The Evolution of the Responsibility to Protect

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Abstract

This article traces the evolution of the responsibility to protect. It presents the operationalization of the concept in the United Nations and how the concept has been used in practice. In its conceptualization in the United Nations, the concept first refers to the states' responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. However, the distinctiveness of the concept comes from putting forward the international community's responsibility to protect in case a state manifestly fails to protect its population. Although a consensus exists on the states' responsibility to protect their populations, the international community's responsibility to react in cases of manifest state failure to protect their populations found limited support.

Keywords: *responsibility to protect, United Nations, Kenya, Darfur, Libya.*

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Koruma Sorumluluğunun Gelişimi

Öz

Bu makale koruma sorumluluğunun gelişiminin izini sürmektedir. Kavramın Birleşmiş Milletler'de nasıl işlevselleştirildiğini ve uygulamada nasıl kullanıldığını sunmaktadır. Birleşmiş Milletler'de kavramsallaştırıldığı haliyle kavram öncelikle devletlerin halklarını soykırım, savaş suçları, etnik temizlik ve insanlığa karşı suçlardan koruma sorumluluğuna işaret eder. Fakat kavramın esas özelliği herhangi bir devlet halkını korumakta aşikâr bir şekilde başarısız olduğu takdirde uluslararası toplumun koruma sorumluluğu öne çıkmaktadır. Devletlerin halklarını koruma sorumluluklarına dair bir uzlaşı olsa da uluslararası toplumun devletlerin halklarını korumadaki aşikâr başarısızlıklarına karşı tepki gösterme sorumluluğu sınırlı bir destek bulmuştur.

Anahtar kelimeler: *koruma sorumluluğu, Birleşmiş Milletler, Kenya, Darfur, Libya.*

1. Introduction

Responsibility to protect was developed in order to clarify what international community should do in the face of mass atrocities. In the 1990s, there were three cases where the international community's response demonstrated lack of agreement as to what can and should be done. When genocide took place in Rwanda in 1994 the Security Council failed to act as it feared for the security of the UN peacekeepers there. The Council cut the peacekeeping force from 2558 troops to 270. Only after several weeks and murder of several hundred thousands, the Council authorized the deployment of a weak French military force. In 1995, under United Nations Protection Force's (UNPROFOR) watch, Serbs captured Srebrenica and murdered some eight thousand Bosnian Muslim men and boys. While the mission's mandate included deterring attacks against "safe areas", its resources were inadequate to defend vulnerable cities. Finally, in response to increasing violence against ethnic Albanians in Kosovo, the United States, United Kingdom and France sought authorization for a military force. However, they faced Russian and Chinese threats to veto resolutions including use of force. Eventually, they went ahead with the military intervention through NATO without the approval of the Security Council.[2]

As the international community seemed in disarray, Secretary-General Kofi Annan urged the international community to arrive at a consensus on how to approach these issues He challenged the international community with his question: "…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?" In response to this challenge, in September 2000, the Government of Canada established the International Commission on Intervention and State Sovereignty (ICISS) in order to clarify the relationship between sovereignty and military intervention to halt atrocities.[3]

This article traces the evolution of the idea that reframes sovereignty as responsibility and urges the international community to take a range

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2 Saira Mohamed, "Taking Stock of The Responsibility To Protect", *Stanford Journal Of International Law*, Vol. 63, June 2012, p. 66.

[3] Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect Ottawa, International Development Research Centre, 2001, p. vii.

of actions if a state fails to protect its population. Since responsibility to protect was developed by the International Commission on Intervention and State Sovereignty, the first section covers the International Commission's conceptualization of the idea in length. The second section looks at how responsibility to protect evolved within the United Nations. The third section presents an overview of cases where responsibility to protect was invoked, while the fourth section focuses on the use of the concept in Libya intervention in 2011. Libya is important, since the international community for the first time authorized use of force against the wishes of a government. The conclusion summarizes the findings of these sections and outlines where the idea of responsibility to protect stands.

2. Responsibility to Protect in the International Commission on Intervention and State Sovereignty Report

Sovereignty as responsibility was originally developed by Francis Deng, the UN's Special Representative on Internally Displaced People (IDP) in 1993. Deng and his colleague Roberta Cohen argued that states had the primary role in protecting their populations, but there must be some higher international authority to which they will be accountable if they failed to carry out their duties.[4]

The International Commission on Intervention and State Sovereignty also characterized sovereignty as responsibility. According to the Commission, sovereignty involves a dual responsibility. Externally states are responsible to respect the sovereignty of other states. Internally, they are responsible to respect the dignity and basic rights of all the people within the state.[5] Sovereignty as responsibility means that state authorities are responsible to protect the safety and lives of citizens and promotion of their welfare. This kind of thinking about sovereignty is a result of the ever-increasing impact of international human rights norms and the concept of human security.[6] Responsibility to protect is distinguished from the concept of humanitarian intervention by its emphasis on the primary responsibility of the state to protect its own population. The concept brought the novel idea that the international community should assist states

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[4] Michael Newman, "Revisiting the `Responsibility to Protect'", *The Political Quarterly*, Vol. 80, No. 1, January±March 2009, p. 93.

