

REVISITING THE DOCTRINE OF RESPONSIBILITY TO PROTECT: A CRITIQUE OF UNITED NATIONS SECURITY COUNCIL ACTION IN LIBYA*

Abstract

The concept of the responsibility to protect, also called R2P, was developed in response to the genocide in Rwanda and the deliberate targeting of civilians in various armed conflict around the world. Since these crises, a series of governmental and non-governmental initiatives have focused on reconciling the traditional notion of state sovereignty with respect for human rights, with the moral imperative to act with force if necessary in the face of core international crimes. In 2000 a Report entitled ‘the responsibility to protect’, was produced. The report sought to establish a set of clear guidelines for determining when intervention is appropriate, what the appropriate channels for approving an intervention are and how the intervention itself should be performed. Based on this principle, the UN Security Council voted in favor of the NATO-led military intervention which brought the Libyan regime under Col Qhadafi to an end in 2011 and left the country in the ruins currently going on there. Against this backdrop, the primary objective of this study is to appraise the doctrine of responsibility to protect as well as the UN backed NATO led intervention in Libya. Toward that end, the following interrelated issues will be addressed: the Responsibility to Protect and its impact in Libya vis-à-vis the Western countries desire for regime change which was the motivating factor that influenced the intervention instead of the much publicized humanitarian needs. In conclusion, the paper concludes that the UN backed intervention was never in the interest of the Libyan people but was used to achieve a long time geopolitical interest of the West. The paper thereafter will offer recommendations on how to improve the effectiveness of the Security Council for future humanitarian intervention.

Keywords: Responsibility to Protect, UN Security Council, Libya, Critique

1. Introduction

In the past, states could use the concept of sovereignty as a shield from foreign interference, allowing government forces or their clients to perpetrate genocide and other forms of mass atrocity against their own population. Now, the international community, acting through the UN Security Council and under the UN Charter, is obligated to ‘be prepared to intervene when a state is manifestly failing to protect its populations or actively using force against civilians’. At the United Nations General Assembly in 1999, and again in 2000, Secretary-General Kofi Annan made compelling pleas to the international community to try to find, once and for all, a new consensus on how to approach these issues, to ‘forge unity’ around the basic questions of principle and process involved. He posed the central question starkly and directly: ‘If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?’ It was in response to this challenge that the Government of Canada, together with a group of major foundations, announced at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS). The report which was later presented to the General Assembly¹ in December, 2001 unanimously agreed by the twelve Commissioners the need to establish an international norm anchored on the responsibility to protect instead of the absolute doctrine of state sovereignty. The central theme, reflected in the title, is: ‘The Responsibility to Protect’, the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states². The aim of the report was described as: ‘Global political consensus about how and when the international community should respond to emerging crises involving the potential for large-scale loss of life and other widespread crimes against humanity’³. This report is about the ‘right of humanitarian intervention’ and the report tried to answer

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¹ It submitted in December, 2001

² ICISS Report, 2001a. The report was submitted to the UN General Assembly in New York on the 20th September, 2001 and would later form the basis of the future debate regarding intervention and state sovereignty. It was formerly adopted by member states in 2005 other called the World Output Summit, 2005.

³ See the preamble of the 2001 Report on humanitarian intervention which gave rise to the growing concept of responsibility to react, thus relaxing the age long held doctrine of absolute state sovereignty in International Law.

many questions regarding interventions like, question of when, if ever, it is appropriate for states to take coercive and in particular military action, against another state for the purpose of protecting people at risk in that other state? All these issues will be discussed herein to ascertain the extent of the conceptualization of the norm. The nature and dimensions of that responsibility was vividly set out in the report including all the vexed questions about who should exercise it, under whose authority, and when, where and how.

