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Responsibility to Protect as a Primary Institution of the International Society: Libya Case

Aslihan Turan¹

Abstract

The adoption of the Responsibility to Protect Report in 2005 by the UN World Summit was a promising step forward for the evolution of the international society in terms of prevention of mass atrocity crimes and the protection of the civilian people's rights suffering from these tragedies. For some, this move was/is a sign showing the transformation of the international society towards a solidarist one where the R2P would be widely internalized as one of the primary institutions of the society of states. Nevertheless, as the contemporary international practices and approaches against mass atrocity crimes in Myanmar, Rohingya like in many places around the world shows that the members of the international society do not consider the R2P as a main pillar for the survival of the international society. Libya case will show us the dilemma on the implementation of the R2P based on the features of the international society.

Key Words: *English School theory, international society, Responsibility to Protect, primary institutions, Libya intervention, humanitarian intervention*

Introduction

The subsequent humanitarian crises of the 1990s and mass atrocity crimes, which continue to be a global concern, marked an important era for the international relations discipline as it gave birth to new paradigms of research and new challenges to be faced. Even though concepts like sovereignty, intervention, international human rights protection were not new to be debated by international relations scholars, crises of the 90s gave rise to new practices and new principles to discuss, like the Responsibility to Protect (R2P). The latter finds its place within academic spheres and rarely in political decision-making processes; its status, within the international society, causes discussions at both theoretical and practical levels. With the aim of framing the place of R2P within international society, this paper will use English School theory's framework concerning the role of primary institutions of the society of states. Many scholars claim R2P to be

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one of the institutions of international society along with sovereignty, international law, diplomacy, and human rights, maintaining order and justice within the society of states, as well as providing for its survival. The adoption of the R2P report and many references made by a few UN General Assembly / UN Security Council resolutions may have been non-negligible efforts made by international society for the evolution of preventive mechanisms of mass atrocity crimes and the orderly and justly survived international society. However, there are also structural problems and sovereign interests concerns inherent to that same society, preventing R2P from becoming a primary institution. To explain the reasons behind this argument, this paper will first summarize the features of the international society that allowed the adoption of the R2P report. Then, it will discuss the institutionalisation of R2P and will focus on the causes of inconsistencies in the implementation of the R2P and structural problems that prevent R2P from becoming a primary institution of the international society. Libya case will be studied in this regard to open an empirical aspect to that debate to understand the leverage allowing the implementation of the R2P and the rapid clashes between the members of the international society during the responsibility implementation that signals the questionable status of the R2P as a primary institution through the lens of English School.

In discussing the institutionalization of R2P, the paper will ontologically be framed by the international society approach as defined by English School theory. First, the transformation of paradigms and the circumstances leading the international society members to adopt the Responsibility to Protect (R2P) report in 2005 will be evaluated, combining both the solidarity uniting the actors and the controversies born out of the inherent problems of the R2P itself. The next chapter will analyse the impact of the R2P on the transformation of the international society. The intervention in Libya in 2011 will help to show not only the reluctance of the international society to institutionalize the R2P but also increasing scepticism against the latter because of the mismanagement of the R2P operation in the field.

1. International Society of English School Theory

The concept of international society is one of the three systemic forms used by English School (ES) theory in explaining the nature of international relations. The



interaction between states, as the only condition of existence, results in the formation of an international system, which appears as the first level of analysis. The interaction between states refers to mutually influenced states by each other's behaviour, and in this sense, material capabilities play an important role.² This approach is closely related to the realism of Hobbes. On the other hand, world society, as the third form for the ES to explain international relations, necessitates the existence of common interests and common values between the members of the human community. The moral concerns of world society, such as demands for justice, protection of human rights, and development of international humanitarian law, are of primary importance.³ This understanding of international relations is rooted in Kantian cosmopolitan thought.

Although these systemic forms exist together in world politics, international society is the fundamental apparatus of the ES in its analysis of international relations. The classical definition of international society was done by Hedley Bull in the *Anarchical Society* as 'international society is composed of a group of states, conscious of certain common interests and values, bound by common rules and institutions'.⁴ This definition had been later enlarged by Bull in collaboration with Adam Watson as 'a group of states (or, more generally, a group of independent political communities) which not merely form a system, in the sense that the behaviour of each is a necessary factor in the calculations of the others, but also have established, by dialogue and consent, common rules and institutions for the conduct of their relations, and recognise their common interest in maintaining these arrangements.'⁵ For an international society to exist there are three rules of coexistence: Security against violence, the respect of agreements and the stability of properties which refer to assuring the survival of the international society and the position of the sovereign states, the maintenance of both independence and the

² Tim Dunne, 'The English School', in Tim Dunne, Milja Kurki, Steve Smith (eds), *International Relations Theories: Discipline and Diversity*, (Oxford: Oxford University Press, 2013), pp. 144-5.

³ Tim Dunne, 'System, state and society: How does it all hang together?', *Millenium: Journal of International Studies*, 2005, vol. 34, No. 1, p. 160.

⁴ Hedley Bull, *The Anarchical Society: A Study of Order in world Politics*, (London: Macmillan, 1977), p. 13.

