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Responsibility to Protect: The Use and The Abuse

Marwan Hameed

May/2014

**Master's Thesis
Submitted in Partial Fulfillment of the Requirements for the Degree of Master of
International Affairs at
The City College of New York**

Advisor: Dr. Jean Krasno

DEDICATION

I dedicate this research to my people, the people of Iraq, who suffered and still suffering of being victims of armed conflicts that they did not choose, I also dedicate this work to all civilian around the world who got caught in middle of armed conflicts, and to my wife Noor who gave me the strength and backed me all the way to finish this thesis.

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New York,

Marwan Hameed

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ABSTRACT

This paper is an attempt to shed the light on the new emerging norm of the Responsibility to Protect, famously known as (R2P) and its use and abuse within international relations landscape. The norm meant to replace the widely argued and challenged principle of humanitarian intervention, and to put an end, once and for all, to the atrocities committed by sovereign states against their own people, providing protection to those civilians who get caught in armed conflicts, and held those responsible for such crimes accountable for it regardless of any impunity they might have. Despite it's new emerging the norm have been agreed on anonymously by the United Nations member states on World Summit of 2005, and shortly after that it was put into use by the United Nations Security Council (UNSC) in many occasions. The UNSC is responsible for maintaining international peace and security. This paper will look how properly R2P was used and abused by examining carefully its application on three international crises that I chose as study cases, and these are the crisis of Libya (2011), the crisis of Syria (2011), and the Iraq crisis of (2003). The first tow crises were similar as they were civil uprising that was faced by government brutal crackdown on its citizens, but the two crises were different in how the regional and international community respond to it within R2P scope, and how national interest and other political elements affect this response. However, the third study cases looked at R2P application from different prospective, as the Iraq war of 2003 was an illegal interstate conflict that was justified later by reasons of liberty and humanity and yet these same justification were breached in the after math of the occupation of Iraq.

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Chapter I

Introduction

The Responsibility to Protect is one of the most important norms that developed during the late 20th and early 21st century in international relations. Its importance can be seen in its core goals, which basically aim and concentrate on human security by giving a new interpretation of state sovereignty, where states have the responsibility to protect civilian lives within their territory at all times, especially during internal conflicts, when genocide, war crimes, ethnic cleansing and crimes against humanity can be expected to take place. The Responsibility to Protect norm argues that this could be avoided by transferring the responsibility from the state to the international community when a particular state is unable or unwilling to take its responsibility to protect its own people.¹

The norm was also aimed to reshape or reword the problematic principle of the so-called “right of humanitarian intervention,” which is the right of a state or group of states to use coercive measures, including military action, against another state for the protection of civilians from mass atrocities.² The rewording of the concept comes in terms of when that right, if there is such a right, could be used, by whom and under whose authority.

The need to develop such a norm in the international arena came from the mutual consensus among member states of the United Nations (UN) to answer the question of,

¹ Gareth Evans et al, *The Responsibility to Protect: Report of the international Commission on Intervention and State Sovereignty*, Canada, International Development Center 2001. P viii

² *Ibid*, vii

how to find a way to put an end to the mass atrocities of the killing of civilians, war crimes, ethnic cleansing and crimes against humanity. If all agree that humanitarian intervention is considered an acceptable violation of state sovereignty in such a crisis, then a new fundamental change in the basic meaning of state sovereignty is needed too. The end of the Cold War era, the effects of globalization, and international cooperation have influenced the urgency of adopting such a norm such that “states are widely understood as a instrument at the service of its peoples.”³

The early beginning of The Responsibility to Protect, or as its famously known (R2P), starts when the Canadian government responded positively to pleas of Mr. Kofi Annan the UN Secretary-General (SG), after he addressed the General Assembly (GA) twice in 1999 and 2000 calling for a solution on how to protect civilians in such crisis. Mr. Annan, urged member states to try to find a new consensus among them on how to react to future humanitarian crises. The Canadian government with the cooperation of many other major foundations announced at the GA in September 2000, the establishment of the International Commission on Intervention and State Sovereignty (ICISS).⁴

A year later, the ICISS published its first report of which the central idea was “the responsibility to protect.” This basically changed the traditional meaning of state sovereignty by defining sovereignty as a responsibility, which means any sovereign state is, because of that sovereignty, responsible to protect its own population that live within its territory in times of internal armed conflicts. By failing to do so either because the state in question is unable or unwilling, then that responsibility will pass to the

