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**RESPONSIBILITY TO PROTECT:** Analysis of whether Pillar Three of the Responsibility to Protect doctrine obliges the Security Council to act in cases of mass atrocities such as those in Syria

**By**

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**Mini-dissertation submitted in partial fulfilment of the requirement for the LLM: International Humanitarian Law and Human Rights in Military Operations, the Faculty of Law at the University of Pretoria**

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**October 2015**

## DECLARATION

I, the undersigned, hereby declare that the work contained in this dissertation is my own original work and has not previously in its entirety or in part been submitted at any other university for a degree.

Signature.....

Date.....

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## **Acknowledgment**

In the first place, I would like to thank God, the Almighty, for giving me the patience, strength and health to do this study from its inception until its end. I would also like to acknowledge and express my deepest gratitude to my supervisor Prof. Dire Tladi for his indispensable support and assistance, intellectual stimulation as well as invaluable and constructive comments in bringing this study to a completion. I am indebted to my family for their unreserved support and encouragement all the way through my study period. I would like to express my heartfelt thanks to my friends for their helpful comments on the entire document and for providing advice and reference materials.

## Acronyms

AU	Africa Union
BRICS	Brazil, Russia, India, China and South Africa
EU	European Union
HRC	Human Rights Council
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ILC	International Law Council
LAS	League of Arab States
NATO	North Atlantic Treaty Organization
NTC	Transitional National Council
HRC	Human Rights Council
R2P	Responsibility to Protect
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
VLT	Vienna Law of Treaties
P5's	Five Permanent members of the Security Council

## Abstract

For some time now, the problem of an inadequate response to the humanitarian crisis around the world to protect human populations from genocide, war crimes, ethnic cleansing and crimes against humanity has persisted. It was against the significant legal difficulties, and challenges of humanitarian intervention as illustrated above, that it was argued that there was a need for an efficient way to respond to the on-going humanitarian crises thus the introduction of the "Responsibility to Protect idea." The study has briefly touched on the creation, development and eventual adoption of the responsibility to protect (R2P) norm and more specifically. The purpose of this study is to critically examine the Nations Security Council's responsibility with regards to protection civilians from mass atrocities in light of the 2011 Syrian crisis. This is premised especially from pillar three of R2P which states that; "the international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations." The main question of this study is to analyse whether the responsibility to protect doctrine establishes a legal obligation on the United Nations Security Council to act in situations of mass atrocities such the case of Syria? The study has argued that much as the responsibility to protect doctrine neither establishes nor supports the idea that the Security Council is under a legal obligation to act when there is occurrence of humanitarian crisis, however, I have argued that article 24 together with other articles in the United Nations Charter create a legal obligation on the United Nations Security Council to act.

## CHAPTER ONE

### INTRODUCTION

#### 1. Responsibility to Protect Comes Alive

For some time now, the problem of an inadequate response to the humanitarian crises around the world to protect human populations from genocide, war crimes, ethnic cleansing and crimes against humanity has persisted.<sup>1</sup> The Arab uprisings, or Arab Spring, that commenced in Tunisia and spread across almost the entire region at the beginning of 2011.<sup>2</sup> These provided further opportunity for an appropriate response to violations of human rights. Two of the prominent uprisings that featured most conspicuously in international politics have been the uprisings in Libya and Syria.<sup>3</sup> The situations in these two states have apparently had the most widespread consequences if one considers the amount deaths and the amount of destruction as well as the involvement of international actors.<sup>4</sup> These came as a result of various anti-government demonstrations and protests in the above states.<sup>5</sup> In Libya and Syria, protests began in early 2011 and ended up triggering prolonged conflicts.<sup>6</sup> The Libyan situation instigated the United Nations Security Council (UNSC) to make a critical decision in what was seen as the operationalization of responsibility to protect to prevent human rights violations through humanitarian, economic, diplomatic or even military interventions.<sup>7</sup>

The “responsibility to protect” doctrine first came alive when it was applied as a response to the threatened atrocities in Libya.<sup>8</sup> The Security Council adopted

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<sup>1</sup>D. J. Francis. “The Promise and the Peril of the Responsibility to Protect.” Carlisle Barracks, PA: U.S. Army War College, 2012.

<sup>2</sup> See, “Arab uprising.” Available at <http://www.infoplease.com/encyclopedia/history/arab-spring.html>. Accessed on 14 March 2015.

<sup>3</sup> F, Feije. “The UN Security Council and the uprisings in Libya and Syria:” Available at <http://dare.uva.nl/cgi/arno/show.cgi?fid=452509>. Accessed on 14 March 2015.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> A. J. Bellamy, & P. D. Williams, “The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect.” *International Affairs* 87.4 (2011): 825-850.

<sup>8</sup>A. J. Bellamy. “Libya and the Responsibility to protect: the Exception and the Norm.” *Ethics & International Affairs* 25.03 (2011): 263-269.



Resolution 1973 that endorsed a no-fly zone over Libya and furthermore called for the use of “all necessary measures” to protect civilians.<sup>9</sup> This reflected a change in the Council’s attitude toward the use of force for the purpose of human rights protection.<sup>10</sup> On the heels of the responsibility to protect doctrine triumph in Libya, and with the reaction by the Syrian government to protests and the nonviolent demonstrations by the Syria population which began in mid-March 2011, it was expected that the situation would trigger a similar and speedy response as in Libya. These expectations, were, however, dashed.

The atrocities committed in 2011 in Libya provoked a response where the Security Council acted swiftly to intervene.<sup>11</sup> The Security Council adopted Resolution 1970, “which condemned the use of lethal force by the regime of Muammar Gaddafi against the protesters participating in the Libyan protests, and it imposed a series of international sanctions in response”.<sup>12</sup> The sanctions included an arms embargo on Libya. Additionally, targeted sanctions which include travel bans and asset freezes on high-level persons in the Libyan regime were imposed.<sup>13</sup> In spite of the resolution above, however, the violence escalated between the government forces and the armed opposition.<sup>14</sup> Subsequently, there were calls from different civil society groups and regional organizations making for a serious response to prevent and halt mass atrocities.<sup>15</sup>

Firstly, there was the six Arab States, part of the Gulf Cooperation Council, which convened on the 7 March and made a statement indicating that “the UN Security Council should take all necessary measures to protect civilians, including enforcing a

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<sup>9</sup> UN Doc S/RES/1973 (2011) paras 4, 6 and 8.

<sup>10</sup> See, Bellamy, *Supra* note 8 above.

<sup>11</sup> S, Zifcak. “Responsibility to Protect after Libya and Syria”, *Melbourne Journal of International Law*. 13 (2012): 59.

<sup>12</sup> UN Doc S/RES/1970 (2011) paras 4–23.

<sup>13</sup> *Ibid.*

<sup>14</sup> See, “Libya to RtoP: Implementation of UN resolution 1973 to protect civilians.” Available at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>. (Last accessed on 24 March 2015).

<sup>15</sup> *Ibid.*



The Libyan government, notwithstanding, kept on committing several human rights violation including crimes against humanity. Subsequently, the United Nations Security Council, acting under Chapter VII, article 41 of the UN Charter, adopted UN Resolution 1973.<sup>22</sup> This resolution authorized all member states "to take all necessary measures to protect civilians and civilian populated areas in the Libyan Jamahiriya."<sup>23</sup> This was the first time the UNSC sanctioned the use of military force under the auspices of the responsibility to protect (R2P) to prevent a mass atrocity.<sup>24</sup> The Resolution 1973 was proposed by France, Lebanon, and the United Kingdom.<sup>25</sup> There were only 10 members of the SC who voted in the affirmative (Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, South Africa, and permanent members, France, the United Kingdom, and the United States.)<sup>26</sup> Russia and China decided to abstain rather than use their veto as permanent members for reasons that they believed the mandate in the resolution would set a dangerous precedent and since the two usually opposed the use of force against a sovereign country.<sup>27</sup> This resolution denoted a significant moment in repairing the deep damage caused the Security Council's previous failure to authorize any serious intervention to end the mass atrocities.<sup>28</sup> This is because many humanitarian interventions in such cases were handicapped by narrow legal mandates and weak implementation.<sup>29</sup> As such, it can be argued, in Libya, the UNSC got it right.

## 2. False Hope? Council's Inaction In the face of Atrocities Post Libya

The hope created by the UNSC resolution 1973 on Libya was quickly dashed when the Council failed to intervene seriously in situations which appeared to have equal or more appalling human rights violations and deserved the same action. In Yemen, for example, the Security Council took almost a year to act. The Security Council

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<sup>22</sup> UN Doc S/RES/1973 (2011) paras 4, 6 and 8.

<sup>23</sup> Ibid.

<sup>24</sup> See Francis, *Supra* note 1.

<sup>25</sup> See, "Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions." Available at <http://www.un.org/press/en/2011/sc10200.doc.htm>. (Last accessed on 24 March 2015)

<sup>26</sup> Ibid

<sup>27</sup> Ibid.

<sup>28</sup> Williams, *et al.* "Security Council Resolution 1973 on Libya: a Moment of Legal & Moral Clarity." *Case Western Reserve Journal International Law*. 44 (2011): 225.

<sup>29</sup> Ibid

adopted a resolution which failed to show any commitment to the early ideal in Libya to protect civilians but rather called for a political reconciliation process led by the Yemenis.<sup>30</sup> Violence, however, continued despite the Security Council resolution, and there was an expectation of a similarly strong response as it had done in Libya. While Yemen signalled a retreat from the experience of Libya, Syria amplified this signal. There is currently a bitter and bloody conflict in Syria which began three years ago and, to date, the responsibility to protect doctrine has failed to find way to Syria to stop the serious, ongoing, mass atrocities where more than 200,000 Syrians have been killed and millions have been internally displaced or forced to seek refuge in neighbouring countries.<sup>31</sup>

It has been noticed that the reluctance to the intervention in Syria depended on geopolitics.<sup>32</sup> For instance, in the context of Syria, its strong allies, Russia and China, have consistently obstructed any form of intervention especially by the use of their veto powers, and they have vetoed at least three resolutions put forward at the United Nations Security Council, including a resolution requiring the Syrian regime to cease military action against its own civilians and calling for President Assad to step down and allow his deputy to assume control.<sup>33</sup> This is because the two countries were disappointed by the Security Council actions that led to Western military intervention in Libya and the downfall of its long-time leader Muammar el-Qaddafi. And as such they are cautious not to repeat the same mistake in Syria.

Following the outbreak of violence during in March 2011, the response has been negligible as the situation continues to deteriorate in Syria. The main, seemingly imperative response probably has been the United Nations Security Council Resolution 2139, which demanded “that all parties immediately cease all attacks on civilians, as well as the indiscriminate employment of weapons in populated areas, including shelling and aerial bombardment, such as the use of barrel bombs, and methods of warfare which are of a nature to cause superfluous injury or unnecessary

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<sup>30</sup> UN Doc S/RES/2014.

<sup>31</sup> See "Syria: February 2015 Monthly Forecast: Security Council Report." Available at [http://www.securitycouncilreport.org/monthly-forecast/2015-02/syria\\_16.php?print=true](http://www.securitycouncilreport.org/monthly-forecast/2015-02/syria_16.php?print=true). (Last accessed on 25 April 2015).

<sup>32</sup>D, Kuwali. "Responsibility to Protect: Why Libya and not Syria?" Policy & practice brief. *The American Centre for the Constructive Resolution of Disputes*16 (2012): 1-7.

<sup>33</sup> See U.N. SCOR, 67th Sess., 6711th mtg. at 2, U.N. Doc. S/PV.6711 (Feb. 4, 2012)

suffering” passed on the 22 February 2014.<sup>34</sup> Nonetheless, ever since that resolution, there has been a serious absence of further steps by the UNSC to take any concrete action such as imposing sanctions or intervening to protect civilians which might have been expected in order for it to keep on embracing the emerging norm of Responsibility to Protect.