[5] Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect, p. 8

[6] Ibid, p. 13.

in fulfilling their responsibility. Thus, it placed armed intervention within a broader continuum of measures that could be taken in response to mass atrocities and genocide.[7]

For the Commission, in line with international law, firstly the state whose people are directly affected has the responsibility to protect. This is also required by practical realities, as the domestic authority is best placed to make a positive difference when problems arise. On the other hand, the broader community of states has a residual responsibility when a particular state is unwilling or unable to fulfil its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular state are directly threatened by actions taking place there. This means that in some circumstances, international community must take action to support populations that are under serious threat. This responsibility to protect has three essential components: the responsibility to prevent human catastrophe, the responsibility to react to an actual or apprehended human catastrophe, and the responsibility to rebuild after the event.[8] Thus, the responsibility to protect involves a broad range of assistance actions and responses, including "both long and short-term measures to help prevent human security-threatening situations from occurring, intensifying, spreading, or persisting; and rebuilding support to help prevent them from recurring; as well as, at least in extreme cases, military intervention to protect at-risk civilians from harm."[9]

Instead of a 'right to intervene' by one state on the territory of another state, the Commission argued that we should speak of a responsibility to protect.[10] This rightly shifts the focus of discussion on the requirements of those who need or seek assistance.[11] Interventionary measures by the international community should come after preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation. Intervention may come in the form of political, economic or judicial measures, and in extreme cases, military action.

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[7] Alex J. Bellamy, "The Responsibility to Protect - Five Years On", *Ethics & International Affairs*, Vol. 24, No. 2, 2010, p 143.

[8] Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect, p. 17.

[9] Ibid, p. 18.

[10] Ibid, p. 11.

[11] Ibid, p. 18.

The commission suggested that tough threshold conditions and a series of precautionary principles must be satisfied, for the intervention to be defensible in principle and acceptable in practice.[12]

Military intervention is reserved for exceptional circumstances when all order within a state has broken down or when civilians are threatened with massacre, genocide or ethnic cleansing on a large scale. Put differently, the international community may use military intervention in cases of violence which "shock the conscience of mankind," or which present a clear and present danger to international security.[13] Principles that must guide the decision on military intervention include "right authority, just cause, right intention, last resort, proportional means and reasonable prospects."[14]

Just cause exists when there is large scale loss of life, actual or apprehended and/or large scale ethnic cleansing, actual or apprehended.[15] In the commission's view, "military action can be legitimate as an anticipatory measure in response to clear evidence of likely large scale killing." Arguing that in most cases there will not in practice be major disagreement, the commission did not quantify 'large scale'[16] Right intention stipulates that the primary purpose of the intervention must be to stop or prevent human suffering. Use of military force for the alteration of borders, the advancement of a particular combatant group's claim to self-determination and overthrow of regimes are not legitimate objectives.[17] Last resort requires exploring every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis. In some cases there will not be enough time for this process to be completed, but there must be reasonable grounds for believing that, if a non-military measure had been attempted, it would not have succeeded.[18] Proportional means is about the scale, duration and intensity of the planned military intervention being the minimum necessary to secure the humanitarian objective. Finally, military action should be taken if it stands a reasonable chance of success of providing actual protection. If the consequences of

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[12] Ibid, p. 29.

[13] Ibid, p. 31.

[14] Ibid, p. 32.

[15] Ibid, p. 32.

[16] Ibid, p. 33.

[17] Ibid, p. 35.

[18] Ibid, p. 36.

embarking upon the intervention are likely to be worse than if there is no action at all, a military action is not justified.[19]

As for the right authority, the Commission stated that it is the Security Council whose authorization must be sought for a military intervention.[20] The Commission proposed a "code of conduct" for the use of the veto with respect to actions that are needed to stop or avert a significant humanitarian crisis. The code was to ensure that a permanent member, in matters where its vital national interests were not involved, would not use its veto to obstruct the passage of a majority resolution.[21] If Security Council fails or rejects to consider a proposal for intervention, an alternative is to seek support for military action from the General Assembly meeting in an Emergency Special Session under the established "Uniting for Peace" procedures. If the Security Council failed or rejected to deal with a catastrophe, another alternative to take action is a regional or sub-regional organization.[22]

3. Responsibility to Protect in the United Nations

In September 2003, UN Secretary General established the High-Level Panel Threats, Challenges and Change in order to examine the UN role in international security.[23] This panel was set up by the Secretary General of the United Nations in response to the lack of agreement among Member States on the proper role of the United Nations in providing collective security.[24] In 2004, responsibility to protect was endorsed by the High-level Panel on Threats, Challenges and Change in its report *A More Secure World: Our Shared Responsibility*, which characterized responsibility to protect as "an emerging norm".[25] High-level Panel stated that "we all share responsibility for each other's security".[26] The Panel argued that there is a growing acceptance that sovereign governments have the primary responsibility to protect their own citizens from catastrophes such as mass

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[19] Ibid, p. 37.

