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Responsibility To Protect; A Questionable Norm

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“RESPONSIBILITY TO PROTECT: A QUESTIONABLE NORM”

Albana Hykaj

May 2014

Master Thesis

Submitted in Partial Fulfillment of the Requirements for the Degree of Master of International Relations at the City College of New York

Advisor: Jean Krasno
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New York, Albana Hykaj

May 2014
ABSTRACT

This thesis examines the commitment made by world leaders in the support of military humanitarian intervention in the name of human rights. In the context of humanitarian intervention in international law it can be said that there is ample state practice to indicate that the strength of opinion juris is not fully established. Humanitarian intervention, however, remains a highly controversial issue as it draws from the concept of universality central to the human rights discourse at the same time as it changes dominant conceptualizations of state sovereignty.

This thesis assesses the effectiveness of existing Articles of the United Nations Charter framework that aim to reduce human rights violations. To establish a framework this thesis will rely on different writings by Mr. Kofi Annan, former Secretary General of United Nations, for their emphasis on the need for international actors to work toward the “common good” in order to realize a stable and secure international order. I examine four case studies: Bosnia (UN inaction), Kosovo (action without Security Council authorization), Libya (intervention with Security Council authorization), Syria (yet a case of inaction, even though violence is evident).

The hypothesis that guides my thesis is that leaders at times place the moral imperative for humanitarian intervention above national interest but not always. National interests at other times prevent the moral action needed. I argue that:

1) The implementation of Responsibility to Protect has been inconsistent: Evidence will show the selectivity: Libya yes, Syria no.
2) Implementation is dependent on the national interests of major powers, especially the P-5.
3) UN and regional organizations must all be on board as they did for Libya under resolution 1973.

The analysis leads to the conclusion that although, the adoption of the notion of the Responsibility to Protect, the subsidization of preventive mechanisms, and the creation of the Office of the Special Adviser on the Prevention of Genocide where the international community have had a significant impact, there needs to be more efficient visible collaboration of world leaders to go above national interest.
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CONCLUSION
INTRODUCTION

Chapter One

This thesis will analyze the international community’s response to humanitarian intervention and crimes against humanities. The international community failed to respond to the horrific genocide of 800,000 Tutsis in Rwanda and thus was passive in the face of continued loss of human life; the shameful unwillingness of UN peacekeeping forces to prevent the murderous ethnic cleansing of 7,000 to 8,000 Muslim men and boys in Srebrenica in Bosnia in July 1995; and the unauthorized intervention in response to the ethnic cleansing in Kosovo of Kosovo Albanians, which left 700,000 persons displaced and thousand killed.¹

Because of the guilt emerging from Rwanda and Bosnia, NATO intervened in Kosovo in 1999 and later on in Libya in 2011 to redeem their moral conscience and to rescue innocent civilians from brutal crimes of violence and ethnic cleansing in the case of Kosovo. NATO’s action in Kosovo was a violation of the United Nations Charter due to the lack of Security Council authorization, whereas the intervention in Libya was legal because the Security Council in Resolution 1973 authorized the use of force. It appeared that the intervention in Kosovo and later on the adoption of Responsibility to Protect opened the road to humanitarian interventions. However this thesis will demonstrate that the moral imperative does not always prevail in the face of national interest. In 2005,

heads of states at the World Summit unanimously adopted the Responsibility to Protect in their “Outcome Document,” which was based on the idea of “sovereignty as responsibility,” and embraced a dual responsibility: externally to respect the sovereignty of other states and internally to respect and protect human rights of citizens within the state.

The adoption of R2P represents significant progress on human rights but its effects on humanitarian intervention have been limited. The thrust of the responses to humanitarian crises in the post R2P period remains uneven and deeply influenced by leaders who follow national/self-interests in the decision making process surrounding the question of whether to intervene in a humanitarian crisis or not. While guilt remains there has been no intervention now in the crisis in Syria. Only in a few cases, the intervention for humanitarian purposes has been declared under circumstances that were actually humanitarian rather than motivated by self-interest and power-seeking.  

The inconsistency of world leaders in responding differently in cases of military humanitarian intervention has caused significant loss of lives and global and regional instability. Compared to Rwanda’s genocide, now the world is better in taking preventive action, but still not very good. The fact remains that another Rwanda even though not genocide but still mass murder, is happening now in Syria and it is not likely to end soon. The most useful analogy to help us understand the failure of atrocities in Syria is Bosnia. The violence in Bosnia, as in Syria was carried out by a national army and

2. James Traub, If we can let Syria burn, Have we learned nothing at all from Rwanda? Foreign Policy magazine, April, 04, 2014.
3. Ibid.
paramilitaries as a matter of state policy which made it harder to prevent. Both wars went on for years, and thus offered the international community the opportunity to intervene. President Obama is doing now in Syria the same thing that president Clinton did in Bosnia; he did not want to intervene in Bosnia because he feared the political costs of a failed intervention. Although Clinton worked to bring about a negotiated solution, hoping all the while that Europe would act. And yet, we see the willingness of world leaders and international community to intervene in extreme cases of human rights violations, even though President Obama himself established an Atrocities Prevention Board on April 23, 2012, and has in his cabinet brilliant advocates of the Responsibility to Protect such as Susan Rice and Samantha Power. On the other hand, he did agree to be part of NATO’s intervention in Libya, for preventing mass killing from the hand of Muammar al-Qadaffi in Benghazi in 2011. Yet Syria has proven too hard, as Bosnia did for Clinton until the mass killing that took place in Srebrenica.

The hypothesis that guides my thesis is that evidence will show that leaders at times place the moral imperative for humanitarian intervention above national interest but not always. National interests at other times prevent the moral action needed.

As noted in abstract my argument is:

4) The implementation of Responsibility to Protect has been inconsistent:

Evidence will show the inconsistency. Intervention in Libya yes, Syria no.

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On April 23, 2012, President Obama announced the formation of the Atrocities Prevention Board and other steps to help the United States prevent and respond to mass atrocities.

4. Traube, ibid.
5) Implementation is dependent on the national interest of major powers, especially the P-5.

6) UN and regional organizations must all be on board as they did for Libya under resolution 1973.

In order to validate my argument I have selected the 1995 Bosnia crisis, 1999 Kosovo, 2011 Libya, and Syria today which will further help illustrate the concept of humanitarian intervention, before and after the initiation of R2P, and how the response to humanitarian crises still remains deeply influenced by world leaders who follow national self-interests in the decision making process whether to intervene or not. I carefully choose these cases in order to have a broad spectrum of non-humanitarian intervention and humanitarian intervention. Bosnia and Syria are cases of non-humanitarian intervention, while Kosovo is a case of humanitarian intervention without Security Council authorization, where NATO’s action was a violation of United Nations Charter. “Kosovo is widely touted as an almost perfect example of humanitarian intervention, where the intervening actors' primary purpose was to rescue innocent civilians from a brutal ethnic cleansing campaign.” The promotion of humanitarian intervention in Kosovo will be the pivotal case of this thesis.

5. Enric Heinze, Waging humanitarian war: “The ethics, law, and politics of humanitarian intervention”. State University of New York Press Publisher (January 1, 2010), p. 76
Libya is a case of humanitarian intervention under the recent concept of R2P with the SC’s authorization under resolution 1973, and Syria is yet a case of non-intervention where the war is still going on.

Throughout this thesis I propose that when the most basics human rights are being violated, leaders, especially P5 of SC, should not close their eyes in the face of genocide, ethnic cleansing or mass murder. Therefore, I will analyze what the international community has done during these crises and what could have been done to prevent this violence.

Furthermore, this thesis will give a broad description of the doctrine of humanitarian intervention by analyzing the United Nations Charter (UN), practice, the North Atlantic Treaty Organization (NATO), the Responsibility to Protect, international law and other relevant international actors.

In the course of my discussion, I will examine the legality of armed interventions by looking at the international community’s responsibility to act and on the other hand state sovereignty, and how evolving norms and practices within the global regime have changed on such topics and attitudes toward global intervention.

Research on these cases will allow me to assess what kind of criteria should be weighted in international humanitarian intervention, norms, and how the development of human rights has influenced the evolution of the Responsibility to Protect as a norm and as a movement of the international community in building ties between morality and legality.
The research questions that are addressed in this thesis are:

What is humanitarian intervention?

What is state sovereignty, its relation with humanitarian intervention?

How was brought the Responsibility to Protect created?

What is the role of United Nations?

What is the role of international actors?

What kind of criteria should be weighted in humanitarian interventions?

Why the inaction in Bosnia?

Why action in Kosovo even though without SC’s authorization?

Why action in Libya with SC’s authorization?

Why yet not a decision for action in Syria?

What is humanitarian intervention?

“Humanitarian intervention is the threat or use of force by a state, group of states, or international organisation primarily for the purpose of protecting the nationals of the target state from widespread deprivations of international recognised human rights.”

6. Ian Brownie’s assertions in the Oral Pleadings of 10 May 1999 in the Case Concerning the Legality of the Use of Force (the FRY v NATO Members) and the summary in Kosovo Crisis Inquiry: International Law Aspects, ICLQ 2000, vol 49 at page 886

Humanitarian intervention was deemed by many to be an impermissible assault on state sovereignty.7 “Traditionally, international law empowers a sovereign state to exercise exclusive, absolute jurisdiction within its territorial borders, and that other states and multilateral actors have the corresponding duty not to interfere in a state’s internal affair”.8 However, as Mr. Annan puts it:

State sovereignty is being redefined by the forces of globalization and international cooperation. The state is now widely understood to be the servant of its people, not vice versa. At the same time, individual sovereignty --the human rights and fundamental freedoms of each and every individual as enshrined in our Charter-- has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny. 9

He continued to argue that; “While the genocide in Rwanda will define for our generation the consequences of inaction in the face of mass murder, the conflict in Kosovo has prompted important questions about the consequences of action in the absence of complete unity on the part of the international community.”

The focus here will remain in two types of intervention, without Security Council’s express authorization and with SC’s authorization. When the latter is given, the action taken by States or regional organizations fits comfortably under Article 39 and Art 42 of Chapter VII of the Charter as it did for example in Libya. It is when the authorization is

8. Joyner, p.324
9. Kofi Annan, Two concepts of sovereignty, From: The Economist, 18 September 1999
not given or asked for as indeed happened in the case of Kosovo, that the most controversial issues arise. As Reisman puts it:

Even when it is generally accepted that a system is failing to respond to a violation whose remedy has been assigned exclusively to a formal decision maker or the human consequences of the failure are especially grave, some participants-international lawyers in particular-may insist that, good intentions notwithstanding, greater systematic injury will be caused by the prospective unilateral action than by failure of designated decision-maker to respond adequately. Nor is this always, as exponents of unilateral action contend, a dreamy retreat from a nastily imperfect reality. It may be an indispensable ingredient in the recipe for changing the reality.10

Humanitarian intervention is to be seen, initially, in the context of the current trends on the use of force generally and whether resorting to force under the umbrella of humanitarian intervention is a legal concept provided for in international law.

Immediate reference is made to the obvious written international law, the UN Charter.

And the immediate answer to that is: no. The use of force is prohibited expressly by Article 2(4) of the Charter:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

It is permitted only in the case of self-defence, individual or collective, as prescribed in Article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence in an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security…

Force is also legal when authorized by the Security Council and carried out by regional organisations, group of States or the Security Council itself.

Furthermore, it has long been accepted that the nature of the prohibition in Article 2(4) is that of *jus cogens*, a status that allows for no derogation and which can only be altered, amended or replaced by another norm of the very same peremptory status. As a result, Article 2(4) is binding upon States, whether acting individually or collectively as Members of international organizations, more importantly on those of a military character such as NATO, over and above any other obligation that derives from any other Treaty. It is also naturally binding on the organizations themselves.

But are territorial integrity and political independence the only two pillars to be safeguarded by this prohibition? If that were the case, then, arguably, there would be space in the Charter for legal justification of humanitarian intervention. If not, reference needs to be made to other sources of international law.

Article 2(4) is not restrictive to the territorial integrity and political independence of a sovereign State. "…in any other manner inconsistent with the purposes of the United

Nations" suggests a permissive character which might classify an intervention as illegal even though it is not strictly directed against the territorial integrity and political independence of a State. This would mean that in the case of Kosovo, NATO’s intervention, had as its purpose neither the invasion of Serbia, nor the acquisition of its governing power, but could still be a breach of Article 2(4).

The same conclusion on its permissive character can be drawn from the preparative work of the Charter. In Chapter II of the Dumbarton Oaks Proposals, the original draft made no mention of territorial integrity or political independence, by subjecting any resort to force to the test of inconsistency with the purposes of the United Nations. After dismissing suggestions such as by Ecuador to incorporate in the wording of the Article, acts of aggression, and the Brazilian proposal to expand to direct and indirect threats and excessive foreign influences, the San Francisco Conference adapted the Australian amendment, which produced the current formulation of the Article 2(4) in the UN Charter.

However, there is pause for thought here: "any other manner" has to be inconsistent with the purposes of United Nations and NATO’s intervention in Kosovo was anything but inconsistent with those purposes. Aiming to bring to an end the humanitarian catastrophe and ethnic cleansing, the massive and continuous breaches of fundamental human rights of the Kosovar Albanians by the Serb authorities, their purpose was consistent with what was clearly stated in the Preamble of the Charter, itself.

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We, the Peoples of United Nations Determined “.... To reaffirm faith in human rights, in the dignity and worth of the human person, in the equal rights to men and women and of nations large and small...” encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

Furthermore, in Article 1(3)\textsuperscript{14} of Chapter 1: "The purposes of the United Nations are:

To achieve international co-operation in solving international problems of ... a social... or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.\textsuperscript{15}

Clearly, NATO was trying to save its credibility by doing in Kosovo what it did not in Rwanda. Moreover, as it was seen above, the draft in the Dumbarton Oaks Proposal put the emphasis entirely on the matter of consistency, without feeling the need to name any of the elements that were intended to be guaranteed. Furthermore, humanitarian intervention is not stated as any of the other potential inconsistent manners of the Charter. As Brownlie clearly stated: “It must be admitted that humanitarian intervention has not been expressly condemned by the League Covenant, the Kellogg-Briand Pact, or the United Nations Charter. Indeed, such intervention would not constitute resort to force as an instrument of national policy.”\textsuperscript{16}

Thus, it can be argued that if NATO's intervention was not threatening the two expressed elements of the personality of a State in Article 2(4) or being inconsistent with any other

\textsuperscript{14} Also Article 55 and Article 56 of the Charter provide for the promotion of human rights.
\textsuperscript{15} Fernando Teson, "Humanitarian Intervention: An Inquiry into Law and Morality" New York 1996, at page 13
\textsuperscript{16} Ian Brownlie, " International Law and the Use of Force by States, OUP, 1963, page 338
purpose of the UN, then there is clearly no breach of the prohibition on the use of force Article.

However, other distinguished academics appear to take the opposite view by identifying territorial integrity, especially where linked with political independence, with territorial inviolability.\textsuperscript{17} In the case of Kosovo, Sir Hersch Lauterpacht said:

… a State would be acting in breach of its obligations under the Charter if it were to invade or commit an act of force within the territory of another State, in anticipation of an alleged impending attack or in order to obtain redress, without the intention or interfering permanently with the territorial integrity of that state.\textsuperscript{18}

The interpretation of the law on the use of force did not follow any revolutionary path. In 1970 the Friendly Relations Declaration\textsuperscript{19} clearly reconfirmed the same approach:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.\textsuperscript{20}

Four years later, in 1974, the General Assembly’s Definition of Aggression precluded any kind of justification for the use of force by stating that: “No consideration of

\begin{footnotes}
\item[17] Oppenheim’s International Law, 1952, Volume II,
\item[18] ibid,
\item[19] The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation amongst States in Accordance with the Charter of the United Nations, 1970 at “The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter”, at http://www.un-documents.net/a25r2625.htm
\item[20] ibid.,
\end{footnotes}
whatever nature, whether political, economic, military or otherwise, may serve as justification for aggression.”

More specifically, humanitarian intervention has been regarded by many (some of them presiding over the International Court of Justice) as incompatible with the United Nations Charter. However, the notion does not owe its existence to March 1999. People like Brownlie, Akehurst, Conforti or Simma in various years before 1999, regardless of opposing the compatibility of humanitarian intervention with the Charter proved two points: first, the notion existed and has been invoked as a legal justification by military actions taken by UN Member States and secondly, the condemnation has not proved strong enough to cause legislative steps that would expressly forbid it. This suggests that although some legal anomaly was already recognized, a practical way to overcome the legal lacuna was becoming a necessity. Although, the written provisions of UN Charter as one of the sources of international law do not explicitly refer to humanitarian intervention, it should be given consideration to customary international law as the other main source. While treaties are static by nature and have proven resistant and difficult at their best to alteration and amendment, customary law, as a barometer, indicates the dynamics of international law, by offering the possibility to be flexible to political and other changes of society's needs. Thus, its character is highly important to humanitarian intervention as an emerging concept in international law, a possibility that was acknowledged by the ICJ in the Nicaragua case when stating that:

21. General Assembly Resolution 3314 (XXIX), Article 5
22. Ibid.,
"The significance for the Court of cases of State conduct prima facie inconsistent with the principle of non-intervention lies in the nature of the ground offered as justification. Reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards modification of customary law."24

To conclude that humanitarian intervention creates customary law, state practice must be followed by *opinio juris cive necessitates*, the intention of states to consider the practice as legally binding as it was reaffirmed in the Nicaragua case25. The practice pattern and the intention to be bound by it should be consistent in the course of a substantial length of time.26

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26. ibid.,
LITERATURE REVIEW

Chapter two

For the purpose of this thesis, regarding humanitarian intervention I will relay on Kofi
Atta Annan’s work, who served as the seventh Secretary-General of the United
Nations from January 1997 to December 2006, who is a pillar of human rights. Annan
and the United Nations were the co-recipients of the 2001 Nobel Peace Prize “for their
work for a better organized and more peaceful world.”27

His excellent support for human rights will help give a better understanding about how
the United Nations responds to the political, human rights and humanitarian crises
affecting so much of the world; about the means employed by the international
community in situations of need; and about our willingness to act in some areas of
conflict, while limiting ourselves to humanitarian palliatives in many other crises whose
daily toll of death and suffering ought to shame us into action.