2. Basic Principles of Responsibility to Protect

At its core, responsibility to protect aims to prevent the sorts of mass atrocities that have occurred repeatedly in the past, claiming millions of lives, as happened in *Rwanda, Bosnia, Srebrenica* etc. There is no state today which denies the duty of state to protect its own population. Ideally, responsibility to protect would be ‘self-executing,’ meaning states would protect their own populations or ask for and receive outside help if necessary; however, many states lack the capacity to protect their civilians from violence, while for others the leading source of violence is the government⁴. Early proponents of responsibility to protect sought to establish a responsibility to act, which would imply that the international community has an obligation to take collective action to protect populations in all instances of genocide, mass murder or grave breaches as it is called under the Geneva Convention. The two basic principles of the Report mainly that State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself; and that where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect⁵. On this basis, the International Commission on Intervention and State Sovereignty first attempts to transform national sovereignty from a principle which traditionally implies that states are ‘untouchable’ in their internal affairs into one that holds states responsible for the protection of their peoples from grave violations of human rights.

During the UN World Summit in 2005, however, a number of states voiced concern that powerful states would use responsibility to protect as a pretext to intervene in weak states or that responsibility to protect call for military intervention could even violate international law⁶. Questions remain as to when application of responsibility to protect would shift from the national to international level. Intervention on the basis of responsibility to protect will thus be decided on a case-by-case basis, primarily determined by the collective judgment of the Permanent members of the UN Security Council or convergence of their national interests.

According to the report, the foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in: obligations inherent in the concept of sovereignty; the responsibility of the Security Council under Article 24 of the UN Charter, for the maintenance of international peace and security; specific legal obligations under human rights provisions of the Charter⁷ and human protection declarations, covenants and treaties, international humanitarian law and national law; the developing practice of states, regional organizations and the Security Council itself⁸. The responsibility to protect embraces three specific responsibilities namely the responsibility to prevent which is aimed to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. The second being responsibility to react which is expected to prepare states to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions⁹ and international prosecution¹⁰, and in extreme cases military intervention. The third one is the responsibility to rebuild which seeks to provide measures aimed at, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert¹¹. The objective of the principle is prevention. According to the report, Prevention is the single most important dimension of the responsibility to protect and it urges the UN that prevention options should always be exhausted before intervention is contemplated. The concept outlined the Principles for Military Intervention to include the Just Cause Threshold principle. It stated that because Military intervention for human protection purposes is an exceptional and extraordinary measure, to be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind: ‘Large scale loss

⁴ L. Glanville, ‘The Responsibility to Protect Beyond Borders.’ *Human Rights Law Review*. 24 January 2012. Web.

⁵ ICISS Report, 2001a ix

⁶ N. Gvosdev, ‘Key Interests Prevent Russia From Abandoning Syria-Oped.’ *Eurasia Review*. 3 July 2012. Web. <http://www.eurasiareview.com/03072012-key-interests-prevent-russia-from-abandoning-syria-oped/>

⁷ See for instance Articles 1(3) of the Charter, Article 55 and 56 of the Charter

⁸ ICISS Report, 2001a

⁹ See Article 41 of the UN Charter

¹⁰ See Article 6, 7, 8 etc of the ICC Statute

¹¹ ICISS Report, 2001 p.2

of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or Large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape'¹².

Under the principle, the primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering and that the right intention is better assured with multilateral operations, clearly supported by regional opinions. However, because of the seriousness of military intervention and the cost and human implications, the principle states that military campaign should be the last resort. It opined that: 'Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded'. One issue that was hotly debated and is still being debated today is the issue of the right authority. It simply means which body has the legal and or moral authority to intervene inside the territory of a sovereign nation to protect the suffering population? There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has. According to the report, the Security Council authorization should in all case be obtained prior to any military intervention. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter before intervene would be lawful. Unfortunately, the principle apart from its unanimous adoption at the World Document Outcome in 2005, there has not been any legal recognition of the doctrine in international law. The language adopted in the 2005 Document¹³ avoided any legal commitment on the part of the international community. For instance, at the negotiations on the World Summit Outcome Document, the then US Permanent Representative John Bolton stated accurately that the commitment made in the Document was 'not of a legal character. In a similar vein, the representative of Singapore noted in the preliminary meeting of the General Assembly: 'For my delegation, it is clear that, four years ago, our leaders pledged their strong resolve to the notion of Responsibility to Protect. Certainly, that did not make responsibility to protect part of international law or a legally binding commitment'¹⁴.