³ Kofi Annan, interview by the Economist, Sep 18th 1999. P81

⁴ Gareth Evans et al, The Responsibility to Protect: Report of the international Commission on Intervention and State Sovereignty, Canada, International Development Center 2001. p vii

international community to react and protect civilians of that state by assisting and enabling that state, through appropriate means, not to exclude coercive measures, to resume its responsibility to protect its population.⁵

The report sets three main elements for the use of the responsibility to protect and these elements are:

- a. The responsibility to prevent: to address both root causes and direct causes of internal conflict and other man made crises putting population at risk.
- b. The responsibility to react: to respond to situation of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecutions, **and in extreme cases military intervention.**
- c. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of harm the intervention was designed to halt or avert.⁶

The report of the ICISS and its theme of the Responsibility to Protect were unanimously adopted by the UN General Assembly (UN GA) in resolution A/res/60/1 during the World Summit in 2005.⁷ Both the report and the UN GA resolution made it very clear that the coercive measures, including military intervention, should be conducted under the UN Security Council (SC) authorization. The use of force should be

⁵ Ibid, XII

⁶ Ibid, xi

⁷ UN General Assembly resolution A/res/60/1, 2005

the last choice after exhausting all peaceful means of prevention and other means short of the use of force.⁸

Why this is important?

Both human security and state sovereignty are of high importance to the field of international relations in the new millennium. The Responsibility to Protect, or as it is famously known (R2P), is a norm that touches on both issues. On the one hand, R2P redefines sovereignty from a right to a right with responsibility. On the other, R2P was developed to end war crimes, genocide, crimes against humanity and ethnic cleansing. Since the application of the norm is ambiguous, it may need further research and adjusted before the international community, namely the UN, starts using it as one of its security strategies. Having said that, I do not mean that we should have a perfect norm because this is obviously impossible, but what I am trying to say is that the norm was not fully put to test yet. It still not clear who is going to determine; who is accountable to what? Or, how to draw general lines of when peaceful means have been exhausted before relying on military action?

The argument:

I will argue, through my thesis, that the major powers of the UN Security Council (UN SC), in some occasions, have abused the norm of R2P, and that the Security Council adopted the use of force using R2P justification, in order to interfere in other state's internal affairs for the national interest of all or some of its permanent members.⁹ I will also argue that, national interest is still favored as a foreign policy by the major powers

⁸ Gareth Evans et al, *The Responsibility to Protect: Report of the international Commission on Intervention and State Sovereignty*, Canada, International Development Center 2001, p xi

⁹ Sharma, Serena K., *Toward a Global Responsibility to Protect: Setbacks on the Path to Implementation*, *Global Governance*, Jan-Mar2010, Vol. 16 Issue 1, p 127

(the Global North) towards selected targets in developing countries (the Global South). Even if that interference led to desired consequences from the R2P point of view, it still, should not be conducted purposely for the national interests of the major powers in the Security Council; otherwise it will lose much of its credibility. Instead, it should be looked at, as Mr. Annan describes “A new, broader definition of national interest is needed in the new century, which would induce states to find greater unity in the pursuit of common goals and values. In the context of many of the challenges facing humanity today, the collective interest is the national interest.”¹⁰ I will examine my argument by answering the following questions:

1. Has the UN SC Permanent Members abused the norm of R2P?
2. Did they exhaust all other peaceful options before relaying on the use of force in applicable cases such as Ivory Coast and Libya?
3. What role the VETO power had played, if any, to hinder the proper use of R2P and unifying the efforts of the Council in particular and the UN in general towards a humanitarian crisis?
4. Can the SC Permanent Members wave their right of using the VETO on R2P cases and leave it to the vote of the 15 member of the council?
5. If the ICISS report offers guidelines for the proper use of R2P, why it is not adopted properly?
6. Is there any early alarm mechanism? If yes, is it functional?
7. Were there any cases that are applicable to the use of R2P, but were neglected? If yes, why?

¹⁰ Kofi Annan, interview by the Economist, Sep 18th 1999. P81

8. What role should a regional organization have to play in R2P issues before it transfers it to the UN?
9. Has R2P become a selective political tool of the major powers?