⁵ Hedley Bull and Adam Watson, 'Introduction' in Bull and Watson (eds), *Expansion of International Society*, (New York: Oxford University Press, 1985), p. 1.



external sovereignty of states, the establishment of peace (in the sense of absence of war), the limitation of violence between states, the conformity to international agreements.⁶

Considering these features attributed to the international society, contemporary world politics and decision-making mechanisms of the United Nations (UN) system are proving the existence of such a community with the state sovereignty still at the top of international agenda, but with also common attempts to construct new rules to conform to and new values to share. This is where the normative conflict on the R2P institutionalisation became significant not only at the theoretical but also practical level.

1.1. The path towards the adoption of the R2P by the international society

The adoption of the Responsibility to Protect (R2P) report marked one of the steps forward in extending the international society in the sense that it was an instrument served by the members of the society of states in the new conjuncture of the 2000s, challenging the supremacy of sovereignty concerns in the minds and acts of the members of international society. With the paradigms shifting at the end of the Cold War, an adaptation period was already needed, and the perpetration of mass atrocity crimes of the 1990s tested the capability of the international society to confront threats against international order and justice, and unfortunately revealed the incapacity to do so. The 1990s had successive humanitarian tragedies (Somalia, Rwanda, Bosnia, Kosovo ...) that international society had to resolve, but failed to prevent or stop. The outbreak of a civil war in Somalia, followed by the collapse of the state, made it difficult to focus on international society's attention and concern. After huge civil deaths, the United Nations Security Council (UNSC) adopted resolution 794⁷, for the first time allowing the use of force for humanitarian purposes. In Rwanda, while the crime of genocide was being perpetrated, international society was reluctant to call it so and to act against it to protect civilian people. The inaction of the international society led to the death of thousands of hundreds of people, and the Criminal Tribunal for Rwanda was established by the UN to prosecute and punish genocide perpetrators and was an attempt to contribute to

⁶ Andrew Linklater and Hidemi Suganami, *The English School of international relations: A contemporary reassessment*, (Cambridge: Cambridge University Press, 2006), pp. 17-26.

⁷ Resolution 794 (1992) / adopted by the Security Council at its 3145th meeting, on 3 December 1992. <https://digitallibrary.un.org/record/154648?ln=en&v=pdf>



international justice. The unacceptable approach of the international society was similar during the Yugoslav Wars in Bosnia and Kosovo. Civilian people, victims of ethnic cleansing, did not receive immediate support from the members of the international society. The UN created the Criminal Tribunal for Ex-Yugoslavia with the same perspective it had after the Rwanda genocide. The Kosovo case was significant for the understanding of humanitarian intervention because, for the first time, NATO acted without UNSC authorization, which led to a new debate about the legality and the legitimacy of intervention.⁸

In these circumstances, international society became conscious of the fact that it has the obligation to develop new primary and secondary institutions in order to obtain the ability to prevent and stop mass atrocity crimes all around the world. The International Criminal Court (ICC) and similarly the Responsibility to Protect (R2P) are born in such an atmosphere as two remedies; however the shift of the international society for the protection of substantive values has not led to a transformation in the legal procedures that will regulate the way it responds when these values are challenged.⁹ Notably, the R2P remained in the political sphere, in other words, in sovereign exclusive areas of the state.

Although mass atrocity crimes, just war thinking, and military intervention were not new concepts that were born after the Cold War, the situation where international society fell into and the experiences it faced in the 1990s influenced deeply the path towards the adoption of new institutions. In this sense, R2P and ICC are two global normative and institutional developments in terms of fighting against mass atrocity crimes. R2P provides a normative framework for preventing and stopping mass atrocity crimes, while ICC is designed to punish perpetrators and deter future atrocities.¹⁰ The conventional approach to the role of the state actor, sovereign immunity, and its precedence over human rights was seriously challenged by the two normative initiatives. The divergence between pluralists and solidarists within the ES represents this precise

⁸ Fusun Turkmen, 'From Libya to Syria : The Rise and Fall of Humanitarian Intervention?', 2014 ACUNS Annual Meeting, 19-21 June 2014, Istanbul, pp. 4-6.

⁹ Jason Ralph and Adrian Gallagher, 'Legitimacy fault lines in international society: The responsibility to protect and prosecute after Libya', *Review of International Studies*, February 2015, pp. 6-7.

¹⁰ Kurt Mills, 'R2P and the ICC: at odds or in sync?', *Criminal Law Forum*, 26(1), 2015, 73-4.



disagreement about the priority of international order and justice, and the R2P finds its rightful place because of the challenges it absorbs.