### **3. Prospects for Responsibility to Protect After Inaction in Syria**

Although the response to the situation in Syria has been insignificant, it can be contended that the UN Security Council’s responses to these two uprisings can be regarded as being inconsistent.<sup>35</sup> In Libya, the Security Council made a swift response to prevent the on-going human rights violations prevent as compared to the case of Syria.<sup>36</sup> The imposing of sanctions against Libya within days by the Council, the establishment of a no-fly zone and the authorized use of force in Libya within a month after the start of the uprisings shows the inconsistency of the decision making of the Council as it took over a year to adopt any resolution on Syria.<sup>37</sup> As such, it can be argued that instances such as the Syrian situation make the application and implementation of the responsibility to protect doctrine difficult and one wonders whether indeed it can replace the existing norms to respond to the ever-growing number of mass atrocities around the world. As such the doctrine continues to be given much thought by many people around the world and seems to be finding its way to becoming a frame of reference for preventing and responding to mass atrocities.<sup>38</sup>

This dissertation examines the principle of responsibility to protect and its applicability in the case in Syria. It highlights the emergence of the responsibility to protect doctrine amidst the difficulties that were involved in applying the humanitarian intervention doctrine in halting cases of mass atrocities. Even though many commentators were happy with its application within the Libyan situation, its future has been subjected to contention because of its failure to be applied to other similar and much more appalling situations such as the conflicts in Syria and Yemen. There

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<sup>34</sup> UN Doc S/RES/2139.

<sup>35</sup> See, Feije, Supra note 3 above.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

will be deliberations on the situation in Syria because the crisis has a lot in common with the one in Libya and this will require an analysis of whether the responsibility to protect concept establishes a legal obligation on the SC to take action in the face of serious mass atrocities. The main research question is intended to make an analysis of whether the responsibility to protect doctrine makes it a legal obligation the Security Council to respond in cases of mass atrocities considering the inaction in Syria? The dissertation will also consider whether the situation in Syria amounts to a responsibility to protect situation. If so, is there a legal obligation to on the UNSC to act in terms of responsibility to protect doctrine? And if that is the case how does this legal obligation arise?

#### **4. Synopsis**

The aforementioned research questions will be addressed in the following chapters. The second chapter will deal the evolution of responsibility to protect principle including its relationship with the humanitarian intervention concept. It will conceptualise and evaluate whether responsibility to protect creates a new doctrine or whether it is simply the same principle bottled in new packaging. Chapter three forms the crucial part of the dissertation and will discuss the situation in Syria and evaluate the international response to the situation. It will seek to address the issue of whether the the responsibility to protect doctrine establishes a legal obligation on the Security Council to respond in cases of mass atrocities considering the inaction in Syria. The final chapter will offer concluding remarks, giving recommendations in order to halt the mass atrocities effectively.

## Chapter Two

### Emergence of Responsibility to Protect

#### 1. Introduction

There has been extensive contention with regards to the notion of responsibility to protect since it was developed in the 2001 Report of the International Commission on Intervention and State Sovereignty.<sup>1</sup> The report was formally acknowledged by the United Nations General Assembly and accordingly reaffirmed by the United Nations Security Council (UNSC) in 2005.<sup>2</sup> It was in the Outcome Document of the 2005 World Summit,<sup>3</sup> where the United Nations General Assembly recognised the presence of a responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>4</sup> The incorporation of the principle, devised among international legal scholars as the “responsibility to protect,” or “R2P”, was due in large part to a seminal report entitled *The Responsibility to Protect (R2P Report)*, published by the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) in 2001,<sup>5</sup> and two United Nations (UN) reports<sup>6</sup> on reform produced before the 2005 World Summit.<sup>7</sup> In April 2006, the principle was reaffirmed in a resolution by the U.N. Security Council.<sup>8</sup> Advocates of

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<sup>1</sup>G, Evans. "From humanitarian intervention to the responsibility to protect." *Wisconsin International Law Journal* 24 (2006): 703.

<sup>2</sup> Ibid.

<sup>3</sup> 2005 World Summit Outcome Document, G.A. Res. 60/1, Para 138–139, U.N. GAOR, 60th sess., U.N. Doc. A/Res/60/1 (Oct. 24, 2006) [hereinafter Outcome Document].

<sup>4</sup> M. W, Matthews. "Tracking the emergence of a new international norm: the responsibility to protect and the crisis in Darfur." *Boston College International & Comparative Law Review*. 31 (2008): 137.

<sup>5</sup> "International Community on Intervention & State Sovereignty, The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (2001)", available at [www.iciss.ca/pdf/Commission-Report.pdf](http://www.iciss.ca/pdf/Commission-Report.pdf) [hereinafter ICISS Report].

<sup>6</sup> In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General. UN, 2005 and The Secretary General's High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility, ¶¶ 201–203.

<sup>7</sup> See, Mathews *Supra* note 4 above.

<sup>8</sup> Res, S. C. 1674, ¶ 4, UN Doc. S/RES/1674 (Apr. 28, 2006) (the Security Council reaffirmed the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect).

responsibility to protect, however, recognize that significant challenges remain in implementing and actualizing the responsibility to protect.<sup>9</sup>

This chapter gives a brief history of the international legal discourse and a doctrinal premise that resulted in the emergency of responsibility to protect. The chapter will discuss the responsibility to protect framework, its reception and adoption by the UN, and, furthermore, the shifting of discourse away from humanitarian intervention. The chapter will conclude by discussing the legal status of the responsibility to protect doctrine and assess whether responsibility to protect introduces any new doctrinal matter. And it will conclude by considering some of the criticisms that are labelled against the responsibility to protect doctrine.

## 2. Humanitarian Intervention

### 2.1. The shortfall of humanitarian intervention

Responsibility to protect is seen as an alternative for the humanitarian intervention doctrine. Humanitarian intervention was the subject of significant legal difficulties, and these legal difficulties and challenges were illustrated in the aftermath of the atrocities in Rwanda, Bosnia and Kosovo. This was as a result of the failure to forestall or halt either the 100-day genocidal slaughter of 800,000 Rwandan Tutsis in 1994<sup>10</sup> or the mass murder of over 8,000 Bosnians by an ethnic Serbian militia in 1995.<sup>11</sup>

The concept of humanitarian intervention and its legitimacy under international law has been the subject of numerous debates for years now.<sup>12</sup> It originates from back the 17th-century international lawyer, Hugo Grotius.<sup>13</sup> He claimed that:

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<sup>9</sup> Macfarlane, *et al.* "The Responsibility to Protect: is anyone interested in humanitarian intervention?" *Third World Quarterly* 25.5 (2004): 977-992.

<sup>10</sup>See "Rwanda genocide: 100 days of slaughter." Available at <http://www.bbc.com/news/world-africa-26875506>. Accessed on 15 April 2015.

<sup>11</sup>Ibid.

<sup>12</sup>J. Sarkin. "Dealing With Africa's Human Rights Problems: The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect". *Journal of African Law*, April 2009 P.4.



*"...the principle of sovereignty could be restricted by principles of humanity and considered that, whether a war for the subjects of another be just, for the purpose of defending them from injuries by their ruler...if a tyrant...practises atrocities towards his subject, which no just man can approve, the right of human social connection is not cut off in such case...It would not follow that others may not take up arms for them."<sup>14</sup>*

Since then, there have been numerous efforts to find an appropriate definition for the term "humanitarian intervention". Several legal scholars have defined humanitarian intervention as the threat or use of force by a state, group of states, or international organizations primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.<sup>15</sup> Even though majority of the definitions include the use of force, there are arguments that interventions which resort to force cannot be defined as humanitarian interventions,<sup>16</sup> and these define humanitarian intervention without reference to the use of force.<sup>17</sup> This debate around the concept of humanitarian intervention continued in the 1990s with the major challenges being on how to respond towards instances of serious human right abuses.<sup>18</sup>

The NATO intervention in Kosovo in 1999 presents a perfect illustration of a better comprehension of the above controversies. In this case, there were deliberations that, if the Security Council was not ready to adopt any resolution which authorized the use of force for humanitarian purposes, states in the form of a regional organization would, if necessary, intervene without the permission of the Security

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<sup>13</sup> M. Copithorne, *Kosovo and Beyond Trilateral Perspectives on International Legal Issues: Conflict and Coherence* in C. Carmody, Y. Iwasawa & S. Rhodes, ed., (*Baltimore: American Society of International Law*, 2003) 173-175.

<sup>14</sup> F. Abiew, "The Evolution of the Doctrine and Practice of Humanitarian Intervention". Kluwer Law International The Hague, 1999 P.35.

<sup>15</sup> S. Murphy, "Humanitarian Intervention: the United Nations in an Evolving World Order", (University of Pennsylvania Press, Philadelphia, 1996)

<sup>16</sup> See, B. Parekh, "Rethinking Humanitarian Intervention", International Political Science Review Vol.18, No. 1, (1997) P.54.

<sup>17</sup> See, Murphy, *Supra* note 15, P.8.

<sup>18</sup> See, Mathews *Supra* note 4 above.

Council.<sup>19</sup> It was argued that the NATO intervention was illegal but legitimate in a sense that, while it did not fulfil the principles of international law, it was endorsed by its compelling moral purpose.<sup>20</sup> In a similar vein, David Chandler observes that, although the military intervention led by NATO lacked formal legal authority in the absence of a UN Security Council mandate, the advocates of intervention claimed that the intervention was humanitarian and, thereby, had a moral legitimacy and reflected the rise of new international norms, not accounted for in the UN Charter.<sup>21</sup> The fact that NATO lacked an unequivocal Security Council authorization approval led to questions regarding the legality of the humanitarian intervention doctrine.<sup>22</sup> This is best represented by a quotation from the speech of the Secretary-General of the United Nations, Kofi Annan, given in September 1999 before the General Assembly, almost three months after the NATO bombardments:

*"While the genocide in Rwanda will define for our generation the consequences of inaction in the face of mass murder, the more recent conflict in Kosovo has prompted important questions about the consequences of action in the absence of complete unity on the part of the international community. It has cast in stark relief the dilemma of what has been called "humanitarian intervention"."*<sup>23</sup>

The advocates of the doctrine of humanitarian intervention argue that it appears that there is an inherent tension in the UN Charter between the prohibition of the use of force, the protection of state's sovereignty, and the protection and promotion of human rights.<sup>24</sup> This is clear from the 1990s debates regarding humanitarian

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<sup>19</sup>M. Geliijn, "Humanitarian Intervention and the Responsibility to Protect after 9/11", *Netherlands International Law Review* 53.01 (2006): 37-62.

<sup>20</sup>A. Bellamy, "R2P or Trojan horse? The Crisis in Darfur and Humanitarian Intervention after Iraq", *Ethics and International Affairs*, Vol. 19 (2) pp. 31-54.

<sup>21</sup>C, David. "The Responsibility to Protect? Imposing the Liberal Peace", *International Peacekeeping*, Vol. 11, No.1, spring 2004, pp.59-81.

<sup>22</sup> Ibid.

<sup>23</sup> A. Kofi. "Speech of the UN Secretary-General to the General Assembly, September 20." New York: United Nations 1999

<sup>24</sup> See, the UN Charter Articles 1(3)6, 55 and 567. Article 1(3): —The Purposes of the United Nations are ...to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination as to race, sex, language, or religion. Articles 55 and 56: All members pledge to take joint and separate action in cooperation with UN to achieve creation of conditions of stability and well-

intervention which centred on the struggle for supremacy between the principles of sovereignty and human rights.<sup>25</sup> This struggle is between the global North and the global South with the former contending that, if the human rights violations are as a result of a State's failure to protect its citizens, human rights must trump state sovereignty.<sup>26</sup> This would mean that there is a right to intervene in the internal affairs of other States by outside States under certain exceptional circumstances.<sup>27</sup> The global South, however, explicitly opposes this purported right;<sup>28</sup> contending that State sovereignty is a fundamental principle of the international system,<sup>29</sup> and, therefore arguing that State sovereignty automatically trumps any questions of human rights.<sup>30</sup> In addition, Alex Bellamy contends that humanitarian intervention is perceived as a Trojan horse which is used by the powerful States to legitimize their interference in the affairs of the weaker states.<sup>31</sup>

As expressed above, therefore, there is a reason to believe that there has been of the lack of clear legal mechanism to intervene effectively to the numerous humanitarian crises such as in Rwanda and Kosovo.<sup>32</sup> As a result of these tragedies, a consensus emerged in the early 2000s of the need to re-define the parameters of international responses to conflicts.<sup>33</sup>

## 2.2. International Law Governing the Use of Force

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being necessary for peaceful and friendly relations among nations, by promoting universal respect for, and observance of, human rights and fundamental freedoms for all.

<sup>25</sup> A. Lewis, "The Responsibility to Protect: a new response to humanitarian suffering?" e-*International Relations* (6 July 2010).

<sup>26</sup> G. Evans, "The Responsibility to Protect: An Idea Whose Time Has Come...Gone?" *International Relations* 22.3 (2008): 283-298.

