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Has the 'responsibility to protect' been a real change in the humanitarian intervention to defend human rights?

A case study of Libyan crisis

Ershed Ahammad

Supervised by: Andy Unger
LLM International Human Rights and Development

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Abstract

This research examines the applications of the responsibility to protect (R2P) doctrine and whether this doctrine has adopted different structure from the humanitarian intervention term in the military action through an assessment of the crisis in Libya. In the 1990s, the nature of the armed conflict changed dramatically. Interstate wars were replaced by violent intrastate conflicts that caused the breach of human rights and death of many civilians.[1] Due to the escalation of internal conflicts, which leads to humanitarian crises, the international community has gradually recognized the significance of international negotiation or intervention to prevent crisis. International intervention includes military action, which violates the concept of state sovereignty. The R2P, was implemented to increase the relationship between the state sovereignty concept and individual human rights, defines sovereignty as a responsibility to defend its population from mass atrocities. The first full-scale test of the R2P was in the intervention in Libya. Though initially it was considered as a model case of how the R2P should be applied but the wisdom of this intervention has largely been taken into question as the country descends further into civil war. The questions are also raised on whether the R2P has other political interests rather than defending human rights and it is old wine in new bottles.

Introduction:

The key principle of the R2P is that state sovereignty implies the primary entity of responsibility to a state for the protection of the population within the state. If a state fails to meet this responsibility and therefore the population is suffering severe harm, the principle of traditional respect of state sovereignty "yields to the international Community's responsibility to protect".[2] In the international area, one of the most axiological clashes happens between the sovereignty and the human rights concepts, which have the core values in the current international scenario to protect and develop the international human rights.[3]

On the one hand, this clash involves the question of legitimacy in so far as the realization of both concepts is intertwined as the protection of human rights requires the flexibility of state sovereignty that "in turn, has evolved to be regarded not only as a right but also as a responsibility, thus gaining a vertical dimension (state- citizen) to add to its horizontal dimension (state- state)".[4] On

[1] Serdar Ornek, The Responsibility to Protect and Libya intervention. P- 361.

[2] Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," Foreign Affairs 81 (2002): 99

[3] L. L. Jubilut / International Community Law Review 14 (2012) 309–335.

[4] Liliana L. Jubilut, Has the 'Responsibility to Protect' Been a Real Change in Humanitarian Intervention? An analysis from the crisis in Libya: P-309.

the other hand, the question is about legality, which seems the protection of sovereignty much more rooted in the founding norms of international law than the protection of human rights since it may lead to inaction in the face of gross violations of human rights due to legalistic approaches.

Mainly this clash is emphasized in the practice of humanitarian intervention when the limitation on the use of force is the question in the face of the necessity of protecting human rights. Due to such characteristic of humanitarian intervention, it has been exercised and debated for several years in the international law without a consensus on both its legality and legitimacy.

To combine the development of the international human rights regime, the end of the Cold War and several catastrophic humanitarian crises especially in Rwanda in 1994 and in Kosovo in 1999[5] has been intensified to debate over humanitarian intervention and highlighted the necessity to reconcile the concept of sovereignty and the protection of human rights in international law to find a clear rules on humanitarian intervention.

Considering this, the Secretary General of the United Nations (UN) in 1999 urged for "a new international consensus responding to massive violations of human rights and humanitarian law".[6] Due to this reason, the R2P as a new doctrine was come forward and also approved for action by the UN General Assembly (GA). The approval of the R2P means that it has the legality since the UN is the guardian of the use of force and the international peace and security and the legitimacy since the UN leads the most international organization with universal membership and the GA is the most representative organ within the UN.

In the case of Libya crisis, the demonstrations on 15 February 2011 in the city of Benghazi demand the departure of Muammar al-Gaddafi's regime. It was the starting point of the escalation of violence, which leads to the incorporation of two resolutions of the United Nations (UN) Security Council and a military intervention of foreign forces in Libya for the protection of civilian population.[7] Later on, the SC incorporated resolution 1970 on 26 February 2011 and resolution 1973 on 17 March 2011 that authorized the use of force in Libya.

In the aim of civilian population protection, Member States are authorized to take all necessary measures to protect civilians under Chapter VII of the UN

[5] Thomas Franck, "Collective Security and UN Reform: between the necessary and the possible", 5 Chicago Journal of International Law (Winter 2006).

[6] Simon Chesterman, Responsibility to Protect, International Peace Academy Report – New York Seminar, 1, available at http://www.ipacademy.org/PDF_Reports/UNDIP-IPA.pdf.

[7] Bruno Pommier, the use of force to protect civilians and humanitarian action: the case of Libya and beyond. P- 2.

Charter, while excluding any form of occupation of Libyan territory. In addition, they are also allowed to take all required measures like "the flight ban over Libyan airspace" to protect civilians under the standard of R2P.

Now it is important to see that whether the R2P brings the necessary change in the use of force for humanitarian purposes by the legality and legitimacy status of the humanitarian intervention to protect the international human rights in Libya.

This research has found a potential field in the intervention of Libya. Since "it was the first time that the Security Council called upon the 'responsibility to protect' in one of its resolutions",[8] the outcome of this research can be taken for future use of the R2P in human rights issue.

Chapter 1

1. Humanitarian Intervention and the Use of Force in International Law:

1.1 The Question of Legality

Though there is no agreed legal definition of humanitarian intervention but 'the use of force to protect human lives' is commonly used to explain. Gareth Evans and Mohamed Sahnoun stated it as a "coercive action against a state to protect people within its border from suffering grave harm".[9]

From the definition, 'a coercive action' may entail a vast array of actions varying from economic sanctions to the use of military force[10] and in practice, it can be carried out by a single state, a group of states, a collective organization that is not the UN or by the UN.

Interventions by the military force are seen in the controversial manner because there are no provisions in the UN Charter to allow this and therefore the questions have been raised about the legality of humanitarian intervention.[11]

For some reasons, the issue of legality is important. First of all, the establishment of the 'rule of law' in the international legal system was the primary purpose of international law in the 20th century, so that "rules are

[8] Liliana L. Jubilut, supra note 4, P- 311.

[9] Evans and Sahnoun, supra note 2, p- 99.

[10] Louis Henkin, "Humanitarian Intervention", 26 Studies in Transnational Legal Policy (1994), p- 391.

[11] Liliana L. Jubilut, supra note 4, p- 312.

relevant in the international scenario". Secondly, rules are "necessary to minimize anarchy and to allow for the co-existence and cooperation of states in the international scenario".[12] Thirdly, rules are highly important when there is a lack of total communion of objectives and values in the present multicultural and multiethnic international scenario. Finally, many states still believe in a strict legalistic and positivist approach to international law and in the existence of a legal rule, which will serve as a convincing argument for action.[13]

The study of the legality of humanitarian intervention is, in this sense, important to solving the dilemmas of its application and must be done in the light of the founding norm of the current international legal system.

In the time of the UN creation, it was so in light of an international legal system that opted for a positivistic approach and valued non-intervention as an integral aspect of state sovereignty.[14] Its main function was to establish a system of collective security to replace the unilateral use of force by states. To accomplish this function, the UN Charter contains severe limitations on the use of force with Member States having agreed to "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".[15]

In practice, these limitations imply in the way that force can only be legally used "in self- defence or with the authorization by the Organization; and even in these cases there are restrictions that apply".[16] The UN also can only exercise the use of force in order to maintain the international peace and security. This limitation is bolstered by the lack of an obligation on the UN to enforce international law in general. The recourse to force in the UN Charter is thus tailored narrowly, and, textually, does not allow for forceful actions for humanitarian purposes.[17] In fact, in the drafting process of the UN Charter the right for humanitarian intervention was proposed but, in the end, was not included in the final text.

Due to this gap between actual need and lack of authorization for humanitarian interventions, states developed in practice two main interpretations since such provisions are absent in the UN Charter. First, "the

[12] Alberto do Amaral Junior, O Direito de Assistência Humanitaria (2003), p- 47.

[13] Liliana L. Jubilut, supra note 4, p- 312.

[14] Simon Chesterman, Just War or Just Peace? (2002) at Jennifer Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society", 8 Global Governance (2002), p- 505.

[15] UN Charter Art 2, paragraph 4.

[16] Liliana L. Jubilut, supra note 4, p- 313.

[17] Michael Glennon, "The New Interventionism – The Search for a Just Interna- tional Law", 78 Foreign Affairs 24 (1999), p-24.

positivist approach under which the lack of authorization is seen as a prohibition of the use of force for humanitarian purposes"[18] and secondly, a more holistic approach by which it is argued that in accordance with other provisions in the UN Charter and the UN practice throughout the years, the omission does not amount to a prohibition and, therefore, humanitarian interventions can legally occur. The choice between these two possibilities "has divided and still divides states today".[19]

The debate in practice is further complicated in the sense that the UN Charter, while not having a clear rule on humanitarian intervention, imposes humanitarian obligations on states and clearly has a preoccupation with human rights, which might lead not only to an axiological clash but also a normative one within this document.[20] It indicates that the issue of the legality of humanitarian intervention is still an open problem.

1.2 The Question of Legitimacy

The use of force in the similar manner raises legal questions about the legitimacy of the actions to the international legal system. The question regarding the legitimacy of humanitarian intervention mainly relates to both "the internal coherence of the international legal system and its external legitimacy and needs to be solved not only to allow for the unchallenged use of force for humanitarian purposes but also to avoid a weakening of the international legal system as a whole".[21]

Coherence and legitimacy are essential and more relevant to the international legal system due to three reasons. First, a system of coercion is absent there, which exists in practice internally in the states. Secondly, centralization of the legislative procedure since the repository of the most norms are their legislators. Thirdly, the creation of hierarchy among its main actors and this custom is extremely dependent on the perception of the legitimacy and coherence of the system and of the rules.[22]

To reconcile sovereignty and human rights is the main challenge to coherence posed by humanitarian intervention. At the drafting and establishment time of the UN Charter, the classical notion of sovereignty as a right was reigned and the concern with sovereignty was outweighed with human rights that explain the lack of authorization for humanitarian intervention in the UN Charter.[23]

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[18] Liliana L. Jubilut, supra note 4, p- 313

[19] Michael Glennon, "The UN Security Council in a Unipolar World", 44 Va. J. Int'l L. (2003–2004), p- 96.

