

‘R2P’: A Doctrine Dead at its Infancy?
An Exploration of the Current Status of the International
Legal Doctrine of the Responsibility to Protect through the
Cases of Libya and Syria

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Introduction

In the aftermath of the international community’s failure to prevent mass atrocities in Rwanda and Bosnia-Herzegovina in the 1990s, the need for a legal tool to end future massacres and other human rights violations became even more essential. At the same time, the calls of those advocating the need to respect state sovereignty and to stop unilateral humanitarian interventions increased. The narrative of these calls was largely endorsed by states such as Russia and China¹ - as will be clarified further in the remainder of this article progresses. This clash of priorities is best summarised by then-United Nations (UN) Secretary General Kofi Annan:

[I]f 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?²

A year later, the International Commission on Intervention and State Sovereignty proposed an answer in the form of the ‘Responsible to Protect’ (‘R2P’ from hereon) doctrine. Through this new doctrine, the Commission broadened the understanding of sovereignty from an absolute right of every state with regards to the powers they may exercise over their citizens, to a

¹ Daphné Richemond, ‘Normativity in International Law: The Case of Unilateral Humanitarian Intervention’ (2003) 6 *Yale Human Rights and Development Law Journal* 45, 49-50.

² *We the Peoples: The Role of the United Nations in the 21st Century*, UN Doc A/54/2000, 48.

right that comes with responsibilities towards the people of that state with both internal and external obligations.³ The basic principle of the R2P doctrine is that state sovereignty implies state responsibility for the protection of those living under that state.⁴ So if a population within a state is suffering serious harm and the respective state is either unable or unwilling to protect its population, the responsibility then falls on the international community to intervene and provide protection to the injured population.⁵ Intervention does not always imply military intervention – this is deemed to be a last resort. Instead, measures such as economic sanctions and arms embargoes may also be seen as appropriate interventions.

The basic principles of this doctrine may be summarised in three pillars: (i) each sovereign state has the primary responsibility to halt atrocities that take place in its jurisdiction; (ii) the international community must assist and encourage the state in its efforts; and (iii) if a state is unable or unwilling to prevent such mass atrocities from taking place, the international community has to act collectively, including through the use of force if necessary.⁶ It is worth noting that in case of intervention, the interveners are obliged not only to stop the atrocities, but to also help in the state's rebuilding efforts.

After the Commission unveiled its proposed doctrine in 2000, R2P quickly gained support, with the UN Secretary-General's High-Level Panel on Threats, Challenges and Change releasing a report in 2004 endorsing the doctrine's main principles. In the report, titled 'A More Secure World: Our Shared Responsibility', the Panel recommended that the doctrine be adopted

³ G J Evans & M. Sahnoun, (2001) 'The responsibility to protect: report of the International Commission on Intervention and State Sovereignty' Ottawa: *International Development Research Centre*.

⁴ Charles Cater and David M. Malone, 'The Genesis of R2P: Kofi Annan's Intervention Dilemma' in Alex J Bellamy and Tim Dunne (eds), *The Oxford handbook of the responsibility to protect* (OUP 2016) <www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198753841.001.0001/oxfordhb-9780198753841-e-7> accessed 09 October 2019.

⁵ *ibid.*

⁶ *ibid.*

as an 'emerging norm.'⁷ This norm ought to be exercised 'in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.'⁸ A year later the UN General Assembly (UNGA), in its World Summit Outcome Document, unanimously expressed its support for the doctrine.⁹ Consequently, in 2006 the UN Security Council (UNSC) unanimously expressed its commitment to R2P in Resolution 1674.¹⁰ Thus, the international community's widespread rapid acceptance of this doctrine gave it credibility. At the same time, it was seen as a solution to the dilemma that had torn apart international community in the 1990s, specifically whether to prioritise national sovereignty or intervene in states to protect their populations. So, this doctrine gave the international community a potentially powerful tool in its fight against international humanitarian and human rights law violations. Through R2P, many hoped that the mistakes of the previous decades, when it came to such violations, would not be repeated. These mistakes included the split of international consensus as a result of unilateral interventions and the subsequent instability in international relations.

R2P was not only welcomed because it struck the right balance between the concepts of state sovereignty and human rights. One of the main benefits the doctrine seemed to have, was its emphasis on consensus, which can be expressed through the UNSC's approval, before implementing Pillar 3 interventions. This characteristic of the doctrine is considered beneficial because it avoided the risk of tensions between the interveners and any other state, consequently reducing the risk of a larger scale confrontations. In fact, despite the fact that the UNSC has the power to authorise the use of force when it comes to threats of peace,¹¹ such threats are not limited to cross-

⁷ UNGA, *A more secure world: our shared responsibility – Report of the High-level Panel on Threats, Challenges and Change* (2 December 2004) 59th Session (2004) UN Doc A/59/565, 66.

⁸ *ibid.*

⁹ World Summit Outcome Document, UNGA Res 60/1 (24 October 2005) UN Doc A/RES/60/1 at paras 38–39.

¹⁰ UNSC Res 1674 (28 April 2006) UN Doc S/RES/1674.

¹¹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art 42.

border practices.¹² Instead, human rights violations amounting to genocide, ethnic cleansing, war crimes or crimes against humanity may also be considered a threat to international peace.¹³ Yet prior to this doctrine's articulation, any interventions on human rights grounds were conducted unilaterally, without any international authorisation. R2P changed this by emphasising consensus and offering a more international solution to the prevention of mass atrocities.