Furthermore, I will relay on authors such as Thomas G. Weiss whose research of two
decades provides a compelling introduction to the theory and practice of humanitarian
intervention in the modern world. He examines political, ethical, legal, strategic,
economic, and operational dimensions and uses a wide range of cases to highlight key
debates, controversies and as well as the normative evolution of what is increasingly
known as "the responsibility to protect" 28

Christopher C. Joyner examines the legality of armed intervention by highlighting the role of governmental responsibilities as it relates to national sovereignty. He carefully examines the concept of humanitarian intervention, deals with UN charter framework and identifies criteria that ought to be weighted regarding international intervention to halt genocide or ethnic cleansing. He gives a number of reflections on the “Responsibility to Protect” as a norm, and on the other hand, the prospects for mobilizing international will to convert moral rhetoric into legal opportunity. 29

In regard to unilateral action, PhD Michael Riesman gives a clear definition by explaining that:

Unilateral actions are taken by an unauthorized participant who contends they are, nonetheless, lawful”. He explains that: “The normative ambiguity of unilateral actions in contemporary international law arises from the regrettable but acknowledged intermittent ineffectiveness of decision institutions. The appropriate remedy for this problem is to make institutions effective”.30

In regards to unilateral action, and again Kosovo, Bruno Simma said that: “In the case of Kosovo, only a thin red line separates NATO’s action from international legality. To resort to illegality as an explicit ultima ratio for reasons as convincing as those in the Kosovo case is one thing. To turn such an exception into general policy is quite

another.”  
Furthermore, as seen in the introduction, in his interpretation of article 2(4) he states that: It has long been accepted that the nature of the prohibition in Article 2(4) is that of *jus cogens*, a status that allows for no derogation and which can only be altered, amended or replaced by another norm of the very same peremptory status. **Antonio Cassese**, also agrees with Simma on the legitimacy of use of force by NATO in Kosovo. He explores the notion that “NATO’s action may nevertheless be taken as evidence of an emerging doctrine in international law allowing the use of forcible countermeasures to impede a state from committing large-scale atrocities on its own territory, in circumstances where the Security Council is incapable of responding adequately to the crisis.” However, the author argues that: “a customary rule may emerge which would legitimize the use of force by a group of states in the absence of prior authorization by the Security Council.”  
This might bring the threat to global security which is inevitably involved in the use of force without such authorization.

**Fernando Teson**, argues that the promotion of human rights in the context of the Charter is equally important to the control of international conflict. In his paper: The Liberal Case

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31 Bruno Simma, NATO, the UN and the Use of Force: Legal Aspects, http://ejil.oxfordjournals.org/content/10/1/1.full.pdf
32 For an interpretation of Article 2(4) Simma, Bruno " UN Charter Commentary” OUP, 1995 at pg 106 , also Simma states that Article 39 does not authorize states to use force or forceful countermeasures
6. Forcible Humanitarian Countermeasures in the World Community? 10 EJIL 1999 at pg

34 Antonio Cassesse, Comment on Bruno Simma, NATO, The UN and the Use of Force at: Ex iniuria ius oritur, Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?, http://207.57.19.226/journal/Vol10/No1/com.html
of Humanitarian Intervention, he develops a twin assumption of liberal moral and political theory: “that, the primary purpose of the government is to protect human rights, and that victims of grievous injustice are entitled to outside help. Humanitarian intervention is legitimate when it is directed at suppressing human rights abuses and complies with the doctrine of double effect.”

Again in regards to humanitarian intervention, Sean D. Murphy states that "… International Law in its broadest sense should be regarded not merely as a system of rules, but rather, as a comprehensive process by which states and other international actors make authoritative and more or less controlling decisions, driven in part by past decisions and in part by contemporary community expectations".

Samantha Power, with her book: A Problem from Hell gives an overview of lack of response to genocide in the 20th century. She explains why has the U.S. failed to act to stop (or attempt to stop) genocides from happening by analyzing reaction to six different genocides (Armenia, the Holocaust, Cambodia, Iraq/Kurds, Rwanda, and Serbia/Bosnia/Kosovo) examining what US knew, what did, and why, and see what sorts of patterns emerge. Her conclusion is that a lack of political/moral "will" to act combine with a self-serving political calculus (political risk than failure to act) mean that barring changes, US is very unlikely to act to prevent genocide now or in the future. For the interest of this thesis this book will be used in the case of Bosnia.

In regards to Arab Spring, Vijad Pashad explores the recent history of the Qadhafi regime, and the social forces who opposed him.  

Many other scholars will be consulted in regards to R2P such as: Thomas G. Weiss, Ramesh Thakur, Mary Ellen O’Connell, Aidan Hehir, Alex J. Bellamy, David Chandler, Rodger Shanahan, Rachel Gerber, Abiodun Williams, Gareth Evans. The scholars expressed different points of view in challenges and opportunities of the Libyan intervention.

The main argument of this analyzes is the evolvement of R2P norm.

As seen above in the introduction, R2P emerged in 2000 as a concept of international relations. R2P focuses on the notion of sovereignty; it is known in international law that a state has absolute supremacy over its territory and citizens. “In the ICISS report, “sovereignty was re-defined and extended to include the responsibility a state bears towards protecting its own civilians from harm”. In addition, in cases where a state is unable or unwilling to protect its civilians from mass atrocity crimes, the international community has a responsibility to act immediately in order to prevent or halt such crimes. “The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with

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39 Vijad Pashar, Arab Spring, Libyan Winter, 2012 AK Press, (Edinburg, Oakland, Baltimore)


42 Ibid, p.14
Chapters VI and VIII of the Charter, to help protect populations.” The ICISS report highlights four distinct crimes where R2P should be applied. Those are: genocide, war crimes, ethnic cleansing and crimes against humanity, which had previously been defined under international law by the Rome Statute of the International Criminal Court.

For the case of Syria, I will focus the research mainly in journal articles such as Reuters, Guardian, NY Times, BBC, and interview of NATO’s Secretary General Anders Fogh Rasmussen at CNN, as Syria is a case which is still going on.
Responsibility to Protect

Chapter three

From the Treaty of Westphalia in 1648 until 1998—sovereignty functioned as institutionalized indifference. The international intervention in Kosovo broke that mold and was the backdrop for UN Secretary-General Kofi Annan’s search for a new norm.43

The Responsibility to Protect, evolved as a concept from the pure aspiration of Secretary-General Kofi Annan, to the status of a norm in process of becoming a legal principle. He made compelling appeals to the international community in his Millennium speech in 2000, in order to resolve the dilemma of humanitarian intervention.44 He clearly illustrated the nature of the debate about the responsibility of the International Community to protect civilians in situations of crisis and at the same time to remain committed to another fundamental principle which is state sovereignty. He argued:

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 offend every precept of our common humanity? 45

To respond to Annan’s call to action, the Canadian government established an International Commission on Intervention and State Sovereignty, in September 2000. The Responsibility to Protect was issued as a report in December 2001. Chaired by, Gareth Evans and Mohamed Sahnoun. The R2P was affirmed in 2005, when it was included in

44. Joyner, p.324
45. Ibid, p.324
the consensus Outcome Document of the UN World Summit. The doctrine is based in three pillars:

First, the duty of every state to protect its people from genocide, war crimes, ethnic cleansing, and crimes against humanity;

Second, a commitment on the part of the international community to assist states in fulfilling their responsibilities;

Third, the preparedness of countries to take remedial action under the UN Charter when a state is manifestly failing to protect its citizens.

Since its adoption eight years ago, R2P has emerged as a widely shared norm in international relations, and every country has made a commitment to protect citizens from genocide, war crimes, crimes against humanity, ethnic cleansing and (at least in theory) to act accordingly. In 2011, United Nations Security Council invoked the R2P by authorizing a humanitarian military intervention aimed to halt mass atrocities and crimes against humanity in Libya, which demonstrated the full triumph of this norm. However, since world leaders unanimously embraced R2P in 2005, the international community has had a mixed track record of applying these principles when mass violence is threatened or occurs. Despite the idealistic promises of its frame, unfortunately the

Former secretary of state Madeleine K. Albright and former presidential special envoy to Sudan Richard S. Williamson co chaired the Working Group on the Responsibility to Protect, which includes former government officials, academics, foreign policy experts, political consultants, and media professionals. Jointly organized by the United States Institute of Peace (USIP), the United States Holocaust Memorial Museum, and the Brookings Institution, the Working Group seeks to increase understanding of the responsibility to protect (R2P), assess how the concept has worked in relevant cases, and identify concrete steps to bolster the will and capacity of U.S. decision makers to respond in a timely manner to threats of genocide, crimes against humanity, and other mass atrocities.

47. Ibid, p.7
crimes that R2P was supposed to prevent have continued at a shocking pace in the last few years, as in the most recent unsolved case of Syria. For the interest of this thesis, the legacy of the international response in Libya, and Syria will be analyzed. Through these two cases I will demonstrate that the gap between warning and response is still a challenge for the international community and also propose that global leaders should insist that the duties which all countries have acknowledged must be taken seriously and acted on with determination and vigor.

**The Doctrine of Responsibility to Protect**

If a government is unable or unwilling to protect its citizens, or furthermore is executing massive human rights crimes against its people, then the R2P delegates the international community to act. The Responsibility to Protect is multidimensional as it involves:

1) **Responsibility to react**, which is the most important one. It responds to situations of compelling human need, with appropriate measures including armed force, if necessary.\(^{48}\) When the preventing efforts fail to halt internal violence and the government is powerless or unwilling to remedy, then measures of humanitarian intervention by the international community may be necessary.

2) **Responsibility to prevent** includes political means, diplomatic initiatives, and economical strategies and, if necessary, military force.\(^{49}\)

3) **Responsibility to rebuild** is the aftermath of an intervention that includes reconstruction and recovery of a society from violent war.\(^{50}\)

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**Sovereignty as Responsibility**

\(^{48}\) Joyner, p.327
\(^{49}\) Ibid
\(^{50}\) Ibid
As Evans puts it, the principle of sovereign equality of states is enshrined in Article 2, Section 1, of the UN Charter, and the corresponding norm of nonintervention is enshrined in Article 2, Section 7: a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have the corresponding duty not to intervene in its internal affairs.\(^5\) Furthermore, no state holds unlimited power to do what it wants to its own people. It is acknowledged in international relations that; sovereignty implies a dual responsibility: externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state.\(^5\) As Joyner argues, “the notion of sovereignty should be conceived as the preeminent need for the government of a state to exercise responsibility, not merely control over its action. In regard to sovereignty and the UN Charter, Annan writes that:” If states bent on criminal behavior know that frontiers are not an absolute; if they know that the Security Council will take action to halt crimes against humanity, then they will not embark on such a course of action in expectation of sovereign impunity.”\(^5\) As mentioned above, state authority is not absolute; internally it depends on constitution, government, local, provincial and national power.”

Internationally, too, in human rights covenants, UN practice and state practice itself, sovereignty is understood as embracing responsibility. The UN Charter is an example of an international obligation voluntarily accepted by member states.”\(^5\) This doesn’t mean that there should be a change in the status of state sovereignty, what R2P suggests is

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52. Ibid
54. Ramesh Thakur Ibid. p.12
that, it should be a change in the exercise of sovereignty: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.\textsuperscript{55}

The R2P doctrine was repeatedly invoked in connection with \textbf{Libya} when, in 2011, opposition protests challenged the legitimacy of the country’s longtime dictator, Muammar al-Qadhafi, who threatened the protestors by calling them foreign mercenaries and vowed to fight to the “last drop of blood.”\textsuperscript{56} To stop a mass murder the UN Security Council adopted Resolution 1973 in response to the escalating civil war in Libya, on 17 March 2011. The intervention was led by the UK, France, US - and NATO. Libya marks the first time that the Security Council has authorized an international R2P operation. In the Balkans, it took NATO a full decade to intervene with air power, with the adoption of R2P in Libya, it took one month to mobilize a broad coalition, secure a UN mandate, establish and enforce a no-fly and no-drive zones, stop Qadhafi’s advancing army and prevent a massacre of the innocents in Benghazi.\textsuperscript{57}

As Dr. Krasno\textsuperscript{58} explained the intervention in Libya, during her lessons of international law; there are three factors which led to this intervention. First, Libya’s geographical position is an open desert landscape. Its proximity to Europe made it easy for allied countries to intervene militarily, (a non- intervention meant for Europe a huge influx of refugees and destabilization of whole continent). Second, the Arab League endorsed the

\footnotesize
\textsuperscript{55} Ibid, p.16
\textsuperscript{56} Ibid, p.16
\textsuperscript{57} Thakur, Ibid, P13
\textsuperscript{58} Dr. Jean Krasno, is currently the Director of IRMP of the faculty at the City College of New York in the Political Science Department and Distinguished Fellow at International Security Studies at Yale University. She has written extensively on the UN, participated the organization of Perez de Cuellar’s papers and has been involved for several years with an oral history of the UN conducted at Yale University. See more at: http://unhistoryproject.org/research/research_experiences-krasno.html
intervention, including Libya’s neighborhood. Third, Russia and China members of UNSC P-5 didn’t impose the veto this time, they rather chose to abstain.

The resolution 1973 shows that including R2P language in the preamble might provide the normative justification in the operational paragraphs of the UN mandates.59 Regardless of the debate of many writers that the intervention in Libya was made for oil, as Thakur writes, the operation in Libya marks a pivotal rebalancing of interests and values.

The intervention in Libya demonstrates how R2P can be applied as a norm, if world leaders are willing to save lives and punish those who intend to carry out crimes against humanity. It remains to be seen whether this intervention will be viewed in the future as a precedent or merely as a tale. The controversy is reflected in the Security Council paralysis over robust action in Syria, where the bloodshed inflicted by the regime is far worse than Libya.

The civil war in Syria grew out of the Arab Spring. President Bashar al-Assad’s refused the demands for political reform, instead imposed brutal repression.

The international community is responding with verbal condemnations, repeated efforts at mediation, the temporary introduction of human rights monitors, rigorous economic sanctions, and aid for refugees, but, yet no intervention. In the meantime, the number of the dead in Syria now exceeds 150,000 with the regime rolling bombs out of helicopters into civilian areas. In 2012, several USA senior advisors, including, Clinton and Petraeus proposed a much greater effort to arm Syria’s moderate rebels. President Obama declined

59. Thakur, Ibid, p. 21
18. Traub, Foreign policy article, Ibid.
to act, hoping for negotiated solutions which have never had a chance of succeeding without the threat of force. 61 In an interview for BBC, Mr. Annan said: “When the people of Syria desperately need action, the main problem remains the disunity of international community.” Russia and China have vetoed the resolution three times, there continues to be finger pointing and name calling in the SC. Syria continued to suffer until the use of chemical weapons in August 2013 led to threats of force and accelerated international diplomacy to dismantle them.62 This led to intense negotiations of diplomatic efforts to include mediators such as Kofi Annan and Lakhdar Brahimi. While the UN could have well justified an R2P response, they did not. Again geopolitics triumphed over the protection of civilians and human rights. In comparison with Libya, why not Syria is clear: The geography of Syria is harsher than Libya, the politics in the country are different, it has a tougher military challenge, and there’s a double veto from China and Russia.

The terrible carnage in Syria illustrates that the embrace of R2P is not sufficient especially when the permanent members of the Security Council are divided and external military intervention is difficult. R2P is the duty of every state, the failure to govern effectively and fairly is a primary threat to its realization. Does this mean that R2P is dead? No! As Weiss explains, “Syria demonstrates that a robust R2P response is never automatic.”63 As mentioned above, Syria is distinctly more complicated, chancy and

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61 Ibid
63 Weiss, ibid
confused than Libya. However, “Syria currently shames the collective international conscience and appears to dash the hopes for decisive outside military intervention.”

The Responsibility to Protect was intended as a road map to prevent humanitarian catastrophes from evolving. The atrocities R2P is intended to halt, are often, planned by some governments or leaders who are intent on imposing their will on others through terror and violence. Such plans frequently develop over a period of time and are preceded by hostile words, policies, and actions. The effectiveness of R2P depends on the ability and willingness of the international community to respond whenever and wherever the evidence of an impending crisis appears, as the case of Syria is clear proof. If the international community, especially SC P-5, translates R2P into action, that will actually prevent and halt genocide and other forms of mass atrocity. Its success depends on the attitudes and actions of countries over time. World leaders must recognize the doctrine as both universal and continuous, leave apart national self-interest, and apply it to every country at all times. The world community must proceed on this basis. R2P is the most extraordinary norm to ensure peace and reduce human suffering. If in critical moments such as the present case of Syria, R2P is ignored, then it will fail in its purpose.