[20] Liliana L. Jubilut, supra note 4, p- 313.

[21] Ibid, p- 314

[22] Ibid.

[23] Liliana L. Jubilut, supra note 4, p- 314.

However, with the years, the situation has been changed with human rights rising in the axiological hierarchy of international relations until reaching a position comparable to sovereignty. The status of the human rights rising norms led to the weakening of the argument that humanitarian intervention was not possible due to the legal protection of sovereignty by the UN Charter. The argument did not seem to fit into the new culture of human rights. Due to this reason, the system to maintain its internal coherence there was a need to reconcile human rights and sovereignty to allow for humanitarian intervention.[24]

With regard to the external legitimacy of humanitarian intervention mainly rise four questions. First of all, the question relates to the purposes of the intervention since it is the matter of fear that humanitarian purposes will start to be used as a cover for other types of interventions to serve other goals rather than human rights protection.

Secondly, it concerns to the moral legitimacy when the force is exercised to protect human rights as the notions of tolerance and peace lie at the heart of human rights norms. This argument is usually classified as an ethical objection to humanitarian intervention. In accordance with Jennifer Welsh the ethical critiques against humanitarian intervention can be gathered into two groups: the first group "claims that sovereign states provide the protective shell for the process of self-determination. As such, they are moral entities and should enjoy the presumptive right of non-intervention" and "the second set of ethical objections is consequentialist. Even if one could overcome concerns about self- determination, intervention is opposed because of the negative outcomes it can generate".[25]

The counter argument to the first claim is that historically in practical nature it is seen in many times that the state itself violates human rights and thus it cannot be seen as a 'protective shelf' for its minorities. Moreover, in the recent scenario of international relations, there are states that are not capable of ensuring the minimum standard of human rights to their populations. In both situations, inaction due to the norm of non-intervention seems to put the self-determination prospect in more endangerment than action taken to ensure it.[26]

Regards to the consequentialist objection, it can be solved by the assumption that in "the face of two evils one has to choose the lesser one, for not acting would be the same as acquiescing to the worst evil".[27] This critique has as its base the idea that "the most adequate ethics for human rights is the ethics of

[24] Ibid.

[25] Simon Chesterman, *Just War or Just Peace?* (2002) at Jennifer Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society", 8 *Global Governance* (2002), p- 508.

[26] Liliana L. Jubilut, supra note 4, p- 314.

[27] Mahatma K. Gandhi, Autobiografia: minha vida e minhas experiências com a verdade (1999)/Ibid.

means by which every action has to be considered in it and in its adequacy to the final goal".[28] This, however, does not mean that force should not be used to protect human rights since human rights are about restraining force. It usually means that by using force human rights should be upheld that allows only for interventions for humanitarian purposes, as there is no other option to prevent gross violation of human rights.

Thirdly, the question is regarding the possibility of whether inaction in the situation of gross violation of human rights and possibly severe loss of lives could ever be legitimate. This question relates to the clash between legitimacy and legality and also regards to its answer as "it depends on the choice of which of these concepts will be valued higher in each situation; since as international law stands now there are several possibilities of an action not fulfilling both criteria as a perfect norm should do".[29]

Fourthly, the question relates both from the unsolved question of whether inaction or action in the face of gross violations of human rights is more legitimate despite its legality and from the practical compromise reached by the practice of the international community over the years. Since it is generally almost impossible to choose action or inaction, the international community opted for a case-by-case analysis, which has lead to selectivity. Though it is argued that such selectivity in some circumstances inevitable, it does not mean that it is satisfactory.[30] On one side, "it allowed for decisions to remain exclusively political". On the other side, "it did not add to the legitimacy of international law in so far as cases regarded as similar were dealt with in different ways".[31]

In the face of such kinds of problems, to find a solution to the issue of legitimacy of humanitarian intervention continues to also be in order.

[28] Bhikhu Parehk, Gandhi: past masters (1997), p- 59.

[29] Draft resolution S/1999/328. UN. Security Council. S/PV.3989/ taken from Liliana L. Jubilut, supra note 4, P-316.

[30] Thomas Franck, Recourse to Force – State action against threats and armed attacks. (2005), p- 145.

[31] Liliana L. Jubilut, supra note 4, P-316.

Chapter 2

2 The 'Responsibility to Protect'

2.1 The Background

In order to both problems with the legality and legitimacy of the humanitarian intervention, it was needed a clear legal doctrine to solve the issue. For example, the problem of the NATO intervention in 1999 that had not been authorized by the Security Council, the report of the Independent International Commission on Kosovo described the intervention as 'unavoidable' because "diplomatic options had been exhausted, and two sides were bent on a conflict which threatened to wreak humanitarian catastrophe." [32] The commission concluded that, "the intervention was legitimate, but not legal."

Due to this reason, the UN Secretary General requested states at the GA in 1999 and 2000 to "try to find, once and for all, a new consensus on how to approach these issues, to forge unity around the basic questions of principle and process involved". He produced the central question directly that "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?"[33]

In relation to this, the Canadian Government established the International Commission on Intervention and State Sovereignty (ICISS) to study the issue, which presented a comprehensive report about the R2P that deals a new doctrine for the use of force for humanitarian purposes.

By 12 specialists of the different countries, the ICISS was formed and held 11 round tables over the world before issuing its report. The round tables were important because it included civil society through scholars and non-governmental organizations in the debate and was trying to reflect common and shared values to avoid criticism that the report was based on Western culture. These efforts added to the legitimacy of the report that in turn aided its acceptance. In 2001, ICISS presented its report suggesting to adopt given changes to the international community and proposed "a shift from the doctrine of humanitarian intervention to the doctrine of the R2P".[34]

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[32] Gareth Evans, Vol. 24, No. 3 From Humanitarian Intervention to R2P, p- 707.

[33] International Commission on Intervention and State Sovereignty (ICISS), The Responsibility to Protect, VII, Dec. 2001.

[34] Liliana L. Jubilut, supra note 4, P- 317.

2.2 The Doctrine of the 'Responsibility to Protect'

The aim of the R2P is to establish a framework for the use of force to protect human lives and human rights by promoting two main shifts in the rhetoric of humanitarian intervention. First and most important shift is to focus on the limits of exercising sovereignty as it has absolute right to responsibility.

The second shift regarding the dichotomy between rights and duties. Many times, it is argued in favor that humanitarian intervention were based on a 'right to intervene' which was also based on the idea of the sovereignty of the individual. This approach used the rhetoric of the protection of human rights to make flexible the concepts of state sovereignty and non-intervention, thereby allowing states to intervene in other states due to humanitarian crisis. It granted them not only permission but also a right to do so.[35]

Due to three benefits, The ICISS stated to shift a 'right to intervene' to a 'responsibility to protect'. First, the focus of the action would be on the interests of the beneficiaries rather than conducting the action on the states.[36] Secondly, it would broaden the requirement for the action to solve the crisis, highlighting not only actions in the event of an on-going crisis but also actions in pre and post crisis to prevent and effectively solve complex humanitarian situations. Thirdly, it would be the solution of traditional arguments against action like the general rule of the UN Charter is non-intervention and therefore, intervention being taken even for humanitarian purposes could be seen as against the law.

From the second benefit, "the broadening of the scope of actions involved in dealing with humanitarian crisis", the ICISS established that the R2P entails three different sets of responsibilities:

1. The responsibility to prevent: to adopt both the core causes and direct causes of internal conflict and other man-made crises laying populations at risk;
2. The responsibility to react: to respond to situations of absorbing human need with applicable measures, which may comprise coercive measures like sanctions, international prosecution and in severe cases, military intervention;
3. The responsibility to rebuild: to specify, particularly after a military intervention, full assistance with recovery, reconstruction, and reconciliation, addressing the causes of the harm the intervention was planned to halt or avert.[37]

In doing so the ICISS managed to "link the new doctrine of humanitarian intervention with two other relevant issues in the UN agenda – development and peace – thus adding to the legitimacy of the new proposal and increasing

[35] Liliana L. Jubilut, supra note 4, p- 318.

[36] Louise Arbour, "The Responsibility to Protect as a Duty of Care in International Law and Practice", 34 Review of International Studies (2008) p- 448.

[37] Liliana L. Jubilut, supra note 4, p- 318.

its chances to be accepted by the states".[38]

In using the term of R2P has another advantage that it recognized the primary responsibility, which falls to the state itself and only in the time of its failure or unwillingness to act, the responsibility turns to the international community. In this sense, the ICISS produced its proposal to its prospective states by ascertaining that state sovereignty continues to be a norm in international law and cleared that "the responsibility to protect will not radically alter the complex set of relation that exist between states and the varied representatives of the international community".[39]

Having established the main shifts on the eloquence of the doctrine, the ICISS proceeded to breaking down each one of the above three responsibilities.

The responsibility to prevent draws special attention to the importance of early warnings and analysis, the efforts to prevent at the level of root causes, and efforts in direct prevention entailing any available means to solve a dispute. Prevention is seen as the single most important dimension of the responsibility to protect.

The responsibility to react has very close connection with the classical doctrine of humanitarian intervention "as it is triggered once all preventive measures have failed and there is the need to react to situations of compelling need for human protection".[40] It demands the establishment of sanctions of the use of force and in extreme cases, the resort to military action.

In dealing with a military intervention, the ICISS established a new set of criteria, which includes:

1. One threshold criterion;
2. Four precautionary criteria;
3. One principle related to the right authority to intervene and
4. Ten operational principles.