Hypothesis

From recent events where R2P was argued or used, there is clear evidence that Realism, in terms of national interests, or Realpolitik is the governing principle determining the relations between the Global North and the Global South, and that the Responsibility to Protect as a norm was used as instrument to achieve national interest of developed states. I will approach this conclusion by answering this question “Why the UN did not even discuss the Responsibility to Protect for Iraq during the 2004-2008 humanitarian crises?”

I argue that the Responsibility to Protect is a selective political tool, and Realist theory is still in place in world politics. It is not necessary that this argument go against liberal theory. Because, on the one hand even in such situations democracies of the developed countries (Global North, i.e. United States, Great Britain, Russia, France, etc.) can still cooperate among each other or find a level of cooperation, as Liberal theory goes, over regions considered as part of their sphere of influence or national interest (i.e. Kyrgyzstan, Libya, Ivory Coast, Mali, Syria), without the need to compete each other, like in realist theory. On the other hand, they will act completely as Realist towards other developing countries (Global South, i.e. India, Pakistan, Iraq, Iran), and prevent them from evolving to be in their level of competition, and they will maintain that world order status quo through the use of the UN itself and its norms to serve their strategic national

interests. Having said that, this collective action will hinder the UN, namely the Security Council, from taking the right action when it is mostly needed (i.e. Rwanda).

Methodology

For the purpose of this paper, I am going to use qualitative methods, relying on the literature that comes from different sources. I will use related books, articles, journals, conference outcomes, reports, and interviews with academic and professional persons, and related UN resolutions.

I will be examining the question of why the SC used R2P norm in military intervention choice in some cases (i.e. Libya), while neglected it with others (i.e. the situation of civilians in Iraq after the 2003 invasion, South Ossetia 2008, and Syria)? Then I will use Libya, Syria, and Iraq as case studies. Since 2001 the UN along with the ICISS developed the Responsibility to Protect norm. It was sought to be a more peaceful alternative to the use of the problematic principle of humanitarian intervention and to provide more protection to civilians during an internal armed conflict or insurgency, preventing atrocities, war crimes, and all related armed conflict violence against civilians.

I will then address the questions of what role the UN early warning and assessment capacity of such catastrophes has to offer? Is there a way to reduce or limit the risks of abusing the responsibility to protect?¹¹ How true is it that an early warning capacity could lead to early preventive action?¹²

¹¹ United Nations Secretary-General report, “*Early warning, assessment and the Responsibility to Protect*”, UN doc, A/64/864, July 2010, p1

¹² Ibid, p8

What needs to be done to avoid misusing the notion by the major powers that have the veto on the UN SC? How can they use it more appropriately for the protection of civilians and the prevention of all kinds of crimes against humanity? For that end, and to avoid the lack of action in the case of Rwanda (1994), and to also avoid acting without SC authorization as in Kosovo with NATO military intervention (1999). The veto right has hindered the UN and prevented it from taking the proper action towards many atrocities in the world. In order to avoid hindering R2P in the practice of the SC, it would be more useful if it became part of the General Assembly (GA) mandate, namely the Forth Committee's program of work, except, off course, for the part related to the use of force. The reason for saying that is because in the GA there is no veto right, and in that way the veto would have no affect on the norm. In that case the responsibility to prevent, assist and rebuild will be more effective. However, this needs to be preformed with more legal obligations to be granted to the UNGA resolutions in order to be curried out.

Chapter II Literature Review

Human rights and its associated declarations are the most important driving elements in developing norms, such as R2P, in international relations politics, to prevent violence against civilians, war crimes, and crimes against humanity. R2P in its first version was the concept of the so called “humanitarian intervention,” which emerged as a humanitarian concern of intergovernmental organizations, namely the United Nations, towards grave violations of human rights committed by governments against their citizens, after the end of the Cold War era and the collapse of the Soviet Union. Humanitarian intervention was problematic from its first days, due to the tension that characterized the international relations during the Cold War and critics saw it a political tool framed with international law to be used by major powers, or the Global North, to interfere in the internal affairs of the Global South states, as a breach of their sovereignty. It also did not protect civilians from mass atrocities in some states when it was most needed, as in Rwanda in 1994, the Kurds in Iraq in 1988, where states and member states of the United Nations did nothing about it, simply because there was no state interest that would lead to intervention.¹³