This article seeks test whether the doctrine has satisfied the expectations that accompanied its conception. The first major test for the R2P doctrine came in 2011 with the Libyan crisis, followed shortly by an analogous situation in Syria. By examining these two conflicts in turn, this article assesses whether R2P is still fit for purpose: that is, whether it has become a mere tool of diplomatic oratory or an effective tool that may be used. The following section contrasts these cases with another two crises, Yemen and Myanmar. At the outset, it is worth noting that the purpose of this article is not to argue over the doctrine's merits, but rather to examine whether the conflicts mentioned above have rendered it unusable or useless and therefore 'dead'.

2. Libya

The Libyan case is part of a much larger trend that academics and commentators have named the 'Arab Spring'. This trend included protests, demonstrations, riots, civil wars and in general all forms of opposition (violent or non-violent) that swept the Arab world, beginning in Tunisia at the end of 2010.¹⁴ Based on the examples set by the peoples of Tunisia¹⁵ and

¹² Nigel Rodley, 'Humanitarian Interventions' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (2017) 776-7.

¹³ *ibid.*

¹⁴ Elfatih A Abdel Salam, 'The Arab spring: Its origins, evolution and consequences... four years on' (2015) 23 *Intellectual Discourse* 119, 121.

¹⁵ Kareem Fahim, 'Slap to a Man's Pride Set Off Tumult in Tunisia' (*The New York Times*, 21 January 2011)

<<https://www.nytimes.com/2011/01/22/world/africa/22sidi.html>> accessed 10 October 2019; Nader Hashemi 'The Arab Spring Two Years On: Reflections on Dignity, Democracy, and Devotion' (2013) 27(2) *Ethics & International Affairs* 207, 209-10, 214, 217-8.

Egypt,¹⁶ in February 2011, Libyan citizens took to the streets in what would turn out to be one of the bloodiest episodes of the 'Arab Spring'.¹⁷ But, the Libyan leader Muammar Gaddafi refused to step down without putting up a fight and he vowed that the protestors in Benghazi, the revolution's epicentre, would be 'hunted down door to door and executed'.¹⁸ These events sparked memories of the 1994 Rwandan massacre,¹⁹ something which the UN was determined to prevent from happening again largely because of the immeasurable pain and suffering that had taken place. On 25 February, the UN Human Rights Council adopted Resolution S-15/1 which not only called upon Libya to 'meet its responsibility to protect its population',²⁰ but also recommended Libya's expulsion from its UNSC membership,²¹ a recommendation that the UNGA endorsed on 1 March. On 26 February, the UNSC passed Resolution 1970, which specifically referenced the Libyan government's responsibility to protect its citizens by putting an end to the violence.²²

These resolutions marked the first application of R2P, and the international community's strong stance seemed to suggest that the doctrine would live up to all of the expectations that followed its creation. Yet despite this, the violence in Libya intensified, to the detriment of the Libyan people. At the same time, however, the international outcry against the Gaddafi regime became even stronger, with a plethora of organisations, such as the Gulf Cooperation Council and the Arab League mentioned below, calling for stronger measures. On 7 March, the Gulf Cooperation Council urged the

¹⁶ Hashemi (n 15) 209, 219.

¹⁷ *ibid* 212-13, 218-20.

¹⁸ ABC Radio National, 'Defiant Gaddafi Issues Chilling Threat' *The World Today* (23 February 2011) <<http://www.abc.net.au/worldtoday/content/2011/s3146582.htm>> accessed 18 August 2019.

¹⁹ Spencer Zifcak, 'The Responsibility to Protect After Libya and Syria' (2012) 13 *Melbourne Journal of International Law* 1, 2.

²⁰ Resolution S-15/1 (Libyan Arab Jamahiriya) A/HRC/RES/S-15/1, para 2.

²¹ *ibid* 14.

²² UN Security Council, Security Council resolution 1970 (2011) [on establishment of a Security Council Committee to monitor implementation of the arms embargo against the Libyan Arab Jamahiriya], 26 February 2011, S/RES/1970 (2011).

UNSC to take every measure necessary, including enforcing a no-fly zone, to protect the Libyan population.²³ On 12 March, the Arab League took those calls a step further by declaring that the existing Libyan authorities had lost their legitimacy completely,²⁴ and instead the League would work with the Transitional National Council of Libya (NTC) to help the local population.²⁵ Following the widespread international concern on the issue the UNSC, during its 17 March meeting, adopted Resolution 1973.²⁶ Not only did this resolution recognise Libya's failure to respect Resolution 1970 and expressed concern about the widespread human rights violations, but it also declared a no-fly zone over Libya and authorised a military intervention which was undertaken through NATO's Operation Unified Protector. Indeed, this case marked the first time in the UNSC's history that a military intervention against a sovereign state was authorised without the consent of the state.

For all these reasons, this resolution was a revolutionary step in the realm of international relations. Libya's paradigm signified the first transposition of R2P from theory to action. More specifically, to implement the third pillar of the doctrine, the Resolution gave permission for the adoption of 'all necessary measures' to protect civilians under threat of attack,²⁷ but it forbade the deployment of a 'foreign occupation force of any form on any part of Libyan territory'.²⁸ The aim of the measures, including the UN-authorized no-fly zone,²⁹ was to deter the Gaddafi regime from committing more human rights abuses, which had escalated to potential crimes against humanity.³⁰ According to Gareth Evans 'the international military intervention in Libya' was 'not about bombing for democracy or Muammar

²³ Paul D Williams, 'Briefing: The Road to Humanitarian War in Libya' (2011) 3 *Global Responsibility to Protect* 248, 251.

²⁴ Zifcak (n 19) 6; League of Arab States, *The outcome of the Council of the League of Arab States meeting at the Ministerial level in its extraordinary session On The implications of the current events in Libya and the Arab position* 12 March 2011, para 2.

²⁵ *ibid.*

²⁶ UN Security Council, Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya], 17 March 2011, S/RES/1973 (2011).

²⁷ *ibid* para 4.