The threshold criterion is 'the *just cause* for the action'. It tries to limit the possibility of resort to force by determining the fairness of the motives. The ICISS established that just causes for intervention in the R2P are: "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape".[41] Gareth Evans and Mohamed Sahnoun, former co-chairs of the ICISS, stated about the possibility of action in the face of "over- whelming natural or

[38] Ibid.

[39] Anne Orford, "Jurisdiction without territory: from the Holy Roman Empire to the Responsibility to Protect", 30 *Michigan Journal of International Law* (2008–2009) p-1012.

[40] ICISS, supra note 33, P- 29.

[41] Ibid, p- 32.

environmental catastrophes, in which the state concerned is either unwilling or unable to help and significant loss of life is occurring or threatened".[42]

The four precautionary criteria are: right intention; last resort; proportional means and reasonable prospects respectively. The right intention standard relates to the just cause and legitimacy aspects of the intervention and thus "to avoid humanitarian interventions that are ultra vires". The criteria of last resort and proportional means reflect the self-defence doctrine, which limits the use of force by necessity; proportionality and imminence. And the last standard reasonable prospects also relates to 'legitimacy of purposes and choice between the lesser of two evils'.[43]

In the event of the right authority to intervene, the ICISS provided that the Security Council is the body has the primary responsibility to maintain international peace and security and due to this reason, it has the right authority to authorize interventions. Along with this, ICISS also stated the way of intervention. For instance, it proposed recourse to the GA under the 'Uniting for Peace' procedure. Alternatively, it suggested option "to actions by regional or sub-regional organizations in their area of jurisdiction subjected to the seeking of post-facto authorization by the SC"[44], as in Kosovo.

With regards to the responsibility to react, the ICISS provided ten operation principles under which action must be undertaken. They are: (1) clear objectives; (2) clear and unambiguous mandate; (3) resources to match the objectives and mandate; (4) common military approach; (5) unity of command; (6) limitations, incrementalism and gradualism in the use of force; (7) rules of engagement; (8) respect to international humanitarian law; (9) acceptance that the protection of force cannot be the principal objective and (10) maximum coordination with humanitarian organizations.

The responsibility to rebuild is considered as the last responsibility in the R2P, which encloses peace building obligations, justice and reconciliation efforts, and development. To achieve these goals, it may necessary to establish an administration under the UN, as in Kosovo and East Timor.[45]

To establish this administration, the three types of above responsibility and the criteria to the use of force for the protection of human lives and human rights, the ICISS aimed to meet four basic objectives that will also work as new approach to intervene on human rights protection grounds. These objectives are: "(1) to establish clear rules, procedures and criteria for determining whether, when and how to intervene; (2) to establish the

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[42] Ibid.

[43] Liliana L. Jubilut, supra note 4, p- 319.

[44] David J. Jividen, "It takes a region: a proposal for an alternative regional approach to UN Collective Force Humanitarian Intervention", 10 *U.S. A.F. Acad. J. Legal Stud*. (1999–2000), p- 109. Taken form Liliana L. Jubilut, supra note 4, P-320.

[45] Liliana L. Jubilut, supra note 4, p-320.

legitimacy of military intervention when necessary and after all other approaches have failed; (3) to ensure that military intervention when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and (4) to help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace".[46]

Beside these objectives, ICISS recommended that the GA "adopt a draft declaratory resolution embodying the basic principles of the responsibility to protect" and that the SC "seek to reach agreement on a set of guidelines, embracing the 'Principles for Military Intervention' to govern their responses to claims for military intervention for human protection purposes" and that "the Permanent Five members of the Security Council should consider and see to reach agreement not to apply their veto power, in matters where their vital interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support".[47]

Chapter 3

3 Assessing the Real Change of the 'Responsibility to Protect' on Humanitarian Intervention

To study the changes, it seems essential to introduce the issue from three points of view:

1. The doctrinal perspective, particularly regarding the rhetorical shifts proposed by the new doctrine;
2. The practical aspects;
3. The ethical aspects, especially when the proposed doctrine aims solving both questions of legitimacy and legality.[48]

The study will mainly be completed on the basis of the proposed objectives of the R2P and of the existing unsolved questions regarding humanitarian intervention. The main focus of the study will be on the use of force since it has the close connection between the R2P and humanitarian intervention in the point of military interventions to protect human rights.

3.1 Assessing the doctrinal aspects of the 'responsibility to protect'

In this aspect, the main points of the R2P are the proposed rhetorical shifts in

[46] ICISS, supra note 33, p- 11.
[47] Ibid, pp. 74- 75.
[48] Liliana L. Jubilut, supra note 4, p- 321.

the arguments on humanitarian intervention like changing sovereignty from an absolute right to a limited right and changing the 'right to intervene' to a 'responsibility to protect' and the establishment of criteria for action.[49]

In relation to the rhetorical shifts, the R2P has been applauded for "the conceptual move from a 'right to intervene' to a 'responsibility to protect' ",[50] which could be a solution between sovereignty and human rights clash since sovereignty would be "no longer conceived as undisputed control over territory, but rather as a conditional right dependent upon respect for a minimum standard of human rights".[51]

However, these shifts may not be considered as the model solution since they are appeared at first glance the 'right to intervene' that was never helped to put states on guard against the incorporation of any formal doctrine of humanitarian intervention and never agreed in international law and relations. Due to this reason, the proposed is seen as a change from 'right' to 'duty' to intervene as the responsibility in practice means duty.[52]

On the one side, the change of a right to a duty could be seen to achieve more encumbers in the action of the states than they are willing to do, which could be aside of the doctrine. It is the matter of fact that once it comes to the states as a 'right', there might be an option about practicing the said right or not. However, there is no such discretion to the states when it comes under a 'duty' because it obligates to curry out the action. In this sense, the responsibility of the national states appears to be adequately enclosed in the concept. However, the international obligation to exercise may endanger the doctrine in so far since the change could mean that the lack of express authorization by the UN Charter could be read in a more radical way than the above mentioned interpretations laid down by states, since it could mean an obligation to conduct humanitarian interventions.[53]

On the other side, the shift would impose the need to establish a mechanism of assessing the responsibility in the event of failure of performing the duty. In the current manner of the international legal system, this would "mean a major transformation in so far as according to the ICISS the organ vested with the primary R2P is the SC, an organ against which judicial review has been very limited".[54] In this sense, incorporating the proposed shift, the R2P may create new questions of legitimacy and legality rather than solving the existing issues on humanitarian intervention.

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[49] Ibid.

[50] Neil Macfarlane, Jennifer Welsh and Carolin Theilking, "The Responsibility to Protect – Assessing the Report of the International Commission on Intervention and State Sovereignty", 57 *Int'l J.* 489 (2001– 2002), P- 492

[51] Ibid, p- 493.

[52] Liliana L. Jubilut, supra note 4, p- 322.

[53] Ibid.

[54] Ibid.

In relation to the establishment of criteria for action by the R2P, there has been commendation of the new doctrine and even the claim that this is "the more significant contribution of the Commission's report" as it creates "a spectrum of action for the international community – prevention, non-military coercion, military action, and post-conflict rebuilding".[55]

In the international scenario, the establishment of criteria is relevant when both the international community is willing to act "as a way to limit possible abuses" and it is unwilling to act "as a standard to push for action".[56] In light of this view, the establishment of criteria by the R2P could also be commended since this could minimize the selectivity in relation to humanitarian crisis. Once again, however, there may be found some problems in the doctrine being proposed.

First, the issue of the criteria has been proposed to justify for forceful action. For example, the just cause threshold that in the words of the ICISS would be "outright killing or ethnic cleansing", but which can be seen "as problematic for being at the same time too limited and too vague".[57]

It is clear that the option of the ICISS was for the minimum common denominator which can be elucidated by the combination of two factors: first, the option for maintaining the restrictions on the use of force to be in keeping with the general UN system to limit the use of the R2P and secondly, the preoccupation by the ICISS to tailor its report to its addressee which lead to the necessity of compromises in order to obtain consensus at least to the most drastic humanitarian crisis.

However, on the one hand, the proposed criterion is not always theoretically sufficient for the broad terms of the R2P because it does not allow for precise and clear standards of application and due to this reason, it may lead to selectivity.

To illustrate the view, the ICISS did not define "large scale loss of life" or "a failed state", that are the core terms of its just cause threshold. In this sense, it did not appear to have aided for establishing practical criteria through this doctrine as it had proposed to do. On the other hand, it appeared to have extricated the broader human rights issue in the earlier doctrines of humanitarian intervention. In relation to these, the ICISS controversially provided that "there will be no difference of opinions in practice of what is a situation demanding action, minimising thus the relevance of theoretical criteria".[58]

There is also possibility of some criticism on the question of 'right authority' against R2P. This is due to the issue that though the ICISS stated the

[55] Macfarlane et al., supra note 49, p- 492.

[56] Philip Alston, International Human Rights Course at New York University School of Law, Fall 2005 (28 Oct. 2005).

[57] Liliana L. Jubilut, supra note 4, p- 323.

[58] Ibid, p- 324.

proposal of some alternatives for the inaction of the SC that are essential to make certain of the responsibility of the SC in the face of its inaction but these alternatives do not solve the legal or legitimacy problems of inaction by the SC when the use of force is needed for humanitarian purposes.[59]

First of all, according to the ICISS, the GA could act under the "Uniting for Peace" precedent and it has to be said that although it can deliberate on the matter it cannot authorize the use of force or enforce its decisions, which in practice means that a humanitarian intervention cannot be undertaken by the GA and thus, inaction would still exist even against the view of the majority of the international community.

Secondly, regarding regional organizations that could act within their jurisdictions subjected to a *post-facto* SC authorization. Here, the proposal is also complicated in terms of legitimacy for "(i) authorisation normally should be asked before the act is realised and (ii) until the authorisation is granted the action remains in a limbo not being legal but having the possibility of acquiring this status".[60] However, although article 53 of the UN Charter states that enforcement action by regional organizations require authorization by the SC, there is no mention of the need of such authorization being a priori, which means that in terms of legality the proposal by the ICISS did not poses a problem in relation to the UN Charter.

