Responsibility to protect
Will the doctrine survive Syria?

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INTRODUCTION

‘Responsibility to Protect’ (R2P or RtoP) is a new international security and human rights norm to raise awareness on serious violation of human rights, and to urge the utilization of legal instruments against mass atrocity crimes.\(^1\) Although RtoP debuted merely ten years ago proposed by the International Commission on Intervention and State Sovereignty, sponsored by the Canadian government, it gained ground in international law societies as well as on the level of international politics very rapidly.

RtoP breaks with the general non-interventionist attitude of the contemporary international law regime, and seeks to put forward human rights in legal practice even if it clashes with the principle of state sovereignty. It suggests a new approach for the dilemma of humanitarian intervention which triggered criticism from many commentators who give prominence to state sovereignty.

Despite strong criticism, RtoP has come a long way in just 10 years. In 2005, the United Nations World Summit officially recognized the norm.\(^2\) Thanks to RtoP a Special Adviser for the Prevention of Genocide and Mass Atrocities has been nominated in 2004 by the UN Secretary-General, moreover, three years later, RtoP gained a seat on the UNSG’s right to help the former special adviser’s work on analyzing conflicts and to accelerate conceptual development and consensus-building on RtoP.\(^3\) Also an International Coalition was launched on RtoP in New York in 2005, to co-operate with the UN.\(^4\) Arguably it attracted most attention when the UN Security Council Resolution 1973 invoked the norm in its drafting on the case of Libyan crisis. Many authors raised high hopes to the refreshingly new theory after Libya and still assert that it will form international politics and especially the function of UN. However, it seemed to fail to offer


\(^{3}\) Letter dated from the Secretary-General addressed to the President of the Security Council (31 August 2007) UN Doc S/2007/721

a possible solution to the current Syrian crisis. This thesis presents the remarkable ascent of RtoP from its seeds through its embracement by the UN and implementation by several States (notably in the Libyan case) to the recent deadlock at the Syrian crisis, and analyzes the possible way(s) forward.

My argument is built upon a single research question: does the ‘Responsibility to Protect’ norm offer a solution to the ever emerging intervention-dilemma of the current international legal regime guarded by the United Nations? Analysis of the subject will rest upon findings from secondary research. The information from books, articles, studies – the report of ‘Responsibility Protect’ in particular – in the field will be critically reviewed in order to present this multi-faceted subject. As for the legal part, I will also proceed with analyzing the relevant primary sources of international law: UN Charter, judgments of the International Court of Justice, international conventions, statutes of international tribunals etc.\(^5\)

The first chapter stands for defining RtoP in international legal context and analyzing the development of the concept within international politics.

First, I will clarify some legal terms concerning RtoP, using the ICISS-study, as the fundamental document of RtoP, and the relevant international law sources; such as the four Geneva Conventions and the two Additional Protocols on international humanitarian law in armed conflict, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Rome Statute of the International Criminal Court, the Articles of State Responsibility for Internationally Wrongful Acts and inevitably the UN Charter which provides the basis of the contemporary international law.

Then, I will present the antecedents and the formation of RtoP to give an insight into the development process of international politics which eventually culminated to Canada’s commission towards the ICISS to design a new approach to the concept of ‘humanitarian intervention’. Here, I will recall the reform attempts, by exalted international politicians and diplomats of the past two decades, which were all implicated into some ways in the ICISS-report. Among the forerunners was Bernard Kouchner, founder of the INGO, Médecins Sans Frontières, Francis Deng, the present UN Secretary-General’s

Special adviser for the Prevention of Genocide, the UNSG Boutros Boutros Ghali and Kofi Annan. In the second part of this section, the development of the norm will be presented; here I mainly rely on UN documents, as the Secretary-General reports. The progress is visible on institutional level as well, as seen by the establishment of the Global Centre for RtoP, the appointment of a UN Special Adviser on RtoP, and the launch of the International Coalition on RtoP hosted by the World Federalist Movement-Institute for Global Policy in New York.

In the third and final section of the theoretical part, the norm itself will be reviewed in light of the ‘humanitarian intervention’ concept for the sake of delimitating the two. The contradiction between RtoP and contemporary international law will be exposed by referring to the UN Charter, and throughout a historical introduction, I will present how approaches changed towards the responsibility of the international community in past decades. To introduce my topic several reflections and interpretations will be invoked to stress the controversies of both theories.

The most controversial part of RtoP is its practical implementation. Therefore, the second part of evaluation stands for disclosing the contradiction of realization and theory. The discussion will be introduced by an overall view: which states embrace and even implement the norm in their foreign policy, and which states turn a cold shoulder to the RtoP-concept, and why.

The case of Libya needs to be presented multidisciplinary. Besides legal elements of ‘the Libya-case’ I will reveal some political, economical and historical aspects which contributed to the ambiguous success and the potential cause of the endless hesitation in the Syrian crisis. The United Nations Security Council adopted both the 1970 and 1973 resolutions which legitimated troops of the North Atlantic Treaty Organization to intervene in Muammar Gaddafi’s persistent violation of human rights. However, humanitarian intervention (the term is still being disputed) is always the most controversial field of international law. Albeit the international law regime has improved a lot in past decades, state sovereignty still remains a very sensitive topic. RtoP tries to change the language of the norm. Will the norm survive Syria?

the debate by giving priority to our common value: human rights. Non-interventionists argue that no such action exists without political purpose in the background, and on this point the doctrine of RtoP is also vulnerable. This was China’s and Russia’s arguments when they vetoed the Syrian intervention several times allowing the crisis become a continuous mass atrocity.

Many authors predict the end of RtoP when discussing the recent Syrian crisis. Certainly, the shortcomings of the idea have been revealed recently and as more and more time passes by with inaction, the more exposed the weaknesses of RtoP will become. Here I have to underscore, the thesis does not provide with an exhaustive account on the Syrian crisis and the relating international political affairs but rather concentrates on the main cleavages concerning and affecting RtoP.

The writing will conclude with the evaluation of RtoP in the light of my research question: whether RtoP offers a solution to the ever emerging intervention-dilemma of the current international legal regime. The conclusion will contain the outline of benefits and shortcomings of the idea and a summary of the possibilities and the way forward for the debate.

I. Defining ‘Responsibility to Protect’

Emerging legal norm or political effort to catalyze a debate? Reconceptualizing of humanitarian intervention or legacy of the so-called intervention d’humanité?7

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Many have tried to give a definition for the notion of ‘Responsibility to Protect’ as not even its creators included identification in their report with the same title.\(^8\) Where does that ambiguity stem from?

The official webpage describes RtoP as the followings: ‘RtoP is a new international security and human rights norm to address the international community’s failure to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity’\(^9\). On the UN World Summit 2005, States declared their legal obligations towards the responsibility to protect i. e. they accept their ‘responsibility to protect [their] populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.\(^10\) Article 139 of the Outcome Document also recognizes the responsibility to protect of the international community under the UN Charter Chapter VII.\(^11\) Furthermore, as a huge breakthrough of the concept, the UNSC invoked the concept in the resolutions 1970 and 1973 in the Libyan case. Does that mean that RtoP has emerged to a legal norm in merely ten years?

No, it arguably does not. Although the ‘contemporary understanding lends some weight to resolutions adopted by [certain UN-bodies] [...]’, in particular when combined with more traditional sources (treaties or state practices)’ but among the general binding legal documents indentified under Article 38 of the Statute of ICJ, responsibility to protect is yet to be recognized as a legal norm.\(^12\) In his article, Stahn leads to the conclusion that RtoP rather ‘should be understood partly as a political catchword that gained quick acceptance because it could be interpreted by different actors in different ways, and partly as ‘old wine in the bottles’ [referring to its legal reference].

Some authors attribute the problem of the definition to the fact that RtoP sets out to reconceptualize of ‘humanitarian intervention’ which is again a blindfold in current public

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\(^9\) ICRtoP official webpage

\(^10\) Outcome Document para 138.

\(^11\) Ibid. para. 139.

\(^12\) (Stahn, 2007)
international law, that is, the concept is not a commonly accepted part of legal terminology. RtoP, such as the former concept, humanitarian intervention, represents a clash of the UN Charter and the customary rule stemming from the 19th, 20th century. Both seek to redefine the now prevailing concept of sovereignty and to draw another framework to interventions in general and military interventions in particular.

In the following, I will elaborate on these political, legal and historical aspects of RtoP, and meanwhile present its ample terminology. First, the ‘old wine in the bottles’ or well-established legal ground will be in focus. Then, the directions of international political debate in past decades, particularly in UN circles, will be addressed which all nurtured the political doctrine of RtoP. A comparison of humanitarian intervention and RtoP comes in the third section in order to have a clear delimitation of the two. Finally, the last section will present the terms that RtoP added to the humanitarian discussion: responsibility to prevent, react and rebuild.

My aim here is not to find a label for RtoP but to detect the basic elements which the concept has been built on and to comprehend the rationale behind it, for further discussion.

1. RtoP in legal context - an emerging norm

It is challenging to define the place of RtoP in the current international law regime. Undoubtedly, RtoP as an emerging legal norm implies elements from the international human rights law (with a focus on the ‘right to life’) and international humanitarian law although, by tackling state sovereignty, it addresses again a new field of international law. 14

13 (Domestici-Meţ, 2010) argues that the ‘intervention d’humanité’ formula was born ‘in the 19th and early 20th centuries […] and stood for a short military operation aimed at saving lives that were immediately threatened. From the then —Syrian province — of Ottoman Empire (1860) – today Lebanon to Beijing – (where western diplomats had underwent a 55 days nightmare in 1901) – a kind of legal regime had arisen from practice.[…] This customary exception to the major rule of sovereignty has been theorized in the last years of this period.’ See also G. Sulyok: A humanitárius intervenció elmélete és gyakorlata. Gondolat. 2004, p. 34
14 Ibid.
However new the idea of RtoP might seem at first sight, each of the three pillars of international law mentioned above, that RtoP is prudentially built upon, has its long-established position in the current international law course.\(^\text{15}\) The contribution of RtoP lies mainly in its gap filling function, which gap emerges in some cases between state sovereignty and human (rights) protection, as Domestici-Met puts it.\(^\text{16}\) Nevertheless, I would rather call it as merely a shift of focus, and in these terms, I favor De Baere’s approach that RtoP is being ‘overly pessimistic’ when springing from the idea that state sovereignty ‘allows a state to act in its territory without any restriction [e.g. serious breaches of peremptory norms] whatsoever’.\(^\text{17}\) Then why was this shift of focus necessary after all? This question will be discussed in the following section. Now, I will go on with the terminology: first, the already codified legal terms which were advanced by RtoP.