The paradigm shifts of the new conjuncture after 2001 and the transformation of the international society made the preparation and then the adoption of the R2P possible. The release of the R2P report was just after the 11/09 terrorist attacks, when a counter-terrorism agenda, emphasizing the necessity and exceptional measures to be taken when human rights-related issues are at stake. The way the international community negotiated the exceptional measures and welcomed their instrumentalization was encouraging for the R2P's future, but it was also one of the primary reasons for the normative regress for the R2P, since it also fueled already existing suspicion about Western intentions in humanitarian intervention.¹¹ The leverage for preparing the R2P report was the common interest of the members of the international society was the fight against acts challenging state sovereignty. As the world was facing a global threat and the USA was promoting togetherness in its fight against international terrorism, international society was on a stage where there was a sensitivity about their survival and that of the international society. As a consequence, in those crisis times, survival became a supreme common interest of the members of the international society and thus provided a togetherness. In other words, the motives gathering states for the adoption of R2P and the objectives of these were not compatible with the content and aims of the report. Thus, the weakness of the institutionalisation of the R2P lies in this lack of internationalization of the norms and principles it entails.

In the context of post-11/09, even though some scepticism was valid against the Western world, the R2P report was considered as a way to unite international society's members against a common threat. Nevertheless, when the 20th anniversary of R2P adoption arrived, the success concerning its implementation is still debatable. Considering humanitarian tragedies and mass atrocity crimes in Myanmar, Yemen, Ukraine, Palestine and all around the world, the R2P is rarely mentioned in UN Security Council (UNSC) resolutions. This international society's reluctance to support the

¹¹ Jennifer M. Welsh, 'Norm contestation and the Responsibility to Protect', *Global Responsibility to Protect*, 5 (2013), p. 369.



adoption of R2P and to uphold its commitment to protect civilian victims of mass atrocity crimes can be attributed to a few factors, which do not excuse its inaction.

1.2. Pluralist-solidarist division within the ES guiding through understanding R2P's inherent dilemma

The dilemma between the quest for order and justice within the international society is also a debate among ES scholars having two different conceptions of international society, which Hedley Bull identified as pluralists and solidarists. To understand the resistance towards the R2P, avoiding it to become the heart of the international relations agenda, exploring the theoretical split of the ES would provide us with a guideline of analysis. Pluralist and solidarist ES scholars agree upon the existence of a society of states having a consensus on common values, rules, and institutions. Nevertheless, the two wings do not share the same perspective about the normative content of this society, mainly on three specific issues: the place of war in international society, the sources of international law, and the status of individuals.¹²

The divergence between the pluralist and solidarist wings of the ES is about the nature and the potentiality of international society, in Buzan's words, and particularly about the actual and potential extent of shared norms, rules, and institutions within the systems of states. The nature of international law draws the attention of the two wings and the conflict arises when it is to be decided if the rules should be embraced from natural law or positive law. This differentiation is essentially separating two wings when the humanitarian intervention topic is in focus. According to Buzan, pluralist conceptualization focuses on the realist side of rationalism and suggests that international society norms and rules should be formulated respecting positive law and thus made by states. The latter is the principal actor in international society, and its sovereignty has legal and political primacy. Pluralists argue that international society is created upon the acceptance of a plurality of actors, thus believing in the preservation of cultural differences. This approach insists on the act of allowing each nation and state to develop

¹² Quoted by Alex Bellamy, 'Humanitarian Responsibilities and Interventionist Claims in International Society', *Review of International Studies*, vol 29, No 3, (jul. 2003), p. 323, from Hedley Bull, 'The Grotian Conception of International Society', in Martin Wight and Herbert Butterfield (eds), *Diplomatic Investigations* & Hedley Bull, *The Anarchical Society*.



its way of life. This plurality makes international society a type of community where states share a limited concern for the international order necessary for coexistence in an anarchic world, and in this, agreements are a tool for mutual recognition of sovereignty, respect for diplomatic rules, and promotion of the non-intervention principle. In other words, the normative content of a pluralist international society is limited to a mutual interest in the continued existence of the units comprising the society. In this sense, for states that are unable to agree about substantive issues like redistributive justice, the international society plays an instrumental role in avoiding disorder and concerns about survival.¹³

Meanwhile, the solidarist wing resides on the Kantian side of rationalism, claiming that concerns about human rights protection are necessary for international society. According to solidarists, international society cannot be limited to playing a functional role for the international order, rather, it should embrace shared norms and institutions for further political convergence. The solidarist conception of international society argues that diverse communities can reach an agreement about substantive moral standards and that international society has moral agency to uphold those standards. Solidarist thinkers focus on the normative framework to understand what states should do and what norms should be part of international society, and also on the empirical view to analyse what states do and what norms are becoming part of international society. The use of force in such a society will be considered legitimate only if it is an 'act of law enforcement' that can either be for the defence of a state (collective security) or the upholding of the society's moral purpose. In this sense, Buzan claims that a solidarist understanding of international order is inevitably more interventionist and its ties together state and non-state actors and focuses on cosmopolitan notions of individual rights. As a consequence, solidarists claim that there is agreement among the members of the

¹³ Barry Buzan, *From International to World Society: English School Theory and Social Structure of Globalization*, (Cambridge: Cambridge University Press, 2004), pp. 45-7 & Alex Bellamy, 'Interventionist International Society', p. 323.



international society on the extreme cases of human suffering constitute a humanitarian emergency and thus a legitimate exception to the rule of non-intervention.¹⁴