<sup>27</sup> Ibid.

<sup>28</sup> See, A. Roberts, "The So-Called Right of Humanitarian Intervention", Trinity Papers, number 13, 2000, P. 17

([http://www.trinity.unimelb.edu.au/publications/trinity\\_papers/paper13](http://www.trinity.unimelb.edu.au/publications/trinity_papers/paper13)), last accessed on 15 April 2015

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> A. Bellamy, "Responsibility to protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq." *Ethics & International Affairs* 19.02 (2005): 31-54.

<sup>32</sup> C, Joyner. "Responsibility to Protect: Humanitarian Concern and the Lawfulness of Armed Intervention", *The Virginia Journal of International Law*. 47 (2006): 693.

<sup>33</sup> See, General Assembly and SC, Report of the Panel on UN Peace Operations, [http://www.un.org/spanish/peace/operations\\_report](http://www.un.org/spanish/peace/operations_report), last visited on 15 April 2015

The use of force between states is governed by the United Nations Charter article 2(4) of which provide as follows: "*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*"<sup>34</sup> Article 2(4), thus, constitutes a fundamental prohibition on the use of, and even the threat of force that in some manner violates the territorial integrity or political independence of states, or that in some other way transgresses the purposes of the United Nations.<sup>35</sup> Besides this, Article 2(7) states that "nothing contained in the present Charter shall authorize the U.N. to intervene in matters which are essentially within the domestic jurisdiction of any state."<sup>36</sup> This prohibition on the use of force was additionally emphasized by the international Court of Justice in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, and it is considered to be a breach of obligations under customary international law to use force against another State, not to intervene in its affairs, not to violate its sovereignty.<sup>37</sup> The court also held that the prohibition on the use of force is covered by treaty law, i.e. which is the UN Charter, by customary international law.<sup>38</sup>

The U.N. Charter additionally explicitly provides for two circumstances in which the use of force is lawful. Firstly, under Article 51 of the Charter, states maintain "an inherent right of individual" and "collective self-defense if an armed attack occurs...until the Security Council has taken measures necessary to maintain international peace and security."<sup>39</sup> Consequently, in case state A commits an armed attack against state B, the aggrieved state may use force to repel the attack until such time that the Security Council acts.<sup>40</sup> Besides, the victim state may call upon other states to assist it in collective self-defence.<sup>41</sup> Furthermore, under Article 39, the Security Council is empowered to determine whether there is a "threat to the peace,

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<sup>34</sup> U.N. Charter art. 2, para. 4.

<sup>35</sup> See, Joyner Supra note 32 above.

<sup>36</sup> U.N. Charter art. 2, para. 7.

<sup>37</sup> *Nicaragua vs. United States*, (1986) ICJ Reports 14, at para 190.

<sup>38</sup> *Ibid.*

<sup>39</sup> UN Charter Art 52.

<sup>40</sup> See, J, Holzgrefe. "The humanitarian intervention debate." in Holzgrefe, Jeff L., and Robert O. Keohane (eds). "*Humanitarian intervention: ethical, legal and political dilemmas*". Cambridge University Press, 2003.

<sup>41</sup> *Ibid.*

breach of the peace, or act of aggression,"<sup>42</sup> and, if the Council so decides, it can invoke Article 42 to authorize the use of military force against the offending state.<sup>43</sup>

Regional organizations are permitted to deal with "matters relating to the maintenance of international peace and security"<sup>44</sup> under Chapter VIII of the Charter. The organizations cannot, however, undertake any "enforcement action"<sup>45</sup> without approval by the Security Council. Similarly, for the use of armed force to be a permissible remedy for a humanitarian crisis, the Security Council must first determine, under Chapter VII provisions, that there is a serious occurrence of massive human rights violations, or that they are about to occur.<sup>46</sup> Moreover, it should then be reasoned that such incidences amount to a threat to international peace, and, lastly, that the Council ought to authorize an enforcement action to prevent or halt those violations.<sup>47</sup> Without such Security Council approval, any kind of resort to military means by any other governments to compel another state not to perpetrate, or even not to tolerate, human rights atrocities within its territory would constitute a breach of Article 2(4) of the Charter.<sup>48</sup> As such, such actions would be viewed as unlawful.<sup>49</sup>

In this perspective, considering the facts of NATO's intervention in Kosovo, it can be contended that it was not an act of self-defence since there was no armed attack against any of its member states.<sup>50</sup> In addition, since there was no Security Council resolution that mandated such intervention, NATO's actions could not be classified

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<sup>42</sup> Ibid at art 39.

<sup>43</sup> Art 42 of UN Charter; Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

<sup>44</sup> Ibid art 51.

<sup>45</sup> Ibid art 53.

<sup>46</sup> See, Joyner *Supra* note 32 above.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> B, Simma. "NATO, the UN and the Use of Force: Legal Aspects." *European Journal of international law* 10.1 (1999): 1-22.

as a measure of collective security.<sup>51</sup> The alleged humanitarian intervention was, thus, contended to be unlawful under international law.<sup>52</sup>

Conclusively, owing to the ineffective response to humanitarian crises with the existing norms, this led to the acceptance of the need for a new international norm that urges a more collective reaction to humanitarian crises. This attitude was affirmed when Kofi Annan asked the General Assembly, “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?”<sup>53</sup> He asserted that “no legal principle – not even sovereignty - [should] shield crimes against humanity.”<sup>54</sup> This need for a change prompted the Canadian government to sponsor the creation of the International Commission on Intervention and State Sovereignty (ICISS).<sup>55</sup> In 2001, the Commission released a report entitled *The Responsibility to Protect*,<sup>56</sup> which aimed at uncovering the most effective way to respond to the massive violation of human rights under humanitarian law.<sup>57</sup>

### **3. Conceptualization Responsibility/the Responsibility to Protect Framework**

#### **3.1. Content of the ICISS Report**

After sometime of intensive research, interviews, consultations and investigations, ICISS, an *ad hoc* commission of participants which, in 2001, worked to popularize the concept of humanitarian intervention and democracy-restoring intervention under the name of "Responsibility to Protect," found that international norms had shifted

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> “We the Peoples: The Role of the United Nations in the 21st Century”, Millennium Report of the Secretary-General of the United Nations 48 (September 2000).

<sup>54</sup> Ibid.

<sup>55</sup> The commission was co-chaired by Gareth Evans (former Foreign Minister of Australia) and Mohammed Sahnoun of Algeria (former Special Advisor to the UN Secretary General and Special Representative for Somalia and the Great Lakes; the other members were Gisèle Côté-Harper, Lee Hamilton, Michael Ignatieff, Vladimir Lukin, Klaus Naumann, Corral Ramaphosa, Fidel Ramos, Cornelio Sommaruga, Eduardo Stein and Ramesh Thakur.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid at 81.

such that state sovereignty was no longer inviolate.<sup>58</sup> The Commission developed the idea of the 'Responsibility to protect' with the expectation that it would overcome the intractable international debate around the concept of humanitarian intervention which had developed in the 1990s and which had become particularly heated in the wake of NATO's intervention in Kosovo in 1999.<sup>59</sup>

The ICISS Report recommended that States have the primary responsibility to protect their populations from massive human rights violations,<sup>60</sup> and that it is only if the State is unable or unwilling to fulfil this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place.<sup>61</sup> Gareth Evans, one of the co-chairs of the ICISS Report, explains as follows:

*"We sought to turn the whole weary debate about the right to intervene on its head, and to re-characterize it not as an argument about the 'right' of states to anything, but rather about their 'responsibility' – one to protect people at grave risk: the relevant perspective we argued was not that of prospective interveners but those needing support. The searchlight was swung back where it always should be: the need to protect communities from mass killing and ethnic cleansing, women from systematic rape and children from starvation...."*<sup>62</sup>

In this, the Report sought to shift the emphasis in debates over humanitarian crises from the controversial notion of a 'right to intervene' to the more palatable idea of a 'responsibility to protect.'<sup>63</sup> The ICISS report, therefore, sought to bridge the gap between intervention and sovereignty by introducing a complementary concept of responsibility, under which responsibility is shared by the national State and the broader international community.<sup>64</sup> The responsibility to protect relies on the axiom

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<sup>58</sup> Ibid.

<sup>59</sup> G. Luke. "The responsibility to protect beyond borders." *Human Rights Law Review* (2012).

<sup>60</sup> See, Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (December 2001) (Hereinafter the ICISS Report).

<sup>61</sup> Ibid.

<sup>62</sup> G. Evans, "The International Responsibility to Protect: the Tasks Ahead, Address to Seminar on Africa's Responsibility to Protect", The Centre for Conflict Resolution, Cape Town, 23 April 2007.

<sup>63</sup> See ICISS report, *supra* note 60 above.

<sup>64</sup> C. Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *The American Journal of International Law*, Vol. 101, No. 1 (Jan. 2007) P. 99-120

that sovereignty exists essentially for the purpose of protecting people, and it is conceived of as the principal guardian of the rights of its people.<sup>65</sup> However, in cases where the state is unable or unwilling to ensure this protection so that it becomes the responsibility of the international community to act in its place thus losing its status of primacy.<sup>66</sup>

### **3.2. U.N. Adoption of Responsibility to Protect**

After the development of the concept of the responsibility to protect in the ICISS Report, there were other documents that were significant in the continuous development of the concept, i.e. the report of the then Secretary-General, Kofi Annan, entitled *In Larger Freedom: Towards Development, Security and Human Rights for All* (hereinafter the Secretary-General Report)<sup>67</sup> and the 2005 World Outcome Document.<sup>68</sup>

#### **3.2.1. In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary-General**

Besides development, security and human rights, which formed the backbone of SG's report, there were also recommendations about the concept of responsibility to protect.<sup>69</sup> The Secretary-General recommended that States should embrace the emerging norm of the responsibility to protect:

*"While I am well aware of the sensitivities involved in this issue, I strongly agree with this approach. I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it..."*<sup>70</sup>

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<sup>65</sup> Ibid at Pg. 102.

<sup>66</sup> Ibid.

<sup>67</sup> See, Report of the Secretary General, "In Larger Freedom: Towards Development, Security and Human Rights for All", delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005) (Hereinafter the Secretary-General Report)

<sup>68</sup> See, 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005) [hereinafter 2005 World Summit Outcome].

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.



Here the Secretary-General emphasised the need to implement the responsibility to protect through peaceful means.<sup>71</sup> Concerning the use of force, however, the Secretary-General conclusively argues that any possibility of humanitarian interventions should seek the authorization of the UN Security Council.<sup>72</sup> In fact, the Secretary-General recommended the following in case there was the authorization of the use of military force.

*“The task is not to find alternatives to the Security Council as a source of authority but to make it work better. When considering whether to authorize or endorse the use of military force, the Council should come to a common view on how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is proportional to the threat at hand; and whether there is a reasonable chance of success.”<sup>73</sup>*

In this we see the broad focus of the Secretary-General’s Report on the UN Security Council to embrace responsibility to protect, although it is silent on the alternative means to carry out interventions for purposes of civilian protection as there a serious retreat from the acceptance of any form of military action without the Security Council’s authorization.<sup>74</sup>

### **3.2.2. The 2005 UN World Summit Outcome Document**

In 2005, at the United Nations World Summit, there was a general consensus by the world leaders that States have the primary responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>75</sup> States further agreed that States should assist others States in exercising their responsibility.<sup>76</sup> In addition, States also confirmed that the international community has the responsibility to take action using peaceful means to protect populations from

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<sup>71</sup> See, Stahn, *supra* note 64 above.

<sup>72</sup> See, Report of the Secretary General *supra* note 67 above.

<sup>73</sup> Ibid, Para 126

<sup>74</sup> See, C. Stahn, *supra* note 64 above, P. 108.

<sup>75</sup> N. Kikoler, “Responsibility to protect 4 (2009)”. Available at <http://www.rsc.ox.ac.uk/pdfs/keynotepaperkikoler.pdf>. Last accessed on 21 March 2015.