**Mass atrocity crimes**

So let us take a closer look at the conventional elements of international law that the ICISS considered when has been trying to formulate the norm in 2001. As stated on the official webpage, the scope of RtoP implies the followings: genocides, war crimes, ethnic cleansing and crimes against humanity; referred in short ‘mass atrocity crimes’ or ‘mass atrocities’.\(^\text{18}\) All of these terms, with the exception of ethnical cleansing, have been clearly defined in various codified international agreements, definitions I will make use of in the following.\(^\text{19}\) Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide: ‘[genocide] is a crime under international law which they [the Contracting Parties] undertake to prevent and to punish’.\(^\text{20}\) The legal recognition of the concept of

\(^{15}\) (Stahn, 2007)
\(^{16}\) (Domestici-Met, 2010)
\(^{17}\) (De Baere, 2012) p. 4. See also Military and Paramilitary Activities in and against Nicaragua v. United States of America, Merits (Judgment of 27 June 1986): ‘A State's domestic policy falls within its exclusive jurisdiction, provided of course that it does not violate any obligation of international law [e.g. international human rights law].’
\(^{18}\) ICRtoP official, 2013
\(^{19}\) Report of Secretary General. Implementing the responsibility to protect (2009) UN Doc A/63/677. [UNSG, 2009]
‘crime against humanity’ and ‘war crimes’ came first with the Nuremberg Charter in 1945, and were included in the charters of the subsequent ad hoc criminal tribunals.\textsuperscript{21} The ICC has extended its jurisdiction on all three major crimes with the addition of the crime of aggression as articulated under Article 5 Rome Statute, the foundational document of the first permanent international criminal tribunal.\textsuperscript{22} The RtoP also refers to the Geneva Conventions the basic documents of international humanitarian law.\textsuperscript{23} Accordingly, ‘Under conventional and customary international law, States have [and had before RtoP] obligations to prevent and punish genocide, war crimes and crimes against humanity’.\textsuperscript{24} 

One could hardly state that the creators of RtoP invented something new with bringing these mass atrocity crimes under the authority of UN Security Council. On the contrary, the general principle of supremacy of the UNSC prevails in almost every post-UN international agreement, and presumably it would have been a strikingly reckless idea of RtoP to break with this tradition at the present international law system. Concerning mass atrocity crimes, the Art VIII Genocide Convention is relevant to mention here, as it utters: ‘Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide[…]’.\textsuperscript{25} The Rome-Statute of ICC sets out

See definition at Article 6: For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.


See Charter of the International Military Tribunal of Nuremberg, Art. 7; Charter of the International Military Tribunal of Tokyo, Art. 6; Statute of the International Criminal Tribunal for the former Yugoslavia, Art. 5; Statute of the International Criminal Tribunal for Rwanda, Art. 3; Statute of the International Criminal Court, Art. 27.

\textsuperscript{22} Rome Statute of the ICC, 17 July 1998, 2187 UNTS 90/37 [hereinafter: Rome Statute] Art. 5: The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.

\textsuperscript{23} ICISS-Report

\textsuperscript{24} UNSG, 2009 para. 3.

\textsuperscript{25} Genocide Convention, Article VIII
already in the preamble its complementary feature and articulates the Court’s subjection to the UN System at various points.26

**International Human Rights**

RtoP elevates human rights to priorities, particularly in internal or external conflicts. What is implied under this term?

According to the Max Planck Encyclopedia of Public International Law, human rights can be defined as rights of ‘individuals’ and ‘groups’ vis-à-vis the States which were the only subjects of international law until the drafting of the UN-Charter.27 Following the UN-Charter ‘together the [Universal Declaration of Human Rights in 1948] and the two Covenants [adopted in 1966] 28, mapped out the international human rights agenda, established a benchmark for state conduct, inspired provisions in many national laws and international conventions, and led to the creation of long-term national infrastructures for the protection and promotion of human rights’.29 That implied an ‘individualist orientation to the universalizing values behind the global human rights movement’.30

Human rights ‘have gradually evolved into a legal and institutional system that has its sources in contemporary international law’.31 The international human rights law consists of legally binding conventions, such as the most-quoted ICCPR but also the more specialized ones as the Genocide Convention or the UN Convention Against Torture etc., and the emerging customary law.32 RtoP – borrowing from the qualitative aspects of the humanitarian intervention debate – focuses on the fundamental, first-generation, non-political human rights – more precisely their violations on large scale – that is the ‘right to

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26 Complementary feature: see Rome Statute of ICC preamble: ‘Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions […]’. Subjection to UN-System: see Rome Statute of ICC Art 5 para 2, Art 8 (b) (e), Art 13, Art 16, Art 115 (financial dependence).
28 I. e.: International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)
29 ICISS-Report: para. 2.17.
30 (Deng, 2010)
31 MPEPIL: Human Rights
32 Ibid.
life, liberty and security’, ‘torture or to cruel, inhuman or degrading treatment or punishment’, and the ‘prohibition of all forms of slavery, slave trade and servitude’ (Sulyok, 2013).³³ Pursue to Article 2 ICCPR, states have obligations to protect their individuals: ‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind […].’³⁴ But what if a state does not live up to its undertakings?

This question leads us to the next section, namely the problematic sovereignty and non-intervention concepts.

**Sovereignty and non-intervention**

RtoP seeks to overthrow the still prevailing Westphalian concept of sovereignty stemming from 17ᵗʰ century.³⁵ Therefore, I turn now to the delineation of the concept of sovereignty in contemporary law regime, and identify the traces of the Westphalian principles. The UN Charter, as the fundamental document of contemporary international law, utters the following: 'The Organization is based on the principle of the sovereign equality of all its Members.'³⁶ Thus, it leaves no questions that State sovereignty 'continues to be a fundamental norm within the international order.'³⁷ The ICJ specified more the current concept behind sovereignty in the *Nicaragua v. USA case* as the followings: ‘[…] the principle of respect for State sovereignty [is] in international law of course closely linked with the principles of the prohibition of the use of force and of non-intervention.’³⁸

There is a general agreement among scholars that the still prevailing ‘non-intervention’ concept – closely connected to sovereignty – spelled out under Art 2 (4) UN Charter, is a Westphalian legacy. In the XVII century, the royal-based states adapted the

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³³ See: Article 3,4,5 UDHR; Article 6 (right to life) and Article 9 (liberty and security of persons) ICCPR; Article 2 (right to life), and Article 5 (liberty and security of persons) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, 213 UNTS 221

³⁴ ICCPR Article 2 (1)

³⁵ (Evans, 2008)

³⁶ UN Charter, Article 2

³⁷ (Deng, 2010) p. 353

modern system of sovereign states: ‘states legally equal to each other, not subject to the imposition of supranational authority, and above all not intervening in each other’s internal affairs’.  

Nonetheless, the UN Charter brought two very significant adjustments to this principle under Chapter VIII. First, the Security Council is vested with the right to authorize an interventional operation of any kind, if it determines ‘the existence of any threat to the peace, breach of the peace or act of aggression’. The threat to peace and what measures to take, however, is up to the nuclear five in the UNSC to define. Second, every Member of the UN has the inherent right to self-defense, either individual or collective.

None of the two articles, however, include terms as ‘humanitarian purpose’ or ‘human (rights) protection’ which is a massive deficiency of text. This deficiency faded the focus of the preemptory human rights norms and gave the always changing political atmosphere in UNSC a free hand to decide if a gross and systematic violations of fundamental human rights are ‘threat to peace’ or ‘breach of peace’ already to take coercive measures.

International lawyers and other scholars have been seeking to find a way among the legal paragraphs for the so-called ‘humanitarian intervention’ for several decades. Among the failed attempts were those scholars who expanded the right to self-defense on humanitarian interventions, although this approach has seemed to fail when the whole international community raised serious concerns after the Iraqi intervention carried out by the Bush-administration. Most other international lawyers took off from Oppenheim’s argumentation that the preamble, the last sentence of Article 2 (7), and Articles 1 (3) and 55 made it clear that Charter was designed to ‘protect the sovereignty of peoples’, thusly, ‘the Organization marks a further step in the direction of elevating the principle of humanitarian intervention to a basic rule of organized international society’.

39 (Evans, 2008)
40 UNCharter Art. 39.
41 Ibid. Art. 51.
42 (Domestici-Meţ, 2010) p. 954
44 (quoted in: Stahn, 2007)
And that is how we got to the most recent attempt, the responsibility to protect which is pursuing the shift of emphasis on human protection and the related duties of States – derived from the already existing international human rights covenants – and international community. Here, I have to underscore that it is not the case that the human factor has never been an object of UNSC-legitimized interventions before, but a shift of emphasis was needed to bring the humanitarian issue into prominence. Considering the innovations here, the RtoP is ‘an established hard norm with a view to the territorial State, and an emerging legal norm with regard to other States and the UN’. 

Presumably, the International Law Commission, the ‘codificator organ’ of the UN also felt the changing environment of international human rights when it came out with its Draft Articles on State Responsibility for Internationally Wrongful Acts the same year as the ICISS-report was published. Under chapter III, it does tackle international responsibility with respect to ‘serious breaches of obligations under peremptory norms of general international law, and calls for cooperation between States to bring to an end to the quoted breaches or, at least, States shall refrain to ‘render aid or assistance in maintaining that situation’.

The legal document that is the closest to the RtoP terminology namely: States have responsibility for wrongful acts. This is the first point where RtoP goes further, and entitles also positive duties to States - the responsibility to prevent, to react and to rebuild - and it is much more concrete on the actions to take in case of serious violation of human rights.

Hence, in the light of the above discussed legal pillars, RtoP goes only partly beyond the current legal setup, the lion’s share of the theory is just an ‘old wine in the

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45 (ICISS-report, 2001)  
46 (Peters, 2011)  
48 Ibid. 40. Art 1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.  
49 Ibid. 41. Art. 1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. 2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.  
50 (De Baere, 2012)
bottles’ as it implements the same legal instruments only draws larger attention to them and emphasizes certain humanitarian parts (Stahn, 2007). Does this prompt any progress in the intervention debate, consequently? From a legal perspective, not really, as eventually the subjects and actors remain the same (i.e. individuals, states, Security Council) as well as the primary sources of international law. The answer is rather to be found in the political context to which this work turns to.

2. RtoP in political context – an effort to catalyze debate

In the previous section, I left the question unanswered: Why was a shift of focus in human rights actually needed, since international treaties included state obligations previously? This query cannot be dealt with in a legal context. International politics is the one what fuels the use of legal instruments therefore the answer lies in the changing political air.

The founders of RtoP formed a critical opinion on the practice of UNSC during the Cold War years. The two super powers in the Council either ‘were reluctant to impose any significant constraints on their misbehaving partners’, thus they raised their vetoes against action, or drafted resolutions for humanitarian purpose with vague mandate in merely 10 cases leaving the international lawyers ample way of interpretation. In 1990’s, the interventions under the aegis of the UN are assessed as insufficient, poorly executed, or too late by the ICISS-report when referring to Rwanda (in 1994), Kosovo (1999), Srebrenica (in 1995) and Somalia (in 1992). The international climate on the turn of millennium did not favor the concept of international human rights protection, as the interventions responding to the terror attack 9/11 (Afghanistan 2001, Iraq 2003) referred to State security and the right of self-defense.