One can claim that pluralist conception is a minimalist international society which led the scholars to be sceptical about the legitimacy and efficacy of humanitarian intervention. Their approach lies in the belief that there is no existent or possible agreement about what an emergency abuse of human rights is. They do not see any prospect for a consensus because they think that human rights are not universal and are specific to the cultural context. Therefore, proposals for universal ethics are always culturally biased.¹⁵

Pluralists advance the idea that even though globalisation and human rights regime have gained an impact since several decades and that state behaviour is more and more influenced by international society, the lack of a supreme regulatory mechanism undermines the effectiveness of this regime. This idea is related to ES theory's understanding of international society framed by anarchy. The compliance to international law and the respect for human rights stay as a matter for states to decide. This is why solidarists react with a cosmopolitan responsibility norm and they claim that for universal rights to be universally ensured, international society must be ready to intervene in the domestic affairs of one of its members. Thus, humanitarian intervention concept has become one of the most controversial issues in international relations, at the centre of the sovereignty-responsibility debate.¹⁶

The adoption of the R2P report at the UN World Summit Outcome Document in 2005 was a sign for the international society to move forward in becoming a more solidarist one, lying on the cooperation model to bring up new concepts and rules in the name of protecting civilian human rights against mass atrocity crimes. However, 20 years passed since the adoption of the R2P report showed that the members of the international society were still insisting to maintain the pluralist model prevailing the protection of

¹⁴ Buzan, *From International to World Society*, pp. 47-8 & Alex Bellamy, 'Interventionist Claim in International Society', pp. 324-5.

¹⁵ Alex Bellamy, 'Humanitarian responsibilities', p. 324.

¹⁶ Christian Bundegeard, 'The Normative Divide in International Relations', DIIS Working Paper, 2010:27, p. 12.



sovereignty, considered as essential for the order. The tendency of the international society towards remaining a pluralist one was also supported by the ambiguities inherent in the R2P report itself.

According to Jennifer Welsh, former UN Secretary General's Adviser on the Responsibility to Protect, there are three main problems of the report itself. The first is the fact that the R2P of the international society is designed to be triggered in the case of large scale of loss of life, whether real or apprehended. In this sense, there was no clarity about the conditions of an international action. A second problem consisted of the source of international responsibility, whether it was derived from international law or morality. (Insisting on moral principles though in order to not be engaged by binding legal obligations) And the third problem consisted of to which entity the responsibility was accorded. (It was the international community in general.)¹⁷

Considering the features of the international society, the first problem revealed by Welsh implies the existence of a loophole in the report.

*"In the Commission's view, military intervention for human protection purposes is justified in two broad sets of circumstances, namely in order to halt or avert: large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale "ethnic cleansing," actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. If either or both of these conditions are satisfied, it is our view that the "just cause" component of the decision to intervene is amply satisfied."*¹⁸

Whereas the identification of crimes targeted by the report is an attempt to clarify the conditions in which the R2P should be implemented, the emphasis on large scale loss of life avoids a consistent and objective implementation for two main reasons. First of all, international society is left to decide on the number of dead civilian worth to take action to stop mass atrocity crimes. This arbitrary decision making is leading to another problem that is of selectivity problem. Considering the anarchical nature of the international

¹⁷ Welsh, 'Norm contestation', p. 371.

¹⁸ Report of the International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect', December 2001, p. 32, available at: { <http://responsibilitytoprotect.org/ICISS%20Report.pdf> }, accessed at 16 September 2020.



society, the states were given the possibility to act arbitrarily, which cause an inconsistency in the international action, which further strengthens the scepticism towards R2P.

This is closely related to the source problem of the R2P, whether it is international law or morality. International law is one of the primary institutions of the international society guaranteeing its orderly survival. However, the adoption of the R2P did not accord a legal status so the states had/have not the obligation to take the legal engagement. In other words, the R2P is left to an arbitrary interpretation by each international actor. Nevertheless, the very basis of the reasons behind the adoption of this report was the obligations emanating from the human rights regime. Arguing that the R2P is lacking a legal aspect would not be 100% right in the sense that it is founded on the basic human rights protection already having a legal status. Although the military intervention pillar's conditions of the R2P are not clarified by the report, the international society's anarchic structure and the state supremacy seem to be the more important causes of the so-called failure of the R2P.

The third problem on the entity that would trigger the implementation of the R2P. The report emphasizes the role of the UNSC as the only competent body to decide on military intervention. Nevertheless, before coming to that stage, the prevention methods have a large spectrum, from economic sanctions to diplomatic negotiations. The role of individual initiatives and the NGOs that are working ambitiously on the protection of civilians in the scope of the R2P are not emphasized by the report. However, these efforts are crucially important for the internalization of the R2P by the international society to push it into shared values and principles by the members and to promote the legalization of it by states. Even though ES prevails state actor as its primary analysis level, non-state actors have as much as a role for the functioning of not only international order but also international justice.