<sup>76</sup> See, 2005 World Outcome document *supra* 67 at Para 138.

massive human rights violations, and, when a State fails to protect its population from such violations, they agreed to take collective action, in a timely and decisive manner, through the UN Security Council, in accordance with the Charter.<sup>77</sup>

In short, the Outcome document was summarized within three pillars of responsibility to protect, and these are: a state has a responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing;<sup>78</sup> the international community has a responsibility to assist the state to fulfil its primary responsibility;<sup>79</sup> and, if the state manifestly fails to protect its citizens from the four above mass atrocities, and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions with military intervention being considered the last resort.<sup>80</sup>

In the end, there was a shift of the terms of debate from the language of 'intervention' towards a 'responsibility to protect', which has presented a significant improvement.<sup>81</sup> Firstly, its framing gives the State in question the primary responsibility of protecting its population, and, only where that state is either unwilling or unable to discharge this responsibility or is the perpetrator itself, should the responsibility to act be taken up by other States.<sup>82</sup> Despite the fact that the discourse on the responsibility to protect doctrine kept being a subject of contention especially within the UN framework, and also receiving certain resistance from some states, however, this led to consensus within the UNSC when it adopted Resolution 1674<sup>83</sup> after reaffirming resolutions 1265 (1999) and 1296 (2000) concerning the protection of civilians in armed conflict, and Resolution 1631 (2005) on co-operation between the United Nations and regional organisations.<sup>84</sup> In addition to reaffirming

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<sup>77</sup> Ibid.

<sup>78</sup> Pillar 1 of Responsibility to protect.

<sup>79</sup> Pillar 2 of Responsibility to protect.

<sup>80</sup> Pillar 3 of Responsibility to protect.

<sup>81</sup> See, A, Bellamy. "Whither the responsibility to protect? Humanitarian intervention and the 2005 World Summit." *Ethics & International Affairs* 20.2 (2006): 143-169.

<sup>82</sup> G, Evans, and Mohamed S, Mohamed. "The responsibility to protect: report of the International Commission on Intervention and State Sovereignty". International Development Research Centre, 2001.

<sup>83</sup> UN Doc S/RES/1674 (28 April 2006).

<sup>84</sup> See, "importance of preventing conflict through development, democracy stressed." United Nations. 28 April 2006. Available at <http://www.un.org/press/en/2006/sc8710.doc.htm>. Accessed on 19 May 2015

the responsibility to Protect, the same resolution also identified the measures that the Security Council could take to protect civilians, such as demands for humanitarian access.<sup>85</sup>

#### 4. The Legal status of the Responsibility to Protect

Human intervention has raised a number of legal issues, particularly with respect to the prohibition on the use of force. To the extent that responsibility to protect is seen as a response to humanitarian intervention, it should be determined whether similar legal issues arise. This section will consider the legal contours of responsibility to protect. There are views that it is an emerging norm,<sup>86</sup> or soft law,<sup>87</sup> and that it is on its way to achieving the status of customary international law.<sup>88</sup> The challenge is that the only authority of the responsibility to protect comes from its adoption by the General Assembly in Resolution 60/1.<sup>89</sup> General Assembly resolutions are, however, not sources of international law.<sup>90</sup> As such, whereas the adoption of the responsibility to protect by General Assembly is significant, it is neither an international treaty nor a formal legal instrument and therefore, does not create any legal obligations.<sup>91</sup>

As much as there are contentions that responsibility to protect will do little to prevent future mass atrocities; it can be argued that the doctrine is quite distinct from the humanitarian intervention in the following ways. Firstly, humanitarian intervention deals more with military intervention only, while the responsibility to protect doctrine is seen as a preventative measure that stresses state responsibilities.<sup>92</sup> This means

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<sup>85</sup> Ibid.

<sup>86</sup> See, C. Stahn, *Supra* at note 64 above.

<sup>87</sup> J. Welsh & M. Banda, "International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?" *Global Responsibility to Protect* 3, 213 (2010).

<sup>88</sup> J. Dorsey, "The Current Status of the Responsibility to Protect: Where Is—Or Isn't—It?" Available at <https://invisiblecollege.weblog.leidenuniv.nl/2010/02/10/title-344/>. Accessed on 15/8/2015.

<sup>89</sup> W. Burke-White, "Adoption of the Responsibility to Protect." July, 30, 2011. University of Pennsylvania Law School, Public Law Research Paper No. 11-40.

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> A. Simon (2012). "Libya and the Responsibility to Protect." *Global Centre for the Responsibility to Protect Occasional Paper Series*, No.3/2012. Available at: [www.globalr2p.org/media/files/libyaandr2poccasionalpaper-1.pdf](http://www.globalr2p.org/media/files/libyaandr2poccasionalpaper-1.pdf).

that with regards to responsibility to protect, military intervention may only be carried out as a last resort, when all other, non-coercive measures have failed and when it is authorized by the Security Council.<sup>93</sup> It is seen that responsibility to protect extends the intervention beyond purely military means and encompasses a whole continuum of obligations<sup>94</sup> which include: the responsibility to prevent; the responsibility to react; and the responsibility to rebuild.<sup>95</sup>

The second difference presented by responsibility to protect that it is firmly rooted in international law, particularly the law concerning sovereignty, peace and security, human rights, and armed conflict,<sup>96</sup> as compared to humanitarian intervention which seem regularly to violate Article 2.4 of the UN Charter, which outlines the territorial integrity of every sovereign state.<sup>97</sup> This can be seen through the fact that, with regards to military intervention under responsibility to protect, it has to be authorized by the state in question or by the UN Security Council under Chapter VII of the UN Charter. Thirdly, humanitarian interventions have in the past been justified because of the prevention of human rights abuses as compared to responsibility to protect which focuses only on the four mass atrocity crimes, genocide, and crimes against humanity, war crimes, and ethnic cleansing. Finally, while humanitarian intervention assumes a "right to intervene", the responsibility to protect doctrine focuses on a "responsibility to protect".<sup>98</sup>

## 5. Criticisms of Responsibility to protect.

The doctrine of responsibility to protect and its implementations has come under criticism by some states and individuals. At the General assembly debate on responsibility to protect in 2009, States such as Venezuela, Cuba, and Nicaragua

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<sup>93</sup> Ibid.

<sup>94</sup> GSDRC (2013). "International legal frameworks for humanitarian action: Topic guide". Birmingham, UK: GSDRC, University of Birmingham.

<sup>95</sup> Ibid

<sup>96</sup> A. Bellamy and R. Reike. "The responsibility to protect and international Law." *Global Responsibility to Protect* 2.3 (2010): 267-286.

<sup>97</sup> Charter of the United Nations.

<sup>98</sup> See Simon, *Supra* note 92 above.

argued that responsibility to protect lacks legal standing.<sup>99</sup> Other States, also, argued that they never accepted responsibility to protect as a legal concept, or a legally binding commitment, but rather only as a political one.<sup>100</sup> Consequently, many States suggest that the responsibility to protect has no legal standing but only moral standing.<sup>101</sup> For example, both the British and US Governments respectively have indicated that they regard the responsibility to protect as a political commitment and not a legal one.<sup>102</sup>

With such perplexity, the question of the effectiveness of responsibility to protect against the existing norms has come into play. One criticism against the responsibility to protect doctrine is with regards to its application. Firstly, it is argued that it seems to swing between power and obligation to intervene in a sense that it discriminates between the rich and poor, weak and powerful states.<sup>103</sup> For example, article 4.42 of the ICISS report<sup>104</sup> excludes the five permanent members and other great powers where the obligation to intervene would apply even if all the conditions

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<sup>99</sup> See, Report on the General Assembly Plenary Debate on the Responsibility to protect, 15 September year 2009. Available at [http://www.responsibilitytoprotect.org/ICRtoP%20Report-General\\_Assembly\\_Debate\\_on\\_the\\_Responsibility\\_to\\_Protect%20FINAL%2009\\_22\\_09.pdf](http://www.responsibilitytoprotect.org/ICRtoP%20Report-General_Assembly_Debate_on_the_Responsibility_to_Protect%20FINAL%2009_22_09.pdf).

<sup>100</sup> A. Brown, "Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect?" Volumes 8-55 of Research paper, *House of Commons Library*, 2008

P. 26

<sup>101</sup> Ibid

<sup>102</sup> See, Letter from Ambassador John Bolton on the Responsibility to protect, 30 August 2005 (<http://www.responsibilitytoprotect.org>.) The US position was spelled out in a letter from the former US Ambassador to the UN, John Bolton. It states that in a general and moral sense the international community has a responsibility to act when the host state allows atrocities. The letter makes it clear that the US does not believe the UN as a whole, or the Security Council, or individual states, have an obligation to intervene under international law. In a written answer from June 2007, the British Government stated that Responsibility to Protect remains a political commitment rather than a legal obligation.

<sup>103</sup> F. Carlo. "The responsibility to protect doctrine and humanitarian intervention: too many ambiguities for a working doctrine." *Journal of Conflict and Security Law* 13.2 (2008): 191-213.

<sup>104</sup> Application of this precautionary principle would on purely utilitarian grounds be likely to preclude military action against any one of the five permanent members of the Security Council even if all the other conditions for intervention described here were met. It is difficult to imagine a major conflict being avoided, or success in the original objective being achieved, if such action were mounted against any of them. The same is true of other major powers who are not permanent members of Security Council. This raises again the question of double standards – but the Commission's position here, as elsewhere, is simply this: the reality that interventions may not be able to be mounted in every case where there is justification for doing so is no reason for them not to be mounted in any case.

for intervention were satisfactorily met.<sup>105</sup> This implies that the great power states are permitted to treat their citizens in any way they like compared to weaker power states who have to comply with the responsibility to protect doctrine.<sup>106</sup> This shows a failure to uphold the universal humanitarian mission, principles, and procedures.<sup>107</sup>

Another main concern surrounding responsibility to protect is that it infringes upon national sovereignty.<sup>108</sup> However, this was rebutted by the Secretary General Ban Ki-moon in the report implementing the Responsibility to Protect.<sup>109</sup> Those who advocate for responsibility to protect argue the international community will only intervene in a state without its consent if it is evident that the state is either allowing mass atrocities to occur, or is committing them, in which case the state is no longer upholding its responsibilities as a sovereign. This argument shows that responsibility to protect rather reinforces the principle sovereignty.

Another major criticism of responsibility to protect as set forth by Chomsky is the selectivity approach to cases by the doctrine of responsibility to protect which makes it important to question the impartiality in its implementation.<sup>110</sup> For example, the Iraq sanctions administered by Security Council were related to genocide but have not included in the agenda of responsibility to protect.<sup>111</sup> In addition, the people in Gaza with their denied fundamental human rights need immediate protection.<sup>112</sup>

## 6. Conclusion

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<sup>105</sup> See, Carol, *Supra* note 103 above.

<sup>106</sup> Ibid

<sup>107</sup> Ibid.

<sup>108</sup> R, Moran and D, Horowitz, "Libya and the Soros Doctrine", available <http://www.frontpagemag.com/fpm/89019/libya-and-soros-doctrine-rick-moran>. Accessed on 15 May 2015.

<sup>109</sup> See "Implementing the responsibility to protect". Report of the Secretary-General. UN doc. A/63/677. Available at <http://responsibilitytoprotect.org/implementing%20the%20rtoP.pdf>. Accessed on 20 May 2015.

<sup>110</sup> C, Noam, Statement by Prof. N. Chomsky to the UN General Assembly Thematic Dialogue on the RtoP. The UN: New York, 23 July 2009, p.1. Available at: <http://www.un.org/ga/president/63/interactive/protect/noam.pdf>. Accessed on 20 May 2015.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

In conclusion, even though both humanitarian intervention and the responsibility to protect move from the premise that sovereignty is not absolute, the responsibility to protect doctrine shifts away from state-centred motivations to the interests of victims by focusing not on the right of states to intervene but on a responsibility to protect populations at risk.<sup>113</sup> After years of debate concerning the problems involved in the implementation of the doctrine of humanitarian intervention to halt the violations of human rights, the introduction of the concept of responsibility to protect was welcomed by many as it was seen as a replacement of the old norm because of its application as Michael Newman observes that “R2P therefore constituted a real conceptual change both because it incorporated peaceful as well as coercive actions by international forces and accepted that there was a relationship between wider development and human security issues and the kinds of crisis that could conceivably precipitate military intervention as a last resort.”<sup>114</sup>

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<sup>113</sup> GSDRC (2013). “International legal frameworks for humanitarian action: Topic guide.” Birmingham, UK: GSDRC, University of Birmingham

<sup>114</sup> N, Newman." Revisiting the ‘Responsibility to Protect”, *The Political Quarterly*, Vol. 80. No.1. January- March 2009.