This brief introduction to the post- cold war policy challenge hopefully shows why the shift of focus on human rights was indeed needed. To realize this need a change of

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51 (ICISS, 2001)
52 (Evans, 2008, p. 21)
53 Ibid.
54 (Evans & Sahnoun, 2003)
environment and mindset of the international community was essential. The new demands and expectations of human protection articulated in the late 80s when French diplomat Bernard Kouchner formulated the idea of ‘droit d’ingérence.’

**Droit d’ingérence**

Numerous efforts have been made ‘to set international thinking on a new path’ in relation to human rights and sovereignty in past decades. The first, which has won relatively broad support in the UN, was born in France in 1987. Bernard Kouchner, also the cofounder of the humanitarian NGO, Médecins Sans Frontières and his law professor friend, Mario Bettati have established the concept of *droit d’ingérence* or ‘right to intervene’. Although ‘beyond the provocative wording, the idea was not meant to subvert the principle of sovereignty’, still it failed in the conservatively thinking UN General Assembly, in particular, in the global South as most ex-colonies feared that while speaking of ‘intervention’ means rather ‘interference’. However, the French phrase caught on quickly, primarily, on the global North, thus, refreshed the debate about ‘humanitarian intervention’, and reset the duty of human protection into prominence (*devoir d’ingérence*) vis-à-vis State sovereignty. Kouchner’s theory was echoed in several UN resolutions later and set the directions of the debate in the 90s.

**Doctrine of international community**

The French rhetoric *devoir d’ingérence* was partly recalled in Tony Blair’s, then Prime Minister of United Kingdom, famous speech in Chicago ten years later when he articulated his ‘doctrine of international community’. The curiosity of the Blair-doctrine lies in its context, namely, the NATO launched airstrikes on Yugoslavia in the name of ‘prevention of a humanitarian catastrophe’ and ‘self-defense’ without any UNSC

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55 (Domestici-Meț, 2010) (Evans, 2008)
56 (Stahn, 2007)
authorization whatsoever which was a very controversial action from legal perspective (viz. illegal) but won broad support by the international community. In that context, it seemed plausible to establish a new framework for a morally justifiable intervention.

Blair, beside other pressing international issues, called for reconsidering the principle of non-interference with the following messages: ‘acts of genocide can never be purely internal matter’, ‘the spread of our values [of liberty, the rule of law, human rights and an open society] makes us safer’ ‘then that is in our national interests too’. To the question ‘when and whether to intervene?’, he identified the following five major considerations. ‘First, are we sure of our case?’ ‘Second, have we exhausted all diplomatic options?’ ‘Third, on the basis of a practical assessment of the situation, are there military operations we can sensibly and prudently undertake?’ ‘Fourth, are we prepared for the long term?’ ‘And finally, do we have national interests involved? Blair did not promote interventions that evade the UNSC but called for finding ‘a new way to make the UN and its Security Council work.’

The speech was a very impressive progress of the debate at its time as a very important world leader embraced the idea of ‘just war based on values’ although it was again a proposal from the ‘North’ and what is more, from an ex-colonist state, thus, the global South turned down the idea.

**UN and the responsibility to protect**

Several forerunners antedated the ICISS-report even in UN circles with kindred objectives. The call for re-appraisal of sovereignty appeared in 1992 first already, in UNSG Boutros-Boutros Ghali’s report *An Agenda for Peace* where he put forward very sharply that ‘the time of absolute and exclusive sovereignty... has passed' and that 'its theory was

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58 (Sulyok, 2004)
60 Ibid.
61 Ibid.
62 (Evans, 2008)
never matched by reality’. 63 Boutros Ghali’s observations were recognized even by the UNSC noting that ‘under certain circumstances, there may be a close relationship between acute needs for humanitarian assistance and threats to international peace and security, which trigger international involvement’.64 That note was arguably an implied affirmation of the language of the humanitarian intervention debate.

However, the theoretical recognition was not followed by clear-cut actions, at least not at the very grave Rwandese genocide in 1994 or at the shocking massacre of Srebenica in 1995. Responding to the detachment of acute humanitarian issues, Francis Deng – Sudanese diplomat, then also Special rapporteur on the Human Rights of Internally Displaced Persons - following in Boutros-Ghali’s footsteps, came forward with a much more vigorous concept with the wording, ‘sovereignty as responsibility’ in 1996. Deng has not only stipulated the State duty for protection (of their own citizens), but uttered: if a state fails to fulfill its obligations towards its citizens, ‘the right to inviolability should be regarded as lost, first voluntarily as the state itself asks for help from its peers, and then involuntarily as it has help imposed on it in response to its own inactivity or incapacity and to then assuaged needs of its own people’.65 In other words, the sovereignty carries certain responsibilities for governments to protect their citizens, but in case of failure or inactivity, this responsibility flows on other nations to interfere. Deng’s concept gained traction in UN institutional developments (not in UN resolutions) and ended up as the ‘central conceptual underpinning of the responsibility to protect norm as it finally emerged’.

UNSG Kofi Annan was a seminal figure in the birth process of RtoP. In his case, there is vast documentary available to present his contribution to the sovereignty-intervention-human rights, holy trinity debate. I choose his most quoted question which he raised with reflect to the Kosovan intervention in 1999 labeled as ‘tragedy’: ‘[I]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human

63 Quoted in: (Deng, 2010) p. 363
64 Ibid. p. 366.
66 (Evans, 2008)
rights that offend every percept of our common humanity?" The Ghanaian diplomat recognized the general change of attitude towards human rights, and invited the Millennium General Assembly to keep up with it. He shed new lights even on the UN Charter, and stressed that: ‘For even though the UN is an organization of states, the Charter is written in the name of “we the peoples”’. It reaffirms the dignity and worth of the human person, respects for human rights […]. Ultimately then, the United Nations exists for, and must serve, the needs and hopes of people everywhere. In another publication, the UNSG phrased that ‘State sovereignty, in its most basic sense, is being redefined […]. States are now widely understood to be instruments at the service of their peoples, and not vice versa’. The idea, which he then put forward, was named as the ‘individual sovereignty’ smartly enhancing the priority of human rights above that of state sovereignty.

Kofi Annan’s work directly prompted the establishment of the ICISS in 2000. The Canadian government announced then at UNGA its endeavor to find a ‘new common ground’ to the humanitarian intervention challenge by commissioning a think-tank. After a year of discussions all around the world with diplomats, politicians and international lawyers, the Commission came up with a report with the title: The Responsibility to Protect. The report, as demonstrated in the previous section, combines old and new elements of international law. In the same way, its political approach is also a furtherance of the forerunner political concepts. Kouchner started to readdress the humanitarian intervention dilemma, moving the focus on to the humanitarian elements, which was supplemented by Blair’s calls on international community for taking actions. In parallel, the UNSGs and Deng adopted the rhetoric of reevaluating State sovereignty and responsibility of international community: Cf. Ibid. 3.1, 8.1, 8.2, 8.4, 8.31, 8.32, 8.33 Sovereignty as responsibility: Cf. for example, Ibid. 2.14, 2.15

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68 Ibid.
69 Ibid.
70 Ibid.
71 (Evans, 2008)
72 Ibid.
73 (ICISS, 2001)
74 Ibid.
75 Cf. ICISS, Foreword
76 Stressing responsibility of international community: Cf. Ibid. 3.1, 8.1, 8.2, 8.4, 8.31, 8.32, 8.33
77 Sovereignty as responsibility: Cf. for example, Ibid. 2.14, 2.15
respectively the role of the UN in favor of human rights protection, respectively the role of the UN in favor of human rights protection, and so through the decades a polished and well-structured merger concept was born.

The savvy of the ICISS-document was praised by UNSG Kofi Annan who decided to take up the concept in the High-level Panel on Threats, Challenges and Change in the framework of the UN comprehensive reform, then included it in his report inviting member states to embrace RtoP. Arguably, the Outcome Document seems to imply the most important milestone in the career of RtoP where states unanimously adopted paragraphs 138 and 139 admitting the core messages of RtoP including their own responsibility to protect. UNSG Ban Ki-moon, in 2007, established a position of a Special Adviser on the Responsibility to Protect in order to bolster the work of the Special Adviser of Genocide and Mass Atrocities in analyzing ‘cases of serious violations of international humanitarian and human rights law’ and to deal with ‘conceptual development and consensus-building’. Later, he extended the Special Advisers’ duties with early warning tasks on human rights issues.

What makes RtoP distinct from other political concepts that it could achieve, what none of the former concepts could, world-wide recognition? Firstly, the mobilizing power, as the ICISS included diplomats, politicians, lawyers and other influential persons from all over the world, including global South and North in discussions. Secondly, the report did not stick to rhetorical guidelines but covered a detailed implementation plan from the humanitarian pre-crisis phase (‘responsibility to prevent and early warning system’),

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78 Role of UNSC: Cf. ibid.: 6.13, 6.14, 6.15
81 Outcome Document Para. 138, 139
82 Letter dated from the Secretary-General addressed to the President of the Security Council (31 August 2007) UN Doc S/2007/721
84 The commissioners of ICISS has been also chosen consciously in order to represent the national variety: Gareth Evans (Australia) Mohamed Sahnoun (Algeria) Gisèle Côté-Harpé (Canada) Lee Hamilton (United States) Michael Ignatieff (Canada) Vladimir Lukin (Russia) Klaus Naumann (Germany) Cyril Ramaphosa (South Africa) Fidel V. Ramos (Philippines) Cornelio Sommaruga (Switzerland) Eduardo Stein Barillas (Guatemala) Ramesh Thakur (India) (ICISS, 2001)
through the solution of an already evolved crisis (‘responsibility to react’), to the ‘follow up’ (‘responsibility to rebuild’). Thirdly, it excellently grasped the current state of mind of the international community and the academic world and considered the limits that international legal instruments provide. RtoP reaffirms the principality of UN and the Security Council and envisages a reform within the institution. Fourth, Stahn e. g. emphasizes the versatility feature of the norm reflecting on its various applications in the aforementioned UN-documents. And last but not least, RtoP ‘invented a new way of talking about humanitarian intervention’ by shifting the focus on the people at grave risks instead of discussing States’ right to intervene.

3. Delimitation of ‘humanitarian intervention’ and ‘the responsibility to protect’

‘This report is about the so-called ‘right of humanitarian intervention’: the question of when, if ever, it is appropriate for states to take coercive – and particular military – action, against another state for the purpose of protecting people at risk in another state’. So begins the foreword of the ICISS-report of The Responsibility to Protect, debate-provoking as it is. Not surprisingly the academic debate augmented rapidly about the counter non-interventionist phrasing and apparently that was exactly the authors’ goal. Jill Sinclair, secretariat head of ICISS has been quoted in the co-chair, Gareth Evans book: ‘This is not an intellectual, academic exercise but rather a political effort to catalyze a debate’. (Although the wording of the very first sentence is not that smart if RtoP holds prevention of humanitarian catastrophes as priority over intervention.) Despite the numerous elements RtoP borrows from the humanitarian intervention concept it cannot be put on equal footing with the former theory. Delimitation of the two is required.