Both in the 2005 Outcome Document and the follow-up documents, particularly the 2009 Report of the Secretary-General of the UN, states have refrained from turning the responsibility to protect into a legal obligation on the part of the international community as far as undertaking of collective action is concerned. Therefore, at this stage it is not possible to interpret this notion of 'responsibility' as a legal one. Thus, the question that arises is whether Responsibility to Protect is genuinely an obligation, (legal or moral), also for the international community or just one of the rhetorics? Thus, currently there is neither an existing legal mechanism nor an attempt to establish one to assure international community's collective response at times when there is state failure to prevent or halt grave violations of human rights. Consequently, in general terms, it is not necessarily possible to talk about a well-established legal responsibility to protect at the international level. In the absence of strictly established criteria for implementing responsibility to protect, the duty assumed by the international community stands out as a moral duty rather than a legal one. The UN Security Council can pursuant to the principle of responsibility to protect activate it enforcement measures and hold that the commission of mass atrocity crimes and grave breaches amount to threat to international peace and security.

3. Libyan Sovereignty and Responsibility to Protect

In Libya 2011, peaceful protestors were brutally suppressed by government troops, police, and proxy militias. Autocratic governments used extra-judicial killings, intimidation, and unrestrained violence in an attempt to maintain their authority. The NATO intervention in Libya is one of the most recent humanitarian interventions recorded and it was the first intervention anchored on the emerging norm of responsibility to protect. In February, 2011 UN Security Council adopted Resolution 1970¹⁵ which imposes an arms embargo on Libya. When the Libyan regime

¹² ICISS Report, 2001a, 4

¹³ Based on the framework of the Outcome Document, it is clear that 'the concept of a 'responsibility to protect' does not amount to a legal norm that would legitimize unilateral intervention in domestic affairs by individual states or regional organizations, but refers on the contrary to the encouragement and support the international community has to give to states so that they exercise this responsibility' at least at that level even when all the member agree that the four prohibited crimes as agreed in the Summit must be prevented from happening.

¹⁴ Being minutes of the proceedings of the UN General Assembly debate on the Report of the UN Secretary General on the Responsibility to Protect framework. Retrieved from www.un.org/ga/president/63/interactive/protect/conceptnote.pdf (accessed August, 08, 2018).

¹⁵ See the summary of NATO intervention in Libya. Available on https://www.nato.int/cps/en/natolive/topics_71652.htm last visited on 20/11/15 by 5.30am

refused to halt the killing of civilians, on 17th March 2011, the UN Security Council adopted another resolution (Resolution 1973¹⁶) which imposes a no-fly zone over Libya and authorized member state to take all necessary measures to protect civilians-populated areas under attack or threats of attack. Following the continued militarization of the Libyan uprising and the deliberate targeting of Government forces by armed bandits within the Libyan territories, NATO purportedly answered the United Nations call to the International Community to protect the Libyan people. In March 2011, a coalition of NATO allies and partners acting on UN Resolution 1973¹⁷ of 2011 began enforcing an armed embargo, maintaining a non-fly zone and purportedly protecting civilian populated areas from attack or the threat of attack in Libya under Operation Unified Protector (OUP). OUP was successfully concluded on 31st October, 2011¹⁸. In the aftermath of the UN Security Council Resolution 1973, the UN Secretary-General Ban Ki-Moon declared that: 'The Security Council today has taken a historic decision. Resolution 1973 confirms, clearly and unequivocally, the international community's determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their own government'¹⁹. He concluded happily that the people of Libya have since formed a new government and are working, albeit with much difficulty, towards a functioning democracy based upon rule of law and respect for human rights. We shall later interrogate the validity of this statement.