[20] Ibid, p. 50.

[21] Ibid, p. 51.

[22] Ibid, p. 53.

[23] Aidan Hehir, "The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?", *International Relations*, Vol. 24, No. 2, 2010, p. 221.

[24] United Nations General Assembly, Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All, A/59/2005, 21 March 2005, p. 24.

[25] United Nations General Assembly, Report of the High-level Panel on Threats, Challenges and Change , A More Secure World: Our Shared Responsibility, A/59/565, 2 December 2004, p. 57.

[26] Ibid, p. 16.

murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. However, when they are unable or unwilling to do so, that responsibility should be taken up by the wider international community. In such circumstances, the international community should engage in prevention, response to violence, if necessary, and rebuilding shattered societies.[27]

With regard to the right to authorize intervention, High-level Panel pointed to the Security Council. It also identified five criteria of legitimacy that the Security Council should consider when discussing whether to authorize or apply military force: seriousness of threat, proper purpose, last resort, proportional means and balance of consequences. High-level Panel argued that these would significantly improve the chances of reaching international consensus on the intervention. In the panel's view Chapter VII of the United Nations Charter fully empowers the Security Council to deal with every kind of threat that States may confront. The Panel did not touch upon the issue of alternatives if the Security Council fails or rejects to react. For the Panel "the task is not to find alternatives to the Security Council as a source of authority but to make it work better than it has."[28]

In 2005, Kofi Annan, then Secretary General of the United Nations, in his report In larger freedom: towards development, security and human rights for all stated that he believes "that we must embrace the responsibility to protect, and, when necessary, we must act on it." He reiterated that this responsibility lies, first and foremost, with each individual State. Similar to the above-mentioned reports he argued that "if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations." For the secretary general, when such methods appear insufficient, the Security Council may decide to take action under the Charter of the United Nations, including enforcement action.[29] However, the Secretary General's report confined problems that activate the international community's responsibility to protect to "genocide, ethnic cleansing and crimes against humanity".[30] Secretary General's

[27] Ibid, p. 56-57.

[28] Ibid, p. 53.

[29] United Nations General Assembly, Report of the Secretary-General, In larger freedom: towards development, security and human rights for all, p. 35.

[30] Ibid, p. 59.

report placed responsibility to protect in the section dealing with freedom to live in dignity instead of the section on the use of force. Emphasis was put on the need to implement responsibility to protect through peaceful means. This was meant to detach the linking of responsibility to protect with humanitarian intervention and promote the commitment to the rule of law and human security.[31]

Following these, responsibility to protect was endorsed by the General Assembly in 2005 World Summit. Paragraphs 138, 139 and 140 in its Outcome Document were devoted to responsibility to protect. The World Summit Outcome document accepted each individual state's responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The international community was tasked with encouraging and helping states to exercise this responsibility and supporting the United Nations in establishing an early warning capability. In addition, international community's responsibility to use appropriate diplomatic, humanitarian and other peaceful means, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity was acknowledged. General Assembly stated that "we are prepared to take collective action, in a timely and decisive manner, through the Security Council" and "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 genocide, war crimes, ethnic cleansing and crimes against humanity."[32] At the world summit international community's responsibility to protect was defined as a moral duty as opposed to a stronger legal duty upon the insistence of those who are reluctant to endorse the concept. Alternative ways to take action if the Security Council fails or rejects to react a crisis was dropped in all the endorsements of responsibility to protect after the International Commission on Intervention and State Sovereignty report. The proposal of the International Commission on a code of conduct for permanent members of the Security Council not to exercise their veto power was also dropped. Moreover the fact that the international community promised to deal with issues on a case by case basis and in areas where there is a manifest failure was seen as dilution of

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[31] Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?", *The American Journal of International Law*, Vol. 101, No. 1, January 2007, p. 107.

[32] United Nations General Assembly, Resolution adopted by the General Assembly on 16 September 2005, 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, p. 30.

the concept by commentators. The threshold for international action was raised by the statement that international community's responsibility to react starts in cases of manifest failure of a state to protect its population.[33]