²⁸ *ibid.*

²⁹ *ibid* paras 6-8.

³⁰ *ibid* Preamble para 7.

Gaddafi's head. Legally, morally, politically, and militarily it has only one justification: protecting the country's people.³¹ Yet, the latter was, or seemed to be, unachievable without the former. Regardless of whether this was true or not, this dilemma would be the root of R2P's biggest challenge.³²

Within a few weeks of the beginning of the international intervention, Gaddafi's forces were driven out of Benghazi and its population was secured, yet the resistance in other parts of the Libyan state was more persistent than anticipated.³³ The delay in eliminating violence against the population led to an intensification of the voices calling for a regime change in Libya. The argument within NATO circles was that the objectives set by Resolution 1973 would not be fully completed so long as Colonel Gaddafi was in power.³⁴ Here, it is worth noting that the Resolution did not explicitly authorise regime change, let alone the killing of Gaddafi. In addition, many commentators at the time questioned the existence of an implied authorisation based on the fact that the Resolution's preamble stated that the situation in Libya had been referred to the ICC prosecutor.³⁵ Moreover, the then-Secretary General of the Arab League expressed his concerns over the

³¹ Gareth Evans, 'UN targets Libya with pinpoint accuracy' *The Sunday Morning Herald* (24 March 2011) <www.smh.com.au/politics/federal/un-targets-libya-with-pinpoint-accuracy-20110323-1c6pc.html> accessed 10 October 2019.

³² *ibid.*

³³ Zifcak (n 19) 7.

³⁴ Lance Kildron, 'The Libyan Model and Strategy: Why it Won't Work in Syria' (2012) 5 *Journal of Strategic Security* (4) 35, 38; NATO, 'Statement on Libya' (Press Release, (2011) 071, 8 June 2011)

<https://www.nato.int/cps/en/natohq/news_75177.htm> accessed 19 August 2019.

³⁵ Nicholas Grief 'Is Gaddafi a legitimate target?' (*The Guardian*, 27 April 2011)

<www.theguardian.com/commentisfree/2011/apr/27/gaddafi-un-resolution-1973>; Geoffrey Robertson 'When tyrannicide is the only option' (*The Independent*, 1 April 2011) <www.independent.co.uk/voices/commentators/geoffrey-robertson-when-tyrannicide-is-the-only-option-2258671.html>; Con Coughlin 'The West should not have allowed Muammar Gaddafi to be murdered in cold blood' (*The Telegraph*, 27 October 2011)

<www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8853066/The-West-should-not-have-allowed-Muammar-Gaddafi-to-be-murdered-in-cold-blood.html>

broadening of the Alliance's bombardments in Libya.³⁶ Nevertheless, in August 2011, the NTC took over the Colonel's capital, Tripoli, forcing Gaddafi to flee with a small convoy to Sirte.³⁷ His persecutors persisted, taking town after town, in an effort to capture their former leader.³⁸ By 20 October 2011, Gaddafi was killed by NTC fighters with the help of NATO and by the end of the same month, NATO had ceased Operation Unified Protector.³⁹ The death of the Libyan leader signified the beginning of the doctrine's odyssey, with heavy criticisms being invoked in the years to come. These criticisms were centred around the argument that the doctrine was abused in order to bring about a regime change in Libya, thus making it susceptible to becoming a tool for expanding geopolitical influence rather than protecting civilians.

These criticisms stem from the debate between respect for human rights and state sovereignty that had been so dominant in the 1990s, prior to the doctrine's introduction. Such voices show that nothing good will result if no adequate respect is shown to the international community's approval over interventions in states, namely by authorising X, only for the intervener to do Y. On the contrary, such an approach strengthens the risk of polarisation between western and non-western states. This mutual mistrust can only impede international consensus when R2P requires it, much to the dismay of victims of human rights violations. As it will be seen in the next section, regarding the Syrian conflict, these concerns about the sovereignty of the Syrian state have indeed served as an excuse to prevent the doctrine's application, resulting in damaging unilateral interventions instead. As a result, R2P has been led to a point where even its existence as a legal doctrine is now under doubt.

³⁶ Maria Golovkina and Michael Georgy, 'Western powers strike Libya; Arab League has doubts', *Reuters*, 20 March 2011 <www.reuters.com/article/us-libya/western-powers-strike-libya-arab-league-has-doubts-idUSTRE7270JP20110320> accessed 10 October 2019.

³⁷ Kareem Fahim, 'In his last days, Gadhafi survived on pasta and delusions' (*The New York Times*, 22 October 2011).

³⁸ *ibid.*

³⁹ Kildron (n 34) 37.

One could argue that the application of R2P in Libya was a prima facie success since it prevented what was arguably an immeasurable amount of suffering for the people of Libya.⁴⁰ This opinion is espoused by some academics who focus on two elements of the intervention to support this view.⁴¹ First, the intervention was authorised by the UNSC. It is true that having the Permanent Five Members of the UNSC (P5) refraining from using their veto power on such a controversial issue may point to prioritising their commitment to human rights, which is a success itself.⁴² It must be added that, in contrast to the situation Darfur or Côte d'Ivoire, the international community acted quickly,⁴³ which may have saved thousands of lives. In both of these cases extensive delays prior to the interventions in their internal conflicts led to tens of thousands of deaths.⁴⁴

Nevertheless, the weakness in the application of R2P in the case of Libya does not lie on its authorisation, but rather on its scope of application. Forgetting that putting an end to unilateralism was one of the main reasons for the creation of R2P,⁴⁵ the West has created a division over the application of the doctrine by unilaterally stretching its scope. Even though the West did not act unilaterally when intervening in Libya, transforming its mission from the protection of civilians to the objective of regime change was done unilaterally, and without clear UNSC authorisation.⁴⁶ This outcome can be interpreted as an abuse of what started as a legitimate legal doctrine. An idea that aimed at strengthening good faith between international actors, by

⁴⁰ Zifcak (n 19) 13.