Armed intervention in a foreign country is one of the most controversial courses of action in international relations. Libya by 2011 was a sovereign country with a single functional and viable government. It has all the attribute of a sovereign state. Libya was capable of protecting its citizens from attacks but unfortunately, in this case, the West falsely accused the Libyan state itself of deliberately targeting and killing its civilians population. Despite the Charter provisions on the protection of sovereignty, the UN activated the collective enforcement measures. This is despite the fact that the UN Charter has explicit provision for the protection of state sovereignty though however same can be eroded pursuant to a determination under Article 39 that there exist a threat to international peace and security. The U.N. Charter integrated and reflected the values of the *Westphalian* state system, and reaffirmed the principles of non-intervention in domestic affairs and non-use of force across international borders by affirming that the United Nations itself 'is based on the principle of the sovereign equality of all of its Members'²⁰. Most importantly, the Charter urges member states 'To refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state' that would not be consistent with the purposes of the organization'²¹. This provision shows that the framers of the UN Charter intend to preserve the sanctity of the sovereignty as agreed in the *Westphalian* Treaty. In addition to the foregoing provisions, the Charter went further to discourage even the UN itself from notion of interfering in any internal affairs of the sovereign state. The important of the concept of state sovereignty within the framework of the Charter was illustrated thus:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle *shall not prejudice the application of enforcement measures under Chapter VII*²².

Having provided in clear terms the sanctity of sovereignty of member states, the UN Charter did not provide for any express provisions for the enforcement of humanitarian intervention but leaves the security Council with the wisdom to determine when a crisis becomes a threat to international peace and security. The Charter simply made provisions for human rights without providing mechanism for their observance or enforcement. The preamble of the Charter reaffirms 'faith in fundamental human rights ... in the equal rights of men and women and of nations large and small.' Moreover, one of the purposes of the United Nations is to: 'Achieve international cooperation in solving international problems of a humanitarian character' and in 'promoting and encouraging respect for human rights'²³ Furthermore, the Charter also charges the General Assembly with initiating studies and making recommendations 'for the purpose of assisting in the realization of human rights'²⁴. Finally, the Charter charges the Economic and Social Council with

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Byman, Daniel, Michael Doran, Kenneth Pollack, and Salman Shaikh. 'Saving Syria: Assessing Options for Regime Change.' Saban Center, Brookings Institution. Memo #21. March 2012. Web. http://www.brookings.edu/~media/Research/Files/Papers/2012/3/15%20syria%20saban/0315_syria_saban.pdf accessed on 18/9/18

²⁰ See Article 2(1) of the UN Charter

²¹ Article 2(4) UN Charter

²² Article 2(7) UN Charter. Note emphasis supplied.

²³ Article 1(3) of the Charter

²⁴ Article 13 of the UN Charter

‘setting up commissions ... for the promotion of human rights²⁵.’ Outside these laudable provisions, there is nothing in the UN Charter to show collective will to enforce human rights in events of mass atrocity crimes. The subordination of human rights in the hierarchy of the United Nations’ purposes is manifested in the reality that the U.N. Charter excludes a provision for intervention on humanitarian grounds. The only way to lift the protective barrier afforded to sovereignty by the combined readings of articles 2(4) and 2(7) of the Charter is to activate the only one exception to the sanctity of domestic jurisdiction²⁶. This will now take us to the enforcement measures of the UN as articulated in the Charter.