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64 Weiss, ibid
65 Albright – Williamson, p.9
UN INVOLVEMENT in BOSNIA and HERZEGOVINA

Chapter four

UN involvement in the former Yugoslavia before the outbreak of the Bosnian war

The former Yugoslavia was not a big concern of the UN until the federation started to disintegrate the early 1990s. The first armed clashes in the federation of Yugoslavia started in 1991 when Slovenia and Croatia declared independence. The European Community (EC) responded to the world during the crises in Yugoslavia by proclaiming that the wars going on in the former Yugoslavia were a European problem that could be handled by the EC. Still observing the situation in Europe, the UN decided to get involved in the Yugoslavian crises in late 1991. The Security Council adopted resolution No.713 which imposed an arms embargo on all republics of Yugoslavia; however this decision did not hurt Serbia. “On September 25, 1991, the United Nations Security Council banned arms sales to all parts of Yugoslavia, an action that in the long run gave a military advantage to the Serbs, who inherited the JNA and its weapons.”  

On the other hand, Bosnia and Croatia were badly hurt from the arms embargo, as they did not possess much weaponry of their own, especially heavy arms.

As the wars started to break out in almost all Yugoslavian republics, the UN appointed Cyrus Vance, former US Secretary of State, to act as its mediator in Yugoslavia. Vance was able to achieve a cease-fire and temporary settle the conflict in Croatia (known as Vance plan) which was followed by the deployment of the UN peacekeepers.

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UNPROFOR in the most war affected areas of Croatia along the border with Serbia. The UN decided to settle its headquarters in the Bosnian capital, Sarajevo thinking that its presence there would stop the conflict from spreading to Bosnia. Moreover, the UN took an extra step in tightening Serbian actions by imposing economic sanctions on Belgrade. A decision this made in cooperation with the EC and the United States. Also after the Republic of Slovenia, Croatia and Bosnia declared their independence, the UN expelled Yugoslavia, made up of only Serbia and Montenegro, from the UN. The three former Yugoslavian republics were recognized by the United States and one day later they were accepted by the UN as members. Also, Bosnian independence was recognized by the EC and it is believed that the US even advised the Bosnian government to seek independence. However, Bosnian recognition by the major powers, the presence of the UN troops in Sarajevo and its membership in the UN did not prevent the country from engaging in a long and catastrophic ethnic war.

**UN role after the outbreak of war in Bosnia**

After the situation in Croatia was settled with the implementation of the Vance plan, Yugoslav People’s Army (JNA) withdrew from Croatia and joined the Bosnian Serb army starting “ethnic cleansing” against the innocent civilians of Bosnia. At this point the United Nations Security Council (UNSC) had to extend and reinforce UNPROFOR’s mandate in Bosnia. As the war went on, UNPROFOR’s mandate was extended a several times.

UNPROFOR’s priorities were to:
• Ensure that the Sarajevo airport was safe and would function efficiently in transporting humanitarian aid.

• Assist the United Nations High Commissioner for Refugees (UNHCR) to deliver humanitarian aid in different areas of Bosnia.

• Protect members of International Committee of Red Cross (ICRC) while transferring released civilian detainees.

• Monitor the “no-fly zone”, assuring that there would be no military flights over the areas.

• Protect the “safe areas” established by the Security Council including the town of Sarajevo from attacks.

But how could UNPROFOR succeed in implementing its mandate, when from the very beginning it begun facing major obstacles? There were only about 16,300 UN peacekeepers in Bosnia, who were not trained well and were poorly supplied by different countries that had sent them. Some of them came even without winter clothes and many others without weapons. Meanwhile the Serbian aggressive army not only outnumbered the UN forces, but they were very well trained and equipped with heavy weaponry received from Belgrade. The UN presence there was not even taken seriously into consideration. Firstly, UNPROFOR’s main purpose in Bosnia was to provide humanitarian assistance to the evacuated civilians. However, gradually the Security Council got involved in providing services to the war torn civilians such as “safe areas” and a “no-fly zone.” However, the assistance provided by the UN to the Bosnian civilians is considered the worst of our time. Massive torture, rape and massacres happened in the safe areas of the UN in the presence of the peacekeepers. In order to achieve their goal,
the UN forces would have needed to be much better prepared and equipped to get
involved in the armed clashes with the conflicting parties. However, fighting against any
of the parties would have meant taking sides which would have contradicted the
philosophy of peacekeeping missions and would have gone against UN mandate.

As bad as the situation would get in the Bosnian enclaves, with thousands of Muslims
being killed savagely, raped and displaced by the Bosnian Serb army, the UN
peacekeepers were not authorized by the Security Council to use weapons, not even in
cases when some of them were killed and many others were taken hostage. There were
about 5,000 French and British peacekeepers in Bosnia and both of the countries feared
Serb revenge against their troops. They also believed that eventually the Vance-Owen
peace plan would make the Bosnian Serbs even more hostile. In many occasions the
UN peacekeepers witnessed crimes by Bosnian Serbs against Muslims throughout the
war. Even the Bosnian officials such as the deputy prime minister, who was under the
care of UN forces, was killed by Bosnian Serbs. The Secretary General had proclaimed
that the member states has decided to provide troops to UNPROFOR based on the
existing Security Council resolution, which stated that the mandate of the Force would be
implemented as a peacekeeping operation and not as peacemaking.

As UNPROFOR managed to put the Sarajevo airport back into operation, its main
task was to distribute humanitarian aid. However, they often failed to properly dispense it
to the Bosnian civilians as their convoys were harmed and aid was confiscated. Indeed,
aid distributed to the safe areas only kept the civilians alive until the Serbian aggressor
would eventually kill them. It also helped to feed and supply the fighters and mainly the
Bosnian Serbs, who frequently attacked the humanitarian convoy and robbed them. As a

result, the UN peacekeepers were criticized by reporters and in particular by American reporters for prolonging the war in Bosnia. Misha Glennny who witnessed a chronicle of events that took place in the Bosnian war stated in her book “I see people queuing listlessly for bread. The Serb forces confiscate any food-aid destined to Sarajevo. One day I go to the airport to see the UN take delivery of twelve tons of food. The UN arrived but the food is already gone.”  

The war became even more extreme when on May 5, 1993 General Ratko Mladic became commander of the Bosnian Serb army. “The event was preceded and followed by an escalation of violence all over Bosnia. On May 18 a Red Cross relief convoy was shelled on the outskirt of Sarajevo. On May 22, a UN convoy was hijacked. On May 24, the village of Kozarac, in Banja Luka region, was overrun by Serbs and its inhabitants massacred.” The UN troops had very little control over the distribution of humanitarian aid and no control or authority over the conflict occurring between the ethnicities. So at this point they were very week at handling the situation and could not manage to save the civilians from the aggression.

Another failure of UNPROFOR happened when the Security Council decided to declare a no-fly zone over the territory of Bosnia. The peacekeepers were authorized to only monitor the banned fly zone, but not to take any action against those that flew over it. Until 1993, the no-fly zone rule was violated many times as the UN monitored about 465 violations in the area. As a consequence, the UN managed later on to adapt a resolution which allowed all members to reinforce the UN’s role in the no-fly zone. The operation was then handed over to the North Atlantic Treaty Organization (NATO) which

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for some time was not able to completely restrict all the violations. However, in many cases it succeeded in punishing the violators.

Although, the Security Council extended UNPROFOR’s mandate in Bosnia a couple of times, it did not get any back up from other countries which were not willing to send their troops in the war. As the war got more intense the UN intended to handle crimes against the larger civilian communities by creating the so called “safe areas” in the towns of Bihac, Gorzade, Sarajevo, Strebrenica, Tuzla and Zepa where most of refugees had settled. These enclaves were made up by many local inhabitants and refugees who settled there when Serb forces ethnically cleansed the nearby regions. Yet, the definition of the safe areas was not very clear, because the resolutions issued by the UN Security Council only declared that the safe areas would be protected from attacks and that the Bosnian Serb forces be withdrawn to a further distance from where they would not be able to threaten the civilians of the enclaves; though they never moved a step back. UNPROFOR together with humanitarian agencies were allowed free access to these enclaves.

As a consequence, UNPROFOR’s most disputed operation came during their mandate in the safe areas. After UNPROFOR troops were deployed to the safe areas the situation became even more complicated. The international community as well as the Bosnian civilians believed that now the safe areas were in safe hands and finally the inhabitants of those areas would be protected and supplied with humanitarian aid without any barrier, and possibly be transferred from there. Unfortunately, this could not be easily achieved. Besides the difficulty of delivering humanitarian relief supplies, moving civilians out of enclaves was no accepted by the international community, as it would

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70Rogel, C. *The breakup of Yugoslavia*, p. 65-67
mean to participate in ethnic cleansing, or by the Bosnian Muslim government, which
used the safe areas politically to raise more attention internationally. 71

As for protection, UNPROFOR was very poorly armed its strength could not even be
compared to that of Bosnian Serb army. Even though some UN members agreed to
establish the safe areas in Bosnia, they constantly hesitated to provide the means that
would actually make the areas safe. “The allies were unwilling to provide additional
military resources and repeated their concern that the safe havens would suck them into a
long-drawn-out war with the Serbs”. 72 Though, some of the members of the Security
Council, in particular Morocco, Pakistan and Venezuela supported the proposal for
reinforcing the UN’s presence in the protected zone. Eventually, these countries wanted
the proposal to lead to UN military intervention assisting the Bosnian Muslims.
However, most of the members of the Security Council disagreed with their statement.
The countries, such as Britain, France and Spain whose troops were already involved in
the Bosnian war would not to be persuaded to get into a war with Serbs by the member
states which were not contributing peacekeepers in the Bosnia. Despite the fact that in
1993 the UN requested additional 34,000 troops from the member states to be deployed
in the safe areas, the Netherland was the only Western UN member state to confidently
respond to the Secretariat’s demand for troops in implementing the Security Council safe
area resolution. However, until 1994 the Dutch were to not able join UNPROFOR
because they were not prepared to meet the UN requirements. 73

The Council invited the UN Secretary General Boutras Ghali and the UN High
Commissioner for Refugees, Mrs. Sadako Ogata to discuss the possibility of

72 Ibid, p. 102
73 Ibid pp. 120-123
strengthening the UN involvement in the safe areas in order to promote the situation there. Almost immediately, after the discussion Lord Owen and Cyrus Vance, the co-chairmen of the International Conference on the Former Yugoslavia (ICFY) warned about the risk of further involvement of the UN troops in the area. They proclaimed that the safe area would be “safe” only if Bosnian Serbs and the Bosnian government would agree on creating them.

As a result, the UN was unable to provide a full deployment of UNPROFOR troops in the safe areas, a condition which favored of the Bosnian Serb army as their shelling in the protected areas would be even easier with fewer UN peacekeepers. The Bosnian Serbs essentially ignored the UN declaration of the safe areas and started cleansing the Muslims ethnically. When the safe areas came under heavy Serbian attacks, the UN reacted by requesting the withdrawal of heavy weapons, however, even in January 1994 when the NATO forces started bombing the Bosnian Serb’s military centers, an attack on the Sarajevo market killed 68 Muslim civilians. As a result NATO demanded a 20km weapons exclusion zone which the Serbs complied with. Regardless of NATO air strikes against the Bosnian Serb forces, the Sarajevo attack was followed by other massive attacks, such as that of Gorazde, Bihac, Zepa, and finally Strebrenica where the worst massacre of civilians occurred since World War II. On one day about 8,000 Muslims, men and boys, were mercilessly killed in Strebrenica by the Bosnian Serbs.\footnote{Rogel, C. The Breakup of Yugoslavia, pp. 65-67} After this catastrophic genocide took place, the international community really started to express their empathy for the victims. Particularly, the UN High Commissioner for Refugees, Larry Hollingsworth showed his sorrowful emotions about the killed noncombatants by
stating “I hope the military commanders who ordered the firing on Srebrenica burns in the hottest corner of hell……. {Those} who loaded the weapons and fired the shells-I hope they have nightmares forever more, I hope their sleep is punctuated by the screams of the children and the cries of mothers.”75

Additionally, in revenge of the NATO bombing, the Bosnian Serbs took more than 360 UNPROFOR troops as hostages,76 thus indicating that the UN peacekeepers were not even able to defend themselves. Some of the main reasons why UNPROFOR failed to halt the genocide from occurring include: Firstly, as mentioned earlier there were insufficient troops, especially in the safe areas to provide humanitarian protection. As the situation worsened in the safe areas the UN military commanders there requested a much higher number of troops. However, their voices were ignored by the rest of the world. “Tadeusz Mazowiecki, a former president of Poland acting on behalf of the UN who had proposed and defended the havens idea, resigned in protest when the UN failed to defend the safe areas when they came under attack in 1995.”77 In many cases the Dutch commanders demanded warning air strikers from French but their request was delayed. Also the UN troops who remained outside could not take the risk to threatening the Serbs as they would put in the UN hostages’ lives in danger. Secondly, the UN mission in Bosnia faced financial difficulties as the UN member states were not contributing enough. Thirdly, the majority of the UN members were not willing to get UN troops involved deeper in the Bosnian war. Not only they feared failure, which they had experienced in Rwanda and Somalia but also because there were disagreements on the

75Shoup, B. “The War in Bosnia Herzegovina”. P. 141
77Rogel, C. “The Breakup of Yugoslavia”p.65
Security Council on how to solve the conflict in Bosnia. It was not until the end of 1995 that the members of the Security Council could come up with a unanimous decision.

**Other means of the UN contribution during the war in Bosnia.**

Besides the creation and the deployment of UNPROFOR forces in Bosnia there were other actions taken by the UN during the conflict. The United Nations High Commissioner for Refugees (UNHCR) contributed to the war by delivering humanitarian aid and care for refugees. It faced many difficulties during its mission in Bosnia as there was a very large number of war torn civilians to care for. The devastating war had generated the greatest number of refugees and displaced persons in Europe since World War II. For the most part, UNHCR kept the number of victims remarkably low, especially during the cold winters. Another effort taken by the UN Security Council in promoting justice in former Yugoslavian countries was the establishment of the (ICTY) in 1993. Its main task is to deal with war crimes that took place in the 20th century in the Balkans. In collaboration with the EC the UN also organized an International Conference in the Former Yugoslavia (ICFY) in London in 1992. Its main purpose was to promote peacekeeping, peacemaking and defensive diplomacy in all of the republics of former Yugoslavia. 78

The ICFY difficulties in achieving a cease-fire in Bosnia came primarily as a result of its late involvement in the conflict. The ICFY’s co-chairmen were Cyrus Vance, representing the UN and Lord David Owen, representing the EC. Though in 1993, they undertook intensive diplomatic negotiations with the representatives of Bosnian Serbs, 78

78 Touval, Saadia. Mediation in the Yugoslav Wars. PALGRAVE 2002, pp. 112-117,
Croats and Muslims their plan, the Vance-Owen plan was not accepted by all the conflicting parties. Thus Vance was replaced by Thorvald Stolenberg, who failed to convince the parties to come to a common agreement as well. Not, even the Contact Group of 1994 managed to settle peace in Bosnia. It was not until late 1995 that a diplomatic solution of the conflict was reached. 79

The plans were rejected by the conflicting parties for the following reasons. First, there was not enough pressure by the international community to push them to accept the peace plans. Though, Lord Owen had threatened the Muslims a couple of times in the peace conferences by claiming that if they did not accept the plans the UN peacekeepers would withdraw and that the Bosnian Muslims would not be assisted by the international community anymore; there were no cases where the Bosnian Serbs were pushed hard to accept the plans. Second, at the beginning of the conflict the Bosnian Serbs had occupied about 70 percent of the Bosnian territory and “cleansed” the Muslims and the Croats from the area. So even though efforts were made by the UN diplomats to deal with the issue, the Bosnian Serbs would not accept any plan that would require the distribution of the land sizeded by them. Third, some of the plans were unacceptable by the Bosnian Muslim government because they would not agree on any partition of the country.

Even though the international community was aware of the crimes committed by Serbian oppressors against the civilians of Croatia and Slovenia during their fight for independence, and the Serbian “ethnic cleansing” war policy, first implemented in Croatia, from the beginning of the war in Bosnia they agreed not to use military forces in

79 Ibid, pp. 120-123.
the territory. Instead they preferred peaceful means such as diplomatic negotiations, and humanitarian operations. The majority of the UN Security Council members referred to the Bosnia war as a civil war, where all three conflicting parties were blamed equally for the war. Despite the fact the media around the world showed and reported on massive civilian atrocities and devastating conditions and treatment of thousands of Bosnian Muslim and Croat detainees in the camps controlled by the Bosnian Serbs, the UN major states took no serious action to support a cease-fire until the establishment of the Dayton accords in 1995. “As late as summer 1995, when Srebrenica was “cleansed” of its Muslims, the powers still failed to act. They continued to treat the Bosnia situation as a humanitarian crisis, sending food to feed the hungry, while looking the other way when it came to identifying and punishing those responsible for the crime.” 80 After the war finally came to an end late 1995, world politicians and analysts heavily criticized the UN and U.S for their ineffective war policies in the early stages of the Bosnian conflict by claiming that,

The United Nations did not respond in a timely manner to early reports from the field about atrocities in the prison camps. The US state department also had early reports of killing associated with the forcible transfer of populations but did not follow up on the report. The failure to report reflects systematic defects in the way the international community and the United States monitor human rights crises. Had the world community focused earlier on the atrocities in Bosnia-Herzegovina, many might have been saved. 81

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80 Rogel, C. The Breakup of Yugoslavia, p. 34.
Even though the U.S was politically involved in the war through its diplomats there, in the beginning of the war it strongly opposed military intervention in Bosnia. As it feared that if the UN intervenes military the U.S would have to send troops as well. President Bush stated that “American boys should not die for Bosnia.”82 In the early stages of the war the U.S policymakers claimed that the war did not threaten American national interests, thus it was not in their interests to get involved. Another important thing to note about the U.S role in the war was that, the Cold War had ended just a few years before the breakup of Yugoslavia, thus at the time the US officials worried about offending the Russians, who sympathized with the Orthodox Christian Serbs.