⁴¹ *ibid* 10.

⁴² Ariela Blatter and Paul D Williams, 'The Responsibility Not to Veto' (2011) 3 *Global Responsibility to Protect* 301, 316-17.

⁴³ Zifcak (n 19) 10-11.

⁴⁴ Harry Verhoeven, Ricardo Soares de Oliveira & Madhan Mohan Jaganath, 'To Intervene in Darfur, or Not: Re-examining the R2P Debate and Its Impact' (2016) 30 *Global Society* 21, 29;

⁴⁵ Heidarali Teimouri, 'Protecting while not being responsible: the case of Syria and responsibility to protect' (2015) 19(8) *The International Journal of Human Rights* 1279, 1282.

⁴⁶ Spencer Zifcak, 'The Responsibility to Protect' in Malcom D Evans (ed), *International Law* (4th ed OUP 2014) 524.

placing emphasis on common decisions, suddenly may be seen as another tool world powers could use to expand their spheres of influence.

Indeed, good faith between western and non-western states was anything but stronger after the Libyan intervention. Following the toppling of Gaddafi, there was a strong backlash from a range of developing countries.⁴⁷ The backlash focused on the 'broad scope' of NATO action, which the Arab League had specifically condemned.⁴⁸ Indeed, there are many states, specifically in the Global South, that argued that the NATO coalition abused its mandate by imposing a regime change, including, among many others, Algeria,⁴⁹ South Africa⁵⁰ and India.⁵¹ Practically, in terms of respect to state sovereignty, there is not much difference between a unilateral intervention in a state and one that has been authorised, if that authorisation is misused because the latter puts the much-needed international consensus at risk. Consequently, such misuses of authorisation may imperil the future of the R2P doctrine as well. As it will be described in the following parts of this article, the Libyan example served as a discouragement or at least an excuse against the use of R2P in future cases,⁵² rendering the doctrine practically useless. Both the Russian and Chinese governments were determined to prevent Resolution 1973 from setting a legal precedent.⁵³

⁴⁷ Maggie Powers, 'Responsibility to protect: dead, dying or thriving?' (2015) 19 *The International Journal of Human Rights* (8) 1257, 1268.

⁴⁸ Edward Cody, 'Arab League condemns broad bombing campaign in Libya' (*The Washington Post*, 20 March 2011) <https://www.washingtonpost.com/world/arab-league-condemns-broad-bombing-campaign-in-libya/2011/03/20/AB1pSg1_story.html?noredirect=on>, accessed on 19 August 2019.

⁴⁹ Christian Lowe, 'Algeria demands end to air strikes on Libya' (*Reuters*, 22 March 2019) <<https://af.reuters.com/article/commoditiesNews/idAFLDE72L1QB20110322>> accessed 10 October 2019.

⁵⁰ Emsie Ferreira, 'Zuma warns against military intervention in Libya' (*Mail & Guardian*, 21 March 2011) <<https://mg.co.za/article/2011-03-21-zuma-warns-against-military-intervention-in-libya>> accessed 10 October 2019.

⁵¹ Sujay Mehdudia, 'India regrets military action against Libya' (*The Hindu*, 20 March 2011) <www.thehindu.com/news/national/India-regrets-military-action-against-Libya/article14955278.ece> accessed 10 October 2019.

⁵² Zifcak (n 19) 18.

⁵³ Andrew Garwood-Gowers, 'The Responsibility to Protect and the Arab Spring: Libya as the exception, Syria as the Norm?' (2013) 36 *UNSW Law Journal* 594, 612.

A second factor that some rely on to argue that the doctrine was successfully applied is that no ground forces were deployed during the intervention.⁵⁴ The absence of an occupying force was indeed prescribed by Resolution 1973 and arguably this provision was critical to the Resolution's adoption because it satisfied those UNSC members that prioritised non-intervention.⁵⁵ With hindsight, one could argue that the prohibition on the use of ground forces was a mistake because, in the absence of a trustworthy force to lead the transition, the country has spiralled into bloodshed and chaos since Gaddafi's death. At the moment, the country is ravaged by armed militias who facilitate 'human trafficking and the enslavement of migrants and asylum seekers attempting to cross the Mediterranean Sea to Europe.'⁵⁶ Lacking much-needed stability, Libya has become a battleground for 'tribal and regional enmities and alliances',⁵⁷ where, 'since 2011, various transitional governing bodies have failed to restore peace'.⁵⁸ Viewed in this light, one could argue that the international community has failed to apply R2P in a satisfying manner.

In short, the global community has not taken sufficient measures to implement the most important aspect of a Pillar 3 intervention, namely the obligation to rebuild and stabilise the state in which the intervention took place. At present, none of those responsible for human rights abuses has been brought before the International Criminal Court (ICC), despite efforts that were made to achieve this.⁵⁹ Moreover, the UNSC has managed to agree on an arms embargo, but despite its renewal,⁶⁰ it has not done much to prevent a further round of bloodshed and chaos which has resulted in the

⁵⁴ Kildron (n 34) 38.

⁵⁵ Zifcak (n 19) 6-7, 11.

⁵⁶ Global Centre for the Responsibility to Protect, 'R2P Monitor', Issue 46, 15 July 2019, 15.

⁵⁷ *ibid* 16.

⁵⁸ *ibid*.

⁵⁹ *ibid*.

⁶⁰ *ibid*; UN Security Council, Security Council resolution 2473 (2019) [on the situation in Libya], 10 June 2019, S/RES/2473 (2019).