These problems are causing a lack of trust in the R2P and according to Welsh, the war against Iraq in 2003 was also an obstacle for the development of the R2P because of preventive war approach of Bush's USA. Preventive war was a challenge for both the UN and existing international law. It raised concerns about the western approach for the



conditions of recourse to force. A second negative impact of the Iraq war is due to the declarations of Tony Blair and Michael Ignatieff grounding the war on the humanitarian basis (which was initially taken to fight against weapons of mass destruction) empowered developing countries' suspicion on whether R2P was a new name for the old practice of western interventionism.¹⁹

As a matter of fact, R2P remains as a political commitment rather than a legal obligation, and Summit Outcome Document represents a form of soft law like J. Welsh claims. There is no new legal obligation created for states, and it does not create any new international mechanism or authority to undertake executive action. Rather it presents a new interpretation of existing rules by underlying normative understandings about domestic and international conduct.²⁰ States are reluctant to get engaged with legally binding rules, which avoids the prevention of violation of human rights all around the world. The fact that the R2P remains in the political domain results not only in the selectivity of the decision of the international society but also in its delay and determinacy of its decisions on humanitarian tragedies. According to the international society understanding of the ES, states are conscious of their common interests and common values and that they are bound by common rules. As Hedley Bull posits, international law is one of the instruments of the international society assuring the order. These show us the need to have codified rules for legal clarity about when and how the international society should be able to prevent, react and end mass atrocities and protect the victims.

Usually, UNSC's functioning is considered the main reason for the inadequacy of R2P and ICC to prevent mass atrocities. The increase in civil war numbers and the severity of tragedies during the 1990s would be attached to the failure of the UNSC, two important sights were evoked by Hehir: the influence of politics on decision making at the Security Council and the lack of standing military force capable of being deployed to intervene. The UNSC is the only mechanism of the international society to have the

¹⁹ Welsh, 'Norm contestation', p. 370.

²⁰ Welsh, 'Norm contestation', p. 377.



competence to authorize the use of military force and to refer states that are not a party to the Rome Statute to the ICC.²¹

2. What is the Status of the R2P for the International Society?

In ES thinking, there are primary and secondary institutions that are maintaining international order, thus the international society: balance of power, diplomacy, international law, war, and great powers as enumerated by Bull in *Anarchical Society*. The perspective shaped by institutions is at the heart of ES thinking because these help to understand the substantive content of international society, in Buzan's words. The institutions evolved over history and are diversified by different ES scholars. However, as a fundamental role, international society's institutions are durable practices.²² The institutions do not stay the same, and according to Wight, they depend on the nature of the international society, so each international society has its institutions and does not distinguish between primary and secondary institutions. According to him, besides sovereignty, international law, balance of power that are distinctive to European international society, diplomacy, trade, religious sites among others, are also institutions of the international society.²³

ES scholars had and still have different perceptions of the institutions depending on their pluralist or solidarist inclinations, as well as their choice of analysis framework. Whereas Mayall defended international law as being the master institution (2000:94), Robert Jackson argued that sovereignty was the principal institution of the society of states.²⁴ International organizations are usually accepted as secondary institutions and according to Knudsen, especially the UN system transformed deeply fundamental pluralist institutions' functioning towards a more solidarist one. This argument claims that war as an institution was transformed by the rule of non-use of force, leaving the ground for a legitimate use for the common good that represents a solidarist appreciation of war. Likewise, the great power management is institutionalized by the UN system by creating

²¹ Aidan Hehir, *The Responsibility to protect*, (Basingstoke: Palgrave, 2012), p. 217, cited by Kirsten Ainley, 'The responsibility to protect and the International Criminal Court: counteracting the crisis', *International Affairs*, 91 : I (2015), pp. 37-40.

²² Barry Buzan, *From International to World Society*, pp. 161-7.

²³ Buzan, *From international to world society*, 168-9.

²⁴ Buzan, *From international to world society*, pp. 170-3.



a collective, mutual restraint, and coordination system between the great powers. That also transformed the balance of power practices from an arms race, competition to the collective management of international order and justice. International law is likewise influenced by the UN system, as it is the most developed and effective instrument for the collective enforcement of international law, according to Knudsen. Last but not least, a final appreciation is about the evolution of human rights and duties supported by the UN, which also endorsed the development of a solidarist international society.²⁵

2.1. Did the R2P transform the international society towards becoming a solidarist one?

The R2P report certainly brings a new perspective on considerations of sovereignty as a new potential institution of international society. Humanitarian objectives of the report, at the expense of supremacy of sovereignty in times of mass atrocity crimes, were promising for those who were reading international politics through a solidarist approach. Mutual recognition of sovereignty persisted as a norm of international society, and R2P was born as a will to prevent mass atrocity crimes. Thus, R2P was perceived as the continuation of the institutionalization process of international society.²⁶

The R2P report was included in the Outcome Document of the 2005 high-level UN World Summit 2005, transforming the discussion on humanitarian intervention. According to the ICISS report, the norm of humanitarian intervention should not be addressed through 'whether or not' to intervene anymore, but the international society must focus on 'how' to intervene. Another transformation came with a new approach to sovereignty. The sovereignty definition of the report emphasized the “responsible sovereignty” aspect instead of conventional “immune sovereignty”. And this responsibility entailed/entails state responsibility to protect not only its own people but also suffering people of third countries. Nevertheless, the responsible sovereignty was not accepted as a general norm.