Thirdly, regarding the SC although the ICISS maintained that the veto power should only be used in the time of the questions being dealt with vital interests to one of the permanent members but in practice, the definition of vital interest means that action would still be at the mercy of the five permanent members.

In relation to the process in which the intervention should occur, the ICISS proposed that a code of conduct should exist. This is a positive aspect of the new doctrine since it would create accountability mechanisms for the intervening forces and increase the respect for humanitarian international law. Therefore, it will enhance the legitimacy and legality of the actions being taken.[61]

To all the above, it can be said that in the doctrinal aspects, the real changes brought by the responsibility to react in the R2P are debatable that makes the analysis of the practical aspects of the doctrine much more relevant.

3.2 Assessing the Practical Aspects of the 'Responsibility to Protect'

The study of the practical aspect of the R2P in this research will be on the basis of the progress of the R2P in the UN due to the facts that:

1. The report of the ICISS was a response to a plea by the Secretary

[59] Ibid.
[60] Ibid.
[61] Ibid.

General;
2. The UN is the guardian of the use of force in international relations;
3. The UN organs, specially the SC, are the main addressees of the report in terms of its recommendations actions to be taken in the UN; and
4. The questions of legality and legitimacy of humanitarian intervention arise from its relation to the UN Charter.

UN Secretary General hold the new doctrine in his report "In larger freedom – towards development, security and human rights for all" by the heading of "rule of law" in a session charged with the "Freedom from fear" where he proposed an agenda with different "adjustments" in the UN to face the challenges to the international legal system and delivered that: "I believe that we must embrace the responsibility to protect and, when necessary, we must act on it".[62]

Although he also stated that the primary R2P lies with states and only the secondary responsibility goes to the international community international community has only secondary responsibility; the SC as the organ of the UN has right to authorize enforcement action if necessary and adopted the "responsibility to protect as a basis for collective action"[63] as proposed by the ICISS. But, the Secretary General did not directly mention the elements and criteria of the R2P. He has just given the impression that only the broader concept of acting to protect human lives and human rights was being adopted.

Despite this, it can be noticed as the enlargement of the just causes for action since there is direct mention of crimes against humanity in the Secretary General report. However, in the overall view of the context the R2P was narrowed.[64]

Nevertheless, the R2P doctrine was made through the draft of the GA president and adopted by this organ on October 24, 2005 along with the heading of World Summit Outcome (A/RES/ 60/1).

It seemed at paragraphs 72 and 74 of the draft document but was adopted in the final document at paragraphs 138 and 139 where stated that it is an individual responsibility for each state to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It also established that the international community should aid states "to exercise this responsibility and support the United Nations in establishing an early warning capability" besides having "the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chap- ters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity".[65]

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[62] Liliana L. Jubilut, supra note 4, p-326.

[63] Kofi Annan, *In Larger Freedom – Towards Development, Security and Human Rights for All*. Available at http://www.un.org/largerfreedom/. P- 4.

[64] Liliana L. Jubilut, supra note 4, p- 326.

[65] Ibid.

The document also indicated the importance of the Security Council and collective action on the fact on a case-by-case basis manner demanding that peaceful means the force should be used to solve crises and for the protection of human rights. Once again, the R2P is incorporated as more limited than the proposal of the ICISS, in so far as it is stated in even broader terms. From this, "one can see the trend of weakening the doctrine in each step taken until its actual implementation".[66]

In the following years, the UN continued to practice the R2P doctrine mainly through the General Assembly and the Secretary General. In 2007, the Secretary General appointed a Special Advisor on the R2P, who started to act jointly with the Special Adviser on the Prevention of Genocide. In 2008, he delivered a speech in Berlin stating that the R2P has 3 pillars like national responsibility, UN assistance to states and the responsibility of the international community and in 2009, he presented a report on 'Implementing the Responsibility to Protect'. The General Assembly also incorporated a resolution in 2009 in the R2P and decided to continue the debate on the subject, and they do in 2010 through the 'Interactive Dialogue on Early Warning, Assessment and the Responsibility to Protect' and in 2011 through the 'Interactive Dialogue on the Role of Regional and Sub-regional Arrangements in Implementing the Responsibility to Protect'.[67]

In the introduction of its 1674 thematic resolution on the protection of civilians in armed conflicts of 2006, the SC provided that it "reaffirms the provisions of paragraph 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and reaffirmed this idea on resolution 1706. However, such statements and the following practice of the SC show only the broader concept of protecting populations and generalized human rights violations. The 'responsibility to protect' doctrine had been first used in 2011 in the Libyan crisis context.[68]

3.3 Assessing the Ethical Aspects of the 'Responsibility to Protect'

Differentially from the practical and doctrinal aspects of the R2P, it appears that the new doctrine in the ethical aspects has only brought along benefits. Since the international scenario had been reorganized after World War II, ethics concern increased, which valorize positively human beings in international law and relations based on values, an axiological aspect of international law that focused on the protection of human beings.

There are two benefits are mainly seen in the ethical aspects of the R2P. First, it is the idea of the beginning of the establishment of a hierarchy of values for international law and relations, given that the doctrine seems to

[66] Ibid.
[67] Ibid.
[68] Ibid, p- 328.

clearly establish a prevalence of human rights over sovereignty in cases of gross and generalized violence. The doctrine tries to reconcile both set of values, but seems to state that, if there has an option to choose, human rights should prevail. Secondly, this idea established an upright way of assessing the use of force through humanitarian intervention in the international area. It is also relevant to avoid a case-by-cases approach, which could lead to selectivity in light of interests of state and to set forth the political choices been made in a priori way.

Having incorporated a set of criteria as a whole in place of against humanitarian intervention term, the R2P doctrine can be ascertain as a major step forward in an area where consensus is lacking and the fundamental rights of human beings are in danger.

In this point, it appears that although there are still problems with the doctrinal and practical aspects of the R2P, it relighted the debate on the humanitarian interventions proposing an upright way to assessing them based on a clear ethical choice that values confirm the protection of human beings, which has a significant contribution to the R2P doctrine.

Chapter 4

4 The 'Responsibility to Protect' in the Case of Libya

In the context of the struggling for the government change and the revolution in Libya, in February 2011, the SC started to look into the situation through its resolution of 1970. They mainly observed the violence and use of force to the civilians and particularly the gross and the systemic violence of human rights that fulfill the threshold criteria of the R2P as seen above.

In fact, the SC used the expression "responsibility to protect" in this resolution for the first time. It comes not on the normative part of the resolution, but rather in its preamble and refers only to the national responsibility of governments in this case that is called the "Libyan's authorities' responsibility to protect", which although primary are not the sole components of the R2P.[69]

Even though there has limitation for the use of the doctrine in this resolution but it is relevant for two reasons. First, it is ground breaking since it uses the expression "responsibility to protect" in a specific case, given that paragraphs mentioning the international community's 'responsibility to protect' have been deleted, placed on the preamble or completely absent from previous SC resolutions, even with over a dozen situations or crisis that were recognized as reaching the threshold of the R2P hypotheses. In this sense, "the Libya

[69] UN. Security Council. S/RES/1970 (2011), Preamble, paragraph 9.

case can be seen as innovative".[70]

Secondly, it sets forward the frameworks for the actions to be taken both in relation to the responsibility to react and to rebuild components of the R2P. Regarding to the former several crisis, the SC adopted different actions to react to the crisis like the imposition of an arms embargo, travel ban, asset freeze, and a sanctions committee, besides the solicitation of all Member States to facilitate and support humanitarian assistance. In relation to the latter, the SC resolution states, "the assets frozen will be at a later stage made available to and for the benefit of the people of the Libyan Arab Jamahiriya".[71]

The SC incorporated another new resolution 1973 on March 2011 since the crisis in Libya continued and restated that the "responsibility to protect" to the Libyan authorities declaring "crimes against humanities might have being committed" [72] but still it did not mention the R2P to the international community.

A ceasefire was demanded by this resolution and it was necessary to find a solution to the crisis. Due to this, it established a no-fly zone and a ban on flights, reinforced the arms embargo and the asset freeze, established a panel of experts, and allowed for Member States to "take all necessary measures . . . to protect civilians civilian populated areas under threat of attack . . . while excluding a foreign occupation force of any form on any part of Libyan territory".[73]

To solve the humanitarian crisis peacefully, at first, the SC moved into position for the non-military sanctions against Libya and it was said that the military action would be authorized only when such measures are considered as futile. This appears to be "in keeping with the idea of creating a spectrum of action in the establishment of criteria for actions under the R2P".[74]

The SC resolution also indicates the heavy civilian causalities as a ground for the military action that falls under the idea of large scale loss of life and of outright killing, which is "a just cause threshold in the R2P doctrine as proposed by the ICISS puts this action in keeping with this novel doctrine".[75] In both resolutions, it was seen that the SC mentions "responsibility to protect" and made reference "to regional organizations and their position and actions on the crisis", as a way to legitimize its actions.[76]

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[70] Liliana L. Jubilut, supra note 4, p- 329. Information on the webpage of the International Coalition for the Responsibility to Protect at http://www.responsibilitytoprotect.org/ index.php/crises.

[71] UN. Security Council (S/RES/ 1970). Paragraphs 18.

[72] Ibid, preamble, paragraph 7.

[73] Ibid, paragraph 4.

[74] Liliana L. Jubilut, supra note 4, p- 330.

[75] Ibid.

[76] Ibid.

In the consequence of the crisis, the SC adopted five resolutions in Libya, starts from September 2011, that's are resolutions 2009, 2016, 2017, 2022, 2040. Though these do not mention expressly R2P but mention national responsibility and can be seen in the context of the responsibility to rebuild, especially due to the references to post conflict peace building, a transitional government, sustainable peace, national reconciliation and justice, a Libyan-led transition and rebuilding process and the establishment of the United Nations Support Mission in Libya (UNSMIL).[77]

All of this shows the evolvement of the R2P doctrine in the context of Libya and in the actions of the SC. Therefore, it is important to look if the case of Libya can be seen as a precedent for future actions of the SC in this area, and for an ample acceptance and enforcement of the R2P doctrine.