## CHAPTER THREE

### Responsibility to protect In Syria

#### 1. Background

Having discussed the legal discourse of the concept of responsibility to protect and its framework, I now consider the contextual analysis of Syria and examine the implications of the responsibility to protect doctrine. The first section will give the background to the conflict as well as the general international response to the crisis. Section two will discuss whether Syria qualifies as a responsibility to protect situation and, if so, whether there is a legal duty to act. The final part will argue that, if the legal force of the doctrine of responsibility to protect is to be considered binding, the Security Council ought to be under a legal obligation to take and authorise sufficient robust action in situations such as in Syria which is visibly a situation where responsibility to protect needs to be given expression.

The uprising of the conflict in Syria has its roots in protests that started in March 2011. The Syrian conflict started as a protest against the arrest and torture of children who painted revolutionary slogans on a school wall.<sup>1</sup> The unrest resulted in the Syrian government security forces opening fire on demonstrators and killing several citizens.<sup>2</sup> As a result, more protests continued in the whole the Syria, demanding Assad's resignation as President.<sup>3</sup> The violence escalated, and, by July 2011, hundreds of thousands protestors were taking to the streets in towns and cities across the country.<sup>4</sup> Though the exact numbers are not known, it is estimated that, by June 2014, 90,000 people had lost their lives during the conflict.<sup>5</sup> The numbers, however, had doubled by August 2014 to 191,000 and they continued to climb to

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<sup>1</sup>J, Gifkins. "The UN Security Council Divided: Syria in Crisis." *Global Resp. Protect* 4 (2012): 377.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> BBC News Middle East, L. Rodgers *et al*, 'Syria: The story of the conflict,' 12 March 2015, Available at <http://www.bbc.com/news/world-middle-east-26116868>. Accessed on 20 June 2015

<sup>5</sup> Ibid.



220,000 by March 2015.<sup>6</sup> It is also reported that almost four million people have fled since the start of the conflict, most of them women and children.<sup>7</sup> A further 7.6 million Syrians have been internally displaced within the country, bringing the total number forced to flee their homes to more than 11 million, half the country's pre-crisis population.<sup>8</sup> Overall, an estimated 12.2 million are in need of humanitarian assistance inside Syria, including 5.6 million children.<sup>9</sup> In witnessing such viciousness by the Syrian government, the Human Rights Council (HRC) strongly condemned the widespread, systematic and gross violation of human rights, acts of violence, ongoing atrocities and indiscriminate targeting of civilians by the Syrian authorities.<sup>10</sup> The HRC condemned, in particular, the targeted killing of children and the fact that children have been subject to arbitrary arrest, detention, torture and ill-treatment, including sexual violence.<sup>11</sup> Given the above, one naturally concludes that the Assad government has undeniably failed in upholding the doctrine of Responsibility to Protect, specifically Pillar One. As commented by the UN High Commissioner for Human Rights, Navi Pillay, "it is a manifest failure of the obligation of a sovereign, which is to protect your citizens and that would be the opening for international intervention of whatever kind."<sup>12</sup>

## **2. International intervention to stop the mass atrocities in Syria**

The sentiments and disturbing reports that highlighted the massive human rights violations triggered numerous demands for President Assad to resign and the UNSC to take action in the name of the responsibility to protect. Despite the numerous calls for action in Syria, the members of the UNSC failed to adopt any resolution on the situation in Syria or to Condemn Syria's Crackdown on Anti-Government Protestors,

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> General Assembly of the United Nations, Human Rights Council, A/HRC/RES/20/22, July 16, 2012.

<sup>11</sup> Ibid.

<sup>12</sup> Channel 4 News. 2012. Assad Should Be Investigated for Syrian War Crimes. Channel 4 News, 16 February. Available <http://www.channel4.com/news/assad-should-be-investigated-for-syrian-war-crimes>. Accessed 22 June 2015

owing to the veto by the Russian Federation and China.<sup>13</sup> The disagreements over Syria centered mainly on two issues: firstly, how the events on the ground could be interpreted; and, secondly, how to respond to the violence.<sup>14</sup> For example, a draft statement which was intended to express grave concern about ongoing violence in Syria was rejected by Russia who argued it represented interference in the internal affairs of a sovereign state.<sup>15</sup> There was also resistance from India, Brazil and South Africa to Western pressure on Syria arguing that their trust in the West had been lost after the North Atlantic Treaty Organisation (NATO) had exceeded its mandate in Libya.<sup>16</sup> The BRICS (Brazil, Russia, India, China and South Africa) members, especially Russia, also contended that NATO's actions morphed from enforcing a no-fly zone to actively seeking regime change, and that this had exceeded the mandate set out by the UN Security Council in Libyan resolution 1973.<sup>17</sup>

In the end, while the Security Council managed to adopt two resolutions, there are no United Nations mandated international sanctions and other measures have been applied on the Syrian government to effectively respond to the violence in Syria.<sup>18</sup> All this owing to first to the vetoed draft UNSC Resolution Russia and China that would have strongly condemned 'the continued grave and systematic human rights violations and the use of force against civilians by the Syrian authorities in October 2011.'<sup>19</sup> Russia opposed the resolution stating that, "today's rejected draft was based on... the philosophy of confrontation. We cannot agree with this unilateral, accusatory bent against Damascus. We deem unacceptable the threat of an

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<sup>13</sup>See, "Security Council Fails to Adopt Draft Resolution Condemning Syria's Crackdown on Anti-Government Protestors, Owing to Veto by Russian Federation, China," Press Release, SC/10403, <https://www.un.org/News/Press/docs/2011/sc10403.doc.htm>. Accessed 22 June 2015

<sup>14</sup> See Giffkins, *Supra* note 1, pg. 389–93.

<sup>15</sup> United Nations Security Council, "Statement by the President of the Security Council on the situation in the Middle East," S/PRST/2011/16, 3 August 2011, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/PRST/2011/16](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2011/16). Accessed 27 June 2015.

<sup>16</sup> C, Lynch. "New UN bloc finds constraining the West preferable to restraining Syria." *Foreign Policy* 10 (2011).

<sup>17</sup> "Security Council Fails to Adopt Draft Resolution Condemning Syria's Crackdown on Anti-Government Protestors, Owing to Veto by Russian Federation, China," Press Release, SC/10403, <https://www.un.org/News/Press/docs/2011/sc10403.doc.htm> Accessed 27 June 2015

<sup>18</sup> *Ibid.*

<sup>19</sup> UNSC, Draft Resolution: S/2011/612, New York, UNSC, 4 October 2011, Available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2011/612](http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/612), accessed on 17 July 2015.

ultimatum and sanctions against the Syrian authorities. Such an approach contravenes the principle of a peaceful settlement of the crisis on the basis of a full Syrian national dialogue."<sup>20</sup>

Again, in February 2012, China and Russia again exercised their veto powers at the UNSC against a second draft resolution. This draft resolution, sponsored by a large number of Arab and Western countries, was meant to condemn the Syria regime for 'the continued widespread and gross violations of human rights and fundamental freedoms'.<sup>21</sup> The resolution would have also condemned violence from opposition groups in Syria. Here China justified its veto, "arguing that Security Council members were attempting to 'put undue emphasis on pressuring the Syrian Government' and were aiming for a 'prejudged result of the dialogue' (meaning regime change)."<sup>22</sup>

The Security Council, however, in the midst of initial inaction took some affirmative steps to intervene. The first response to the atrocities in Syria was Resolution 2042(2012) which was unanimously adopted on 14 April 2012 which condemned the 'wide spread violations of human rights by the Syria authorities', as well as 'any human rights abuses by armed groups'.<sup>23</sup> It also authorized a team of up to 30 unarmed military observers "to liaise with the parties and to begin to report on the implementation of a full cessation of armed violence in all its forms by all parties".<sup>24</sup> This was the first resolution the SC had passed addressing the situation in Syria in demanding a halt to violence after nearly 13 months of protests and human rights violations.<sup>25</sup> In addition, later in the same month of April, the UNSC adopted Resolution 2043, which authorised the deployment of a further 270 unarmed military

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<sup>20</sup> UNSC, 6627th meeting: S/PV.6627: provisional, New York, UNSC, 4 October 2011, pp. 3–4, Available at [http://www.un.org/qa/search/view\\_doc.asp?symbol=S/PV.6627](http://www.un.org/qa/search/view_doc.asp?symbol=S/PV.6627), accessed 17 July 2015.

<sup>21</sup> UNSC, Draft Resolution: S/2012/77, New York, UNSC, 4 February 2012, Available at [http://www.un.org/en/qa/search/view\\_doc.asp?symbol=S/2012/77](http://www.un.org/en/qa/search/view_doc.asp?symbol=S/2012/77), accessed on 17 July 2015.

<sup>22</sup> UNSC, 6711th meeting: S/PV.6711: provisional, New York, UNSC, 4 February 2012, p. 9, available at [http://www.un.org/qa/search/view\\_doc.asp?symbol=S/PV.6711](http://www.un.org/qa/search/view_doc.asp?symbol=S/PV.6711), accessed 17 July 2015.

<sup>23</sup> See, UN Doc. S/RES/2042 (Apr. 14, 2012); Security Council Unanimously Approves Observers for Syria.

<sup>24</sup> Ibid.

<sup>25</sup> M. Sharp, & M. B, Christopher. "Armed conflict in Syria: US and International response." *Library OF Congress Washington DC Congressional Research Service*, 2012.

observers to Syria.<sup>26</sup> This formally created the United Nations Supervision Mission in Syria (UNSMIS), the official mandate of which was ‘to monitor a cessation of armed violence in all its forms by all parties and to monitor and support the full implementation of the Envoy’s [Annan’s] six point proposals.’<sup>27</sup> Individual permanent members of the SC have taken their own approaches outside of the Security Council as well through individually or regionally implemented sanctions or exertions of diplomatic pressure.<sup>28</sup> As much as there have been resolutions adopted “regarding the destruction of chemical weapons,”<sup>29</sup> “demanding increased humanitarian access,”<sup>30</sup> and also reaffirming the need for the government to uphold its primary responsibility to protect the Syrian population,<sup>31</sup> neither the Council as a whole, nor the permanent members on their own, have taken decisive action to act under Chapter VII of the UN Charter and adopt serious measures against the Syrian government so as to help halt the mass atrocities.<sup>32</sup>

### 3. Responsibility to Protect in Syria

In assessing the responsibility to protect in Syria, several questions will be answered. The first is whether the situation in Syria amounts to a responsibility to protect situation? And the main question of the dissertation which is whether pillar three of the R2P doctrine obliges the Security Council to act in cases of mass atrocities such as those in Syria will be answered in this chapter.

#### 3.1. Is Syria a responsibility to protect situation?

This section will assess whether the on-going conflict in Syria falls within the scope of responsibility to protect. Firstly, the Independent International Commission of Inquiry

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<sup>26</sup> UNSC, Resolution 2043 (2012), New York, UNSC, 21 April 2012, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2043](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2043) (2012). Accessed 22 July 2015

<sup>27</sup> Ibid

<sup>28</sup> See, B. James. “Sanctions Hitting Unintended Targets”, Washington Post Aug. 15, 2012, at A12 (addressing impact of U.S. economic sanctions against Syria).

<sup>29</sup> See S/RES/2118 and S/RES/2209, respectively.

<sup>30</sup> See S/RES/ 2139 and S/RES/ 2165, respectively.

<sup>31</sup> Ibid.

<sup>32</sup> S, Mohamed. "Omissions, Acts, and the Security Council's (In) Actions in Syria." *Boston University International Law Journal* 31.2 (2013).

on the Syrian Arab Republic report confirmed that the situation in Syria fell within the scope of responsibility to protect.<sup>33</sup> According to the UNCHR Report, it claimed that Assad's security forces had committed "widespread, systematic, and gross human rights violations"<sup>34</sup> by indiscriminately using heavy weapons, including tanks, artillery, and helicopter gunships, against civilians.<sup>35</sup> Additionally the report also found that Syrian forces had deliberately shot civilians, shelled residential areas, and tortured hospitalized protestors.<sup>36</sup> The same report also found that Assad's security forces summarily executed unarmed protestors, targeted women and children using snipers and attacked residential areas with indiscriminate weapons such as mortars.<sup>37</sup> The Report echoed the language of the responsibility to protect third pillar that "the government of Syria has manifestly failed in its responsibility to protect its people."<sup>38</sup>

The UNHRC reports also found that the majority of these attacks were directed against unarmed civilians. For example, according to the report, it was reported that, on December 21, 2011, Syrian government forces "attacked a group of activists who had sought refuge in the village mosque... After the forces withdrew, 60 bodies were discovered ... the victims appeared to have been tortured before execution."<sup>39</sup> Also in the Houla region, Syrian militias, known as *shabiha*, aligned with government and executed over one hundred civilians, which lead to many western states expelling Syrian diplomats in protest.<sup>40</sup> In the response to the overwhelming condemnation over Houla, however, the Syrian government claimed that it was a legitimate target towards "terrorists" who were themselves responsible for mass killing.<sup>41</sup>

Besides the UNHRC report, Professor David Crane, former Chief Prosecutor to the Special Court of Sierra Leone, led a team which wrote a detailed report documenting

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<sup>33</sup> A/HRC/28/69.