4. UN Security Council and Enforcement measures under Chapter VII

The Security Council is the sole body authorized to make decisions that United Nations member states must implement in accordance with the Charter²⁷. Under Chapter VII, the UN Security Council may determine threats to peace, ‘decide what measures not involving the use of force are to be employed to give effect to its decisions,’ and ‘take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security²⁸. Therefore, the importance of the U.N. Security Council should not be underestimated, particularly in regard to conflict resolution. Although there are fifteen members on the Council, ‘the Permanent members with their potential vetoes retain the status of *primus inter pares* and have used these to account for the vast majority of defeated UN Security Council resolutions. Since the end of the Cold War, the UN has taken a much more active role in resolving such conflict. Since 1990, there have been notable actions by the UN Security Council, which include attempts to alleviate humanitarian crisis in Somalia, halt ethnic cleansing in Bosnia, restore democratically elected rulers in Haiti, Sierra Leone, and Cote d’Ivoire, guarantee peace agreements resolving civil wars, and ensure post-conflict stability in Afghanistan, Bosnia, East-Timor, Kosovo, Haiti, and Iraq. In most of these cases, the recognized government of the nation in question agreed to the UN-authorized mission²⁹.

The UN Charter³⁰ allows the UN Security Council to authorize enforcement action under Chapter VII. The Charter³¹ binds members of the United Nations ‘to carry out the decisions of the Security Council in accordance with the present Charter.’ The main provision is article 39 which gives the Security Council the responsibility of determining that a threat to the peace exists and of deciding what enforcement measures to undertake according to Articles 41 and 42. In essence, activating Article 39 renders Article 2(7) inoperative. The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. Enforcement measures rest on the requirement that the Security Council will determine the existence of a threat to peace thereby opening the door to intervention under Chapter VII. An Article 39 judgment of the Security Council determining a threat to the peace which is based on a majority decision (at least nine of the 15 members) without a dissenting vote by a permanent member is also legally binding.

5. Libya and Implementation of Responsibility to Protect

The Libyan conflict in 2011 presents an important case study on authorization of the use of force on the normative basis of responsibility to protect. When Libyans took to the streets in February of 2011, echoing their Tunisian and Egyptian neighbors’ demands for more representation and rights, they were met with ‘lethal and indiscriminate’ violence by *Qaddafi*’s security forces. International condemnation and calls for restraint failed to halt attacks against increasingly large protests. The UN Security Council, encouraged by permanent member states such as France, the United Kingdom, and the United States, first imposed sanctions and subsequently authorized the use of force to protect civilians, consistent with the provisions of responsibility to protect. These actions raise two key questions: did the situation in Libya warrant action under responsibility to protect, and if so whether regime change was the purpose of the UN Resolution 1973 for intervention in Libya? The Libyan government did everything it could to maintain power. Even before protests began, the government realized that political unrest in the neighboring countries of Tunisia and Egypt could inspire similar efforts in Libya; it proceeded to take preemptive measures such as reducing food prices in an attempt to discourage unrest. These efforts failed, with the first large protest against *Qaddafi*’s

²⁵ Article 68 of the UN Charter

²⁶ Op. Cit, footnote 11

²⁷ See Article 24 of the Charter

²⁸ See Article 39 of the Charter

²⁹ D. Forsythe, ‘The UN Security Council and Response to Atrocities: International Criminal Law and the P-5.’ *Human Rights Quarterly*. Volume 34, Number 3. August 2012. Web. http://muse.jhu.edu/journals/human_rights_quarterly/v034/34.3.forsythe01.html accessed on 18/9/18

³⁰ Referring specifically to article 39 of the Charter

³¹ Article 25 of the Charter

government occurring on February 15. Almost immediately, the government decided to use force to suppress protestors and maintain control. Two days later, a 'day of rage' occurred that was met with violence in which at least 20 people were killed³². As public discontent escalated, Libyan authorities loyal to *Qaddafi* arrested hundreds of civilians, attacked protestors with all heavy weapons, including aircraft, and killed hundreds. The perception of continuous, unrestrained violence on the part of the regime gave momentum to growing calls for *Qaddafi* to leave and/or some type of international intervention. Continuing violence led to Security Council Resolution 1970, which specifically invoked: 'The Libyan authorities' responsibility to protect its population,' condemned its violence against civilians, demanded that this stop,' and sought to elicit a positive response from Col. *Qaddafi* and his cronies 'by applying targeted sanctions, an arms embargo and the threat of International Criminal Court prosecution for crimes against humanity'³³.