2019 Western Libya offensive.⁶¹ Had there been an international peacekeeping force on the ground it is possible that, those responsible for the 2011 violations would have been brought to justice. Moreover, a UN ground force may have proven useful in facilitating the peaceful disarmament of all warring sides and helping the country's transition to democracy just as in Cote d'Ivoire, where a normal transition to democracy has been achieved⁶² as well as the disarmament of 69,000 combatants.⁶³

These concerns have raised doubts about the efficacy of the R2P doctrine. After all, it is only reasonable to question the viability of a doctrine that can only be implemented provided that the political willingness to implement it can be secured only if no ground forces will be involved. This assertion is made, despite the fact that the final outcome will probably be just as bad, if not worse, than the starting position, in terms of human rights abuses. If one examines the current situation in Libya, as has already been portrayed throughout this article, it is arguable that the abuses taking place now are worse than those that stimulated the 2011 intervention. Of course, this argument is largely speculative, since no one knows how the situation would have evolved were it not for the NATO campaign. However, in light of the current situation, it is worth recognising that this argument is not without merit.

At the moment, non-deployment of ground forces may simply be an issue of lack of political will, but as with any practice governed by international law, such political decisions set precedents that may one day develop into binding norms. It seems pivotal that for R2P to survive, ground forces will have to be committed in future interventions,⁶⁴ despite the interveners'

⁶¹ Human Rights Watch, 'Libya: Threat of Tripoli Fighting Raises Atrocity Concerns', 6 April 2019 <www.hrw.org/news/2019/04/06/libya-threat-tripoli-fighting-raises-atrocity-concerns> accessed 10 October 2019.

⁶² Alexandra Novosseloff, 'The Many Lives of a Peacekeeping Mission: The UN Operation in Côte d'Ivoire', *International Peace Institute* (June 2018) 24.

⁶³ *ibid* 31.

⁶⁴ Roger C Altman and Richard N Haass, 'American Profigacy and American Power: The Consequences of Fiscal Irresponsibility' (*Foreign Affairs*, November/December 2010).

current unwillingness to do so.⁶⁵ At the same time, any such interventions should be conducted much more cautiously in an effort to stay faithful to what will be prescribed by their mandates and to facilitate trust between the major world players when it comes to humanitarian interventions. The abovementioned course of action seems to be one of the most important parts of the treatment for a doctrine that, despite being promising, has found itself in a perilous position. The remaining necessary actions for its rescue can be found in the following case of Syria.

3. Syria

Following the wave of protests that spread throughout the Arab world in 2011, people in Syria took to the streets.⁶⁶ The situation took a turn for the worst in March of the same year when a group of Syrian armed forces opened fire at a funeral procession in Dar'a.⁶⁷ From that point onwards, the protests spread to all major cities of the country, including Damascus, Idlib and Homs.⁶⁸ After another month of protests, the Syrian leader, President Bashar al-Assad, swore in a new government, recognised the right to peaceful protest and lifted the forty-eight year old state of emergency,⁶⁹ in an effort to appease the protestors. These measures proved to be too little too late, with the protests continuing and intensifying.⁷⁰ The conflict between the state and civilians reached its worst when, on 21 August 2013, reports emerged, claiming that chemical weapons were used against civilians.⁷¹ These actions could qualify as both crimes against humanity and war crimes,

⁶⁵ Kildron (n 34) 39.

⁶⁶ BBC 'Mid-East unrest: Syrian protests in Damascus and Aleppo' *BBC*, (15 March 2011) <www.bbc.co.uk/news/world-middle-east-12749674>.

⁶⁷ Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN GAOR, 17th spec sess, UN Doc A/HRC/S-17/2/Add.1 (23 November 2011) at para 27.

⁶⁸ *ibid.*

⁶⁹ Zifcak (n 19) 15.

⁷⁰ Nidaa Hassan and Julian Borger 'Syrian 'national dialogue' conference boycotted by angry opposition' *The Guardian* (10 July 2011) <www.theguardian.com/world/2011/jul/10/syrian-national-dialogue-boycotted-by-opposition>.

⁷¹ Teimouri (n 45) 1284.

which would put the Syrian conflict well within the scope of an R2P intervention.⁷²

At the UNSC, every member state expressed its concern, but the Russian representative made it clear that it viewed the matter as entirely domestic and not a matter in which the international community had a role to play.⁷³ This view, which was also supported by China,⁷⁴ shaped subsequent discussions at the UNSC and hampered full application of the R2P doctrine up until the time of this writing, in the sense that no sufficiently effective measures have been adopted at a UNSC level. Not only has no Pillar 3 intervention taken place, but the UNSC has not even been able to secure the enforcement of its resolutions regarding humanitarian access to civilians.⁷⁵

However, with regard to Russia, its active opposition to intervention in Syria may be better explained by its economic and military ties with the Syrian regime⁷⁶ and by the fact that the country is 'one of the last strongholds for anti-American dominance'.⁷⁷ As Gareth Evans points out, 'for all of the lamentable inadequacy of the Security Council's response to the situation in Syria, no one has seriously argued that it is not an R2P case'.⁷⁸ Thus, Russia and China have locked the UNSC into a gridlock, making an intervention under R2P practically impossible. Instead, many local and global powers have chosen to intervene unilaterally, and hence illegally, often through air bombardment campaigns. The most recent example of this is the Turkish 2019 Rojava offensive, which led to reports of a potential humanitarian catastrophe from its first hours.⁷⁹ Such interventions not only have the

⁷² *ibid.*

⁷³ UN SCOR, 66th sess, 6524th mtg, UN Doc S/PV6524 (27 April 2011) 7.

⁷⁴ *ibid* 7-8.

⁷⁵ GCR2P (n 56) 7-8.

⁷⁶ Kildron (n 34) 41.