²⁵ Knudsen, 'Fundamental institutions and international organizations: Solidarist architecture', in T. B. Knudsen and C. Navari (eds), *International Organization in the Anarchical Society*, (Palgrave Macmillan, 2018), pp. 180-4.

²⁶ Knudsen, 'Fundamental', pp. 186-9.



The World Summit clarified that R2P would only be applied against four atrocity crimes: genocide, crimes against humanity, war crimes and ethnic cleansing. With this document, the UN committed itself to authorise the use of force to stop mass atrocities, without the consent of the targeted state, and this on a case-by-case basis.²⁷

In 2009, when Ban Ki-Moon, the then Secretary General of the UN published a report identifying three pillars of the R2P: 1) States have the primary responsibility to protect their people from mass atrocities; 2) The international community has a responsibility to assist states in this regard; 3) The international community has a responsibility to use a variety of means – diplomatic, humanitarian, and military to protect people when the state fails to carry out its responsibilities.²⁸ The responsibility to protect civilian people from mass atrocity crimes (genocide, ethnic cleansing, crimes against humanity and war crimes) lays primarily on the state. However, the international community has the responsibility to assist the state to fulfil its responsibility and it should address to peaceful means (diplomatic, economic and humanitarian) to protect populations. In the case a state fails to protect its population, or a state itself commits the above crimes, the international community could address to recourse to force against the state in question, only with the UNSC authorization. It appears that there are structural problems in this statement, because of the limitation of the responsibility to four crimes and the slippery ground of peaceful means. There are questions that emerged like who will decide the peaceful means are sufficiently made use of, how actors will decide when to implement the tools of R2P (mainly military ones) or why such a critical decision is conceded to five permanent members of the UNSC? Since the adoption of the R2P report, although there are attempts to bring the R2P to international agenda, with also attempts to extend and clarify the content of it, these steps did not resolve structural problems of the R2P allowing the permanent members of the UNSC to act arbitrarily and to calm down the widespread scepticism against the mechanisms of the R2P. Although these steps cannot be ignored as positively held to move the international society to a solidarist one, these are not yet enough to realise this idea. This was clearly seen in the intervention in

²⁷ Mills, 'R2P and the ICC', p. 1.

²⁸ Mills, 'R2P and the ICC', pp. 1-2.



Libya in 2011 when a promising implementation of the R2P took place. The international response was decided surprisingly fast, but the clashes emerged at the same speed among the members of the international society.

When the implementation of a responsibility is at stake, concerns about the limits of this responsibility emerge even though the report defines the dimensions of responsibility in its own context. In times of failure of states to protect civilians from four atrocity crimes, the report accorded responsibility to the international society. The responsibility in cause entailed three dimensions: the responsibility to prevent atrocities, the responsibility to react when mass atrocity crimes are committed, and the responsibility to rebuild when these atrocities are stopped.²⁹ However, the transformation was only viable in the discourse, as the examples showed that the conventional attitude of the international society has not changed about the inviolability of the immune state sovereignty. According to Bull, the normative reflection of sovereignty is the supremacy over the population within a territory at the domestic level and in the form of independence towards other external authorities at the international level.³⁰ Also, these are sovereign states that make and interpret international rules, and make these legitimate via their actions and decisions. They are also responsible for the protection of these rules, which are designed to sustain the order.³¹ The sovereign state still remains as the fundamental unit of international society, defined as an independent political community, dotted by a government and sovereignty over a territory and population. The strong attachment to state sovereignty avoids the fulfillment of international responsibility in the name of civilian human rights at the expense of sovereign rights.

However, the R2P doctrine claims that sovereignty must assure security against mass atrocity crimes. Sovereignty as responsibility was clearly accorded to the sovereign state to protect its own population. The initialization and operationalization of any decisions related to R2P were that of sovereign states; in case of its failure, the international community is supposed to take the responsibility. However, this

²⁹ Mills, 'R2P and the ICC', p. 1.

³⁰ Bull, *Anarchical Society*, pp. 8-9.

³¹ Bull, *Anarchical Society*, pp. 68-71.



international responsibility did not replace state sovereignty rights as the collective action is assured by the permanent members of the UN Security Council and it would be initialized on a case-by-case basis using diplomatic, humanitarian and forceful means if necessary.³² Even though the UN Security Council is doted by a competence to adopt a resolution consisting of the use of necessary measures in order to stop or prevent a mass atrocity crime, it is not the efficient mechanism for R2P, firstly, because of the voting system causing an obstacle to an adequate implementation of the R2P. The UNSC permanent member system, as well as the voting procedures, already subject to discussions among the members of the society of states, reveal scepticism which is widely shared by non-Western countries against selective decisions made by the USA, Russia, China, France and the UK and the inconsistency in their reactions towards similar humanitarian tragedies in the world.