Decisions and opinions of members of the Security Council, especially the permanent ones, contradicted in that the U.S tried to be more active in political negotiations mainly in 1994. It also pushed the international community to lift the sanctions against Bosnia and use air forces to bomb the Serb positions there, particularly those located around the safe areas. However, countries such as United Kingdom, France and Canada, which contributed the greatest number of troops to Bosnia, did not accept this idea because they did not want to endanger the peacekeepers lives. Also the UN commanders found it difficult to implement the resolutions recommended by the U.S without putting in danger their ability to function as peacekeepers. Thus the UN officials attempt to combine peacekeeping and peace enforcement in Bosnia was catastrophic.

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82 Power, A Problem From Hell, p. 263
If the Western powers had been more serious about preventing the genocide in Bosnia, they could have at least occupied Sarajevo and the territories around it in order to protect the airport from artillery attack. They could have also succeeded in delivering sufficient humanitarian aid through Croatia since the two countries are close neighbors. In addition if willing, with the backup of the U.S, NATO forces could have attacked the Bosnian Serbs’ military bases without endangering UN peacekeepers’ lives, by shelling the hills around Sarajevo to stop the Serbs, positioned on the hills, from attacking Sarajevo and from hijacking humanitarian relief. Another advantage would have been to bomb Serb military and industrial targets in the Bosnian Serb territory, or even within Serbia in order to at least deter Serb aggression.\(^8\)

**NATO air strikes in Bosnia**

In order for NATO to start its operation in Bosnia it needed UN authorization. After UNPROFOR’s failure to protect the safe areas and after the UN troops frequently were attacked by the Bosnian Serbs, the United States and the NATO Secretary General Manfred Woerner pushed the UN Secretary General to request NATO to use air strikes in Bosnia. In the meanwhile, the U.S had worked out arrangements with the Russians, Serb protectors. Also France was willing to join the NATO military operations. The U.S seemed to be motivated mainly by the desire to show its ability in leading NATO, as well as its wish to bring the Bosnia genocide to an end.

Following the Strebrenica massacre, all UNPROFOR were ordered to withdraw from Bosnian Serb held enclaves, making it easier for NATO to launch heavy air strikes. On

\(^8\) Ibid, p. 263
August 1, 1995, the contact group mediators of U.S, French and British warned the Bosnian Serb General Ratko Mladić that NATO would respond to any Serb attack on the UN safe areas. The French and the British by this time most of their troops had pulled out—encouraged the U.S to use air strikes against the Bosnian Serbs. NATO officers even suggested that “The plan is to bomb the crap out of them. The idea would be to make it something the Serbs would never, ever, want to experience.” However, on August 28, 1995, Serbs convinced that they could do whatever they wanted in Bosnia, and if threatened, they would get worse, attacked a market place in Sarajevo and killed 37 people and wounded 85. President Clinton knew that the Serbs were increasing their attacks in order to make the UN peacekeepers pulled out, thus he wanted to send the 20,000 U.S forces that he had promised to Bosnia before the UN pulls out completely. His administration committed itself to emerging a serious working strategy, since the failure in Bosnia was hurting U.S foreign policy. As a result, Richard Holbrooke was appointed as the US mediator to Bosnia. As assistant secretary of state for Europe and Canada, he had proclaimed that the war in Bosnia would be ended through the use of force. Holbrooke now could play a major role in NATO forces and could use all air powers, if necessary against the Bosnian Serb forces. Given that General Mladić, though under intensive pressure, refused to withdraw his heavy weapons from Sarajevo, NATO air strikes continued for two weeks. Holbrooke also assisted the Bosnian Muslims and Croats in capturing back territory occupied by Bosnian Serbs during the war. Within two weeks the territory controlled by them raised from 28% to more than 50%.

84 Shoup, B. The War in Bosnia-Herzegovina, p. 149
After continuous NATO bombing on the Bosnian Serb military bases, Serb leaders realized that they could not resist the NATO forces anymore and this time they were persuaded, especially by Milosevic who wanted the sanctions in his country to be lifted, that it was time for a cease-fire and for peaceful talks. In fact, towards the end of the war, Milosevic was put under pressure from the Russians, who play a major role in the Security Council, to accept the peace agreements. On the other hand he was under intensive pressure by Bosnian Serb military leaders who did not want to withdraw from the occupied areas. Nevertheless, all this trouble between the Serbs and the Russians, and the heavy NATO bombing finally forced the Bosnian Serb leaders to accept proposals for a peaceful settlement.

Holbrooke and his team held intensive rounds of peace negotiations with the Serbian President Milosevic, Croatian President Tudjam and Bosnian President Izetbegovic for twenty-one days in Wright-Patterson air force in Dayton, Ohio. As a result, on December 14, 1995, all three parties declared and signed a peace agreement known as Dayton accords.  

Although the UN representatives had managed to conduct all previous peace negotiations, the final peace agreement was not reached with the UN assistance or under its supervision. Finally, the U.S had demonstrated that a combined use of force and diplomatic negotiations would produce a peaceful settlement. The Bosnian government had started the war unprepared and unorganized. The leaders placed their faith in the international community which, they thought would not stand by and observe a European

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country, recognized by most of the countries of the world and newly admitted as a sovereign member of the UN, be destroyed so badly.

**UN role in preserving the peace in Bosnia after the war**

Following, the signing of the Dayton Accords, the Security Council adopted Resolution 1031, which authorized NATO to deploy in Bosnia-Herzegovina the Implementation force (IFOR), made up of about 60,000 troops, in order to implement the peace agreement there. The IFOR’s most important duty was to ensure the withdrawal and departure of all heavy artilleries and military forces and to ensure protection of the refugees. IFOR’s mandate in Bosnia ended after a year, thus the UN Security Council authorized the Stabilization force (SFOR) to further stabilize the situation in the awake of the war. All the parties had promised full cooperation in the implementation of the peace plan. In order to monitor the implementation of the civilian law enforcement, and train new law enforcement employees and assist in other related cases, the UN created the International Police Task Force (IPTF), which succeeded in fulfilling their mission for the most part. One of the most important entities created by the UN was the High Representative, whose task was to supervise and coordinate all civilian actions of the peace agreement implementation. In fact, the High Representative was the final authority to oversee the civilian implementation of the peace agreement. In order to ensure full implementation of the peace settlement, the UN Security Council provided the High Representative with full legitimate powers.

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UNMIBH’s success in carrying out its mandate in Bosnia.

Proud of UNMIBH’s success in completing its mandate, the UN Secretary General announced at the end of UNMIBH’s mandate in 2002: “Through UNMIBH, the United Nations had demonstrated its ability to complete a complex mandate in accordance with a strategic plan and within a realistic and finite time frame. UNMIBH has completed the most extensive police reform and restructuring project ever undertaken by the United Nations.”

UNMIBH was established in December 1995. In order to achieve a successful mission in the post-war, the UNMIBH was led by the Special Representative of the Secretary General and the Coordinator of the UN operations in Bosnia. He was in charge of supervising the IPTF Police Commissioner and also to coordinate all other UN’s operations in Bosnia. The mission had spread its offices and activities all over the ruined parts of Bosnia, where it had established effective units and offices, such as the Criminal Justice Advisory Unit, the Civil Affairs Unit, the Human Rights Office and the Public Affairs Office, in order to bring back to life every single civil and political institution. All of the UNMIBH institutions were implemented effectively and in accordance with the UN Secretary Council’s resolutions. After the deployment of IFOR, the UN had to assist only in implementing the civilian aspects of the Dayton agreement. Its main task was to contribute to the creation and the implementation of the rule of law. It also aimed to step by step assist Bosnia in reconstructing and operating all its

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governmental institutions. It helped reform and reconstruct the local offices, including police forces, judicial system and social and economic services.

At the end of the UNIBH’s mandate in 2002, the Secretary-General issued his final report on UNMIBH to the Security Council, where he provided an overview of the accomplishments of the Mission. One of the essential questions to take into consideration is; what are some main factors that caused UNPROFOR to end up so deeply unsuccessful during its mission? And what are some factors that caused UNMIBH to success in fulfilling its mandate during the Bosnian past-war? Some of the factors include:

- **Collaboration of the UN member states**; unlike throughout the war, all UN members states were concerned about the Bosnia’s post-war reconstruction and stabilization, where they closely followed the reestablishment process.

- **General security condition**; obviously in any humanitarian undertakings, it is much easier to efficiently operate in peace time. Thus for UNMIBH to achieve its goal was not so difficult since all the warning parties had signed the peace agreement and also the peacekeeping was performed by IFOR and SFOR troops.

- **Various expectations of the international community**; many people around the world saw UNPROFOR as a peace enforcement entity, the UN Secretary General often complained that majority of the international community and the Bosnian government expected the UNPROFOR to get involved in the armed clashes, which the Security Council would have never approved. Thus the expectations of the international community were never met and this caused the UNPROFOR’s total unpopularity. Whereas for UNMIBH the expectations were not so high, as
more weight was put on the IFOR, SFOR and the High Representative, whose task was to implement military means.

**UN’s efforts in prosecuting the perpetrators**

Besides diplomatic negotiations, whether or not effective, in 1993 the UN Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY), in order to deal with war crimes that occurred in the former Yugoslavian republics during the 1990s. The ICTY is the first international war crimes court created by the UN, for the purpose of bringing to trial the perpetrators accused of acts of murder, torture, enslavement, rape, devastation of property and other crimes stated in the Tribunal’s Statute. 90

President Slobodan Milosevic was one of the accused leaders for atrocities that took place during the collapse of former Yugoslavia, where more than 100,000 people were killed and millions displaced. In 2001, he was captured and brought to The Hague for trial in the ICTY, where he died during the process of investigation. 91 From its establishment the ICTY has charged 60 people for crimes committed against various ethnicities in Croatia, Bosnia and Herzegovina, Kosovo, Serbia and Macedonia. 92 Both of the Bosnian Serb war criminals Radovan Karadzic and Ratco Mladic were accused of

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Bosnian genocide and in particular the Strebrenica massacre. After many years of evasion, they were arrested by Serbian authorities and transferred to the ICTY for trial. The main purpose of the UN Security Council in establishing the Tribunal was to deter future war crimes and to bring justice to thousands of victims and their families, therefore contributing to long lasting peace in Eastern Europe.

**Conclusion**

In General, the UN’s presence in Bosnia and Herzegovina showed to the world both the unwillingness and the willingness of action of world leaders. Although UNPROFOR’s mission was mainly unsuccessful, the UN still continued to acknowledge itself as an operative security organization when it came to taking care of the returning refugees after the war and rebuilding Bosnia politically and economically. In contrast, UNMIBH proved the strength and authority of the UN in accomplishing its mission in Bosnia in reconstructing and stabilizing the country. Though, the war was catastrophic and lasted for almost five years, since UNMIBH left Bosnia in 2002 there is not a recorded single incident between the ethnicities there. Nevertheless, the UN has to rethink the concept of the peacekeeping, especially when it comes to ethnic wars and it should react faster and more aggressively in conflicts when thousands of lives are being taken per day.
NATO INVOLVEMENT in KOSOVO

Chapter five

As Mr. Annan wrote:

The Kosovo conflict has prompted a wide debate of profound importance to the resolution of conflicts. The sovereign states who drafted the Charter over a half century ago knew that there are times when the use of force may be legitimate in the pursuit of peace. That is why the Charter's own words declare that armed force shall not be used, save in the common interest.\(^{93}\)

NATO bombed the territory of the Federal Republic of Yugoslavia for 78 days from the 24th of March 1999 till 10\(^{th}\) of June 1999. The reason was the continuing atrocities and ethnic cleansing carried out by the Serbian authorities against the Kosovo-Albanian population\(^{94}\) and the stated purpose the termination of such a humanitarian catastrophe. Its legal status became the subject of much debate. Use of force by one or more States against another sovereign State is prohibited by Article 2(4) of the United Nations Charter save in two cases: self-defence under Article 51, and when the Security Council has authorized the resort to force under Article 42 of the Charter. Article 51 has been accepted as customary

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\(^{93}\) Annan, Ibid,p.2

law and thus it is invocable by all States. In the case of NATO’s self-defence, NATO’s Secretary General Javier Solana said:

Our objective is to prevent more human suffering and more repression and violence against the civilian population in Kosovo... We must halt the violence and bring an end to the humanitarian catastrophe now unfolding in Kosovo ... **We have a moral duty to do so**\(^95\)

The remaining option was the Security Council's authorization in the form of a Chapter VII Resolution\(^96\) that had to be passed by its Members without any of the Five Permanent Members vetoing it. That Resolution was never issued and permission was never sought in the first place, although in theory Mr Annan recommended that:

**When forceful intervention becomes necessary, the Security Council must be able to rise to the challenge.** The choice must not be between Council unity and inaction in the face of genocide, as in the case of Rwanda, on the one hand; and Council division, with regional action, as in the case of Kosovo, on the other. In both cases, the Member States of the United Nations should have been able to find common ground in upholding the principles of the Charter, and acting in defense of our common humanity. As important as the Council's enforcement power is its deterrent power. **If states bent on criminal behavior know that frontiers are not an absolute; if they know that the Security Council will take action to halt crimes against humanity, then they will not embark on such a course of action in expectation of sovereign impunity.**

Although these few facts might represent NATO as a militarily powerful organization that considers legal technicalities as trivial and avoidable, the situation requires a complete and accurate assessment. It had to be a choice, between taking an action whose

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legality would be questioned but which would serve the laudable purpose of saving human lives and ending the inhumane and degrading treatment, on one side and, compliance with sovereignty rights in international law which would have allowed a further enhancement of a flagrant breach of fundamental human rights, on the other.

Kosovo, a Short History

The history between Serbs and Kosovo - Albanians\(^97\) is known to start with the 1389 battle of Kosovo Polje.\(^98\) However, for the purposes of this thesis, it will be discussed Kosovo as a case of humanitarian intervention, leaving apart the historical debate.

It can be said that Kosovo was among the territories acquired by Serbia after its first enlargement as a result of the Balkan Wars in 1912 and 1913. The degree of territorial and political autonomy given to Kosovo (and other Provinces) by Marshall Tito in 1974 was taken away by Slobodan Milosevic who had come to power in 1985 and had based a substantial part of his political success on a rage of nationalism against the “Albanization” of the region.\(^99\) In March 1989, he imposed martial law (with serious legal irregularities), which put Kosovo under the direct rule of Serbia. The implementation of this law was based firmly on the systematic violation of human rights in the form of killing, torture and arbitrary arrests and imprisonment.\(^100\)

This provoked the creation of a "shadow state" with parallel state institutions which managed to run an unofficial, but very telling referendum on the political status of the

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\(^98\) Anzulovic, Branimir \textit{"Heavenly Serbia: From Myth to Genocide"}, London 1999.


\(^100\) Ibid, supra note 2.
Province. The referendum concluded in favor of the "Republic of Kosovo" asking for independence and the status of a republic within a federation retaining the right of secession. This was later confirmed with the 1992 "underground elections" which was followed in 1996 by the creation of the Kosovo Liberation Army (Ushtria Clirimtare e Kosoves) an army which shared some characteristics with clandestine guerrilla groups and had taken upon itself the goal of Kosovo's liberation. The continuous objection of the international community to Kosovo’s plea of self-determination in support of its independence, led to violence deployed by the KLA against Serbs, and as a result caused the Security Council to condemn expressly in Resolution 1160(1998):

the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the Kosovo Liberation Army or any other group or individual and all external support for terrorist activity in Kosovo, including finance, arms and training.

**Dayton Agreement**

The appeal to take their destiny into their own hands was surely emphasized by the Dayton negotiations in 1995 from which the Kosovo cause expected some redress but was in fact clearly excluded. The Dayton Agreement dealt with the situation of Bosnia and Herzegovina and was signed in Paris in 14 December 1995 after three weeks of negotiations, four years of atrocities carried out on the Bosnian Population by the Serb

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101 The Badinter Commission at 92 ILR 1993 at pg 167 (Badinter Commission suggested that peoples in the States emerging from the dissolution of the SFRY were entitled only to an ‘internal self-determination’, i.e. some form of political autonomy followed by protection of their linguistic, cultural and religious identity within the State they were part of).
authorities, the disappointing role of the UN and other international and regional organisations and the systematic failure of previous agreements and peace plans, as mentioned in previous chapter, provided a framework of constitutional, peace-building and enforcement measures.\textsuperscript{102} It made specific reference to the Protection of Human Rights in Annex 6 "Agreement of Human Rights” and provided for a constitutional reversal of ethnic cleansing\textsuperscript{103} in Annex 7 when addressing the issue of refugees and displaced persons. The Agreement was concluded in the presence of the five Members of the Contact Group and the European Union's Special Negotiator, by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. Kosovo was part of the latter and had already been subjected to gross human right violations for six years since Milosevic had come to power in 1989. The non-violent way of resistance chosen by its self-proclaimed President, Ibrahim Rugova relied on a potential diplomatic solution, but had also proved unsuccessful. The disappointment following Kosovo's exclusion from the Dayton negotiations and the recognition of ‘Republika Srpska’ territory, part of which was acquired as a result of ethnic cleansing against the Bosnians, only ripened the conditions for the creation of the KLA. However, in previous talks on the issue of Kosovo, although technically speaking an internal matter of Serbia, were raised as highly relevant to the region, but to no practical avail.\textsuperscript{104} The Kosovo - Albanians didn’t settle for autonomy and the Serbs didn’t have any intention to

\textsuperscript{102} The Dayton Peace Accords, 14 December 1995, Paris, see also Cox, M "The Dayton Agreement in Bosnia and Herzegovina: A study of Implementation Strategies" 69 British Yearbook of International Law (1198), 201

\textsuperscript{103} This particular provision is difficult to reconcile with the recognition of Republika Srpska as part of the Bosnian federation, part of whose territories were in fact conquered by the Serbs as a result of the ethnic cleansing against the Bosnians. In this context, it can be argued that the Dayton Accords have set a potentially dangerous precedent.

