The Evolution of the “Responsibility to Protect” as an International Norm

by

BEN HADJ LARBI Ghassen

DISSERTATION

Submitted in Partial Fulfillment of the Requirements

for the Degree of

Doctor of Philosophy
in International Development

GRADUATE SCHOOL OF INTERNATIONAL DEVELOPMENT

NAGOYA UNIVERSITY

Approved by the Dissertation Committee:

YAMAGATA Hideo (chairperson)
NISHIKAWA Yukiko
KUSAKA Wataru
SHIMADA Yuzuru

Approved by the GSID Committee: April 20, 2016

主論文の要約

(Abstract of Dissertation)

論文題目：The Evolution of the “Responsibility to Protect” as an International Norm

氏　名：　BEN HADJ LARBI Ghassen

論文内容の要約：

The last decades have witnessed an increasing number of grave and massive violations of human rights. In particular, crises in the 1990s such as Somalia, Rwanda, Bosnia and Kosovo and the way the international community reacted to them have shown that a doctrine was needed to deal with such issues. Indeed, the Rwandan and the Bosnian cases have shown the cost in human lives when the international community refused to intervene, while the Somalia and Kosovo cases have illustrated the dangers of such military interventions to stop massive violations of human rights. It is in this context of questioning whether there was an ethical duty on the part of the international community to react to mass atrocities and how that would be compatible with the principle of non-intervention and state sovereignty that the doctrine of “Responsibility to Protect” (or R2P for short) was formulated. Since then, the concept, often described as an “emerging norm”, has become an integral part of discussions of international politics both in academia and in policy circles.

However, few studies considering what the implications of calling R2P a norm have been conducted, despite the fact that there was a body of literature dealing with what norms are, how they appear and develop and how they come to matter in the international scene. This study tries to fill that void by studying the evolution of R2P as an international norm. To do so, we use the body of literature on norms to find an adequate framework that describes the evolution of international norms. We use that framework against R2P, first to check whether R2P follows the steps outlined by the framework, and second to see how far it has gone to in the evolution of international norms. Indeed, a norm at the start of its evolution will not be widely used and will not overly influence the course of actions taken, while a norm that has already been established is expected to have a strong influence over the behaviour of the actors. To verify that, we also examine crises in Darfur, Kenya, Côte d’Ivoire and Libya and try to see what role, if any, R2P played in shaping the response of the international community. We do so by looking at the various statements of representatives of member states of the UN Security Council, with the assumption that we could find clues and references to R2P in their explanations as to why they chose to support or to abstain from voting various resolutions

dealing with those crises. Indeed, a norm by definition advocates for a certain standard behaviour and pushes actors towards particular courses of action, and it is not a stretch to expect to find references to a norm in the explanations of actors for why they chose a certain set of actions. By doing so, we could have a clear idea about the current status of R2P as an international norm, and explain why R2P did or didn't play an important role in dealing with the above mentioned crises. Furthermore, it allows us to project ourselves in the future and anticipate the potential challenges to R2P and evaluate its usefulness as a norm.

We analyse the evolution of R2P as an international norm using the "norm life cycle" model developed by Finnemore and Sikkink. We find that the evolution of R2P followed the trajectory outlined by the framework: three different phases "norm emergence", "norm cascade" and "internalization" with the first two separated by a "tipping point". In the case of R2P, its evolution could be divided in two main periods: the first between 2001 and 2005, and the second from 2005 until now. These periods correspond to the "norm emergence" phase and the "norm cascade" phases respectively and are separated by the 2005 World Summit, which serves as the "tipping point" of the norm life cycle model. While some characteristics of the "internalization" phase were present, they served more in assisting the promotion and socialization mechanisms of the "norm cascade phase" while instilling the normative biases of R2P into professionals. Because of that, we conclude that R2P is in the "norm cascade" phase of the norm life cycle model.

The case studies analysed also seem to agree with the evolution of R2P. Indeed, in the oldest case study of Darfur, we find that R2P was not a strong influence over the decisions of the Security Council, with the exception of the Philippines who explicitly referred to the doctrine to explain why it voted for the resolution. This is in accordance with the current state of R2P at the time, which was progressing from the "norm emergence" phase to the "tipping point".

It is more difficult to evaluate the role of R2P in the Kenyan case because the resolution of the crisis came largely through informal meetings between the opponents and leaders of the African Union. However, the UN Secretary-General's statement about the resolution of the crisis shows that he saw the actions taken by the informal panel as an application of the norm. In the same vein, Desmond Tutu, who is a member of The Elders, an independent group of global leaders who work for peace and human rights and supporters of R2P founded by Mandela, also interpreted the actions of the informal panel as R2P in action. This case illustrates both the drive for building reputation for the norm consistent with a norm in the "norm cascade" phase of the norm life cycle model, but it also shows the strength of the consensus of the international community concerning its involvement for the peaceful settlement of crises.

The Côte d'Ivoire crisis and the position of the international community are also consistent with the stage of evolution of R2P at the time. Indeed, that period was characterized by intense socialization and discussion of the concept by member states following the successful resolution of the Kenyan crisis. As such, we could see a stronger emphasis on the protection of civilians in the declarations of member states. Although the crisis was of a political nature and member states encouraged its peaceful resolution in a political manner,

they also were wary of the on-going violence against civilians and the potential for escalation. While there was no explicit mention of R2P, declarations of member states seemed to refer to the principles of R2P. The stronger role of R2P in the resolution of this crisis is thus consistent with the evolution of the norm.

Finally, the Libyan crisis was the biggest test to the commitment of the international community to uphold the R2P doctrine and the crisis itself was "almost a textbook illustration justifying R2P principles". In this case again, the actions of the international community seem to have been in accordance with the stage of the evolution of R2P at the time. But because Resolution 1973 authorized the use of force against a functioning government for the explicit goal of civilian protection, this case could also be seen as a transition from the "norm cascade" phase to the "internalization" phase, where norms are strictly adhered to. However, the stretch of the mandate by NATO and its subsequent active participation in the civil war that ensued seem to have put a stop to the evolution of R2P towards the next stage.

Furthermore, we find that the evolution of R2P as an international norm was closely followed in its application to solving a number of international crises. We could see a shift from the traditional non-interference towards a less indifferent or even more assertiveness in defending, in words at least, the rights of populations from mass atrocities, as the norm was getting more accepted and debated at the UN.

We also discuss the potential future of the norm. We find mixed results. On the one hand, the basic principles of the norm are relatively well accepted by states and civil society in general, having intrinsic characteristics and strong adjacency claims with notions of human rights and human security. It has managed to become the *de facto* framework for talking and dealing with mass atrocities. On the other hand, the norm remains divisive concerning the possibility of the use of force, with strong opposition from China and Russia and a cautious attitude from India and South Africa. Furthermore, the dual responsibility system of the norm, which seeks to force the link between well-established rules of international law and a new concept of sovereignty, can possibly become a handicap for its systematic application. Also, the very structure of the United Nations, with the Security Council holding the absolute power to authorize the use of force or not and the veto powers of the permanent members, is potentially the largest obstacle to R2P truly becoming an international norm and becoming internalized. The RwP proposal of Brazil, while inconclusive in the end, could provide a model for emerging powers to contribute to the further evolution of R2P if they so wished. For R2P to stay relevant, it needs to keep the possibility of coercive action and deal with the issue of its codification into international law. The main actors, namely the states and the United Nations, should take the issues and engage in further discussion about the challenges R2P faces when implementing its reactive part and notably its authorization of the use of force.

Although it may not reach the internalization stage of the norm life cycle model because of the politics of great powers, it would still contribute to improve on the large and important issues on which there is consensus and solidify those basic principles, but that would no longer be R2P.

Contents

Chapter I. Introduction

1. Introduction and Aims of the Research

Before the 90s, the main doctrine for responding to grave humanitarian crises or mass violations of human rights was the so-called 'humanitarian intervention', defined as "coercive action against a state to protect people within its borders from suffering grave harm" by Gareth Evans and Mohamed Sahnoun[1]. While this doctrine was used most notably in Kosovo in the late 90s, such interventions provoked wide outrage from the parties not involved. The first blame was that such interventions were not decided by the United Nations Security Council and were thus illegal from an international law perspective. The second criticism made to humanitarian intervention was that it violated the sacrosanct doctrine of non-intervention inherited from the peace of Westphalia. Furthermore, humanitarian intervention suffered from a number of critics, especially that it was politically motivated and only served to pursue the interests of great powers, and ignoring terrible situations.

Especially, the concept has been strongly attacked for the failure of the international community to stop the massacres in Rwanda and Bosnia. In Rwanda, the United Nations and other main actors such as Belgium, France and the United States of America were criticized for their lack of reaction to the on-going atrocities, even though there was a UN mission already in place in the country at the time. In Bosnia, they criticized the lack of protection of the Bosnian population of Srebrenica by the forces of UNPROFOR and their lack of reaction again to the

[1] Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs*, November 1, 2002, http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect.

massacres that took place. Because of that, the United Nations Secretary-General of the time, Kofi Annan, challenged political leaders and asked the question: "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]

The answer came from the International Commission of Intervention and State Sovereignty, or ICISS, in the report "The Responsibility to Protect" (or R2P for short) released in the end of 2001 with the concept of the same name. Part of the novelty of the concept resided in its new approach tying responsibility to sovereignty, reaffirming the importance of the protection of civilians not only to the state concerned but to the whole international community. Coupled with the concept of human security, this led to an important shift in how to approach crises. Since then, the concept, often described as an "emerging norm", has become an integral part of discussions of international politics both in academia and in policy circles.

1.1 Problem Statement and Research Questions

The concept of R2P has often been referred to as an "emerging norm". Indeed, the first such mention is arguably in the report "A More Secure World: Our Shared Responsibility", written by the High-Level Panel on Threats, Challenges, and Change in December 2004. Regarding R2P, the Panel stated that "We endorse the emerging norm that there is a collective international responsibility to protect"[3]. Since then, the term stuck and was often used when discussing R2P[4].

---

[2] Kofi A. Annan and United Nations, *We The Peoples: The Role of the United Nations in the 21st Century* (New York: United Nations, Department of Public Information, 2000).

[3] United Nations and United Nations, *A More Secure World: Our Shared Responsibility: Report of the High-Level Panel on Threats, Challenges, and Change* (New York? United Nations [Dept. of Public Information], 2004), para. 203.

[4] Gareth Evans, "From Humanitarian Intervention to the Responsibility to Protect," *Wisconsin International Law Journal* 24 (2007 2006): 703–22; Paul D. Williams and Alex J. Bellamy, "The Responsibility To Protect and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (March 1, 2005): 27–47, doi:10.1177/0967010605051922; Ved P. Nanda, "The Protection of Human Rights under International

Before discussing the issues of R2P as a norm, it is necessary to define what we mean by norm. While there are many definitions for the term depending on the different fields of studies, we adopt the following one from Finnemore and Sikkink: norms are standards "of appropriate behaviour for actors with a given identity"[5], and have three main characteristics: compliance with the standard or strategy throughout (most of) society, stabilization of expectations around the standard shared expectations, and self-reinforcement[6]. We discuss this issue in-depth in Chapter II. The norm status of R2P has often been discussed, but with a focus on whether R2P has achieved the status of a norm (mostly in legal terms, where it is equated with a rule of customary law) at different points in time or after particular events, with no being a recurrent answer[7]. However, this does not help us understand why R2P is not yet a fully-accepted norm, nor why it was successfully or unsuccessfully been applied to various crises. To answer such questions, we need to include the time component in the equation and look at how and why R2P started and how it still evolves.

Much research has been done on the concept of international norms and their development and dynamics (see Chapter II), and this has described the particular dynamics that allow a concept to become an international norm or to fail at doing so. It has also allowed the possibility to predict whether some particular concepts are more likely to become an international norm or not by giving some factors that can be tested against. Because R2P is often referred to as an

---

Law: Will the U.N. Human Rights Council and the Emerging New Norm 'Responsibility to Protect' Make a Difference?," *Denver Journal of International Law and Policy* 35 (2007 2006): 353–78.

[5] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 04 (1998): 891, doi:10.1162/002081898550789.

[6] Matthew J. Hoffman, "Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle," Technical report (Department of Political Science and International Relations University of Delaware, 2003), 4.

[7] Jonah Eaton, "An Emerging Norm? Determining the Meaning and Legal Status of the Responsibility to Protect," *Michigan Journal of International Law* 32, no. 4 (2011): 765–804; Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?," *The American Journal of International Law* 101, no. 1 (2007): 99–120; Nanda, "Protection of Human Rights under International Law."

“emerging norm”, instead of asking directly whether it has matured and become an established and accepted international norm yet, it would be more useful to assess its evolution, and by doing so, it would allow to know if it has become an established international norm in the end. Using the tools developed by norms researchers, we can have a clear view of how far along in its evolution R2P is currently, as well as the likelihood of its success or failure in becoming a fully accepted international norm.

However, this requires taking a historical approach to the development of R2P and to reassess its role in crises depending on what stage of its evolution it was. Doing so would help improve the understanding of the successes and failures of R2P in specific situations as well as provide hints to particular issues that may impede the evolution of R2P towards becoming an established and fully accepted international norm. This will be done through the careful study of the different dynamics of the evolution of the norm, how and why it started and how it grew, how it was applied in particular cases, why it was successful or not in those particular cases, what factors may inhibit it from further evolving and what challenges it must overcome to finish its evolution if possible.

To summarize, we set ourselves to answer the following questions:

- What is the current status of evolution of R2P as an international norm and is it a fully accepted international norm?
- Why was R2P successful or unsuccessful in its application to the cases studied?
- What was the effect of the stage of evolution of R2P, if any, on the international community’s response to the particular crises studied?
- If R2P has not managed to become a fully accepted norm, what are the challenges to that and what are next steps R2P has to tackle in order to become one?

1.2 Methodology

We are set to answer the above research questions by using a framework developed by Finnemore and Sikkink called the "norm life cycle" model. This framework deals with the evolution of international norms and describes the different stages in the evolution of an international norm, and for each stage the main actors pushing the norm, the motives they have for advocating it and the dominant mechanisms they use to do so. This model was developed after an extensive study of the literature on norms and has since been used in a variety of studies. Because we are dealing with the evolution of R2P as an international norm, this framework is the ideal tool to use. While there are other frameworks dealing with international norms, this is the one that is best suited to answer our research questions because of its focus on the process of evolution and the spread of international norms. A more complete discussion on the subject, with an outline of different models of framework dealing with international norms and a more detailed explanation of the "norm life cycle" model is found in Chapter II.

In order to analyze the case studies and determine the effect of R2P on each of them, in addition to the above mentioned "norm life cycle" model, we use secondary data mostly in the form of the statements of the representatives at the United Nations when they voted the different resolutions dealing with the cases that we study. We do so because we base ourselves on the constructivist approach of the "norm life cycle" model, and particularly on the dominant mechanisms to spread the norm which include persuasion, socialization and institutionalization. Thus, it is necessary to look at the discourse and vocabulary used by the main actors in the different crises in order to see whether R2P was an important factor or not and whether we can see an evolution in the use of R2P-related expressions or vocabulary as time goes on and the norms goes through the phases of its evolution. In addition to these documents, we also use relevant literature on those crises in order to include other viewpoints and explanatory factors

outside of R2P.

The International Coalition for the Responsibility to Protect, an umbrella organization of NGOs whose goal is to support the norm, has compiled a list of crises where R2P has been invoked by civil society or actors of the international society. These cases range from Darfur to Syria, through Burma, Kenya, Mali, and many others.

While using all these cases for our study would be ideal, we are constrained by time and the volume of documents and speeches to analyse. Furthermore, there is also an additional constraint: we have to have case studies ranging from the first emergence of the R2P norm all the way to the present. Indeed, since we are studying the evolution of R2P as an international norm, we have to cover all the time of its evolution in order to be relevant. Because of that, we have decided to focus on four particular cases. This number is low enough to allow a thorough analysis of the documents and statements of actors, but also high enough to cover the different periods of the norm evolution. The particular cases to be studied in this research are Darfur between 2004 and 2007, the post-election violence in Kenya in 2009, the post-election violence in Côte D'Ivoire in 2011 and the Libyan civil war in 2011. These case studies were selected because of their importance in relation to R2P and the amount of scholarly work that was already done on them. Darfur is a crisis showcasing the timid start of R2P, Kenya and Côte D'Ivoire a time when there was a stronger consensus on the norm, and the Libyan case, with the UN allowing NATO to proceed with a military operation, highlights the worst case scenario of the norm. With these case studies, we have a spread across time and different types of response to the crises from the international community. Furthermore, these cases have been studied by many scholars and thus, there are many resources to rely upon or criticize with our approach.

1.3 Contribution and Limitations

This research aims to fill a research gap in the literature on R2P by focusing on evolution as an international norm and its application in particular crises in the context of that evolution. Each research question offers a particular contribution. The first research question, "what is the current status of evolution of R2P as an international norm and is it a fully accepted international norm?" may be relatively straightforward, as there seems to be a relative consensus in the academic literature that R2P has not yet managed to become a fully accepted international norm. However, many of those studies have focused on the legal definition of a norm, as in asking whether R2P has become part of International Law or not. Because of that, it is important to revisit this question with a special focus on the dynamics of norm evolution and the tools of constructivism. In addition, recent crises such as Côte D'Ivoire, Libya and Syria seemed to have an important effect of R2P and it is thus a good moment to check again this evolution. Furthermore, this question nicely sets up the stage for the research and show that we will follow a chronological order in studying the evolution of R2P. Our hypothesis is that R2P has not been accepted as an international norm yet.

The second and third questions, "why was R2P successful or unsuccessful in its application to the cases studied?" and "what was the effect of the stage of evolution of R2P, if any, on the international community's response to the particular crises studied?" are the main contributions of this research. Indeed, while as we mentioned before these cases are widely studied, they have not been through the particular lens we have chosen. As we have said previously, we take a constructivist approach to the study of these cases, and thus we focus mostly on the declarations made by the representatives of the main actors, the member states at the United Nations in the context of the evolution of R2P as an international norm. This has two advantages. First, it makes our research very much grounded, as we are using the exact words of the main actors of

the crisis. Second, it allows us to easily see any evolution of language towards the use of R2P-related words and expressions. We will be thus able to shed a new light on the crises by highlighting the role R2P played or failed to play in them, in conjunction with the other factors identified in the literature.

By taking into account the stage of evolution of the norm at the time of the crises, we will also be able to better assess why R2P was successful or not in those particular instances and thus contribute to a better understanding of the dynamics of the crises. Furthermore, by studying the language used to justify action or inaction on the grounds of R2P over a period of time, we will also be able to see the evolution of the language used and assess whether or not R2P has had an increased influence over the behaviour of actors as would be expected from a developing norm. We expect to find that, if R2P had a role in shaping the response of the international community in dealing with the cases studied, it would probably not be the most important factor, and it would probably be the sum of all positive factors that made action possible. In the case of no action of the part of the international community, we would find that it is not because R2P was absent from the discussion but rather that the other positive factors were too weak to warrant action on the part of the Security Council. Furthermore, we expect to observe an evolution in the language used by the actors, with them using more and more vocabulary and expressions in relation to R2P the more the norm is developed.

The last question, “if R2P has not managed to become a fully accepted norm, what are the challenges to that and what are next steps R2P has to tackle in order to become one?” is the logical next step to the previous ones. As there is a large body of research stating that R2P has not yet managed to become a fully accepted international norm, and we may confirm this view in our analysis, we have to think about why that is and what must R2P do in order to become one. Again by using the statements seen in the case studies, and with the rest of the literature on the topic, we will explore the limits of R2P as it stands now and investigate a number of

potential routes for its future. In this section, we expect to find some of the same challenges to R2P as those identified by other scholars, such as the veto power of the Security Council, or the lack of political will. As for the next steps, this question remains open at this moment.

However, this research has a few limitations. First, by focusing mostly on the declarations of the representatives of the member states of the United Nations, we almost certainly miss some explanatory power on the motives behind the decisions taken. Indeed, it would be naïve to take the statements at face value and we do not know whether there were any deals or promises made behind the scenes. But this is somewhat attenuated by the fact that we will be using a lot of other sources with different approaches in our case studies.

The second limitation is that a number of the issues over R2P that we will identify in our case studies will probably be the same as those identified by other scholars. For instance, we chose not to have Syria as a case study because of the obvious problem with the UNSC veto. This issue was foreseen from the onset of R2P by the ICISS and remains a thorny issue. However, even if we end up with some issues being the same, the fact that we found these same issues coming from a different approach to the problem only serves to give more credence to these particular issues and reinforce the need to tackle them in further research.

While the concept was originally conceived and officially published in 2001 by the ICISS, it has many nuances and interpretations, and the concept itself and what it entails have changed over the years. In order to understand clearly R2P, we need to understand the background in which it was developed and understand its original incarnation. The next part illustrates these different understanding of the doctrine and the underlining principles behind their formulation.

2. Historical Background of R2P

2.1 R2P in the 2001 ICISS Report

The first incarnation of R2P was articulated in the report of the ICISS, which was published in December 2001. This section outlines the main principle of the norm as well as its main foundations and the different responsibilities it sets up.

A) The main principle

A first step that was necessary to the development of R2P was a shift in the meaning of the concept of sovereignty from "sovereignty as control" to "sovereignty as responsibility"[8], meaning that sovereignty was no longer seen as the prerogative of a state to do what it wants for internal matters. The ICISS report explains that sovereignty entails a duty of protection of the people's fundamental rights from massive acts of violence, and sovereigns, the states, have a responsibility to fulfil this protection[9].

Basically, R2P puts forward two levels of responsibility. The first level of responsibility, coming from the previous redefinition of the concept of sovereignty, is "the primary responsibility for the protection of [a state's] people [which] lies with the state itself."[10] The second one addresses the case when the first level is failing or has failed: "where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields

[8] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, 2001), para. 2.14, http://site.ebrary.com/id/10119691.
[9] Hugh Breakey, "The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis" (Griffith University Institute for Ethics, Governance and Law, May 2011), 17, https://www.griffith.edu.au/__data/assets/pdf_file/0007/333844/Responsibility-to-Protect-and-the-Protection-of-Civilians-in-Armed-Conflict-Review-and-Analysis.pdf.
[10] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, XI.

to the international responsibility to protect."[11]

Thus presented, the main principle of R2P differs from the "right of intervention"[12]. Gareth Evans for instance has strongly affirmed the significance of this distinction[13], although other scholars have argued the difference is not so great. For example, Thomas Weiss criticized the points that should distinguish R2P from "Humanitarian Intervention." In particular, he thinks that there is strong overemphasis on the prevention side, as opposed to the reaction side, and that starting with diplomatic and non-coercive measures is highly situational[14].

B) The foundations of R2P

The ICISS put forward four foundations for R2P.

i. The concept of "sovereignty as responsibility"

The ICISS considered the meaning of sovereignty and what obligations the concept entailed. It found that there was a necessary re-characterization of it: from "sovereignty as control" to "sovereignty as responsibility"[15]. The Commission explained the significance of that change. First, it implied that state authorities were responsible for protecting the lives of their citizens and promoting their welfare. Secondly, it suggested that the national political authorities were responsible both to their citizens as well as to the international community through the UN. Thirdly, it meant that the states were accountable for all their acts, commission and omission.

[11] Ibid.
[12] Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford University Press, 2000), 185, http://www.oxfordscholarship.com/view/10.1093/0199243093.001.0001/acprof-9780199243099.
[13] G. Evans, "The Responsibility to Protect: An Idea Whose Time Has Come ... and Gone?," *International Relations* 22 (September 1, 2008): 283–98, doi:10.1177/0047117808094173.
[14] Thomas G. Weiss, *Humanitarian Intervention* (Polity, 2012), 103–104.
[15] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, para. 2.14.

Given that most modern conflicts are internal, this change in the meaning of sovereignty helps to alleviate the dilemma of respecting states' sovereignty and the need to protect the people that inhabit those states.

ii. The responsibility of the Security Council

In a link with the previous point, the Commission recalled the special role and responsibility of the Security Council in maintaining international peace and security and how that responsibility was being challenged by the new conflicts[16]. Indeed, as opposed to the time of the establishment of the UN, most conflicts nowadays are internal and not inter-state. Furthermore, the number of civilians killed in conflicts has increased nine folds since the beginning of the twentieth century[17]. Because of these changing circumstances, there is a difficulty for the United Nations to reconcile the principle of sovereignty of its member states as traditionally understood and the mandate of the Security Council to maintain international peace and security. However, because of this responsibility, the United Nations and the Security Council must face these issues and work towards resolving that problem.

iii. Human rights and law

The ICISS also considered the significance of human rights in relation to the issue of R2P. It recalled Article 1, paragraph 3 of the UN Charter and the 1948 Universal Declaration of Human Rights, and noted the universal reach of international criminal tribunals such as the International Criminal Court. Seeing this development of the law, the Commission's position

[16] Ibid., 13.
[17] *Casualties of Conflict: Report for the World Campaign for the Protection of Victims of War* (Department of Peace and Conflict Research, Uppsala University, 1991), 19.

was that both the substance and process of human rights law was increasingly "without borders"[18].

iv. The developing practice of states, regional organizations and the Security Council

In analysing state practice, the ICISS noticed a substantial gap between the best practice of international behaviour of nations as it was codified in the UN Charter and their actual state practice. It recalled the recent military operations for humanitarian purposes such as in Somalia, Liberia, Sierra Leone and Kosovo. It noted that these operations were conducted by a variety of actors and regional organizations with or without Security Council authorization. For the Commission, this gap could be seen as the emergence of a new guiding principle which it termed "responsibility to protect"[19].

C) The responsibilities of R2P in the ICISS report

The ICISS report outlined three responsibilities that should be accomplished. The first is the responsibility to prevent "both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk."[20] Root causes can include "poverty, political repression, and uneven distribution of resources"[21]. It is important to note that even at this early stage the involvement of the international community, such as in development assistance, support for local initiatives or mediation efforts, can have important effect and be crucial[22].

The next is a responsibility to react, requiring the state in trouble and the international

[18] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 14.
[19] Ibid., 15.
[20] Ibid., XI.
[21] Ibid., 22.
[22] Ibid., para. 3.3.

community to respond to the situation when the first responsibility has failed. The ICISS put forward six criteria for giving legitimacy to interventions without the consent of the state in question[23].

- Right Authority: The ICISS report stated "there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes"[24]. But it also allowed other multilateral possibilities, such as through the General Assembly or through regional organizations.
- Just Cause: The commission stated this criteria is met when actions to be taken are done to :
  - stop or avert "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation"[25];
  - or stop "large scale 'ethnic cleansing,' actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."[26]
- Right Intention: The report stated that "the primary purpose of the intervention must be to halt or avert human suffering"[27]. The report recognized that there would probably always be ulterior motives and perfectly pure motives are not realistic, but the necessity of a multi-lateral response would help in this regard[28].
- Last Resort: This means that "every diplomatic and non-military avenue for the

[23] Ibid., 32.
[24] Ibid., para. 6.14.
[25] Ibid., para. 4.19.
[26] Ibid.
[27] Ibid., para. 4.33.
[28] Breakey, "The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis," 24.

prevention or peaceful resolution of the humanitarian crisis must have been explored."[29]

- Proportional Means: The report explained that "the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question."[30] The military intervention should be no more than what is required to fulfil the mandate given and meet the protection objectives[31].

- Reasonable Prospects: The report stated that "military action can only be justified if it stands a reasonable chance of success, that is, halting or averting the atrocities or suffering that triggered the intervention in the first place."[32] It also acknowledged the fact that this criterion would effectively rule out action potential action against any of the five permanent members of the UNSC[33].

The last responsibility, after intervention, is a responsibility to rebuild, which requires "full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert."[34] It includes disarmament, demobilization and reintegration of local armed forces as well as measures to prevent "reverse ethnic cleansing" and to ensure the safe and secure return of refugees[35].

---

[29] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, para. 4.37.
[30] Ibid., para. 4.39.
[31] Breakey, "The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis," 24.
[32] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, para. 4.41.
[33] Breakey, "The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis," 24.
[34] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, XI.
[35] Ibid., 40.

2.2 R2P in the UN 2005 World Summit

Following the publication of the report, the concept gained a lot of attention. Most importantly, UNSG Kofi Annan, in his report "In larger freedom", supported and pushed it, stating that:

> I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it. This responsibility lies, first and foremost, with each individual State, whose primary raison d'être and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations.[36]

The concept of Responsibility to Protect was also accepted unanimously at the UN Millennium Summit of 2005 in paragraphs 138, 139 and 140, but changed from its original ICISS incarnation. It is important to note that the paragraphs related to R2P were placed in Sect. IV on Human Rights and Rule of Law, as opposed to Sect. III on Peace and Collective Security, helping proponents of R2P to convince sceptics that the concept was not about legitimizing the use of force. Because of their importance, it is necessary to cite these paragraphs in full:

> 138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement,

[36] UN General Assembly, "In Larger Freedom: Towards Development, Security and Human Rights for All - Report of the Secretary-General - A/59/2005" (New York: United Nations General Assembly, March 21, 2005), 35.

through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on

the Prevention of Genocide.[37]

As is evident, this version of R2P is different from what the ICISS envisioned. Indeed, unlike the Report of the Secretary-General's High-Level Panel, the text of the Summit does not provide any legitimacy criteria for the authorization of the use of force by the Security Council. Also, there is no explicit reference in the Outcome Document of the "responsibility to rebuild", which was the third responsibility in the ICISS report. The outcome Document also limits the scope of R2P: it now only deals with a set of four fundamental crimes defined by international criminal law, as opposed to the vision of the ICISS where R2P could be applied in cases falling short of the four crimes but nonetheless deadly.

The responsibility of the international community is also less strong in the Outcome Document as compared to the ICISS report. In Paragraph 138, it uses the phrase "as appropriate" and makes the conditions of action more flexible. In Paragraph 139, the Heads of State talk about their preparedness "to take collective action" signalling that they refrain from undertaking a responsibility in a strict manner, which in essence would be an obligation. This attitude is strengthened by the phrase "case-by-case basis", which enables the international community to leave certain cases out upon consideration. Furthermore, the Outcome Document placed R2P squarely inside the UN framework by explicitly requiring a mandate of the Security Council for any operation. Because of these differences and basically a "watering down" of the ICISS vision of R2P, this particular version was dubbed "R2P-lite" by Thomas Weiss[38]. Nonetheless, the adoption of the concept by the United Nations in the largest gathering of heads of states of the time was seeing as success by the proponents of R2P.