Further consideration of the concept came in the form of a report by UN Secretary-General Ban Ki-Moon in 2009. *Implementing the Responsibility to Protect* was built on the narrow understanding of the 2005 World Summit Outcome. It stated that the responsibility to protect applies "only to the four specified crimes and violations: genocide, war crimes, ethnic cleansing and crimes against humanity." The Secretary-General argued that "to try to extend it to cover other calamities, such as HIV/AIDS, climate change or the response to natural disasters, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility".[34] Based on the World Summit Outcome, the report stated that the responsibility to protect rests on three pillars: the protection responsibilities of the State; international assistance and capacity building, and timely and decisive response. Protection responsibilities of the state derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States. International assistance and capacity building in pillar two is about the commitment of the international community to assist states in meeting those obligations. Pillar three refers to the responsibility of international community to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection. International community's response may be pacific measures under Chapter VI of the Charter, coercive ones under Chapter VII and/or collaboration with regional and subregional arrangements under Chapter VIII.[35] The report states that "no strategy for fulfilling the responsibility to protect would be complete without the possibility of collective enforcement measures, including through sanctions or coercive military action in extreme cases. It points out that when a State refuses to accept international prevention and protection assistance, commits egregious crimes and violations relating to the responsibility to protect and fails to respond to less coercive measures, collective measures could be authorized by the Security Council, by the General Assembly

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[33] Hehir, "The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?", p. 222.

[34] United Nations General Assembly, Report of the Secretary-General, Implementing the responsibility to protect, A/63/677, 12 January 2009, p. 8.

[35] Ibid, pp. 8-9.

under the "Uniting for peace" procedure or by regional or subregional arrangements with the prior authorization of the Security Council.[36] In a way that reminds the code of conduct of the International Commission, the Secretary General urged permanent members of the Security Council to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect.[37] Secretary General's report on Implementing the Responsibility to Protect was debated in the General Assembly in 2009. Consensus was built on the report's elaboration of the concept, and a plan for implementation was set out. For Alex Bellamy this represented a modest but tangible step in the concept's evolution.[38]

UN Secretary-General continued efforts to elaborate responsibility to protect in further reports. In his 2010 report, the Secretary-General focused on early warning and assessment,[39] while in his 2011 report he dwelled on the role of regional and subregional arrangements in implementing the responsibility to protect.[40] UN Secretary General's 2012 report presented an assessment of the tools available under Chapters VI, VII and VIII of the Charter for implementing pillar three of the responsibility to protect (timely and decisive response).[41] The 2013 report dealt with the issue of state responsibility and prevention.[42] The 2014 report was on international assistance and the responsibility to protect.[43] The 2015 report took stock of 10 years of implementing the responsibility to protect.[44] The 2016 and final report of the Secretary-General Ban Ki-Moon focused on the obstacles to mobilizing collective action to prevent and respond to genocide, war

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[36] Ibid, p. 25.

[37] Ibid, p. 27.

[38] Bellamy, "The Responsibility to Protect - Five Years On", p. 148.

[39] United Nations General Assembly, Report of the Secretary-General, Early warning, assessment and the responsibility to protect, A/64/864, 14 July 2010.

[40] United Nations General Assembly, Report of the Secretary-General, The role of regional and subregional arrangements in implementing the responsibility to protect, A/65/877–S/2011/393, 28 June 2011.

[41] United Nations General Assembly, Report of the Secretary-General, Responsibility to protect: timely and decisive response, A/66/874–S/2012/578, 25 July 2012.

[42] United Nations General Assembly, Report of the Secretary-General, Responsibility to protect: state responsibility and prevention, A/67/929–S/2013/399, 9 July 2013.

[43] United Nations General Assembly, Report of the Secretary-General, Fulfilling our collective responsibility: international assistance and responsibility to Protect, A/68/947–S/2014/449, 11 July 2014.

[44] United Nations General Assembly, Report of the Secretary-General, A vital and enduring commitment: implementing the responsibility to protect, A/69/981–S/2015/500, 13 July 2015.

crimes, ethnic cleansing and crimes against humanity, and suggested how such barriers might be overcome.[45]

Overall, responsibility to protect has evolved from its focus on how to respond to intra-state humanitarian crises towards a concern with prevention.[46] Throughout its history of evolution, critics maintained that responsibility to protect provides an opportunity for Western states to intervene at will under the pretext of humanitarianism.[47] Others have argued that the problem is not too much intervention, but inaction in the face of atrocities.[48] There are also those who argue that it is "a rhetorical posturing that promises little protection to vulnerable populations".[49]On the other hand, throughout the process of its evolution, who has the responsibility to protect in case of Security Council paralysis could not be clarified.[50] In other words, "no satisfactory answer has been given to the imperative 'no more Rwandas and Kosovos', i.e. to cases where it is precisely the Security Council which is unable or unwilling to protect".[51] Neither the efforts to define responsibility to protect nor its implementation in practice resolved the problem of what to do when the Security Council fails to achieve consensus in case of mass atrocities.[52]

4. Responsibility to Protect in Practice

Responsibility to protect shaped international reaction to the violence that erupted after the disputed December 2007 presidential elections in Kenya. When the victory of incumbent President Mwai Kibaki, a member of the Kikuyu ethnic group over Raila Odinga, a Luo, was declared, people started to protest the perceived rigging of the election. During the protests, stores were looted, houses were destroyed, people were displaced and killed. Militias engaged in retaliatory killings. In less than two months 1.133 Kenyans had been murdered, unknown numbers raped, and there were over 500.000 internally displaced people. Individuals, militias

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[45] United Nations General Assembly, Report of the Secretary-General, Mobilizing collective action: the next decade of the responsibility to protect, A/70/999–S/2016/620, 22 July 2016.