4.1 The Libyan Case as a Precedent for the 'Responsibility to Protect '

Although there is a problem in the application of the R2P by the SC in the time of the returning to selectivity for the case by case approach, which is incorporated in the World Summit Outcome Document for the R2P, but it does not help the issues of legality and legitimacy of humanitarian interventions. The point of selectivity can only be seen in a comparison of the crisis in Libya and in Syria.

In the both situations, there have internal revolutions against the government, which lead to the dreadful loss of lives and the breach of human rights of the civilian population. However, in each case the international community has different response.

In the case of the Libyan crisis, the SC permitted various sanctions and for the protection of the civilian population from the systemic and gross violation of human rights authorized the use of force by its Members. It also referred this case to the International Criminal Court and "called upon the responsibility to protect in its resolutions".[78]

The SC, however, did not embrace the R2P doctrine as a whole as a principled way for the assessment of humanitarian interventions. Due to this reason, the practical enforcement of this doctrine is limited and mainly leads to selectivity. For example, the case of Syrian crisis raises few shortcomings as the existence of the use of the R2P in the case of Libya as a precedent.

The SC has not acted under the R2P doctrine in the case of Syria, although there has been large-scale loss of life, as estimated of 9000 deaths on February 2012, government's chemical weapon possession, the

[77] Established by UN. Security Council. S/RES/2009, paragraph 12, and reinforced by UN. Security Council. S/RES/2022, preamble / Liliana L. Jubilut, supra note 4, p-330.

[78] Liliana L. Jubilut, supra note 4, p-330.

characterization of war crimes, crimes against humanity, massive forced displacement and the determination that the situation in Syria leads to an armed conflict.[79]

Considering three failed resolutions, the SC has only established a Special Envoy and asked to end the widespread violation of human rights in its own words. Therefore, it is stated that there has not hard sanctions, which are imposed by the international community "as a whole in Syria even as a bargaining or a protective tool, as was the case of Libya".[80]

All of these views present that the SC is abstaining to adopt the R2P doctrine in a holistic way. Such issue could be "minimized if as the end result we had SC allowing for the use of force for humanitarian purposes even if it is not adopting the doctrine".[81] However, it does not appear to be the same case as the crisis in Libya because it was seen under case-by-case approach, which leads to selectivity and does not "allow for the adoption of a principled way for assessing humanitarian intervention". [82]

In practice, this approach faces problems. For example, the political interest and the veto power of states, which have effect on humanitarian decision over the crisis. Generally, in terms of the vital interest of the states, the R2P allows the veto to be used from the permanent members of SC which opens a large room for interpretation and for taking decision in the base of humanitarian needs but in practice, it highly depends on the states' political will.

In relation to these circumstances, it is seen that though the doctrine of the R2P with its criteria is too wide in concept but too narrow in the application especially when it is applied to real cases to solve the questions of legitimacy and legality of humanitarian interventions.

Therefore, practically there are no actual difference between current rules, "formally established or derived from the practice of the SC on intervention" for the protection of humanitarian crisis and the new doctrine. This situation could be explained by "the *status quo* would be maintained, with no set of criteria being used to asses all humanitarian crisis but rather the prevalence of a case-by-cases approach; which could be seen as defeating the R2P as it will signify that it has not brought a real change in the doctrine of humanitarian intervention in the core issue of selectivity".[83]

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[79] Available at http://www.aljazeera.com/news/middleeast/2012/02/201222313395961747 9.html /

[80] Liliana L. Jubilut, supra note, p- 332.

[81] Ibid.

[82] Ibid.

[83] Ibid.

4.2 IHL and the use of armed force to protect civilians:

In the time of demonstrations at Benghazi, Libya Gaddafi on 17 March 2011 straightforward stated "his forces would show no mercy and no pity for the insurgents".[84] In relation to this fact, the UNSC attempted to ensure the physical protection for the civilians. Though such attempts in the past would have been committed with impunity amid general helplessness particularly while the consensus that led to coalition military operations had been obtained on the basis of quite a fragile agreement, it had nonetheless been developed within the framework of the UN and with consultation with the regional bodies most concerned. But the action in Libya many considered to be perfectly legal from the viewpoint of international law, at least in terms of the decision making process that had been followed.[85]

Regarding the use of armed force in the view of international humanitarian law (IHL), it mainly regulates how war is engaged. Having a humanitarian mission, this department of law "aims to limit the suffering caused by war, regardless of considerations relating to its justifications or motives, or to prevent war".[86] The legal basis of the use of force is solely the prerogative of the UN Charter since the measures of implementing it and the collective security mechanism have been described there. Governments have the first responsibility to protect civilian. If states fail to do so, it transferred to the international community. And if this responsibility is made effective through the use of armed force, such use of force must obviously comply with the relevant rules of IHL.[87]

Chapter 5

5 Analysis

5.1 Legal Issues

The state responsibility is considered, as first pillar of the R2P, which is strongly based on current international law. It is the obligations for the treaty and customary international law to prevent genocide, war crimes, and crimes

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[84] 'Frappes aériennes ou pas, Kadhafi menace Benghazi', L'Express, 17 March 2011, available at: http:// www.lexpress.fr/actualite/monde/frappes-aeriennes-ou-pas-kadhafi-menace-benghazi_973573.html?xtor=x.

[85] Bruno Pommier, the use of force to protect civilians and humanitarian action: the case of Libya and beyond.

[86] ICRC, 'IHL and other legal regimes: jus ad bellum and jus in bello', 29 October 2010, available at: http://www.icrc.org/eng/war-and-law/ihl-other-legal-regmies/jus-in-bello-jus-ad-bellum/overview-jus- ad-bellum-jus-in-bello.htm.

[87] Bruno Pommier, the use of force to protect civilians and humanitarian action: the case of Libya and beyond. P- 1071.

against humanity by the states. These obligations are most clearly defined in relation to genocide and war crimes, which are mainly on treaty basis.[88] Though crimes against humanity largely still not codified but there is now substantially developing case law from the several international courts and tribunals who are growing their nature and contents.

The legal view of genocide, war crimes, and crimes against humanity in the point of the Rome Statute 2002 of the International Criminal Court (ICC) is that the obligations on states to punish culprits effectively of these international crimes. In relation to this, the ICC and other regional tribunals provide their view interpreting the principles of the R2P By ending their immunity.[89]

Usually, in accordance with the international law, when such crimes are occurred by a state, it goes to the international community to prevent that since these are considered as peremptory norms. Though, regarding the responsibility of the international community to co-operate to stop that crimes, the International Law Commission (ICL) mentioned straight forward at article 41 but in draft articles, it acknowledges as "open to question", which impose voluntary duty. Therefore, in some circumstances, it is seen that the international community are not willing to act, even if there such crimes occur like in the Myanmar.

5.2 Conceptual and Political Challenges

Within the member states, the practice of the R2P by its nature and tools is still disputed among the civil society. Their dispute is mainly on the distinction of practice of the R2P and the humanitarian intervention regarding human security.

The humanitarian intervention concept was largely discussed in the 1980s to the 1990s. To help the state for the human rights protection, the international support is the key pillar of this concept, which is also essential for the doctrine of R2P. The R2P foresees "a much wider spectrum of tools or instruments, including for prevention, protection, capacity building, and rebuilding, that do not entail coercive action".[90]

Regarding the R2P, it places comparatively slight weight on the military or forcible responses unlike humanitarian intervention. For example, in paragraph 139, Outcome Document underscores of the Chapter VII, in the case of serious obvious, the enforcement measures could be commenced peacefully by the authorization of SC. Further, to illustrate the view, the UN

[88] The Convention on the Prevention and Punishment of the Crime of Genocide, January 12, 1951, 78 UNTS 277

[89] Edwards C. Luck "The United Nations and the Responsibility to Protect" August 2008.

[90] Ibid.

applied this doctrine to prevent small scale of violence during post election violence time in Kenya in 2008 but it was not continued in the time of large scale violence in Darfur.[91]

The transformation of the R2P doctrine from promise to practice faces another conceptual and operational obstacle to prove that it brings similar value to the myriad UN programs on similar themes because the UN System has well-established programs to enhance human rights and humanitarian norms like for early warning and conflict prevention, for the protection of civilians in armed conflict including from sexual violence, for peacekeeping and peace building and for strengthening the rule of law etc.[92] Though it can be expected that there has been official resistance to adding the new R2P doctrine to existing entities and efforts but on behalf of the R2P, it can be argued that the standing capacities are frequently weak and underdeveloped, and it has not direct link with secretary general, general assembly, security council and other principal organs of the UN.

Therefore, to add the R2P criteria and perspectives to the current work of accessible entities would increase their ability to deal with and for the prevention of such distinct set of crimes and violations.

5.3 Institutional issues:

The implementation of the R2P doctrine's key goals like prevention and protection has four leading programmatic dimensions:

1. Capacity- building and rebuilding;
2. Early warning and assessment;
3. Timely and decisive response;
4. Collaboration with regional and sub regional arrangements.[93]

5.3.1 Capacity Building and Rebuilding

For the purpose of R2P, capacity building means to increase the potentiality of individuals, institutions and societies for the prevention of crimes and violations or to respond with care when these types atrocities occur and to rebuild afterwards. These wide range capacity-building effort proceeding by the UN System through out an R2P lens, which may cooperate to find probable interactions among existing projects, departments, programs, and agencies. Current efforts to animate interagency cooperation on the key cross-sectoral issues, such as conflict prevention, rule of law assistance, security sector reform, human rights promotion, and gender equality, could serve the R2P goals.[94]

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[91] Ibid.

[92] Ibid.

[93] Ibid.

[94] Ibid.