\textsuperscript{104} Owen, David " Balkans Odyssey", Florida 1995, at pg 76
grant even a minimal degree of autonomy. Thus, inserting Kosovo’s cause into the Dayton negotiations could have prejudiced the very immediate cause of the talks because Milosevic had expressed with consistency that Kosovo was an internal issue for Serbia, and he was too important to that process to be subjected to further challenges given possible adverse consequences. The international community couldn’t afford this, after the lengthy history of the failure of diplomacy and a strong pattern of humanitarian catastrophe in Bosnia. Kosovo constituted the basis for another humanitarian catastrophe in the future\textsuperscript{105} and, was even correctly foreseen by some of the international negotiators as the future undoing of Milosevic.\textsuperscript{106} Still, preventing the accelerating crisis in Kosovo was seen by some as a luxury when compared with the need for an immediate solution to the situation in Bosnia. The benefit of such a pragmatic approach,\textsuperscript{107} nonetheless, would only be short-term. It did not cure the region's wounds, it only isolated them temporarily.

**Events between 31 March 1998 and 23 March 1999**

The Security Council issued the first Resolution to respond to the massive violations in Kosovo in March 1998 (Res. 1160\textsuperscript{108}) followed by an arms embargo on the FRY, concurrently suggesting diplomatic negotiations between the two parties in conflict to decide upon the "political status issues" which would ideally result in a peaceful settlement of the dispute.

\footnotesize{\textsuperscript{105} Hagen “The Balkans’ Legal Nationalism, 78 No 4 Foreign Affairs (1999) 53
\textsuperscript{106} Owen, ibid at 8
\textsuperscript{107} It is difficult not to see it as a trade-off approach.
\textsuperscript{108} S/Res/1160/1998}
However, the resolution made it clear that independence was out of the question. “The Security Council expresses its support for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration.”

Even so, ethnic cleansing did not stop. On the contrary, it intensified to a point where even the International Committee of Red Cross had to abandon the region. As the Secretary General himself pointed out, "collateral damage" had grown into appalling atrocities reminiscent of the recent past elsewhere in the Balkans.

On the 23rd of September, the Security Council issued resolution 1199 and called again for immediate termination of hostilities and the maintenance of a cease-fire in Kosovo. It also addressed the immediate need to improve the humanitarian situation and the need for unconditional dialogue with international involvement.

In October 1998, NATO’s intention of resort to force became clearer by issuing an order for military intervention in response to the Serb actions in Kosovo. A temporary suspension of the order occurred as a result of a package deal reached between the US special envoy Richard Holbrooke and the Yugoslav Government, which promised the withdrawal of Yugoslav troops from the territory of the province and the presence of an international monitoring scheme, which would supervise the implementation of that

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109 ibid., at paragraph 5
110 4 Max Planck Encyclopaedia of Public International Law 2000, at pg 1591
agreement. NATO meanwhile had achieved an agreement with Belgrade on an air surveillance system over Kosovo.\textsuperscript{112}

Both agreements were endorsed in the Security Council Resolution 1203 of 24 October 1998, once again under Chapter VII. During this time the Kosovo political leaders and the Yugoslav government were offered the draft of a peace plan by the US negotiator for Kosovo, Christopher Hill. Both Parties refused it, even in its third version. The decentralization of public power and its distribution mainly to local authorities did not suit either the Kosovo leadership who were seeking a central government, or the Serbs who were preaching equality for all ethnic groups which meant political marginalization for the almost absolute majority of 90 per cent of Albanians in the region.

Atrocities resumed once again. The international community called for respect for the prior agreements otherwise NATO threatened to take all necessary measures "in the light of both parties."\textsuperscript{113}

Afterwards there were two turning points that preceded the commencement of the bombing: The Racak massacre and the failure of the Rambouillet negotiations.

On 15 January 1999, in the village of Racak 45 ethnic Albanians were slaughtered\textsuperscript{114} by FRY and Serbian forces. Some of the victims were women and children and at least one of them was decapitated. As a result, 5,500 people fled the village.

\textsuperscript{112} S/1998/991 \\
\textsuperscript{113} ibid. \\
\textsuperscript{114} “Under Orders: War Crimes in Kosovo” Human Rights Watch 2001 at pg 112
In a Presidential Statement of 19 January 1999, the Security Council condemned the massacre and called for: “…an urgent need and full investigation of the facts and urgently calls for the Federal Republic of Yugoslavia to work with the International Tribunal for the former Republic of Yugoslavia and KVM to ensure that those responsible are brought to justice.” 115

The statement continued with deplored the FRY’s aggravating actions in declaring the head of the Kosovo Mission Verification, William Walker persona non-grata (decision which was suspended) and the FRY’s refusal of access to the ICTY Prosecutor Louise Arbour. Tension escalated rapidly. The High Commissioner for Refugees, Ogata expressing horror at the killings in Racak stated:

The Racak killings have caused tension in other villages and our staff report that in areas near the conflict zone women and children are moving out to stay with relatives in villages farther south.”116 And that: “Renewed fighting since Christmas Eve has forced more than 20,000 people to flee at least 23 villages in the municipalities of Decane, Podujevo, Stimlje, and Suva Reka. UNHCR staff report that the conflict area in Kosovo seems to be widening117

The Rambouillet Round

If you want peace you must prepare for war.118 The Rambouillet talks aimed at a political settlement119 and were initiated under much pressure on 6 February 1999. The Contact

115 S/PRST/1999/2
117 Sadako Ogata’s Statement of 18 January 1999 at www.unhcr.org
Group managed to secure an interim settlement on the autonomy of Kosovo, which would formally be under FRY control, but practically would enjoy almost all the important characteristics of a sovereign State. The Rambouillet Agreement envisaged NATO's military presence in the territory of Serbia as an enabler of the area's demilitarisation, which would be gradually replaced by Kosovo's own police forces while the role of the Serb police and armed forces would be kept to a minimum. The implementation and monitoring of the Agreement would be assigned to NATO and OSCE (Organization for Security and Co-operation in Europe).

The agreement was finally signed by the Kosovo Albanian delegation, but the Serbian representatives refused with the justification that the suggested military presence of NATO or any other foreign entity in the territory of Serbia would infringe the sovereignty of the latter. During the talks, the Serbian diplomatic resistance was vividly associated with further massacres, attacks on villages in the region of Podujeve and forced displacement of thousands of Albanians. All this was taking place in mid–March and by the end of the month the OSCE had to evacuate its verification mission.

**NATO Intervention**

The failure of the Rambouillet talks, the unsuccessful attempts by Richard Holbrooke in Belgrade, and the systematic dismissal of NATO's ultimatums made NATO's Secretary General Javier Solana authorise the initiation of the military attacks against the FRY. The
operation under NATO's command started on 24 March 1999 with the air bombardment of military targets in the FRY. The whole operation lasted 78 days and was based entirely on air attacks, intelligence operations and the threat of ground troops based in countries neighbouring Yugoslavia. Two days after the bombing started, Russia proposed a draft resolution to condemn the operation as breaching the United Nations Charter Provisions (Article 2(4), 24 and 53) and suggested that NATO’s action should be categorized as an Article 39 threat to international peace and security. This was defeated by twelve votes to three, the supporting countries being Russia, China and Namibia. On 2 June 1999, the International Court of Justice in the case concerning the Legality of Use of Force refused the request of the FRY for provisional measures to put an immediate stop to NATO’s action. The reason was the failure of the FRY to establish that the Court had jurisdiction in all the cases.

In May, the G8 terms of settlement were accepted by the FRY. The adoption of Resolution 1244(1999) which contained principles set by the European Union and the Russian envoys on ending violence and withdrawing all FRY forces from Kosovo marked the end of the conflict.

NATO and the Doctrine of Humanitarian Intervention

In humanitarian intervention doctrine, first of all the scale of the humanitarian crisis must be assessed and how that affects international peace and security. Second the purpose of

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120 The alternative of ground troops was discussed in Washington, article available at: [http://www.washingtonpost.com/wp-srv/inatl/daily/april99/clinton040199.htm](http://www.washingtonpost.com/wp-srv/inatl/daily/april99/clinton040199.htm), consulted on 26 April, 2014

121 The claim was brought against ten countries: Belgium, Canada, France, Germany, Italy, Spain, Portugal, the Netherlands, the United Kingdom and the United States of America.
the intervention and its potential effects must be analysed and third, the use of force would be carried out with particular reference to the extent of the force used, and its necessity, the length of the operation, and the existence of alternative solutions.

1) Was Kosovo becoming a humanitarian catastrophe?

The Prosecutor of ICTY stated in her Press Release of 10 March 1998 that the jurisdiction of the ICTY is ongoing and would cover "the current violence in Kosovo."

On the 31 March of the same year the Security Council in paragraph 17 of the Resolution 1160, asked the Prosecutor to "begin gathering information related to the violence in Kosovo that may fall within the Tribunal's jurisdiction." In October 1998, Secretary-General Kofi Annan on his report, on human rights stated:

"the scope and the intensity of the conflict in Kosovo grew dramatically while human rights situation deteriorated…Serious human rights abuses were being reported on a daily basis throughout the summer and early autumn."

Also he confirmed in his Report of 17 March 1999 (after the massacre of Racak had occurred) that: "The Humanitarian and human rights situation in Kosovo remains grave." The General Assembly in Resolution 53/164 of 9 December 1998 condemned strongly "…the overwhelming number of human rights violations committed by the authorities of the FRY (Serbia and Montenegro), including summary executions, indiscriminate and wide spread attacks on civilians…mass forced displacement of

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122 Available at: [http://www.icty.org/sid/7683](http://www.icty.org/sid/7683), consulted on 27 April, 2014
123 ibid.
civilians…torture and other cruel inhuman or degrading treatment, in breach on International humanitarian Law”.

2) Was Kosovo a threat to International Peace?
In the Kosovo case, an intervention on the basis of self-defence under Article 51\textsuperscript{126} was not justifiable and indeed, was never invoked by NATO. As Kosovo was part of the Republic of Serbia, which itself is part of Former Republic of Yugoslavia the conflict was confined to the territorial borders of a sole State and Article 2(7) prohibits such an intervention:
“Nothing in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State…”
Furthermore, NATO was under a duty not to intervene in the civil strife of a State.

Regional agencies do have a role in resolving international conflicts, but the Charter is explicit in making their role subsidiary to Security Council’s primary responsibility.
Article 53, paragraph 1 states: "the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority…”
Even military intervention has been contemplated by the regional agencies, for example, under Article 51 on self-defence, that action cannot be taken unless authorized by the Security Council which has the primary responsibility\textsuperscript{127} to preserve or restore collective peace and security. : "…But no enforcement action shall be taken without the authorization of the Security Council…”

\textsuperscript{126} UN Charter available at: https://treaties.un.org/doc/publication/ctc/uncharter.pdf

\textsuperscript{127} On regard to Article 24, the Slovenian Ambassador Mr. Turk spoke of "primary", but not “exclusive” responsibility during the 26\textsuperscript{th} March 1999 talks on condemnation of NATO’s intervention in S/PV.3989 at pg 9
An additional problem was Article V of the Treaty of Washington\textsuperscript{128}, which limits NATO's right to collective self-defence to its members and their territorial integrity, but not beyond. However, the then Deputy Secretary of State, Strobe Talbott referred to 'common interest' and stated that:

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\text{… As we maintain our ability to defend the territorial integrity of all NATO members, we also need forces, doctrines and communication assets that will allow us, when necessary, to address the challenges of ethnic strife and regional conflict that directly affect our security but that lie beyond NATO territory—as we have done, and we are doing in the Balkans.} \textsuperscript{129}
\]

3) What was the purpose; humanitarian or Western power interest? One of Brownlie’s suggestions was that in the case brought against NATO’s Members on the Legality of the Use of Force “The Command structure of NATO constituted an instrumentality of the respondent States, acting as their agent.”\textsuperscript{130} One suggestion was that NATO’s intervention was needed as a means of strengthening the organization's credibility,\textsuperscript{131} whereas, on 23 March 1999, Bill Clinton addressing his nation declared:

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\text{Our strikes have three objectives: to show determination of NATO to oppose aggression: to stop President Milosevic attacks on civilians: and weaken the capacity of the Serbs to wage war in Kosovo by reducing their war potentials…}
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\textsuperscript{128} Article V of the North Atlantic Treaty 1949  
\textsuperscript{129} Bruno Simma, “NATO the UN and the Use of Force,” \url{http://ejil.oxfordjournals.org/content/10/1/1.full.pdf}  
\textsuperscript{130} at \url{http://www.icj-cij.org/icjwww/idocket/iyall/iyallicr9914 19990510.html}, consulted on 27 April, 2014  
\textsuperscript{131} Dusan “Kosovo- Warnings of Aggression” Review of International Affairs, at pg29
Also, the British Prime Minister, Tony Blair spoke of the risk of weakening NATO, but he also pointed out that this was not the most important reason for intervention: “To walk away now would not merely destroy the NATO’s credibility; more importantly would be a breach of faith with thousands of innocent civilians.”

Among the variety of reasons stated in speeches by several politicians, it is certain that the use of force was invoked to address the humanitarian catastrophe and that was made clear in the Security Council’s Resolutions which not only determined the threat to peace and security, but also stated that the resort to force to address the problem was a real possibility, by mentioning the additional measures in case of non-compliance in Resolution 1160 (1998) and reconfirming this view in Resolution 1199 that: "should the concrete measures demanded in this resolution and resolution 1160(1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region".

Solana on 23 March authorised military action as a result of the FRY's Government refusal to:

Accept the interim political settlement, which has been negotiated at Rambouillet:

Fully observe the limits on the Serb Army and Special Police Forces agreed on 25 October

End excessive and disproportionate use of force in Kosovo.

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132 Statement by the Prime Minister Tony Blair, in the House of Commons, Tuesday, 23 March 1999 in Weller, at pg 495
134 Press Statement by Dr Javier Solana, Secretary General of NATO, 23 March 1999 at Marc Weller " The Kosovo Crisis 1989 –1 999” vol I, pg 495
He declared that the objective of the intervention was "…to prevent more human suffering and more repression and violence against the civilian population of Kosovo" and also "to prevent instability spreading in the region." 135

This was reconfirmed on the same day by NATO's own Press Release. 136

However, the case for humanitarian intervention can create at its best a right and not an obligation to intervene for humanitarian purposes. Although mixed motives are a political reality, when geopolitics is of high relevance, they give rise to potential abuse and Kosovo might not be seen any more as a precedent tailored for the enforcement of the humanitarian norm as was hoped when intervention in Libya happened Syria is a case in point.

4) What were the alternative means?
The US Secretary of State Madeleine Albright stated before the commencement of the Rambouillet talks that:

Three outcomes are possible: If President Milosevic refuses to accept the Contact Group proposals, or has allowed repression in Kosovo to continue, he can expect NATO air strikes.

If the Kosovo Albanians obstruct progress at Ramboillet or on the ground, they cannot expect NATO and the international community to bail them out. Decisions on air strikes and international support will be affected, and we will find additional ways of bringing pressure to bear. If the two sides

135 ibid.
do reach agreement, we will need to concentrate our effort on making sure that it is successfully implemented.\textsuperscript{137}

In the end, the Rambouillet negotiations failed and no agreement was reached. The Kosovo delegation was finally persuaded to sign, but that did not happen with the Serb representatives. However, at a Council meeting on the 24 March the Russian Representative stated very clearly that:

NATO's decision to use military force is particularly unacceptable from any point of view because the potential of political and diplomatic methods to yield a settlement has certainly not been exhausted'.\textsuperscript{138}

Outraged by NATO's military intervention, the Chinese representative heading the Security Council at the time said: Recently, the parties concerned have been working actively towards a political settlement of the crisis.\textsuperscript{139}

Hence the different political climate: Rambouillet was initiated when violent massacres had resumed and both parties were prepared for a escalation in fighting and intention to compromise was in neither agenda, whereas Dayton found the parties exhausted after three years of fighting. The partition of Bosnia also represented a realistic compromise, whereas Milosevic’s share in Kosovo was much greater. Furthermore, there was no threat of sanctions on the country’s economy as there was when the Council imposed economic sanctions on the FRY in Resolution 757 (1992).\textsuperscript{140}

\begin{footnotesize}
\begin{enumerate}
\item[Ibid, “Winning Ugly” at pg 74\textsuperscript{137}]
\item[Security Council Provisional Records, 3988\textsuperscript{th} Meeting, 24 March 1999, 5.35 p.m. (NY time), Extract\textsuperscript{138}]
\item[Ibid.\textsuperscript{139}]
\item[Michael P. Scharf and Joshua L. Dorosin, "Interpreting UN Sanctions: The Rulings and Role of the Yugoslavia Sanctions Committee," in Brooklyn Journal of International Law, 19/1, 1993, pp. 771-827.\textsuperscript{140}]
\end{enumerate}
\end{footnotesize}
Therefore, even with the absence of the necessary political dynamics, Rambouillet attempted a solution by peaceful means. But at the same time it had also exhausted all the diplomatic options to address the conflict. Further it added to the certainty that resort to force would be the effective answer to the problem.