<sup>34</sup> See, Independent International Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 50, 57, U.N. Doc. A/HCR/21/50 (Aug. 16, 2012) [hereinafter Report on Syrian Arab Republic].

<sup>35</sup> Ibid at 36-46.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid at 126.

<sup>39</sup> Ibid at 42.

<sup>40</sup> Houla: "How a Massacre Unfolded", BBC, June 8, 2012, Available: <http://www.bbc.co.uk/news/world-middle-east-18233934>. Accessed 22 July 2015

<sup>41</sup> See, Report on Syrian Arab Republic, supra note 34.

the atrocities that had occurred in Syria since March 2011.<sup>42</sup> His report considered and analysed various reports from news agencies and NGOs and concluded that there was enough evidence to support the claim that forty individuals within the Assad regime had committed crimes against humanity.<sup>43</sup>

Given the evidence that the Syrian government is committing atrocity crimes is substantial, well-documented, and corroborated by multiple sources in the media, human rights organizations, and government agencies, it satisfies that it is textbook case for a responsibility to protect situation.

### **3.2. Is there an obligation to on the UNSC to act in Syria?**

Having established that the situation in Syria meets the requirements for action under the doctrine of responsibility to protect, the next question is whether there is an obligation on the UNSC to act to protect the civilians in Syria? The concept of responsibility to protect envisions the UNSC as the most important international actor.<sup>44</sup> Responsibility to protect deals with the competence of the UNSC with regard to the prevention and containment of mass human rights violations, tries to develop a threshold for the UNSC action, aims at reducing the abusive use of power, and emphasis that the UNSC has not only the right to intervene but also a responsibility to protect people from serious crimes.<sup>45</sup> This was to be able to link the concept to Article 24 of the UN Charter, which gives the UNSC's "primary responsibility for the maintenance of international peace and security".<sup>46</sup>

#### **3.2.1. The powers of the United Nations Security Council**

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<sup>42</sup> See, Syracuse University college of Law, Report on the Syrian Crisis: "Mapping Atrocity in Syria".

<sup>43</sup> Ibid at 70.

<sup>44</sup> M.Payandeh. "With Great Power Comes Great Responsibility-The Concept of the Responsibility to Protect within the Process of International Law-making." *The Yale Journal of International Law*. 35 (2010): 469.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

The point of departure is article 24 (1)<sup>47</sup> of the Charter which empowers the Security Council with the primary responsibility for the maintenance of international peace and security. Based on this responsibility given to the Security Council, the majority of the key documents advocating the responsibility to protect doctrine identify the Security Council as the “right authority” to take collective action to fulfill the international community’s responsibility.<sup>48</sup> The argument stems from the fact that the UNSC does have the ability to call on UN member states to produce material elements needed to prevent the core crimes. It also has the powers to adopt resolutions and authorize peace making or peace keeping missions It can also call the UN member states to establish and monitor no-fly zone to help halt the mass atrocities in order to implement the Responsibility to protect doctrine.<sup>49</sup> In short, the UN Security Council has the legal right to authorize both military and non-military action whenever it identifies a threat to international peace and security including an internal situation that is characterized by human rights violations.<sup>50</sup>

Much as the United Nations Security Council has such powers, in carrying out these powers the Security Council shall act in accordance with the Purposes and Principles of the UN.<sup>51</sup> Under Article 25, members in turn “agree to accept and carry out the decisions of the Security Council.”<sup>52</sup> The broad powers of the Security Council are provided for in Chapters VI, VII and VIII of the UN Charter. The powers could be divided into different parts, namely powers for the pacific settlement of disputes, powers to determine the existence of a threat to peace, breaches of peace and acts of aggression, and powers to decide what measures are to be taken to restore international peace and security.

### 3.2.2. Limitations on the Powers of the Security Council

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<sup>47</sup> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

<sup>48</sup> H, Nasu. "The UN Security Council's Responsibility and the "Responsibility to Protect." *Max Planck Yearbook of United Nations Law* 15 (2011): 377-418.

<sup>49</sup> W.Knight. "*The Routledge handbook of the responsibility to protect.*" Routledge, 2012.

<sup>50</sup> De Wet, Erika. "*The Chapter VII Powers of the United Nations Security Council.*" Hart Publishing, 2004. at 196.

<sup>51</sup> See Article 25 of the UN Charter

<sup>52</sup> Ibid

Now that it has been observed that the Security Council has broad powers and it exercises them according to its discretion, the question is if there are any legal rules limiting the ability of the Council to determine 'R2P-situations' constituting threats to the peace? David Schweigman observes that, "once a Chapter VII situation arises, the Security Council is of the opinion that it can take any and all of the measures that it considers useful and suitable for dealing with the situation or any of its consequences, whether those actions are of a military, administrative, regulatory or even primarily judicial nature."<sup>53</sup> These powers of the Security Council, however, have opened a debate on whether the powers can be limited.

The starting point for where the legal duty would arise for the Security Council to act under the responsibility to protect is the fact that much as the Council enjoys a considerable discretion when determining under Article 39 but it is not entirely free to act.<sup>54</sup> The Appeals chamber of the ICTY said, "Neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutes* (unbound by law)".<sup>55</sup> The court held that:

*"The Security Council is an organ of an international organization, established by a treaty which serves as a constitutional framework for that organization. The Security Council is thus subjected to certain constitutional limitations, however broad its powers under the constitution may be. Those powers cannot, in any case, go beyond the limits of the jurisdiction of the organization at large, not to mention other specific limitations or those which may derive from the internal division of power within the Organization. In any case, neither the text nor the spirit of the Charter conceives of the Security Council as legibus solutus (unbound by law)."*<sup>56</sup>

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<sup>53</sup> S, David. "The Authority of SC under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice." *Kluwer Law International, The Hague, Netherlands*, 2001 at pg. 165.

<sup>54</sup> Frowein & Krisch, Article 39, Simma (Ed.), *The Charter of the United Nations. A Commentary*, p. 719, paras. 4-5.

<sup>55</sup> Tadić Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (decision of 2nd October 1995), ICTY Trial Chamber II, (1997) 105 ILR 453; 35 ILM 32, ¶¶ 9-48.

<sup>56</sup> Prosecutor v. Tadic, Case No. IT-94-1-AR72, ¶ 28, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 28 Int'l Crim. Trib. for the Former Yugoslavia



This implies that the Security Council is not only bound and restricted by the Charter itself but also by *jus cogens* and also some scholars have argued that also common law in particular humanitarian law and human rights.<sup>57</sup> Peters argues that, if responsibility to protect doctrine is to be taken as a legal principle, then the UNSC'S duty to take sufficiently robust action in a responsibility to protect situation is not a moral duty, but rather a legal one.<sup>58</sup> This is because the Security Council is bound by the customary *jus ad bellum* and *jus in bello* principles of proportionality and necessity in its capacity of authorising the use of force.<sup>59</sup> It suffices to say that, if we accept Peters contention, then there is a duty under the UN Charter and the responsibility to protect doctrine for the UNSC to act. This duty also stems from the fact that Security Council is bound by the "Purposes and Principles" of the Charter when acting,<sup>60</sup> which include to maintain international peace and security,<sup>61</sup> to develop friendly relations among nations<sup>62</sup> and promote human rights.<sup>63</sup>

Another argument is that, as much as the UNSC enjoys the discretion under article 39 of the UN Charter which allows the Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to take military and non-military action to "restore international peace and security,"<sup>64</sup> there is a legal duty on the UNSC to respond positively to situations where there are serious human rights violations, thus invoking the responsibility to protect to protect civilians. This can be done by way of interpretation of the concept "threat to the peace" in article 39 of the UN Charter, and its application to any situation of mass atrocities.<sup>65</sup> With regards to responsibility to protect, Peters proposes an intriguing reverse question asking whether the Council should be allowed not to call a situation a "threat to the peace"

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<sup>57</sup> ME O'Connell, "The United Nations Security Council and the Authorization of Force: Renewing the Council Through Law Reform", in *The security Council and the use of force, theory and reality-a need for change* (2005).

<sup>58</sup>A, Peters. "The responsibility to protect and the Permanent Five: the obligation to give reasons for a veto" in *Responsibility to protect: from principle to practice*, Hoffmann, Julia, André Nollkaemper, and Isabelle Swerissen, (Eds). *Amsterdam University Press*, 2012.

<sup>59</sup> See, O'Connell, *Supra* note 57 above.

<sup>60</sup> See Article 24 (2) of the UN Charter.

<sup>61</sup> *Ibid* at article 1(1).

<sup>62</sup> *Ibid* at article 1(2).

<sup>63</sup> *Ibid* at article 1(3).

<sup>64</sup> Article 39 of the UN Charter.

<sup>65</sup> See Peters, *Supra* note 58.

when it comes to responsibility to protect.<sup>66</sup> In this regard, Peters proposes that as much as there can be a limitation to the expansion to the meaning of a legal term, there are also limits to narrowing it unduly.<sup>67</sup> Here she implies that a failure to label a factual situation and to apply the appropriate legal concept to the facts means overstepping the legal limits of the leeway inherent in any interpretation and application of the law.<sup>68</sup> In this, she suggests that the Security Council lacks the free will to assess whether a responsibility to protect situation can qualify as a threat to the peace as stipulated in Chapter VII of the UN Charter.<sup>69</sup> With this argument it can be concluded that, given any form of ongoing genocide, the Security Council ought to qualify it ultimately as a threat to the peace and any refusal to do so would be considered an illegal act by the United Nations and the member states.<sup>70</sup>

The legal obligation additionally originates from the fact that Security Council members have a responsibility to cooperate in bringing to an end the commission of core crimes, i.e. genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement which are part and parcel of the responsibility to protect.<sup>71</sup> This can be done by way of an obligation voting positively on resolutions that approve robust intervention in the event that is the only means to bring an end to responsibility to protect crimes and violations.<sup>72</sup> This follows the argument that, besides article 41(1)<sup>73</sup> of the ILC on State Responsibility, there is the additional responsibility imposed on Council members to fulfill in good faith the obligations assumed by them in accordance with article 2(2) of the UN Charter and article 26<sup>74</sup> of the VCLT.<sup>75</sup> While participating in deliberations and votes in the Council, it ought to be comprehended that its members act not only as representatives of their

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<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> See Peters, *Supra* note 58.

<sup>72</sup> Ibid.

<sup>73</sup> States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. This means that States are under a positive duty to cooperate to bring to an end serious breaches in the sense of article of ILC.

<sup>74</sup> Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

<sup>75</sup> E, Davidsson. "UN Security Council's Obligations of Good Faith." *The Florida Journal of International Law*, 15 (2002): 541.

respective states but also as an intrinsic part of a collective organ of an international organization.<sup>76</sup> In addition, because the Security Council is not a plenary organ, yet rather an organ with restricted membership, those members do not only stand in a special legal relationship to the organization, the UN, but also in a special legal relationship to the remaining members of the organization who are not represented in the Security Council.<sup>77</sup> Individual members of the Security Council act as delegates of all other UN members, and as trustees of the international community.<sup>78</sup> Their position as trustees precludes them from handling their participation rights in the collective body in an arbitrary fashion.<sup>79</sup> As a basis, the fiduciary obligation of the members of the Security Council brings with it an obligation to balance all relevant aspects.<sup>80</sup> This would imply that the rule of law not only forbids arbitrary decisions of the Security Council as a whole, as expressed above, but should also govern the Council members' voting approving or preventing arbitrary decisions.<sup>81</sup>

The P5's privilege within the Security Council, which is their veto power, also creates an obligation on the SC to act under responsibility to protect. It is arguable that this veto power is, thus, intrinsically correlated with a special responsibility to act.<sup>82</sup> It can, therefore, be suggested that the hard legal obligation to protect populations threatened by the responsibility to protect crimes falls on the permanent members of the Security Council.<sup>83</sup> This can also be supported by the conclusion which was drawn by the delegate of Liechtenstein in the debate leading to Security Council Resolution 1674 on the protection of civilians, viz. "that responsibility leads almost inevitably to the conclusion that collective action to prevent and respond to genocide, crimes against humanity and war crimes must not be made impossible by a non-concurring vote of one of the permanent members of the Council."<sup>84</sup> From the ICISS

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<sup>76</sup> See Peters, *Supra* note 58.