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85 See: UNSG, 2009
86 (Stahn, 2007) He compares four documents in his article: the ICISS report; the High-Level Panel Report, UNSG, 2005 Outcome Document of the 2005 World Summit
87 (Evans & Sahnoun, 2003)
88 (ICISS, 2001) Foreword
89 (Evans, 2008) p. 38.
Certainly the most striking and clear distinction is that while there is no consensus on the definition of humanitarian intervention, the responsibility to protect is an officially recognized concept based on a single report.\textsuperscript{90} Even the former’s name could be puzzling, as the ‘humanitarian’ attribute, well-known from ‘humanitarian law’, encompasses wide scope of activities, ranging from humanitarian assistance in or after war, natural catastrophe or any activity that mitigates suffering of the victims, which has little to do with a military intervention for protecting human rights.\textsuperscript{91} Therefore lots of authors choose to use the straightforward French phase: ‘\textit{Intervention d’humanité}’\textsuperscript{92}. My choice is to stay by the English expression with a wider meaning, as RtoP also applies it, but stipulating that the phrase ‘humanitarian intervention’ stands here for ‘the use of force to protect people in another State from gross and systematic human rights violations committed against them, or more generally to avert a humanitarian catastrophe, when the target State is unwilling or unable to act’\textsuperscript{93}.

This definition for humanitarian intervention indicates perfectly the key messages in common with RtoP. ‘To protect people’ from ‘gross and systematic human rights violations’ also implies the core element of RtoP – however, defines more concrete these violations i.e. mass atrocity crimes – moreover the fundamental human rights enjoy priority over a State ‘unwilling or unable to act’.\textsuperscript{94} On ‘use of force’ however, the two concepts differ: a military action without UNSC authorization does not preclude a humanitarian intervention while RtoP envisages the responsibility to react with military intervention solely with the bare majority of 15 members in charge, including unanimity or at least abstention of the permanent five.\textsuperscript{95} In these terms, the former concept equally covers lawful

\textsuperscript{90} (Sulyok, 2013)  
\textsuperscript{91} (Sulyok, 2004, p. 18) (Prandler, 2002)  
\textsuperscript{92} (Domestici-Met, 2010) Domestici-Met also finds a time difference of the two: ‘If [humanitarian intervention] helps mitigate a disaster, the [intervention d’humanité] helps prevent or stop it. Humanitarian intervention is active upon the consequences of the slaughter, while the —\textit{intervention d’humanité}” is active upstream, upon the causes of suffering.’ p. 957.  
\textsuperscript{94} (Sulyok, 2013) Cf. (ICISS, 2001) Synopsis: Basic Principles and The Just Cause Threshold and Outcome Document Para. 139.  
\textsuperscript{95} (Sulyok, 2013) see: ICISS Report, 6.9 or Synopsis, Principles for Military Interventions (3. Right Authority) and Art. 27 UN Charter.
and unlawful elements from the perspective of the UN Charter based legal system unlike the former which complies with the Charter’s prescriptions.

One can detect similarities of the two among the principles or conditions for a military ‘intervention in the interest of humanity’.

Features of humanitarian intervention are the followings: the intervener can be one or more willing State(s) or international organization(s) – with or without UN authorization - who acts in the name of *bona fides* (or at least in absence of self-interest and abuses); without the consent of the object, ergo target State; the beneficiaries have to be the nationals of target state who have had been the sufferer of grave and large-scale violations of first generation, non-political human rights which emerged in consequence of the active or passive behavior of the target state; considering its tools and realization, military intervention should be carried out as *ultima ratio* (last resort), its duration and means has to be in proportion to the atrocities and in accordance of the international humanitarian law; and last but not least in order to achieve durable ‘success’ the political independency of the target state has to be restored after the intervention.

In comparison, the RtoP does borrow from humanitarian intervention principles with regard to the ‘just cause’ threshold (meaning large-scale loss of life and ethnic-cleansing), state behavior (deliberate action or inability of the State), right intention, last resort, proportional means and reasonable prospect. The right intention however is rephrased by RtoP: ‘[t]he primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering’. Here I draw the attention on the middle part of the sentence meaning that no matter what motives the interveners have when launching a military action if the main goal was fulfilled, that is protecting the people at risks, the intervention is legitimate. Does that mean that RtoP legitimize *mala fides* interventions? By the case of Libya this question will be tackled.

Nevertheless, military intervention is only part of the third pillar of RtoP: the first two spells out the “protection responsibilities of States” and the “international assistance

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96 (Sulyok, 2004, p. 19)
97 Ibid. p. 64
98 ICISS-Report: Synopsis
99 Ibid.
and capacity building” to prevent conflicts and man-made catastrophes. Hence the conceptual elements are significantly broader than those of humanitarian intervention. Thus, military intervention as last resort action is put into shade by RtoP when stressing the priority of prevention. The figure below – borrowed from Sulyok – demonstrates the relationship of humanitarian intervention and RtoP perfectly.

### Pillar I.
Protection responsibilities of the State

### Pillar II.
International assistance and capacity-building

### Pillar III.
Timely and decisive response

**Humanitarian Intervention**

Retrieved from (Sulyok, 2013)

The tradition and historical background of the two were also raised into contrast by Sulyok: ‘[H]umanitarian intervention is incomparably more ancient and more deeply embedded in the thinking of international community than the recently emerged concept of the responsibility to protect’. Indeed, scholars trace back the roots of humanitarian intervention to the idea, presumably named first by the Christian Emperor Constantine (AD 311), *bellum iustum*. Other scholars refer to the seminal figure of international law 17th century, Hugo Grotius whose argument was: ‘war can be undertaken as punishment of

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100 Pillar structure interpreted by UNSG Ban Ki-moon in UN Doc A/63/677 based on the wording of Outcome Document para. 138., 139. Cf. ICISS-report chapter ‘Responsibility to react’
101 ICISS-Report, Synopsis
102 (Sulyok, 2013, p. 757)
the ‘wicked’ (as long as the punisher’s hands are clean)’. The wording humanitarian intervention or *intervention d’humanité* first appeared in the end of 19th century, labeling the military action in the Syrian province of Ottoman Empire (now Lebanon) with the authorization of *Concert des Nations*. Nonetheless, the idea of responsibility to protect, with regard to sovereign State, is not as new as we might think. Stahn detects the seeds of “sovereignty as responsibility” in Grotius’s argumentation as: ‘behavior of states exist ultimately for the benefit of the actual subjects of the rights and duties concerned, individual human beings [and it] would be just to resort to war to prevent a state from maltreating its own subjects’. Stahn further argues that states have never considered as self-referential entities in international law anyway, for example, domestic jurisdiction have traditionally served as forums for the protection of the well-being and interests of human beings.

Sulyok also states that RtoP is ‘an artificial creation born out of sheer necessity’ in contrast to humanitarian intervention. On one hand, the statement is plausible as RtoP was edited by a think-tank on a governmental commission in a year but on the other hand, it does have its seeds ‘deeply embedded in the thinking of the international community’, as Stahn also proves, otherwise it could not have emerged that quickly.

However, RtoP was indeed created on first place to remedy certain deficiency of humanitarian intervention, as also the ICISS-report sets out in the foreword. Evans and Sahnoun, co-chairs of ICISS, identify three developments of the humanitarian intervention debate that RtoP evoked. First, it approaches conflicts from the point of view of those needing support, rather than those ‘who may be considering intervention’; second, states concerned are entitled with the primary responsibility; and third, as an umbrella concept, RtoP is much more multifaceted than humanitarian intervention, embracing not just the

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104 Ibid. keyword: humanitarian intervention
105 (Domestici-Meţ, 2010)
106 (Stahn, 2007) p. 111
107 Ibid.
108 (Sulyok, 2013, p. 757)
109 (Evans & Sahnoun, 2003)
“responsibility to react” but “the responsibility to prevent” and the “responsibility to rebuild” as well’.\textsuperscript{110}

4. Responsibility to protect: prevent, react, rebuild

In the light of previous sections, let us take a closer look on the new wording of RtoP. RtoP has made its major contribution to the humanitarian discussion to move forward by promoting the following terms as positive duties of sovereign States: responsibility to protect, prevent, react and rebuild.

This terminology addresses primarily the Westphalian traces of current concept of state sovereignty. As quoted above, the Secretary-General stated with reference to RtoP the followings: ‘States have obligations according to the Rome Statute and the Genocide Convention to prevent and punish genocide, war crimes and crimes against humanity’ which has also been confirmed by states on World Summit 2005\textsuperscript{111}. Despite these obligations, the terms ‘intervention’ or ‘protection’ have been used way more frequently in the policy debate of sovereignty in past decades than those duties implied in pre-RtoP conventions or in human rights declarations. Hence the commission militates for shaking up the policy debate in a way that favors the people at risks.\textsuperscript{112} Therefore, the theory shifts the emphasis from the external responsibility (ie ‘to respect the sovereignty of other states’) to the internal responsibility, namely, ‘to respect the dignity and basic rights of all the people within the state’. Further, the international human rights covenants also entail the positive duty of a State to protect those human rights.\textsuperscript{113} To this point scholars agree that there is no clash between the responsibility to protect and State sovereignty.

Now, I have touched upon the external responsibility – under the subsection of sovereignty and non-intervention – and the debate of humanitarian intervention – in the previous section – which are included under “responsibility to react”. However, RtoP holds

\textsuperscript{110} (Evans & Sahnoun, 2003, p. 101)
\textsuperscript{111} (UNSG, 2009), Outcome Document para. 138, 138
\textsuperscript{112} (Evans & Sahnoun, 2003)
\textsuperscript{113} See for example: ICCPR Art. 2. (1)
internal responsibility as a priority principle and “responsibility to prevent” as priority of the three external elements, undoubtedly, the two implies also the least attackable concept of the three.