I have collected and examined many different sources from books, articles, reports, and UN documents, which each talked about R2P from a different angle, and I will try to briefly review each of them in this chapter. In all the literature that I collected, scholars and politicians in their writing faced two main controversial aspects. On the one hand, all of them were trying to find a way or to establish a normative base that would allow the international legal framework to prevent the perpetration of genocide, war

¹³ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: ICISS, 2001), p 12

crimes, ethnic cleansing, crimes against humanity, and all other breaches of human rights and security. On the other hand, attempted to do that without breaching the principle of sovereignty, which is the base stone for the international system itself.

The first of these writings, in terms of creating the R2P concept, was the International Commission Report on Intervention and State Sovereignty (ICISS). Twelve commissioners, who came from many different backgrounds, wrote the report to find the common ground, to be acceptable by most of the UN member states, on how to merge responsibility to protect civilians from gross atrocities during armed conflict or state unrest, with sovereignty as the untouchable right of a state to practice within its own territory.

The report set the basis for such common ground; it served later on as guidelines to the UN member states to build on a more acceptable and effective preventive mechanism.¹⁴ The main goal among the commissioners was to agree on, what is politically achievable, by the international community to make sure that there will never be another Rwanda. The report also makes it clear that it provides no guidance for states to deal with terrorist attacks such as those took place in Sept 11, 2001, in the United States of America.

In its first pages, the report sets clear its core principles by stating that sovereignty of a state implies responsibility for the protection of its people, and the principle of non - intervention should be respected by all states in their relations with each other, as long as they fulfill their responsibility of protecting the people living within their border. However, if a given state fails to do so, whether it is unable or unwilling, than it comes a

¹⁴ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: ICISS, 2001), p VIII

responsibility of the broader international community to fulfill this responsibility, and that fulfillment should be achieved through three main stages that are explained in the context of the report.¹⁵

The report also refers to four main points, that the principle of R2P was derived from, and these includes; the inherent obligation of the state sovereignty itself, UN Security Council obligation under the UN charter to maintain international peace and security, certain legal obligations by several human rights covenants, human protection declarations, international humanitarian law, and national law.¹⁶ The report affirms that the main responsibility to protect resides within the state in question by considering it the best sovereign and appropriate authority that is accountable to this protection. Local authorities are, from the report's point of view, the most eligible player to prevent war crimes or atrocities from happening, and to ensure that it would not recur again.¹⁷

The report concludes that it provides no perfect or comprehensive solution to end mass atrocities, rather it only gives common grounds and guidelines on how to put an end to it, and it is up to the political will of the states to develop and implement this norm, to achieve this goal.

In Alex J. Bellamy's book "*Global Politics and The Responsibility to Protect: from words to deeds*" he explained, in his introduction, that calls to end crimes and mass atrocities against civilians in times of armed conflicts, can be traced back to the 18th century. However, actions that were taken to end it were considerably poor. He stated, that the states, and the international community of states acknowledged the importance of

¹⁵ Ibid, p XI

¹⁶ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: ICISS, 2001), p XI

¹⁷ Ibid, P 17

it a long time ago. However, the efforts to halt these crimes were hindered due to two main reasons. According to Bellamy, the first reason is the sovereign right of states recognized by other states over its people which was, and still is, untouchable, and the second is, the fear from legalizing the responsibility to protect, which would encourage local actors to rise against their governments for the sake of attracting foreign intervention.¹⁸ But both can be argued that the right of sovereignty has been breached many times by powerful states through either a legitimate or legal cause (i.e. Ivory coast, Libya), or illegitimate (Iraq).

Bellamy described the R2P as a conflict between human rights and sovereignty, sovereignty as he defined it, “*the right of states to enjoy territorial integrity, political independence, and non-intervention.*” When states by exercising their right of sovereignty became unable or unwilling to protect the fundamental rights of their population, the conflict occurs. Bellamy also pointed out that R2P takes place when civilians face harm either by an internal war, insurgency, and repression or state failure, and this was not far from the ICISS report. Bellamy also refers to the UN Secretary General’s (UNSG) first report, which was published in 2009, regarding implementing R2P. He argues that, despite the fact that many advocates of R2P had criticized Mr. Ban Ki-moon for his lack of action towards the concept, he did manage to find his own vision on how to implement R2P through the support and help of individual states and international community through a partnership. The majority of the member states of the UN agreed on the SG’s vision of the three pillars to implement R2P.¹⁹

¹⁸ Alex J. Bellamy, *Global politics and The Responsibility to Protect: from words to deeds*, London: Oxon UK Routledge , 2011, p 2.