[46] Hehir, "The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?", p. 219.

[47] Ibid, p. 223.

[48] Ibid, p. 224.

[49] Bellamy, "The Responsibility to Protect - Five Years On", p. 144.

[50] Hehir, "The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?", p. 225.

[51] Carlo Focarelli, "The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine", *Journal of Conflict & Security Law*, Vol. 13 No. 2, 2008, p. 213.

[52] Paul R. Williams, J. Trevor Ulbrick and Jonathan Worboys, "Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis", *Case Western Reserve Journal of International Law*, Vol. 45, No. 1&2, Fall 2012, p. 488.

and the police were targeting victims on the basis of their ethnicity and perceived support for a particular presidential candidate. The military could not reach the whole country and the police either refused to intervene or engaged in extra-judicial killings. Therefore, the state was not able to take protective action.[53]

On January 8–10, 2008, Ghana's president and African Union (AU) chair John Kufuor asked former UN Secretary General Kofi Annan to mediate as part of a small team consisting of former Tanzanian President Benjamin Mkapa and Graça Machel, the former first lady of Mozambique. This Panel of Eminent African Personalities arrived in Kenya on 22 January 2008. According to the timetable for implementation that both sides accepted, three agenda items were to be agreed within four weeks: immediate action to stop the violence and restore fundamental rights and liberties; immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration of calm; and strategies to overcome the political crisis. The first two agenda items addressed the R2P preoccupation with mass atrocities.[54]

UN Secretary General Ban Ki-moon characterized the situation as a responsibility to protect one and called for an end to violence. The secretary general and his special adviser for prevention of genocide, Francis Deng reminded Kenya's leadership their responsibility to protect the civilian population. Deng stated that if they failed in their responsibility, they would be held to account by the international community. Moreover, the Security Council issued "a Presidential Statement reminding the leaders of their 'responsibility to engage fully in finding a sustainable political solution and taking action to immediately end violence.'"[55]

On February 28, Kibaki and Odinga initialed the principles for Kenya's first coalition government. The creation of the post of prime minister that could not be withdrawn by the president and had some executive power provided the solution to disagreements. Odinga was to become the prime minister with deputies from each party. Parliament passed the National Accord and Reconciliation Act on March 18. On April 17, Prime Minister Odinga and other members of the cabinet were sworn in.[56]

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[53] Global Centre for the Responsibility to Protect, ''The Responsibility to Protect and Kenya: Past Successes and Current Challenges'', *Policy Brief*, 13 August 2010, p. 1-2.

[54] Thomas G. Weiss, "Halting atrocities in Kenya", www.greatdecisions.org, 2010, pp. 21-22.

[55] Bellamy, "The Responsibility to Protect - Five Years On", p. 154.

[56] Weiss, "Halting atrocities in Kenya", p. 23.

For some commentators, Kenya showed that non-coercive tools, such as mediation, can help stop atrocities when employed early, with sufficient resources and international support. That the response was regionally driven proved that R2P is not about great powers intervening in small countries.[57] For others, however, the contribution of R2P was small, it functioned like background music and contributed a sense of urgency, motivating Africans, the U.S. and the EU.[58] Aidan Hehir argues that references by the Security Council to R2P, and the use of the term in diplomatic negotiations, do not prove the term's utility. According to Hehir, before the emergence of R2P, international pressure was applied on governments involved in internal conflicts and this case was not different.[59] For Alex Bellamy, the AU's emerging peace and security architecture provided the immediate catalyst for international engagement, not R2P per se. Consensus on Kenya owed much to the fact that engagement was limited to diplomacy and had host-state consent. Had diplomacy failed, the Security Council would have found it difficult to step up its engagement.[60]

Responsibility to protect was also invoked with regard to the crisis in Darfur. However, in this case a united or sufficient response in line with the responsibility to protect framework did not come forth.[61] The UN Security Council in its first strong statement of concern about the situation in Darfur in Resolution 1556 of 22 July 2004, described it as a 'threat to international peace and security'. However, afterwards a range of humanitarian and human-rights-relevant measures were adopted. A UN International Commission of Inquiry was established on Darfur on 18 September 2004. The Commission "concluded on 25 January 2005 that the government of Sudan and the *janjaweed* were responsible for 'crimes against humanity and war crimes [that] may be no less serious and heinous than genocide'". Upon the Commission's recommendation, the situation in Darfur was referred to the International Criminal Court (ICC), a vote that passed thanks to the USA's abstention.[62] Since the African Union (AU) mission in the area was weak and lacked credibility, a UN takeover was proposed.