---

[37] UN General Assembly, "2005 World Summit Outcome Document - A/RES/60/1," October 24, 2005, para. 138–140, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement.

[38] Thomas George Weiss, *Humanitarian Intervention: Ideas in Action* (Polity, 2007), 117.

2.3 R2P in the 2009 UNSG Report and the GA Debates

On 25 September 2007 Secretary-General Ban Ki-Moon stated that he "will strive to translate the concept of our Responsibility to Protect from words into deeds, to ensure timely action so that populations do not face genocide, ethnic cleansing and crimes against humanity."[39] For this, he prepared the report "Implementing the Responsibility to Protect" which was formally adopted by the General Assembly in Resolution A/63/677[40] (dated 12 January 2009) which addresses the issue of the implementation of the responsibility to protect following the agreement of the World Summit Outcome Document. Outlining his views, the Secretary-General stated that the Report "seeks to situate the responsibility to protect squarely under the UN roof and within our Charter, where it belongs […] When prevention fails, the United Nations needs to pursue an early and flexible response tailored to the circumstances of each case. Military action is a measure of last, not first, resort and should only be undertaken in accordance with the provisions of the Charter."[41] This report, as well as the ensuing debate in the General Assembly of the United Nations, is the first big effort by the international community to come to a common ground and understanding on the notion of "Responsibility to Protect" after its adoption in the 2005 World Summit. As outlined by the Secretary-General, the goal was to frame R2P in the framework of the UN and to provide guidelines to its implementation. But more than that, it served as a basis upon which debates took place, a truly global forum, concerning the very concept of R2P and what the term exactly entails.

---

[39] Secretary-General Press Release, "Secretary-General, in Address to General Assembly, Lays Out Vision of Stronger, More Flexible, Efficient, Accountable United Nations," September 25, 2007, http://www.un.org/press/en/2007/sgsm11182.doc.htm.

[40] UN General Assembly, "Implementing the Responsibility to Protect - Report of the Secretary-General - A/63/677," January 12, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/677.

[41] United Nations News Service Section, "UN Chief Outlines Steps to Turn 'Responsibility to Protect' Into Practice," *UN News Service Section*, July 21, 2009, http://www.un.org/apps/news/story.asp?NewsID=31533#.Uz4pHfmSyxo.

A) Secretary-General's report "Implementing the responsibility to protect"

This report on the implementation of the responsibility to protect is based on the three pillars of state responsibility: the responsibility of each state to protect its citizens; the responsibility of the international community to provide assistance and capacity-building; and the responsibility of the international community to protect the citizens of another nation if their state failed in its primary responsibility. The first pillar deals with the protection responsibilities of the state: it address the individual responsibility of states to protect their populations from the four crimes of genocide, ethnic cleansing, war crimes and crimes against humanity, as well as from their incitement and that states should inculcate appropriate values and build institutions for protection of their own citizens. The second one is about international assistance and capacity-building: the international community must persuade states to apply pillar 1 and to build capacity by development assistance or providing UN or regional presence. The final and most controversial one has to do with "timely and decisive response" where Member States of the UN are expected to act in a collective manner in case of a failure of a state to fulfil its obligations towards its population and upholding the first pillar. To do so, a number of measures ranging from pacific, under Chapter VI of the UN Charter, to coercive, under Chapter VII relying on a resolution of the Security Council, can be adopted alongside regional arrangements under Chapter VIII.

Recognizing the power of the Security Council permanent members and their capacity to block any action in cases of mass atrocities, the Secretary-General urged them "to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit

Outcome, and to reach a mutual understanding to that effect."[42] He also noted that the UN has not yet established a rapid-response military capacity to respond to the four crimes and that in implementing the responsibility to protect, there may be a need to "consider the principles, rules and doctrine that should guide the application of coercive force in extreme situations relating to the responsibility to protect."[43]

Section V of the report deals with the way forward. In it, the Secretary-General suggests the discussion of the implementation of the responsibility to protect without revisiting the unanimously adopted paragraphs 138 and 139 of the Summit Outcome[44]. On 21 July 2009, Ban Ki-Moon presented the report to be discussed in the plenary meetings of the General Assembly as agenda items 44 and 107 ("Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields," and "Follow-up to the outcome of the Millennium Summit", Report of the Secretary-General).

B) Following debates at the GA

The discussions took place on 21, 23, 24, and 28 July 2009 at the GA[45]. During these days, 94

[42] UN General Assembly, "Implementing the Responsibility to Protect," 27.
[43] Ibid.
[44] Ibid., 29.
[45] UN General Assembly, "A/63/PV.96," July 21, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.96; UN General Assembly, "A/63/PV.97," July 23, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.97; UN General Assembly, "A/63/PV.98," July 24, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.98; UN General Assembly, "A/63/PV.99," July 24, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.99; UN General Assembly, "A/63/PV.100," July 28, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.100; UN General Assembly, "A/63/PV.101," July 28, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.101.

speakers (with one representative speaking on behalf of the European Union and another on behalf of the Non-Aligned Movement) presented their respective countries' official positions regarding the Report of the Secretary-General. During the meetings, the representatives argued that their task should be the implementation of the responsibility to protect concept based on the Paragraphs 138 and 139 of the 2005 World Summit mentioned before. On this basis, they welcomed the narrow understanding of the responsibility to protect outlined by those paragraphs and indicated that these criteria should not be subject to change or renegotiation. Doing so, the vast majority rejected the ideas of including the war against terrorism, natural disasters, pandemics or other calamities to R2P, leaving it only to deal with genocide, ethnic cleansing, war crimes and crimes against humanity.

Among the dissenting countries, Sri Lanka argued for a possible extension of the scope of R2P, saying that "responsible sovereignty must also apply to key issues such as the prohibition of the use of nuclear weapons and other weapons of mass destruction, nuclear disarmament, non-proliferation, counter-terrorism, global warming, biological security and economic prosperity."[46] On another note, France, in a possible reference to cyclone Nargis in Myanmar and the crisis that ensued, stated that it "will also remain vigilant to ensure that natural disasters, when combined with deliberate inaction on the part of a Government that refuses to provide assistance to its population in distress or to ask the international community for aid, do not lead to human tragedies in which the international community can only look on helplessly."[47] However, as stated earlier, such stretching of the scope of R2P was not welcomed by the vast majority of states, claiming as in the case of Cuba that doing so would "undermine the language of the 2005 World Summit Outcome Document"[48] or in the case of the Philippines "only delay, if not derail, such implementation; or worse yet, diminish its value or devalue its original intent

[46] UN General Assembly, "A/63/PV.100," 4.
[47] UN General Assembly, "A/63/PV.97," 9.
[48] UN General Assembly, "A/63/PV.99," 16.

and scope."[49] Such a large consensus among member states shows that the scope of R2P is unlikely to be expanded or changed in the short to mid-term.

Discussing pillar one, states overall agreed that the responsibility to protect lies first and foremost with the individual states. Some states, such as the United Kingdom and South Africa, wished a greater and more proactive part for regional organizations in responding to R2P crises. The President of the General Assembly and representative of Nicaragua also noted that "many Member States have spoken of the root causes of R2P situations and highlighted the urgency of addressing development issues"[50], making the link between development issues and the occurrence of mass atrocities. The importance of prevention and early warning was also stressed, especially by the representative of Sudan who stated that the "way forward should be the establishment of an effective early warning mechanism, as articulated in the report of the Secretary-General."[51] Uruguay also insisted on the importance of prevention and the need for early warning mechanism, saying that "There is a major space for the United Nations, together with regional and sub-regional organizations, to work to build national and regional capacity not only in responding to mass atrocities but above all in relation to prevention and early warning."[52]

Considering pillar three, there was a large consensus that use of force should be used as a last resort and in accordance with the provisions of the UN Charter. In this regard, the understanding of a case-by-case implementation of the responsibility to protect (as suggested by the 2005 Outcome Document) was preferred by the majority of the Member States. Thus, the consensus, as recalled by the President in his closing comments was that "any coercion has to be under the existing collective security provisions of the United Nations Charter, and only in

[49] UN General Assembly, "A/63/PV.97," 11.
[50] UN General Assembly, "A/63/PV.101," 20.
[51] Ibid., 11.
[52] UN General Assembly, "A/63/PV.98," 18.

cases of immediate threat to international peace and security."[53] A majority of states in their statements considered the three pillars complementary. Austria, for instance, stated that that the three pillars are "of equal importance, and at the same time there is no automatism and no necessary sequencing between one and the other."[54]

The issues of the abuse of the concept were expressed by many states of the developing world, especially those that have aligned themselves with the Non-Aligned Movement (NAM). The representative of Egypt, speaking on behalf of the NAM, conveyed the "concerns about the possible abuse of R2P by expanding its application to situations that fall beyond the four areas defined in the 2005 World Summit Outcome, and by misusing it to legitimize unilateral coercive measures or intervention in the internal affairs of States."[55] The question of national interest remains a concern for many, with the President of the General Assembly stating in his opening statement:

> The problem for many nations, I believe, is that our system of collective security is not yet sufficiently evolved to allow the doctrine of responsibility to protect (R2P) to operate in the way its proponents intend, in view of the prevailing lack of trust in developing countries when it comes to the use of force for humanitarian reasons […] It seems unlikely that [the General Assembly] will be able to agree any time soon on definitions of just cause and right intentions.[56]

Furthermore, states have raised many more issues such as the politicization of cases, selective implementation as well as double standards existent within the UN. The issues of the reform of the UN, especially the Security Council, as well as the use of the veto by the permanent members of the Security Council were also discussed.

---

[53] UN General Assembly, "A/63/PV.101," 20.
[54] UN General Assembly, "A/63/PV.98," 1.
[55] UN General Assembly, "A/63/PV.97," 5.
[56] Ibid., 3.

Later, in its 105th plenary meeting on 14 September 2009, the General Assembly adopted a resolution on R2P in which it recalled the two paragraphs of the Outcome Document and:

> 1. Takes note of the report of the Secretary-General and of the timely and productive debate organized by the President of the General Assembly on the responsibility to protect, held on 21, 23, 24 and 28 July 2009, with full participation by Member States;
>
> 2. Decides to continue its consideration of the responsibility to protect.[57]

The next part is a look at the literature surrounding R2P and the different issues and debates on the many parts of the norm.

3. Literature Review

3.1 Issues of Scope and Codifications

The scope of R2P was the subject of intense debate. In the original report, the scope included situations of large scale threatened or actual loss of life, with or without genocidal intent, ethnic cleansing, crimes against humanity and war crimes, state collapse and natural or environmental catastrophes[58]. This was however changed in the World Summit 2005 outcome document to include only the four situations of genocide, ethnic cleansing, war crimes and crimes against humanity[59]. The reason behind this narrowing was to keep R2P's focus on conscious-shocking situations and thus able to generate more sympathy and political will towards the cause. As Evans puts it "we need to preserve the focus and bite of R2P as a rallying cry in the face of mass

[57] UN General Assembly, "A/RES/63/308," October 7, 2009.
[58] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 33.
[59] UN General Assembly, "2005 World Summit Outcome Document," 30.

atrocities"[60]. It seems a consensus has been reached now in maintaining R2P apply only to the four aforementioned situations as is evidenced in the resolution of the United Nations General Assembly following the debates on R2P of 2009[61]. Some try to establish whether the norm bears legal obligations or is becoming a customary law[62], as well as drawing on international law to assert state obligations under R2P[63].

Other scholars focus on who should intervene when there is a military intervention required. The initial ICISS report had a set of six criteria that were to be used to determine who should intervene, namely just cause, right intention, final resort, legitimate authority, proportional means and reasonable prospects, which Evans reduces to five[64]. However, some scholars find these criteria too vague and adopt a more instrumentalist approach, in that the intervener should be the one most likely to be effective[65].

3.2 Issues of Responsibility and Action/Inaction

One of the main issues is the concept of sovereignty and non-intervention under which "a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have the corresponding duty not to intervene in its internal affairs"[66]. In this post-colonial era, these two concepts are often as the only defence, "the only protection that weak states have against the strong. [...] interventionism is illegal and

[60] Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2009), 65.
[61] UN General Assembly, "The Responsibility to Protect - A/RES/63/308," September 14, 2009, http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/63/308.
[62] Eaton, "An Emerging Norm?," 770; Stahn, "Responsibility to Protect," 102.
[63] Louise Arbour, "The Responsibility to Protect as a Duty of Care in International Law and Practice," *Review of International Studies* 34, no. 03 (2008): 452, doi:10.1017/S0260210508008115.
[64] Evans, *The Responsibility to Protect*, 2009, 139–147.
[65] James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford University Press, 2010).
[66] Evans and Sahnoun, "The Responsibility to Protect."

illegitimate because it offends against the constitutive norms of international society"[67]. However, it is not only the weaker states that fear an erosion of their sovereignty. If R2P becomes international law, powerful states might also lose a part of their sovereignty: the decision-making sovereignty. As thus, both weak and powerful states fear that R2P may compromise their sovereignty.

On the other side of the spectrum, there are many arguments in favour of R2P. One of them is the scale of globalization in the last decades. "Situations in 'unimportant' parts of the world, such as those in Kosovo and Somalia, [...] became matters for domestic debate within Western states in the 1990s"[68]. Before, without "the ability to broadcast live around the world"[69], humanitarian crises or human rights abuses in countries other than one's neighbours seldom appeared in the media. Nowadays, though, "with the world as close and interdependent as it now is, and with crises in 'faraway countries of which we know little' as capable as they now are of generating major problems elsewhere [...] it is strongly arguable that it is in every country's interest to contribute cooperatively to the resolution of such problems, quite apart from the humanitarian imperative to do so"[70]. With the world becoming a global village, every country becomes every country's neighbour with a mutual 'responsibility to protect'. Events happening on the other side of the world can now be seen by all and have an effect on domestic policy. Given these radical changes, proponents of R2P argue that old doctrines such as non-intervention are no longer relevant in this world and accept that "the principle of non-interference must be qualified in important respects."[71]

---

[67] Alex J. Bellamy, "Motives, Outcomes, Intent and the Legitimacy of Humanitarian Intervention," *Journal of Military Ethics* 3, no. 3 (November 1, 2004): 219, doi:10.1080/15027570410006192.
[68] Aidan Hehir, *Humanitarian Intervention: An Introduction* (Basingstoke: Palgrave Macmillan, 2010), 7.
[69] Ibid.
[70] Evans, *The Responsibility to Protect*, 2009, 144.
[71] "The Blair Doctrine," *PBS News Hour*, accessed July 28, 2014, http://www.pbs.org/newshour/bb/international-jan-june99-blair_doctrine4-23/.

Another argument in favour of R2P is the emergence of Human Rights Regime. With the implicit obligations associated to this regime, the notion of security shifted from the traditional state security to the security and protection of the individual person. This is exemplified in the ICISS report, which states that we live in "a new world in which human rights trumps state sovereignty"[72]. With the unanimous agreement on the importance of human rights, states needed a mechanism to uphold them and Louise Arbour argues "that the responsibility to protect, if properly understood, implemented and enforced" can provide viable means to do so[73].

The issue of whether there is an obligation of states to intervene when a state fails to protect its citizens is also deeply contentious, with scholars such as Louise Arbour arguing that states have a duty to intervene based on pillar 3 of R2P and the Genocide convention while Cunliffe insists that there is no actual obligation for a particular state to react except to refer the situation to the Security Council[74].

Many scholars have noticed a certain lack of commitment from the international community to apply the principles of R2P that Breau attributes to lack of "the sense of legal obligation necessary to truly implement the responsibility to protect"[75]. To remedy that, two different approaches are recommended: the ICISS counts on the public opinion of the countries to shame the inaction of their leaders and force them to be more active[76], while Austin and Koppelman see it as responsibility of political leaders to create public will towards R2P[77].

---

[72] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 2.
[73] Arbour, "The Responsibility to Protect as a Duty of Care in International Law and Practice," 458.
[74] Philip Cunliffe, "Dangerous Duties: Power, Paternalism and the 'Responsibility to Protect,'" *Review of International Studies* 36, no. Supplement S1 (2010): 79–96, doi:10.1017/S0260210511000076.
[75] Susan C. Breau, "The Impact of the Responsibility to Protect on Peacekeeping," *Journal of Conflict and Security Law* 11, no. 3 (December 21, 2006): 429–64, doi:10.1093/jcsl/krl022.
[76] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, para. 3.26.
[77] Greg Austin and Ben Koppelman, *Darfur and Genocide: Mechanisms for Rapid Response, an End to Impunity* (Foreign Policy Centre, 2005), 39.

3.3 Issues of Abuse and Neo-Colonialism

Another argument against R2P is that it may be used as an alibi to cover up a state's "naked pursuit of national self-interest"[78]. This can mean two different things. The first is that a state, under the guise of R2P, could mount an operation, not to save and protect people, but to acquire natural resources or establish dominion over the country where it intervenes. Just as these are cases of over-use or misuse of the concept, there is a risk that R2P could "facilitate Western inaction"[79]. Hehir argues that because of the vague definition of R2P situations and no clear criteria for intervening, states that do not wish to intervene could use this ambiguity to stall and not intervene. However, this argument could be regarded as a pointer to where the norm is in need of improvement.

Some scholars argue that rather than embodying progressive values: R2P "may undermine political accountability within states and international peace between them"[80]. Chomsky points how the language used for R2P is reminiscent of the language used to justify colonization in the previous century[81], while O'Connell argues that R2P opens possibilities for more use of force between states, thus eroding the presumption towards peace[82]. Researchers such as Branch[83]

---

[78] Arbour, "The Responsibility to Protect as a Duty of Care in International Law and Practice," 446.
[79] Hehir, *Humanitarian Intervention*, 123.
[80] Philip Cunliffe, *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice* (London; New York: Routledge, 2011), i.
[81] Noam Chomsky, "The Skeleton in the Closet: The Responsibility to Protect in History," in *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, ed. Philip Cunliffe (London; New York: Routledge, 2011).
[82] Mary Ellen O'Connell, "Responsibility to Peace: A Critique of R2P," in *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, ed. Philip Cunliffe (London; New York: Routledge, 2011).
[83] Adam Branch, "The Irresponsibility of the Responsibility to Protect in Africa," in *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, ed. Philip Cunliffe (London; New York: Routledge, 2011).

and Mamdani[84] also consider how R2P shifts the responsibility from the government towards its citizens to the government to the international community and its implications on political accountability of leaders and sovereignty of the states.

3.4 Practical Issues

Edward Luck, former Special Advisor to the Secretary-General on the responsibility to protect pointed out "the lack of coherent doctrine underpinning the growing number of mandates that fall between traditional peacekeeping missions and armed engagement with a specific adversary or adversaries"[85]. He stresses that there is a difference between traditional PKOs and other mandates and R2P objectives and that mandates should be more specific.

Another argument that could be made against R2P is the inherent risk of conducting a military operation and not respecting the mandate that was drafted. The NATO military operation in Libya exemplifies this risk. There is almost a consensus that the situation in Libya was a clear case of R2P. From the first contacts between mediators of the Arab League and the Gaddhadi regime, to the adoption of resolution 1970 and 1973 and the subsequent forestalling of the massacre in Benghazi, everything looked like "a textbook case of how the new U.N. doctrine of the Responsibility to Protect (R2P) was supposed to work"[86]. However, the regime change was arguably not a part of the mandate.

The next chapter will be focused on the notion of "international norm" and what it entails, as

---

[84] Mahmood Mamdani, "Responsibility to Protect or Right to Punish?," in *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, ed. Philip Cunliffe (London; New York: Routledge, 2011).

[85] Edward C. Luck, "The United Nations and the Responsibility to Protect" (The Stanley Foundation policy analysis brief, August 2008), http://www.stanleyfoundation.org/publications/pab/LuckPAB808.pdf.

[86] David Rieff, "R2P, R.I.P.," *The New York Times*, November 7, 2011, sec. Opinion, http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html.

well as present the Finnemore and Sikkink “norm life cycle” framework that we will use for norm assessment.

Chapter II. Norms in the International Sphere

1. International Norms

The term "norm" has become more and more used in the field of international relations and political science. However, this can be confusing because it can be defined and used in very different ways[87]. In rational choice theory or economic approaches, norms are defined as "self-enforcing behavioural regularities, often represented elegantly as equilibria of n-person coordination games possessing multiple pure-strategy Nash equilibria"[88], describing a set of repeated behaviour within the different actors. Another definition comes from constructivists, who consider norms to be standards "of appropriate behaviour for actors with a given identity."[89] In this way, norms are no longer descriptive but actually shape the different actors' behaviour.

While they can be seen as very different, these two definitions encompass nonetheless the three main characteristics of what a norm is:

- Compliance with the standard or strategy throughout (most of) society
- Stabilization of expectations around the standard shared expectations
- Self-reinforcement[90]

Our study is about norms in the international system, how they appear and how they spread. Both rational choice and constructivism provide frameworks of analysis. Because of our focus on the mechanisms of appearance and spread of the norms, we adopt the constructivist

[87] Sue E. S. Crawford and Elinor Ostrom, "A Grammar of Institutions," *American Political Science Review* 89, no. 03 (September 1995): 582–600, doi:10.2307/2082975.
[88] Joshua M. Epstein, *Generative Social Science: Studies in Agent-Based Computational Modeling* (Princeton University Press, 2012), 1–2.
[89] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 891.
[90] Hoffman, "Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle," 4.

approach to the definition of norms. Indeed, in trying to understand how and why a norm develops, we have to understand why the choices are made to adopt the norm or not, and this cannot be seen as simply a matter of utility maximization, as emphasized by rational choice, but rather of the social norms and rules that structure that choice[91]. Fundamentally, constructivists consider that a logic of appropriateness guides actor behaviour: "actors choose actions based upon institutional, moral, or normative standards— preferences and interests themselves are shaped by what is considered appropriate"[92]. March and Olsen argue that "action is often based more on identifying the normatively appropriate behaviour than on calculating the return expected from alternative choices."[93] Thus, for constructivists, norms have an important role in determining the behaviour of agents and how they agree and comply on what is acceptable and what is not. Norms do not arise fully fleshed; instead "they are, rather, the resultant of complex patterns of behaviour of a large number of people over a protracted period of time."[94] Constructivists consider that norms arise as some agents accept new behaviours as the appropriate standard, which changes the social context for the other actors who have yet to adopt it, pushing to conform to the new standard[95].

Finally, norms push self-reinforcing behaviour and eventually can be institutionalized and taken for granted. As actors start conforming to the new standard, the norm gains strength and, eventually, if reinforced enough, actors "will no longer consciously call upon it to describe or decide upon behaviour"[96]: once a norm is established, actors "conform without really thinking

[91] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 914.
[92] Hoffman, "Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle," 4–5.
[93] James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*, 1 edition (New York etc.: The Free Press, 1989), 22.
[94] Edna Ullmann-Margalit, *The Emergence of Norms*, Clarendon Library of Logic and Philosophy (Oxford [Eng]: Clarendon Press, 1977), 8.
[95] Hoffman, "Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle," 5.
[96] Ibid., 6.

about it."[97] In Finnemore and Sikkink's words, "norms may become so widely accepted that they are internalized by actors and achieve a 'taken-for-granted' quality that makes conformance with them almost automatic."[98]

There are four main approaches to norm diffusion[99]. First, the "world polity" model of norm diffusion argues that nation-states are culturally constructed and embedded in a world society that promotes cultural processes of modernization, learning and imitation, and institutional and organizational isomorphism[100]. This model claims that international norms are universalistic world models that are "not strongly anchored in local circumstances."[101] To explain the many similarities in the organization of states and their policies, this model argues states comply with international norms and standards as a means to increase or enhance their international reputation and identity as 'modern' states[102]. Thus, this school of thought focuses mostly on "the social-structural frame that organizes, carries, and diffuses world cultural models leaving the content of the models aside."[103] They do not concern themselves a lot with the content of the norms; but rather they stress the importance of the vehicles for norm spread and the societal structure of the actors.

A second model focuses on "norm cascades". A norm starts to be adopted by an increasing number of states to finally become internalized as a norm. This model argues that international norms go through an evolutionary cycle of emergence, acceptance by a 'critical

---

[97] Joshua M. Epstein, "Learning to Be Thoughtless: Social Norms and Individual Computation," *Computational Economics* 18, no. 1 (August 1, 2001): 10, doi:10.1023/A:1013810410243.
[98] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 904.
[99] Mona L. Krook and Jaqui True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality," *European Journal of International Relations* 18, no. 1 (March 1, 2012): 106, doi:10.1177/1354066110380963.
[100] Ibid.
[101] John W. Meyer et al., "World Society and the Nation‐State," *American Journal of Sociology* 103, no. 1 (July 1, 1997): 156, doi:10.1086/ajs.1997.103.issue-1.
[102] Krook and True, "Rethinking the Life Cycles of International Norms," 107.
[103] Meyer et al., "World Society and the Nation‐State," 162.

mass' of states, and diffusion across the international community[104]. Once conformity to the new norm becomes widespread, the norm enters an internalization stage, during which the norm becomes a taken-for-granted feature of domestic and international politics[105]. This model focuses on the dynamics and processes by which a norm appears and gains acceptance, since "norms do not appear out of thin air; they are actively built by agents."[106]

A third model focuses on what is called "boomerang effects". This model seeks to understand how norm diffusion occurs even when states seek to ignore the new standard set by the norm. It posits that in cases where state actors do not respond to demands of civil society of adopting a new standard of behaviour towards a particular subject, domestic groups in turn start connecting with transnational allies, who use the power of principled ideas and norms to lobby their own states or international organizations to put pressure on the recalcitrant state from the outside[107]. The boomerang effect is thus the way that civil society in a particular country manages to shift the position of their state through the use of transnational networks, lobbying and international leverage and pressure. Because of this focus, the model places a strong emphasis on the study of transnational advocacy networks (TANs) and their role as political and normative entrepreneurs[108].

The final "spiral" model, based on the "boomerang effect" model, focuses on the domestic impact of international norms in relation to a "spiral pattern" of transnational influence. This model tries to identify the conditions under which international norms are internalized and applied at the domestic level. It states that norms go through five stages: domestic repression, state denial, tactical concessions, prescriptive status and rule-consistent behaviour[109]. The norm

[104] Krook and True, "Rethinking the Life Cycles of International Norms," 107.
[105] Ibid.
[106] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 896.
[107] Margaret E. Keck, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998).
[108] Krook and True, "Rethinking the Life Cycles of International Norms," 107.
[109] Thomas Risse-Kappen, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights:*

passes through these stages but can at any time stay stuck in a particular one, or even reverses to a previous stage. Because of that, the spiral model "does not assume evolutionary progress towards norm implementation."[110]

As we can see from the brief description above, each model emphasizes a particular aspect of norm spread and adoption. In our case, we are much more concerned about the content of the norm because R2P came as a response to the challenge of Kofi Annan to find a solution to the problems of humanitarian intervention and the content is still being debated and is not fully accepted. Because of that, we should avoid using the "world polity" model since it focuses mainly on the mechanisms of spread and not on the contents of norms. In the same vein, while transnational advocacy networks play an important role in the spread and acceptance of international norms, they are not the focus of this study and thus we should not use the "boomerang effect" model as the framework of analysis. While the "spiral" model provides tools to analyse the evolution of the acceptance of a norm, it is mostly focused on the domestic side. Our study is interested mostly in the international level. Because of that, we use the "norm cascade" model as its focus is the most relevant to our study.

2. Finnemore & Sikkink's "Norm Life Cycle" Model

Finnemore and Sikkink developed a framework representing the life cycle of a norm[111]. This model is a "norm cascade" type of model. It follows three stages: norm emergence, norm cascade and internalization. Each stage is also characterized by three main elements: the actors who promote and apply the norm; the motives for promoting or applying the norm; and the

International Norms and Domestic Change (Cambridge University Press, 1999).
[110] Ibid., 34.
[111] Finnemore and Sikkink, "International Norm Dynamics and Political Change."

dominant mechanisms used to promote and apply the norm. This framework was developed through an analysis of the literature on international norms spread[112] and has since been widely used and applied in the field of norm studies. It also fits well our approach of focusing on the evolution of R2P as an international norm and will allow us to accurately describe this process as well as give us pointers as to why R2P has successfully or unsuccessfully been applied to various crises.

Figure 1 Stages of norms

	Stage 1 *Norm emergence*	*Stage 2* *Norm cascade*	*Stage 3* *Internalization*
Actors	Norm entrepreneurs with organizational platforms	States, international organizations, networks	Law, professions, bureaucracy
Motives	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
Dominant mechanisms	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

Source 1 Finnemore and Sikkink, "International Norm Dynamics and Political Change", p.898.

The first stage, or norm emergence, explains how a new norm is born and how it starts developing. This stage is characterized by the importance of norm entrepreneurs as the main actors promoting the new norm. These persons or institutions have altruistic, empathic or ideational motive[113], take a leading role in trying to convince and persuade leaders in the

[112] Ibid.
[113] Ibid., 898.

international community to adopt the norm they promote[114]. The defining elements of any international society are membership and mutual recognition and recognized norms of conduct[115]. Norm entrepreneurs are thus agents that use soft power in order to spread the norm and push for the acceptance of the norm by states that do not accept it yet. Non-compliant states start complying through "pressure for conformity, desire to enhance their international legitimization, and the desire state leaders to enhance their self-esteem"[116]. A famous example they give of a norm entrepreneur is Henri Dunant, whose personal efforts and his organizational platform, the Red Cross, were instrumental in the adoption of the first Geneva Convention in 1864 on the condition of the wounded in armies in the field.

Between the first two stages is a "tipping point". This tipping point occurs when the norm entrepreneurs manage to get "a critical mass of states to become norms leaders and adopt new norms"[117]. The authors point to a number of empirical studies that seem to suggest that the tipping point "rarely occurs before about one-third of total states in the system adopt the norm"[118]. However, not all states that adopt the norm are equal and some states are more important than others, but this depends on the particular issues of the norm[119]. Generally, states that "have a certain moral stature"[120] are more likely to be critical states in the tipping point because other states will want to be associated to them and be seen in the same good light. Furthermore, states that are vital to the implementation of the norm are also considered critical states[121]. However, a norm reaching its tipping point does not mean that it is universally

[114] Ibid., 895.
[115] Paul D. Williams, "The 'Responsibility to Protect', Norm Localisation, and African International Society," *Global Responsibility to Protect* 1, no. 3 (June 1, 2009): 395, doi:10.1163/187598409X450820.
[116] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 895.
[117] Ibid., 901.
[118] Ibid.
[119] Ibid.
[120] Ibid.
[121] Ibid.

accepted nor will it necessarily lead to universal acceptance in the future. Indeed, even relatively universal norms do not automatically become embedded everywhere, and the local context is an important factor in determining the commitment to them[122].