It also included the possibility of modifying international pressure depending on whether Col. *Qaddafi*'s government complied with the resolution. Citing responsibility to protect in this case was justified because forces loyal to Col. *Qaddafi* were essentially massacring protestors and *Qaddafi* was taking no steps to defuse the situation peacefully. Resolution 1970, passed on February 26, 2011, called upon the current Libyan government to take responsibility for protecting its own civilians, an obligation easily agreed upon in the UN Security Council as the Resolution passed unanimously. Much more controversial was the invocation of Chapter VII and responsibility to protect as rationale to authorize the international use of force to protect civilians when the situation became more violent.

In eastern Libya city of Benghazi, protestors seized weapons depots and military bases, while government forces defected or fled and the situation became an armed rebellion and no longer protest. The opposition managed to gain control of many towns in eastern Libya, most notably the country's second largest city, Benghazi, but remained significantly less equipped than government forces. The government then announced 'that the rebellion would be defeated within 48 hours' as its troops advanced toward Benghazi. The UN Security Council again took action and on March 17, 2011, it passed Resolution 1973 with 10 votes for, 0 against, and 5 abstentions. In contrast to most previous UN actions, Resolution 1973 authorizing armed intervention in Libya occurred in direct opposition to a still-technically legitimate regime. The UN Security Council authorized action against a sitting government 'failing to protect its own people'. This legal aspect is highly significant for potential future of responsibility to protect. The action of the UN Security Council was later discovered to have been a monumental mistake, at least with the worsening security situation in Libya following the murder of *Col Qhadaffi*.

The situation in Libya was an armed rebellion within the territory of a sovereign state and the regime was capable of protecting the people of Libya from the rebellion. UN Security Council Resolution 1970 urged the Libyan Government to protect its population,' but failed to also recommend measures or actions to curb the armed rebellion in eastern Libya. The regime has a responsibility to repel the rebellion and it rolled out its forces to recapture the cities taken by rebels. This aspect was ignored by UN Resolution 1970 as well as Resolution 1973. Therefore, invoking responsibility to protect, this time as grounds for international intervention, was again unwarranted, been an armed insurrection in Libya and most importantly, the methods of implementation of UN Security Council Resolution 1973 were questionable. Whereas the resolutions merely imposed a no-fly zone over Libya and authorized member states to take all necessary measures to protect civilians-populated areas under attack or threats of attack, the NATO led coalition pursued a policy of regime change by supplying arms to the Libyan dissidents and providing air cover for the rebels while using their air superiority to destroy the Government military installations which eventually ousted the Col. *Qhadaffi* regime and ushered in the disaster currently on in Libya. It is pertinent to note that after the ouster of Col. *Qhadaffi*, *Libya* has never had a functional central Government and the UN recognized Interim government does not have effective country in some parts of the country including the capital Tripoli. Even the United States Ambassador³⁴ was killed in Libya after the ouster of *Qhadaffi* following the rise of various armed groups each battling for control of Libya.

The justification of the purported intervention in Libya in 2011 on ground of humanitarian intervention and pursuant to the emerging norms of responsibility to protect cannot be supported in view of the available facts on ground by

³² A. Hehir 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect.' *International Security*. Volume 38, Number 1. Summer 2013. Web.

³³ K. Holmes, 'The Weakness of the Responsibility to Protect as an International Norm.' *Small Wars Journal*. 7 January 2014. Web. <http://smallwarsjournal.com/jrn/art/the-weakness-of-the-responsibility-to-protect-as-an-international-norm>

³⁴ John Christopher Stevens, April 18, 1960 –September 11, 2012 was an American career diplomat and lawyer who served as the US Ambassador to Libya from May 22, 2012 to September, 11 2012. Stevens was killed when the US Special Mission in Benghazi, Libya, was attacked by militants on September, 11 2012 available on https://en.m.wikipedia.org/wiki/J._Christopher_Stevens accessed on 26 September, 2018