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[57] Global Centre for the Responsibility to Protect, "The Responsibility to Protect and Kenya: Past Successes and Current Challenges", p. 2.

[58] Weiss, "Halting atrocities in Kenya", p. 24.

[59] Hehir, "The Responsibility to Protect: 'Sound and Fury Signifying Nothing'?", p. 234.

[60] Bellamy, "The Responsibility to Protect - Five Years On", p. 155.

[61] Cristina G. Badescu and Linnea Bergholm, "The Responsibility To Protect and the Conflict in Darfur: The Big Let-Down", *Security Dialogue,* Vol. 40, No. 3, June 2009, p. 302.

[62] Ibid, p. 295.

On 31 August 2006, the UN Security Council Resolution 1706 referred to the responsibility to protect and invited Khartoum to give its consent to a UN takeover. However, the Sudanese government, insisting that it would not allow an Iraq-style occupation or foreign interference did not give its consent to a UN force. Sudan eventually agreed to a stronger force in the form of a 'hybrid' AU–UN force in June 2007. Security Council Resolution 1769 of 31 July 2007 authorized The African Union/UN Hybrid operation in Darfur (UNAMID) under Chapter VII of the UN Charter to protect both civilians and its own personnel. The mission became operational on 31 December 2007.[63] Overall, both the African Union mission and UNAMID failed to protect the civilians in Darfur, which means that responsibility to protect could not be put into action in Darfur.[64]

In contrast to these cases where application of responsibility to protect seemed obvious, there are two other cases where its application did not find support. In August 2008, when Georgia started a military operation in the breakaway region of South Ossetia, Russia responded by pushing Georgian army back into Georgia proper. Afterwards, Russia unilaterally recognized independence of South Ossetia and Abkhazia. Russia justified its intervention arguing that it prevented mass atrocities that Georgian troops were going to carry out. Russian authorities referred to responsibility to protect in order to define their actions. However neither this characterization nor its recognition of South Ossetian independence found support.[65] On 3 May 2008 Myanmar was struck by Cyclone Nargis. Approximately, 138.000 people died and 1,5 million were displaced. Despite the huge devastation, Myanmar's military regime denied access to humanitarian agencies and prevented the delivery of supplies and medical assistance. In response, French Foreign Affairs Minister Bernard Kouchner defined the issue as a crime against humanity, proposed to invoke responsibility to protect and authorize the delivery of aid regardless of Myanmar's position. China and Association of Southeast Asian Nations (ASEAN) rejected the proposal arguing that responsibility to protect did not apply to natural disasters. Eventually, the UN secretary general and ASEAN managed to receive the regime's consent for the delivery of international aid and provided a joint UN-ASEAN relief package.[66] These two cases clarified the limits to

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[63] Ibid, p. 300.

[64] Ibid, p. 302.

[65] Bellamy, "The Responsibility to Protect - Five Years On", p 151.

[66] Ibid, p 151-152.

responsibility protect. They demonstrated that the use of coercion should be "preceded by compelling evidence of genocide or mass atrocities" and that "'crimes against humanity' excludes crimes not associated with the deliberate killing and displacement of civilians".[67]

The history of the concept's practice demonstrate that the concept has been applied inconsistently.[68] Until the Libya intervention, international community did not act on its responsibility to protect using force.

5. Responsibility to Protect and the Intervention in Libya

When the Arab Spring uprisings reached Libya in 2011, demonstrations turned violent in mid-January. An armed opposition group under the Interim Transitional National Council was established, they took control of Benghazi and Tobruk, but by mid-March, Qaddafi's forces were threatening to retake Benghazi, one of the epicentres of the rebellion. Qaddafi declared that Libyans who take arms against his regime will be executed. Even before, in late February however the Special Advisers and the Secretary General of the UN had stated that the regime's behaviour could amount to crimes against humanity and reminded Libya its commitment to responsibility to protect. On 22 February, the League of Arab States suspended Libya's membership until the violence was stopped.[69] On 26 February 2011, the Security Council adopted Resolution 1970 which reiterated that 'the widespread and systematic attacks' 'against the civilian population may amount to crimes against humanity'. The resolution reminded Libya's responsibility to protect its population. The Security Council referred the situation in Libya since 15 February 2011 to the International Criminal Court. It imposed an arms embargo, issued a travel ban and froze the assets of a number of individuals.[70]

In the meantime, the League of Arab States called for the imposition of a no-fly zone on Libyan military aviation on 12 March 2011. Since Qaddafi did not stop attacks against civilians, the Security Council adopted another resolution on 17 March 2011. In Resolution 1973, the Security Council reiterated the responsibility of the Libyan authorities to protect its population and stated that "parties to armed conflicts bear the

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[67] Ibid, p 151.

[68] Ibid, p. 148.

[69] Alex J. Bellamy and Paul D. Williams, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect", *International Affairs*, Vol. 87, No. 4, 2011, p. 838.