The second stage of the model is norm cascade. During this stage, states take a more prominent role in shaping the norm. More and more states start following the new norm and the primary mechanism for promoting norm cascades is "an active process of international socialization intended to induce norm breakers to become norm followers" [123] using "diplomatic praise or censure […] which is reinforced by material sanctions and incentives"[124]. Norm entrepreneurs and their organizational platforms or networks continue to play a role in the development of the norm by pressuring targeted actors to adopt "new policies and laws and to ratify treaties and by monitoring compliance with international standards"[125]. During this stage, states are forced to conform to the norm by the pressure other states exert on them to also adopt the norm, and by their need of international legitimacy, reputation and esteem[126].

The last step in the life cycle of a norm is the internalization phase. At this stage, the norm is so widely accepted within the international community that it is taken for granted and conformance to it is almost automatic[127]. The authors give slavery, women's right to vote and medical personnel immunity during war as examples of such internalized norms[128]. However, because they are no longer an issue for discussion, such norms are rarely the subject of discussion among political scientists. In this stage, professionals such as lawyers, bureaucrats or even soldiers, become the main actors, working to internalize norms among their members

[122] Williams, "The 'Responsibility to Protect', Norm Localisation, and African International Society," 394.
[123] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 902.
[124] Ibid.
[125] Ibid.
[126] Ibid., 903.
[127] Ibid., 904.
[128] Ibid., 895.

through the mechanisms of iterated behaviour and habit. Professional training is more than just the transfer of technical knowledge: "it actively socializes people to value certain things above others"[129]. Finnemore and Sikkink give the examples of doctors who are trained to value life above all else while soldiers are expected to sacrifice their lives for certain goals[130]. These different normative biases are instilled in all professionals during their training.

In the next chapters, we will apply the norm life cycle model to R2P to evaluate in what stage of the three it is currently. It is important to do that because the pace at which R2P emerged and developed was extremely fast and the cumulative effect was seen as "the most dramatic normative development of our time"[131] according to Ramesh Thakur and Thomas Weiss. Furthermore, to better assess if R2P played a role in crises where it was invoked, it is necessary to estimate how far along as a norm it has come.

[129] Ibid., 905.
[130] Ibid.
[131] Ramesh Thakur and Thomas G. Weiss, "R2P: From Idea to Norm—and Action?," *Global Responsibility to Protect* 1, no. 1 (2009): 22, doi:10.1163/187598409X405460.

Chapter III. Norm Emergence: the Birth of R2P

1. Contested Normative Space: the Need for a New Doctrine of Intervention

The first period starts from the inception of the R2P concept. It was born out of the need for a new way to deal with massive violations of human rights and to avoid further military operations such as the NATO bombing of Serbia. The United Nations Secretary-General of the time, Kofi Annan, challenged political leaders and asked the question: "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"[132]. The answer came from Gareth Evans and the International Commission on Intervention and State Sovereignty, or ICISS, in the report "The Responsibility to Protect" released in the end of 2001 with the concept of 'Responsibility to Protect'. In this context, R2P was a norm introduced and championed by Gareth Evans and the ICISS, who served as norm entrepreneurs. Using the arguments presented in their report, they tried to persuade leaders to adopt this new norm to deal with the issues of massive violations of human rights. This period clearly corresponds to stage one of the norm life cycle model.

It is important to understand how and in what context R2P emerged and why it achieved success as opposed to other initiatives. Indeed, "new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest"[133]. In the case of R2P, we need to recall the international context of the time. The 1990s were characterized by the end of the Cold War and the multiplication of crises where massive violations of human rights took place. It was also at that time that some attempts were made to try to build better consensus and address the issues of the

[132] Annan and United Nations, *We the Peoples*, 48.
[133] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 897.

doctrine of "humanitarian intervention". One such attempt was the work of Bernard Kouchner in promoting what he called "the right to intervene" or "droit d'ingérence" in French[134]. By focusing on the people facing atrocities and their call for help, he argued for a "right to intervene" that should be heeded by policymakers. The concept received much attention, mostly at the time of the intervention in Somalia in 1992[135]. While it was relatively well perceived in Europe and the United States, the concept was rejected by most countries of the South, wary of the possibility of giving more leeway to international powers to interfere in their countries.

However, after the NATO bombardment of Kosovo, in a military operation often described as "illegal but legitimate"[136], there was a need for clarification of existing rules or adoption of new rules. This need was characterized by Kofi Annan in the year 2000 in his challenge to member states of the UN cited previously. Already, research was being done by states and research institutes to address the issues of humanitarian intervention. For instance, the Danish government commissioned the Danish Institute of International Affairs to issue a report "on the political and legal aspects of the possibilities for intervention in situations where states, disregarding provisions of international law, cause conflicts which due to their far-reaching humanitarian consequences affect the international community as a whole."[137] Among their conclusions was that four strategies were possible: the "status quo strategy"[138], requiring a Security Council authorization for any humanitarian intervention; the "ad hoc strategy"[139],

[134] Jean-Baptiste Jeangene Vilmer, "La Mythologie Française Du Droit d'Ingérence," *Liberation*, May 11, 2010, http://www.liberation.fr/monde/2010/05/11/la-mythologie-francaise-du-droit-d-ingerence_625335.
[135] "Somalie : L'espoir Abandonné," *Http://www.liberation.fr*, accessed July 28, 2014, http://www.liberation.fr/evenement/1995/02/28/somalie-l-espoir-abandonne_121906.
[136] Independent International Commission on Kosovo, *The Kosovo Report*, 4.
[137] Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects - The Danish Report*, 1999, 9, http://www.diis.dk/files/media/publications/import/extra/humanitarian_intervention_1999.pdf.
[138] Ibid., 114.
[139] Ibid., 116.

where humanitarian interventions are seen as emergency exits from international law; the "exception strategy"[140], calling for the establishment of a subsidiary right of humanitarian intervention in international law; and finally the "general right strategy"[141] in which a general right of humanitarian intervention is to be established in international law.

In the same vein, the Dutch government also commissioned the Advisory Committee on Issues of Public International Law (CAVV) and the Advisory Council on International Affairs (AIV) to produce a joint advisory report on the issues raised by humanitarian intervention and policy recommendations for the Dutch government regarding the future of humanitarian intervention[142]. In their conclusion, they propose to address the issues of humanitarian intervention by fleshing out a separate justification for humanitarian intervention as a part of state responsibility[143]. They also insist on the need for an assessment framework to evaluate interventions, either to support an operation to get a Security Council authorization or after an unauthorized operation took place in order to estimate its legitimacy[144]. They also allude to systems of early warning and prevention and the role the Netherlands could play in it although they acknowledge these issues were outside the scope of the report[145].

Another often alluded-to example is the so-called "Blair doctrine", outlined by then United Kingdom Prime Minister Tony Blair in a speech to the Economic Club of Chicago on April 22nd 1999[146]. The main contribution of the speech was to identify five issues that states should think about before deciding to intervene: "are we sure of our case?"; have we exhausted all diplomatic options?"; "are there military operations we can sensibly and prudently

[140] Ibid., 118.
[141] Ibid., 119–120.
[142] Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, *Humanitarian Intervention - The Dutch Report*, 2000, http://aiv-advies.nl/download/41c2ea57-765b-4777-82b3-39b8105bebc8.pdf.
[143] Ibid., 26.
[144] Ibid., 27.
[145] Ibid., 37.
[146] "The Blair Doctrine."

undertake?"; "are we prepared for the long term?"; and finally "do we have national interests involved?" In short, he tried to find a set of criteria necessary for military intervention. However, this was again not seen in a good way by countries from the South because of the framing of the intervention in terms of "based on values", echoing the arguments used for justifying the process of colonization.

2. Factors for the Success of R2P

In looking at these examples of normative development and their differences with R2P, we begin to see the factors that allowed R2P to be more successful than the alternatives. First and foremost, they lacked the voice from countries on the receiving end of humanitarian interventions. The Blair doctrine focused on the role of the United Kingdom as an intervening power and its national interests, and the Dutch and the Danish reports, while providing recommendations applicable to all, did so in a Western point of view. On the opposite side, the ICISS included people from all over the world: Gareth Evans from Australia, Mohammed Sahnoun from Algeria, former Philippines President Fidel V. Ramos, Indian scholar Ramesh Thakur, or German NATO General Klaus Naumann to cite a few. Furthermore, the commission hosted eleven regional roundtables and national consultations around the world[147]. Thus, R2P received more support because it was the result of consultations representing points of views from all around the world rather than the traditional Western-centric view.

A second factor is the relative clarity of R2P in spelling out the different responsibilities for the state itself and for the international community as opposed to the other alternatives. The Blair Doctrine focused only on the intervening state's conceptual and political considerations

[147] Evans, *The Responsibility to Protect*, 2009, 38.

and had only a national perspective. While the Dutch and the Danish reports included some of the responsibilities of the states, they were not as concrete and practical as the ICISS. The ICISS also included a rather focused set of criteria to estimate whether a military operation is acceptable or not, something which was touched upon by the alternatives but again not as clearly as in the ICISS report.

A third factor for the success of R2P was the willingness of the ICISS to change the vocabulary used in humanitarian intervention. Indeed, the term "humanitarian intervention" itself had acquired a relatively bad connotation by the time of the Kosovo military operation of NATO. Furthermore, it had become linked with the idea of the use of military force, and only that, in responding to mass atrocities. The change in vocabulary allowed avoiding the existing bias and changing the behaviour of political actors[148]. The choice to use the term "responsibility to protect" rather than "humanitarian intervention" also allowed the ICISS to discuss the meaning and status of sovereignty and ground it in the work of Francis Deng of "sovereignty as responsibility"[149]. While such a link was alluded to in the Dutch report regarding the justification of humanitarian intervention and state responsibility[150], it was not as clearly fleshed out as in the work of the ICISS.

Owing to the specific time and world context of the late 90s, its relative clarity, its willingness to adopt a new language and ground it in a close conceptual framework and its inclusion of points of view from all over the world, R2P managed to emerge as an international norm above its other contenders. In the next part, we use the case of Darfur and analyse it through the lens of R2P and to see what role if any it played in the crisis.

---

[148] Ibid., 42.

[149] Francis Mading Deng, *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings Institution Press, 1996).

[150] Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, *The Dutch Report*, 35.

3. Baby Steps and First Failures: the Case of Darfur

The crisis in Darfur occurred at a time of critical importance to R2P. Indeed, it started at the beginning of 2003, after the publication of the ICISS report but before the adoption of the concept at the 2005 World Summit. The conflict was seen as a typical example of what kind of situations R2P was meant to address and provided a good test of the commitment of the international community to its goals and generated a lot of expectations from the supporters of the norm. However, the reaction of the international community was below expectations and the crisis is now widely seen as one of the first failures of the international community to strongly and thoroughly uphold the principles set out by R2P. In this section, we briefly give an overview of the background of the crisis and the international response before focusing on the role R2P played in it and what legacy it left on the norm.

3.1 Background of the Crisis

In the words of Williams and Bellamy, "the crisis in Darfur represented a supreme humanitarian emergency."[151] The beginning of the hostilities can be traced back to February 2003, when the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) forces attacked government military installations[152]. These attacks came in the context of the still on-going at the time conflict between the Sudanese government and the separatists in the south, as well as multiplication of small local conflicts in the area fuelled by a breakdown of

[151] Williams and Bellamy, "The Responsibility To Protect and the Crisis in Darfur," 30.
[152] Ibid.

local governance and years of neglect of the region by the authorities[153]. The attack of the rebels took the government by surprise and they even managed to attack the El Fasher Airport in April 2003 where they shot up five military airplanes and two helicopter gunships before withdrawing[154]. The government responded to the insurgency by deploying some of its own troops and arming the Janjaweed militias, composed mainly of Arab tribesmen and Arab immigrants from Chad[155]. The militias then engaged in "killings, abductions, forced expulsions, systematic sexual violence, and deliberate destruction of crops, livestock and important cultural and religious sites."[156]

Several attempts to broker a ceasefire were made around the end of 2003 but all failed. In January 2004, the government of Sudan then launched a major ground and air offensive and subsequently, President Bashir declared that the army had restored "law and order" and "established control in all theatres."[157] However, it quickly emerged that it was not the case and soon hostilities resumed and another round of ceasefire negotiations began in late March 2005 in N'Djamena, the capital of neighbouring Chad. While these negotiations managed to produce an agreement, the ceasefire was soon broken and all-out violence erupted between government forces and Janjaweed against the Darfuri rebels. By that time, the number of dead was estimated to be around 30,000 people, mainly civilians, and the number of refugees around 1.2 million[158].

3.2 International Response to the Crisis

---

[153] A. De Waal, "Darfur and the Failure of the Responsibility to Protect," *International Affairs* 83, no. 6 (2007): 1039.
[154] Scott Anderson, "How Did Darfur Happen?," *The New York Times*, October 17, 2004, sec. Magazine, http://www.nytimes.com/2004/10/17/magazine/17DARFUR.html.
[155] De Waal, "Darfur and the Failure of the Responsibility to Protect," 1040.
[156] Williams and Bellamy, "The Responsibility To Protect and the Crisis in Darfur," 30.
[157] Justice Africa, "Prospects for Peace in Sudan: February 2004," February 2004, http://beta.justiceafrica.com/1490/sudan/.
[158] Williams and Bellamy, "The Responsibility To Protect and the Crisis in Darfur," 30.

The reaction of the international community to the events has been mostly negative towards the government of Sudan. Indeed, the United Nations in November 2003 warned that "the country could be facing its worst humanitarian crisis since 1988."[159] In a report released 3 February 2004, Amnesty International claimed that "the prime responsibility for the grave human rights abuses committed against civilians lies with the Sudanese government and militia aligned to it."[160] While the majority of the reactions were condemning the violence that occurred, there was also controversy about whether genocide was being committed or not. While civil society organizations and NGOs were quick to develop that argument, states were generally more cautious. One obvious exception is the United States where the United States Congress declared on 22 June 2004 "that the atrocities unfolding in Darfur, Sudan, are genocide"[161] and on 9 September 2004 Secretary of State Colin Powell announced to the Senate Foreign Relations Committee that his government concluded "that genocide has been committed in Darfur"[162]. On the opposite side, the chair of African Union Peace and Security Council declared that "abuses are taking place. There is mass suffering, but it is not genocide"[163] and the President of 'Medecins sans frontieres' NGO to concur saying that "We have received reports of massacres, but not of attempts to specifically eliminate all the members of a group."[164]

---

[159] United Nations News Service Section, "Sudan Faces Worst Humanitarian Crisis in 15 Years, According to UN," *UN News Service Section*, November 7, 2003, http://www.un.org/apps/news/story.asp?newsid=8821&cr=&cr1=.

[160] Amnesty International, "Sudan: Darfur: 'Too Many People Killed For No Reason'" (Amnesty International, February 3, 2004), http://www.amnesty.org/en/library/asset/AFR54/008/2004/en/41ee9af7-d640-11dd-ab95-a13b602c0642/afr540082004en.pdf.

[161] "Excerpts: US Congress Resolution on Darfur," *BBC*, July 23, 2004, sec. Americas, http://news.bbc.co.uk/2/hi/americas/3921451.stm.

[162] "Powell Declares Genocide in Sudan," *BBC*, September 9, 2004, sec. Africa, http://news.bbc.co.uk/2/hi/africa/3641820.stm.

[163] Press Release of the South African Department of Foreign Affairs, "Position and Response of the African Union on the Darfur Crisis as Being Genocide," November 4, 2004, http://www.dfa.gov.za/docs/2004pq/pq99.htm.

[164] Jonathan Birchall, "Thousands Die as World Defines Genocide," *Financial Times*, July 6, 2004,

The debates about the occurrence of genocide are important because the appropriate response would depend on whether such genocide was happening at the time or not. Indeed, speaking at the UN's Human Rights Commission on the tenth anniversary of the Rwandan genocide, Kofi Annan said that events in Darfur left him

> with a deep sense of foreboding. Whatever terms it uses to describe the situation, the international community cannot stand idly by . . . [but] must be prepared to take swift and appropriate action. By 'action' in such situations I mean a continuum of steps, which may include military action. But the latter should always be seen as an extreme measure, to be used only in extreme cases.[165]

As we can see from the statement of the Secretary-General, if the situation was to be considered as being genocide, then even a military response would have been possible.

The ceasefire between the Sudanese government and the Sudan Liberation Army and the Justice and Equality Movement was signed on 8 April 2004 and was mediated by the African Union (AU). In this agreement, the AU was to send military observers to monitor the ceasefire in what came to be known as the African Mission in Sudan, or AMIS. The mandate of the mission was specified in detail in the "Agreement With the Sudanese Parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur"[166]. It consisted of:

- "Planning, verifying and ensuring the implementation of the rules and provisions of the ceasefire;

---

http://www.ft.com/cms/s/0/4ad90d40-ceea-11d8-8469-00000e2511c8.html.

[165] Secretary-General Press Release, "'Risk of Genocide Remains Frighteningly Real', Secretary-General Tells Human Rights Commission as He Launches Action Plan to Prevent Genocide '," April 7, 2004, http://www.un.org/press/en/2004/sgsm9245.doc.htm.

[166] African Union, "Agreement With the Sudanese Parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur," May 28, 2004, http://www.issafrica.org/AF/profiles/sudan/darfur/cfc/agreement.pdf.

- Defining the routes for the movement of forces in order to reduce the risks of incidents; the administrative movements shall be notified to the CFC;
- Requesting appropriate assistance with demining operations;
- Receiving, verifying, analysing and judging complaints related to possible violations of the ceasefire;
- Developing adequate measures to guard against such incidents in the future;
- Determining clearly the sites occupied by the combatants of the armed opposition and verifying the neutralization of the armed militias."[167]

However, as stated earlier, the ceasefire did not hold long and there were numerous breaches on both sides, and the mission was ill-equipped to face these challenges. Because of the continued attacks on civilians, the mission gradually took a more proactive role in protecting them, thus exceeding its mandate[168]. To face the degrading situation on the ground, the AU, in its Peace and Security Council meeting on 20 October 2004, decided to increase the number of its personnel present to "3,320 personnel, including 2,341 military personnel, among them 450 observers, up to 815 civilian police personnel, as well as the appropriate civilian personnel"[169] and to expand the mandate of the force to include limited civilian protection. AMIS was thus changed from a primarily unarmed military observers force to a major operation that included armed forces, civilian police, and other support teams. But even with this expanded mandate and force, the mission was still clearly not prepared enough. Indeed, a report by Human Rights Watch described the deficiencies of the force, pointing to the "poor planning, logistical difficulties and external factors"[170] that hampered it was well as

[167] Ibid., pt. III.i.
[168] De Waal, "Darfur and the Failure of the Responsibility to Protect," 1041.
[169] African Union, "Communique of the 17th Meeting of the Peace and Security Council," October 20, 2004, 3, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/RO%20PSC%20PR%20Comm_XVII.pdf.
[170] Human Rights Watch, "Imperatives for Immediate Change - The African Union Mission in Sudan,"

a general lack of training, operational capacity and political initiative of mission personnel.

The first Security Council resolution relating to the situation in Darfur was UNSC Resolution 1547 passed on 11 June 2004, in which the Security Council reaffirmed its support to the negotiation process between the government and the rebels and called upon them "to bring an immediate halt to the fighting in Darfur" and to "conclude a political agreement without delay"[171]. On 30 July, the Security Council passed Resolution 1556 under Chapter VII of the UN Charter, which imposed an arms embargo on the region, supported the deployment of the protection force envisioned by the AU and gave the Sudanese government 30 days to disarm the Janjaweed militias or face the possibility of sanctions. It also recalled the primary responsibility of the government of Sudan to "to respect human rights while maintaining law and order and protecting its population within its territory"[172] even though experts seemed to agree that the government lacked the capability to quickly stop or disarm the Janjaweed by force[173].

But the government of Sudan did not cooperate fully to the provisions of the resolution and the AMIS force proved to be not enough to maintain a ceasefire between the parties. In an effort to improve the AU force, the UN proposed to take over the mission and make it into an UN peacekeeping mission. For this, the Security Council passed Resolution 1590 on 24 March 2005 in which it decided to establish a United Nations Mission in Sudan (UNMIS), whose mandate was:

- "to support implementation of the Comprehensive Peace Agreement"[174] through a

---

January 2006, 4, http://pantheon.hrw.org/reports/2006/sudan0106/.

[171] UN Security Council, "Resolution 1547 (2004)," June 11, 2004, http://www.un.org/Docs/journal/asp/ws.asp?m=s/res/1547%282004%29.

[172] UN Security Council, "Resolution 1556 (2004)," July 30, 2004, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1556(2004).

[173] De Waal, "Darfur and the Failure of the Responsibility to Protect," 1041.

[174] UN Security Council, "Resolution 1590 (2005)," March 24, 2005, para. 4(a), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1590(2005).

number of actions;

- "to facilitate and coordinate, within its capabilities and in its areas of deployment, the voluntary return of refugees and internally displaced persons, and humanitarian assistance, inter alia, by helping to establish the necessary security conditions"[175];
- "to assist the parties to the Comprehensive Peace Agreement in cooperation with other international partners in the mine action sector, by providing humanitarian demining assistance, technical advice, and coordination"[176];
- "To contribute towards international efforts to protect and promote human rights in Sudan, as well as to coordinate international efforts towards the protection of civilians with particular attention to vulnerable groups […]"[177].

However, the government of Sudan refused to give its consent to the changing of the force. Because of that, the UNSC passed Resolution 1706 on 31 August 2006 which formally expanded the mandate of the UNMIS (United Nations Mission in Sudan) to include peacekeeping and taking over the AMIS force. The resolution also "invite[d] the consent of the Government of National Unity for this deployment", and reiterated its intention to take "strong and effective measures, such as an asset freeze or travel ban, against any individual or group that violates or attempts to block the implementation of the Agreement or commits human rights violations."[178] Still, the government refused to give its consent to the deployment of the new force and as De Waal said "called the bluff of the United States and UN Security Council"[179] and proceeded to negotiate the details of the force. Finally, a consensus was reached to form a hybrid UN-AU force: the UN–African Union Mission in

[175] Ibid., para. 4(b).
[176] Ibid., para. 4(c).
[177] Ibid., para. 4(d).
[178] UN Security Council, "Resolution 1706 (2006)," August 31, 2006, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1706(2006).
[179] De Waal, "Darfur and the Failure of the Responsibility to Protect," 1042.

Darfur (or UNAMID), which was mandated in Resolution 1769 passed on 31 July 2007[180], with its mandate, structure, size and talks determined with reference to a joint UN–AU assessment. However, the conflict is still on-going and UNAMID is still currently active.

3.3 R2P's Role in the Crisis

As we mentioned at the start of this section, the Darfur case was seen as a test for the commitment of the international community to uphold the principles of R2P. Rather than the wishful thinking of NGOs or other organisms, there were references made to it in the remarks of states and international organizations. For instance, the Security Council in its Resolution 1706 made direct references to paragraphs 138 and 139 of the 2005 World Summit Outcome Document by reaffirming their provisions[181] and reiterated its condemnation of all breaches of human rights and international humanitarian law in Darfur. The UN's attempts to deploy forces were also supported by the decisions of the European Union (EU) Parliament. For example, in its resolution on 28 September 2006, the Parliament made a direct reference to the norm of R2P by using the phrase "the UN 'Responsibility to Protect'" and asserted that due to Sudan's failure to protect its population, it is "obliged to accept a UN force in line with UN Security Council Resolution 1706."[182] Furthermore, it urged:

> the UN Security Council to bring pressure to bear on the Sudanese authorities to accept the deployment of the already authorized UN Mission to Darfur, with a clear Chapter VII mandate and enhanced capacities given to such a mission through UN

[180] UN Security Council, "Resolution 1769 (2007)," July 31, 2007, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769(2007).
[181] UN Security Council, "S/RES/1706," 1.
[182] European Parliament, "Resolution On The Situation in Darfur," September 28, 2006, 2, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0387+0+DOC+XML+V0//EN&language=EN.

Security Council Resolution 1706.[183]

However, as we have outlined earlier, there has been no forceful military operation in Darfur, and the Sudanese Government's consent has been prioritized over intervention despite the allegations of genocide taking place and a seemingly strong consensus of the international community that the government of Sudan was in part responsible for the violence. Williams and Bellamy give three reasons to explain this: "Western abuse of humanitarian justifications during the 'war on terrorism'"[184]; "Darfur is less important than the 'war on terrorism'"[185]; and "military intervention would jeopardize the Naivasha Agreement"[186]. While these reasons reflect the lack of political will of the international community to commit to a forceful military operation, De Waal also shows that the measures taken fell short of the 'responsibility to protect', regretting the lack of discussion of the force's "strategic purpose and concept of operations"[187] and illustrating the discrepancy between the expectations from the force and what was actually achieved.

These reasons show that R2P did not manage to play an important role in the crisis. Indeed, as an international norm, its role is to influence actors towards condoning certain behaviours, condemning others, and acting upon breaches of accepted behaviours. In the case of Darfur and R2P, the government of Sudan was seen as having failed its responsibility to protect its own citizens, even playing a role in arming and supporting the militias that attacked those civilians. Following that and the principles of R2P, the responsibility for the protection of those civilians should have therefore fallen upon the international community, who should support efforts to stop the violence and even enforce by force the cessation of hostilities in the

[183] European Parliament, "Resolution On The Situation in Darfur."
[184] Williams and Bellamy, "The Responsibility To Protect and the Crisis in Darfur," 36.
[185] Ibid., 37.
[186] Ibid., 38.
[187] De Waal, "Darfur and the Failure of the Responsibility to Protect," 1044.

case of a country purposefully targeting its civilians. However, as demonstrated by Williams and Bellamy, no forceful military action was done even though there was ground to expect one, and when there was such a threat, the government of Sudan called the bluff and the international community had to further negotiate and get the consent of the government to deploy the mission[188]. Furthermore, De Waal has also shown that the efforts of the international community fell short of what was expected of an international "responsibility to protect"[189]. It is therefore legitimate to ask why R2P did not have an influence on the behaviour of actors in the crisis.

However, we need to take the historical context into consideration. Indeed, the events related happened between 2004 and 2007, at a time where R2P was transitioning from the norm emergence to the norm cascade phase. Because of that, the norm was not yet fully accepted and other considerations such as state integrity and non-intervention could have had a stronger pull factors because they were more established doctrines. R2P could have had an influence on member states but it would have been relatively minor at the time. But it might also be argued that this case illustrates nothing more than the usual functioning, or failing, of the Security Council, with its great power politics and usual inconsistencies and that R2P had nothing to do with it. Indeed, it is neither the first time nor the last time that a lack of political will, political gridlock among permanent members, or other agendas allow a situation to escalate or fail to deescalate it: Rwanda and Kosovo serve as fresh examples. To determine whether R2P had any role in the Darfur crisis or whether this is just the habitual Security Council functioning, we propose to look at the declarations of the UN member states when discussing resolutions about Darfur. Analysing them will allow us to see what principles were deemed important for each member and allow us to tentatively answer the question of

[188] Williams and Bellamy, "The Responsibility To Protect and the Crisis in Darfur," 35.
[189] De Waal, "Darfur and the Failure of the Responsibility to Protect," 1045.

whether R2P played any role in the crisis or not.

In this case, we will look at declarations made by Security Council members on the day of the vote of Resolution 1564 on 18 September 2004. This resolution is of particular importance here because it requested the Secretary-General to "rapidly establish an international commission of inquiry in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable"[190]. It also threatened the government of Sudan of sanctions relating to restrictions against its petroleum sector and travel of government officials if it "fail[ed] to comply fully with resolution 1556 (2004) or this resolution, including, as determined by the Council after consultations with the African Union, failure to cooperate fully with the expansion and extension of the African Union monitoring mission in Darfur"[191]. We chose this resolution because it is the closest to an actual threat to the government of Sudan: not only did it instigate a commission to determine whether genocide was committed, possibly opening the way to strong enforcement actions, but it also linked the possibility of sanctions not just to the compliance to the resolution but also to the government's cooperation with the African Union. Given these strong words, members who would want to refer to the principles of R2P were the most likely to express their views in this resolution. The Resolution was passed with 11 votes in favour (Angola, Benin, Brazil, Chile, France, Germany, Philippines, Romania, Spain, United Kingdom of Great Britain and Northern Ireland and United States of America), 0 votes against and 4 abstaining (Algeria, China, Pakistan and Russian Federation).

We can observe a number of similar arguments for countries which abstained. First, all of

[190] UN Security Council, "Resolution 1564 (2004)," September 18, 2004, 3–4, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1564(2004).
[191] Ibid., 4.

them commended the efforts of the government of Sudan in complying with Resolution 1556. For instance, the Algerian representative criticized the text of the resolution, noting that "[the resolution] does not really do justice to the Government of the Sudan — which has taken initiatives and carried out actions that go in the right direction — and highlights only the shortcomings that have been noted"[192]. Furthermore, they deplored the threat of sanctions. Algeria did so because they were unfair towards the efforts of the government of Sudan who "has itself officially requested the extension and strengthening of the mandate of the African mission in Darfur and has committed itself to serious cooperation with the United Nations to implement resolution 1556 (2004) and with the African Union to expand its presence in Darfur."[193] China as a principle reiterated its view that "instead of helping to solve complicated problems, sanctions may make them even more complicated"[194]; and Russia thought the Council "should use approved diplomatic methods."[195] In giving their arguments, both the representatives of Algeria and Pakistan insisted on reaffirming "the sovereignty, unity and territorial integrity of Sudan."[196] The arguments of the abstaining bloc thus relied on the view that the resolution was unfair towards the effort of the government of Sudan and placed emphasis on the principles of sovereignty as traditionally understood.

The member states who voted in favour also had a number of arguments to explain their choice. First, they toned down the view of the abstaining bloc that the government of Sudan had taken good steps. For instance, the German representative acknowledged the steps but pointed out that "this progress was limited in scope and that, more important, there was no verifiable progress in key areas of resolution 1556 (2004), such as the disarmament of the

[192] UN Security Council, "S/PV.5040," September 18, 2004, 3, http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.5040.
[193] Ibid.
[194] Ibid., 5.
[195] Ibid., 4.
[196] Ibid., 3,7.

Janjaweed, the prosecution of human rights violations and the overall security situation for the population and the internally displaced persons in Darfur."[197] All members in favour of the resolution also referred to the terrible humanitarian situation on the ground and the numerous breaches of the ceasefires as a justification for supporting the text.