⁷⁷ *ibid.*

⁷⁸ Gareth J Evans, 'The Responsibility to Protect Comes of Age' *Project Syndicate*, 26 October 2011 <www.project-syndicate.org/commentary/the-responsibility-to-protect-comes-of-age?barrier=accesspaylog>.

⁷⁹ Bethan McKernan, Julian Borger, and Dan Sabbagh, 'Turkey unleashes airstrikes against Kurds in north-east Syria' (*The Guardian*, 9 October 2019)

drawback of being unregulated by any international organisation, and have also led to a great number of civilian deaths,⁸⁰ but they are also harmful to the future of R2P. Arguably, it will be impossible to establish R2P interventions as a binding norm if the majority of state practice moves in the opposite direction.

The Syrian war has highlighted many of R2P's limitations. Apart from the aforementioned dependency of the application of a legal norm on the political and geostrategic considerations of the UNSC's members, there is also the question of who should be the target of the proposed intervention. As Steward Patrick has explained:

[...] the Syrian case demonstrates the difficulty of applying R2P when the conflict in question has evolved from a government making war on unarmed civilians into a full-blown civil war in which both regime and rebel forces commit atrocities. When opposing sides are wearing neither white nor black hats but varying shades of grey, the threshold criteria for R2P intervention - and the means by which it should be implemented - become even cloudier than normal.⁸¹

This is arguably the biggest difference between the Syrian and the Libyan cases when it comes to Pillar 3 interventions. By contrast to Libya, where the opposition was somewhat united in 2011, with defensible territories and could readily replace the national government,⁸² the Syrian situation is much more chaotic. The Syrian Opposition lacked both an identifiable leader and a centralised command centre,⁸³ resulting in fragmented reactions, which, on several occasions, led to humanitarian violations by all warring sides.⁸⁴ The situation only became worse with the rise of the Islamic State (IS) in 2014,

<www.theguardian.com/world/2019/oct/09/turkey-launches-military-operation-in-northern-syria-erdogan> accessed 11 October 2019.

⁸⁰ GCR2P (n 56) 7.

⁸¹ Steward M Patrick, 'Does Syria Mean the End of the Responsibility to Protect?' (*The Atlantic*, 13 June 2013).

⁸² Kildron (n 34) 39, 43.

⁸³ *ibid.*

⁸⁴ GCR2P (n 56) 7.

which again brought the question of how to address the Syrian conflict to the forefront of debate.⁸⁵ On that ground, the United States initiated a series of unauthorised, limited interventions, involving again the protection rhetoric.⁸⁶ Nevertheless, such acts can be said to fall within a grey area of law, considering article 2.4 of the UN Charter.⁸⁷ Both the multiplicity of human rights perpetrators and the subsequent interventions can only serve as a call for reform. In order to secure the doctrine's efficient application in the future, specific conditions under which it should be applied must be set, thus leaving less room for political maneuvers. For example, it may be useful to set different levels of force that would be permissible in different circumstances. If one compares the cases of Libya and Syria, it can be seen that the amount of force used in the former would not suffice in the latter. Therefore, by splitting Pillar 3 into subgroups, a clearer scope would be set for every intervener, while at the same time, the appropriate and proportionate level of force would be applied to every situation.

Any intervention in Syria would have to be directed against multiple adversaries, with the intervening forces thus facing a somewhat herculean resistance. Under such conditions, 'putting boots on the ground' looks like an unavoidable outcome. It is unclear if the current scope of R2P interventions would cover such an operation, and the likelihood of obtaining UNSC authorisation for any such intervention is minimal. Hence, the Syrian case raises doubts over R2P's effectiveness, at least in its current form. In order for the doctrine to have a future, its dependency on political interests must be limited and the circumstances under which it will be implemented must be clarified.

4. Looking at the Future

Looking at the future, the survival of R2P seems uncertain. The cases of Libya and Syria have dealt devastating blows to the doctrine, each in its own way. However, research has shown that R2P rhetoric up to 2014 had actually

⁸⁵ Teimouri (n 45) 1285.

⁸⁶ *ibid.*

⁸⁷ UN Charter (n 11), art. 2.4.

increased since these two conflicts had broken out.⁸⁸ Powers argues that since the intervention in Libya and up until February 2014 there were 341 references to the doctrine in the UNSC, which are slightly more than the references made in the period between 2005 and the Libyan intervention. Of these references 82% were affirmative, while only 7% were purely negative.⁸⁹ The negative references were made only by five states, Sudan, Nicaragua, Syria, Venezuela, and Russia, none of which has a particularly good human rights record.⁹⁰ Nevertheless, from the point of the intervention onwards, R2P rhetoric is still present, but mostly limited to Pillar 1.⁹¹ Thus, it appears that, at a minimum, Pillar 1 of the doctrine can be considered universally acceptable, to the point that it could be seen as binding.⁹² However, when it comes to a transition from words to deeds, the situation becomes much more discouraging. This is mostly evidenced by the lack of Pillar 3 interventions as well as by the insufficient, incomplete or incorrect utilisation of the R2P interventions. Both of the interventions that took place after Libya happened with the consent of the state where it took place.

Therefore, it must be pointed out that neither of these interventions falls within the usual R2P concept. Hence, both the interventions in Mali⁹³ and the Central African Republic (CAR).⁹⁴ can be said to fall within the scope of Pillar 3 only marginally. The following section will discuss two additional on-going conflicts where the R2P doctrine might be applicable, namely Burma and Yemen, in an effort to assess the doctrine's present state. These assessments are quite limited due to the on-going and volatile character of the conflicts, which renders any conclusion on the future of R2P necessarily tentative.

⁸⁸ Powers (n 47) 1269, 1271.

⁸⁹ *ibid.*

⁹⁰ *ibid* 1272.