Just before the military action commenced, on 23 March NATO's Secretary General Solana concluded that:

"All Efforts to achieve a negotiated, political solution to the Kosovo crisis having failed, no alternative is open but to take military Actions." 141

Rambouillet offered no effective diplomatic solution 142, given the intractability of various issues. It is also true that the Security Council was asserting its responsibility in the crisis 143, but this continuing assertion also confirmed its failure effectively to resolve the crisis. In the words of UN Secretary-General Kofi Annan himself: "It is indeed tragic that the diplomacy has failed, but there are times when the use of force may be legitimate in the pursuit of peace." 144

Authorization of the use of force was an alternative within the remaining alternative of using force. Bypassing the Council was the other option and the one which NATO chose.

The Security Council could have indeed been asked for authorisation on the use of force as the threat to international peace and security was already established. However, there were persistent objections by the Russian side and China, both Members of the P5 and

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141 Ibid
142 Ibid, pg 4, supra at note 26
143 See supra note 42 (Solana).
whose veto is decisive in the Council granting such authority. So, one hypothesis that
such authorization by the Council would have been probably refused, to stop the agony of
the Kosovo people, based on moral grounds, NATO decided to follow its own decision.

Thus, it can be asserted that there is ample evidence to prove that there
remained no alternative means to the use of force to redress the problem.
As a result, it can be concluded that NATO was not breaching its
obligation under Article 7\(^{145}\) of its Statute to respect the “Security
Council’s supreme responsibility for the maintenance of peace and
security.\(^{146}\)

5) Length of time
When talking about humanitarian intervention, one of the criteria to be met is that the
length of time should be determined on the basis of the immediacy of the conflict and
consequently be proportionate to the solution of the former. However, there is clearly no
time limit to justify intervention. Every case is assessed on its merits and duration may
differ on a number of factors such as political constraints and costs, geographical
position, and military resistance. A NATO Air Commander expressed the intention of a
short campaign by stating that: ”I had been told, I can't tell you how many times: you're
only going to be allowed to bomb two maybe three nights- that's all Washington can
stand, some members of the Alliance stated…this'll be over in three nights.”\(^{147}\)

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\(^{145}\) Simma, NATO, The UN and the Use of Force, Legal Aspects, EJIL 10 (1999), 1-22
\(^{146}\) A. Cassese at supra note 48, p. 794
\(^{147}\) Channel 4 "War in Europe" in "Kosovo: The Military Campaign", consulted on 28 April 2014, at:
http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2810.htm,
Whereas the British Prime Minister made himself clear that the bombing would continue as long as it would take to be successful. 148

The Legitimacy of NATO’s Intervention

The Security Council never passed the draft resolution proposed by Russia condemning the intervention when it had already started149. Sometimes, that has been seen as an implicit authorization making the operation “legal.” However such an interpretation is far from reaching. “The Charter requires a positive decision by the Council, not the absence of a negative one-otherwise the veto power of the permanent members would be pointless.”150 Hence, the refusal of the condemning draft resolution indicates general acceptance as to the legitimacy of the intervention. Still, there was little consistency amongst politicians on whether there were ample legal grounds for NATO’s action. The classifying language contains the term of ‘humanitarian catastrophe’ instead of ‘humanitarian intervention.’ Robin Cook, then the British Foreign Secretary stated that: “The legal basis for our action is that the international community [sic] states do have the right to use force in the case of overwhelming humanitarian necessity”151. In fact there was no such clear-cut picture of international law. Although the moral aspect of the intervention in Kosovo is randomly seen as a justification for the action, for the countries that carried out the operation, it formed the basis of an obligation, the impact of which gave rise to the only means left of bringing the crisis to an end. The importance of such a

148 ibid
150 Krisch "Unilateral enforcement of the Collective Will" Max Planck United Nations Yearbook 3 (1999) at pg 86
151 Nicholas Wheeler, ”Reflection on the Legality and Legitimacy of NATO’s Intervention in Kosovo at pg 154 of “the Kosovo Tragedy”, supra note 1
moral obligation was expressed by the German President of the European Union at the
time, when stating:

on the threshold of the 21st century, Europe cannot tolerate a humanitarian
catastrophe in its midst’. It cannot be permitted that, in the middle of
Europe, the predominant population of Kosovo is collectively deprived of
its rights and subjected to grave human right abuses. We, the countries of
the European Union, are under a moral obligation to ensure that
indiscriminate behaviour and violence, which became tangible in the
massacre of Racak in January 1999, are not repeated. We have a duty to
organization was also bound by its Statute, Article 1 which states: “As set
out by the United Nations Charter, the contracting parties undertake to
settle by peaceful means any international dispute they might get involved
in, so that no threat would be posed to international peace, security and
justice and to refrain in their international relations from threatening to use
or using force in any way that would not be in keeping with the purposes
of the United Nations.”\textsuperscript{152} However, one could argue that using the term
‘purposes’ rather than asking more specifically for compliance with the
‘provisions’ of the ensure the return to their homes of the hundreds of
thousands of refugees and displaced persons.”\textsuperscript{153}

The Canadian representative declared that supporting the Draft Resolution to Condemn
NATO’s Action would position States “outside the international consensus, which means
that the time has come to stop the continuing violence against the Kosovo population.”\textsuperscript{154}

\textsuperscript{152} Ranko Petkovic, “International Law Order and NATO Aggression against Yugoslavia”, Yugoslav Survey, A
Record of Facts and Information, Belgrade, 1999.
\textsuperscript{153} Simon Chesterman, " Just War or Just Peace: Humanitarian Intervention and International Law " OUP
2001 "at pg 212
\textsuperscript{154} S/PV 3989, 26 March 1999, pg 7
Having said that, NATO as a regional Charter leaves more scope for interpretation to accommodate the variety of circumstances not covered expressly by the Charter. Even the Danish Institute for Foreign Affairs concluded that “In extreme cases, humanitarian intervention may be necessary and justified on moral and political grounds even if an authorization from the United Nations Security Council cannot be obtained.”

And after all, NATO in Kosovo was not a battle for territory, but one for humanity. It was a just and rightful cause.

## Conclusion

NATO's operation in Kosovo was a necessity and clearly addressed a large-scale humanitarian catastrophe. It put a stop to ethnic cleansing and the abuse of Kosovo Albanians, although it was limited to the deployment of air power. More importantly, it provided the Province, with a high degree of autonomy. However, the legality of the intervention is less clear. In the context of the doctrine of humanitarian intervention in international law, it can be said that there is ample state practice to indicate the existence of humanitarian intervention, but the strength of the *opinio juris* was not fully established. The Kosovo case might have changed something in this direction by introducing a case unique in the complexity of its nature: There were no doubts as to the ripening of the humanitarian disaster and the Security Council had acknowledged that it...

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155 Krisch argues that the term was in fact meant to strengthen the prohibition rather than restrict it. At pg 87, supra note 74
156 ibid.
157 "Blair to Double Aid for Refugees" The Times (London) 4 May 1999 at Kristotis “NATO’s Armed Force Against Yugoslavia” 49 ICLQ 2000 at pg 341
had explicitly condemned the FRY’s actions on the Kosovo-Albanian population; it had called for an end to violence and repression. It had expressed the need for additional measures in case of non-compliance and then it had stopped giving any realistic input into the solution of the problem.

It is true that NATO acted without UN authorization, but force was its last resort.

Some of the principal countries in the operation had previously lead lengthy negotiations for a peaceful settlement through the Rambouillet Accords, by amending agreements and extending deadlines in the hope of achieving a compromise. Unfortunately, the talks failed and only removed any doubts about the effective redress being anything else but military intervention.

Kosovo represents a pivotal step in international law. It is the best case that can currently be made for humanitarian intervention; it helped the norm of Responsibility to Protect to emerge in international law which however requires further consolidation. The Kosovo case proves the will of world leaders to intervene based on moral grounds and apparently opened the road to intervention in Libya, as will be seen in the next chapter. As stated in my hypothesis, the Kosovo case demonstrates that leaders at times place the moral imperative for humanitarian intervention above national interest but as we will see in the case of Syria, not always.
NATO Involvement in Libya and Responsibility to Protect

Chapter six

A short history of Libya

The name “Libya” was adopted in 1934, by Italy (used by the Greeks for all of North Africa, except Egypt) as the official name of the colony, which consisted of the Provinces of Cyrenaica, Tripolitania, and Fezzan. This thesis will focus on the history from 1951 and Libya’s independence up to Qadhafi.

Libya was the first country to achieve independence through the United Nations on 24 December 1951. As a fact, on November 21, 1949, the UN General Assembly passed a resolution stating that Libya should become independent before January 1, 1952. During these negotiations with the UN, Libya was represented by King Idris I, and Lybia was proclaimed a constitutional and a hereditary monarchy under King Idris. In 1959, the discovery of significant oil reserves led the country to be extremely wealthy, although the wealth was concentrated in the hands of the elite.

On 1 September 1969, Mu’ammar Abu Minyar al-Qadhafi staged a coup d’état against King Idris; at the time he was a 28 year-old army officer. Hence, he named himself chief of state and proclaimed the new Libyan Arab Republic.

In the 1970s, Libya claimed the leadership of Arab and African revolutionary forces and sought an active role in international organizations.

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159 Ibid
The 1980s Libya’s growing friendship with the U.S.S.R., led to increased tensions with the West. The tension increased even more in 1986, following a bombing attack against American military personnel in Berlin. In response, the U.S imposed unilateral economic sanctions.

In 1988, Libya was implicated in the bombing of Pan Am flight 103 over Lockerbie. As a result, Scotland and the UN imposed additional sanctions.

In 1999, Libya fulfilled one of the UNSCR requirements by surrendering two Libyans suspected in connection with the bombing for trial before a Scottish court in the Netherlands. In August 2003, Libya fulfilled the remaining UNSCR requirements and as a result, UN sanctions were lifted on 12 September 2003. After 2003, Qadhafi tried to make significant improvements in normalizing relations with Western nations.

The Arab revolution that began in several Middle Eastern and North African countries in late 2010 erupted in Libyan cities in early 2011. Qadhafi’s brutal repression on protesters broke into civil war that triggered UN authorization of air and naval intervention by the international community. After months of back and forth fighting between government and opposition forces, the Qadhafi regime fell in the middle of 2011 and was replaced by a transitional government. Libya in 2012 formed a new parliament and elected a new prime minister.

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161 Ibid.
Arab Spring

The Arab Spring captivated the Arab World. Protests started in Tunisia whose leader was Ben Ali, and in Egypt headed by Hosni Mubarak. The revolution spread very quickly from Morocco to Bahrain.\textsuperscript{162} It seemed like all the authoritarian states of the Arabian Peninsula would finally be freed. Outraged protestors and a thirst of freedom had produced this new wave, and continued to send it forward.

In Libya, social forces opposed to Muammar Qadhafi had begun to rebel, but they were weak.\textsuperscript{163} Qaddafi’s forces responded to the initial peaceful protests against the excesses of his regime, and killed perhaps more than a thousand of his own people. Hence, they were supported by France and the United States, with promises of freedom.

NATO began its assault, ushering in a Libyan Winter\textsuperscript{164} that cast its shadow over the Arab Spring. Libya erupted in the middle of two revolutions Tunisia and Egypt and as a consequence the fever for democracy was inevitable. The social will of the Libyan people to stand up against tyranny and dictatorship stems from the fact that they had been deprived of basic human rights. The people had reclined constant insults from the notorious leader, who was narcissistic and showed no respect for his own people. However, the Arab Spring in Libya was violent and complex.\textsuperscript{165}

\textsuperscript{162}Vijad Pashar, Arab Spring, Libyan Winter, 2012 AK Press, (Edinburg, Oakland, Baltimore), p.6
\textsuperscript{163}Ibid (Vijay Prashad explores the recent history of the Qaddafi regime, the social forces who opposed him).
\textsuperscript{164}Ibid
\textsuperscript{165}Ibid p.6
The uprising in Libya started on 15 February 2011 in the east-Libyan town of Benghazi after Libyan authorities arrested a human rights activist. It escalated radically by Libyan loyalists on 18 February. During February, a growing number of Libyan forces, diplomats and politicians defected to the opposition while several towns fell into the hands of the rebels. Violent protests and clashes started also in Tripoli.\textsuperscript{166} This development compelled Qadhafi to launch a military counteroffensive with all means of force. As a result, the Qadhafi forces were able to retake several cities, forcing the rebels to withdraw. That led to the first UN Security Council Resolution 1970 of February 26, which specifically invoked “the Libyan authorities’ responsibility to protect its population,” condemned its violence against civilians, demanded that this stop. The UN sought to concentrate Qadhafi’s mind by applying targeted sanctions, an arms embargo and the threat of International Criminal Court prosecution for crimes against humanity.\textsuperscript{167} In contrast, as it became apparent Qadhafi was not only ignoring the UN resolution but indeed planning a major assault on Benghazi in which no mercy whatever would be shown to perceived opponents, armed or otherwise, whom he called “cockroaches.”\textsuperscript{168} In response, the Security Council followed up with Resolution 1973 of 17 March, which included the R2P principle.

\textbf{The International’s Community Reactions}

In 2011, Western politicians such as US President Barack Obama, British Prime Minister David Cameron and other members of the NATO alliance praised what they believed was...
a successful campaign to intervene in Libya. As seen above, the UN Security Council, on 26 February 2011, unanimously adopted resolution 1970, which was not taken seriously by Qadhafi. 169 The Security Council demanded an end to the violence, and imposed a series of international sanctions. The Council also decided to refer the situation to the International Criminal Court. Furthermore, the Security Council, adopted resolution 1973, on 17 March 2011, and demanded an immediate ceasefire in Libya, including an end to ongoing attacks against civilians, which it said might constitute crimes against humanity. 170

The Council authorized Member States to take "all necessary measures" to protect civilians under threat of attack in the country, and only a few days later, acting on the resolution, NATO planes began striking Qadhafi’s forces. 171

Many other international organizations like the European Union (EU), 172 the African Union (AU) 173, the League of Arab States (LAS) 174, the Organization of the Islamic Conference (OIC) 175, the Gulf Cooperation Council (GCC) 176 together criticized the actions of the Qadhafi regime. Hence, requested for a no-fly zone, and urged the Qadhafi regime to stop the violence. Between all the states, only Turkey and Russia rejected the idea of a no-fly zone in Libya. While Germany and the U.S. opposed a military

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169 Evans, Ibid
171 Libya article, Ibid.
172 Council of the European Union 7081/11, Press 41, 28 February 2011, on 2 May, 2014
intervention, Great Britain and France wanted to establish a non-fly zone as soon as possible. 177

On 10 March, NATO ministers in accordance with the United Nations178 gathered in Paris to decide on the policy and measures to be taken toward Libya. The NATO members decided to consider that "...in order to protect the civilian population, Member States will examine all necessary options provided, to prove that there is a demonstrable need of humanitarian intervention, a clear legal basis and support from the region."179 It was decided as well that Qadhafi had to resign. In contrast to the NATO decision, the most important leader in Europe, German chancellor Angela Merkel "expressed her skepticism" of military action. On the other side the French President Nicholas Sarkozy stated that France and Britain were in favor of intervening in Libya.180 During the meeting of the G8 in Paris, the European leaders continued to take different decisions regarding Libya. As mentioned, Germany signaled no willingness to participate in a military intervention. The U.S. insisted on obtaining a UN Security Council resolution to allow the use of military force, in order to pave the way for further action.

178 Ibid
179 European Council, Declaration Extraordinary European Council, 11 March 2011, EUCO 7/1/11 REV 1, published 20 April 2011
180 Emily O'Brien and Andrew Sinclair The Libyan War: A Diplomatic History, Center on International Cooperation, NYU, August 2011
In the meanwhile, Qadhafi’s infamous speech over the radio where he declared his intention to "have no mercy" with the rebels pushed the UNSC only hours later to adopt resolution 1973, on 17 March 2011 which created the legal authority for an intervention.

Demanding an immediate ceasefire in Libya, including an end to the current attacks against civilians, which it said it might constitute “crimes against humanity” Security Council this evening imposed a ban on all flights in the country’s airspace a no-fly zone-and tightened sanctions on the Qadhafi regime and its supporters.

The UNSC resolution passed with ten votes in favor none against, with five abstentions: Germany, Brazil, Russia, China, and India. In the rebel territory within Libya, the UNSC resolution led to cheers and approval. Furthermore, the Council authorized States, “to take all necessary measures to protect civilians under threat of attack in the country, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory – requesting them to immediately inform the Secretary General of such measures.”