However, we also find some differences in the group. For instance, Brazil and Benin both thought that the text of the resolution did not acknowledge enough the efforts of the government of Sudan, with the Brazilian representative wishing that the text "could have acknowledged other positive steps […] disarmament and improvement of security in certain areas of internally displaced persons, together with the deployment of additional police."[198] They both also feared that sanctions would be automatic with Brazil clearly reiterating its interpretation that sanctions would not be automatic and Benin wishing "the sponsors of the resolution had agreed to drop the reference, given the controversy and the controversial interpretations to which it may be subject."[199] Another difference is that some countries placed an emphasis on the on-going humanitarian crisis and the need to save lives as an important reason for supporting the resolution. For instance, France said that it had "always stated that we should pursue the sole objective of saving human lives."[200] Both the United States and the United Kingdom reprimanded the government of Sudan in its role in arming militias and targeting civilians, and the British representative reminded it to meet "its responsibilities, the most basic of which is to protect its own citizens."[201] But perhaps the most important declaration for our study is that of the representative of the Philippines who stated that a "State has the responsibility to protect its citizens, and, if it is unable or unwilling to do so, the international community — the Security Council — has the moral and legal

[197] Ibid., 7.
[198] Ibid., 10.
[199] Ibid., 9.
[200] Ibid., 8.
[201] Ibid., 9.

authority to enable that State to assume that responsibility."[202]

In reading these declarations of the member states of the Security Council, we find only little trace of the principles of R2P. As we have seen, only a few countries mentioned the primary responsibility of the state towards the protection of its citizens, although this was clearly mentioned in the text of the resolution. They did not mention the responsibility of the international community either. Furthermore, even if they referred to this first responsibility, only the representative of the Philippines clearly referred to the second responsibility of the international community and acknowledged R2P as a guiding principle for its decision to support the resolution. In addition, and going back to the argument of De Waal, none of the member states seemed prepared to consider any further enforcement action except sanctions, showing that the actions undertaken fell short of a real sense of responsibility towards the civilian population of Darfur.

The Darfur case is an illustration of the failure of the international community to uphold the principles of R2P, both from a political will and operational point of view. Furthermore, the fact that few member states who voted in favour referred to any kind of responsibility and the relative timorousness of the actions taken seem to point towards an absence of any role of R2P in shaping the decisions of the member states. It seems that this was business as usual for the Security Council. However, with the emphasis of certain countries on the failings of the government of Sudan and the statement of the representative of the Philippines, we nonetheless begin to see glimmers of R2P in the discourse of these actors. Although it did not affect in any major part the decisions, the mere fact that such allusions were made seem to point that R2P was beginning to influence the discourse and thus behaviour of these member states. The next chapter will thus focus on the next stage of the cycle, namely the tipping point and norm cascade stages of the norm life cycle model.

[202] Ibid., 12.

Chapter IV. Norm Cascade: the Spread and Adoption of R2P at the International Level

1. The United Nations 2005 World Summit: Tipping Point for the Norm?

To reach the tipping point, there needs to be a "critical mass of relevant state actors" that accept the norm[203]. R2P was unanimously embraced at the rhetorical level during the UN 2005 World Summit, the largest gathering of heads of states, with the concept included in paragraphs 138, 139 and 140 of the Outcome Document. Because of this, it would be hard to argue that this was not the tipping point for R2P. As Christina Badescu and Thomas Weiss put it, "this adoption goes beyond the 'critical mass of relevant state actors'"[204].

However, the R2P paragraphs included in the World Summit Outcome Document represent a departure from the concept outlined in the original R2P report of the ICISS. There were five main differences[205]: the narrow focus on intervention, the requirement of a UNSC mandate, the non-adoption of the ICISS criteria, the change of scope to four specific crimes and the weakening of the responsibility to react. The responsibility to rebuild, present in the original ICISS document, was completely omitted in favour of a stronger emphasis on the intervention part. This was however "mitigated by the creation of the Peacebuilding Commission earlier in the Outcome Document, whose role is precisely to help countries move from conflict to stability and peace."[206] States also indicated that the Security Council should be the only authority able to authorize the use of force, while not "explicitly rule out other types of

[203] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 895.
[204] Cristina G. Badescu and Thomas G. Weiss, "Misrepresenting R2P and Advancing Norms: An Alternative Spiral?," *International Studies Perspectives* 11 (November 2010): 360, doi:10.1111/j.1528-3585.2010.00412.x.
[205] Breakey, "The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis," 31.
[206] Ibid., 32.

authorisation"[207]. Paragraph 139 stated the requirement of approval by the Security Council, but it left out any criteria for authorizing the use of force. A small group of developed states, fought bitterly against what they saw as a "limitation on the full and untrammelled exercise of state sovereignty, however irresponsible that exercise might be."[208] Others, such as China, Russia, and many developing countries, were not supportive of the idea of having a number of criteria because they feared that they would be abused[209]. The scope of application was also narrowed, now covering only the four crimes of genocide, war crimes, ethnic cleansing and crimes against humanity, as opposed to the wider "serious harm, as a result of internal war, insurgency, repression or state failure…" [210] of the ICISS report. Furthermore, the responsibility to react was also eroded by the use of softer language, such as "preparedness" instead of "responsibility"[211].

Nonetheless, the concept was still adopted with a large consensus because of the support of key leaders, especially those of the African Union. This is in part because the African Union, in its constitutive document, has Article 4(h) stating "the right of the African Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances, namely: war crimes, genocide, and crimes against humanity"[212] which is very similar to the principles championed by R2P. This article signalled a shift of African states from their traditional doctrine of non-interference to an emphasis on non-indifference. In addition to this change in attitude, R2P gave them another guarantee that great powers could not act as they

[207] Ibid., 33.
[208] Evans, *The Responsibility to Protect*, 2009, 49.
[209] Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," *Ethics & International Affairs* 20, no. 2 (2006): 143–69, doi:10.1111/j.1747-7093.2006.00012.x.
[210] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, 2001), XI.
[211] Breakey, "The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis," 37.
[212] African Union, "Constitutive Act of the African Union," July 11, 2000, sec. 4(h), http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf.

wanted to and intervene unilaterally without a Security Council resolution as would have been possible using the humanitarian intervention doctrine. This point was of particular importance considering the context of the time. Indeed, the World Summit came two years after the invasion of Iraq by the United States and the United Kingdom in 2003. In the lead up to the war, the United States and the United Kingdom tried to use R2P to justify their military operation. While that was clearly a case of misuse of the concept[213], it nonetheless created fear that R2P would be used just like humanitarian intervention, a tool for great powers to impose their will. This may have been a reason for the strong desire of many developing states to support R2P and not to allow any kind of military operation outside of a Security Council operation.

In addition, a number of prominent figures in African politics were instrumental in helping to promote R2P. For instance, Francis Deng, with his conception of "sovereignty as responsibility"[214], was an important norm entrepreneur whose work was essential in promoting R2P. Also, Ambassador Jean Ping of Gabon, the former President of the UN General Assembly at the time of the World Summit in 2005, was a strong proponent of R2P and was instrumental in creating consensus between member states that led to the eventual inclusion of R2P in the World Summit Outcome Document[215].

Moreover, Gareth Evans notes the historical "embrace of limited-sovereignty principles by the key Latin American Countries"[216] as another important step in making the inclusion of R2P in the Outcome Document possible. However, while the United Kingdom and the United States were relatively supportive of the norm outside of the criteria[217], a number of states, especially in

---

[213] Evans, *The Responsibility to Protect*, 2009, 69.
[214] Deng, *Sovereignty as Responsibility*.
[215] Jean Ping, "Keynote Address at the Round-Table High-Level Meeting of Experts on the Responsibility to Protect in Africa," October 23, 2008, http://www.responsibilitytoprotect.org/index.php/component/content/article/129-africa/1910-african-unions-commission-on-r2pkeynote-speech-by-chairperson-jean-ping?format=pdf.
[216] Evans, *The Responsibility to Protect*, 2009, 50.
[217] Ibid., 49.

Asia, were still reluctant to recognize and adopt R2P. It is thanks to the efforts of the Canadian Prime Minister Paul Martin, through effective last minute personal diplomacy, that they finally agreed on the text[218]. Thus, even with disagreements and compromises, it seems that a vast majority of states have embraced the norm at its basic level.

As we have seen earlier, in Finnemore and Sikkink's model, the tipping point depends on two factors. The first is the number of states accepting the new norm, empirically seen as needing at least one-third of the states in the international community[219]. The second is the criticality of those states, meaning that some states are more important than others in producing a cascade, and these states are "those without which the achievement of the substantive norm goal is compromised."[220] In the case of the 2005 World Summit, the text was adopted unanimously, thus vastly exceeding the number required. Furthermore, as we have seen, it was the involvement of Canada, who first established the ICISS, and African and Latin American states, who were the first concerned with the problems that R2P tries to deal with, that eventually led to R2P being included in the Outcome Document. These were the critical states necessary towards a cascade phase. This leads us to consider the 2005 World Summit as the tipping point for R2P.

2. First Success: the Case of the Post-Election Violence in Kenya in 2007/2008

In 2005, along with other member states of the United Nations General Assembly, the state of Kenya supported the "responsibility to protect" by signing the Outcome Document. In December 2007, violence erupted in the aftermath of the presidential elections. This crisis

[218] Ibid., 50.
[219] Finnemore and Sikkink, "International Norm Dynamics and Political Change," 901.
[220] Ibid.

attracted the international community's attention, especially that of the African Union. This case is widely viewed as the first successful implementation of the R2P norm through the preventive measures adopted under the second pillar of R2P: the commitment of states to assist other states in difficulty[221]. The AU initiative to solve the crisis comprised mostly mediation efforts by a group of African mediators led by ex-UN Secretary-General Kofi Annan[222].

2.1 Background of the Crisis

On 27 December 2007, presidential elections were held in Kenya. Facing each other were incumbent President Mwai Kibaki of the Party of National Unity (PNU), and opposition leader Raila Odinga of the Orange Democratic Movement (ODM). Before making an account of the post-election events, it is necessary to outline the role of ethnicities in Kenya. It is a country with over 70 distinct ethnic groups, with the five largest being the Kikuyu (20%), the Luo (13%), the Luhya (14%), the Kalenjin (11%) and the Kamba (11%)[223]. The influence of ethnical affiliation is very important in shaping political life in Kenya: "political violence […] has an ethnic dimension, much of which can be attributed to the fact that in rural areas, the population is relatively homogenous, which fuels thinking in ethno-geographic terms."[224] In the 2007 elections, both the ODM and the PNU were supported by ethnically-rooted political constituencies: the first by the Luo, Luhya and Kalenjin ethnic groups, and the PNU mostly by the Kikuyu, of whom Mr. Kibaki is a member.

---

[221] Evans, *The Responsibility to Protect*, 2009, 51.
[222] Roger Cohen, "How Kofi Annan Rescued Kenya," *The New York Review of Books*, August 14, 2008, http://www.nybooks.com/articles/archives/2008/aug/14/how-kofi-annan-rescued-kenya/.
[223] "The Crisis in Kenya" (International Coalition for the Responsibility to Protect (ICR2P), n.d.), http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya.
[224] Johannes Langer, "The Responsibility to Protect: Kenya's Post-Electoral Crisis," *Journal of International Service* 20, no. 2 (2011): 8.

Opinion polls before the elections showed Mr. Odinga being in the lead[225], and preliminary results of the election seemed to confirm that. However, as more results came in, the difference between the two hopefuls decreased and the final results put Mr. Kibaki ahead. The impartiality of the results was immediately challenged by Mr. Odinga who demanded a recount of the votes, and the chief EU observer of the elections remarked that "the presidential elections were flawed."[226] Despite these serious allegations of vote rigging, the Kenyan electoral commission declared Mr. Kibaki as the winner and the President was sworn in on 30 December 2007.[227]

Almost immediately after the results were announced, violence started to emerge in different parts of the country, resulting in more than 1,000 deaths and the displacement of over 500,000 civilians[228]. Because of the ethnic polarization of the election, clashes were characterized by the ethnically targeted killings of people aligned with the PNU by ODM, and similarly ethnically-driven counter-attacks in ODM-aligned communities. Although a large number of attacks were made by angry mobs, the government and the police were also soon incriminated. Indeed, the government responded by using excessive and calculated force, sometimes using police to intimidate the opposition[229]. The opposition was also accused of encouraging violence, with some ODM politicians organizing and using demonstrations to bargain for power.[230]

---

[225] Ben Agina, "Kenya: Steadman Releases Its Last Polls Before Election," *The East African Standard (Nairobi)*, December 19, 2007, http://allafrica.com/stories/200712181132.html.
[226] Jeffrey Gettleman, "Disputed Vote Plunges Kenya Into Bloodshed," *The New York Times*, December 31, 2007, sec. International / Africa, http://www.nytimes.com/2007/12/31/world/africa/31kenya.html.
[227] Ibid.
[228] "The Crisis in Kenya."
[229] Adam Ashforth, "Ethnic Violence and the Prospects for Democracy in the Aftermath of the 2007 Kenyan Elections," *Public Culture* 21, no. 1 (January 1, 2009): 11–12, doi:10.1215/08992363-2008-018.
[230] Langer, "The Responsibility to Protect: Kenya's Post-Electoral Crisis," 10.

2.2 International Response to the Crisis

The African Union quickly took action and tried to bring about a settlement between the two parties. It took the form of a panel of high-level personalities, including the former Chairman of the African Union and at the time President of Ghana John Kufuor, President Yoweri Museveni of Uganda as the Chairperson of the East African Community (EAC) at the time, former Secretary-General of the United Nations Kofi Annan, former President of Tanzania Benjamin Mkapa and the wife of Nelson Mandela Graca Machel. The African Union, in its 10th Ordinary Session of the Assembly of the Union, expressed "its deep concern at the prevailing situation and its humanitarian consequences, as well as at its implications for peace and stability in Kenya and the region as a whole", "strongly deplore[d] the loss of lives and condemn[ed] the gross violations of human rights that occurred in the past weeks" and officially welcomed the engagement of the group of eminent African elders and stressed "the need for the parties to extend full cooperation to the mediation efforts."[231]

The EU and individual states as well as the UN supported the mediation process and insisted on the responsibility of the actors to stop the violence and protect the population. Indeed, UNSG Ban Ki-moon reminded "the Government, as well as the political and religious leaders of Kenya of their legal and moral responsibility to protect the lives of innocent people, regardless of their racial, religious or ethnic origin."[232] The Security Council also made clear its attitude regarding the matter with the 6 February 2008 statement of the President of the Security Council in which it stated that:

---

[231] African Union, "Decision on the Situation in Kenya Following the Presidential Election of 27 December 2007," February 31, 2008, http://www.au.int/en/sites/default/files/ASSEMBLY_EN_31_JANUARY_2_FEBRUARY_2008_AUC_TENTH_ORDINARY_SESSION_DECISIONS_AND_DECLARATIONS.pdf.

[232] UN Secretary-General, "Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Kenya," January 2, 2008, http://www.un.org/sg/statements/?nid=2937.

> the only solution to the crisis lies through dialogue, negotiation and compromise and strongly urges Kenya's political leaders to foster reconciliation and to elaborate and implement the actions agreed to on 1 February without delay, including by meeting their responsibility to engage fully in finding a sustainable political solution and taking action to end immediately violence, including ethnically motivated attacks, dismantle armed gangs, improve the humanitarian situation and restore human rights.[233]

A settlement was finally reached between the parties on 28 February 2008 in the form of two political agreements: "Acting Together for Kenya – The Agreement on the Principles of Partnership of the Coalition Government"[234] to enact "The National Accord and Reconciliation Act 2008"[235]. The act outlined a reform in the government of Kenya, with the creation of the post of Prime Minister, with the authority to co-ordinate and supervise the execution of government functions and being an elected member of the National Assembly from the largest party; the nomination of two deputy prime ministers, each nominated by a member of the coalition; and the inclusion of these reforms in the Constitution of the country. Again, the African Union, in its communiqué of the 115th meeting of the Peace and Security Council on 14 March 2008 welcomed the signing of the agreements, endorsing them and called on all Kenyans to support them, and also commended both "President Mwai Kibaki and Honorable Raila Odinga for the wisdom, leadership and courage shown in acting in the interests of all

---

[233] UN Security Council, "S/PRST/2008/4," February 6, 2008, http://www.un.org/Docs/journal/asp/ws.asp?m=S/PRST/2008/4.

[234] "Acting Together for Kenya – The Agreement on the Principles of Partnership of the Coalition Government," February 28, 2008, http://peacemaker.un.org/sites/peacemaker.un.org/files/KE_080228_Acting%20Together%20for%20Kenya-Agreement%20on%20the%20Principles%20of%20Partnership%20of%20the%20Coalition%20Government.pdf.

[235] "The National Accord and Reconciliation Act 2008," February 28, 2008, http://www.hdcentre.org/fileadmin/user_upload/Our_work/Peacemaking/Kenya/Supporting_documents/5-The-National-Accord-and-Reconciliation-Act-2008-Kenya-28-Feb-2008.pdf.

Kenyans to end the crisis in the country", as well as John Kufuor and the panel of eminent African personalities and expressed appreciation "to the international community, including the United Nations and the UN Secretary-General, for its support to the Panel of Eminent African Personalities and the Kenya National Dialogue and Reconciliation."[236]

United Nations Secretary-General Ban Ki-Moon considered the response as "the first time both regional actors and the United Nations viewed the crisis in part from the perspective of the responsibility to protect.[237]" In the same vein, Desmond Tutu praised the swift reaction of the international community compared to past cases[238]. The engagement of state leaders from Africa through their services as mediators proved vital. In addition, the UN was involved "at the highest political levels, the Security Council has issued a statement deploring the violence, and the secretary general and the leadership of human rights offices have been mobilized."[239]

2.3 Factors of Peaceful Settlement and Role of R2P

Considering this case, we can see a few factors that allowed the situation to settle. First and foremost was the immediate and decisive involvement of the most relevant regional organization to which Kenya belongs: the African Union. Indeed, it was praised for its rapidity in setting up a high committee contact, composed of eminent African personalities, with the two Kenyan presidential candidates and reminding them of their country's commitment to protect their citizens.

A second factor, critical for the success of this case, was the participation of Kofi Annan in

[236] African Union, "Communique of the 115th Meeting of the Peace and Security Council," March 14, 2008, http://www.peaceau.org/uploads/communiquekenyaeng.pdf.
[237] UN General Assembly, "Implementing the Responsibility to Protect," para. 51.
[238] Desmond Tutu, "Taking the Responsibility to Protect," *The New York Times*, November 9, 2008, http://www.nytimes.com/2008/02/19/opinion/19iht-edtutu.1.10186157.html?_r=0.
[239] Ibid.

the mediation efforts. Although not a UN official anymore, he still carried a strong aura of legitimacy for his actions. As an African and ex-UN Secretary-General, his involvement in the mediation was welcomed by the parties that saw him as an impartial and legitimate figure. A third factor was the encouragement of the Security Council in its statement concerning the situation in Kenya. Though not directly involved in the mediation, the fact that some statements were made on the situation could be seen as an indicator that the situation could end up in front of the Security Council and with a resolution. Reminding the presidential hopefuls that the international community was watching and ready to act, it put pressure on them to reach a settlement between them rather than having a resolution imposed from outside.

It is more difficult to evaluate the role of R2P in the Kenyan case because the resolution of the crisis came largely through informal meetings between the opponents and leaders of the African Union. However, the UN Secretary-General's statement about the resolution of the crisis shows that he saw the actions taken by the informal panel as an application of the norm. In the same vein, Desmond Tutu, who is a member of The Elders, an independent group of global leaders who work for peace and human rights and supporters of R2P founded by Mandela, also interpreted the actions of the informal panel as R2P in action[240]. The case of Kenya became an example of a successful application of the second pillar of the R2P norm. In general terms, the international community's rapid response is acknowledged as "a model of diplomatic action under the Responsibility to Protect."[241] The Global Centre for the Responsibility to Protect also praised the outcome of the situation, and further insisted that the "international community, in keeping with the responsibility to protect, must work with the government of Kenya to take the necessary measures today to avert crimes tomorrow."[242]

[240] Ibid.
[241] "The Crisis in Kenya."
[242] "Kenya" (Global Centre for the Responsibility to Protect), accessed January 7, 2013, http://globalr2p.org/countrywork/country.php?country=157.

This case illustrated the drive for building legitimacy and reputation for the norm and demonstrated how to apply it, which is consistent with a norm in the "norm cascade" phase of the norm life cycle model. It also showed the strength of the consensus of the international community concerning its involvement for the peaceful settlement of crises.

3. International Socialization: Debates in the United Nations General Assembly and the 2009 Report of the United Nations Secretary-General

After R2P reached its tipping point in 2005, elements characteristic to the second stage, or norm cascade could be observed. First, states and international organizations became the main actors of discussion and evolution of the norm, participating in spreading it through socialization. This is clearly evident in the efforts of the UN to discuss R2P and ground it in its framework. The report of the SG on implementing R2P[243] and the ensuing debates of the General Assembly in July 2009, are a clear instance of socialization between member states to try to push for a wider acceptance of the R2P. The GA debates were also the grounds for states to publicly reaffirm their support for the norm, giving them more international legitimation and esteem while increasing the pressure on other states to also support R2P. Furthermore, civil society organizations such as the International Coalition for the Responsibility to Protect (ICR2P) continue their efforts to raise awareness on the issues of R2P and publicly praising or shaming states' stances on crises; while think tanks such as the Global Centre for the Responsibility to Protect (GCR2P) provide avenues for academics and norm entrepreneurs to further refine the norm and make contacts with state officials. This era was also used to try and build reputation for R2P by showcasing instances of success of the application of the norm.

[243] UN General Assembly, "Implementing the Responsibility to Protect."

Indeed, there was strong publicity about how the post-election crisis in Kenya in the end of 2007 was solved peacefully and how R2P was supposed to function.[244] In concluding this part, we can say that at the end of the crisis in Kenya, R2P was exhibiting characteristics typically associated with the second stage, or norm cascade, of the norm life cycle model.

4. Responsibility of the International Community: the Case of the Post-Election Violence in Côte d'Ivoire in 2011

The 2011 Côte d'Ivoire crisis was a political crisis which began after Laurent Gbagbo, the President of Côte d'Ivoire since the year 2000, was proclaimed the winner of the presidential elections of 2010. However, the opposition candidate, Alassane Ouattara, also claimed the victory and was recognized as the legitimate President by a number of countries, organizations and leaders worldwide. This case is significant in that the UN refused the results proclaimed by the Ivorian Constitutional Council and supported the internationally recognized President, as well as expanded the mandate of the on-going UN operation there to include a greater protection mandate of civilians. This case could be seen as another example of the international community stepping up to uphold the principles of R2P.

4.1 Background of the Crisis

The 2010 elections in Côte d'Ivoire were supposed to be the ultimate step in the political process aimed at bringing stability to the country after a decade of strife. Indeed, after disputed

[244] Tutu, "Taking the Responsibility to Protect."

elections in 2000 and the fomenting of a rebellion in the North of the country in 2002, France and the Economic Community of West African States (ECOWAS) established a peacekeeping mission to separate the belligerents. The UN and the African Union were also active in the crisis, sending emissaries to both sides, culminating in the signing by the different parties of the Linas-Marcoussis agreement in January 2003. The agreement provided for an end of hostilities and the forming of a national reconciliation government with the responsibility to prepare new elections[245]. In support of the process, on 13 May 2003, the Security Council passed Resolution 1479 which established the United Nations Mission in Côte d'Ivoire (MINUCI). The mission's mandate was to "to facilitate the implementation by the Ivorian parties of the Linas-Marcoussis Agreement, and including a military component […] complementing the operations of the French and ECOWAS forces" [246]. On 27 February 2004, following a report of the Secretary-General, the Security Council passed Resolution 1528 which established the United Nation Operation in Côte d'Ivoire (UNOCI). The UNOCI and ECOWAS forces were placed under the authority of the new mission and the mandate was made to include:

- "Monitoring of the ceasefire and movements of armed groups"[247];
- "Disarmament, demobilization, reintegration, repatriation and resettlement"[248];
- "Protection of United Nations personnel, institutions and civilians"[249];
- "Support for humanitarian assistance"[250];
- "Support for the implementation of the peace process"[251];

[245] "Accord de Linas-Marcoussis," *France Diplomatie : Ministère Des Affaires étrangères et Du Développement International*, accessed November 24, 2014, http://www.diplomatie.gouv.fr/fr/dossiers-pays/cote-d-ivoire/colonne-droite-1347/documents-de-reference/article/accord-de-linas-marcoussis.
[246] UN Security Council, "Resolution 1479 (2003)," May 13, 2003, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1479(2003).
[247] UN Security Council, "Resolution 1528 (2004)," February 27, 2004, para. 6 (a–c), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1528(2004).
[248] Ibid., para. 6 (d–h).
[249] Ibid., para. 6 (i–j).
[250] Ibid., para. 6 (k).

- "Assistance in the field of human rights"[252];
- "Public information"[253] and;
- "Law and order"[254].

Most importantly in our case, the resolution authorized the mission "to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment"[255] and allowed "for a period of 12 months from 4 April 2004 the French forces to use all necessary means in order to support UNOCI"[256] and "[h]elp to protect civilians"[257]. However, despite the different forces present, fighting erupted intermittently and the elections were repeatedly delayed, finally taking place on 31 October 2010 and the run-off between Laurent Gbagbo and Alassane Ouattara on 28 November 2010.

On 2 December 2010, the Ivorian Commission Electorale Indépendante (CEI) announced provisional results showing that Alassane Ouattara had won the Ivorian election in the second round with 54% of the vote against 46% for Laurent Gbagbo[258]. However, because the CEI had missed the official deadline to announce the results, the Constitutional Council, whose President was seen as an ally of Gbagbo, said it had the authority to announce the results and on 3 December, it cancelled vote for departments in the North of the country, who strongly supported Ouattara, citing irregularities, thus making Gbagbo the winner of the election[259].

---

[251] Ibid., para. 6 (l–m).
[252] Ibid., para. 6 (n).
[253] Ibid., para. 6 (o).
[254] Ibid., para. 6 (p–q).
[255] Ibid., 3.
[256] Ibid., 5.
[257] Ibid.
[258] "Ouattara Declared Winner of Côte d'Ivoire Presidential Election," *RFI*, accessed November 22, 2014, http://www.english.rfi.fr/africa/20101202-ouattara-declared-winner-cote-divoire-presidential-election.
[259] Adam Nossiter, "Ivory Coast Election Standoff, With Limbo and 2 Winners," *The New York Times*, December 3, 2010, sec. World / Africa, http://www.nytimes.com/2010/12/04/world/africa/04ivory.html.

4.2 International Response to the Crisis

The UN as well as the vast majority of the international community recognized the victory of Ouattara and considered him as the legitimate President of the country. Indeed, ECOWAS, in its Extraordinary Session of the Authority of Heads of State and Government on Côte d'Ivoire "recognized Mr. Alassane Dramane Ouattara as President-elect of Côte d'Ivoire, and consequently, representative of the freely expressed voice of the Ivorian People."[260] In the same vein, the African Union endorsed the communiqué of ECOWAS and recognized Ouattara "as the President-Elect of Côte d'Ivoire."[261] This view was further reaffirmed by the Security Council by the passing of Resolution 1962 on 20 December 2010 which welcomed the decisions of ECOWAS and the AU and urged "all the Ivorian parties and stakeholders to respect the will of the people and the outcome of the election in view of ECOWAS and African Union's recognition of Alassane Dramane Ouattara as President-elect of Côte d'Ivoire and representative of the freely expressed voice of the Ivorian people as proclaimed by the Independent Electoral Commission."[262] The Resolution also decided to strengthen UNOCI by authorizing the deployment of up to 500 temporary personnel and the temporary redeployment of military units from UNMIL to UNOCI[263].

ECOWAS, having suspended Côte d'Ivoire from all its decision-making bodies, called on Gbagbo "to make a peaceful exit [… or it] would be left with no alternative but to take other measures, including the use of legitimate force."[264] However, Gbagbo did not move from his

[260] ECOWAS, "Final Communique on the Extraordinary Session of the Authority of Heads of State and Government on Cote D'Ivoire," December 7, 2010, http://news.ecowas.int/presseshow.php?nb=188&lang=en&annee=2010.
[261] African Union, "Communique of the 252nd Meeting of the Peace and Security Council," December 9, 2010, http://www.peaceau.org/uploads/communiquy-of-the-252nd.pdf.
[262] UN Security Council, "Resolution 1962 (2010)," December 20, 2010, 2, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1962(2010).
[263] Ibid., 3.
[264] ECOWAS, "Extraordinary Session of the Authority of Heads of State and Government on Cote

position and continued to claim victory in the election. The UN was also trying to advance negotiations between the two parties but they did not achieve much, because Gbagbo would not admit his defeat and Ouattara, enjoying strong international support, was not keen on making concessions[265].

On the ground, the situation began to deteriorate, with forces loyal to each camp battling it out in several villages and towns. On 17 March 2011, a rocket attack on a pro-Ouattara district of Abidjan killed or maimed about 100 people and UNOCI issued a statement indicating that "such an act, perpetrated against civilians, could constitute a crime against humanity"[266]. Ouattara's forces, however, began gaining ground and launched a major offensive on 28 March, triggering an increase in inter-communal violence, most notably in the town of Duekoue[267].

It is in this context that on 30 March 2011, the Security Council unanimously passed Resolution 1975. It reaffirmed Ouattara as the president, condemned Gbagbo's refusal to accept the political solution of the AU, adopted financial and travel sanctions against a number of individuals, and recalled its authorization to UNOCI to "to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence"[268], including this time by "prevent[ing] the use of heavy weapons against the civilian population"[269]. The next day, the forces loyal to Ouattara entered Abidjan and on 4 April UN and French helicopters assaulted military camps and destroyed heavy weapons and weapons stockpiles belonging to

---

D'Ivoire," December 24, 2010, http://news.ecowas.int/presseshow.php?nb=192&lang=en&annee=2010.

[265] A.J. Bellamy and P.D. Williams, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect," *International Affairs* 87, no. 4 (2011): 834.

[266] "Ivory Coast Shelling 'War Crime,'" *BBC*, March 18, 2011, sec. Africa, http://www.bbc.co.uk/news/world-africa-12787015.