⁹¹ Graham Melling, 'Beyond rhetoric? Evaluating the Responsibility to Protect as a norm of humanitarian intervention' (2018) 5 *Journal on the Use of Force and International Law* (1) 78, 94-96.

⁹² Powers (n 47) 1269, 1271

⁹³ Isaline Bergamaschi, 'French Military Intervention in Mali: Inevitable, Consensual yet Insufficient' (2013) (2) *Stability: International Journal of Security & Development* 1, 6.

⁹⁴ Powers (n 47) 1258.

One could easily call Myanmar's Muslim Rohingya minority, 'the world's most persecuted' minority.⁹⁵ This persecution, which has lasted for decades, mostly takes the form of direct and structural violence, including ethnic cleansing and genocide.⁹⁶ Nevertheless, R2P has not been utilised to prevent future human rights violations here. As previously indicated, R2P does not always require military intervention. This point makes the situation even more worrying since it proves the international community's inability to rely on R2P's pillars that come prior to an intervention. First, it shows the state's unwillingness to adhere to the concept of sovereignty as responsibility. This concept 'implies a system of law and order that is responsive to the needs of the national population for justice and general welfare'.⁹⁷ Based on reports of 'apartheid-like conditions'⁹⁸ from which the Rohingya are suffering, there is little or no room to argue that the Burmese government sees its sovereignty as a responsibility, at least not towards all of its citizens. Based on what was already mentioned on the binding force of the first pillar of R2P, it can be argued that Myanmar is violating its international obligations. This should have normally been enough to trigger a collective response by the international community. Nonetheless, save for individual states and regional blocks no other measure has been adopted, much to the detriment of any chances for survival the doctrine has.

Second, it demonstrates the international community's inability to adequately address its own obligations towards the Burmese people. As previously mentioned, no collective measures have been adopted at a UN

⁹⁵ Lindsey N Kingston, 'Protecting the world's most persecuted: the responsibility to protect and Burma's Rohingya minority' (2015) 19(8) *The International Journal of Human Rights* 1163.

⁹⁶ *ibid* 1164.

⁹⁷ Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC Brookings Institution Press, 1998), 275-6.

⁹⁸ 'UN calls for 'full Rohingya citizenship'' (*Al Jazeera*, 30 December 2014 <www.aljazeera.com/news/americas/2014/12/un-calls-full-rohingya-citizenship-myanmar-monks-rakhin-2014123044246726211.html> accessed on 23 August 2019; GCR2P (n 55) 5.

level to the point of writing this article. Sanctions by the US, Canada, the EU and Australia, including an arms embargo, have been adopted,⁹⁹ but these have not resolved the problem. This further underscores the need for a coordinated, international response. Furthermore, in December 2018, the United Nations Human Rights Council (UNHRC) approved the creation of a fact-finding mechanism for Myanmar and the Organisation of Islamic Cooperation urged for a case to be brought to the International Court of Justice (ICJ), something that The Gambia has confirmed that it is planning to do.¹⁰⁰ Nevertheless, it is doubtful that these measures have produced any tangible effects on the perpetrators since the Burmese government has done little for the refugees' repatriation other than demolishing their villages and building concentration camps in their places.¹⁰¹

It is hard to believe that these measures will be sufficient to persuade Burma to adhere to its obligations. What they might do then, is to shed enough light to the abuses that take place so that it will be imperative for the UN members to adopt collective measures. Possibly the sole silver lining in this situation is that, on 4 July 2019, the Chief Prosecutor of the ICC requested authorisation to open a formal investigation into the alleged mass deportation of more than 700,000 Rohingya people.¹⁰² It must be noted that for the time being none of these actions has brought about any actual impact on the lives of the alleged victims, although a possible ICC prosecution might be the strongest pressure exercised until now on Myanmar. It remains to be seen if such a prosecution will encourage Burma to respect its responsibility to its people.

The continuing situation in Myanmar could threaten R2P. If the international community and, most importantly, the UNSC continue to ignore their

⁹⁹ GCR2P (n 56) 5-6.

¹⁰⁰ *ibid.*

¹⁰¹ GCR2P (n 56) 6; Jonathan Head, 'Rohingya crisis: Villages destroyed for government facilities' (*BBC*, 10 September 2019) <www.bbc.co.uk/news/world-asia-49596113> accessed 10 October 2019.

¹⁰² GCR2P (n 56) 5-6; Office of the Prosecutor, 'ICC Prosecutor, Fatou Bensouda, requests judicial authorisation to commence an investigation into the situation in Bangladesh/Myanmar' (4 July 2019) <www.icc-cpi.int/Pages/item.aspx?name=pr1465> accessed on 23 August 2019.

collective obligations to take measures to halt human rights violations, the doctrine could easily slip into oblivion. This is because of the long-established principle that, in international law, for a norm to become binding, there needs to be 'a constant and uniform usage practiced by the States in question'.¹⁰³ Therefore, the case of Myanmar serves as a warning about the future of R2P, as it demonstrates a lack of consistent and uniform practise amongst states in addressing war crimes and human rights violations that occur in similar conflicts.

5. Yemen

As with Myanmar, the conflict in Yemen has highlighted another threat that the R2P doctrine is facing. The war that has been raging between the country's government and Houthi rebels has left more than 24 million Yemenis in need of humanitarian assistance.¹⁰⁴ Moreover, the military coalition led by Saudi Arabia and the United Arab Emirates (UAE) has carried out bombardments since 2015, which have resulted in more than 16,000 civilian casualties.¹⁰⁵ These actions have been characterised as widespread violations of international humanitarian and international human rights law by all parties.¹⁰⁶

Despite these actions, the UNSC has again failed to take advantage of the full potential of R2P. As of the time of writing, the UNSC has imposed sanctions against Houthi leaders and the country's former President Saleh,¹⁰⁷ and also imposed an arms embargo against the internal parties of the conflict.¹⁰⁸ These measures, however, have fallen short of preventing the international coalition from continuing to commit war crimes and crimes against

¹⁰³ *Asylum Case*, ICJ Reports, 1950, 266, 276-7.