NATO’s Intervention in Libya

NATO action commenced immediately to stop a major catastrophe in Benghazi. Even though, by some skeptics this was an exaggerated excuse, Evans states that “it was

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183 Ibid
inconceivable that Arab League support for the Security Council would have been forthcoming if it was not, and had not been perceived to be, very real.\textsuperscript{184}

The first strikes against Libya began on 19 March, conducted by France and Great Britain. Then, on 01 April 2011, NATO took over the full implementation of resolution 1973 with the aim to protect civilians. The mission was called “Unified Protector.” There were different reactions from some states regarding this mission; Germany decided to withdraw troops from Naples, which was the main base of the mission, Turkey tried to negotiate a new cease-fire, while Russia, China, Brazil and India criticized the whole mission. On behalf of Russia, the foreign minister Sergei Lavrov accused NATO of exceeding the goal of the resolution and recommended: "if somebody would like to get authorization to use force to achieve a shared goal by all of us, they would have to specify in the resolution who this somebody is, who is going to use this authorization, what the rules of engagement are and the limits on the use of force."\textsuperscript{185} NATO officially ended its mission on 31 October 2011. Despite some criticism, the mission was successful. Without the massive support of the coalition forces engaged in operation “Unified Protector,” the success of the Libyan revolt would have been impossible. Although there has been a wide spread perception that NATO stretched its mandate to the absolute limit, in Libya. According to Evans:

it would have been much more comfortable if NATO had confined its role, after neutralizing the Libyan air force and halting the ground forces

\textsuperscript{184} Evans, Ibid article
moving on Benghazi, confined itself essentially to a watching-brief role: maintaining the no-fly zone and being prepared to attack whenever civilians or civilian areas were being putting at risk.

Despite some criticism, NATO’s intervention was crucial in regard to human rights and in securing the overthrow of the Qadhafi regime by the rebel forces. NATO observed some constraints in its engagement, including the obvious one of not putting fighting troops on the ground, which according to Evans, prolonged the struggle more. However, to conclude there’s little doubt that NATO’s intervention in Libya was decisive. It secured regime change, by removing the Qadhafi regime from power which was the only way to protect civilians from atrocities by the regime.

**What scholars say about R2P and Libya?**

As seen in chapter three, the R2P norm is widely accepted by most heads of State. The UN has pronounced that states have the responsibility to protect their citizens, and that the international community has the responsibility to intervene on some level when states fail to do so. And yet, the methods and degree of this response remains controversial.

The controversy began when the UN Security Council adopted Resolution 1973 in response to the escalating civil war in Libya. As seen above, citing Chapter VII of the United Nations Charter, the Security Council authorized member states “to take all necessary measures… to protect civilians and civilian populated areas under threat of
Gareth Evans says that: “maybe, just maybe, we’ll be able to say ‘never again’ in the future without having to periodically look back, as has so often been the case in the past, asking ourselves, with a mixture of anger, incomprehension and shame, how did it happen again.”

Regarding the R2P concept, Weiss notes that although R2P is often described as an “emerging norm, it has already played a decisive role in shaping international debates about human rights violations and humanitarian response.” He recommends that: R2P must not be defined too broadly, as “broadening perspectives has opened the floodgates to an overflow of appeals to address too many problems.” And “it must not be defined too narrowly, as R2P is not only about the use of military force.”

However, Ramesh Thakur critiques the military intervention in Libya. According to him it was not a good example of R2P in action. He’s of idea that “the United Nations was neither designed nor expected to be a pacifist organization.” According to Thakur R2P is a useful norm in shaping military humanitarian intervention, and on the importance of

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187 Ibid

188 Ibid, Thomas Weiss, Whither R2P? August 2011, p.6
military intervention as a part of R2P, he argues that “to be meaningful, the R2P spectrum of action must include military force as the sharp-edge option of last resort.”

Following Thakur’s point of view, O’Connell asserts that: “in Libya, military force was not used as an option of last resort,” and she underlies that sanctions, negotiations, and other peaceful measures were not properly attempted beforehand. According to O’Connell, international law demands that military interveners must show that their actions are only as last resort, and they will do more good than harm. Hence, she concludes that, the military intervention in Libya can hardly be considered a case of R2P in action.

Criticizing the intervention in Libya, Hehir, argues that R2P has been applied inconsistently according to the interests of the 5 permanent members of the Security Council. He states that United Nations, “substantial legal, political and institutional reform” is needed to ensure the prevention of future mass atrocities which remains a “structural barrier to effective action.”

Furthermore, Alex Bellamy offers another criticism regarding R2P and the military intervention in Libya. He suggests distinguishing the concept of R2P from regime change. According to Bellamy, many countries, like China, Brazil and South Africa have

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189 Ibid, Ramesh Thakur, R2P, Libya and International Politics as the Struggle for Competing Normative Architectures, September 2011, p. 12.13
190 Ibid, MaryEllen O’Connell, “How to lose a Revolution” p.15
191 Supra note 29, The Responsibility to Protect: “challenges and opportunities in the light of Libyan intervention”
criticized R2P for being a tool of Western powers to affect regime change. Thus, to his point of view R2P should be applied in the future as a norm in accordance with all the countries. He recommends that the international community must be prudent in maintaining the distinction between R2P and regime change. 192

According to David Chandler, Libya doesn’t represent a case of humanitarian intervention at all, and the West has only used R2P as an excuse for intervention.193 When the norm of humanitarian intervention was emerging during the nineties, the global leaders were the UN, NATO, and the EU, who sensed the immediate need for change regarding humanitarian intervention. The author expressed, yet after unauthorized intervention in Kosovo, the failed wars of Iraq and Afghanistan, the emerged R2P norm remains “a complex, unstable norm, where interventions are ad hoc and do not involve Western responsibility or transformative promise.” The military intervention in Libya has not much to do with the real intention of R2P and humanitarian intervention.

Rodger Shanahan, expressed concern over the inconsistency of the application of the R2P norm, by stating that; “the selectivity of the concept’s application has already opened it up to criticism from those parts of the international community who see in R2P another justification for western interference in the developing world’s internal political affairs”194 however “the next few years will see whether R2P is likely to

193 Ibid, David Chandler, Libya: The End of Intervention, November 2011, p.24-25
prosper or fade away as its practical limitations are judged against whatever successes it can claim.”

Rachel Gerber puts the focus on the “prevention pillar”; which is mostly neglected in international policy discussions according to her, but is instead even more important than intervention: “why wait to halt a massacre if early engagement might avert it entirely?”

Gerber recommends that R2P must develop the prevention pillar, stating that,

We must develop a framework for prevention that at once targets these unique dynamics across the various phases of potential crisis and prioritizes atrocity-focused objectives within broader efforts to prevent conflict, promote security, and encourage economic development.

Abiodun Williams suggests separating R2P from military intervention. To his point of view, branching out from a focus of military intervention, R2P could:

Enhance local and international institutional capacities to assess and address the risk of atrocities at an earlier stage through primary prevention, ensure robust measures are taken to halt R2P crimes in a more consistent manner, and rebuild societies emerging from conflict.

As seen above there are different points of view, ideas and recommendations between scholars of international relations about R2P. However, to make an evaluation of its application, one should judge case by case. Despite the critics, the Responsibility to Protect is a norm whose time has come to be applied properly. For centuries, human catastrophes have gone un-prevented. As Evans asks:

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195 Ibid, p.27
196 Rachel Gerber, Prevention: Core to the Responsibility to Protect, October 2011, p.28 -29
197 Abiodun Williams, The Responsibility to Protect and Peacemaking, August, 2011
Why did it take so long after World War II for the international community to agree that they had the responsibility to protect civilians from genocide and mass atrocities? It seems like the world said “never again” a number of times before anyone took proactive steps to make this a reality.\footnote{198}

The emergence of the new responsibility to protect norm may not in itself guarantee that the world has seen the end of mass atrocity crimes once and for all, but at least we do have a norm now which has made a fundamental shift in attitudes on the scope and limits of state sovereignty. Since its foundation, the UN has had to address the problem of states waging war against each other,\footnote{199} and not only human rights. What mostly defines the controversy is Article 2(7) of the UN Charter: “Nothing should authorize intervention in matters essentially within the domestic jurisdiction of any State.”

On the other hand, even non-intervention is criticized. Before R2P, even when the international community did react through the UN, as Evans explains, “it was too often erratically, incompletely or counter-productively, as in the debacle of Somalia in 1993, the catastrophe of Rwandan genocide in 1994, and the almost unbelievable default in Srebrenica in Bosnia just a year later, in 1995.”

When it came to ethnic cleansing in Kosovo in 1999, most governments accepted quite rapidly that external military intervention was the only way to stop it. But again the

\footnote{198} Gareth Evans, Interview: The R2P Balance Sheet After Libya, September 2010

\footnote{199} Ibid
Security Council failed to act, this time in the face of a threatened veto by Russia.\footnote{200}{Evans, supra note 41} According to Evans, Libya was a spectacular step forward. The Security Council passes resolution 1973 – the first of its kind specifically invoking the responsibility to protect in a particular country situation – approving “all necessary measures” (which in UN-speak means military force) to secure civilian protection objectives in the context of atrocity crimes being committed and feared.\footnote{201}{Evans, Ibid} Nevertheless there have been negative reactions to the way in which NATO interpreted its mandate in Libya. “The Libyan case was, at least at the outset, a textbook case of the R2P norm working exactly as it was supposed to, with nothing else in issue but stopping continuing and imminent mass atrocity crimes.” He concludes by saying that the Responsibility to Protect norm may not in itself guarantee that the world has seen the end of mass atrocity crimes once and for all, but it certainly gives us a better chance of getting there than we have ever had before.\footnote{202}{Evans interview, supra note 41}

Conclusion

The application of the norm of the Responsibility to Protect will inevitably remain selective and highly contingent on the political context. The humanitarian imperative is a strong and growing global impulse, and humanitarian intervention is still subject to the constraints of geopolitics, resources, and political will. As Thakur writes, the operation in Libya marks a pivotal rebalancing of interest and values.

\footnote{200}{Evans, supra note 41} \footnote{201}{Evans, Ibid} \footnote{202}{Evans interview, supra note 41}
What has been most striking in the Libyan case is the consolidation of R2P as a vital global norm. The implementation of R2P as we saw in this chapter depends on the attitudes of the Security Council, and especially on the national interests of the P-5. Libya marks the first time that the Security Council has authorized an international operation. While in the Balkans, it took a full decade to intervene with air power, with the adoption of Responsibility to Protect in Libya it took only a month as mentioned in chapter three, to mobilize a broad coalition, secure a United Nations mandate, establish and enforce a no-fly zone and no-drive zones, stop Qadhafi’s advancing army and prevent a massacre of the innocents civilians in Benghazi. Libya has demonstrated the viability of a well-implemented R2P intervention. Yet just because the doctrine was successful in Libya, one should not assume that the UN and its allies will apply it universally. As atrocities emerge in Syria, the international community will need to have the agreement of the P-5, Arab League, NATO and all factors to find a final solution.

The political willingness remains selective on humanitarian intervention. Intervention must balance the goal of preventing suffering with other interests and commitments. Some conflicts, such as Syria, are dauntingly complex and would impose unacceptable burdens on well-meaning interveners, especially when the consequences of any solution are uncertain.
Syria: the Unresolved Case

Chapter seven

A short history of Syria

Syria declared its independence on April 17, 1946. Syrian politics from independence through the late 1960s were marked by constant upheaval. Syria's political instability during the years after the 1954 coup, the parallelism of Syrian and Egyptian policies, and the appeal of Egyptian President Gamal Abdel Nasser's leadership in the wake of the 1956 Suez crisis created support in Syria for union with Egypt. On February 1, 1958, the two countries merged to create the United Arab Republic, and all Syrian political parties ceased overt activities.

The union was not a success, however. Following a military coup on September 28, 1961, Syria seceded, reestablishing itself as the Syrian Arab Republic. However, the Government explored the possibility of creating a federation with Egypt and Ba'ath--controlled Iraq. An agreement was concluded in Cairo on April 17, 1963, for a referendum on unity to be held in September 1963.

However, serious disagreements among the parties soon developed, and the tripartite federation failed to materialize. On February 23, 1966, a group of army officers carried out a successful, intra-party coup, imprisoned President Hafiz, dissolved the cabinet and

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203 History of Syria, http://www.factrover.com/, seen on 5 May 2014
204 Ibid
abrogated the provisional constitution, and designated a regionalist, civilian Ba'ath government.\textsuperscript{205} The defeat of the Syrians and Egyptians in the June 1967 war with Israel weakened the radical socialist regime established by the 1966 coup. The 1970 retreat of Syrian forces sent to aid the PLO during the "Black September" hostilities with Jordan reflected this political disagreement within the ruling Ba'ath leadership. On November 13, 1970, Minister of Defense Hafiz al-Assad affected a bloodless military coup, ousting the civilian party leadership and assuming the role of prime minister. \textsuperscript{206}

In March 1973, a new Syrian constitution went into effect followed shortly thereafter by parliamentary elections for the People's Council, the first such elections since 1962. From 1976 until its suppression in 1982, the arch conservative Muslim Brotherhood led an armed insurgency against the regime. In response to an attempted uprising by the brotherhood in February 1982, the government crushed the fundamentalist opposition centered in the city of Hama.

Syria's 1991 participation in the U.S.-led multinational coalition aligned against Saddam Hussein marked a dramatic watershed in Syria's relations both with other Arab states and with the West. Syria participated in the multilateral Middle East Peace Conference in Madrid in October 1991, and during the 1990s engaged in direct, face-to-face negotiations with Israel.

Hafiz Al-Assad died on June 10, 2000, after 30 years in power. Immediately following Al-Assad’s death, the parliament amended the constitution, reducing the mandatory

\textsuperscript{205} Ibid
\textsuperscript{206} Ibid, History of Syria
minimum age of the President from 40 to 34 years old, which allowed his son, Bashar Al-Assad legally to be eligible for nomination by the ruling Ba'ath party. On July 10, 2000, Bashar Al-Assad was elected President by referendum in which he ran unopposed, garnering 97.29% of the vote, according to Syrian government statistics.

Politics of Assad

After Bashar al-Assad took over, everybody thought that the Western-educated ruler would sustainably reform the country. Indeed, he followed the idea to "modernize or upgrade authoritarianism," that is to improve the system without real changes or a more democratic approach towards domestic Syrian policy.\textsuperscript{207} His family has an Alawite background, which is a part of Shiism, a minority religious group in Syria, in contrast to Sunni that makes up the majority.\textsuperscript{208} Hence, the conflict between the ruling alawites and the Sunni rebel majority also represents a history of tensions and conflicts between these ethnic groups. Syria was a member of the Arab League, the Organization of Petroleum Exporting Countries, of the Organization of Islamic Cooperation, and the United Nations.

\textsuperscript{208} Syria's Alawites, a secretive and persecuted sect, article of Reuters: Sunnis Muslims make up 74 percent of Syria’s 22 million population, Alawites 12 percent, Christians 10 percent and Druze 3 percent. Ismailis, Yezidis and a few Jews make up the rest. Alawites broke away from Shi'ism more than 1,000 years ago and retain some links to it, including the veneration of Ali, the cousin and son-in law of the Prophet Mohammad. Alawi literally means "those who adhere to the teachings of Ali."\url{http://www.reuters.com/article/2012/01/31/us-syria-alawites-sect-idUSTRE80U1HK20120131}, seen on, 1 May 2014
Nations.

The main focus of Syria’s foreign and economic policy is toward the East. Syria had ties with Iraq since 2000, which brought it into alliance with the U.S. in 2003; when Assad only politically opposed the intervention. 209

The dispute with Lebanon, where Syria has a particular interest, forced Assad to having a relationship with Iran, to provide support and to influence on the Hezbollah in Lebanon in a way to counterbalance Israel and the U.S. Syrian troops –stationed in Lebanon since 1976 in a self-imposed peacekeeping role, were withdrawn in April 2005. 210

However, its best ally remains Russia, with whom Syria maintains close connections. Russia even has a navy base in the Syrian city of Tartus that was founded in 1971. Russia is expanding more of its forces to the Tartus naval base, which constitutes the only Russian base in the Mediterranean. As we will see later, this might explain the veto of Russia on SC resolution regarding the intervention in Syria.

Assad’s attempted to modernize the Syrian economy by using the concept of a ‘social market’ economy. 211 This attempt failed and Syria’s political support for Iraq since 2002/2003 had a significant economic cost caused by U.S. embargos.

In May 2007, a referendum by popular vote approved Bashar al-Assad’s second term as
president. As seen in a previous chapter, like in Libya, Syria was influenced by the Arab Spring that began in the region, and antigovernment protests broke out in the southern province of Dar’a in March 2010. Protesters were crying out for revoking the restrictive Emergency Law which allowed arrests without charge, the legalization of political parties, and the removal of corrupt local officials.

The government responded to this tension by repealing of Emergency Law and approving laws which permitted new political parties, and liberalized local and national elections. The government reacted because demonstrations had spread to nearly every city in Syria. However, this didn’t mean that the government, especially Assad, had any intention stepping down. Indeed, the government’s response to armed opposition activity from the start, has led to extended violent clashes.

Although verbal international pressure on the Assad regime has intensified since 2011, carried out by Arab League, the EU, Turkey, and the United States which also expanded economic sanctions against the regime, nothing much has changed.