March, 2011. If the intervention had been limited to protecting the civilian population against attack, the intervention would have been justified but the West in addition to paralyzing the Government's military capabilities to fight the rebellion were also arming the insurgents. In addition resolution 1970 had already imposed an arm embargo on Libya. The protest had turned into an armed struggle when the United Nations Security Council UN Security Council intervened, citing responsibility to protect. It is important to note that in Libya there were armed groups who have taken up arms against the regime. It was an armed rebellion even though started through a civil protest. When the UN adopted Resolution 1973 the aim was to protect civilians and not to enforce a regime change. Regime change imposed from outside was by no means part of the original goal of military intervention in Libya, at least not of the official policy of the UN. The armed rebellion was a matter with the domestic jurisdiction of the state of Libya. Responsibility to protect therefore could not have applied in the circumstance

This explains why China and Russia has been the traditional opponent of the responsibility to protect framework. For instance, the Chinese government 'had opposed The Responsibility to Protect throughout the ICISS process and insisted that all questions relating to the use of force defer to the Security Council. In its position paper on UN reform, however, China accepted that 'massive humanitarian' crises were "the legitimate concern of international community.'" While Russia supported the rhetoric of the responsibility to protect, it shared China's belief that no action should be taken without Security Council approval and suggested that, by countenancing unauthorized intervention, the Responsibility to Protect risked undermining the UN Charter. Again, the Non-Aligned Movement (NAM) rejected the concept. India, for example, argued that the council was already sufficiently empowered to act in humanitarian emergencies and observed that the failure to act in the past was caused by a lack of political will, not a lack of authority. Speaking on behalf of the NAM, the Malaysian government argued that the responsibility to protect potentially represented a reincarnation of humanitarian intervention for which there was no basis in international law³⁵. It was the outcome of the Libyan intervention that has stalled any progress in Syria since 2011. Russia, a trusted and dependable ally of the Syrian Government has not only vetoed any UN Security Council resolution calling on Syrian Government to protect its population, it has also sent its military hardware and forces to fight on the side of the Syrian Government thus removing any possibility of intervention by the international community. Thus any progress and goodwill which the principle of responsibility to protect made in last decade was destroyed in Libya and the consequence is what we now have in Syria, a civil war in its 8th year without any hope of either military or political solution.

6. Conclusion

Responsibility to protect is somehow misrepresented as an emerging legal norm, structured to legitimize humanitarian intervention and excuses form of military recklessness. This fear or perceived misrepresentation was what manifested itself in 2011 in Libya. The member states do not find the argument of the proponent of the principle attractive because it somehow redefines sovereignty, enabling self-interested coercive intervention, and expanding the scope of potential intervention none of which are tenable to the majority of states of the international community. It is in response to this plea that the Security Council purportedly authorized the intervention in Libya in 2011. That intervention was meant to 'impose a no-fly zone over Libya and authorized member states to take all necessary measures to protect civilians-populated areas under attack or threats of attack' but the implementation mechanism was left at the mercy of the member State. US and her Western allies took up the initiative and systematically ousted the Libyan regime, supporting the rebel groups with military weapons and air superiority while preventing the regime air force from flying. The measure was never the mandate of resolution 1973. The intervention in Libya pursuant to the principle of responsibility to protect was abused. Regime change was never the target of the UN resolution but rather to impose a no-fly zone over Libya and for member states to take all necessary measures to protect civilians populated areas under attack or threats of attack. It is our submission that the implementation of the responsibility to protect in Libya was wrong as the situation did not warrant same and the measure of the implementation was tailored to meet the national and geopolitical interests of the US and Western allies. It is therefore recommend a reform of the UN system to provide a standby UN Command Force to lead any future action on humanitarian intervention pursuant to responsibility to protect principle.

³⁵ Copied from the work of Alex J. Bellamy. 'Whither the Responsibility to Protect. (Summer 2005): 151-2) [https://www.cambridge.org/core>article](https://www.cambridge.org/core/article) accessed on 12/08/2018