[267] With Liam Dutton C4 Weather Presenter, "800 Dead in Ivory Coast Violence, Says Red Cross," *Channel 4 News*, accessed November 24, 2014, http://www.channel4.com/news/800-dead-in-ivory-coast-violence-says-red-cross.

[268] UN Security Council, "Resolution 1975 (2011)," March 30, 2011, 3, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1975(2011).

[269] Ibid.

the Gbagbo camp. Finally, on 11 April, Ouattara's forces, with the assistance of French forces, stormed Gbagbo's residence and arrested him. Gbagbo, his wife, son and about 50 members of his entourage were captured and taken to the Golf Hotel, Ouattara's headquarters, where they were placed under United Nations guard.

4.3 R2P's Role in the Crisis

From the very onset of the crisis there were concerns about the potential for mass atrocities. Indeed, On 29 December 2010, the Special Advisers to the Secretary-General on the Prevention of Genocide and the Responsibility to Protect Francis Deng and Edward Luck issued a statement expressing their "grave concern at developments in Côte d'Ivoire"[270], and reminding all the parties of their responsibility to protect, including preventing the crimes and their incitement. They also issued another statement on 19 January 2011 where their reiterated their concern "about the possibility of genocide, crimes against humanity, war crimes and ethnic cleansing in Côte d'Ivoire"[271] and deplored the continuing of the violence and hate speech, reminding the parties of their responsibility to protect all populations in Côte d'Ivoire.

As seen from these statements and Resolution 1975, while the protection of civilians was not the main concern at the beginning of the crisis, the UN played an important role in making it a focus for action. However, can this be attributed to R2P? Isn't it the usual working of the Security Council? Again, we have to take the crisis in its historical context in the evolution of

[270] United Nations Press Release, "UN Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Côte D' Ivoire," December 29, 2010, http://www.un.org/en/preventgenocide/adviser/pdf/Special%20Advisers'%20Statement%20on%20Cote%20d'Ivoire,%2029%20.12.2010.pdf.

[271] United Nations, "Statement Attributed to the UN Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Côte d'Ivoire," January 19, 2011, http://www.un.org/en/preventgenocide/adviser/pdf/OSAPG,%20Special%20Advisers%20Statement%20on%20Cote%20d'Ivoire,%2019%20Jan%202011.pdf.

the R2P doctrine as a norm. As we have seen earlier, at the time of the crisis, R2P had already reached the tipping point and was in the second stage of the "norm life cycle" model, or norm cascade. This stage is characterized a desire to establish legitimacy for the norm and build up its reputation through international socialization, institutionalization and demonstration of how the doctrine worked. We might then expect to see countries and organizations that supported R2P to show how the doctrine is supposed to work and apply it in concrete cases to demonstrate it.

We already have the statements from the Special Representatives outlined earlier but to really be able to say that R2P played a role in the response to the Côte d'Ivoire crisis, we need to analyse the statements made by the main actors of the international community, in this case the representatives of member states that voted for the passing of Resolution 1975. We choose this resolution because it is the one where the Security Council recalled the mandate of UNOCI to protect civilians and clarified that this mission of protection also included the prevention of the use of heavy weapons against civilians. Because of this, it is reasonable to assume that member states, if they were inspired by R2P principles, would show this influence on this occasion. Member states of the Security Council were Bosnia and Herzegovina, Brazil, China, Colombia, France, Gabon, Germany, India, Lebanon, Nigeria, Portugal, Russian Federation, South Africa, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The resolution was submitted by Nigeria and France and was passed unanimously, but not all member states made a speech after the vote: only Nigeria, India, South Africa, Brazil, Gabon, the United States, Germany, Colombia, the United Kingdom and China decided to make a statement, as well as a final statement by the representative of Côte d'Ivoire.

Since the resolution was passed unanimously, it stands to reason that all member states held a certain number of common views. First and foremost, all intervening member states

reiterated their view that President Ouattara was the rightful President of Côte d'Ivoire and urged Gbagbo to relinquish his power. For instance, the representative of Nigeria said that "[t]he current situation is without a doubt a direct consequence of the refusal of Mr. Laurent Gbagbo to cede power to President Alassane Ouattara."[272] Furthermore, they all deplored the escalation of the violence and the attacks, with the German representative being "concerned about increasing attacks and violence, committed not only against civilians but also against United Nations personnel."[273]

There was also a consensus about the need for a peaceful and political settlement of the conflict. Many member states outlined this view, with the representative of China urging the parties "to seek to settle their differences through dialogue and consultations"[274] and Brazil continuing "to strongly support a political process that promotes a negotiated settlement to the crisis while upholding the will of the Ivorian people, as reflected in the recent elections."[275]

A number of member states also noted and appreciated the continued efforts of the AU and ECOWAS to bring about a political settlement. For instance, the representative of Germany "strongly welcom[ed] the efforts undertaken by the Economic Community of West African States (ECOWAS) and the African Union"[276] and the representative of the United Kingdom noted that the present resolution was "in support of the African Union's efforts to find a political solution, and respond[ed] to the calls made to the Security Council by the Economic Community of West African States (ECOWAS) in its communiqué of 24 March."[277]

Certain member states also clearly explained that they voted for the resolution first and foremost with a view towards the protection of civilians. Indeed, the Nigerian representative

[272] UN Security Council, "S/PV.6508," March 30, 2011, 2, http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.6508.
[273] Ibid., 5.
[274] Ibid., 7.
[275] Ibid., 4.
[276] Ibid., 6.
[277] Ibid.

deplored the fact that "the violence is beginning to take on ethnic and sectarian overtones"[278] and "[a]s stakeholders in the future of Côte d'Ivoire, the United Nations, ECOWAS and the African Union have a moral and legal obligation."[279] In the same vein, the Gabonese representative stated that "[i]t was largely with a view to protecting the civilian population that [Gabon] voted today in favour of resolution 1975 (2011)"[280], while the German representative reiterated his concern about "reports of increased fighting and violence against civilians, as well as about armament and recruitment, including of mercenaries"[281], but praised the reaction of the Security Council stating that "By adopting this resolution today, the Council has demonstrated that it is ready to act in the face of the deteriorating security situation on the ground."[282]

However, there were some dissenting views on a number of points, with the representative of India being the most critical. Indeed, he raised a few issues his government had with the resolution. First, he made warnings against the spectre of using the mandate of UNOCI as a tool for regime change. Indeed, he stated that "United Nations peacekeepers should draw their mandate from the relevant resolutions of the Security Council [… t]hey cannot be made instruments of regime change."[283] This statement is probably in reference to the military operation led by NATO in Libya that was taking place at the time of the vote. He further reaffirmed the need for peacekeepers to remain neutral and not become a party to the civil war. This view was also expressed by the representative of China, who stated that "United Nations peacekeeping operations should strictly abide by the principle of neutrality"[284], as well as the representative of Brazil who said that "UNOCI must exercise caution and impartiality so as

[278] Ibid., 2.
[279] Ibid.
[280] Ibid., 5.
[281] Ibid.
[282] Ibid.
[283] Ibid., 3.
[284] Ibid., 7.

not to become party to the conflict."[285]

The Indian representative also underlined that there was no mandate in the resolution to refer the situation in Côte d'Ivoire to the ICC. Indeed, the resolution only noted that the "International Criminal Court may decide on its jurisdiction over the situation in Côte d'Ivoire on the basis of article 12, paragraph 3 of the Rome Statute"[286]. He further warned that there should be no *a priori* presumptions about the nature of the violence, stressing that "[e]ach allegation has to be investigated on a case-by-case basis by the competent national bodies, and further action taken pursuant to relevant laws."[287] However, in opposition, the representative of Germany stressed that "[t]hose who commit such acts [of violence against civilians and UN personnel] must be brought to national and international justice, including, where applicable, to the International Criminal Court."[288]

A final criticism by the Indian representative was about the shorter time taken to adopt resolutions. Indeed, he lamented the tendency of hurrying the process of resolution adoption, noting that "there should be enough time for deliberations and consultations with all countries concerned [… i]n situations such as those envisaged in the present resolution, it is imperative that troop-contributing countries be first consulted on the mandate of United Nations peacekeepers"[289] in order to effectively implement the mandate. This argument is justified in that India is in the top 3 contributors of military and police personnel to UN operations[290].

As we can see from the various statements, although the crisis was of a political nature and member states encouraged its peaceful resolution in a political manner, they also were wary of the on-going violence against civilians and the potential for escalation. We clearly see that the

[285] Ibid., 4.
[286] UN Security Council, "S/RES/1975."
[287] UN Security Council, "S/PV.6508," 3.
[288] Ibid., 5–6.
[289] Ibid., 3.
[290] United Nations Peacekeeping, "Ranking of Military and Police Contributions to UN Operations," October 31, 2014, http://www.un.org/en/peacekeeping/contributors/2014/oct14_2.pdf.

resolution put an emphasis of the protection of civilians and declarations by member states reflect that view. While there was no explicit mention of R2P, the declaration of the representative of Colombia concerning the "the fundamental responsibility of Côte d'Ivoire to protect all people on its territory"[291] and especially that of Nigeria concerning the "moral and legal obligation"[292] of the United Nations, ECOWAS and the African Union seem to refer to the principles of R2P. In this case, it is difficult to say that this is the Security Council in its usual business because it is the member states that placed the security concerns of the civilians at the forefront of the issues when dealing with the crisis. This seems to show that member states were more prepared to act and respond even forcefully to potential escalations of attacks against civilians than they were in the past, especially when relevant regional organizations backed them as in this case. This is consistent with what we would expect from the international community and international organizations when dealing with a norm in the norm cascade phase of the "norm life cycle" model. The next chapter will focus on the last stage of the model.

[291] UN Security Council, "S/PV.6508," 6.
[292] Ibid., 2.

Chapter V. Push to Internalization: the Case of the Libyan Civil War of 2011

1. Towards Internationalization: Professionalization of R2P

After the tipping point, there are mechanisms characteristic of the third phase, or norm internalization, which can be observed. As presented previously, in this stage, professionals become the main actors, working to internalize norms among their members through the mechanisms of iterated behaviour and habit. The "Office of the special adviser on the prevention of genocide" is an office created by UN Secretary-General Kofi Annan in 2004 with a mandate to collect information on massive violations of human rights that may lead to genocide, make recommendations to the Security Council through the Secretary-General and to liaise with other agencies on activities for the prevention of genocide. Francis Deng was appointed Special Adviser to the Secretary-General on the Prevention of Genocide on 29 May 2007, on a full time basis. Working under his overall guidance, a Special Adviser to the Secretary-General on the Responsibility to Protect was also appointed on 21 February 2008 in the person of Edward Luck, although in a part-time basis. The role of the Special Adviser to the Secretary-General on the Responsibility to Protect is "to further the conceptual, political, institutional and operational development of the responsibility to protect concept, as set out by the General Assembly in paragraphs 138 and 139 of the 2005 World Summit Outcome document."[293] As of June 2014, the current Special Adviser to the Secretary-General on the Prevention of Genocide is Adama Dieng and the current Special Adviser to the Secretary-General on the Responsibility to Protect is Jennifer Welsh.

As we can see from their mandates, the office deals with R2P at the professional and

[293] "Office of The Special Adviser on The Prevention of Genocide," accessed June 29, 2014, http://www.un.org/en/preventgenocide/adviser/jenniferwelsh.shtml.

bureaucratic level. While the main goal of the office is the prevention of genocide, which is only one of the four crimes R2P is concerned about, the actors and their activities are set in the normative framework of R2P. First, the choice of Francis Deng as the Special Adviser is a strong nod to the underlining principle of R2P: the notion of sovereignty as responsibility first developed by Francis Deng himself. Second, the staff provides training and information, and engages with civil society in projects around the world, spreading the ideological and normative values against genocide to a larger audience of professionals. While their focus is on genocide, it is also strongly linked to the other three crimes of concern to R2P. Furthermore, the appointment of a Special Adviser to the Secretary-General on the Responsibility to Protect is a clear indication that some professions are dealing with this issue at a professional and bureaucratic level, again carrying the normative biases of R2P instilled by their professional training.

Another body of professionals dealing with issues in the same spirit as that of R2P is the International Criminal Court, referred to as the Court hereafter. It was established by the Rome Statute of the International Criminal Court in 1998 which came into force on 1 July 2002. It is now a permanent tribunal whose purpose is to prosecute individuals accused of crimes of genocide, crimes against humanity, war crimes and the crime of aggression[294]. As we can see, the three of the four crimes the Court deals with are the same as those R2P is opposed to. The difference in the crimes between the Court and R2P can possibly be explained by the context of the time in which they were formed. Indeed, the Court was established as a continuation of the legal tradition of the special courts that were established in the aftermath of World War II such as the Nuremberg and Tokyo special courts, and which dealt with the issue of aggression. As for R2P, the crime of ethnic cleansing came more to prominence during the time of the Kosovo

[294] UN General Assembly, "Rome Statute of the International Criminal Court," July 17, 1998, http://www.refworld.org/docid/3ae6b3a84.html.

War in 1999 and became an issue of prominence in the following years. There is also another aspect of the Court that allows us to state that its professionals' work is in the same spirit as that of R2P: the notion of international responsibility. Indeed, the Court can only investigate, prosecute and try individuals if the State concerned is unable or unwilling genuinely to do so. Thus, the Court is not to be considered as a replacement of national courts but rather as a complement to them and as a last resort[295]. In doing so, the Court can be seen as promoting the notion of international responsibility advocated by R2P: if a state cannot protect its citizens, then that responsibility passes to the international community. The Court, with its lawyers, prosecutors, judges and other professionals, in their daily activities, are spreading the normative biases instilled by their professional training to the people they meet and train and are thus actively promoting the norm.

However, these examples of professionals actively working in the spirit of R2P are not enough to claim that the norm has reached the final stage of the norm life cycle model and has been internalized. Indeed, the fact that the Special Adviser to the Secretary-General on the Responsibility to Protect is on a part-time basis, under the overall guidance of the Special Adviser to the Secretary-General on the Prevention of Genocide and sharing the same office seems to show that R2P is a more controversial subject than the prevention of genocide. The Court, for its part, does not deal with the prevention aspect of R2P, which has been designated by the ICISS as "the single most important dimension of the responsibility to protect"[296]; or with the establishment of early warning capability advocated by the UN Secretary-General[297]. Furthermore, internalized norms are usually so widely accepted within the international community that they are no longer an issue for discussion. Even though professionals are

[295] Ibid. Art. 1.
[296] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 13.
[297] UN General Assembly, "Early Warning, Assessment and the Responsibility to Protect Report of the Secretary-General - A/64/864," July 14, 2010, http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/864.

actively working and dealing with R2P principles in part or wholly in their everyday activities, the fact that controversies about the norm itself remain and changes are still occurring to the focus and scope of the norm, are ground enough to claim that it has not yet reached the last stage of the norm life cycle model and has not yet been internalized as an international norm.

2. Internalization in Practice: the Case of the 2011 Libyan Civil War

2.1 The Significance of the Libyan Crisis

We believe that the crisis in Libya has a specificity which makes it unique among all the other conflicts we have studied so far. It is the only time that the Security Council authorized a military operation against an internationally recognized state and member of the United Nations with the express purpose of protecting civilians.

While there were numerous times where the Council authorized the deployment of some military personnel in some countries, they have all been under different circumstances. For instance, all traditional peacekeeping operations, such as the Congo crisis in the 1960s or Darfur in the 2000s, were deployed with the consent of the host country and with strict rules of engagement that consisted mostly of self-defence. The military operation in Iraq in 1990 where the Security Council passed Resolution 678 authorizing "all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area"[298] could be seen as an equivalent to what happened in the case of Libya in that the Security Council authorized the use of military force against a

[298] UN Security Council, "Resolution 678 (1990)," November 29, 1990, para. 2, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/678(1990).

member state. However, this also differs from the Libyan case in that Resolution 678 was passed to enforce the provisions of a previous Resolution in the case of a clear aggression by Iraq against Kuwait, and was not concerned with the protection of civilians. The Kenyan post-election crisis, although deemed a case of successful application of R2P[299], was resolved peacefully, while the deployment of troops in Côte D'Ivoire, another crisis with R2P concerns, was again done with the consent of the internationally recognized government[300].

Thus, the Libyan crisis is a unique case among military operations sanctioned by the Security Council and among other R2P crises. Furthermore, this case deals with the most extreme case in R2P, namely using force to protect civilians against an unwilling government. The fact that the international community managed to pass a resolution to respond to the most extreme case of R2P seems to be a clear indication that R2P as a norm had matured enough by then to influence the behaviour and actions of member states. However, there are other factors that are potentially more important that made the passing of Resolution 1973 possible. Because of these specificities and unique context, we see the Libyan crisis as a qualitatively significant case study for the evolution of R2P as an international norm, as well as a potential case that could have pushed the evolution of R2P further and usher the last "internalization" phase.

2.2 Background and Events in Libya

The Libyan crisis started in the wake of the revolutions in neighbouring Tunisia and Egypt, in February 2011, when people started demonstrating in various cities across Libya and got reprimanded heavily. The first demonstrations happened in the eastern city of Benghazi, and were met by security forces using excessive and lethal force, causing numerous civilians to die.

[299] Tutu, "Taking the Responsibility to Protect."
[300] UN Security Council, "S/RES/1975."

The Organization of Islamic Cooperation[301] and the Peace and Security Council of the African Union[302] initially responded by both condemning the use of excessive force against civilians. On 22 February 2011 the UN High Commissioner for Human Rights, Navi Pillay, called for an immediate cessation of the human rights violations committed by Libyan authorities[303]. On the same day the Arab League decided to suspend Libya from the organization[304]. The League of Arab States later called on the Security Council to impose a no-fly zone over Libya[305] to prevent further loss of civilian lives. These responses came from states and organizations tied closest to Libya both territorially and politically, and gave the international community grounds for concern.

With the situation deteriorating so quickly, and following the Arab League's recommendation, the United Nations Security Council convened and passed resolution 1970[306] on 26 February 2011. In it, the Council expressed "grave concern"[307] at the situation in Libya and condemned "the violence and use of force against civilians"[308]. It also deplored "the gross and systematic violations of human rights"[309], and rejected the attempts by "the highest levels of the Libyan government"[310] to incite hostility and violence. It demanded an immediate end to the violence in Libya and for the government to address the "legitimate demands of the

[301] Organization of the Islamic Conference, "OIC General Secretariat Condemns Strongly the Excessive Use of Force against Civilians in the Libyan Jamahiriya," *Organization of the Islamic Conference*, February 22, 2011, http://www.oic-oci.org/oicv2/topic/?t_id=4947&ref=2081&lan=en&x_key=libya.
[302] African Union, "Communique of the 115th Meeting of the Peace and Security Council."
[303] Office of the High Commissioner for Human Rights, "Pillay Calls for International Inquiry Into Libyan Violence and Justice for Victims," February 22, 2011, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10743&LangID=E.
[304] "The Arab League Suspends Libya Until Demands of the People Are Met," *BBC*, February 23, 2011, http://www.bbc.co.uk/worldservice/africa/2011/02/110223_libya_arableague_focus.shtml.
[305] Al Jazeera, "Arab States Seek Libya No-Fly Zone," March 12, 2011, http://www.aljazeera.com/news/africa/2011/03/201131218852687848.html.
[306] UN Security Council, "S/RES/1962."
[307] UN Security Council, "Resolution 1970 (2011)," February 26, 2011, 1, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011).
[308] Ibid.
[309] Ibid.
[310] Ibid.

population"[311]. It urged the authorities to act with restraint, respect human rights and international humanitarian law, ensure the safety of foreign nationals, the safe passage of humanitarian workers and supplies and lift restrictions placed on the media[312]. The resolution also referred the situation to the Prosecutor of the International Criminal Court, who would then address the Council within two months after the adoption of Resolution 1970 and every six months after that to update the Council on the actions taken[313]. The Council also decided that Libyan officials should fully co-operate with the Court[314]. An arms embargo was also imposed, preventing weapons from being exported to or out of Libya[315] as well as a travel ban[316] and an asset freeze targeting Qadhafi and his immediate family[317].

2.3 Contents of UNSC Resolution 1973

The government was still amassing the army close to the city of Benghazi and was preparing to assault it, with Qadhafi making inflammatory statements on national television. The League of Arab States called on the UN Security Council "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," and to

"cooperate and communicate with the Transitional National Council of Libya and to

[311] Ibid., para. 1.
[312] Ibid., para. 2.
[313] Ibid., para. 4, 7.
[314] Ibid., para. 5.
[315] Ibid., para. 9–10.
[316] Ibid., para. 15.
[317] Ibid., para. 17.

provide the Libyan people with urgent and continuing support as well as the necessary protection from the serious violations and grave crimes committed by the Libyan authorities, which have consequently lost their legitimacy."[318]

Subsequently, the Security Council then passed Resolution 1973[319] on 17 March 2011, submitted by France, Lebanon, the United Kingdom of Great Britain and Northern Ireland and the United States of America, based on the resolution of the League of Arab States. The resolution:

- demanded the immediate establishment of a ceasefire and a complete end to violence and all attacks against, and abuses of, civilians[320];
- imposed a no-fly zone over Libya[321];
- authorized all necessary means to protect civilians and civilian-populated areas, except for a "foreign occupation force"[322];
- strengthened the arms embargo[323];
- imposed a ban on all Libyan-designated flights[324];
- imposed an asset freeze on assets owned by the Libyan authorities, and reaffirmed that such assets should be used for the benefit of the Libyan people[325];
- extended the travel ban and assets freeze of Resolution 1970 to additional individuals

[318] 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," March 12, 2011, http://responsibilitytoprotect.org/Arab%20League%20Ministerial%20level%20statement%2012%20march%202011%20-%20english(1).pdf.

[319] UN Security Council, "Resolution 1973 (2011)," March 17, 2011, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011).

[320] Ibid., para. 1.

[321] Ibid., para. 6.

[322] Ibid., para. 4.

[323] Ibid., para. 13.

[324] Ibid., 17.

[325] Ibid., para. 19–20.

and Libyan entities[326];

- established a panel of experts to monitor and promote sanctions implementation[327].

2.4 Passing of UNSC Resolution 1973

The resolution was passed with ten votes in favour (Bosnia and Herzegovina, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, South Africa, the United Kingdom, and the United States), zero votes against and five abstentions (Brazil, China, Germany, India, and Russia). What might be surprising is how this resolution came to pass in the first place with the well-known frigidity of the Security Council in authorizing such actions. In order to understand that, we look at the statements issued by the representatives of each country in the Security Council on the day of the vote. The arguments used for justifying voting for the resolution or abstaining differ for each country but can be categorized in five broad categories: matters of principles, matters of practicality, matters of regional implications, matters of assessment and matters of procedure.

A) Matters of principle

In terms of matters of principle, we can see two main arguments for supporting or abstaining on the resolution. First is the opposition to the use of force. Indeed, several members of the Security Council made it clear that they were against resorting to the use of force in this situation but the degree differs. Most notably, China and India were strongly opposed to any form of use of force. The representative from China said that his country was “always against

[326] Ibid., para. 22–23.
[327] Ibid., para. 24.

the use of force in international relations"[328], while the Indian representative said that it was "totally unacceptable and must not be resorted to"[329]. On the other hand, the representative of Russia was more wary of the possibility of excessive use of force and the consequences it might have on the conflict and the region[330]. The position of Lebanon on this argument is perhaps the most intriguing in that its representative stated that it "would never advocate the use of force or support war in any part of the world"[331], but that it supported the resolution with the hope that it might serve as a deterrent to the Libyan authorities to force them to stop their operations. This position is possibly due to the fact that Lebanon was not only representing itself but also the position of the League of Arab States that supported the establishment of a no-fly zone and of which Lebanon is a member. On the other side of the fence, the positions of Nigeria and South Africa are much softer on this issue. Indeed, they are not against the use of force per se but against any unilateral use of force or occupation force[332]. In supporting the resolution, they emphasized the provisions of the resolution requiring a multilateral and joined effort and explicitly excluding any foreign occupation force. This position clearly reflects the position of many African countries that are suspicious of military operations reminiscent of the humanitarian intervention doctrine. By supporting the resolution, they guarantee that any military operation would have to be multilateral with the Security Council still informed.

The second argument has to do with the legitimacy, or lack thereof, of the Qadhafi regime. Indeed, some states affirmed that the Libyan authorities had lost all legitimacy and were no longer representative of the Libyan people. This was notably the position of the representative of the United Kingdom, Lebanon, Germany and Portugal. While all member states condemned

[328] UN Security Council, "S/PV.6498," March 17, 2011, 10, http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.6498.
[329] Ibid., 5.
[330] Ibid., 8.
[331] Ibid., 4.
[332] Ibid., 9–10.

the repression and aggressions against civilians, these four states made it clear that the Libyan regime of the time could no longer be seen as the representative of the Libyan people and thus there would have to be a political transition to a new regime[333]. It is interesting to note that though Germany also adhered to this argument, it still abstained in the vote, showing that this issue was of less importance in its view.

B) Matters of practicality

There were two main arguments dealing with issues of practicality. The first dealt with the fact that the previous resolution 1970 was not sufficient to stop the conflict. Member states deplored the fact that the Libyan authorities did not comply with its provisions and that the fighting was still on-going. However, there were two opposing views in this matter. On the one hand, there were those who argued that since the previous resolution was not followed by the Qadhafi regime, the new resolution would have to be stricter with means to enforce its provisions. As explained by the representative of Colombia, "even more important than the establishment of a no-fly zone is its enforcement [… and] without this authorization, the no-fly zone would be illusory", estimating that "the Libyan authorities had sufficient time to comply with resolution 1970"[334]. This view was shared mostly by France, the United Kingdom, the United States, Portugal and Lebanon. On the other hand, countries like Russia, India and Germany, though recognizing that the Libyan regime did not comply with the previous resolution, were just in favour of another resolution without the resort to the use of force[335]. However, they gave no clue to how such measures could be enforced without the possibility of use of force. Their position seems to do more with matters of principle or politics rather than with the practicality of a new resolution.

[333] Ibid., for the UK p.4; for Lebanon p.3; for Germany p.4; and for Portugal p.8.
[334] Ibid., 7.
[335] Ibid., for India p.6; for Russia p.8; and for Germany p.5.

The second argument about practicality has to do with how the military operation would go. In this issue, the roles are reversed and we see Russia, India and Germany questioning the practicality of such a military operation and the risks associated with it while the opposing member states avoid any detail about it. India questioned the implementation of the resolution, pointing that they "do not have clarity about details of enforcement measures, including who will participate and with what assets, and how these measures will exactly be carried out"[336] while Russia received no answer regarding "how the no-fly zone would be enforced, what the rules of engagement would be and what limits on the use of force there would be"[337]. On the other side, France and the United Kingdom simply reaffirmed their readiness to act to enforce the provisions of the resolution, with the United Kingdom clearly citing NATO as a participant in the military operation[338].

C) Matters of regional implications

The Security Council also discussed the regional implications of an involvement and military participation in Libya in the context of what came to be known as the Arab Spring. Indeed, many countries recognized that important changes were rocking the Arab world and that it could have a big impact on the region in the future. For France, it was "one of the great revolutions that change the course of history"[339] and Germany recognized that "North Africa is undergoing major political changes"[340]. However, there was division in how to deal with the particular situation in Libya in that regional context. For France, the United Kingdom and the United States, that meant supporting the opponents of the Qadhafi regime in what they saw as their legitimate demands. France was particularly vehement in its statement, saying that "we

[336] Ibid., 6.
[337] Ibid., 8.
[338] Ibid., 4.
[339] Ibid., 2.
[340] Ibid., 4.

must not give free rein to warmongers; we must not abandon civilian populations, the victims of brutal repression, to their fate; we must not allow the rule of law and international morality to be trampled underfoot"[341] and the United States insisted that it "stands with the Libyan people in support of their universal rights"[342]. South Africa echoed this sentiment, but to a lesser degree, stressing the necessity for any solution to the conflict to "also preserve the unity, sovereignty and territorial integrity of Libya"[343] and Germany stressed "the opportunities for political, social and economic transformation"[344] of such a movement. But for Brazil, it was the "spontaneous, home-grown nature" of the movement that was the most important and it feared that using force "could change that narrative in ways that may have serious repercussions for the situation in Libya and beyond"[345]. Russia was also wary of the possible implications any military operation would have on the whole region.

D) Matters of assessment

Another point of discussion between the representatives had to do with how to assess the need for a military operation. There was still an on-going mission of the Special Envoy of the Secretary-General to Libya taking place at the time[346] and some member states such as India were awaiting his report of the situation and his progress[347]. At the same time, the African Union was also planning another round of discussion scheduled to start on 19 March 2011 with the Qadhafi regime and the rebels[348]. Russia and China were particularly opposed to the possibility of the use of force and pushed strongly for a political and peaceful settlement of the

[341] Ibid., 2.
[342] Ibid., 5.
[343] Ibid., 9.
[344] Ibid., 4.
[345] Ibid., 6.
[346] Spokesperson for the Secretary-General, "Statement Attributable to the Spokesperson for the Secretary-General on Libya," March 16, 2011, http://www.un.org/sg/statements/?nid=5141.
[347] UN Security Council, "S/PV.6498," 6.
[348] Alex De Waal, "African Roles in the Libyan Conflict of 2011," *International Affairs* 89, no. 2 (2013): 371.

conflict. Russia recalled that it had presented an earlier draft of the resolution backing the efforts of the Special Envoy and the need for a peaceful settlement, but was rejected because "the passion of some Council members for methods involving force prevailed"[349]. Both India and Russia also stressed the importance of the involvement of regional organizations in trying to find a peaceful solution, commending the efforts of the African Union in particular and giving their support to their initiative. Russia also feared the possibility of states using force to further their own agenda rather than just for protecting the civilians while a peaceful and negotiated solution was being researched but said that "during negotiations on the draft, statements were heard claiming an absence of any such intentions" and that it "take[s] note of these"[350].

Even some member states who voted for the resolution were hopeful for a peaceful solution to the conflict. As mentioned earlier, Lebanon hoped the threat of the use of force would deter the Libyan regime from attacking the civilians anymore[351]. As members of the African Union, Nigeria and South Africa also expressed strong hope in political and peaceful resolution of the conflict, with Nigeria reminding that "the crisis is one of regional import"[352] and South Africa "the decision of the African Union Peace and Security Council to dispatch an ad hoc high-level committee to Libya to intensify efforts towards finding a lasting political solution to the crisis in that country"[353]. It is interesting to note that France, the United Kingdom, the United States, Columbia and Bosnia and Herzegovina did not cite any foreseeable political process in their statements, hinting that they were not expecting any possible political or potentially peaceful outcome of the situation.