U.N.-Arab League special envoy Kofi Annan promoted a six-point initiative plan to end the violence, bring in relief, and forge a political process to address grievances in Syria. Annan has stressed that "implementation of the plan is the key" and the Assad regime needs "to put its commitments into immediate effect." Even though at the beginning the

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212 Ibid
213 Ibid
214 Ibid
plan was accepted and the Assad regime has said it is committed to end the violence, he continued the crackdown just the same.\textsuperscript{215} The plan was never fully adhered to by either side and as violence continued to escalate, Annan decided to resign by stating: “the increasing militarization of the Syrian conflict and the clear lack of the unity in the Security Council had fundamentally changed the circumstances for the effective exercise on my role.”\textsuperscript{216} According to Mr. Annan the problems were “compounded by the disunity of the international community,” especially by Russia and China who have vetoed resolution on the crisis three times. He expressed that it was impossible for him or anyone to compel the Syrian government and the opposition, to bring about a political solution.\textsuperscript{217} He continued that Syria can still be saved if the international community can show the courage of leadership, for the sake of Syrian people. He said “he did not rule out someone taking over the mediator’s role for him, but a successor might choose another path.” \textsuperscript{218}

In October 2012, Lakhdar Brahimi, the current Joint Special Representative of the United Nations and the League of Arab States on the Syrian crisis, began meeting with regional heads of state to assist in brokering a cease-fire.\textsuperscript{219}

While the opposition had lacked cohesion early on in the conflict, in December 2012, more than 130 countries recognized the National Coalition of Syrian Revolution and

\textsuperscript{215} Syria crisis, Kofi Annan quits as a UN-Arab League envoy, 02 August 2012, news conference at: \texttt{http://www.bbc.com/news/world-middle-east-19099676}, seen on 05 May 2014
\textsuperscript{216} Ibid, bbc article
\textsuperscript{217} Ibid
\textsuperscript{218} Annan, Ibid
\textsuperscript{219} \texttt{https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html}, Syria’s Background, seen on 5 May 2014
Opposition Forces, as the sole legitimate representative of the Syrian people.\textsuperscript{220}

In 2013, the unrest persisted and the death toll among Syrian Government forces, opposition forces, and civilians had topped 100,000.\textsuperscript{221} In January 2014, the Syrian Opposition Coalition and Syrian regime began peace talks at the UN sponsored Geneva II conference. However by April 2014 the number of the deaths exceeded 150,000 with the regime dropping barrel bombs on civilian targets.\textsuperscript{222}

By May 2014, the media reported that Brahimi who had replaced Annan was going to resign on 13 May 2014. Brahimi was expected to brief the Security Council on 13 May, and according to the Guardian, this is almost certain to be his final appearance. As the Guardian writes, the veteran Algerian mediator replaced Mr. Annan in 2012.\textsuperscript{223} During his two rounds of peace talks in Geneva, between Assad and opposition representatives no agreement was really reached except for one week ceasefire.\textsuperscript{224} When Brahimi resigns, the new mediator is expected to report only to the UN. The other preceding mediators, Annan and Brahimi, represented both the UN and Arab League. However due to the deep division within the Arab world over Syria this has changed. As Black writes; “Saudi Arabia, Qatar and other Gulf states openly back the anti-Assad rebels, while countries such as Algeria and Iraq stand solidly behind Damascus. The Arab League’s role has become a drag because of the division”.\textsuperscript{225}

\textsuperscript{220} Ibid
\textsuperscript{221} Ibid
\textsuperscript{222} Foreign policy article, supra note chapter three.
\textsuperscript{223} Ian Black, Middle East editor, article: UN looking for Syria envoy as Brahimi prepares to quit after failed peace talks, the guardian.com, Thursday 01 May 2014
\textsuperscript{224} Ibid
\textsuperscript{225} Black, Ibid
Latest news

On April 30, 2014 a Syrian government fighter jet fired a missile at a school in the northern city of Aleppo that killed as many as 47 people, mainly children, as students were preparing an art exhibition to depict the horrors of Syria's civil war, activists said.\footnote{226}

A Syrian government statement on Wednesday said the military had carried out operations against terrorists in Aleppo, but it didn't address the strike on the school. The strike came days after Syrian President Bashar al-Assad announced that he would run for a third, seven-year term in the country's June elections.

Despite military gains by the Syrian government across the country, violent clashes continue to plague the country, a challenge for election plans. The Syrian opposition and its Western and Arab backers, including the U.S., have denounced the election plan, which they say can't be free or fair amid a civil war.\footnote{227}

Sadly enough, “the missile strike occurred at 9 a.m. when a Russian-made MiG jet fired at the Ein Jalout school. A frantic search for any students and teachers alive and trapped in the rubble continued until 5 pm.”\footnote{228}

Images of the school posted on social media, which couldn't be verified, showed a mess


\footnote{227}{Ibid}
\footnote{228}{Ibid}
of shattered desks, pools of blood and drawings scribbled with colored pencils, depicting the death, suffering and bloodshed that has become a common refrain in Syria's three-year civil conflict.²²⁹

Despite many incidents of mass murder, now the greatest concern now of UN Secretary General Ban Ki-moon is that thousands of people are not getting the medical aid including life-saving medicines, that they need, as was reported in Reuters.

Medical supplies, including life-saving medicines and vaccines, and equipment for the wounded and the sick are commodities privileged throughout the Geneva Conventions. Denying these is arbitrary and unjustified, and a clear violation of international humanitarian law, Ban said.

"Yet, medicines are routinely denied to those who need them, including tens of thousands of women, children, and elderly."²³⁰ Furthermore, he stated that nearly 3.5 million people were largely without access to essential goods and services due to this civil war, which is now in its fourth year. The Security Council was due to discuss the report later in May 2014.²³¹

²²⁹ Ibid
²³¹ Ibid
Syrian allies, Russia and China, have shielded Syria on Security Council resolution three times during the war. “They had previously vetoed three resolutions that would have condemned Syria’s government and threatened it with possible sanctions.”

Furthermore, cross-border humanitarian aid remains a problem, even though the UN has asked for more cross-border access especially from Jordan and Turkey. The Secretary General Ban Ki-moon added that this request still remains pending because the “Syrian government has stated that they will only allow the use of border crossing points that are controlled by them.”

NATO, No Intervention in Syria

The Secretary General Anders Fogh Rasmussen stated that the alliance has no intention of intervening in Syria. The denial for a NATO mission in Syria is broader, and based on a very specific argument. Secretary General also doubts the possibility of a NATO intervention, even with a UN mandate, and instead urges the Arab states to find a regional solution.

Second, Syria is also a different society; which is much more complicated ethnically, politically and religiously, as seen above in previous paragraphs. For these reasons,

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232 Ibid
233 Ibid
Rasmussen stated on 17 February 2012, “I do believe that a regional solution should be found,” referring to the Arab League.  

Third, the current political disapproval by Russia, China and others of the intervention in Libya, and fourth, an intervention in Syria would constitute high military risks for NATO. The military intervention against the weaker Libyan forces reveals several military flaws within NATO which at the time had a major ally; the U.S. This issue influences the whole NATO decision-making process on the Syrian case. To make it short, NATO will not intervene without the support of the U.S, but even if U.S decides to support NATO, the advanced Syrian forces backed by Russia may cause some major problems for the West. Thus, the NATO Secretary General only presented the position of the North Atlantic Council, where NATO member states are not eager to start a new military mission. Even though, there is clear evidence of the use of chemical weapons. Anders Fogh Rasmussen said “it was up to individual NATO countries to decide how they would respond to the attack and he did not envisage any NATO role beyond existing plans to defend NATO member Turkey, which borders Syria.”

In a live interview for CNN - London, in April 2014 Rasmussen said that, NATO would not be taking part in any military action; Despite his declaration, he stated that chemical weapons should not go un-answered. He stated that NATO has sent a strong message to Turkey that NATO will defend its borders. “However, if individual alleys want to

234 Simon Cameron Moore, article, Reuters “NATO to stay out of Syria even if UN mandate emerges.” http://www.reuters.com/article/2012/02/17/us-syria-nato-id seen on 29 April 2014

235 Ibid

236 Francoise Lenoire, Reuters, NATO Secretary General Anders Fogh Rasmussen talks to the media during a monthly news conference in Brussels September 2, 2013.
respond militarily and individually I would recommend a short, tailored measured military operation, and for that you don’t need a NATO command system.\textsuperscript{237} Again he stressed: “we are focused only in the protection of Turkey; of course a possible attack versus this country will have NATO’s response.” He condemned the use of chemical weapons, and call for the international community to react and prevent such chemical attacks from happening again. On the question of a possible limited, narrow strike declared by U.S President Obama he enthusiastically answered:

I do believe that a narrow short limited tailored action would be an appropriate response to the horrendous use of chemical weapons, I also would like to stress that there is no long-term military solution conflict in Syria. Speaking about long-term perspective we need a political process leading to a political settlement.\textsuperscript{238}

To the question: Why did NATO provide support for Libya and isn’t prepared to provide any further support for a Syrian intervention?

He answered: “In Libya we had a clear United Nations mandate, we had clear support from countries in the region, and there is no call for NATO action in Syria.”\textsuperscript{239}

To sum-up, regarding Syria, NATO wisely recognizes the military and political risk of a possible intervention, hence prefers to not interfere.

\textsuperscript{237} Live interview for CNN - London, in April 2014
\textsuperscript{238} Ibid
\textsuperscript{239} CNN interview, ibid
R2P in Syria

When it comes to robust action in Syria, where bloodshed and suffering are far worse than Libya, The Security Council remains paralyzed. According to Weiss, “It is not the R2P norm, but rather geopolitics and collective spinelessness that explain action in Libya and inaction in Syria”.\textsuperscript{240} What Hehir calls the “permanence of inconsistency” is an accurate description of the politics of R2P, or indeed the politics of anything.\textsuperscript{241} As Weiss argues; The responsibility to protect is a principle and not a tactic. It is simply a humanitarian principle.\textsuperscript{242} World leaders contributed in reframing sovereignty as contingent rather than absolute, but when it comes to Syria sovereignty and interference remain intact. According to Weiss, the UN General Assembly initially condemned the violence and supported the peace plan with a two-thirds majority. On both occasions only 12 of 193 states in the GA voted against the resolutions. The GA resolution condemned Assad for mass atrocities and specifically called for his resignation. Furthermore, the UN’s Joint Office on the Prevention of Genocide and R2P called for a halt to crimes against humanity. The Human Rights Council also condemned the crimes. The United States, the European Union, and other states imposed sanctions; the Arab League condemned the actions, formulated a peace plan, and sent human rights monitors. But still Syria didn’t stop the mass atrocities. Indeed in August 2013 it used chemical weapons. Even the diplomacy of high-level diplomats such as Kofi Annan and Lakhdar Brahimi failed. Negotiations have been ineffective in dealing with a dictator such as

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\textsuperscript{242} Weiss, Ibid
Assad.

Eventually, the use of chemical weapons in August 2013 indicated the signs of a game changer as the U.S. threatened with air strikes in spite of low support among the U.S Congress and Western parliaments. This seemed though to have served as a catalyst to push for a diplomatic solution. Russia responded by calling for a hasty agreement to dismantle Syria’s chemical weapons stock under the supervision of the UN. Exercising chemical warfare makes the survival of the population and entire ethnic groups for that matter, compromised into the extreme!!!

To the question why intervention in Libya and not in Syria even though the situation is far worst, Professor Weiss explains:

The politics in the country and at the United Nations were totally different—demonstrated by several actual or threatened double vetoes from Russian and China—as well as the geography and the demography; the military challenge was far tougher; and the potential costs by 2013 appeared to outweigh the benefits of coercion.243

With support for Assad from Russia and China, the major players have been unwilling to take the risks that would be the outcome of any intervention.

According to a UNHCR report, "This is the biggest humanitarian tragedy since the Rwandan genocide." The numbers don't lie. Too many innocent people in Syria have

suffered - above all, the children of Syria. **Of the 2.5 million Syrian refugees, HALF are children.**

As Weiss justly expressed, “Syria currently shames collective international conscience and appears to dash the hopes for decisive outside military intervention; human abattoirs are not inevitable.”

He explains that, however, that this is not the end of R2P. Syria per se demonstrates that a robust R2P response is never automatic. Diplomacy and Media public lamentations were audible, even if government security forces deployed tanks, warships, and heavy weapons against civilians. Unfortunately, in the case of Syria, apart from Security Council politics of the day, “the responsibility to protect principle” suffered a heavy blow due to confusion and generalizations. More foreign fighters have become involved and insurgent atrocities slowly but surely are replicating the crimes of the regime itself. Finally, it was considered much more complicated and complex than Libya and the West has not been willing to challenge Russia and China.

In summary, R2P demonstrates that state sovereignty is not absolute, but contingent on responsible behavior. Thus, responsible behavior by a government towards its citizens is the best shield from intervention. Expecting consistency is like fooling ourselves. Therefore, occasional action sometimes is preferable to no action at all, even though it is

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246 Weiss, ibid
case by case. Intervention depends on political will which, in turn depends on national interest. If these two meet R2P can be applied as a norm. This means, Syria is not Libya!

**Conclusion**

The case of Syria clearly indicates that political will as exercised by world leaders ultimately decides whether, where and why the International community will act. Regardless of how violations of human rights may be, only when the political will exists, will leaders decide to intervene? Only then will humanitarian factors be taken into a consideration and innocent people victimized by the war will get assistance and protection. In the case of Syria, only the moral issues are obvious, but there are too many factors blocking the implementation of R2P. Although Syria meets all the criteria of the R2P norm for a military intervention, even the diplomacy of undertaken by Annan and Brahimi has failed.

Chris Joyner explains that military intervention should be the last resort and all other means should be exhausted first. “These means include democratic protests, appeals to the UN Security Council and even economic sanctions. If human rights conditions worsen, or the threats to the security of persons escalate in that state, the lawful justification—and need—for military intervention will rise correspondingly.”

The threshold of just cause to use armed force as a last resort must be taken only “when a massive loss of life, real or potential, with or without genocidal intent, results from either

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247 Joyner, p.329
deliberate government action or the inability of the government to exercise the
responsibility to protect its own citizens."248
CONCLUSION

Humanitarian intervention remains a highly controversial issue as it draws from the concept of universality central to the human rights discourse at the same time as it changes dominant conceptualizations of state sovereignty.

International Security is a high priority of nations and international organizations, such as United Nations to ensure mutual survival and safety. These actions include military intervention and diplomatic agreements such as treaties and conventions. After WWII, international security emerged as a new objective to prevent another world war. However, in the twenty-first century it took a new form, as threats are not only coming from states (i.e., Syria), but also from internal conflict involving ethnic groups. The individual, the society and the globe may become the victims of these new threats. The physical and economic survival of the individual is damaged as well. Moreover, ethnic conflicts affect not only neighboring states but they can destabilize the credibility of various security organizations, including regional and international organizations. Usually, ethnic wars such as the war in Bosnia-Herzegovina and Kosovo tend to be both long lasting and intense. Thus in this regard, multinational and international efforts must be based on a strong backing from the United Nations Security Council in order to settle disputes.

At the end of the Cold War, it was believed that there would be greater international cooperation that would turn the United Nations into a more flexible and efficient organization in solving international conflicts. During the 1991 Gulf War, the UN showed effective cooperation among its major members who allied to fight against Iraqi
aggression. However, during its mission in Somalia, Rwanda, and the former Yugoslavia, it failed to play the role of an effective security organization as thousands of innocent civilians were killed during these devastating ethnic wars. After the intervention in Kosovo, the adoption of the Responsibility to Protect, and the intervention in Libya the UN and NATO regained their credibility.

The deployment of military force for human protection was largely absent from the international agenda until the action against Libya. Musterling the cross-cultural political will is never going to be easy, but Libya might be pivotal for the evolving norm of the responsibility to protect. Security Council resolution 1973 authorized “all measures necessary” against Libya to enforce a no-fly zone and to protect civilians. Prompt, robust and effective international action shielded Libya’s people from the kind of murderous harm that Muammar Gaddafi inflicted on unarmed civilians in 2011. This was an unprecedented moment in the history of UNSC and the R2P. “The ostensibly unique nature of this intervention led many to predict the dawn of a more humane world, ready to respond to mass violence.” 249

It seemed that the intervention in Libya demonstrated the efficacy of the Responsibility to Protect, but, as we watch the daily carnage in Syria and the number of refugees leaving their country, R2P seems to have failed.

Although, the adoption of the notion of the Responsibility to Protect, the support for preventive mechanisms, and the creation of the Office of the Special Adviser on the

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http://www.e-ir.info/2012/03/14/syria-and-the-responsibility-to-protect-rhetoric-meets-reality/
Prevention of Genocide have brought improvements, there needs to be more visible collaboration among world leaders to go beyond national interest.

This thesis demonstrates that even though R2P is the most important norm in the history of military humanitarian intervention, it has not completely altered the decision-making process; the exclusive right to act is still retained by the Security Council. “This means that national interests determine the response of the ‘international community’ to intervene in a crisis.” 250 Apparently, the enforcement of R2P in required situations of forcible action to prevent or halt mass atrocities is mostly predicated on the political will of UNSC – P5 or the willingness to go around the Security Council’s authority to the General Assembly or even regional organizations.

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Former secretary of state Madeleine K. Albright and former presidential special envoy to Sudan Richard S. Williamson co chaired the Working Group on the Responsibility to Protect, which includes former government officials, academics, foreign policy experts, political consultants, and media professionals. Jointly organized by the United States Institute of Peace (USIP), the United States Holocaust Memorial Museum, and the Brookings Institution, the Working Group seeks to increase understanding of the responsibility to protect (R2P), assess how the concept has worked in relevant cases, and identify concrete steps to bolster the will and capacity of U.S. decision makers to respond in a timely manner to threats of genocide, crimes against humanity, and other mass atrocities.


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See more at: http://unhistoryproject.org/research/research_experiences-krasno.html


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