RtoP, borrowing from the concept of Deng’s “sovereignty as responsibility”, demand states live up to their obligations implied in human rights covenants and declarations, thus emphasizes that ‘the responsibility for the protection of its people lies with the states itself’.\footnote{ICISS Report, para. 1.33-1.35} In World Summit 2005 UN member states confirmed this responsibility: ‘Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.’\footnote{Outcome Document para. 138.}

The UNSG report in 2009 separated this part and named as the first pillar of RtoP, namely as “the protection responsibilities of the state”.\footnote{(UNSG, 2009)}

“Responsibility to prevent” calls on the international community ‘to be doing more to close the gap between rhetorical support for prevention and tangible commitment’ as ‘conflict prevention is not merely a national or local affair’.\footnote{ICISS-report para. 3.1., 3.3} Efforts of conflict prevention can be basically every support, initiatives or actions that develop capacity-building in a State meaning strengthening also political, legal, economical or military institutions, in one word, development assistance.\footnote{Ibid. Early warning and analysis: para. 3.3, 3.21-3.24., Direct prevention efforts: 3.25-3.32} All these activities assist to the so-called “root cause prevention”. It is very trusting of RtoP to envisage that there will be enough political will in the global North to allocate money even for a “root cause prevention”, probably also that is what de Baere meant when he labeled RtoP as partly an ‘overly optimistic’ norm.\footnote{(De Baere, 2012)}

However, the responsibility to prevent also includes more practical parts as capacity-building for “early warning and analysis” and “direct prevention efforts”.\footnote{ICISS-report para. 3.10-3.17} The report forms a critic towards previous conflict warning systems as being ‘ad hoc and
unstructured’ and that the specialized NGOs (like Human Rights Watch, Amnesty International etc.) have been more devoted and successful in conflict monitoring than the UN itself.\footnote{Ibid. para. 3.12, 3.13} It therefore calls on the Secretary General to use his power entitled under Article 99 UN of Charter and ‘bring to the attention of the Security Council any matter that in his opinion may threaten the maintenance of international peace and security’.\footnote{Ibid. para. 3.14} UNSG Kofi Annan took the advice and established a position of Special Adviser on the Prevention of Genocide in 2004 with the mandate, \textit{inter alia}, ‘to act as mechanism for early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention potential situations that could result in genocide […]and] to enhance the UN-capacity to analyze and manage information relating to genocide and relating crimes’\footnote{Letter from the Secretary-General addressed to the President of the Security Council. (12 July 2004) UN Doc S/2004/567 \url{http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/567}}. Later, UNSG Ban Ki-moon bolstered the Special Adviser’s work by nominating a Special Adviser on Responsibility to Protect ‘at the level of Assistant Secretary-General, on a part time basis’ whose role will be conceptual development and consensus-building on RtoP (doing so according to the outcome of World Summit 2005).\footnote{Letter dated from the Secretary-General addressed to the President of the Security Council (31 August 2007) UN Doc S/2007/721 (UNSG, 2009)}

The international aspects of “responsibility to prevent” were classified as the second pillar of RtoP by the UNSG, namely “international assistance and capacity-building” after the relating sentences of Outcome Document paragraph 138 and 139: ‘the international community should, as appropriate, encourage and help States to exercise this [responsibility to protect] responsibility’ and ‘we also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out’.\footnote{\textit{UNSG, 2009}}

‘The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are
prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from [mass atrocity crimes].’ – the opening two sentences of the Outcome Document paragraph 139 asserts.\(^\text{126}\) This part of the text has been interpreted as the third pillar of RtoP: “timely and decisive response”, implying elements both of the “responsibility to react” and “responsibility to rebuild”.\(^\text{127}\) The Synopsis utters: ‘where […] the state in question is unwilling or unable to halt or avert [the population’s suffer of serious harm], the principle of non-intervention yields to the international responsibility to protect’.\(^\text{128}\) At first sight, responsibility to react reflects the humanitarian intervention language but if we take a closer look, it does imply significant differences.

RtoP does not differ to any extent from UN Charter. In case of an emerged conflict, RtoP suggests to follow the prescriptions of Chapter VI, VII, VIII of the UN Charter.\(^\text{129}\) If a state is indeed incapable or unwilling and preventive measures fail to resolve the situation, coercive measures of broader community may be required, these measures could be political, economic, judicial or at worst scenario, military action.\(^\text{130}\) It is also said that less intrusive always have to enjoy priority above more intrusive ones.\(^\text{131}\) Measures reacting to a crises should be considered first, as diplomatic, political restrictions (e.g in representation, mobility) or economic sanctions (e.g. financial sanctions, restrictions on import) or peaceful military actions (e.g. arm embargoes, ending cooperation).\(^\text{132}\) Only as last resort can military intervention be justified, and it has to fulfill three basic conditions: first, human rights violation has to reach the “just cause threshold” (large-scale loss of life or ethnic cleansing), second, the military action has to meet the “precautionary criteria” (right

\(^{126}\) Outcome Document para. 139  
\(^{127}\) (UNSG, 2009)  
\(^{128}\) ICISS-Report: Synopsis  
\(^{129}\) Ibid. 6.3, 6.4  
\(^{130}\) Ibid. 4.1 cf. Art. 41, 42 UN Charter  
\(^{131}\) Ibid. para. 4.1  
\(^{132}\) para. 4.7-4.9
intention, last resort, proportional means, and reasonable prospects) and third, it has to possess the “right authority”.

The report also suggests post-intervention obligations in the name of “responsibility to rebuild”. The foundations of this idea was established first by UNSG Boutros-Ghali, in Agenda for Peace then more elaborated in Kofi Annan’s Brahimi-report, which stressed the ‘continuum’ feature of interventions, and in “In Exit Without Strategy” especially enhancing the post-intervention responsibilities (Stahn, 2007). RtoP takes “The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa” report as the basis for its peace building concept. First, security should be ensured, especially to prevent the reverse ethnic cleansing, the status of returnees, refugees, IDPs has to be redressed. Second, judicial system has to be restored in order to prevent human rights violations. Third, setting back development in the intervened country to make the economy work again and reset a sustainable development in the country. Finally, de facto suspension of exercise sovereignty has to be restored in a process of the transfer of responsibility from international to local agents to handle prevention of further ethnic conflict evolution.

133 Ibid. Synopsis
134 Ibid. 5.5.
135 Ibid. 5.8, 5.13, 5.19, 5.26, 5.30


II. Implementation of RtoP

Following the world leaders’ recognition in 2005 and the embracement by UNSG Ban Ki-moon in 2009, the responsibility to protect norm has been more and more frequently invoked by states and regional organizations.

Among the greatest advocators of the principle is of course Canada, the Maecenas of the norm and Australia who also took on sponsorship of its development. A quite recent success for the doctrine is that a rapidly emerging country from the global south, Brazil embraced it with special regard to its peace and capacity building pillar. A supporter of RtoP from the very beginning was the African Union (AU) which has been a valuable partner especially in Darfur and Côte D’Ivoire but in Libya as well.

The European Union Parliament referred to the norm in its resolution on the crisis of Darfur and Libya. Russia although referred to its ‘responsibility to protect’ in its war in Georgia, however a unilateral intervention like the Georgian obviously does not fit to the scope of RtoP. Concerning the USA, President Barack Obama implied RtoP in his speeches on Libya, as the biggest contributor to the UNSC-authorized intervention, and later on Syria but we will see the former had a controversial outcome.

Actions taken under pillar one and two are hard to assess from outside. Calling a state to account for failing to take measures to prevent serious and systematic violations of human rights when they have not occurred yet sounds rather absurd. In other words, failing to live up to responsibility to prevent can only be judged after the crisis emerged. Hence the responsibility to react and rebuild is much more detectable. Therefore the

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137 Kenkel, Kai Michael (2012) Brazil and R2P: Does Taking Responsibility Mean Using Force? Global Responsibility to Protect. 5-32
139 Ibid.
implementation part of RtoP now turns to ‘responsibility to react’ issues of which Libya and Syria imply the most alarming cases.

The first litmus test of RtoP in a pillar III situation (i.e. military intervention) was the case of Libya when the norm was explicitly used in the UNSC resolutions 1970 and 1973. Through the Libyan case could be the implementation challenges of the third pillar of RtoP, including the ideas of responsibility to react and rebuild, best presented so that the reluctance of action seen by Syria will be comprehensible.

1. Libya - litmus test of RtoP

Evolution of the crisis

The wind of Arab Spring reached Libya after Tunisia and Egypt, in January 2011. Peaceful protests on the side of the freshly established Transitional National Council turned into a brutal crackdown by the government. Colonel Muammar Gaddafi probably did not assume his doom when he named his protesting citizens “cockroaches” and threatened to execute them all whatever it takes, using the same language as hutu media used in Rwanda 1994 before the dreadful massacre.

Regional and universal organizations, as well as the media reacted with unprecedented promptness. Between 20-23 February the League of Arab States, the Organization for Islamic Cooperation and the Peace Council of African Union all assembled discussing the Libyan situation, the former even suspended the Libyan

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membership.\textsuperscript{144} In their statements, they all condemned the violence emerging in the Northern African country.\textsuperscript{145}

On 26 February, the Security Council unanimously voted for the resolution 1970 welcoming the condemnation of the regional organizations and the resolutions of Human Rights Council of 25 February 2011 to set up an international commission to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya.\textsuperscript{146} Primarily, it urged Libyan authorities to act with respect to human rights and international humanitarian law and provide security to their nationals.\textsuperscript{147} It also considered that the systematic attacks against the civilian population ‘may amount to crimes against humanity’, therefore referred the situation to the ICC.\textsuperscript{148} Furthermore, the resolution prescribed arms embargo, travel ban for 16 people – including of course Gaddafi and his children – and freezing their assets.\textsuperscript{149} Finally, it establishes a New Sanctions Committee to oversee what has been spelled out earlier.

Military intervention - timely and decisive response

Colonel Gaddafi’s second mistake was to repeat his earlier rhetoric of fierce repression and held out the prospect of an assault on Benghazi on the very day when the UNSC voted on the adoption of the second resolution on Libya.\textsuperscript{150} The resolution 1973 passed on 17 March with 10 votes, including the United States, and abstentions from Russia, China, Germany, Brazil and India.\textsuperscript{151}

‘Deploring the failure of Libyan authorities to comply with resolution 1970’ and to abide by their responsibility to ensure protection for their civilians – in compliance with their obligations under international law, including international humanitarian law, human

\textsuperscript{145} Ibid.
\textsuperscript{146} UNSC Res 1970
\textsuperscript{147} Ibid. 2.
\textsuperscript{148} Ibid. 6.
\textsuperscript{149} Ibid. 9., 15., 17.
\textsuperscript{151} Ibid.
rights and refugee law – resolution 1973 ‘stresses the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people’.\textsuperscript{152} Most importantly, the resolution 1973 authorizes Member States on two places to take all measures necessary nationally or though regional organizations or arrangements ‘to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya’ and to enforce the ban on flights.\textsuperscript{153}

Merely two days later bombings were launched without any forerunner investigation committee by the USA.\textsuperscript{154} Then a coalition of 14 NATO members and four partner nations, based on USA intelligence information joined the operations, the major contributors of naval and aerial forces were the United Kingdom and France.\textsuperscript{155} Benghazi was saved within weeks.\textsuperscript{156} However, the Libyan Government did not give up and the fights dispersed all over the Northern part of the country, including the capital Tripoli.\textsuperscript{157} The rhetoric of the three leading intervening states changed gradually during the crises: on 28 March US President Obama stated, he will use no military enforcement to remove Gaddafi,\textsuperscript{158} two weeks later Le Figaro, The Times, Washington Post and New York published a release of a conference with the title: \textit{Gaddafi doit partir}.\textsuperscript{159} However, many sources mention that Gaddafi’s palaces and governmental buildings were also targeted by the interveners causing unnecessary casualties.