<sup>77</sup> *Ibid*

<sup>78</sup> Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), 28 May 1948, International Court of Justice, Advisory Opinion, ICJ Reports 1948, p. 57 at p. 64.

<sup>79</sup> *Ibid*.

<sup>80</sup> M. Herdegen, *Völkerrecht* (Beck, München, 9th ed., 2010), p. 315.

<sup>81</sup> See Peters, *Supra* note 58.

<sup>82</sup> *Ibid*.

<sup>83</sup> L, Arbour. "The responsibility to protect as a duty of care in international law and practice." *Review of International Studies* 34.03 (2008): 445-458.

<sup>84</sup> Statement of Liechtenstein in the debate on SC Res. 1674, 9 December 2005 (S/PV.5319 (Resumption 1), p. 15.

suggestion that, when action is needed to stop or avert a significant humanitarian crisis, and when a permanent member of the Security Council does not claim its vital interests to be involved, it should not use the veto to obstruct the passage of what would otherwise be a majority resolution.<sup>85</sup> This can be complemented by the High-level Panel report of 2004 which asked “the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses.”<sup>86</sup>

In conclusion, this chapter has established that the current situation in Syria is where responsibility to protect can be applied. This is because the Syrian government has failed to protect its population from the on-going mass atrocity crimes and human rights violations and there is no meaningful action that has been taken to this date. It has been also established that the Security Council, which is the primary responsibility to maintain peace and security has failed to meet its obligations. As such I have argued that even although the responsibility to protect resides first and foremost in the territorial state, the Security Council has a legal obligation under the United Charter to act under responsibility to protect situations especially when the state in question fails to act end the commitment of mass atrocities. This is supported by what the UN Secretary General stated while speaking of the responsibility to protect, that “within the SC, the five permanent members bear particular responsibility, because of the privileges of tenure and the veto power.”<sup>87</sup>

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<sup>85</sup> See, International Community on Intervention & State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (2001)*, available at [www.iciss.ca/pdf/Commission-Report.pdf](http://www.iciss.ca/pdf/Commission-Report.pdf) [hereinafter ICISS Report], para 6.21.

<sup>86</sup> See High-level Panel, para. 256.

<sup>87</sup> “Within the Security Council, the five permanent members bear particular responsibility because of the privileges of tenure and the veto power they have been granted under the Charter. I would urge 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 138 of the Summit Outcome document, and to reach a mutual understanding to that effect.”

## CHAPTER FOUR

### Conclusion and Recommendations

#### 1. Conclusion

The concept of responsibility to protect came alive as a consequence of the international community's failures to react sufficiently to human rights abuses, especially the failure to act in the 1994 Rwanda genocide,<sup>1</sup> the horror of insufficient intervention in Bosnia, and the non-UN authorized intervention in Kosovo.<sup>2</sup> The concept was a product of the work done by the ICISS in a response against the significant legal difficulties, and challenges of humanitarian intervention. With the aim of building a new international consensus on how to respond to serious human rights violations, a report known as "The Responsibility to Protect" by the International Commission on Intervention and State Sovereignty (ICISS) was published.<sup>3</sup> The Report aimed to address the challenges that surrounded human interventions in the 1990s, namely just cause, right authority, and the tension between intervention for the protection of human rights violation and sovereignty.<sup>4</sup> The doctrine of responsibility to protect seeks to move away from the traditional concept of humanitarian intervention, i.e. the military intervention in a state, without the approval of either the UNSC or the state, and with the purpose of preventing widespread suffering or death among the inhabitants.<sup>5</sup>

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<sup>1</sup> K. Moghalu, "Rwanda's Genocide: The Politics of Global Justice." (Houndmills: Palgrave Macmillan, 2005). Rwanda exposed the tragedy of inaction, the shame of a lack of political will to intervene. When genocide erupted in Rwanda in 1994, the Security Council was aware of the degree of violence and potential for escalation, but it feared for the security of the U.N. peacekeepers that had been stationed in Rwanda since 1993.

<sup>2</sup> A. Schnabel and R. Thakur (eds.), "Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship." (Tokyo: United Nations University Press, 2000).

<sup>3</sup> Ibid.

<sup>4</sup> D. O. Quinn, "The Responsibility to Protect." MA diss., Canadian Forces College (2007).

<sup>5</sup> Simon, Chesterman. "Just war or just peace? Humanitarian intervention and international law". *Oxford University Press*, 2001.

As already discussed in the presiding chapters, the responsibility to protect has been subjected to scrutiny through debates and discussions in the U.N. system, with no real consensus emerging about the principle. The doctrine, however, progressed since its inception in 2001 to international endorsement as it was widely embraced by world leaders during the 2005 World Summit.<sup>6</sup> In the 2005 World Summit Outcome Document, there was a clear and unambiguous acceptance by all governments of the collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. The world leaders also expressed their willingness to take timely and decisive collective action for this purpose, through the Security Council, when peaceful means proved inadequate and national authorities were manifestly failing to act. This was ultimately and formally adopted by the General Assembly later the same year.

This approval of the responsibility to protect doctrine at the 2005 World Summit, as well as the fruitful discussions on implementing the responsibility to protect at the General Assembly, signalled a successful management challenge of demands for humanitarian intervention. The principle stipulates: firstly, that states have an obligation to protect their citizens from mass atrocities; secondly, that the international community should assist them in doing so; and, thirdly, that, if the state in question fails to act appropriately, the responsibility to take action falls to the larger community of states.<sup>7</sup> This means that the primary responsibility lies with the state itself in protecting its own people from mass atrocity crimes. When, however, a state is unwilling or unable to halt or avert such crimes, the wider international community then has a collective responsibility to take whatever action is necessary.<sup>8</sup>

Even though the responsibility to protect doctrine is seen to play a role in shaping the world's response to mass atrocities, its place in international law continues to be controversial and is surrounded by disagreements, and especially when it comes to the implementation.<sup>9</sup> As the Syria crisis has shown, the responsibility to protect doctrine is filled with controversy with regard to its implementation. As a result, the

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<sup>6</sup> N, Smit. "From the ICISS Report to the 2005 World Summit." (2010).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> M, Halliyadde. "The Meaning of the Responsibility to Protect: An Analysis of the R2P Principle in International Law, 2001-2013." (2015).

question for this dissertation of whether the Security Council has a legal obligation to take action under serious mass atrocities such as in Syria under the doctrine of the responsibility to protect doctrine. In answering this delicate question, chapter three of this dissertation has argued, looking at the third pillar responsibility to protect, we can infer that that the UNSC has an obligation to act to halt any kind of mass atrocities. To balance countervailing concerns, this work has proposed that the UN Charter framework provides for the above argument. Chapter three has demonstrated that, if the responsibility to protect is to be considered as a legal principle, any inaction, or the vetoing of a proposal for a Security Council resolution authorising robust action, would be an illegal act that affects the responsibility of the UN and of the Security Council members.

Much as there is legal ambiguity with regards to the term "responsibility," there seems to be a serious suggestion that the responsibility to protect doctrine implicitly suggests mandatory action in the face of massive human rights violations.<sup>10</sup> The Security Council has, however, continued to object to mandatory action through its position on the responsibility to protect following the ICISS Report.<sup>11</sup> However, I have argued that the above suggested mandatory action the part of the Security Council can be achieved in the following ways; Firstly, it has been observed that the UNSC, has the primary responsibility to maintain peace and security thus any omission to such a duty it would be considered failure on the part of the Security Council to perform its duties; I have also suggested that it should be noted that when the Security Council is exercising its discretion under article 39 of the UN Charter, these actions are not entirely free which means that to act not only in accordance with the Principles and Purpose of the UN Charter but also *jus cogens* i.e. humanitarian law and human rights law; I have also argued that the Security Council has a duty to act positively to situations where there obvious serious violations of human rights in order to protect civilian; Another argument I have suggested is that Council members also have an obligation to cooperate in bringing an end to the commission of core crimes listed under the responsibility to protect doctrine; And finally I suggested that

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<sup>10</sup> M, Payandeh. "With Great Power Comes Great Responsibility-The Concept of the Responsibility to Protect within the Process of International Lawmaking." *Yale Journal International Law*. 35 (2010): 469.

<sup>11</sup> *Ibid*

the veto privilege within the Council is correlated with special responsibility to act. This means should avoid the use of their veto powers when it comes to situations of responsibility to protect. In conclusion much as it is extremely difficult at the moment to accept that the responsibility to protect doctrine either establishes or supports the idea that the Security Council is under a legal obligation to take action when there is a humanitarian crisis, I have suggested that the Security Council is no exception, since in fact it has been portrayed as the “right authority” to exercise collective enforcement powers to implement the international community’s responsibility to protect.<sup>12</sup>

## 2. Recommendations

The responsibility to protect doctrine is intended to fill the vacuum between legality and legitimacy in the international community’s interventions with the objective of protecting human rights during the commission of mass atrocities. There is, therefore, a need to substantiate the responsibility to protect with a set of widely accepted internationally codified criteria in order to restrain the abuse of the doctrine by the great powers.<sup>13</sup> Despite the ICISS report and the 2004 High Level Panel Report providing guidelines on how a new responsibility to protect concept should be operationalized, there is still much to be done to uncertainty surrounding responsibility to protect. This is because of the danger it poses, through its selective application to halt mass atrocities, which creates not only double standards but also undermines the legitimacy of the concept.<sup>14</sup> And this will continue to trigger more questions, such as why intervention in Libya and not in Syria, Yemen, Bahrain and other countries.

The UN Security Council has to show commitment to protecting civilians affected by conflict by acting consistently to protect civilians, particularly when the authorization of the use of force is required. UN Security Council permanent members are encouraged to use of their veto effectively when the Council is discussing situations of the protection of grave civilian concern, including actual or incipient war crimes,

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<sup>12</sup> See, H, Nasu. "The UN Security Council’s Responsibility and the “Responsibility to Protect.” *Max Planck Yearbook of United Nations Law* 15 (2011): 377-418.

<sup>13</sup> Sauer, M. A. R. C. "The politics of responsibility to protect." (2008). Available at <http://library.fes.de/pdf-files/iez/global/05313-20080414.pdf>. Accessed on 15/5/2015.

<sup>14</sup> Ibid.



crimes against humanity, ethnic cleansing, and genocide. Finally, in cases such as of that of Syria, where there is substantial and well-documented evidence from multiple sources that the government is committing atrocious crimes, the Security Council must authorize the use of force to prevent the continuous to commitment such crimes, either acting pursuant to responsibility to protect or on the basis that such actions represents a threat to the peace and security. This is because the after math always weighs heavy on that country for generations to come, although all is done to prevent, there will be some effects left. Therefore measure should be put in place to help these countries recover over time. The help should not be about the stopping of the ongoing crimes only, but to also make sure those who disturb the peace by committing these crimes must answer, this will serve as a deterrent.

## Bibliography

- A, Peters, A 2012, "The responsibility to protect and the Permanent Five: the obligation to give reasons for a veto" in *Responsibility to protect: from principle to practice*, Hoffmann, Julia, André Nollkaemper, and Isabelle Swerissen, (Eds). Amsterdam University Press, p. 199
- Abiew, F 1999, "The Evolution of the Doctrine and Practice of Humanitarian Intervention". *Kluwer Law International The Hague*, p.35.
- Arbour, L 2008, "The responsibility to protect as a duty of care in international law and practice." *Review of International Studies* 34.03, p.445-458.
- Bellamy, A.J 2011, "Libya and the Responsibility to protect: the Exception and the Norm." *Ethics & International Affairs*, 25.03, p.263-269.
- Bellamy, A, "R2P or Trojan horse? The Crisis in Darfur and Humanitarian Intervention after Iraq", *Ethics and International Affairs*, Vol. 19 (2) pp. 31-54.
- Bellamy, A.J 2006, "Whither the responsibility to protect? Humanitarian intervention and the 2005 World Summit." *Ethics & International Affairs* 20.2, p.143-169.
- Bellamy, A.J and Reike, R 2010, "The responsibility to protect and international Law." *Global Responsibility to Protect* 2.3, p.267-286.
- Bellamy, A.J & Williams, P.D 2011, "The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect." *International Affairs*, 87.4, p.825-850.
- Bellamy, A.J 2005, "Responsibility to protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq." *Ethics & International Affairs* 19.02, p. 31-54.
- Brown, A 2008, "Reinventing Humanitarian Intervention: Two Cheers for the Responsibility to Protect?" Volumes 8-55 of Research paper, *House of Commons Library*, p. 26
- Burke-White, W, "Adoption of the Responsibility to Protect." (July 30, 2011). University of Pennsylvania Law School, Public Law Research Paper No. 11-40.
- Carlo, F 2008, "The responsibility to protect doctrine and humanitarian intervention: too many ambiguities for a working doctrine." *Journal of Conflict and Security Law* 13.2, p.191-213.
- Channel 4 News. 2012. *Assad Should Be Investigated for Syrian War Crimes*. Channel 4 News, 16 February. Available <http://www.channel4.com/news/assad-should-be-investigated-for-syrian-war-crimes>. Accessed 22 June 2015.