The limitation of mass atrocity crimes to four major ones to be addressed by R2P helped to convince sceptical states to accept the report, because according to constructivists, the institutionalization, particularly the legalization, provides greater specificity to norms, helping thus to dampen contestation and facilitate states' adherence. Although Sarah Percy does not share this approach advanced by Martha Finnemore and Katherine Sikkink and claims that legalization can also undermine a norm's progress if greater specificity amplifies particularly contentious aspects of the norm.³³ These four crimes had also been identified by Rome Statute (1998) and the Constitutive Act of the African Union (2001) and this expressed limitation assured sceptic states that R2P would be implemented in exceptional cases. Especially non-Western states were reluctant to trust the objectives of R2P because of the fear that the latter would erode sovereignty and authorize arbitrary intervention, mainly by Western countries. The condition that any use of force in the name of R2P should be decided by the UN Security Council aimed to resolve the problem of the 'proper authority' question of the ICISS report³⁴, however it

³² Welsh, 'Norm contestation', pp. 373-4.

³³ Welsh, 'Norm contestation', p. 374. Welsh quoted Martha Finnemore and Katherine Sikkink, 'International norm dynamics and political change', *International Organization*, 52/4, 1998, pp. 887-917 & Sarah Percy, 'Mercenaries: Strong norm, weak law', *International Organization*, 61/2, 2007, pp. 367-397.

³⁴ Welsh, 'Norm contestation', pp. 374-6.



did not, considering the UNSC structure and the scepticism against the will of its members.

2.2. Libya Case and a Response to the Non-Institutional Aspect of the R2P

The R2P became concretely visible when the international society decided to intervene in the Libyan civil war in 2011. The crisis in Libya was caused following democratic aspirations of 'Arab Spring' movements started in Tunisia in 2011 and it was responded by a brutal reaction of the Gadhafi regime against civilian protestors. In a timely and decisive way, as was anticipated by the R2P report, the UNSC adopted two consecutive resolutions, RES1970 and RES1973, to prevent further atrocities and stop the violence committed by the regime towards the Libyan people.

By its first resolution, RES1970, the UNSC referred the case to the International Criminal Court (ICC), and the significance of it hinges upon the fact that the international society completed its responsibility to protect by its responsibility to prosecute.³⁵ In this framework, RES 1970 was a sign that the UNSC members were following their commitment to the 2005 Outcome Document and that the quest for justice was prevailing over the protection of sovereign rights. This perception was reinforced by a second resolution, RES1973. The specificity of the RES1973 was due to UNSC authorization to recourse to force against Libya, a sovereign government recognized and a member of the UN, to protect the civilian population. The resolutions in question were promising for the future of humanitarian action and were considered promising for the evolution of both the R2P and solidarity within international society.

The Libya intervention was a further step for the R2P to be operationalized but was contested by most of the members of the Security Council. In 2011, the Brazilian government suggested revising the R2P as 'responsibility while protecting', emphasizing the international community's non-military options for implementing the norm, limiting the recourse to force as a last resort, and strengthening the accountability of those who act militarily on behalf of the Council. Even though this initiative did not come to an end,

³⁵ Carrie Booth Walling, *All Necessary Measures: The United Nations and Humanitarian Intervention*, (Philadelphia, University of Pennsylvania Press, 2013), pp. 234-5.



it is important to show that the debate is still alive concerning the role of protection of the international society would be activated.³⁶

The Libya intervention is a representative case for the mutual evolution of international society and humanitarian intervention. Resolutions 1970 and 1973 indicated the determination of the international society to take its responsibility towards suffering peoples. Nevertheless, even though international society has evolved concerning its approach in favour of human rights, it is hard to claim that the international society had been radically transformed with the adoption of the R2P report. Remarks have to be made on many facilitating elements for the society of states to adopt those resolutions; at regional level like the Arab League or the African Union's support for such an intervention; efforts at individual level must be noticed like that of Navi Pillay (ex-president of the International Criminal Tribunal for Rwanda). In the meantime, at domestic level, there were also Libya's particularities, which differentiated it from previous humanitarian intervention cases: the evident call by Colonel Gadhafi to mass killings, the negative human rights protection record of the Libya regime, the lack of international alliances, and the support to terrorism by the regime, rich petrol resources, weak army structure...

Promising resolutions 1970 and 1973 were also challenged by the reaction by Russia, particularly by Vladimir Putin to condemn the abstention of Medvedev in voting, as well as the reaction of the Arab League and African Union members becoming sceptical about the humanitarian purposes of the intervention because of the regime change in the country. The political contestation after the Libya intervention, over regime change and the use of protection of civilian mandate, are the symptoms, according to Ralph and Gallagher, of a perceived legitimacy deficit in the ordering structure of international society, which also influenced the Syria crisis.³⁷

Even though at the beginning of the Libya crisis and international society's response to it was promising for the consideration of the R2P as a primary institution, the reactions just after the military intervention along with the inability to deal with the

³⁶ Welsh, 'Norm contestation', p. 367.