[349] UN Security Council, "S/PV.6498," 8.
[350] Ibid.
[351] Ibid., 4.
[352] Ibid., 9.
[353] Ibid.

E) Matters of procedure

Matters of procedure were also addressed. Indeed, some countries expressed regret over the way the resolution was passed. China's representative raised procedural issues by noting that many of China's questions during the "consultations on resolution 1973 . . . failed to be clarified or answered." Consequently, China had "serious difficulty with parts of the resolution"[354] but due to the special circumstances of the situation on the ground, and the position of the Arab League on the establishment of a non-fly zone, it chose to abstain rather than to vote against. Brazil was also surprised and deplored the fact that the provisions of the resolution went beyond what the League of Arab States had initially asked for. Similarly, Russia said "the draft was morphing before our very eyes, transcending the initial concept as stated by the League of Arab States"[355]. India strongly criticized the lack of a report from the Secretary-General Special Envoy to Libya and the fact of having to vote on a resolution without "an objective analysis of the situation on the ground"[356].

2.5 Legal Issues of the Measures Taken

Because of the controversial nature of the authorization of the use of force, it is necessary to ascertain with the highest degree of scrutiny whether the authorization is beyond any reproach and whether, as opposed to the NATO intervention in Serbia, it is both legal and legitimate. UNSC Resolution 1973 was passed by the Security Council under Chapter VII of the Charter, the resolution is arguably lawful. However, we need to check if the Council overstepped its prerogatives by asking: was the "threat to international peace and security" established, and was the non-compliance by the government of Libya to UNSC Resolution 1970 ground enough to

[354] Ibid., 10.
[355] Ibid., 8.
[356] Ibid., 6.

justify the use of force?

A) Threat to international peace and security?

By the time resolution 1973 was passed, a number of civilians were already dead, and by all accounts the situation was deteriorating. There are no definitive estimates of the number of civilian casualties at the time. According to Luis Moreno-Ocampo, the prosecutor of the ICC, 500 to 700 died from shootings in February, before full-fledged fighting broke out between the government and hastily assembled rebel forces[357]. Italian Minister of Foreign Affairs Franco Frattini stated that according to his information 1,000 people had died by 23 February 2011[358]. Article 39 of the Charter of the United Nations explains when non-military measures and use of force can be applied by the Security Council on states:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." [359]

Both resolutions 1970 and 1973 were adopted under Chapter VII of the Charter as a response to a "threat to the peace." No explicit reason is cited for the application of Art.39; however such reasons can be inferred from the wording of the resolutions:

- "plight of refugees and foreign workers forced to flee the violence in the Libyan Arab

[357] International Criminal Court, Office of the Prosecutor, "Statement to the United Nations Security Council on the Situation in the Libyan Arab Jamahiriya, pursuant to UNSCR 1970 (2011)," May 4, 2011, http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/statement%20to%20the%20united%20nations%20security%20council%20on%20the%20situation%20in%20the%20libyan%20.aspx.

[358] Al Jazeera, "Live Blog - Libya Feb 23," *Al Jazeera Blogs*, February 23, 2011, http://blogs.aljazeera.com/blog/africa/live-blog-libya-feb-23.

[359] United Nations, "Charter of the United Nations," June 26, 1945, 39, http://www.un.org/en/documents/charter/index.shtml.

Jamahiriya"[360]

- "condemning the violence and use of force against civilians"[361]
- "considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity "[362]
- "gross and systematic violation of human rights"[363]
- "rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government"[364]
- "the Libyan authorities' responsibility to protect its population" [365] and "the responsibility of the Libyan authorities to protect the Libyan population"[366]

It is possible to argue that refugees could threaten the peace in neighbouring states if large numbers were to follow. However, the resolution does not give any clear indication to the fact that they are dealing with any significant number of refugees. Most other possible reasons are drawn from grave breaches of human rights in Libya along with a possibility of such actions constituting crimes against humanity as defined through the Rome Statute of the International Criminal Court. The last potential reason is a possible direct reference to the R2P doctrine and the "Libyan authorities' responsibility to protect its population"[367]. The Libyan authorities having failed their duty, the R2P doctrine says that this duty therefore falls upon the international community.

Though no clear and direct explanation is given for determining that the situation in Libya

[360] UN Security Council, "S/RES/1973," 2.
[361] UN Security Council, "S/RES/1970," 1.
[362] Ibid.; UN Security Council, "S/RES/1973," 1.
[363] UN Security Council, "S/RES/1970," 1; UN Security Council, "S/RES/1973," 1.
[364] UN Security Council, "S/RES/1970," 1.
[365] Ibid., 2.
[366] UN Security Council, "S/RES/1973," 1.
[367] UN Security Council, "S/RES/1970," 2.

constitutes a "threat to international peace and security" as was stated in resolution 1973[368], we can assume that the Security Council reached this conclusion by the non-compliance of Libya with its previous resolution 1970 and the deterioration of the situation. Each reason viewed separately does not seem to constitute a "threat to international peace and security". However, when taken all together, they can be considered to constitute such a threat and this seems to be the way the Security Council determined it.

B) Non-compliance to resolution and use of force

However, is the non-compliance with previous UNSC Resolution 1970 ground enough to authorize use of force? There is a precedent to this situation: UNSC Resolution 678 (1990) about Iraq in the context of the first Gulf War. The resolution "demands that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so."[369] It also "authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area" [370].

We can draw a parallel between the situation of Iraq and that of Libya. In both cases, a state did not comply with the provisions of a Security Council resolution, and another resolution was passed with the possibility of use of force in order to enforce the provisions of the first one and the new provisions. The context of the two situations is nonetheless different: in Iraq, it was about a clear military aggression of Iraq against another sovereign state while in Libya, it was in

[368] UN Security Council, "S/RES/1973," 2.
[369] UN Security Council, "S/RES/678," para. 1.
[370] Ibid., para. 2.

the context of civil insurgency. However, one of the goals of UNSC Resolution 678 was to "uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area"[371]. In this case, the threat to international peace and security was deemed important enough because a previous resolution was not implemented, and thus the use of force could be authorized and used to bring about the restoration of international peace and security. In the case of Libya, it was also found that the situation constituted a threat to international peace and security, and as in the case of Iraq, a resolution was passed and was not followed by the state in question.

It could be argued that there needs to be a stronger requirement than simply not observing a UNSC resolution in order to authorize use of force and that it was authorized in Iraq because it was a clear act of aggression. But in the case of Libya, not only did the government fail to implement the provisions set forth by resolution 1970 but also made numerous breaches to humanitarian law, such as the deliberate targeting of civilians and the refusal to provide humanitarian access. Given the severity of these breaches, and the fact that they could amount to crimes against humanity, in addition to the non-compliance with resolution 1970, the Security Council estimated the threat to peace strong enough to justify the possibility of using force to implement the previous resolution and restore the peace. Considering the previous points, it does not seem that the UNSC overstepped its prerogatives in passing resolution 1973.

2.6 Legitimacy of the Measures Taken

A) Necessity of assessing legitimacy

As can be seen from the previous sections, while the resolution was passed with no votes against, the authorization of the use of force was still controversial. Keeping in mind the

[371] UN Security Council, "S/RES/678."

example of Kosovo, the intervening states sought to defend their action by focusing on the fact that though the military action was not sanctioned by a Security Council resolution, they still went on ahead because they deemed it legitimate and not unlawful. This view was later challenged in the Kosovo Report [372] which agreed on the legitimacy of the actions but not on their lawfulness. Since R2P was conceived as solution to crises such as Kosovo, we might be tempted to assess both the lawfulness and the legitimacy of actions done in similar situations.

However, we need to consider whether we actually need to do that in this particular case. Indeed, we here have a United Nations Security Council resolution that was passed under Chapter VII of the Charter. It can easily be argued that since the resolution was passed and is legally binding, it is deemed legitimate, and there is a tradition in legal studies of conceiving legitimacy as being equivalent to legality[373]. However, this is a reductionist view of the concept of legitimacy that ignores other aspects pointed by other scholars. According to Hurrell, "legitimacy is about providing persuasive reasons as to why a course of action, a rule, or a political order is right and appropriate"[374]. Thus, the process of debating, justifying and giving reasons is an integral part of legitimacy. Thomas Franck also points out that since there is no recognizable sovereign in the realm of international relations; adherence to the rules comes from voluntary compliance by the members of the community of states. He defines legitimacy as "a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process"[375]. Basically, legitimacy is the force that exerts a pull toward voluntary compliance to

[372] Independent International Commission on Kosovo, *The Kosovo Report*.
[373] Pérez Herranz and Matilde, "The Security Council and the Legitimacy of the Use of Force: Legal, Normative and Social Aspects," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, December 1, 2011), 11, http://papers.ssrn.com/abstract=1884196.
[374] Andrew Hurrell, "Legitimacy and the Use of Force: Can the Circle Be Squared?," *Review of International Studies* 31, no. Supplement S1 (2005): 15–32, doi:10.1017/S0260210505006765.
[375] Thomas M. Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press,

a particular rule. As discussed previously, the military operation in Libya is lawful. But the fact that the resolution was lawful and legally binding should not excuse us from questioning the legitimacy of the actions decided precisely because it is the degree of legitimacy of these actions that favours or hinders compliance. Furthermore, because R2P as a concept and norm is still changing and has yet to be fully accepted or implemented, it is thus even more necessary to discuss whether a military operation justified by the language of R2P is both legitimate and lawful. As is with almost all cases of use of force, any such actions are highly controversial, and even more when they are perceived as illegitimate. It is thus important to check if such actions are considered legitimate or not.

B) Legitimacy criteria

The original ICISS report listed a number of criteria to legitimize reaction against a government who was not upholding its responsibility to protect its citizens: just cause, right authority, right intention, last resort, proportional means and reasonable prospects. Although these criteria were not adopted in the Outcome Document, they still give a good basis to assess if the actions taken could be considered as legitimate and we use them here in the context of the Libyan case.

1) Just cause criterion

The first is the just cause criterion. The ICISS stated that this criteria is met when actions to be taken are done to stop or avert "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale 'ethnic cleansing,' actual or apprehended, whether

---

1990), 24.

carried out by killing, forced expulsion, acts of terror or rape"[376]. We also have further description of the responsibility of countries in the UN 2005 World Summit Outcome Document. Paragraph 138 of the 2005 Outcome Document states that:

> each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement.[377]

In the case of the Libyan government, there have been reports of repression of demonstrations and killings and even use of helicopters and military aeroplanes against civilians [378] as well as public threats on national television by Qadhafi urging his supporters to go attack the "cockroaches" against him[379]. These actions could amount to crimes against humanity due to their wide spread. Thus, it seems the Libyan government did not uphold its responsibility to protect its citizens.

Paragraph 139 of the World Summit 2005 Outcome Document states that:

> the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII,

---

[376] International Commission on Intervention and State Sovereignty, *ICISS Report*, para. 4.19.
[377] UN General Assembly, "2005 World Summit Outcome Document," para. 138.
[378] Alistair MacDonald, "Cameron Doesn't Rule Out Military Force for Libya," *Wall Street Journal*, March 1, 2011, sec. World News, http://online.wsj.com/news/articles/SB10001424052748704615504576172383796304482?mod=googlenews_wsj&mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052748704615504576172383796304482.html%3Fmod%3Dgooglenews_wsj.
[379] "Defiant Gaddafi Refuses to Quit," *BBC*, February 22, 2011, sec. Middle East, http://www.bbc.co.uk/news/world-middle-east-12544624.

> on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[380]

Following this paragraph, there needs to be a failure in peaceful means to settle the situation in order to be able to military action. In the case of Libya, the UNSC, through its resolution 1970, tried to stop the fighting and demanded an immediate end of violence while the African Union offered to mediate between Qadhafi and the rebels. However, the Libyan authorities refused the mediation offer and did not comply with the provisions of Resolution 1970, with repression continuing and government troops advancing on rebel-held towns and cities.

In the case of Resolution 1973, while "expressing grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties"[381] and "[c]onsidering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity"[382], it "[d]emands the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians"[383]. Libya had manifestly failed to uphold its responsibility to protect its citizens. The resolution passes the just cause criteria.

2) Right authority criterion

The second criterion is the right authority criteria. The ICISS report states that "there is no better or more appropriate body than the United Nations Security Council to authorize military

[380] UN General Assembly, "2005 World Summit Outcome Document," para. 139.
[381] UN Security Council, "S/RES/1973," 1.
[382] Ibid.
[383] Ibid., para. 1.

intervention for human protection purposes"[384]. As Resolution 1973 was passed in the United Nations Security Council, it thus passes the right authority criteria. Because of the current status of R2P as a norm adopted by the UN system where it is explicitly required to have an authorization from the Security Council in order to authorize military action, it seems that this criterion is no longer relevant to the issue.

3) Right intention criterion

The third is the right intention criterion. The report states that "the primary purpose of the intervention must be to halt or avert human suffering"[385] and a good way to ensure that is "to have military intervention always take place on a collective or multilateral rather than single country basis."[386] This point was clearly challenged in the remarks of the representative of Russia[387]. Indeed, the Russian delegate expressed strong concerns over the fact that some countries insisted on having the possibility of using force. Most notably, France and the United Kingdom were the front leaders in arguing for a military operation, and it has since emerged that France's ex-president Nicolas Sarkozy might have had motives for favouring a military solution against Qadhafi[388]. However, all member states condemned the use of force of the Qadhafi regime against its population and many acknowledged the fact that Libya did not comply with the previous resolution[389.]

Even Germany, who abstained in the vote, clearly stated it did not see the Qadhafi regime as

[384] International Commission on Intervention and State Sovereignty, *ICISS Report*, para. 6.14.
[385] Ibid., para. 4.33.
[386] Ibid., para. 4.34.
[387] UN Security Council, "S/PV.6498," 8.
[388] Peter Allen, "Gaddafi Was Killed by French Secret Serviceman On Orders of Nicolas Sarkozy, Sources Claim," *Mail Online*, September 30, 2012, http://www.dailymail.co.uk/news/article-2210759/Gaddafi-killed-French-secret-serviceman-orders-Nicolas-Sarkozy-sources-claim.html.
[389] UN Security Council, "S/PV.6498."

legitimate anymore[390]. In the case of France, the United Kingdom and the United States, it seems it was regime change that they were pushing towards: as seen in the statements of their representatives, they did not mention any potential peaceful solution to the conflict[391]. This is in opposition with the position of African countries and Lebanon who condemned the violence but emphasized the need for such a political settlement[392]. But there is a difference between saying a regime is no longer legitimate and actively pushing for a regime change. Could regime change be considered a right intention? On its own, it clearly is not. However, when coupled with a regime that is actively attacking its own citizens and possibly committing war crimes, such a change, along with some safeguards, may be considered to be done with a right intention. In this case, although some supporters of the resolution were hoping for regime change, other supporters trying to achieve a peaceful settlement explicitly forbade in the resolution "a foreign occupation force of any form on any part of Libyan territory" [393], imposing limits on what could be done by a military force even in the case of a regime change. We consider the criterion passed.

4) Last resort criterion

The fourth one is the last resort criterion. As written in the ICISS report, "every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored."[394] From a strictly theoretical point of view, one could question the need for this particular criterion, especially when dealing with the Security Council. Indeed, the Security Council has full discretionary powers to decide how to respond to a threat to international peace and security: it could decide to authorize a military action without having to

[390] Ibid., 4.
[391] Ibid.
[392] Ibid.
[393] UN Security Council, "S/RES/1973."
[394] International Commission on Intervention and State Sovereignty, *ICISS Report*, para. 4.37.

try to have a peaceful resolution of the crisis. However, doing so would leave room for suspicions of abuse of power and would undermine the standing of that organ. As such, the last resort criterion is necessary as a shield against potential abuses and needs to be taken into account when assessing the legitimacy of a course of action.

As mentioned before, the Libyan government did not comply with the previous resolution calling for immediate ceasefire, refused mediation plans by AU and prepared an imminent attack on the city of Benghazi. However, there was still an on-going mission of the Special Envoy of the Secretary-General to Libya taking place at the time [395] and India was awaiting his report of the situation and his progress[396]. At the same time, the African Union was also planning another round of discussion scheduled to start on 19 March 2011 with the Qadhafi regime and the rebels[397]. The fact that these initiatives were still on-going and that some member states emphasized their support and expectations to them could be seen as the proof that not all peaceful means were exhausted. It could be argued that the Security Council should have waited for the report of the Special envoy and the outcome of the efforts of the African Union before passing a resolution authorizing the use of force because the last resort criterion was not met at the time.

However, as the ICISS mentions, non-military option should be explored insofar as there is reasonable grounds for believing the options would succeed[398]. It was even made clearer in the wording of the Outcome Document where the international community would respond more forcefully "should peaceful means be inadequate"[399]. Given the failure of previous attempts to bring Qadhafi and his opponents to the negotiation table and the deterioration of the situation on

[395] Spokesperson for the Secretary-General, "Statement Attributable to the Spokesperson for the Secretary-General on Libya."
[396] UN Security Council, "S/PV.6498," 6.
[397] De Waal, "African Roles in the Libyan Conflict of 2011," 371.
[398] International Commission on Intervention and State Sovereignty, *ICISS Report*, para. 4.37.
[399] UN General Assembly, "2005 World Summit Outcome Document," para. 139.

the ground, it seems that previous attempts proved inadequate to resolve the situation and it is likely that a lot more blood would have been shed while waiting for such efforts to produce a solution. While doing so would ensure the last resort criteria, such a solution would not be an effective solution in that instead of stopping the violence, it would have allowed it to continue under the justification of favouring a hypothetical peaceful settlement. Because of that, it would be better to assess the last resort criteria by looking at every effective measure that can stop the violence immediately, after non-military option proved inadequate, rather than every potential measures taken to resolve the crisis peacefully while allowing violence to continue on the ground.

Effective peaceful measures were taken in UNSC Resolution 1970 to stop the violence but the government of Libya did not comply with it. Furthermore, the fact that there was the threat of an imminent attack by regime forces on the rebel stronghold of Benghazi and the public threats of Qadhafi showed the necessity for a quick and strong response if the international community wanted to avoid a potential bloodbath. Because of the fact that effective peaceful measures were taken before and not respected and the lack of further effective options to bring about a peaceful resolution of the crisis, we can say that the resolution was passed as a last resort, in order to protect population in imminent danger.

5) Proportional means criterion

The next criterion is the proportional means criterion. Basically, "the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question." [400] In this case, the resolution explicitly excluded "a foreign occupation force of any form on any part of Libyan territory" but allowed member states "to take all necessary measures, […] to protect civilians and civilian populated areas

[400] International Commission on Intervention and State Sovereignty, *ICISS Report*, para. 4.39.

under threat of attack"[401]. The use of the expression "all necessary measures" implies that proportionality was not considered for the military operation and non-proportional means could be used to achieve the goals of the resolution. However, the term necessity is often used in conjunction with proportionality in just war theory. Because of that, another reading of the resolution could focus on the term "necessary", in that necessity cannot be taken without proportionality. Such an interpretation would pass the proportional means criteria, in that though there is no allusion to proportionality, the use of necessity goes hand in hand with proportionality and thus there is no need to mention it. However, given the controversial nature of military operations, a stricter assessment and interpretation of the terms of the resolution would be better to assess its legitimacy. Thus, because of the use of the term "all" and the lack of explicit reference to any notion of proportionality, we consider the proportional means criterion not met.

6) Reasonable prospects criterion

The last criterion is the reasonable prospects criterion. It means that "military action can only be justified if it stands a reasonable chance of success, that is, halting or averting the atrocities or suffering that triggered the intervention in the first place."[402] The abstention of Germany was justified by its view that this criterion would not be met. Indeed, it feared large-scale loss of life and making the situation a protracted conflict and announced it would not contribute its forces for the military operations[403]. Other states such as Russia and India also questioned this criterion but on more technical and practical terms: how would the no-fly zone be enforced, what assets would be used, what rules of engagement would a coalition adopt[404]. The fact that

[401] UN Security Council, "S/RES/1973," para. 4.
[402] International Commission on Intervention and State Sovereignty, *ICISS Report*, para. 4.41.
[403] UN Security Council, "S/PV.6498," 5.
[404] Ibid.

these nations emit doubt as to the feasibility and chance of success of the military operation casts doubts on the existence of reasonable prospects. But as resolution 1973 "authorizes Member States […] acting nationally or through regional organizations or arrangements" and "requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4" (protection of civilians)" [405] and Libya not being any major military power, the chances of success of the military operation seemed high enough to pass this criterion.

7) Legitimacy of the resolution

In the ICISS report, the commission's position was that all criteria should be met if a military operation was to be considered legitimate. However, it is the author's view that there is no need for all the criteria to be met in order to consider this authorization of use of force legitimate. Indeed, the fact that the resolution was passed by the Security Council in and of itself is a strong indicator of the legitimacy of its provisions. If there was a strongly contentious point, it seems very unlikely the resolution could have been passed at all. By having only abstentions and no votes against the resolution, the member states and the international community give credence to the legitimacy of the actions decided. While it can be argued that some of the criteria were not met, and this was clearly hinted at in the declarations of some member states, they eventually abstained rather than voting against because of the special circumstances on the terrain, upholding their commitment to respond in a "timely and decisive manner"[406]. As noted by Franck, "a rule's degree of beingness is infinitely variable, depending on the degree to which

[405] UN Security Council, "S/RES/1973."
[406] UN General Assembly, "2005 World Summit Outcome Document," para. 139.

those to whom it is addressed believe themselves obligated by it." [407] Thus, there is no such thing as absolute legitimacy: it is always a matter of degree. The fact that the resolution passed a number of criteria serves only to support the view that it has a high degree of legitimacy. Although the proportional means criterion could not be satisfied, the fact that all other criteria were respected gives us reasonable grounds to view the actions authorized by Resolution 1973 as legitimate indeed.

2.7 Role of R2P in the Passing of the Resolution

Because we are studying the effect of the Libyan crisis on the evolution of R2P as an international norm, it is imperative to first establish that R2P did indeed play a role in the crisis. Some scholars do not see R2P as having been particularly important or relevant in dealing with the Libyan crisis. Indeed, Hehir indicated that there was no mention of R2P in either Resolution 1970 and 1973, except for the responsibility of the Libyan government to protect its own people[408]. He also pointed out that statements made by the member states the day of the vote of Resolution 1973 showed "a paucity of references to R2P"[409], and relied on Chapter VII of the Charter or Resolution 1970 to justify the authorization of military action. This view is however challenged by Dunne and Gelber. Using the same statements of the representatives as Hehir, they argue that "given the extent of the use of explicit RtoP language in the statements and justifications of key state and non-state based actors, it is difficult to agree with Hehir"[410]. Citing how all the representatives, even those who abstained, emphasized the

[407] Franck, *The Power of Legitimacy Among Nations*, 44.
[408] Aidan Hehir, "The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect," *International Security* 38, no. 1 (July 1, 2013): 147, doi:10.1162/ISEC_a_00125.
[409] Ibid.
[410] Tim Dunne and Katharine Gelber, "Arguing Matters," *Global Responsibility to Protect* 6, no. 3 (July 24, 2014): 343, doi:10.1163/1875984X-00603004.

need of the protection of the civilians, the authors concluded that the statements showed that the international community affirmed its responsibility to protect the civilians of Libya and that it stood united against the actions of the Libyan government, while having different opinions on how to tackle the matter[411]. Thus, this demonstrated that "the RtoP norm was present explicitly and implicitly in the reasoning of Council members."[412]

Furthermore, in our opinion, there is an additional element in the statements made by the representative in the Security Council on the day of the passing of Resolution 1973 that allows us to say that they were issuing their statements with R2P in mind. The issues they addressed, namely the justness of the cause, the right intention of the use of force, its use as a last resort and the prospects and feasibility of the military operation, seem to constitute a number of criteria that the member states used to evaluate the legitimacy of the provisions of the resolution. Indeed, each member state's representative touched upon these issues and used these points to justify their support or not of the resolution. Furthermore, these points are very close to a list of criteria proposed by the ICISS, which we have seen earlier, in its initial report on R2P for evaluating the legitimacy of the use of force in dealing with an R2P situation. The ICISS list includes right authority, just cause, right intention, last resort, proportional means and reasonable prospects[413]. While these points or criteria were often used in the past in the context of just war theory, the fact that the points addressed in the statements of the representatives seem to cover most of the same criteria advocated by the ICISS leads us to believe that the Council members were indeed using the principles of R2P in discussing and justifying their behaviour, which seems to indicate that R2P exerted an important effect and was thus relatively strong factor. In the next part, we show how member states addressed the issues outlined above in their respective statements just before or just after the vote of

[411] Ibid.
[412] Ibid.
[413] International Commission on Intervention and State Sovereignty, *ICISS Report*, 32.

Resolution 1973.

2.8 Factors Supporting the Resolution

As we can see from the analysis of the statements of members of the Security Council, of the lawfulness and the legitimacy of the resolution, there were different reasons for supporting the resolution. A first set of reasons has to do with deterioration of the situation in Libya and the non-compliance of the Libyan authorities with the provisions of resolution 1970, most notably the establishment of a cease-fire and the immediate cessation of violence. All countries in favour of the resolution referred to this issue as one of the reasons for their support.

A second set of reasons advanced to justify the vote in favour is the strong involvement of relevant regional organizations, notably statements by the African Union condemning the situation in Libya and the League of Arab States which was the first to call for a no-fly zone and whose resolution serving as the basis for Resolution 1973. Again, all member countries voting in favour of the resolution used this argument.

The last set of reasons has to do with the potential resolution of the conflict and potential political process sought for by the African Union and the mission set up by the resolution. Although the situation was deteriorating, there was still hope among some states that after the establishment of a no-fly zone, the situation would grind to a halt allowing the political process to take place. It is important to see that at the time there were two conflicts taking place: the root conflict having to do with the grievances of the Libyan people that led to demonstrations and repressions in the first place, and the second conflict nested in the first that was about the military offensive of the Libyan army against the city of Benghazi, the heart of the contestation. In saying that they supported a political settlement of the conflict, Lebanon, Nigeria and South Africa were referring to the root conflict. Indeed, the involvement of the African Union in

setting up a high-level committee to Libya shows that they were not only concerned with the cessation of violence but also with addressing the demands of the opponents of the Qadhafi regime. Thus, there is no contradiction in allowing the use of force because in this case, that force was to stop the localized conflict around the city of Benghazi, showing the Libyan authorities that it would not be allowed to violently repress opponents of the regime and hopefully force it to negotiate.

African countries and the African Union also managed to secure provisions against any unilateral military operation or foreign occupation in the text of the resolution, which might have also helped them support it. Furthermore, France, the United Kingdom and the United States made clear in their statements that they were responding to the pleas and aspirations of the Libyan people and thus no longer recognizing the Libyan government as the legitimate authority, and insisted that any future action to be done was only called for and in the name of the Libyan population[414]. Even among supporters of Resolution 1973, we can see a clear divide between countries expecting and hoping for a peaceful settlement of the situation and those thinking that a peaceful resolution was no longer possible. It is therefore no coincidence that countries who took part in the later military actions were from the latter camp.

In light of these statements, we can also see a number of factors that made states decide to abstain rather than to vote against (which in the case of Russia or China would have meant that the resolution would have never passed). First and foremost was the crucial involvement of two of the most relevant regional organizations, the League of Arab States and the Organization of the Islamic Cooperation, which explicitly called for such a resolution, as well as the African Union and its three members in the Security Council which voted in support: a vote against Resolution 1973 could have been seen as ignoring key regional voices while the trend was to depend more on them. A second factor was the isolation of the Qadhafi regime. All the

[414] UN Security Council, "S/PV.6498," 6.

countries in the Security Council denounced the repression of civilians by the regime and many of them deemed the regime as having lost its legitimacy. Also, during his reign, Qadhafi alienated most of his neighbours in the Middle East and in Africa[415] while his support of international terrorist groups made him an enemy of the West. Another factor was the lack of other credible and practical alternative policies. The very public threats on national television of Qadhafi left no doubt at what would happen to the citizens of Benghazi if nothing was done for them and made it difficult to argue that the situation could still stabilize and cool down, especially after recognizing that the previous Resolution 1970 was just ignored by the Libyan regime before.

A last factor both in favour of supporting and against opposing the resolution is also as we have seen the R2P principle. Indeed, Williams & Bellamy claim that "advocacy for R2P helped to establish the principle that foreign governments have a responsibility to stop mass atrocities, helped to clarify how military means might support humanitarian outcomes and supported the development of epistemic communities that are slowly warming domestic politics to the idea of saving strangers."[416] The fact that the resolution clearly reiterated the "the responsibility of the Libyan authorities to protect the Libyan population"[417], and that the vocabulary of R2P permeated the whole argumentation, seem a clear acknowledgment that R2P has become an integral part of the discussion in international affairs, even if it avoided mentioning the responsibility of the international community. As a consequence of these factors, Security Council members could not justify voting against the resolution which purpose was to put a stop to mass atrocities.

[415] De Waal, "African Roles in the Libyan Conflict of 2011," 367.
[416] Paul D. Williams and Alex J. Bellamy, "Principles, Politics, and Prudence: Libya, the Responsibility to Protect, and the Use of Military Force," *Global Governance: A Review of Multilateralism and International Organizations* 18, no. 3 (2012): 293.
[417] UN Security Council, "S/RES/1973," 1.

2.9 Effect of the Libyan Crisis on the Evolution of R2P

As we have shown earlier, while there was no explicit mention of both levels of responsibility of R2P in the Resolution itself or in the statements of the representatives of the member states, the scope and goal of the Resolution as well as the representatives' arguments they used to justify their position seem to show that they addressed the crisis through the lens of R2P. Furthermore, the way the Resolution was passed is in accordance with what we would expect from a norm in the "norm cascade" phase of its evolution. Indeed, in the case of Resolution 1973, the actors here were clearly the international community, or more precisely the states members of the United Nations Security Council. The norm was promoted through institutionalized discussion in the debates and votes of the Security Council and applied through demonstration, in our case authorizing and using force against the Libyan government.

As for the motives, as seen in the previous sections, the statements showed that all member states were fully supportive of the goal of the protection of civilians but they diverged on their views of the legitimacy of the actions taken. However, it could be argued that some countries, especially China, Russia and India, despite expressing strong concerns over the measures and provisions of Resolution 1973, decided not to oppose the resolution in order to conform to the majority view and not be seen as breaking the ranks when even the most relevant regional organizations were supporting the resolution. Because of that, we can say that the motives are both to build legitimacy for the norm and to conform to the majority of other actors who themselves wanted to conform to what the norm required of them.