It is also important to look at the humanitarian cluster approach, which is incorporated by the Inter Agency Standing Committee (IASC) that brings together with relevant UN agencies, NGOs and other international organizations and involved in the provision of humanitarian assistance and expertise. Similarly, the link between R2P and the development assistance approaches of donor countries, regional mechanisms, and the UN System may achieve easily the goals of the R2P.[95]

5.3.2 Early Warning and Assessment

The proposals of the SG regarding the founding of a joint office for the R2P and the prevention of genocide were developed in his report on early warning, assessment and the responsibility to protect in 2010. Here, he realized the necessity of early warning to facilitate the provision for assistance to the states 'before conflicts break out', to ascertain, which states are 'under stress' and to guide timely and decisive collective action, when necessary through the Chapters VI, VII and VIII of the UN Charter. The SG also developed his thinking on the establishment of a convening authority to bring together UN departments to discuss and evaluate policy options and provide advice to the SG in crisis situations.

Since at that time, the Office for Genocide Prevention and the R2P has settled down and developed an analysis stricture for early warning and assessment, it was the duty of the special advisor to monitor emerging situations and issue statements of concern about the circumstances containing the risk of crimes, which has relation with the R2P to remainder the national authorities for their own protection. However, in relation to the Libyan crisis, it is claimed, in the base of post intervention conflicts, that the military action comparatively breaches the human rights than protection. It shows that the above departments have failed to find out indicators of the crisis and early warning of the future danger.

5.3.3 Timely and Decisive Response:

The R2P doctrine does not allow the member state's legal obligations to use of force until it complies with the Charter. According to the Chapters VI, VII and VIII, decisions regarding the action can only be taken when it is confirmed that such action will enhance the protection of the population rather that any other options.

For the operation of the R2P, it distinctly requires a fundamental capability on the part of the United Nations to response timely, whether of a civilian, military, or mixed nature. Though the Secretary General can take the lead of the matters of Chapter VI but its organizational reply depends on the capability of the Security Council or other intergovernmental organs to agree

[95] Edwards C. Luck, supra note 87.p- 7.

for the action in timely manner. Even if the member states acquire the mandate right, finding the material, human, financial support and military resources to implement in extreme cases it is rarely assured. And it is too common that mandates are tailored either politically or materially in practice on the ground.[96] From the view of R2P, the lack of mandates, which fall between traditional peacekeeping missions and armed engagement with a specific adversary, poses a particular challenge.[97]

5.3.4 Collaboration with Regional and Sub regional Arrangements:

Since neighbors can play a vital performance to prevent the R2P crimes and violations in the societies, the R2P emphasizes the valuable role to be played by the United Nations' partners, especially regional and sub regional arrangements in helping states to meet their prevention and protection obligations on human rights. It can also reinforce the efforts of UN in the improvements of its modes of collaborating with regional and sub regional mechanisms and its commitment to building their capacities to anticipate, assess and respond to the human rights issues.[98]

The challenge of the UN in improving communication with the regional and sub regional actors for prevention and protection efforts, providing adequate support for regional efforts and improving capacity at UN head quarters is to analyze the regional implications of a given situation and to generate appropriate strategies.[99] In relation to this, the establishment of the UN Office for West Africa in Dakar and the new UN Regional Centre for Preventive Diplomacy for Central Asia may help. Still the promise on global regional collaboration is far in practice than developed on paper. So, capacity building is required in the global and regional levels.[100]

5.4 R2P and Regime Change

To stop the attacks of Gaddafi's forces on civilians, airstrikes in Benghazi, Misrata and elsewhere were clearly justifiable under 'all necessary measures' in Resolution 1973. However, as the civil war became a war of detrition between Gaddafi's forces and the rebel army, other forms of military

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[96] Ibid.

[97] Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations*, Henry L. Stimson Center, Washington, DC, September 2006.

[98] Ibid.

[99] Stellenbosch Policy Roundtable report, op. cit.

[100] Edwards C. Luck, supra note 87. P- 8.

intervention became less in keeping with the spirit of the UN mandate. For instance, in spite of an arms embargo under Resolution 1970, some countries supplied substantial quantities of weapons to the rebels. France admitted to provide assault rifles, rocket launchers and anti-tank missiles affirming that such actions were both morally justifiable and within the legal parameters of Resolution 1973.[101]

From the key members of NATO, other forms of support included providing battleground leadership advice during the final rebel offensive on Tripoli and Sirte. In the time of August 2011, the New York Times reported "Britain, France and other nations deployed special forces on the ground inside Libya to help train and arm the rebels." Qatar went much further that it had hundreds of troops in every region who were fighting against Gaddafi's forces, which was confirmed by a senior figure of the NTC.[102] Though a foreign occupation force on any part of Libyan territory in any form is not a direct violation of Resolution 1973 but it was not in keeping with the spirit of the civilian protection mandate, which was represented in Resolution 1973. In relation to these, the ambassador of India, Hardeep Singh Puri stated to the UN that the role of NATO in Libya had casually shifted from protecting civilians in Benghazi to overthrowing the government in Tripoli[103] since there was a growing view at the UN in New York that NATO was no longer acting as a defensive shield for populations at risk, but as the NTC's air force.

Those who had advocated in favor of Resolutions 1970 and 1973, faced criticisms that R2P had been co-opted by the 'regime change' agenda of a few Western powers. The counter argument was that while Qaddafi's forces had been engaged, they still constituted a grave threat to civilians.[104] Therefore, the regime had been changed due to protect the civilians and defend the human rights. Regarding this, 'NATO Watch' also argued that "The threat to Benghazi was the principal basis on which UN and Arab League support was obtained for a no-fly zone. That threat was averted within days and no further resolution was gained for NATO to support a rebel advance on Tripoli. Once [Qaddafi's] heavy weapons had been stopped the Libyan people could have been left to struggle it out themselves."[105]

Critiques raised their views on the intervention, which was authorized by UN and regarding the arms, which were being supplied to the NTC (National

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[101] Louis Charbonneau and Hamuda Hassan, "France defends arms airlift to Libyan rebels," *Reuters*, 30 June 2011, available at: http://in.reuters.com/article/2011/06/30/idINIndia-58000920110630.

[102] Eric Schmitt and Steven Lee Myers, "Surveillance and Coordination With NATO Aided Rebels," *New York Times*, 21 August 2011, available at: http://www.nytimes.com/2011/08/22/world/africa/22nato.html.

[103] Ambassador Hardeep Singh Puri quoted in Barbara Plett, "UN Security Council middle powers' Arab Spring dilemma," *BBC News*, 7 November 2011, available at: http://www.bbc.co.uk/news/world-middle-east-15628006.

[104] Davis, "How good is NATO after Libya."

[105] Ibid.

Transitional Council) rebels despite the UN authorized embargo.

At the starting point of the intervention in Libya, Barack Obama, president of the United States announced that "when it comes to our military action, we are doing so in support of United Nations Security Council Resolution 1973 that specifically talks about humanitarian efforts, and we are going to make sure that we stick to that mandate."[106] But jointly three leaders Obama, President Nicolas Sarkozy of France and Prime Minister David Cameron of the United Kingdom argued that It is our duty and mandate under UN Security Council Resolution 1973 is to protect civilians and we are doing in that way rather that to remove Qaddafi by force. But it is impossible to imagine a future for Libya with Qaddafi in power because it is unthinkable that someone who has tried to massacre his own people can play a part in their future government. [107]

In addition, before Resolution 1973, France recognized the NTC as the legitimate representative of the Libyan people. This expression was for the civilian protection shows the intention of France to the end of Gaddafi's regime. In the time of the NATO bombing, Defense Minister Liam Fox of United Kingdom also stated "Mission accomplished would mean the Libyan people free to control their own destiny. This is very clear – the international community wants [Gaddafi's] regime to end and wants the Libyan people to control for themselves their own country". [108]

Though there is no doubt that the interpretation of Resolution 1973 regarding 'all necessary measures' to its limit had been stretched in the Libyan intervention but the questions regarding the protection of civilians and the defending of human rights cannot be neglected in political and military realities. Regards to the protection mandate, James Traub to Darfur's perspective said that "Once the international community threatens to use coercive action against a state committing atrocities, indigenous forces opposing the state will see outside actors as their allies and act accordingly. The discovery that the international community is on their side enhances their sense of righteousness... They will have little, if any, incentive for diplomacy and compromise... Diplomats must make it clear that they are intervening on

[106] Jesse Lee, "President Obama Answers Questions on Libya: 'A Testament to the Men and Women in Uniform,'" The While House Blog, 21 March 2011, available at: http://www.whitehouse.gov/blog/2011/03/21/president- obama-answers-questions-libya-testament-men-and-women-uniform.

[107] Joint op-ed by President Obama, Prime Minister Cameron and President Sarkozy: 'Libya's Pathway to Peace', White House Press Release, 14 April 2011, available at: http://www.whitehouse.gov/the-press-office/2011/04/14/joint- op-ed-president-obama-prime-minister-cameron-and-president-sarkozy.

[108] Patrick Wintour and Ewen MacAskill, "Gaddafi may become target of air strikes, Liam Fox admits," The Guardian, 20 March 2011, available at: http://www.guardian.co.uk/world/2011/mar/20/ coalition-criticism-arab-league-libya.

behalf of a people, not an insurgency".[109]

NATO's long campaign raised hopes among those who were under threat but when simultaneously raising suspicion that the Libyan intervention was about more than civilian protection, it requires revisiting the issue of establishing possible guidelines for the use of military force in R2P situations.

According to different high level reports, books and speeches, Gareth Evans, former Australian foreign minister and co-chair of the international commission, which developed the R2P, five criteria could be used in the time of authorization of the use of military force are seriousness of harm, proper purpose, last resort, proportional means and balance of consequences.[110]

Though the Libya intervention initially fulfilled all five criteria. However, there was an argument on the "proportional means" that it became less credible. To justify this, we have to look at two issues. First, violence against civilians would have resulted if the regime of Gaddafi were not ended. Secondly, has the military force successfully protected civilians and defended human rights from all kinds of violations. In relation to this, British Former statesman Paddy Ashdown commented that we should measure our success by "the horrors we prevent, rather than the elegance of the outcome". [111] In this context, permanently disabling the capacity of the Qaddafi regime can be seen as essential to discharging the mandate of civilian protection to defend the human rights.