[70] United Nations Security Council, S/RES/1970 (2011), 26 February 2011.

primary responsibility to take all feasible steps to ensure the protection of civilians". The Security Council expressed its "determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel". It decided to establish a ban on all flights in the Libyan airspace for the protection of civilians. It authorized member states to take all necessary measures to protect civilians and civilian populated areas, excluding a foreign occupation force on Libyan territory.[71]

With Resolution 1973, the Security Council for the first time authorized use of force against the wishes of a functioning state.[72] In both Resolution 1970 and 1973 the Security Council invoked Libyan authorities' responsibility to protect its population. It adopted resolution 1973 after the exhaustion of peaceful means in Resolution 1970 and acted in accordance with the responsibility to protect framework.[73] However, both resolutions fell short of referring to the responsibility of the international community to intervene in a case where a state is manifestly failing to protect its population.

While Libyan case is significant in the history of responsibility to protect, it seems likely that Libya intervention will remain the exception. In the case of Libya, the threat of mass atrocities was clear, as Qaddafi declared his intentions explicitly.[74] In addition, regional organizations like the Gulf Cooperation Council, the League of Arab States and the Organization of the Islamic Conference supported a no-fly zone over Libya and this made opposition to the proposal for use of military force difficult for those who were reluctant. Without the support of regional organizations, China and Russia would have vetoed Resolution 1973. The reasons behind the regional organizations' support for the no-fly zone are not clear. However, with regard to the League of Arab States the fact that many members were not present during the vote on the no-fly zone, the influence of the pro-US Gulf Cooperation Council, Qaddafi's unpopularity and feelings of humanitarian solidarity may have played a role in this organization's support for the no-fly zone. The Security Council's failure

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[71] United Nations Security Council, S/RES/1973 (2011), 17 March 2011.

[72] Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm", *Ethics & International Affairs*, Vol. 25, No. 3, 2011, p. 263.

[73] Williams et al., "Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis", p. 488.

[74] Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm", p. 265.

to reach a consensus on Syria, where Lebanon has blocked consensus as well as Yemen, where the Gulf Cooperation Council and League of Arab States have divergent opinions suggest that, the case is unlikely to be repeated in the future.[75]

While the operation started by a coalition of the willing, NATO took it over on 1 April. In late August Tripoli collapsed and two months later rebels found and killed Qaddafi. NATO's Operation Unified Protector ended in a few days. For NATO, it was a successful operation. An arms embargo was maintained, humanitarian relief was facilitated and a no-fly zone was sustained and civilian population was protected from Qaddafi's forces.[76] However, NATO's military action in Libya led to fears among some states that responsibility to protect could be used by Western powers as a pretext for removal of unfriendly governments.[77] Since NATO interpreted its mandate expansively. NATO bombers helped the rebels in their advance on the regime's positions. Some reported that NATO bombers softened targets for the rebels. Therefore, second factor that leads to the conclusion that Libya will remain an exception is the reaction of China and Russia against NATO's broad interpretation of its mandate which resulted in regime change. China and Russia objected to regime change on the basis of a mandate just for protection of civilians. However the question is how to limit the scope of responsibility to protect missions. If the mandate is to protect civilians, and the regime is determined to kill them, the civilians can hardly be secure while this regime is still in power.[78]

6. Conclusion

International Commission on Intervention and State Sovereignty elaborated the responsibility to protect in 2001. Firstly it is the states that have the responsibility to protect their populations. If a state fails to fulfil its responsibility to protect either because it is unwilling or unable to do so, the international community has a responsibility to assist that state and if that fails too, the international community has the responsibility to react including use of force. This responsibility to protect has three

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[75] Ibid, p. 266.

[76] Christopher S. Chivvis, "Libya and the Future of Liberal Intervention", *Survival*, Vol. 54, No. 6, 2012, pp. 77-79.

[77] Andrew Garwood-Gowers, "China and the ''Responsibility to Protect'': The Implications of the Libyan Intervention", *Asian Journal of International Law*, Vol. 2, 2012, p. 387.

[78] Graham Cronogue, "Responsibility to Protect: Syria, The Law, Politics, and Future of Humanitarian Intervention Post-Libya", *International Humanitarian Legal Studies*, Vol, 3, 2012, p. 145.

essential components: the responsibility to prevent human catastrophe, the responsibility to react to an actual or apprehended human catastrophe, and the responsibility to rebuild after the event. The Commission argued that there is a responsibility to react by way of a military intervention when there is actual or apprehended large scale loss of life and/or large scale ethnic cleansing. The Commission suggested that permanent members should refrain from using their veto, in cases where their national interests are not at stake. However, if the Security Council failed to take action, the Commission argued that regional organizations could fulfil the responsibility or the proposal for military action could be taken through a Uniting for Peace Resolution at the General Assembly.

