. A. Debate on the 2005 World Summit Outcome (Sept. 16, 2005), <<http://www.un.org/webcast/summit2005/statements15>> accessed on 19 April 2020
- International Crisis group, “Conflict History: Sudan” <http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=10> (Accessed 24 April 2020).
- UNSC, “Letter dated 7 January to the President of the UNSC” (2011) UN Doc S/2011/5
- UNSC, “Letter dated 22 March 2013 from the Secretary General to the President of the United Nations Security Council” (2013) UN Doc. S/2013/184

- UNSC “In Presidential Statement Security Council gives full support to efforts of Joint Special envoy of United Nations, Arab League to end violence in Syria”, (21 March 2012) UN Press Release SC/10583
- UNHRC, “Letter dated 30 May 2012 from the permanent representatives of Denmark, Kuwait, Qatar, Saudi Arabia and Turkey, the Ambassador of the European Union to the United Nations Office in Geneva and the Ambassador of the United States of America to the Human Rights Council addressed to the President of the Human Rights Council” UN Doc A/HRC/S19/