5.5 Old Wine in New Bottles

Scholars try to separate the R2P doctrine from the humanitarian intervention but the value of this doctrine comes from the provisions for intrusive military action. During the prior time of the GA debate in 2009, Gareth Evans, one of the founders of this doctrine, went at great lengths to establish a conceptual distinction between R2P and humanitarian intervention. Later on, he stated that referred solely to coercive military action and allowed for no other policy options was not sensitive to the demands of the Charter. However, referring to the Pillars I and II of R2P, he argued regarding the military intervention was a nuanced and multidimensional tool under the R2P. In relation to this, France mentioned that he largely missed the point since the actual meaning of the

[109] James Traub, Unwilling and Unable: The Failed Response to the Atrocities in Darfur, GCR2P Occasional Paper, 2010, 26.

[110] Gareth Evans, The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All, (Brookings Institution Press, Washington DC, 2008), 139-147.

[111] Paddy Ashdown, "Ray-Bans and pick-ups: this is the future; Iraq-style intervention is over. The messy Libyan version will be our model from now on," The Times, 26 August 2011, www.thetimes.co.uk/tto/opinion/ columnists/article3145750.ece.

R2P comes from Pillar III.[112]

It is true that the R2P and the humanitarian intervention were substantively different doctrines but still it remains unclear about how the application of R2P would avoid the pitfalls of Council action. An assessment of the practice of the Security Council in humanitarian interventions has shown that "it is hard to reconcile it with any principled interpretation of the Council's mandate".[113] In effect, the novelty in R2P lies in reframing the discourse from the controversial right for intervention to a responsibility. While humanitarian intervention brings controversy by constraining national sovereignty, the R2P is arguably different by creating a joint responsibility, which is shared by States and the international community.[114]

The R2P is considered as an evolution of a traditional notion of security to confirm the individual human rights but, in the time of developing of the doctrine, it is seen that it is far from the notion by the way of state practice and custom. Given the absence of state practice des not valid arguments that the R2P has become an accepted norm since the foundational documents of the doctrine fail to meet the criteria for sources of international law, which are listed under Article 38 of the ICJ Statute that mentions "international custom, as evidence of a general practice accepted as law" and "general principles of law".

In this context, it might be worthy to explore the view of the legislation. The political scientists and the scholars of international law commonly found three different categories like obligation, precision and delegation, which enclose the legalization process. While individual of these categories "is a matter of degree and gradation," they make a valuable structure for the assessment of the variability of legalization.[115] The R2P cannot prove itself, as a satisfactory degree of precision (as stated above). It does not entail strict obligation since this doctrine is discharged on case-by-case basis. It also has not "crystal clear with respect to the authority delegated to carry it out". In addition to the case-by-case approach, it has "no reasonable rule can be fashioned to govern all circumstances that can foreseeably arise".[116]

In relation to intervention, Evans raised to the SC to be the gatekeeper with respect to the R2P in the issue of sanctions or coercive response. He also added, "With all of its imperfections, the Council has a better alternative than freelance intervention".[117] But this begs the question of whether humanitarian responses are not going to be more difficult.

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[112] UN Press Release, GA/10848 of 23 July, available at http://www.un.org/News/Press/docs/2009/ga10848.doc.htm.

[113] Simon Chesterman, Just War or Just Peace? Humanitarian Intervention and International Law, p- 160.

[114] Ibid.

[115] Duncan Snidal, "The Concept of Legalization" in *Legalization and World Politics*.

[116] Michael Glennon, *Limits of Law Prerogatives of Power: Intervention after Kosovo*. Palgrave, 2001, p- 7.

[117] Press conference on General Assembly dialogue on R2P.

The question mainly comes forward in the circumstances where the international community commits intervention to show their power. Due to this reason, in some cases in the balance of probabilities, it is seen that intervention occurs more breach than protection of human rights. Regarding this, the ICISS argues that their perspective is not based on power or Realpolitik but on morality and stresses that R2P implies a duty on the state to act as a moral agent.[118]

After all, on one side, the Council had already examined in past resolutions that serious and systematic, widespread and flagrant breaches of humanitarian law, humanitarian crises and acts of genocide or coup disruptions can constitute a threat to international peace and security, which had hardly produced any tangible outcomes.

On the other side, the R2P doctrine, in its World Summit Outcome form, the question that inevitably begs is what value is added by this new concept and while it could correct the gap between formal illegality and moral necessity. Therefore, it can be said that as a doctrine, the R2P was intended to provide an adequate foundation for humanitarian intervention but in practice, its legal formulation has imposed an additional obstacle for such interventions.

Chapter 6

6 R2P in Libya: An Assessment

6.1 Short term

According to Ian Daalder and James Stavridis, the intervention in Libya was the outcome of a swift international reaction to the deteriorating humanitarian situation in Libya. Due to the authorization of UN Security Council and a broad coalition of countries, the intervention was considered both legal and legitimate.

In July 2012, Libya produced its first democratic election after the end of Gaddafi government. It was supported by the UN Support Mission in Libya (UNSMIL) and seen as the turning point for the country. The election also illustrated a desire among Libyans to open Libya to the world and "to throw off the vestiges of both the religious opportunism and the isolationism of the Gaddafi era"[119]

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[118] International Commission on Intervention and State Sovereignty, The Responsibility to Protect: Research, Bibliography, Background, Ottawa: International Development Research Centre, 2001, p- 136.

[119] Lawrence, William. "Against the Odds: The Black Swans of Libya's Arab Spring."

The intervention has been challenged because though it was borne from a intention to protect Libyan civilians and defend human rights, the primary objective of NATO quickly evolved into the overthrow of Gaddafi's regime that went beyond the mandate of the UN SC Resolution 1973 to protect civilians (Details above).

If the civilians' protection was the priority of NATO, it would have been enough to enact a no-fly zone, bomb security forces that posed direct threat to civilians and attempt to negotiate a ceasefire. However, NATO continued taking actions, which went beyond this goal, including targeting Libyan forces that were retreating and aiding rebels who rejected Gaddafi's offers for a ceasefire.[120]

Alan Kuperman predicts that without the intervention of NATO, the conflict in Libya would have lasted six weeks and led to a death toll of about 1,100. However, with the intervention of NATO, the conflict lasted 36 weeks with a death toll ranging between 8,000 and 11,500. If these predictions are correct, the NATO intervention increased the death toll in Libya by between seven and 10 times.[121]

Though, it is claimed that Kuperman's prediction claims was partially based on a hypothetical counterfactual but others report have confirmed that the action of NATO evolved into regime change, which violates the requirement of right intention under the R2P. Even if we accept that regime change could be justifiable under the objective of protecting civilians. Western powers and NATO violated the terms of the SC resolutions by refusing to acknowledge Gaddafi's acceptance of a ceasefire offer and supporting the NTC's rejection of the ceasefire.[122] Therefore, along with the right intention, it can also be said that it did not fulfil the requirement of armed intervention as a last resort.

6.2 Long term

After the intervention under the R2P, there have been few positive developments since from end of the war in October 2011, Libya has been released from economic instability, widespread violence and insecurity and threats to political transition processes. Though it is considered that the military intervention succeeded in the goal of protecting civilians of Libya but the lawlessness and instability of post war in Libya has placed civilians at the mercy of extremist and terrorist groups, while the international community largely ignores the escalating violence. [123]

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[120] Ibid.

[121] Wehrey, Frederic and Wolfram Lacher. "Libya's Legitimacy Crisis: The Danger of Picking Sides in the Post-Qaddafi Chaos." Foreign Affairs. Oct. 6, 2014.

[122] "Libya Dawn militia rejects UN talks." Al Jazeera. Sept. 30, 2014; Wehrey, Frederic and Wolfram Lacher. "Libya's Legitimacy Crisis."

[123] Need to put.

In the post Gaddafi Libya, one of the biggest failings of the government was to its inability to revive the economy. Hydrocarbon revenues comprise over half of Libya's GDP and nearly all of its exports, and Libya has the largest oil reserves in Africa with 46.4 billion barrels.[124] However, since 2011 the eastern half of Libya has sought autonomy, and federalists have continually stopped oil production. As a result, oil production has dropped by 30% from its peak in 2012 at 1.6 million barrels, which was limiting the ability of the government to pay civil servants and develop institutions.[125]

The increasing power and autonomy of Libya's roughly 300 militias has led to a worsening security crisis. Although Libya had its first democratic election in July 2012 but there have been scores of reprisal killings, torture, beatings and arbitrary detentions of suspected Gaddafi supporters. The government has been unable to halt widespread violence or establish control over militias.

In relation to the situation, Shadi Hamid questioned parallel between the trouble of Libya and a failure of R2P that “Libya is in a very difficult situation right now… but we have to ask ourselves, is that tied to the original decision to intervene or to the failure to support the reconstruction of the Libyan state after Gaddafi fell?”[126]However, Gareth Evans pointed that "To ‘protect’ implies more than to ‘intervene.’ It embraces not just a responsibility to react, but to prevent and rebuild as well. Both of these dimensions have been much neglected in the traditional humanitarian intervention debate, and bringing them back to center stage, to rank in priority alongside reaction, makes reaction itself… more palatable”[127]

Therefore, though on the grounds of political interests and costs, the intervention can be justified but it is true that the international community has failed to provide sufficient financial, military, institutional and political support for the post war situation in Libya, which undermines the responsibility to rebuild.