The AU struggled persistently for a peaceful solution and heftily called for a cease fire. In April at a negotiation, Gaddafi seemed opened to peace talks.\textsuperscript{160} Yet, the opposition did not want to hear about it. On 1 May Gaddafi’s youngest son and grand children were killed in an attack on their compound.\textsuperscript{161}

Fights went on until August 2011, when the governmental forces were brought to heels. However, sporadic fights went on during the autumn seeking to find the 40 year

\textsuperscript{152} UNSC Res 1973
\textsuperscript{153} Ibid. 4., 8.
\textsuperscript{155} (Zifcak, 2012)
\textsuperscript{156} Ibid.
\textsuperscript{157} Ibid.
\textsuperscript{158} Obama. 28 03 2011
\textsuperscript{159} Sarkozy, N., Barack, O., & Cameron, D. (2011, 04 15). \textit{Le Figaro}.
\textsuperscript{161} (Zifcak, 2012)
Beatrix Pólya  Responsibility to Protect – Will the norm survive Syria?

tyrant of Libya.\textsuperscript{162} In September, the UNSC adopted a resolution on establishing a United Nations Support Mission in Libya (UNSMIL) to assist and support Libyan national efforts to solidify security, the judicial system and economic recovery of the country.\textsuperscript{163} It lifted the arms embargo solely for the purpose of security maintenance and disarmament assistance and the protection of UN personnel. Resolution 2009 also lifted the ban of flights and assets freeze of two key oil companies.\textsuperscript{164} The UNSC recognized TNC as an official representative of Libya in the UN.

On 20 October, a video circulated the world of Gaddafi’s last minutes in a circle of rebels apparently torturing and humiliating the ex-leader.\textsuperscript{165} Gaddafi died after the video under unknown circumstances. The NATO Secretary General officially declared 31 October the end to its military operations in Libya (The Telegraph, 2011).

Aftermath of civil war

During the eight month civil war, an estimated 30000 people lost their lives and additional 50000 were wounded, 1-2000 people of them were killed before the military intervention.\textsuperscript{166} 

In the time of writing, Libya raises anxiety of destabilization. The Guardian’s journalist recently reported ‘the bloodiest fighting since the overthrow of Gaddafi’ where the Misrata militia opened fire on protesters in Tripoli, killing 37 of them and leaving 400 wounded.\textsuperscript{167} A month ago, the legally elected head of government, Ali Zeidan himself was kidnapped by an Islamist militia which now gets generous pay packets from the government.\textsuperscript{168} Because of the militias pursuing their independency in key cities on the

\textsuperscript{162} Ibid.
\textsuperscript{164} Ibid.
\textsuperscript{166} Milne, S. (2011, 10 26). If the Libyan war was about saving lives, it was a catastrophic failure. The Guardian.
\textsuperscript{168} The Economist. (2013, 11 23). Make or Break.
North, like Mistrata, the unity of Libya is unfeasible. In order to prevent Libya from becoming a failed state, the USA, Britain, Turkey and Italy started to train Libyan soldiers to once replace the militias.\textsuperscript{169}

Hence Libya has to pay the price of its revolution, seems that the desired regime change did not fulfill the great hopes it rather turned to a land ruled by militias.

\section*{Evaluation}

Especially in the light of the aftermath, the outcome of the Libyan intervention remains controversial. Now, I analyze whether the intervention indeed reflected the principles and criteria of RtoP and on what points can the execution by NATO contested. For that sake, I make use of Evans’s five criteria of legitimate use of force.\textsuperscript{170}

1. Seriousness of harm: Is the threatened harm of a kind, and sufficiently clear and serious to justify prima facie the use of military force? In the case of internal threats, does it involve genocide, war crimes, ethnic cleansing or crimes against humanity, actual or imminently apprehended?

Gaddafi’s rhetoric and actions indeed pointed in the direction that his actions may have amounted to crimes against humanity.\textsuperscript{171} Till the resolution 1973, the death toll reached the number of 2000, and as quoted above, threatened his protesters of further assaults. Consequently, the first criterion was met.

2. Proper purpose: It is clear that the primary purpose of the proposed military action to halt or avert threat in question, whatever other purposes or motives may be involved?

Here the opinions are diversified among scholars and also among the international community. In particular, Russian, Chinese and German authors raised their concerns that

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{169} Ibid.
\item \textsuperscript{170} (Evans, 2008, p. 141)
\item \textsuperscript{171} See UNSC Res 1970
\end{itemize}
\end{footnotesize}
while resolution 1973 determined the aim of intervention only to protect civilians under threat of attack, the NATO-troops intervened from the beginning with the intention of a regime change.\textsuperscript{172} The bombing of governmental buildings and the assassination of the majority of Gaddafi’s family during the attacks indeed raises ambiguity. However, bearing in mind that the Security Council as a whole, legally adopted resolution 1973, which solely authorized the protection of civilians, the standpoint of RtoP advocates, that legally the primary purpose was to halt or avert threat in question, sounds reasonable.

Here the clause of the criterion is notable: ‘whatever other purposes or motives may be involved’. In these terms, even the behavior of NATO troops is justifiable under RtoP which I reckon as highly controversial. Especially in the light of the aftermath, regime change is very disputable if it has been a necessary measure but it was certainly not legitimate according to the UNSC resolution.\textsuperscript{173} According to this formulation, those lives taken after the regime change by militias and those needless casualties taken when NATO troops attacked non-military governmental buildings can also be legitimised under RtoP? However this thesis would clash with the principle of RtoP on UNSC supremacy anyway, as the Council did not authorized the regime change thus RtoP cannot accept the stretching of resolution 1973.\textsuperscript{174}

Nevertheless, my conclusion is yes, the intervention met the criterion of proper purpose according to the UNSC resolution, however it was indeed stretched during the execution.

3. Last resort: Has every nonmilitary options for meeting the threat in question explored, with reasonable grounds for believing that other measures will not succeed?

As seen, regional organizations and later the UN HRC responded first with diplomatic measures. The Arab League and the UN body suspended the membership of Libya.\textsuperscript{175}

\textsuperscript{172} (Paech, 2012)
\textsuperscript{173} Bydoon, Maysa (2012). The Responsibility to Protect (RtoP) and Libya. European Journal of Social Sciences. 377-384
\textsuperscript{174} Ibid.
\textsuperscript{175} (Fahim & David, 2011)
Economic sanctions were imposed by the UNSC Resolution 1970, namely oil companies’ – belonging to the Gaddafi family – assets were frozen and aviation bans.\textsuperscript{176} Sanctions were imposed before hand by the same resolution in the military area as well with regard to arm embargoes.\textsuperscript{177}

Gaddafi’s statement on a radio call-in show on killing the protesters ‘with no mercy’, in the light of his previous crackdowns on demonstrations, could stand for ‘reasonable grounds for believing that other measures will not succeed’.\textsuperscript{178} The biggest opponent of the military intervention was the AU. Tabo Mbeki, ex-president of South African Republic sharply criticized the Western countries that they did not give the opportunity to settle the conflict through dialogue. Here he reflected on the refusal of entry of the AU-Delegation appointed for conducting negotiations in Benghazi and Tripoli.\textsuperscript{179} It is also true that during the military intervention Gaddafi’s reconciliation in peace negotiations led by AU were also neglected.\textsuperscript{180}

4. Proportional means: Are the scale, duration and intensity of military action the minimum necessary?

Not surprisingly, this is the most subjective thus vulnerable point of all interventions. Resentful voices were raised in the media on the aggression of NATO. The mostly referred moments were the cruel execution of 53 people including non-combatants, and 500 more lost their lives during a NATO bombing in Sirte.\textsuperscript{181} The most provable needless violence however was the assassination of the Gaddafi’s relatives, and himself who should have been handed over to the ICC.\textsuperscript{182} However, the civil war took around 30,000 Libyan’s lives and from them only 1-2,000 deceased before the intervention.

For sure, Gaddafi sounded desperate to repress the revolutionary wave in his country but certainly his goal was not an ethnic cleansing or genocide on a discriminative basis. He ‘merely’ wanted to continue his dictatorship with his opposition muted. Of

\begin{footnotes}
\item\textsuperscript{176} UNSC Res 1970
\item\textsuperscript{177} Ibid.
\item\textsuperscript{178} (Bilefsky & Lander, 2011)
\item\textsuperscript{179} (Paech, 2012)
\item\textsuperscript{180} (Sherwood & McGreal, 2011)
\item\textsuperscript{181} (Milne, 2011)
\item\textsuperscript{182} (Zifcak, 2012)
\end{footnotes}
course, this does not justify his crimes and his violation of human rights but this analysis is conducted with the focus on people’s life.

Questions emerge also whether a regime change was necessary and that the military actions should have been frozen when Gaddafi agreed in April to a road map for peace.\textsuperscript{183} The legitimate duration is also questionable. However, I leave the questions ‘if the intervention could have been carried out with fewer casualties’, and ‘if it would have saved lives if keeping Gaddafi in power’ open for debate as it surpass the boundaries.

5. Balance of consequences. Is there a reasonable chance of success in averting the threat without worsening the situation? Is action preferable to inaction?

Again it is very hard to judge if inaction would have saved more lives than a civil war bolstered from the outside. However, when authorizing a military intervention the UNSC assuming assessed that it has reasonable prospects to reach success without worsening the situation. Indeed, NATO abolished the threat of hunting down all anti-Gaddafi protestors but did not prevent the emergence of the threat of militias.

Now, we have seen that the Libyan intervention met, roughly saying, all precautionary criteria set by RtoP. It also possessed the right authority via the UNSC resolution and additionally enjoyed the support of regional organizations, with the exception of the AU, which is also a favored element by RtoP. However, the “responsibility to rebuild” has clearly been set aside. A country which has had a centralized political system for more than a half decade, and was in a colonial status before, especially needs increased transitional assistance for a new regime. The NATO was irresponsible with regard to the regime change thus it distorted the intervention under the aegis of RtoP. Even if the military intervention met all precautionary criteria, passed the just cause threshold and possessed the right authorization the lack of responsibility to rebuild supersede the legal and moral justification. I believe this is the key lesson from Libya for RtoP.

The fact that Libya can be regarded as a sample of an ‘RtoP intervention’ does not mean necessarily that the outcome was assessed positively by everyone. In other words,

\textsuperscript{183} (Bilefsky & Lander, 2011)
Libya passed the test of RtoP but left a bitter taste in some world leader’s mouth. In particular, the voices against RtoP with regard to the Libyan sample strengthened in the case of Syria.

2. Syria - the unknown future

Evolution of the crisis

The Syrian crisis commenced just as the Libyan. Peaceful protests demanding respect of human rights, freedom of speech, democracy and measures against poverty turned into a violent crackdown in March 2011. However, President Bashar al-Assad did not use the threatening language with his citizens, as his colleague did in Libya; he rather went with a demagogy of an imperialist conspiracy reminiscent of communist times. As one of his tactical gambit, he even appointed a new government and abolished the High Security Court to hush further protests. It was a miscalculation. The crisis escalated, demonstrators’ demands shifted their focus on regime change, more and more victims fell under crackdowns by national security forces becoming increasingly violent. The death toll exceeded a 300 in the end of April, much more people were detained and tortured.