However, given the uniqueness of the Libyan crisis, being the most extreme case anticipated by R2P and nonetheless having the use of force being authorized by the Security Council; it may be possible that this case could have served as the bridge of R2P towards the final stage of the "norm life cycle" model. Indeed, by having the most extreme case anticipated from R2P be

authorized by the Security Council, it could be argued that this shows that R2P has become strong enough to force the international community to act and enforce conformity from those actors who do not fully embrace it, and given the statements of the representatives presented earlier, it seemed states were recognizing that fact and accepting it.

However, the aftermath of the military operation seemed to have an adverse effect on the evolution of R2P. Indeed, many states that may or may not have supported the passing of Resolution 1973 complained that NATO overstepped the mandate of the UN resolution and turned the military operation to a goal of regime change. For instance, in a meeting of the Security Council about the issue of protection of civilians in armed conflicts held Tuesday 10 May 2011, the representative of South Africa was concerned that "the implementation of these resolutions [on Libya and Côte D'Ivoire] appear[ed] to go beyond their letter and spirit" and called on actors to "refrain from advancing political agendas that go beyond the protection of civilian mandates, including regime change."[418]

In the same meeting, the representative of Brazil said that "we must avoid excessively broad interpretations of the protection of civilians, which could link it to the exacerbation of conflict, compromise the impartiality of the United Nations or create the perception that it is being used as a smokescreen for intervention or regime change."[419] The representative of China also stressed that "the strengthening of the protection of civilians in armed conflict must strictly abide by the purposes and principles of the Charter of the United Nations" and that "[t]here must be no attempt at regime change or involvement in civil war by any party under the guise of protecting civilians."[420] Referring to "the ambiguous experiences in protecting civilians during peacekeeping operations sanctioned by the Security Council", the Russian representative

[418] UN Security Council, "S/PV.6531," May 10, 2011, 18, http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.6531.
[419] Ibid., 11.
[420] Ibid., 20.

reaffirmed that "it is unacceptable for United Nations peacekeepers to be drawn into armed conflict and, in effect, to take the side of one of the parties when implementing their mandate."[421] In an interview, the representative of India went so far as to say that "Libya has given R2P a bad name."[422]

While the initial response and the measures taken by the international community seemed to point towards a stricter and more consistent application of R2P, and thus towards R2P getting into the final stage of the "norm life cycle" model, because of this aftermath, it seems that the evolution of the norm has been severely hindered and the norm did not enter the last stage in the "norm life cycle" model.

[421] Ibid., 9.
[422] Philippe Bolopion, "After Libya, the Question: To Protect or Depose?," *Los Angeles Times*, August 25, 2011, http://articles.latimes.com/2011/aug/25/opinion/la-oe-bolopion-libya-responsibility-t20110825.

Chapter VI. The future of R2P as an International Norm

1. The Responsibility While Protecting

The Libyan crisis has laid bare the problems of R2P and has seemingly halted its evolution towards the last phase of the norm life cycle model. This does not mean that the norm will no longer be able to reach it. Instead, it is again in the norm cascade phase, and it needs to reinforce its legitimacy and build up its reputation through socialization, institutionalization and demonstration through the acts of the states and international organizations. One such attempt at trying to move the norm forward again came from the government of Brazil with its concept or "Responsibility while Protecting" (or RwP for short).

1.1 The Responsibility while Protecting Proposal

This new concept was introduced by Brazilian President Dilma Rousseff at the September 2011 plenary of the General Assembly and further formalized it in a letter of the representative of Brazil to the UNSG dated 9 November 2011[423]. Basically, RwP should be seen as complementary approach to R2P, seeking to have member states agree on a set of "fundamental principles, parameters and procedures"[424] that should guide and legitimize the use of force by the international community to protect civilians. First and foremost, it put back the emphasis on prevention because "it is the emphasis on preventive diplomacy that reduces the risk of

[423] Brazil, "Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General - A/66/551–S/2011/701," November 11, 2011, http://www.un.int/brazil/speech/Concept-Paper-%20RwP.pdf.
[424] Ibid., para. 11.

armed conflict and the human costs associated with it."[425]

The document then described how the international community must react to the threat of violence against civilians by elaborating a number of parameters or criteria that constrain the use of force. Of particular importance is the notion of last resort, stating that the international community "must be rigorous in its efforts to exhaust all peaceful means available in the protection of civilians under threat of violence"[426]. The paper further emphasized the importance of this criteria stressing that "it is imperative to always value, pursue and exhaust all diplomatic solutions to any given conflict"[427] and that the use of force must always be preceded by "a comprehensive and judicious analysis of the possible consequences of military action on a case-by-case basis"[428]. In a possible reference to how Resolution 1973 was passed, the paper also clarified that the international community may only resort to force only "upon the manifest failure of the individual State to exercise its responsibility to protect and upon the exhaustion of all peaceful means"[429]. Because of this understanding, the three pillars of R2P "must follow a strict line of political subordination and chronological sequencing"[430].

In another possible reference to how NATO handled the military operation in Libya, the paper also made a difference between the collective responsibility to protect, which "can be fully exercised through non-coercive measures"[431], and collective security mechanisms, which require that a particular situation be characterized as a threat to international peace and security, in order to avoid "the precipitous use of force"[432].

---

[425] Brazil, "Annex to the Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General Responsibility While Protecting: Elements for the Development and Promotion of a Concept - A/66/551–S/2011/701," November 11, 2011, para. 11a, http://www.un.int/brazil/speech/Concept-Paper-%20RwP.pdf.
[426] Ibid., para. 11b.
[427] Ibid., para. 7.
[428] Ibid.
[429] Ibid., para. 5.
[430] Ibid., para. 6.
[431] Ibid.
[432] Ibid.

The proposal also brought back the possibility of having not only the Security Council as the only authority allowed to authorize the use of force, but also in exceptional circumstances the General Assembly through its "Uniting for peace" Resolution 377(V)[433]. The paper also outlined a number of other criteria and parameters necessary in order to authorize the use of force. One is the proportionality criterion, demanding that the use of force "must produce as little violence and instability as possible and under no circumstance can it generate more harm than it was authorized to prevent"[434]. Furthermore, it must be "limited to the objectives established by the Security Council"[435] and "the scope of military action must abide by the letter and the spirit of the mandate conferred by the Security Council or the General Assembly, and be carried out in strict conformity with international law, in particular international humanitarian law and the international law of armed conflict"[436].

The final paragraphs had to do with increasing the accountability of the force implementing the mandate of the Council. They called for Security Council procedures "to monitor and assess the manner in which resolutions are interpreted and implemented"[437] and requested the Council to "ensure the accountability of those to whom authority is granted to resort to force."[438]

1.2 Is RwP a Useful Addition to R2P?

However, since an informal discussion at the United Nations in February 2012, Brazil has not iterated on the concept and no other member state either. While the concept of RwP seems

[433] Ibid., para. 11c.
[434] Ibid., para. 11e.
[435] Ibid., para. 11f.
[436] Ibid., para. 11d.
[437] Ibid., para. 11h.
[438] Ibid., para. 11i.

to have been shelved by the Brazilian government, and did not seem to create enthusiasm in the rest of the world, it does not mean that the initiative was devoid of merit. Indeed, the way it was done could pave the way for other member states to contribute meaningfully to the further evolution of R2P. And such initiatives are indeed needed in the aftermath of the NATO military operation in Libya and the current inaction of the international community towards what is happening in Syria. While the initiative was received pretty poorly by the West, viewed sceptically by Russia and China and almost ignored by other rising powers for a number of reasons[439], it had nonetheless the merit of trying to push the concept from the apparent halt it had come to and to confront head-on the issues raised by the abuse of R2P[440].

Indeed, it is our opinion that the way Brazil used to propose this further evolution was the good way to push the norm again: it came directly from a relatively strong state, who was not very keen on the idea of R2P but that wanted to achieve more international recognition[441]. The fact that the proposal came from a state rather than an NGO or a think tank lends strong support to the idea that the norm is important to the international community, especially when coming from a regional power such as Brazil. That it came from a country that was traditionally not very supportive of the concept also helps with putting the concept on the radar of other states and provoke them into having a meaningful debate about it. Furthermore, we should not underestimate the will of states, especially emerging powers, to be more recognized on the international scene. Brazil, having presented this proposal, thrust itself into the light as an international and leading norm entrepreneur, improving its image of international power. Thus,

[439] Thorsten Benner, "Brazil as a Norm Entrepreneur: The 'Responsibility While Protecting' Initiative" (Berlin: Global Public Policy Institute, March 2013), 4–7, http://old.gppi.net/publications/research_paper_series/brazil_as_a_norm_entrepreneur.

[440] Andreas S. Kolb, "The Responsibility to Protect (R2P) and the Responsibility While Protecting (RwP): Friends or Foes?" (Brussels: Global Governance Institute, September 2012), 15, http://www.globalgovernance.eu/press/publications/ggi-analysis-the-responsibility-to-protect-r2p-and-the-responsibility-while-protecting-rwp-friends-or-foes/.

[441] Benner, "Brazil as a Norm Entrepreneur: The 'Responsibility While Protecting' Initiative," 1–2.

on the form, the Brazilian initiative is a potential good template to follow in order to push R2P again and continue its evolution towards a fully internalized international norm. The content is a different matter.

Many of the aspects of RwP seem to support R2P. Indeed, it brings back the notions of having a set of criteria to be passed in order to authorize the use of force, it emphasizes the importance of prevention and it allows the possibility having the General Assembly authorize such a use of force while reinforcing the accountability of the agents of the mandate and giving the Security Council a say in the interpretation and implementation of the mandate. At first sight, it looks as if RwP is the right step to give R2P more legitimacy and avoid the mistakes of NATO in Libya. However, on closer inspection, major flaws appear.

It might be argued that Brazil pushed this agenda with the purpose of neutering R2P under the cover of stricter rules for its application. Indeed, given the vocabulary they used and the strict chronological requirement they presented, it could be argued that Brazil had no intention to push for a clearer definition of when the coercive part of R2P should be employed, but rather that it wanted to bury the doctrine under very strict requirements that would make it almost impossible to use in actual crises.

One of the most important aspects of the RwP paper is the idea that the three pillars of R2P "must follow a strict line of political subordination and chronological sequencing"[442]. While this may have been implied before, it nonetheless left the Security Council able to decide when to use of force instead of forcing it, as this proposal does, to go through all the different steps of diplomacy. Although it seems a good idea, it is nonetheless a problem because it would cause unavoidable delays and remove the flexibility that would allow a quick response in order to stop an imminent or on-going mass atrocity, and would conflict with the preparedness of member

[442] Brazil, "Annex to the Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General Responsibility While Protecting: Elements for the Development and Promotion of a Concept - A/66/551–S/2011/701," para. 6.

states to take action as they pledged to in the 2005 World Summit Outcome Document[443]. This point was further addressed during informal debates at the UN about RwP and even the Brazilian representative rejected to strict adherence to a chronological order[444].

The RwP concept also further limits the conditions for and the possibility of military action by stating that "the use of force must produce as little violence and instability as possible and under no circumstance can it generate more harm than it was authorized to prevent"[445]. Such a condition is impossible to guarantee at the onset of any military operation and it would discourage any entity wanting to enforce the mandate because it could be held responsible for anything that would go wrong. Another potential complication is the call for continuous coordination with the Security Council during on-going operations. While it does make the military operation more accountable and transparent, it may also cause delays to important operations and even possibly be counter-productive to the forces on the ground. The Brazilian proposal was also very vague on this matter and did not offer concrete or specific ways to improve this issue[446].

Given these issues, it seems that RwP, while offering a number of objective improvements to R2P, may actually impede the proper response to crises. Introducing a number of criteria to be met in order to authorize the use of force and the emphasis on prevention and greater accountability all serve to improve the legitimacy of R2P and reinforce it. However, the imposed chronological sequencing and the impractical monitoring and assessment of military operations would make any attempt at stopping on-going atrocities highly improbable. If the

[443] Kolb, "The Responsibility to Protect (R2P) and the Responsibility While Protecting (RwP): Friends or Foes?," 12.

[444] Benner, "Brazil as a Norm Entrepreneur: The 'Responsibility While Protecting' Initiative," 7.

[445] Brazil, "Annex to the Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General Responsibility While Protecting: Elements for the Development and Promotion of a Concept - A/66/551–S/2011/701," para. 11e.

[446] Kolb, "The Responsibility to Protect (R2P) and the Responsibility While Protecting (RwP): Friends or Foes?," 15.

goal of R2P is to no longer have a Rwanda or a Srebrenica, then RwP as it has been presented by Brazil may be counter-productive to R2P. The fact that the proposal was not supported by many states and was then abandoned by Brazil shows that member states saw RwP more as an impediment rather than a useful addition to the norm. Despite the issues of the NATO military operation in Libya, by refusing to support RwP, member states have shown their commitment to a working and implementable norm.

2. Potential Factors Against the Development of R2P as an International Norm

As we have seen, R2P is an international norm that has yet to be fully internalized but that has a clear influence in world politics. But we have to ask ourselves why it is the case. Is it only a matter of time? Or are there more important factors slowing or stopping the full internalization of the norm since the Libyan crisis? In this section, we consider two such potential factors: the dual responsibility of R2P, and the current international system structure; and we examine what role R2P could have if it does not become fully internalized as an international norm.

2.1 The Dual Responsibility of R2P

R2P defines two levels of responsibility for the persons to be protected. First is the state itself. In its report, the ICISS states that "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself."[447] This stance is further reaffirmed in the World Summit Outcome Document of 2005, where it is stated that "[e]ach individual State has the responsibility to protect its populations from genocide, war crimes,

[447] International Commission on Intervention and State Sovereignty, *ICISS Report*, 13.

ethnic cleansing and crimes against humanity."[448] The second one is activated when the state cannot or would not assume its primary responsibility. In that case, the responsibility shifts to the international community. This is again mentioned in the ICISS report and in the UN Outcome Document although with some differences. Indeed, the Outcome Document states that:

> "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[449]

This shows that the international community embraces its responsibility to help protect from the four crimes only in a peaceful manner. As for when peaceful means prove inadequate, they are only "prepared to take collective action"[450], which is much less than an assumed responsibility.

The problem here is that R2P tries to force, or fuse together two different types of responsibilities which are at different degrees of acceptance and establishment in international law. The responsibility of the state itself and the collective responsibility to prevent the crimes are arguably well-established in international law. Indeed, the crimes related to R2P are already described in international law and states already have obligations to "prevent and punish genocide, war crimes and crimes against humanity; assist states to fulfil their obligations under international humanitarian law; and promote compliance with the law."[451] Genocide is

[448] UN General Assembly, "2005 World Summit Outcome Document," para. 138.
[449] Ibid., para. 139.
[450] Ibid., 139.
[451] Alex Bellamy, "R2P : Dead or Alive?," in *The Responsibility to Protect - From Evasive to Reluctant Action? The Role of Global Middle Powers*, ed. Malte Brosig (Johannesburg: HSF, ISS, KAS & SAIIA, 2012), 16, http://www.kas.de/wf/doc/kas_32598-1522-1-30.pdf?121102092609.

prohibited and signatories given a legal responsibility to prevent it by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide[452]. The fourth Geneva Convention of 1949 outlines the responsibilities relating to War Crimes in Article 147[453]. The Conventions require state parties to take action to promote compliance with the law. Crimes against humanity are detailed in Article 7 (1) of the Rome Statute of the International Criminal Court of 1998[454].

The problem comes with the forceful reactionary part of R2P, where peaceful as well as non-peaceful means can be used by the Security Council to stop a crisis. Indeed, this is in clear opposition to the well-established legal norms of non-intervention in the affairs of another state[455]. On the one hand, R2P promotes rules that are already well established legally. On the other hand, it seeks to link these established norms to a new and controversial understanding of sovereignty. It may be argued that this is the great novelty and strong point of R2P, to shift the terms of the debate as the ICISS claims. However, we must ask ourselves whether it is really necessary for R2P to link those two aspects.

As can be seen in the UN Secretary-General's various reports on R2P and the GA debates that took place in 2009, there is a relative consensus between states on the basic tenets of R2P, which is not surprising since they are based on established legal norms. The points of contention were always on the potential use of military force by outsiders and the intervention in states' affairs. Because the issue is so controversial, we should ask ourselves if problems for R2P may lead to other problems for the established norms: following the obvious transgression of NATO of its

[452] UN General Assembly, "Convention on the Prevention and Punishment of the Crime of Genocide - A/RES/3/260," December 9, 1948, http://www.un-documents.net/a3r260.htm.
[453] International Committee of the Red Cross (ICRC), "Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)," August 12, 1949, http://www.refworld.org/docid/3ae6b36d2.html.
[454] UN General Assembly, "Rome Statute of the International Criminal Court."
[455] International Court of Justice, "Military and Paramilitary Activities in and against Nicaragua (Nicaragua V. United States of America) (Merits) Judgment of 27 June 1986," June 27, 1986, http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5.

UN mandate in Libya, we see now states reluctant or even blocking any action on the issue of the civil war in Syria because R2P was misused and taken advantage of[456]. Thus, this issue is of potential importance in the current status of R2P as an international norm and the handling of future crises.

2.2 The Structure of the International System and R2P

Another potential factor that may impede the full internalization of R2P is the current structure of the international system and the grounding of R2P in the UN framework. The international community that has the responsibility to protect population in case of the failure or unwillingness of a particular state is made manifest in the United Nations system, and particularly in its deciding organ: the Security Council. However, this organ is caught in a "philosophical conundrum"[457] of being a realist core in a relatively liberal institution. On the one hand, the United Nations was conceived and built to serve as the centrepiece for a collective security system with the goal of deterring aggression, moving away from balance of power politics and fostering peace and cooperation between states. On the other hand, the Security Council is towered by the permanent members, who represent the great powers and hold the veto power. It is sort of a club of great powers and even talks about expanding to include more members have traditionally been framed in the context of the power of the hopeful states.

The Security Council is thus caught on the crossroads of two opposing philosophical tenets. If its role is to manage the world by the will of the great powers, then it is but an institutional

[456] Joshua Foust, "Syria and the Pernicious Consequences of Our Libya Intervention," *The Atlantic*, February 6, 2012, http://www.theatlantic.com/international/archive/2012/02/syria-and-the-pernicious-consequences-of-our-libya-intervention/252631/.

[457] David Fidler, "Caught Between Traditions: The Security Council in Philosophical Conundrum," *17 Michigan Journal of International Law 411 (1996)*, January 1, 1996, 417, http://www.repository.law.indiana.edu/facpub/745.

representation of the traditional balance of powers politics. If its role is to preserve and enforce the system of collective defence, then it undermines itself by giving so much power to a few select states that get the guarantee to evade any responsibility for their acts. As stated by David Fidler, "the Security Council is limited in its ability to act because it has no clear philosophical direction or vision guiding its activities."[458]

R2P, which is now grounded in the UN framework, can be potentially adversely affected by this state of affairs. Indeed, the principles of R2P are universalistic and are to be applied towards all member states, regardless of their status of great power or not. However, because of the extreme power of the Security Council, this cannot be guaranteed. The ICISS itself recognized the problem and wanted the permanent members to agree on a "code of conduct", not to use their veto powers against actions that are designed to stop or avert humanitarian crises[459]. This was unfortunately never done. There were proposals to have authority outside of the Security Council[460], but the reality of the situation is that for the foreseeable future, R2P is grounded in the UN framework and any sort of action done in its name is depending on the will of the Security Council. This was clearly affirmed in the World Summit Outcome Document and the subsequent Secretary-General's reports and the debates in the GA about R2P. However, we already see how the Security Council blocks any action when the interests of one of the permanent members are at stake in the inaction of the Council about the situation in Syria. As it stands, R2P will always be accused of double standards and selectivity, through no fault of the principle but because of the inherent contradictions of the international system in which it is to be applied. As it stands, the Security Council can be seen as the biggest obstacle towards the full development of R2P as an international norm.

---

[458] Ibid., 416.
[459] International Commission on Intervention and State Sovereignty, *ICISS Report*, 51.
[460] Evans, *The Responsibility to Protect*, 2009, 129–138.

3. The Way Forward

The previous section explored two potential factors that may stop R2P from becoming a fully internalized international norm. The dual nature of R2P and the structure of the international system appear to be strong roadblocks. Coupled with the general requestionning of R2P after the Libyan military operation, it seems as though the norm could not develop anymore in its current state. However, R2P seems to be still relevant and likely to play an important role in world politics[461]. This is not necessarily contradictory. Indeed, it is the current state of R2P that may not be able to become a fully internalized international norm. As we have seen before, the concept went from the ICISS vision to the World Summit 2005 version and is still being constantly questioned, improved and refined. Thus, it may be possible that a further iteration of R2P may become accepted widely enough to become internalized. Indeed, noting that emerging powers are relatively hostile to R2P after the Libyan military operation, Ramesh Thakur encourages them to "engage with R2P and seek to improve the means and manner of implementation" in order to "become responsible stakeholders in the global order."[462] In the same vein of advancing the norm, Jennifer Welsh welcomed the requestionning of R2P because it allowed the challenging of various assumptions and may ultimately advance "the international community's understanding and implementation of the responsibility to protect."[463]

While the Libyan crisis could have been the beginning of the "internalization" phase of the

[461] See Williams and Bellamy, "Principles, Politics, and Prudence," 263; Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers," *The Washington Quarterly* 36, no. 2 (April 2013): 61, doi:10.1080/0163660X.2013.791082; Thomas G. Weiss, "RtoP Alive and Well After Libya," *Ethics & International Affairs* 25, no. 03 (2011): 291.
[462] Thakur, "R2P after Libya and Syria," 72.
[463] Jennifer Welsh, "Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP," *Ethics & International Affairs* 25, no. 03 (2011): 261.

evolution of R2P, the way NATO overstepped its mandate induced a strong backlash against the norm, seemingly stopping its evolution. Even the Brazilian proposal of RwP, while done in a laudable way, failed to gather enough momentum and its content was also counter-productive to R2P. However, it is possible to say that this backlash against R2P is a good thing because it forces its proponents to take another good look at the norm and try to address the issues more specifically than before. And there are a few lessons to take from this.

First, while R2P continues to be a political rather than a legal norm[464] and is "predicated on an assumption that normative pressure will compel states to alter their foreign policies"[465], it still seems that R2P has managed to become the de facto framework for dealing with mass atrocities. Indeed, as we have seen in the statements of the member states, states no longer question the fact of whether to do something about such crises but rather how the best answer would be. And while there could still be deadlocks in the Security Council over how to react such as in the case of the war in Syria, it remains an important change compared with the past decades of the prevalence of the principle of non-intervention. Thus R2P has managed to impose its agenda at least on the framing of crises.

Second, the Libyan crisis has shown that there needs to be a stronger control over the intervening force when it has received the authorization of the use of force. While the Brazilian concept of RwP proposed some important steps to give the UN more control over the operations, those steps are too constraining and would only impede the possibility of the force to react in a timely manner to threats on the ground. One possible way to circumvent this problem would be to have clearer vocabulary used in resolutions, but that too would possibly "make it more difficult for Council members to find common ground on human protection mandates"[466].

[464] Stahn, "Responsibility to Protect," 120.

[465] Aidan Hehir, "The Responsibility to Protect as the Apotheosis of Liberal Teleology," in *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*, ed. A. Hehir and Robert W. Murray (Hampshire: Palgrave Macmillan, 2013), 38, http://westminsterresearch.wmin.ac.uk/13164/.

[466] Bellamy and Williams, "The New Politics of Protection?," 847.

Nonetheless, it is important for R2P to avoid the kind of interpretation of mandates as what happened for the Libyan crisis, and it would be probably necessary to have a stronger oversight by the UN on the intervening force, but not to the level proposed by Brazil.

Third, the possibility of the use of force needs to remain a part of R2P. We have seen earlier that the dual nature of R2P could have an adverse effect on its further evolution, especially in the aftermath of the Libyan crisis. Morris proposed that pillar III of R2P be excised, leaving R2P as a standard for proper behaviour and a platform of prevention and capacity-building while decisions on any military operation would be back to being discussed by the Security Council on a case-by-case basis[467]. However, that would simply take us back to previous status quo of having the Security Council decide on whether to intervene or not. Hehir points at this particular issue, noting that Resolution 1973 was "consistent with the Security Council's record of inconsistency"[468], and that "claims of both legal and normative novelty made by the optimists are dubious given the historical record"[469]. But R2P is more than just a catchword covering only existing obligations and offering nothing new. Indeed, while before R2P, the question was whether to do something about a particular crisis; it has since become a question of how to do so instead. R2P also brings together a number of commitments and offers a number of tools to deal with the issues, allowing for them to possibly become part of international law in the future. This is in clear opposition with the previous paradigm of ad-hoc non-precedent-setting of the various Security Council decisions on how to deal with particular crises and doing what Morris suggests would bring us back to that paradigm. Therefore, R2P needs to stay as a comprehensive package, including the possibility of the use

[467] Justin Morris, "Libya and Syria: R2P and the Spectre of the Swinging Pendulum," *International Affairs* 89, no. 5 (September 1, 2013): 1282, doi:10.1111/1468-2346.12071.

[468] Aidan Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect,' *International Security* 38, no. 1 (July 1, 2013): 157, doi:10.1162/ISEC_a_00125.

[469] Ibid.

of force, dealing with mass atrocities.

Fourth, as stated earlier, the way to advance the norm best would be to follow the Brazilian way of making a proposal and debating it in the UN. That way not only engages the international community as a whole but is also more likely to give strong legitimacy to the potential points that would be accepted because of the inclusive character of the debate and it coming from the result of a consensus.

Fifth, and following the proposal in RwP and other scholars, it is necessary to address the issue of the lack of legal codification of R2P. Indeed, with the authorization of the use of force depending on the good will and self-interest of the permanent members in the Security Council, R2P would have no chance to become consistently applied. One way is to actually try and codify R2P. As stated by Hehir, "it is obvious that legal reform is required"[470] and he rightly notes that R2P proponents and organizations dismiss or ignore that issue[471]. However, if R2P is to become an internalized norm, the codification process will sooner or later have to be done. Another way to address this issue would be to find other sources of authority outside of the Security Council, such as the General Assembly or regional organizations, as was suggested in the original ICISS report[472]. This authority could be legal, through the "Uniting for Peace" procedure for the General Assembly or through Security Council authorization ex post facto for regional organizations. However, it is necessary to avoid any unilateral actions because that would bring us back to the days of humanitarian interventions and the doubts over the real reasons of intervention. A final way could be to come up with a new paradigm of authorization but there have been no such proposals yet.

The NATO military action in Libya which overstepped the mandate given by the Security Council also gave rise to the "Responsibility While Protecting" initiative from Brazil, seeking

[470] Hehir, "The Responsibility to Protect as the Apotheosis of Liberal Teleology," 52.
[471] Ibid., 38.
[472] International Commission on Intervention and State Sovereignty, *ICISS Report*, 53.

to clarify the responsibilities of the intervening states[473]. Thus, the concept is still valuable and is being constantly refined in all its different aspects. Furthermore, the World Summit and the GA debates in 2009 have shown that behind the endorsement of R2P by member states lies a genuine process of debate and socialization which reaffirmed the basic tenets of the principle and conferred it a strong legitimacy.

In the event that it does not become a fully internalized international norm, it will continue nonetheless to influence the stage in world politics, albeit in a much reduced manner, because it has become an integral part of discussing any kind of crisis by the international community, and there are no other concepts competing for the same spot at the moment. R2P has the merit of bringing together different issues under the same umbrella and get an explicit endorsement of the principle. While these various aspects may have been present in international humanitarian law and other Security Council resolutions before, the fact of having them grouped under a single principle and framework allows for a larger audience to be aware of these issues and to have a wider range of tools and actors to be used to tackle them. For example, enormous work has been done and is continuing to be done to operationalize the relatively well accepted parts of the norm and most specifically on early warning capabilities[474], which has been traditionally of least concern. This path seems to be the one envisioned by Morris. However, if that comes to pass, it would be very difficult to continue to call it R2P when it has been stripped to less than its bare bones and has become so far away from providing an answer to the original challenge posed by Annan. That would signal the end of R2P and the beginning of another, new norm.

[473] Brazil, "Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General - A/66/551–S/2011/701."
[474] UN General Assembly, "Early Warning, Assessment and the Responsibility to Protect."

Conclusion

We have analysed the evolution of R2P as an international norm using the "norm life cycle" model developed by Finnemore and Sikkink. We found that the evolution of R2P followed the trajectory outlined by the framework: three different phases "norm emergence", "norm cascade" and "internalization" with the first two separated by a "tipping point". In the case of R2P, its evolution could be divided in two main periods: the first between 2001 and 2005, and the second from 2005 until now. These periods correspond to the "norm emergence" phase and the "norm cascade" phases respectively and are separated by the 2005 World Summit, which served as the "tipping point" of the norm life cycle model. While some characteristics of the "internalization" phase were present, they served more in assisting the promotion and socialization mechanisms of the "norm cascade phase" while instilling the normative biases of R2P into professionals. Because of that, we conclude that R2P is in the "norm cascade" phase of the norm life cycle model.

The case studies also seem to agree with the evolution of R2P. Indeed, in the oldest case study of Darfur, we find that R2P was not a strong influence over the decisions of the Security Council, with the exception of the Philippines who explicitly referred to the doctrine to explain why it voted for the resolution. This is in accordance with the current state of R2P at the time, which was progressing from the "norm emergence" phase to the "tipping point".

It is more difficult to evaluate the role of R2P in the Kenyan case because the resolution of the crisis came largely through informal meetings between the opponents and leaders of the African Union. However, the UN Secretary-General's statement about the resolution of the crisis shows that he saw the actions taken by the informal panel as an application of the norm. In

the same vein, Desmond Tutu, who is a member of The Elders, an independent group of global leaders who work for peace and human rights and supporters of R2P founded by Mandela, also interpreted the actions of the informal panel as R2P in action. This case illustrates both the drive for building reputation for the norm consistent with a norm in the "norm cascade" phase of the norm life cycle model, but it also shows the strength of the consensus of the international community concerning its involvement for the peaceful settlement of crises.

The Côte d'Ivoire crisis and the position of the international community are also consistent with the stage of evolution of R2P at the time. Indeed, that period was characterized by intense socialization and discussion of the concept by member states following the successful resolution of the Kenyan crisis. As such, we could see a stronger emphasis on the protection of civilians in the declarations of member states. Although the crisis was of a political nature and member states encouraged its peaceful resolution in a political manner, they also were wary of the on-going violence against civilians and the potential for escalation. While there was no explicit mention of R2P, declarations of member states seemed to refer to the principles of R2P. The stronger role of R2P in the resolution of this crisis is thus consistent with the evolution of the norm.