Chapter 7

7 Key challenges and recommendations

The R2P is considered as the key way by which the international community discerns and responds to the crises, which relates to genocide, war crimes, ethnic cleansing and crimes against humanity. The requirement of the responds is not just only looking at when the R2P is directly implored but also

[124] Libya “United Nations Department of Political Affairs”.
[125] Toaldo, Mattia. “A European Agenda to Support Libya’s Transition.” European Council on Foreign Relations. May 2014. 2.
[126] Wehrey, Frederic and Wolfram Lacher. “Libya's Legitimacy Crisis.”
[127] Ibid.

it needs to be the core priority for the international community to protect population from enormity crimes.[128]

Previously the military action under the humanitarian intervention term had been criticized in the fact that it conflicts with the doctrine of state sovereignty and in some circumstances like in Afganistan, it was claimed that the military action breaches the human rights rather than protection. Recently the action under the R2P in Libya crisis, it is also claimed that it did not fulfill the UN mandate to protect the population upon the responsibility to rebuild. So, it is high time to find out the key challenges and to solve that to move forward.

In relation to the R2P, there is no single outline for the action that applies equally in every situation. Usually this doctrine has been implemented on a case-by-case basis. Since the principle has come into regular diplomatic use, it has inevitably inspired controversies and debates principally because Member States have sometimes disagreed on the most appropriate ways of protecting vulnerable populations. Today the principal challenge is to find out the most appropriate policies to fill up the goals of the R2P and to build the international consensus around them.[129] This section identifies five key challenges and pathways for the R2P to move forward.

7.1 Increasing the engagement of Member States and Regional/Sub regional Arrangements

The most important challenge is to increase the engagement of member states and regional and sub-regional arrangements with the implementation of the R2P doctrine.

After establishment of a global consensus on the value, meaning and scope of the doctrine, the challenge now is to move member states' consideration of the R2P from the rhetorical to the practical. In the past few years, there are some concerns have been expressed regarding the engagement of the international community with the R2P. On the one hand, this relates to current conceptual, political and institutional engagement. Particularly the concern about the General Assembly's engagement mode that is incapable of fostering detailed consideration of specific implementation matters or of contributing to the establishment of a concrete action plan for implementation. On the other hand, according to the Petrie Report in 2012, the actions of UN in Sri Lanka found serious problems with the way in which the UN engaged with member states in relation to a serious protection crisis where the organization failed to provide the information about the threat to the civilian

[128] Alex J. Bellamy, *Massacres and Morality: Mass Atrocities in an Age of Civilian Immunity* (Oxford: Oxford University Press, 2012).

[129] Professor Alex J. Bellamy, 'the responsibility to protect: Towards a living reality'. P- 25.

population to the member states.[130]

To increase the engagement on the conceptual, political and institutional aspects of the R2P, the below pathways may be followed:

- The appointment of a new special adviser on the R2P within the Office on Genocide Prevention and R2P. The key tasks of this advisor would be to develop the on going engagement with Member States on required aspects.
- The development of the Secretary General's strategy aspects for implementation. For example, the potential element could be that the SG will provide a report on a specific implementation matter.
- To increase the engagement with regional and sub-regional arrangements through training, capacity building and information sharing.
- To continue the progress on the national Focal Points initiative and annual ministerial meeting and explore the ways of deepening these processes.
- Increasing the engagement with civil society.[131]

7.2 Mainstreaming R2P into the work of the UN

UN Secretary General Ban Ki- moon in his report on implementing the responsibility to protect stated for the R2P doctrine to be 'mainstreamed' throughout the UN system.

By 'mainstreaming', the SG meant the goals of the R2P that it should be incorporated as one of the priorities of the 'United Nations and its range of agencies, funds and programmes' and this should be done in the fields of human rights, humanitarian affairs, peace building, peacekeeping and political affairs. Therefore, aim of mainstreaming is not to create new programs or bureaucracies but it is important to ensue that the existing work of the UN provides effective values to achieve the goals of R2P.[132]

Mainstreaming may add value to the existing work of UN and strengthen the capacity of the organization in relation to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity to protect vulnerable populations by the below ways:

- Sharp analysis and better use of information, which already collected by the UN system. Here, the risks and coming danger of the military intervention would be identified at an earlier stage.
- Improved decision-making. Here, it would be ensure that as much relevant information as possible is passed from the field to the UN Headquarters in a timely fashion.

[130] Professor Alex J. Bellamy, 'the responsibility to protect: Towards a living reality'.
[131] Ibid.
[132] Ibid.

- More effective policy. Here, researching the collected relevant information on the base of institutional knowledge, it would secure the perfect policy for the situations.
- Build on existing strengths. Here, mainstreaming will help identify where the UN has particular strengths in relation to mass atrocity prevention and where there are gaps.[133]

7.3 Making prevention a living reality

There are many concerns regarding on the prevention of genocide and mass atrocities. In relation to this, a UN strategy for prevention might serve as a model to be used. However, operationalizing strategies for prevention are difficult, especially within the UN context. Therefore a strategy for prevention is urgently needed, which will be carefully thought through and implemented only after extensive consultation. Regarding this challenge, below pathways can be followed:

- A clear understanding of the factors that can increase the risk of genocide, war crimes, ethnic cleansing and crimes against humanity.
- A proper assessment of the work, which contributes to the mitigation of these risks.
- The strengthening and regularizing of assistance to Member States, in partnership with regional and sub-regional arrangements.[134]

7.4 Learning lessons from enforcement

Since there is no single outline for the implementation of the R2P in different situations because every case has different scenario and what works in one situation that may be different in another, there is a need to learn from the past experience. Particularly, the NATO led intervention in Libya appeals to take lessons for the future practice. In the time of learning lessons from the use of force, the below things could be scrutinized:

- Strengthen prevention. This is in keeping with the R2P, which includes a specific commitment to prevent the crimes of mass atrocity by the enforcement.
- Accountability. It was very clear objection to the NATO led intervention in Libya that by refusing to negotiate with the Gaddafi regime and by pursuing regime change, it exceeded its mandate. So, here it can be scrutinized that what could have the outcome if the NATO negotiated with them.
- Analysis and Assessment. From beginning to the end, the enforcement can be analyzed and assessed to find out the better option to defend

[133] Ibid.
[134] Ibid.

human rights.[135]

7.5 Protecting consensus and effectiveness

It mainly remains with the engagement of political, conceptual and institutional debates about the doctrine of R2P to ensure that whilst modifications are made where needed in order to improve effectiveness. In relation to this, the below things need to be solved:

- A tendency to overlook the fact for using the force.
- A tendency to consider the R2P doctrine for the protection of citizens or civilians from the four crimes rather than the broader term of populations, which agreed in 2005.
- A tendency to conflate the R2P and the 'protection of civilians' agenda.

All of the challenges and the recommendations are provided analyzing the NATO led intervention in the Libyan crisis. If these are considered in the time of military intervention under the doctrine of R2P, it is hope that it will be considered as the transformation of humanitarian intervention term and able to protect civilians and defend human rights.

Conclusion

In light of the above, it can be said that the R2P is a valuable effort in attempting to reconcile the concepts of sovereignty and human rights. Practically, however, it may not been able "to meet the secretary general's objective of providing practical guidelines for policy-makers charged with responding to conscience-shocking situations around the globe".[136]

The fundamental problems involved in humanitarian interventions though the R2P doctrine established the set of criteria but these are not likely to be solved soon. It is due to the fact that at the bottom of the problems lie on the continual dilemmas of the international legal system like the conflict between different values, which means that only through the change in paradigms a solution will be possible.

In the issue of humanitarian intervention, the clashes between sovereignty and human rights, and legality and legitimacy are inherent. The combination of such clashes leads to a deeper dichotomy of the international legal system in between peace and justice, which goes to the core of the international arena.

This is a political difficulty that has existed since ancient times and the establishment of a set of criteria. Therefore, the problem is mainly political. In relation to this, the ICISS recognized in the conclusion of its reports

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[135] Ibid.

[136] Macfarlane et al., *supra* note 3, p- 509.

highlighted that the importance of mobilizing national and international political will to achieve the objectives of the R2P.[137]

Absent of the political will to restructure the international legal system through the shift in its main values and paradigms the dilemma of humanitarian intervention will continue, for the establishment of new rules that would bridge the gap between the legality and legitimacy of humanitarian intervention is connected to the rethinking of the international legal system as a whole.

In relation to this and in the face of the current international scenario, it appears that it is in the ethical perspective of the R2P, which brings its bigger contribution to the debate of humanitarian intervention and in the attempt to solve the legality and legitimacy issues. This is due to the issue that though it has still limitations but on the one hand, it established a upright way of assessing and evaluating the decision making regarding to interventions and on the other hand, it tries to balance the values of human rights and sovereignty by establishing the subordination of the latter to the former in case of a clash.

To resolve the humanitarian intervention issues, it can be said that the R2P is relevant because first, it is evidence that the international community starts to see the relevance of the theme of humanitarian interventions and therefore its need of clarification. Secondly, by this doctrine it is attempted to fill up the gap between the needs and distress being felt in the real world, and the codification of best practice of international behavior as articulated in the UN Charter. Thirdly, this doctrine shows that the international communities are willing as a whole to be ready to act in the needs of human rights protection.

In this view, it appears that the R2P doctrine is a relevant change and can produce a transformation in humanitarian intervention in the long run since it is the fact that “at the heart of this conceptual approach is a shift in thinking about the essence of sovereignty, from control to responsibility”[138] and in this sense it would be “an idea that requires time to root”.

If this is the case and the R2P is capable to incorporate a new set of values by the international community through law, reaching the clashes between sovereignty and human rights and legality and legitimacy, and reconciling the values of peace and justice in the international legal system, it can be hope that the R2P will produce relevant change in the humanitarian intervention in long run to defend human rights. However, in the case Libyan crisis, it can be said that here, the criteria and pillars of the R2P doctrine were not followed as required, the humanitarian intervention term had been used just in the different doctrine, which did not fill up the mandate of UN in terms of human rights protection particularly during the post intervention time.

[137] ICISS *supra* note 44, pp. 70–73.

[138] Evans and Sahnoun, supra note 2, p. 101.

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