The opposition started to loosely organize; they created the Syrian National Council mostly of exiled Syrians, and the Free Syrian Army of armed rebels. However, later on, more and more new opponent groups appeared on the scene with distinct affiliations and aspirations which tendency resulted in a chaotic civil war divided along sectarian lines. Armed rebel groups are massively responsible for innocent casualties as well.

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184 (Zifcak, 2012)
185 Ibid.
187 ICRtoP official, 2013
188 The situation of ethnical and religious cleavages in Syria is an outstanding case. The governing power consists of a large majority of Alawites which group represents only 12% of the Syrian population. The ethnical majority is the Sunni Arab population with 60%. Smaller ethnic groups - e.g. Imamis (Twelver Shia), Ismailis (Sevener Shias), Copt Christians, Levantine Christians Jews, Druzes, Kurds etc. – are reluctant to join
The crisis has been elevated to an international level. Turkey, Saud Arabia, Israel and USA advocate the opposition, the latter two unequivocally the modest opposition. However, Russia, Lebanon and Iran whose nuclear politic is alarming recently, have close ties to the Assad-regime. Most of these countries deliver material – weapons, vehicles etc. - and financial support to help their allies thus fueling the conflict. UNSG Ban Ki-moon described the Syrian situation as 'proxy war, with regional and international players arming one side or the other'.

Untimely and vague response

In the case of Syria, responsive measures stuck on a political level. After the fierce crackdown in the end of April 2011 the HRC adopted the resolution S-16/1 where it called on the ‘Syrian government to put an end to the serious abuses of human rights, to lift censorship restrictions and permitting reporting within Syria, calling for the prohibition on foreign journalists to be lifted, and demanding the immediate release of all political prisoners’. In the Security Council however the resolution was vetoed by Russia and China, also Pakistan and Malaysia voted against it.

According to the Russian standing-point then, the events of Syria ‘[do] not present an international threat to international peace and security’ and that it is a domestic matter of the country and that violence does not originate only from the government but from rebel groups, therefore Russia prefers to not taking side in the conflict.

The next draft resolution was initiated by the UK, France, Germany and Portugal in May calling on the Syrian government’s responsibility to protect its citizens, called for an end to killings, arbitrary detention, disappearances and torture furthermore it demanded the lift of restrictions on media. (Here I have to add that the European Union imposed economic sanctions previously in May such as an arms embargo, a visa ban and asset

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190 (Zifcak, 2012) p.75
191 UN SCOR, 27 April 2011, UN Doc S/PV.6524
192 (Zifcak, 2012)
freeze against the Syrian regime. Again, Russia and China vetoed the resolution as it would have taken sides in the conflict, moreover India and Brazil (BRIC countries) joined the skeptical side, and argued that the resolution should not prescribe a reform program for the Syrian government. It was the first time that the BRICs referred to Libya claiming that the intervention there will apparently end up as a regime change but in Syria, they will not let this to happen.

The Arab League, being hefty from the beginning of the Libyan crisis, responded to the Syrian situation first in November 2011 when it condemned the actions by the Al-Assad regime and expelled the country from the organization. However, afterwards it remained very active, also came up with a draft resolution in December 2011 stressing the urgent need to step in the Syrian crisis as it gets spirally dangerous (Zifcak, 2012). This draft demanded that Syria grant immediate access for international humanitarian assistance, the authorities withdraw all military forces from the cities and towns and allow full and unhindered access to League of Arab States institutions (Zifcak, 2012). This resolution at least reached the pacifism of Russia and China, as only the two voted against the resolution, but it did not pass either.

The front line in UNSC was frozen untill the news spread all over the world that chemical weapons were reportedly deployed in Syria on 21 August 2013 killing about 1500 people. Obama held out the prospect of a ‘limited and proportional’ military intervention in order to send a message to Assad and to the world that when testing international norm of nuclear non-proliferation it is to bear in mind ‘there will be consequences’. However, the president did not get the essential support neither from his citizens, neither from congress and neither from military allies for an intervention.

Nevertheless, the use of chemical weapons moved Russia out of pacifism. On 14 September 2013 the USA and Russia reached an agreement in Geneva on the elimination of chemical weapons in Syria, the country believed to have the largest arsenal. This was a

193 ICRtoP official, 2013
http://www.theguardian.com/world/2013/sep/14/syris-crisis-us-russia-chemical-weapons-deal
huge breakthrough in negotiations which paved the way to the first UNSC resolution on the Syrian crisis: resolution 2118.

**Lessons from Libya and Syria**

The Syrian crisis now counts about 110,000 victims, 2.2 million refugees and 5 million IDPs and still we cannot put an end to it.¹⁹⁶ Questions emerge: why has the Assad-regime not acted to live up to his primary responsibility to protect his population and why has the international community not responded timely and decisively to halt this catastrophe, in accordance with their declaration on their responsibility to protect? According to the discussions above potential answers for the second question could be the followings:

1. Syria is an exceptionally difficult case because of its ethnical and tribal fragmentation and tensions between them. Therefore an outcome of coercive intervention would be measureless thus it lacks reasonable prospects.

2. The NATO intervention stretched its license, expressed under the UNSC resolution, and overthrew Gaddafi’s regime thus China and Russia were alienated from a possible intervention for human protection. That is why they vetoed an intervention of any kind three times in UNSC.

3. There is no political will and interest to halt the civil war in Syria as neither world or regional powers want to give up their influence in the area. Furthermore their short-term interests lie in the war.

It seems that no matter how remarkable a path we have seen from RtoP, and no matter that it brought great successes in the Libyan intervention, the emerging soft law norm cannot overcome the obstacles of the political dynamics the nuclear five in UNSC set.

¹⁹⁶ (R2P Monitor, 2013)
CONCLUSION

Learning from the abuses of resolution 1973 invoking RtoP in Libya and the inactivity in Syria, RtoP cuts a feeble figure when it comes to world politics: More skeptical opinions assert its redundancy, as eventually the political will of world-powers prevails no matter what an emerging soft law norm would utter. Some authors even draw attention to the dangers that RtoP implies. Rieff, for example, argues that ‘[the] military aspect remains the most usable element of the doctrine because it is the only one that is both coherent and practicable’ and, he adds elsewhere, ‘it can be used quickly and effectively as a legal and moral justification for military intervention’.197

My conclusion differs. Indeed when turning the concept on its head, what e.g. Russia did in the case of Georgia declaring that it is practicing its responsibility to protect, it can quickly be used as moral justification. But first, it will certainly not be legal and second, if the focus on human protection is lost we cannot talk about RtoP anymore. In the same way, in Libya NATO troops exceeded the limits of the UNSC Resolution but this was the selfish motives of the interveners. However, here I repeat that the ICISS-report does tolerate under the criterion of “right intention” certain bias in military intervention if the primary focus remains the halt or prevention of human suffering. Although this criterion probably suits the political reality better, the former concept of humanitarian intervention is more righteous on exclusion of selfish motives.

In my opinion, the biggest fiasco for RtoP is inactivity. The question whether RtoP will survive Syria addresses this issue. RtoP is an overly optimistic and sometimes too ambitious idea created for one reason: shaking up the international community and the debate of state sovereignty. In international capacity building, but especially in terms of root cause prevention of humanitarian catastrophes, RtoP seems far too idealistic and raises the question if there is or will be ever any political will of more developed states to finance and assist development of the poorer. Furthermore, the list of states in or before humanitarian crisis is too long. If not root cause prevention then an early warning system would offer a much practicable method to prevent mass atrocity crimes.

197 (Rieff, 2011)p. 11.
Comparing the cases of Libya and Syria, in the former case the UN institutions acted surprisingly rapidly, within less than a month the military coalition launched his attacks in 19 March waited only two days after the UNSC resolution, and by October Gaddafi has been assassinated. In the case of Syria, almost all options except coercive measures have been exhausted during the two and a half year period but Russia and China did not let any kind of intervention gain authorization by the UNSC. No one wants to intervene in Syria, in a country where the interests of the nuclear five are divided. No one cares about ‘those needing support’ as long as political interest of any world-power lies in an intervention.

And apparently if there will be any solution, it will be primarily based on the common interest of USA and Russia in nuclear non-proliferation. Let us hope that the upcoming Geneva II talks on Syria will have a focus on RtoP as well.

RtoP is obviously too weak to significantly influence international politics as it does not imply enforceability, as unfortunately no international legal norm does. Nevertheless, it is too early to underplay the policy shaping power of RtoP in the UN. The ICISS-report synthesizes all knowledge what was before implied in UNSG’s rhetoric – the shift of emphasis on individuals in conflicts – solidifies the role of the Security Council but at the same time offers a possible way to reform. RtoP still has its potentials to set up a well-oiled early warning system for conflicts and to build a reference forum in the UN for all NGOs engaged in humanitarian issues. RtoP is also suitable to provide guidance for peace keeping operations or for military operations, however there it has vast room for development here.

Now it is time to come back to my research question: does RtoP offer a solution to the ever emerging intervention-dilemma of the current international legal regime guarded by the UN? RtoP did grasp the gap between international human rights, humanitarian law and state sovereignty in order to strengthen the individual approach not only in intervention issues but in international law in general. It did so without going beyond the international legal setup, guarded by the UN. That is why RtoP received world-wide recognition rapidly. This was indeed an improvement compared to humanitarian intervention, its predecessor. And if we accept that the UN is the main institution to define the development path for international law, the embracement of RtoP elevates the emerging norm to an exceptional
position, implying the potential that RtoP will go down in the books of international law or at least will determine important judicial decisions in the future. That is to say, from legal perspective, RtoP does offer a solution to tackle intervention issues.

On the other hand, RtoP remits the intervention-dilemma to the Security Council, therefore there is no guarantee that it will ‘work better than it has’. In the case of Libya, Russia and China embraced the idea of a military intervention under the name of responsibility to protect but at Syria their main argument was still the respect of sovereignty. It is not consequent. This either means that the UNSC is not ready for the norm to be used and that RtoP still needs time, as it is so with all legal norms, to be embedded in thinking. Or that instead of the doctrine being a determining principle it has a subordinate position to the interests of winner states of II World War, and turns into a toy of international politics meaning that eventually it did not find an alternative solution for the intervention-dilemma. I believe the advocates mission is to raise their voice against the misuse or misinterpretation of the norm in order not to let it bring into discredit.
Responsibility to Protect – Will the norm survive Syria?