- Chesterman, S 2001, "Just war or just peace? Humanitarian intervention and international law". *Oxford University Press*.
- Chomsky, N 2009, "Statement by Prof. N. Chomsky to the UN General Assembly Thematic Dialogue on the RtoP. The UN: New York, 23 July 2009, p.1. Available at: <http://www.un.org/ga/president/63/interactive/protect/noam.pdf>.
- Copithorne, M 2003, Kosovo and Beyond Trilateral Perspectives on International Legal Issues: Conflict and Coherence in C. Carmody, Y. Iwasawa & S. Rhodes, ed., *Baltimore: American Society of International Law*, p.173-175.
- David, S 2001, "The Authority of SC under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice." *Kluwer Law International, The Hague, Netherlands*, pg. 165.
- David, C 2004, "The Responsibility to Protect? Imposing the Liberal Peace", *International Peacekeeping*, Vol. 11, No.1, p.59-81.
- Davidsson, E 2002. "UN Security Council's Obligations of Good Faith." *The Florida Journal of International Law*, 15, p 541.
- Dorsey, J, "The Current Status of the Responsibility to Protect: Where Is—Or Isn't—It?" Available at <https://invisiblecollege.weblog.leidenuniv.nl/2010/02/10/title-344/>. Accessed on 15/8/2015.
- Erika, D.W 2004. "*The Chapter VII Powers of the United Nations Security Council*." Hart Publishing, p.196.
- Evans, G 2007, "The International Responsibility to Protect: the Tasks Ahead, Address to Seminar on Africa's Responsibility to Protect", *The Centre for Conflict Resolution*, Cape Town, 23 April 2007.
- Evans, G 2008, "The Responsibility to Protect: An Idea Whose Time Has Come...Gone?" *International Relations* 22.3, p.283-298.
- Evans, G 2009, "The responsibility to protect: ending mass atrocity crimes once and for all." *Irish Studies in International Affairs* 20.1, p. 30.
- Evans, G 2006, "From humanitarian intervention to the responsibility to protect." *Wisconsin International Law Journal* 24 (2006): 703.
- Evans, G 2009, "The responsibility to protect: ending mass atrocity crimes once and for all." *Irish Studies in International Affairs* 20.1 p. 7-13.
- Evans, G and Mohamed, S 2001, "The responsibility to protect: report of the International Commission on Intervention and State Sovereignty". International Development Research Centre, 2001.

Feije, F." The UN Security Council and the uprisings in Libya and Syria:" Accessed at <http://dare.uva.nl/cgi/arno/show.cgi?fid=452509>.

Francis, D.J 2012, "The Promise and the Peril of the Responsibility to Protect." Carlisle Barracks, PA: U.S. Army War College.

Frowein & Krisch, Article 39, Simma (Ed.), The Charter of the United Nations. A Commentary, p. 719, paras. 4-5.

Gelijm, M 2006, "Humanitarian Intervention and the Responsibility to Protect after 9/11", *Netherlands International Law Review* 53.01, p.37-62.

General Assembly of the United Nations, Human Rights Council, A/HRC/RES/20/22, July 16, 2012.

Gifkins, J 2012. "The UN Security Council Divided: Syria in Crisis." *Global Resp. Protect* 4 p.377.

GSDRC (2013). "International legal frameworks for humanitarian action: Topic guide". Birmingham, UK: GSDRC, University of Birmingham.

Halliyadde, M 2015, "The Meaning of the Responsibility to Protect: An Analysis of the R2P Principle in International Law, 2001-2013."

Herdegen, M 2010, *Völkerrecht*, Beck, München, 9th Ed, p. 315.

Holzgrefe, J 2003, "The humanitarian intervention debate." in Holzgrefe, Jeff L., and Robert O. Keohane (Eds). "*Humanitarian intervention: ethical, legal and political dilemmas*". Cambridge University Press.

Houla: "How a Massacre Unfolded", BBC, June 8, 2012, Available: <http://www.bbc.co.uk/news/world-middle-east-18233934>.

James, B. "Sanctions Hitting Unintended Targets", *Washington Post*, Aug. 15, 2012, at A12 (addressing impact of U.S. economic sanctions against Syria).

Joyner, C 2006, "Responsibility to Protect: Humanitarian Concern and the Lawfulness of Armed Intervention", *The Virginia Journal of International Law*. 47, p.693.

Kikoler, N, "Responsibility to protect 4 (2009)". Available at <http://www.rsc.ox.ac.uk/pdfs/keynotepaperkikoler.pdf>. Last accessed on 21 March 2015.

Knight, W 2012, "*The Routledge handbook of the responsibility to protect*." Routledge.

Kofi, A 1999, "Speech of the UN Secretary-General to the General Assembly, September 20." New York: United Nations.

- Kuwali, D 2012, "Responsibility to Protect: Why Libya and not Syria?" Policy & practice brief. *The American Centre for the Constructive Resolution of Disputes* 16, p.1-7.
- Lewis, A, "The Responsibility to Protect: a new response to humanitarian suffering?" *e-International Relations* (6 July 2010).
- Luke,G 2012, "The responsibility to protect beyond borders." *Human Rights Law Review*.
- Lynch, C 2012, "New UN bloc finds constraining the West preferable to restraining Syria." *Foreign Policy* 10.
- Macfarlane, *et al* 2004, "The Responsibility to Protect: is anyone interested in humanitarian intervention?" *Third World Quarterly* 25.5, p.977-992.
- Moghalu, K 2005, "Rwanda's Genocide: The Politics of Global Justice." *Houndmills: Palgrave Macmillan*.
- Mohamed, S 2013, "Omissions, Acts, and the Security Council's (In) Actions in Syria." *Boston University International Law Journal* 31.2.
- Murphy, S 1996, "Humanitarian Intervention: the United Nations in an Evolving World Order", University of Pennsylvania Press, Philadelphia.
- Nasu, H 2011. "The UN Security Council's Responsibility and the "Responsibility to Protect." *Max Planck Yearbook of United Nations Law* 15, p.377-418.
- Newman, N 2009," Revisiting the 'Responsibility to Protect", *The Political Quarterly*, Vol. 80. No.1. January- March 2009.
- Nicaragua vs. United States, (1986) ICJ Reports 14, at para 190.
- O'Connell ME, "The United Nations Security Council and the Authorization of Force: Renewing the Council Through Law Reform", in *The security Council and the use of force, theory and reality-a need for change* (2005).
- Parekh, B 1997, "Rethinking Humanitarian Intervention", *International Political Science Review* Vol.18, No. 1, p.54.
- Payandeh, M 2010, "With Great Power Comes Great Responsibility-The Concept of the Responsibility to Protect within the Process of International Lawmaking." *Yale Journal International Law*, 35, p.69.
- Peters, A 2011, "The security Council's Responsibility to Protect." *International Organizations Law Review* 8.1, p.15-54.
- Prosecutor v. Tadic, Case No. IT-94-1-AR72, ¶ 28.

Quinn, D. O 2007, "The Responsibility to Protect." MA dissertation, *Canadian Forces College*.

Richard, L & Muhammad, M, "Arab League asks U.N. for no-fly zone over Libya." Available at [http://www.washingtonpost.com/world/arab-league-asks-un-for-no-fly-zone-over-libya/2011/03/12/ABoie0R\\_story.html](http://www.washingtonpost.com/world/arab-league-asks-un-for-no-fly-zone-over-libya/2011/03/12/ABoie0R_story.html): Accessed on 14 March 2015.

Roberts.A, "The So-Called Right of Humanitarian Intervention", Trinity Papers, number 13, 2000, P. 17 ([http://www.trinity.unimelb.edu.au/publications/trinity\\_papers/paper13](http://www.trinity.unimelb.edu.au/publications/trinity_papers/paper13)), last accessed on 15 April 2015.

Rodgers, L et al, BBC News Middle East, 'Syria: The story of the conflict,' 12 March 2015, Available at <http://www.bbc.com/news/world-middle-east-26116868>.

S/RES/ 2139 and S/RES/ 2165.

S/RES/2118 and S/RES/2209.

Sarkin, J 2009, "Dealing With Africa's Human Rights Problems: The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect". *Journal of African Law*, p.4.

Sauer, M. A. R. C. "The politics of responsibility to protect." (2008). Available at <http://library.fes.de/pdf-files/iez/global/05313-20080414.pdf>. Accessed on 15/5/2015.

Schnabel, A and Thakur, R 2000, "Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship", *Tokyo: United Nations University Press*.

Security Council Fails to Adopt Draft Resolution Condemning Syria's Crackdown on Anti-Government Protestors, Owing to Veto by Russian Federation, China," Press Release, SC/10403, <https://www.un.org/News/Press/docs/2011/sc10403.doc.htm>.

Security Council Fails to Adopt Draft Resolution Condemning Syria's Crackdown on Anti-Government Protestors, Owing to Veto by Russian Federation, China," Press Release, SC/10403, <https://www.un.org/News/Press/docs/2011/sc10403.doc.htm>

Sharp, M, & Christopher, M. B 2012, "Armed conflict in Syria: US and International response." *Library OF Congress Washington DC Congressional Research Service*.

Simma, B 2002, (Eds). *The Charter of the United Nations: a commentary*. Vol. 1. Oxford: Oxford University Press.

Simma, B 2009. "NATO, the UN and the Use of Force: Legal Aspects." *European Journal of international law* 10.1, p. 1-22.

Simon .A (2012), "Libya and the Responsibility to Protect." Global Centre for the Responsibility to Protect Occasional Paper Series, No.3/2012. Available at: [www.globalr2p.org/ media/files/libyaandr2poccasionalpaper-1.pdf](http://www.globalr2p.org/media/files/libyaandr2poccasionalpaper-1.pdf).

Smit, N 2010, "From the ICISS Report to the 2005 World Summit."

Stahn, C 2007, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *The American Journal of International Law*, Vol. 101, No. 1 (Jan. 2007) P. 99-120

Syracuse University college of Law, Report on the Syrian Crisis: "Mapping Atrocity in Syria".

The 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005) [hereinafter 2005 World Summit Outcome].

The Independent International Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 50, 57, U.N. Doc. A/HCR/21/50 (Aug. 16, 2012) [hereinafter Report on Syrian Arab Republic].

The Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect (December 2001) (Hereinafter the ICISS Report).

The Report of the Secretary General, "In Larger Freedom: Towards Development, Security and Human Rights for All", delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005) (Hereinafter the Secretary-General Report)

U.N. Secretary-General, "We the Peoples: The Role of the United Nations in the Twenty-First Century: Rep. of the Secretary General." U.N. Doc. A/54/2000 (Mar. 27, 2000).

UN DOC S/PV.6711.

UN Doc. S/RES/2042.

United Nations Security Council, "Statement by the President of the Security Council on the situation in the Middle East," S/PRST/2011/16, 3 August 2011, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/PRST/2011/16](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2011/16).

UNSC, Resolution 2043 (2012), New York, UNSC, 21 April 2012, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N12/305/91/PDF/N1230591.pdf?>

Weiss, T 2004, "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era", *Security Dialogue*, Vol. 35, No. 2, p.149

Welsh, J & M. Banda, M 2010, "International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?" *Global Responsibility to Protect* 3, 213.

Williams, *et al.* "Security Council Resolution 1973 on Libya: a Moment of Legal & Moral Clarity." *Case Western Reserve Journal International Law*. 44 (2011): 225.

Zifcak, S 2012, "Responsibility to Protect after Libya and Syria", *Melbourne Journal of International Law*, 13, p. 59.