In 2004, the High-level Panel on Threats, Challenges and Change, which was established by then UN Secretary General Kofi Annan, endorsed the responsibility to protect. In 2005, Kofi Annan's report In larger freedom: towards development, security and human rights for all called the General Assembly to embrace the "responsibility to protect" as a basis for collective action against genocide, ethnic cleansing and crimes against humanity. However, the report put emphasis on the need to implement responsibility to protect through peaceful means. This detached responsibility to protect from military intervention.

In the 2005 World Summit, General Assembly stated its preparedness to take collective action on a case-by-case basis, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. At the world summit international community's responsibility to protect was defined as a moral duty as opposed to a stronger legal duty. The threshold for international action was raised by the statement that international community's responsibility to react starts in cases of manifest failure of a state to protect its population.

Responsibility to protect was taken up in the 2009 report of the former UN Secretary General Ban Ki-Moon. In *Implementing the Responsibility to Protect* it was stated that the responsibility to protect applies to genocide, war crimes, ethnic cleansing and crimes against humanity. The report categorized responsibility to protect in three pillars: the protection responsibilities of the State; international assistance and capacity building, and timely and decisive response. The report pointed out that the possibility of collective enforcement measures, including

through sanctions or coercive military action in extreme cases is part of the responsibility to protect strategies. According to report, the Security Council, the General Assembly under the "Uniting for peace" procedure or regional or subregional arrangements with the prior authorization of the Security Council could authorize collective measures. The Secretary General urged permanent members of the Security Council to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect. The report was debated in the General Assembly in 2009 and consensus was built on the report's elaboration of the concept.

Overall, in the UN Secretary-Generals' reports the emphasis has been on prevention and non-military responses rather than use of force in order to protect civilian populations. The adoption of responsibility to protect by the General Assembly in 2005 and the Security Council in 2006 opened the way for the application of the concept in concrete cases. Responsibility to protect shaped international reaction to the violence that erupted after the disputed December 2007 presidential elections in Kenya. Although critics maintained that the use of the concept did not make any difference in practice, responsibility to protect framed the mediation attempts and facilitated reconciliation between the two groups who disputed election results. In Kenya, it was shown that the concept does not have to lead to great power interference in internal affairs of a country. Mediation took place under the African Union's leadership. In Darfur, the concept was invoked but robust action did not come forth. A weak African Union mission and the hybrid UN-African Union mission that followed it failed to provide adequate protection of civilians in Darfur. In 2008, Russia declared that it was fulfilling responsibility to protect by intervening in South Ossetia. But this characterization did not find support from the international community. Similarly, in response to Myanmar's denial of access to humanitarian agencies after Cyclone Nargis devastated the country, France wanted to invoke responsibility to protect in order for aid to be delivered against the wishes of Myanmar. This attempt was rejected by China and ASEAN on the grounds that responsibility to protect did not apply to natural disasters. These two cases demonstrated that the use of coercion needs to be based on compelling evidence of genocide or mass atrocities and that 'crimes against humanity' are limited to the deliberate killing and displacement of civilians.

With regard to Libya, in both Resolution 1970 and 1973, the Security Council referred to Libyan authorities' responsibility to protect its population. It adopted resolution 1973 after the exhaustion of peaceful means in Resolution 1970 and acted in accordance with the responsibility to protect framework. With resolution 1973 the Security Council for the first time authorized use of force against the wishes of a functioning state. However, both resolutions fell short of referring to the responsibility of the international community to intervene in a case where a state is manifestly failing to protect its population.

While Libyan case is significant in the history of responsibility to protect, it seems likely that Libya intervention will remain the exception. In Libya, the threat of mass atrocities was clear. Regional organizations' support for a no-fly zone facilitated the decision-making at the Security Council by convincing Russia and China that they should not veto use of force. These two features of the case are unlikely to be repeated in another case. In addition, NATO's broad interpretation of its mandate led to criticisms that responsibility to protect was being used for regime change in Libya. Therefore, it is likely that when a similar situation arises, Russia and China will at least ask for clearer and more limited mandates for any mission which aims at responsibility to protect.

Overall, it is apparent that responsibility to protect has replaced the idea of humanitarian intervention in the lexicon of international community. Moreover, there is no controversy over the states' responsibility to protect their populations. However, what is distinct about responsibility to protect is the international community's responsibility to protect civilians if a state manifestly fails to do so. And it is this aspect of responsibility to protect that is problematic in the opinion of a number of states. These states reject an automatic international responsibility to protect in cases of a state's failure to protect its population. This has been reflected in the wording of the official documents that endorse responsibility to protect. In the General Assembly's World Summit Outcome, states declared that they are prepared to take action on a case by case basis and this has also been endorsed by the Security Council in its resolutions. Moreover, in the Libya case, which is the strongest example of the concept's use in practice, the Security Council did not even refer to the international community's responsibility to protect. This demonstrates that the novelty that responsibility to protect brought to international relations will continue to be disputed in the future.

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