¹⁰⁴ GCR2P (n 56) 8.

¹⁰⁵ *ibid.*

¹⁰⁶ UN Security Council, Final report of the Panel of Experts in accordance with paragraph 6 of resolution 2402 (2018), 25 January 2019, S/2019/83.

¹⁰⁷ UN Security Council, Security Council resolution 2140 (2014) [on the Middle East], 26 February 2014, S/RES/2140 (2014).

¹⁰⁸ UN Security Council, Security Council resolution 2216 (2015) [on cessation of violence in Yemen and the reinforcement of sanctions imposed by resolution 2104 (2014)], 14 April 2015, S/RES/2216 (2015); UN Security Council, Security Council resolution 2402 (2018), 26 February 2018, S/RES/2402 (2018).

humanity. This, in turn, has created an international outcry against the interveners' main arms suppliers.¹⁰⁹

Once again, the international community's inactivity has failed to bring an end to an on-going conflict, which has proven to be lethal not only to tens of thousands of Yemenis, but possibly also to one of the most promising international legal doctrines. First, the international community has failed to take the necessary measures to put an end to the actions of all those responsible for the atrocities that take place in Yemen, including the obstruction of humanitarian assistance.¹¹⁰ To apply this doctrine to the case of Yemen, the selling of arms to any of the parties, including Saudi Arabia and the UAE should be halted so long as these abuses take place. If the doctrine is not applied to a satisfying extent, then again there is the risk that R2P will fall into decay.

The last danger the Yemen case has evidenced is the potential for misuse and subsequent abuse of the doctrine by international players. In this case, Saudi Arabia has constantly used R2P rhetoric to justify its intervention.¹¹¹ However, a legitimate application of the doctrine seems to preclude the official Saudi account of its actions, as 'evidence suggests that Saudi military action is exacerbating the situation on the ground, making the stated objective of protection a less likely prospect.'¹¹² In addition, geostrategic considerations seem to be higher in the Saudi priority list in comparison to human rights protection. This is mostly evidenced by the fact that the two major powers in the Middle East, namely Saudi Arabia and Iran, have been supporting different rival factions in the conflict. Consequently, it can be seen that the alleged application of the doctrine by the Saudis poses a further threat to its survival as it is only used as a pretext to serve the Saudi war for

¹⁰⁹ Susan Hutchinson, 'The pressure to curb arms sales to Saudi Arabia' (*The Interpreter*, 26 February 2019) <www.lowyinstitute.org/the-interpreter/pressure-curb-arms-sales-saudi-arabia> accessed on 24 August 2019.

¹¹⁰ GCR2P (n 56) 9.

¹¹¹ David Tuckwell and Luke Smyth, 'Does Saudi Arabia have a responsibility to protect in Yemen?' (*The Sunday Morning Herald*, 7 May 2015) <www.smh.com.au/opinion/does-saudi-arabia-have-a-responsibility-to-protect-in-yemen-20150507-ggw617.html> accessed on 25 August 2019.

¹¹² *ibid.*

influence. This threatening situation is further intensified by the fact that there is no international consensus for the intervention. Such unilateral actions can reverse the whole effect R2P had on humanitarian interventions and lead the international community several decades to the past. Finally, one could argue that the Saudi-led coalition is only filling the gap that the UNSC has left open. Therefore, had the international community responded to the Yemeni crisis in an adequate and legitimate manner, then there would not have been any room for the coalition to abuse it. This can be contrasted with the intervention in Libya where, despite of the outcome, the actual intervention was a product of the international community as a whole, expressed through the UNSC. Had this not taken place, it is possible that international coalitions or even individual states could have taken advantage of the lack of collective action, just as it is done in Yemen.

Potentially exacerbating the situation is the unlikeliness that the interveners in Yemen will take the necessary measures to rebuild and stabilise the country,¹¹³ again suggesting an incorrect application of R2P. Again, this should be seen as a warning for the UNSC, but little has been done to adhere to the provisions of the doctrine. The international antagonisms which have been tormenting the world in the past years have found prosperous grounds in the current climate of division and in unilateral interventions by stronger into weaker states. This is detrimental to any prospect of global peace and cooperation, but most importantly to the lives and livelihoods of individuals, which the R2P is supposed to protect.

Conclusion

One could say that R2P is not dead. However, this does not mean that its position is not perilous. This is mostly because of inapt uses or failures to use the doctrine. First, R2P was misapplied in Libya, where the scope of the UNSC authorisation was overstretched to bring about a regime change. Another shortcoming the Libyan case has demonstrated about the doctrine is the lack of necessary actions to rebuild the country after the intervention despite having an obligation to do so. On top of the Libyan case, there is the

¹¹³ *ibid.*

international community's inaction in the case of Syria. The paralysis of the UNSC has rendered the doctrine almost ineffective. Furthermore, the war in Syria has showcased that for the R2P to be utilised efficiently in the future, there must be a clarification of the circumstances in which Pillar 3 interventions will be applicable, and their extent, as well as a distancing of the doctrine from individual political interests. Such distancing will prevent the doctrine from being abused in order to serve individual interests and will instead ensure that like cases are treated alike. Finally, the situations in Burma and Yemen could end up being fatal blows for R2P. Particularly, if the UNSC chooses to remain under the shadow of its previous inaction, instead of trying to rightly apply R2P, then the death of a doctrine still in its infancy, may be imminent. Therefore, the fate and possible effect of the R2P doctrine remains to be seen.