Finally, the Libyan crisis was the biggest test to the commitment of the international community to uphold the R2P doctrine and the crisis itself was "almost a textbook illustration justifying R2P principles". In this case again, the actions of the international community seem to have been in accordance with the stage of the evolution of R2P at the time. But because Resolution 1973 authorized the use of force against a functioning government for the explicit goal of civilian protection, this case could also be seen as a transition from the "norm cascade" phase to the "internalization" phase, where norms are strictly adhered to. However, the stretch of the mandate by NATO and its subsequent active participation in the civil war that ensued seem to have put a stop to the evolution of R2P towards the next stage.

Thus, the evolution of R2P as an international norm was closely followed in its application to solving the crises above. We could see a shift from the traditional non-interference towards a less indifferent or even more assertiveness in defending, in words at least, the rights of populations from mass atrocities, as the norm was getting more accepted and debated at the UN.

We also discussed the potential future of the norm. We found mixed results. On the one hand, the basic principles of the norm are relatively well accepted by states and civil society in general, having intrinsic characteristics and strong adjacency claims with notions of human rights and human security. It has managed to become the *de facto* framework for talking and dealing with mass atrocities. On the other hand, the norm remains divisive concerning the possibility of the use of force, with strong opposition from China and Russia and a cautious attitude from India and South Africa.

Furthermore, the dual responsibility system of the norm, which seeks to force the link between well-established rules of international law and a new concept of sovereignty, can possibly become a handicap for its systematic application. Also, the very structure of the United Nations, with the Security Council holding the absolute power to authorize the use of force or not and the veto powers of the permanent members, is potentially the largest obstacle to R2P truly becoming an international norm and becoming internalized. The RwP proposal of Brazil, while inconclusive in the end, could provide a model for emerging powers to contribute to the further evolution of R2P if they so wished. For R2P to stay relevant, it needs to keep the possibility of coercive action and deal with the issue of its codification into international law. The pendulum of R2P evolution is still swinging backwards, and to switch it back forward, the main actors, states and the United Nations, should be taking the issues and engage in further discussion about the challenges R2P faces when implementing its reactive part and notably its authorization of the use of force.

Although it may not have reached the internalization stage of the norm life cycle model

because of the politics of great powers, it would still contribute to improve on the large and important issues on which there is consensus and solidify those basic principles, but that would no longer be R2P.

Bibliography

"Accord de Linas-Marcoussis." *France Diplomatie : Ministère Des Affaires étrangères et Du Développement International*. Accessed November 24, 2014. http://www.diplomatie.gouv.fr/fr/dossiers-pays/cote-d-ivoire/colonne-droite-1347/documents-de-reference/article/accord-de-linas-marcoussis.

"Acting Together for Kenya – The Agreement on the Principles of Partnership of the Coalition Government," February 28, 2008. http://peacemaker.un.org/sites/peacemaker.un.org/files/KE_080228_Acting%20Together%20for%20Kenya-Agreement%20on%20the%20Principles%20of%20Partnership%20of%20the%20Coalition%20Government.pdf.

Advisory Council on International Affairs, and Advisory Committee on Issues of Public International Law. *Humanitarian Intervention - The Dutch Report*, 2000. http://aiv-advies.nl/download/41c2ea57-765b-4777-82b3-39b8105bebc8.pdf.

African Union. "Agreement With the Sudanese Parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in the Darfur," May 28, 2004. http://www.issafrica.org/AF/profiles/sudan/darfur/cfc/agreement.pdf.

———. "Communique of the 17th Meeting of the Peace and Security Council," October 20, 2004. http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/RO%20PSC%20PR%20Comm_XVII.pdf.

———. "Communique of the 115th Meeting of the Peace and Security Council," March 14, 2008. http://www.peaceau.org/uploads/communiquekenyaeng.pdf.

———. "Communique of the 252nd Meeting of the Peace and Security Council," December 9, 2010. http://www.peaceau.org/uploads/communiquy-of-the-252nd.pdf.

———. "Constitutive Act of the African Union," July 11, 2000. http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf.

———. "Decision on the Situation in Kenya Following the Presidential Election of 27 December 2007," February 31, 2008. http://www.au.int/en/sites/default/files/ASSEMBLY_EN_31_JANUARY_2_FEBRUARY_2008_AUC_TENTH_ORDINARY_SESSION_DECISIONS_AND_DECLARATIONS.pdf.

Agina, Ben. "Kenya: Steadman Releases Its Last Polls Before Election." *The East African Standard (Nairobi)*, December 19, 2007. http://allafrica.com/stories/200712181132.html.

Al Jazeera. "Arab States Seek Libya No-Fly Zone," March 12, 2011.

http://www.aljazeera.com/news/africa/2011/03/201131218852687848.html.

———. “Live Blog - Libya Feb 23.” *Al Jazeera Blogs*, February 23, 2011. http://blogs.aljazeera.com/blog/africa/live-blog-libya-feb-23.

Allen, Peter. “Gaddafi Was Killed by French Secret Serviceman On Orders of Nicolas Sarkozy, Sources Claim.” *Mail Online*, September 30, 2012. http://www.dailymail.co.uk/news/article-2210759/Gaddafi-killed-French-secret-serviceman-orders-Nicolas-Sarkozy-sources-claim.html.

Amnesty International. “Sudan: Darfur: ‘Too Many People Killed For No Reason.’” Amnesty International, February 3, 2004. http://www.amnesty.org/en/library/asset/AFR54/008/2004/en/41ee9af7-d640-11dd-ab95-a13b602c0642/afr540082004en.pdf.

Anderson, Scott. “How Did Darfur Happen?” *The New York Times*, October 17, 2004, sec. Magazine. http://www.nytimes.com/2004/10/17/magazine/17DARFUR.html.

Annan, Kofi A., and United Nations. *We The Peoples: The Role of the United Nations in the 21st Century*. New York: United Nations, Department of Public Information, 2000.

Arbour, Louise. “The Responsibility to Protect as a Duty of Care in International Law and Practice.” *Review of International Studies* 34, no. 03 (2008): 445–58. doi:10.1017/S0260210508008115.

Ashforth, Adam. “Ethnic Violence and the Prospects for Democracy in the Aftermath of the 2007 Kenyan Elections.” *Public Culture* 21, no. 1 (January 1, 2009): 9–19. doi:10.1215/08992363-2008-018.

Austin, Greg, and Ben Koppelman. *Darfur and Genocide: Mechanisms for Rapid Response, an End to Impunity*. Foreign Policy Centre, 2005.

Badescu, Cristina G., and Thomas G. Weiss. “Misrepresenting R2P and Advancing Norms: An Alternative Spiral?” *International Studies Perspectives* 11 (November 2010): 354–74. doi:10.1111/j.1528-3585.2010.00412.x.

Bellamy, A.J., and P.D. Williams. “The New Politics of Protection? Côte d’Ivoire, Libya and the Responsibility to Protect.” *International Affairs* 87, no. 4 (2011): 825–50.

Bellamy, Alex. “R2P : Dead or Alive?” In *The Responsibility to Protect - From Evasive to Reluctant Action? The Role of Global Middle Powers*, edited by Malte Brosig. Johannesburg: HSF, ISS, KAS & SAIIA, 2012. http://www.kas.de/wf/doc/kas_32598-1522-1-30.pdf?121102092609.

Bellamy, Alex J. “Motives, Outcomes, Intent and the Legitimacy of Humanitarian Intervention.” *Journal of Military Ethics* 3, no. 3 (November 1, 2004): 216–32. doi:10.1080/15027570410006192.

———. “Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit.” *Ethics & International Affairs* 20, no. 2 (2006): 143–69.

doi:10.1111/j.1747-7093.2006.00012.x.

Benner, Thorsten. “Brazil as a Norm Entrepreneur: The ‘Responsibility While Protecting’ Initiative.” Berlin: Global Public Policy Institute, March 2013. http://old.gppi.net/publications/research_paper_series/brazil_as_a_norm_entrepreneur.

Birchall, Jonathan. “Thousands Die as World Defines Genocide.” *Financial Times*, July 6, 2004. http://www.ft.com/cms/s/0/4ad90d40-ceea-11d8-8469-00000e2511c8.html.

Bolopion, Philippe. “After Libya, the Question: To Protect or Depose?” *Los Angeles Times*, August 25, 2011. http://articles.latimes.com/2011/aug/25/opinion/la-oe-bolopion-libya-responsibility-t20110825.

Branch, Adam. “The Irresponsibility of the Responsibility to Protect in Africa.” In *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, edited by Philip Cunliffe. London; New York: Routledge, 2011.

Brazil. “Annex to the Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General Responsibility While Protecting: Elements for the Development and Promotion of a Concept - A/66/551–S/2011/701,” November 11, 2011. http://www.un.int/brazil/speech/Concept-Paper-%20RwP.pdf.

———. “Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General - A/66/551–S/2011/701,” November 11, 2011. http://www.un.int/brazil/speech/Concept-Paper-%20RwP.pdf.

Breakey, Hugh. “The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis.” Griffith University Institute for Ethics, Governance and Law, May 2011. https://www.griffith.edu.au/__data/assets/pdf_file/0007/333844/Responsibility-to-Protect-and-the-Protection-of-Civilians-in-Armed-Conflict-Review-and-Analysis.pdf.

Breau, Susan C. “The Impact of the Responsibility to Protect on Peacekeeping.” *Journal of Conflict and Security Law* 11, no. 3 (December 21, 2006): 429–64. doi:10.1093/jcsl/krl022.

Casualties of Conflict: Report for the World Campaign for the Protection of Victims of War. Department of Peace and Conflict Research, Uppsala University, 1991.

Chomsky, Noam. “The Skeleton in the Closet: The Responsibility to Protect in History.” In *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, edited by Philip Cunliffe. London; New York: Routledge, 2011.

Cohen, Roger. “How Kofi Annan Rescued Kenya.” *The New York Review of Books*, August 14, 2008. http://www.nybooks.com/articles/archives/2008/aug/14/how-kofi-annan-rescued-keny

a/.

Crawford, Sue E. S., and Elinor Ostrom. “A Grammar of Institutions.” *American Political Science Review* 89, no. 03 (September 1995): 582–600. doi:10.2307/2082975.

Cunliffe, Philip. *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*. London; New York: Routledge, 2011.

———. “Dangerous Duties: Power, Paternalism and the ‘Responsibility to Protect.’” *Review of International Studies* 36, no. Supplement S1 (2010): 79–96. doi:10.1017/S0260210511000076.

Danish Institute of International Affairs. *Humanitarian Intervention: Legal and Political Aspects - The Danish Report*, 1999. http://www.diis.dk/files/media/publications/import/extra/humanitarian_intervention_1999.pdf.

“Defiant Gaddafi Refuses to Quit.” *BBC*, February 22, 2011, sec. Middle East. http://www.bbc.co.uk/news/world-middle-east-12544624.

Deng, Francis Mading. *Sovereignty as Responsibility: Conflict Management in Africa*. Brookings Institution Press, 1996.

De Waal, A. “Darfur and the Failure of the Responsibility to Protect.” *International Affairs* 83, no. 6 (2007): 1039–54.

De Waal, Alex. “African Roles in the Libyan Conflict of 2011.” *International Affairs* 89, no. 2 (2013): 365–79.

Dunne, Tim, and Katharine Gelber. “Arguing Matters.” *Global Responsibility to Protect* 6, no. 3 (July 24, 2014): 326–49. doi:10.1163/1875984X-00603004.

Eaton, Jonah. “An Emerging Norm? Determining the Meaning and Legal Status of the Responsibility to Protect.” *Michigan Journal of International Law* 32, no. 4 (2011): 765–804.

ECOWAS. “Extraordinary Session of the Authority of Heads of State and Government on Cote D’Ivoire,” December 24, 2010. http://news.ecowas.int/presseshow.php?nb=192&lang=en&annee=2010.

———. “Final Communique on the Extraordinary Session of the Authority of Heads of State and Government on Cote D’Ivoire,” December 7, 2010. http://news.ecowas.int/presseshow.php?nb=188&lang=en&annee=2010.

Epstein, Joshua M. *Generative Social Science: Studies in Agent-Based Computational Modeling*. Princeton University Press, 2012.

———. “Learning to Be Thoughtless: Social Norms and Individual Computation.” *Computational Economics* 18, no. 1 (August 1, 2001): 9–24. doi:10.1023/A:1013810410243.

European Parliament. “Resolution On The Situation in Darfur,” September 28, 2006.

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0387+0+DOC+XML+V0//EN&language=EN.

Evans, G. “The Responsibility to Protect: An Idea Whose Time Has Come ... and Gone?” *International Relations* 22 (September 1, 2008): 283–98. doi:10.1177/0047117808094173.

Evans, Gareth. “From Humanitarian Intervention to the Responsibility to Protect.” *Wisconsin International Law Journal* 24 (2007 2006): 703–22.

———. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*. Brookings Institution Press, 2009.

Evans, Gareth, and Mohamed Sahnoun. “The Responsibility to Protect.” *Foreign Affairs*, November 1, 2002. http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect.

“Excerpts: US Congress Resolution on Darfur.” *BBC*, July 23, 2004, sec. Americas. http://news.bbc.co.uk/2/hi/americas/3921451.stm.

Fidler, David. “Caught Between Traditions: The Security Council in Philosophical Conundrum.” *17 Michigan Journal of International Law 411 (1996)*, January 1, 1996. http://www.repository.law.indiana.edu/facpub/745.

Finnemore, Martha, and Kathryn Sikkink. “International Norm Dynamics and Political Change.” *International Organization* 52, no. 04 (1998): 887–917. doi:10.1162/002081898550789.

Foust, Joshua. “Syria and the Pernicious Consequences of Our Libya Intervention.” *The Atlantic*, February 6, 2012. http://www.theatlantic.com/international/archive/2012/02/syria-and-the-pernicious-consequences-of-our-libya-intervention/252631/.

Franck, Thomas M. *The Power of Legitimacy Among Nations*. New York: Oxford University Press, 1990.

Gettleman, Jeffrey. “Disputed Vote Plunges Kenya Into Bloodshed.” *The New York Times*, December 31, 2007, sec. International / Africa. http://www.nytimes.com/2007/12/31/world/africa/31kenya.html.

Hehir, Aidan. *Humanitarian Intervention: An Introduction*. Basingstoke: Palgrave Macmillan, 2010.

———. “The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.” *International Security* 38, no. 1 (July 1, 2013): 137–59. doi:10.1162/ISEC_a_00125.

———. “The Responsibility to Protect as the Apotheosis of Liberal Teleology.” In *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*, edited by A.

Hehir and Robert W. Murray, 34–57. Hampshire: Palgrave Macmillan, 2013. http://westminsterresearch.wmin.ac.uk/13164/.

Herranz, Pérez, and Matilde. “The Security Council and the Legitimacy of the Use of Force: Legal, Normative and Social Aspects.” SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, December 1, 2011. http://papers.ssrn.com/abstract=1884196.

Hoffman, Matthew J. “Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle.” Technical report. Department of Political Science and International Relations University of Delaware, 2003.

Human Rights Watch. “Imperatives for Immediate Change - The African Union Mission in Sudan,” January 2006. http://pantheon.hrw.org/reports/2006/sudan0106/.

Hurrell, Andrew. “Legitimacy and the Use of Force: Can the Circle Be Squared?” *Review of International Studies* 31, no. Supplement S1 (2005): 15–32. doi:10.1017/S0260210505006765.

Independent International Commission on Kosovo. *The Kosovo Report: Conflict, International Response, Lessons Learned*. Oxford University Press, 2000. http://www.oxfordscholarship.com/view/10.1093/0199243093.001.0001/acprof-9780199243099.

International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*. Ottawa, 2001. http://site.ebrary.com/id/10119691.

———. *The Responsibility to Protect*. Ottawa, 2001.

International Committee of the Red Cross (ICRC). “Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention),” August 12, 1949. http://www.refworld.org/docid/3ae6b36d2.html.

International Court of Justice. “Military and Paramilitary Activities in and against Nicaragua (Nicaragua V. United States of America) (Merits) Judgment of 27 June 1986,” June 27, 1986. http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5.

International Criminal Court, Office of the Prosecutor. “Statement to the United Nations Security Council on the Situation in the Libyan Arab Jamahiriya, pursuant to UNSCR 1970 (2011),” May 4, 2011. http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/statement%20to%20the%20united%20nations%20security%20council%20on%20the%20situation%20in%20the%20libyan%20.aspx.

“Ivory Coast Shelling ‘War Crime.’” *BBC*, March 18, 2011, sec. Africa. http://www.bbc.co.uk/news/world-africa-12787015.

Jeangene Vilmer, Jean-Baptiste. “La Mythologie Française Du Droit d’Ingérence.” *Liberation*,

May 11, 2010. http://www.liberation.fr/monde/2010/05/11/la-mythologie-francaise-du-droit-d-ingerence_625335.

Justice Africa. “Prospects for Peace in Sudan: February 2004,” February 2004. http://beta.justiceafrica.com/1490/sudan/.

Keck, Margaret E. *Activists Beyond Borders: Advocacy Networks in International Politics*. Cornell University Press, 1998.

“Kenya.” Global Centre for the Responsibility to Protect. Accessed January 7, 2013. http://globalr2p.org/countrywork/country.php?country=157.

Kolb, Andreas S. “The Responsibility to Protect (R2P) and the Responsibility While Protecting (RwP): Friends or Foes?” Brussels: Global Governance Institute, September 2012. http://www.globalgovernance.eu/press/publications/ggi-analysis-the-responsibility-to-protect-r2p-and-the-responsibility-while-protecting-rwp-friends-or-foes/.

Krook, Mona L., and Jaqui True. “Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality.” *European Journal of International Relations* 18, no. 1 (March 1, 2012): 103–27. doi:10.1177/1354066110380963.

Langer, Johannes. “The Responsibility to Protect: Kenya’s Post-Electoral Crisis.” *Journal of International Service* 20, no. 2 (2011): 1–18.

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,” March 12, 2011. http://responsibilitytoprotect.org/Arab%20League%20Ministerial%20level%20statement%2012%20march%202011%20-%20english(1).pdf.

Luck, Edward C. “The United Nations and the Responsibility to Protect.” The Stanley Foundation policy analysis brief, August 2008. http://www.stanleyfoundation.org/publications/pab/LuckPAB808.pdf.

MacDonald, Alistair. “Cameron Doesn’t Rule Out Military Force for Libya.” *Wall Street Journal*, March 1, 2011, sec. World News. http://online.wsj.com/news/articles/SB10001424052748704615504576172383796304482?mod=googlenews_wsj&mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052748704615504576172383796304482.html%3Fmod%3Dgooglenews_wsj.

Mamdani, Mahmood. “Responsibility to Protect or Right to Punish?” In *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, edited by Philip Cunliffe. London; New York: Routledge, 2011.

March, James G., and Johan P. Olsen. *Rediscovering Institutions: The Organizational Basis of*

Politics. 1 edition. New York etc.: The Free Press, 1989.

Meyer, John W., John Boli, George M. Thomas, and Francisco O. Ramirez. "World Society and the Nation‐State." *American Journal of Sociology* 103, no. 1 (July 1, 1997): 144–81. doi:10.1086/ajs.1997.103.issue-1.

Morris, Justin. "Libya and Syria: R2P and the Spectre of the Swinging Pendulum." *International Affairs* 89, no. 5 (September 1, 2013): 1265–83. doi:10.1111/1468-2346.12071.

Nanda, Ved P. "The Protection of Human Rights under International Law: Will the U.N. Human Rights Council and the Emerging New Norm 'Responsibility to Protect' Make a Difference?" *Denver Journal of International Law and Policy* 35 (2007 2006): 353–78.

Nossiter, Adam. "Ivory Coast Election Standoff, With Limbo and 2 Winners." *The New York Times*, December 3, 2010, sec. World / Africa. http://www.nytimes.com/2010/12/04/world/africa/04ivory.html.

O'Connell, Mary Ellen. "Responsibility to Peace: A Critique of R2P." In *Critical Perspectives on the Responsibility to Protect: Interrogating Theory and Practice*, edited by Philip Cunliffe. London; New York: Routledge, 2011.

Office of the High Commissioner for Human Rights. "Pillay Calls for International Inquiry Into Libyan Violence and Justice for Victims," February 22, 2011. http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10743&LangID=E.

"Office of The Special Adviser on The Prevention of Genocide." Accessed June 29, 2014. http://www.un.org/en/preventgenocide/adviser/jenniferwelsh.shtml.

Organization of the Islamic Conference. "OIC General Secretariat Condemns Strongly the Excessive Use of Force against Civilians in the Libyan Jamahiriya." *Organization of the Islamic Conference*, February 22, 2011. http://www.oic-oci.org/oicv2/topic/?t_id=4947&ref=2081&lan=en&x_key=libya.

"Ouattara Declared Winner of Côte d'Ivoire Presidential Election." *RFI*. Accessed November 22, 2014. http://www.english.rfi.fr/africa/20101202-ouattara-declared-winner-cote-divoire-presidential-election.

Pattison, James. *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* Oxford University Press, 2010.

Ping, Jean. "Keynote Address at the Round-Table High-Level Meeting of Experts on the Responsibility to Protect in Africa," October 23, 2008. http://www.responsibilitytoprotect.org/index.php/component/content/article/129-africa/1910-african-unions-commission-on-r2pkeynote-speech-by-chairperson-jean-ping?format=pdf.

"Powell Declares Genocide in Sudan." *BBC*, September 9, 2004, sec. Africa. http://news.bbc.co.uk/2/hi/africa/3641820.stm.

Presenter, With Liam Dutton C4 Weather. "800 Dead in Ivory Coast Violence, Says Red Cross." *Channel 4 News*. Accessed November 24, 2014. http://www.channel4.com/news/800-dead-in-ivory-coast-violence-says-red-cross.

Press Release of the South African Department of Foreign Affairs. "Position and Response of the African Union on the Darfur Crisis as Being Genocide," November 4, 2004. http://www.dfa.gov.za/docs/2004pq/pq99.htm.

Rieff, David. "R2P, R.I.P." *The New York Times*, November 7, 2011, sec. Opinion. http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html.

Risse-Kappen, Thomas, Stephen C. Ropp, and Kathryn Sikkink. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge University Press, 1999.

Secretary-General Press Release. "'Risk of Genocide Remains Frighteningly Real', Secretary-General Tells Human Rights Commission as He Launches Action Plan to Prevent Genocide '," April 7, 2004. http://www.un.org/press/en/2004/sgsm9245.doc.htm.

———. "Secretary-General, in Address to General Assembly, Lays Out Vision of Stronger, More Flexible, Efficient, Accountable United Nations," September 25, 2007. http://www.un.org/press/en/2007/sgsm11182.doc.htm.

"Somalie : L'espoir Abandonné." *Http://www.liberation.fr*. Accessed July 28, 2014. http://www.liberation.fr/evenement/1995/02/28/somalie-l-espoir-abandonne_121906.

Spokesperson for the Secretary-General. "Statement Attributable to the Spokesperson for the Secretary-General on Libya," March 16, 2011. http://www.un.org/sg/statements/?nid=5141.

Stahn, Carsten. "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *The American Journal of International Law* 101, no. 1 (2007): 99–120.

Thakur, Ramesh. "R2P after Libya and Syria: Engaging Emerging Powers." *The Washington Quarterly* 36, no. 2 (April 2013): 61–76. doi:10.1080/0163660X.2013.791082.

Thakur, Ramesh, and Thomas G. Weiss. "R2P: From Idea to Norm—and Action?" *Global Responsibility to Protect* 1, no. 1 (2009): 22–53. doi:10.1163/187598409X405460.

"The Arab League Suspends Libya Until Demands of the People Are Met." *BBC*, February 23, 2011. http://www.bbc.co.uk/worldservice/africa/2011/02/110223_libya_arableague_focus.shtml.

"The Blair Doctrine." *PBS News Hour*. Accessed July 28, 2014. http://www.pbs.org/newshour/bb/international-jan-june99-blair_doctrine4-23/.

"The Crisis in Kenya." International Coalition for the Responsibility to Protect (ICRtoP), n.d.

http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya.

"The National Accord and Reconciliation Act 2008," February 28, 2008. http://www.hdcentre.org/fileadmin/user_upload/Our_work/Peacemaking/Kenya/Supporting_documents/5-The-National-Accord-and-Reconciliation-Act-2008-Kenya-28-Feb-2008.pdf.

Tutu, Desmond. "Taking the Responsibility to Protect." *The New York Times*, November 9, 2008. http://www.nytimes.com/2008/02/19/opinion/19iht-edtutu.1.10186157.html?_r=0.

Ullmann-Margalit, Edna. *The Emergence of Norms*. Clarendon Library of Logic and Philosophy. Oxford [Eng]: Clarendon Press, 1977.

UN General Assembly. "2005 World Summit Outcome Document - A/RES/60/1," October 24, 2005. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement.

———. "A/63/PV.96," July 21, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.96.

———. "A/63/PV.97," July 23, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.97.

———. "A/63/PV.98," July 24, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.98.

———. "A/63/PV.99," July 24, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.99.

———. "A/63/PV.100," July 28, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.100.

———. "A/63/PV.101," July 28, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/PV.101.

———. "A/RES/63/308," October 7, 2009.

———. "Convention on the Prevention and Punishment of the Crime of Genocide - A/RES/3/260," December 9, 1948. http://www.un-documents.net/a3r260.htm.

———. "Early Warning, Assessment and the Responsibility to Protect Report of the Secretary-General - A/64/864," July 14, 2010. http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/864.

———. "Implementing the Responsibility to Protect - Report of the Secretary-General - A/63/677," January 12, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/677.

———. "In Larger Freedom: Towards Development, Security and Human Rights for All - Report of the Secretary-General - A/59/2005." New York: United Nations General

Assembly, March 21, 2005.

———. “Rome Statute of the International Criminal Court,” July 17, 1998. http://www.refworld.org/docid/3ae6b3a84.html.

———. “The Responsibility to Protect - A/RES/63/308,” September 14, 2009. http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/63/308.

United Nations. “Charter of the United Nations,” June 26, 1945. http://www.un.org/en/documents/charter/index.shtml.

———. “Statement Attributed to the UN Secretary-General’s Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Côte d’Ivoire,” January 19, 2011. http://www.un.org/en/preventgenocide/adviser/pdf/OSAPG,%20Special%20Advisers%20Statement%20on%20Cote%20d’Ivoire,%2019%20Jan%202011.pdf.

United Nations News Service Section. “Sudan Faces Worst Humanitarian Crisis in 15 Years, According to UN.” *UN News Service Section*, November 7, 2003. http://www.un.org/apps/news/story.asp?newsid=8821&cr=&cr1=.

———. “UN Chief Outlines Steps to Turn ‘Responsibility to Protect’ Into Practice.” *UN News Service Section*, July 21, 2009. http://www.un.org/apps/news/story.asp?NewsID=31533#.Uz4pHfmSyxo.

United Nations Peacekeeping. “Ranking of Military and Police Contributions to UN Operations,” October 31, 2014. http://www.un.org/en/peacekeeping/contributors/2014/oct14_2.pdf.

United Nations Press Release. “UN Secretary-General’s Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Côte D’ Ivoire,” December 29, 2010. http://www.un.org/en/preventgenocide/adviser/pdf/Special%20Advisers’%20Statement%20on%20Cote%20d’Ivoire,%2029%20.12.2010.pdf.

United Nations, and United Nations. *A More Secure World: Our Shared Responsibility: Report of the High-Level Panel on Threats, Challenges, and Change*. New York? United Nations [Dept. of Public Information], 2004.

UN Secretary-General. “Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Kenya,” January 2, 2008. http://www.un.org/sg/statements/?nid=2937.

UN Security Council. “Resolution 678 (1990),” November 29, 1990. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/678(1990).

———. “Resolution 1479 (2003),” May 13, 2003. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1479(2003).

———. “Resolution 1528 (2004),” February 27, 2004.

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1528(2004).
———. “Resolution 1547 (2004),” June 11, 2004. http://www.un.org/Docs/journal/asp/ws.asp?m=s/res/1547%282004%29.
———. “Resolution 1556 (2004),” July 30, 2004. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1556(2004).
———. “Resolution 1564 (2004),” September 18, 2004. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1564(2004).
———. “Resolution 1590 (2005),” March 24, 2005. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1590(2005).
———. “Resolution 1706 (2006),” August 31, 2006. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1706(2006).
———. “Resolution 1769 (2007),” July 31, 2007. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769(2007).
———. “Resolution 1962 (2010),” December 20, 2010. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1962(2010).
———. “Resolution 1970 (2011),” February 26, 2011. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011).
———. “Resolution 1973 (2011),” March 17, 2011. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011).
———. “Resolution 1975 (2011),” March 30, 2011. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1975(2011).
———. “S/PRST/2008/4,” February 6, 2008. http://www.un.org/Docs/journal/asp/ws.asp?m=S/PRST/2008/4.
———. “S/PV.5040,” September 18, 2004. http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.5040.
———. “S/PV.6498,” March 17, 2011. http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.6498.
———. “S/PV.6508,” March 30, 2011. http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.6508.
———. “S/PV.6531,” May 10, 2011. http://www.un.org/Docs/journal/asp/ws.asp?m=S/PV.6531.
Weiss, Thomas G. *Humanitarian Intervention*. Polity, 2012.
———. “RtoP Alive and Well After Libya.” *Ethics & International Affairs* 25, no. 03 (2011): 287–92.
Weiss, Thomas George. *Humanitarian Intervention: Ideas in Action*. Polity, 2007.
Welsh, Jennifer. “Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP.” *Ethics & International Affairs* 25, no. 03 (2011): 255–62.

Williams, Paul D. “The ‘Responsibility to Protect’, Norm Localisation, and African International Society.” *Global Responsibility to Protect* 1, no. 3 (June 1, 2009): 392–416. doi:10.1163/187598409X450820.

Williams, Paul D., and Alex J. Bellamy. “Principles, Politics, and Prudence: Libya, the Responsibility to Protect, and the Use of Military Force.” *Global Governance: A Review of Multilateralism and International Organizations* 18, no. 3 (2012): 273–97.

———. “The Responsibility To Protect and the Crisis in Darfur.” *Security Dialogue* 36, no. 1 (March 1, 2005): 27–47. doi:10.1177/0967010605051922.