Abbreviation List

AU  African Union
BRIC  Brazil, Russia, India, China
EU  European Union
HRC  Human Rights Council
ICC  International Criminal Court
ICCPR  International Covenant on Civil and Political Rights
ICESCR  International Covenant on Economic Social and Cultural Rights
ICISS  International Commission on State Sovereignty
ICJ  International Court of Justice
MPEPIL  Max Planck Encyclopedia of Public International Law
NATO  North Atlantic Treaty Organization
NGO  Non-governmental Organization
RtoP  Responsibility to Protect
TNC  Transitional National Council
UDHR  Universal Declaration of Human Rights
UN  United Nations
UNGA  United Nations General Assembly
UNSC  United Nations Security Council
UNSG  United Nations Secretary-General
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A szakdolgozat a mindössze tíz éve megfogalmazott védelmi felelősség elvének (angolul: responsibility to protect, RtoP) pályafutását, fogalmi keretét és implementációs nehézségéit vizsgálja. A dolgozat első része elsősorban a definíciós problémákat illetve az RtoP helyét tárja fel a nemzetközi jog és a nemzetközi politika eszmerendszerében, míg a második az elv alkalmazását tárgyalja a 2011-es libiai és szíriai esetben keresztül.

A védelmi felelősség elve egyrészről egy fejlődő nemzetközi jogi norma, másrészről egy politikai doktrína, amely a népirtások, emberiség elleni bűncselekmények, etnikai tisztogatások és háborús bűncselekmények megelőzését és megállítását tűzi ki céljául. Úgy véli, az alapvető, első generációs, nem politikai emberi jogok védelme elsőbbséget kell, hogy élvezzen még akár az állami szuverenitás felett is. Újragondolja tehát az állami szuverenitás – a kortárs nemzetközi jog rendszerében jellemző – felsőbbrendűségét, és alárendeli azt az alapvető emberi jogoknak.

Ilyen értelemben rokon gondolat a humanitárius intervenció koncepciójával, amelyet azonban új fogalmi keretek közé akar foglalni, hogy egy új, közös alapot, nemzetközi konszenzust hozzon létre a kérdésről, ahogyan az az alapítóatyák, az International Commission on State Sovereignty (ICISS) nevű bizottság jelentésében is áll. A humanitárius intervenció fogalmától azonban élesen eltér az Egyesült Nemzetek Szervezetéhez való hozzáállásában. Ugyanis az RtoP-t jóval megelőző koncepció nem feltétlenül tartja szükségesnek az ENSZ Biztonsági Tanácsának felhatalmazását egy embersiéges beavatkozáshoz, amely ezáltal ütközik az ENSZ Alapokmányával és egyúttal a kortárs nemzetközi jog rendszerével. Az RtoP azonban az ENSZ BT-n belül képzel el reformokat; kiemeli a nemzetközi jogi rendszer emberi jogi elemeit, és így próbál erkölcsi nyomást gyakorolni az ENSZ BT-re, hogy aktívabban cselekedjen súlyos és szisztematikus emberi jogi sértések esetén, a szuverenitás kérdését háttérbe szorítva.

A katonai intervenció kérdése azonban csak egy része az RtoP gondolatának lévén egy ernyőkoncepcióról van szó. Míg az ICISS-jelentés (1) a megelőzés, (2) a reagálás és (3) az újjáépítés felelősségét nevezi meg a koncepció három részeként, addig az ENSZ-
főtitkár Ban Ki-moon más dimenzióba helyezve az elvet (1) az állam védelmi felelősségei, (2) a nemzetközi asszisztencia és kapacitásnövelés és (3) az időszerű és határozott fellépés hármasát teszi meg az RtoP pilléreinek 2009-es jelentésében. Az utóbbi besorolás alapvetően jobban elfogadott, mivel az ENSZ 2005-ös világsúcs-találkozójának eredményeként nemzetközileg elfogadott dokumentum alapján került összefoglalásra.

Az ICISS-jelentés mindenekelőtt a tömeges humanitárius atrocitások megelőzésének fontosságát hangsúlyozza, amelyről elsősorban az államnak kell gondoskodnia, másodsorban pedig a nemzetközi közösséget ösztönzi, hogy a prevencióra és a labilisabb államok fejlődésére több figyelmet és erőforrást fordíts. E tekintetben a tanulmány az ENSZ fokozott szerepvállalására is buzdít, nevezetesen arra, hogy a világszervezet hozzon létre egy olyan megbízható és egységes adatbázist egyúttal egy „korai vészjelző rendszert”, amely kifejezetten a népirtások, etnikai tisztogatások, emberiség elleni bűncselekményeket és háborús bűntetteket figyeli a világban. Erre azért is van szükség, mert jelenleg a számos nem-kormányközi szervezetnek, amik jobban szuperálnak e téren, nincs egy egységes platformuk.

Ha azonban a megelőzés kudarcot vall, és a humanitárius krízis fellép, elsősorban az állam felelőssége annak mielőbbi megoldása, másodsorban azonban igenis a nemzetközi közösség felelőssége a reakció. Ez a reakció mindenekelőtt az ENSZ Alapokmányával összhangban először béke eszközöket kell, hogy jelentsen (diplomáciai válasz, dialógus stb.), ha azonban azok eredménytelenek, nyomatékosító intézkedéseket kell foganatosítani: gazdasági, politikai, katonai szankciókat és végső esetben katonai beavatkozást. Ez tulajdonképpen az „időszerű és határozott fellépés” pillérejének felel meg az ENSZ-főtitkár jelentésében.

A Ban Ki-moon-i felosztásban ugyanakkor háttérbe szorul az „újjáépítés felelőssége”, amely viszont ugyanúgy a három elem részét képezi az ICISS-tanulmányban. Az intervenciók nagy hányada azonban épp az azt követendő újjáépítés és a rend helyreállításának hiánya miatt vonult be a történelembe kudarcként.

A dolgozat második része az RtoP implementálásáról szól. Először egy általános körképet adok a világ államainak és szervezeteinek a doktrinához való viszonyulásáról, majd a 2011-es libiai intervencióra térek rá, amely az RtoP elveinek megfelelően illetve az
azt tartalmazó ENSZ BT határozattal kezdődött meg, így az elvnek egy fontos tesztországa volt.

A líbiai krízishelyzet kialakulását először egy eseménytörténeten keresztül szemléltetem, főkuszálva az emberi jogi sértésekre és fenyegetésekre, majd a nemzetközi reakciót tárgyalom az ENSZ BT határozatokkal együtt. Röviden bemutatom a katonai intervencia alatt történő eseményeket. Harmadik pontként a 2011 februárja és októberé – amelyből csaknem 8 hónap nemzetközi beavatkozással történt – között zajló polgárháború kihatásaira értek ki. A líbiai események elemzése során kiderül, hogy bár az RtoP feltételeként valóban megfelelt a katonai beavatkozás megindítása, azonban a kivitelezés során történt NATO-csapatok túlkapásai illetve visszaélései, de különösen Líbia felelőtlen magára hagyása az intervenció után rossz színben tüntette fel a doktrinát is. Ezen túlkapások voltak például a líbiai diktátor, Muammar Kadhafi rezsimjének megdöntése, amely expliciten nem szerepelt a felhatalmazásában, a felesleges áldozatok ontása (ld. Kadhafinak és családja egy részének megkínzása illetve kivégzése), a béketörekvések negligálása illetve a már említett újjáépítési felelősség figyelmen kívül hagyása.

Az események megítélését és a kérdés megoldását tanulságot adó példa a szíriai eseményekre. A szíriai válság, noha szinte pontosan úgy kezdődött, mint a líbiai, a nemzetközi konstruktív válaszreakció csak a dolgozat írásának idejében látszódik kibontakozni a második genfi béketárgyalás (Geneva II) kilátásba helyezésével. A mintegy két és fél éve zajló szíriai polgárháborúnál az „időszerű és határozott” nemzetközi reakció szöges ellentétét látjuk megvalósulni.

A líbiai hibák visszaközöttek a szíriai események során. A szíriai válság, noha szinte pontosan úgy kezdődött, mint a líbiai, a nemzetközi konstruktív válaszreakció csak a dolgozat írásának idejében látszódik kibontakozni a második genfi béketárgyalás (Geneva II) kilátásba helyezésével. A mintegy két és fél éve zajló szíriai polgárháborúnál az „időszerű és határozott” nemzetközi reakció szöges ellentétét látjuk megvalósulni.

A szíriai kormány felelősségét hangsúlyozó és fellépését követő háró határozattervezet mind megvétőzta Oroszország és Kíná az ENSZ BT-ben, amelyek hozzáteszem még egyáltalán nem helyeztek katonai beavatkozást kilátásba. De késői volt az Arab Liga és más regionális szervezetek reakciója egyaránt. Az Amerikai Egyesült Államok szintén inkább a visszavonulás mellett döntött, igaz az unilaterális intervenció a vegyifegyver-használat miatt indult volna elsősorban, nem kifejezetten az emberek védelme céljából. Szíria esetében a regionális- és nagyhatalmak érdekeinek éles megoszlása manifesztálódott illetve szkeptizmus mutatkozott az emberek védelmében hozott intézkedéseknél kapcsolatban a lehetséges túlkapások és a pártatlanság hiánya miatt. Mára a helyzet rendkívül kaotikussá vált, a kormánypárti és ellenzéki erők is rendkívül fragmentálódtak, épp ezért az intervenció útjában áll az ésszerű kilátások hiánya is.
Szíria és a nemzetközi inaktivitás óriási kudarcot jelent a védelmi felelősség elvének. Felmerül a kérdés, hogy életben marad-e az elv tíz éves sikerpályájának ellenére, illetve, kutatásom fő kérdése az volt: kínál-e az RtoP megoldást az újra és újra előtérbe kerülő intervenció dilemmára. Erre a kérdésre a konklúziómban két választ adtam. Az egyik az, hogy nemzetközi jogi aspektusból sokkal jobb megoldást kínál, mint az elődjé, a humanitárius intervenció koncepciója. Ilyen értelemben nem gondolom, hogy egyhamar elbukik az elv, hiszen a nemzetközi jogrendbe tökéletesen illeszkedik, és egy remek fejlődési pontot és/vagy egy adekvát gondolkodásmódot kínál. Ugyanígy a gyakorlatias részei egyszerűen implementálhatóak az ENSZ számára egyaránt, amely az utóbbi években meg is kezdte az RtoP reformjavaslatainak megvalósítását.

Ugyanakkor van egy komoly hátulútője is annak, hogy az RtoP alátámasztja a jelenlegi ENSZ BT vezetős nemzetközi jogi rendet. Avval, hogy az RtoP végső soron visszaautalja a döntést az ENSZ BT-hez az intervenció legalitásának igazolásáért, alárendeli magát a II. világháború győztes államai között jelen lévő politikai dinamikának. Ebből következően, ahelyett, hogy az RtoP a döntéseket meghatározó norma lenne, könnyen a világpolitika játékszerévé válhat. A feladat az elv életben tartásának érdekében tehát az, hogy a fejlődő jogi norma támogatói határozottan és élesen lépjenek fel visszaélések és félreértelmezések ellen, hogy az legalább morális síkon adekvát mércét jelentsen a továbbiakban is.