³⁷ Ralph and Gallagher, 'Legitimacy faultlines' pp. 1-2.



domestic war in Libya showed that that was not the case. The failure of the Libya intervention in terms of stopping the violence in the country caused reluctance for the implementation of R2P in countries where mass atrocity crimes are committed, like it is the case in Syria, Myanmar, Mali... The R2P is still not internalized as a primary institution that is primordial for the survival of the international society, thus, it is not accepted as a tool to maintain the international society by its members.

The war in Libya between the Libyan National Army under Khalifa Haftar and the UN-backed government of National Accord (2015) under Fayeze Al-Sarraj necessitated an active decision-making of the UNSC enforcing sanctions to all parties damaging the peace process. Although the peace talks took place and international calls for a humanitarian ceasefire to address the Covid-19 pandemic are done, the fighting continued with extrajudicial killings, torture, abductions, attacks on civilian areas, human trafficking and abuses of asylum seekers and immigrants.³⁸ Although the intervention in Libya was a demonstration of rarely seen unity among the members of international society, these actors did not focus on the search for a comprehensive solution to the war. Instead of assisting political institutions, created by the Libyan Political Agreement, that failed to forge a consensus in the country, depending on their interests, foreign states sided with one of the rival groups, which deteriorated the situation in the country.³⁹

Libya intervention was framed in the context of the R2P and according to Hehir and Pattison, the Arab Spring was the concept's most exacting test and prompted a further spike in interest in both its efficacy and desirability. Arab Spring revealed the necessity of Pillar I, which highlights the responsibility of the state to protect its own population from genocide, ethnic cleansing, crimes against humanity, and war crimes. The concerned countries may have failed in their responsibility, which put forward the Pillar II that asks for the responsibility of the international community by assisting the capacity building of the state in question. But most importantly, Pillar III was on the table, consisting of a

³⁸ Global Centre for the Responsibility to Protect, R2P Monitor, Issue 52, 15 July 2020, p. 18, available at: { http://www.globalr2p.org/wp-content/uploads/2020/07/R2P_Monitor_JULY2020_Final.pdf }, accessed on 29 July 2020.

³⁹ Tarek Megerisi, 'Libya's Global Civil War', Policy Brief, European Council on Foreign Relations, June 2019, p. 3.



timely and decisive response of the international community. In Libya, Pillar III was implemented by the international society; nevertheless, neither the civil war in Libya nor the conflicts and mass atrocity crimes in the region and elsewhere have the same timely and decisive action being taken.⁴⁰

Conclusion

Looking back at 2005, this step was considered a transformative one both for the fundamental principles of the international society and the development of the international human rights regime. Nevertheless, the last 15 years showed, if not totally, but partially, that these were not the cases. Structural problems of the R2P, but most importantly, the deep commitment to the state sovereignty principle by state members of the international society, prevented R2P from becoming a consistent and primary institution of the international society.

On International Justice Day, 17th of July, 2020, the UN Human Rights Council adopted its first thematic resolution on the R2P, an important endorsement for the internationalization of the R2P on its 15th anniversary. During the talks of this resolution Ambassador of Australia, H. E. Mansfield, stated that "R2P does not undermine sovereignty. It instead reminds that it comes with a fundamental responsibility to protect its population from atrocity crimes".

Since its adoption, international society has developed new normative and legal safeguards for international human rights protection. R2P provided a guideline to international society to prevent and stop mass atrocity crimes. It is clear that the international community is facing an unprecedented rise in the global population in need of humanitarian assistance, which makes the implementation and efficacy of the R2P primordial.⁴¹ On 4th of September (2020), the UN General Assembly voted for the inclusion of the R2P on the draft agenda of UNGA with 121 votes in favour, 13 against and 32 abstentions.

⁴⁰ Aidan Hehir and James Pattison, 'Introduction: The Responsibility to Protect after the Arab Spring', *Cooperation and Conflict*, 2016, Vol. 51(2), pp. 141-2.

⁴¹ Adrian Gallagher, Charles T. Hunt and Cecilia Jacob, 'Editorial: A New Era of GR2P', *Global Responsibility to Protect*, 12 (2020), pp. 5-6.



Examples all around the world, in Palestine, Darfur, Myanmar, Ukraine and many others are showing that when state sovereignty concerns are at stake, the protection of civilian rights from mass atrocity crimes are left behind by the members of the international society. In these circumstances, even though, there is a huge evolution in the protection of human rights, it is difficult to claim that R2P is one of the primary institutions of the international society. The protection of human rights is still not considered as one of the main pillars for the survival of the international society, which causes international inaction and voluntary ignorance of humanitarian crises. As long as the prevention and halt of mass atrocity crimes, as well as the punishment of those responsible of these tragedies, are not considered as of primary importance for the maintenance of international society and not internalized allowing a quick and consistent response, R2P cannot be labelled as a primary institution of the international society. The status of R2P depends on the transformation of the approaches towards sovereignty and humanitarian protection to go beyond the political will expressed by the international society. What has to be changed for this purpose is stated by Simon Adams perfectly when he spoke on Al Jazeera about Russia's attempt to avoid essential UN aid to desperate Syrians in the north, "the cruel politicization of humanitarian aid".

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