¹⁹ Alex J. Bellamy, *Global politics and The Responsibility to Protect: from words to deeds*, London: Oxon UK Routledge , 2011, p 34

Bellamy viewed many humanitarian crises that took place after the UN 2005 world summit, where R2P gained unanimous consensus of the UN member states. In his view of these crises, especially in the case of Iraq and Afghanistan, Bellamy put most of the wrongful killing of civilians during the war in the two above-mentioned countries on non-state actors (insurgents and antigovernment/ occupation fighters).²⁰ Even with the fact that he did blame a small amount of those casualties on the coalition forces, and admitted that it should be addressed as an R2P case by the international community, but surprisingly it was not. That was because, according to Bellamy, of four principal reasons, which pictured the coalition forces as protectors of civilians against those perpetrators of non-state actors.²¹ But if the civilians are victimized because of a conflict between a state and a non-state actor shouldn't the state actor in question have to do something about it, since it is the most eligible and reliable? In later chapters of his book, Bellamy acknowledged that permanent members of the UN Security Council selectively used R2P in many occasions. However, he argued that R2P is a good principle at the UN, that could generate policy in need of implementation to prevent such atrocities, and R2P has made a positive contribution to both prevention and protection.²² He links R2P and economic development and democracy in a way that makes atrocities more likely to occur when poverty increases in societies and in countries of dictatorship governments.²³ Bellamy also emphasizes the early warning mechanism that supports actions of prevention through UN agencies. It seems many UN member states have their concerns

²⁰ Iraqbodycount.org, <http://www.iraqbodycount.org/analysis/numbers/2011/>, accessed on March 5, 2013.

²¹ Alex J. Bellamy, *Global politics and The Responsibility to Protect: from words to deeds*, London: Oxon UK Routledge, 2011, p 65

²² *Ibid* p 71

²³ *Ibid*, p 95

about R2P, because of gathering information about domestic affairs, authorizing the UN of having its own intelligence gathering operation.

Bellamy concludes that the use of force through the UN Security Council is not the best solution to protect victims of genocide or mass atrocities. Instead, he suggested that political efforts should concentrate more on how to give the Council a full range of options that could be used in such crises, before relying on the use of force.²⁴

Ramesh Thakur in his book, *United Nations Peace and Security*, sheds a light on two main subjects, the first is the UN as the only universal organization that was tasked with maintaining international peace and security, and the second, is the UN's relation with the United States in terms of legality and legitimacy of the use of force. He saw that the UN promises more than it delivers, and that it failed to act in many international crises. However, he affirmed that the world is more cooperative after the UN was founded. He kept referring to a gap between what the UN is capable of, and the resources that it has, or its real capabilities. His most important argument is about when and how force may be used through the UN system, and that is from a legal, political, and normative perspective. Thakur discussed the UNSC, the power of the five permanent members (P5), and how their veto power was used in keeping or failing to keep peace and security. Then Thakur discusses how the UN was very active in developing human rights norms, and how it gave birth to the norm of Human Security. In another part of the book, Thakur writes about the legal aspect of the UN, how the International Court of Justice (ICJ) was created within the UN system, and how the circumstances of modern world affairs led to the creation of the International Criminal Court (ICC), and what politics have to do with these two legal bodies.

²⁴ Ibid, p 194

Then there is the emerging norm of the Responsibility to Protect (R2P) within the UN, with all the legal issues and questions that faced it before it came to a mutual consensus among the UN member states. Thakur examines all these questions and comes to the conclusion that R2P is the most acceptable norm, because most of the society of states does not want another Rwanda, or Bosnia. Self-interest motivated humanitarian intervention is also unacceptable as Russia claimed when it entered Georgia in 2008.

Gareth Evans' book, "*The Responsibility to protect, Ending Mass Atrocities once and for all,*" explained much about the practical development of the R2P. He states that nothing true and right in real life can be achieved smoothly and without being to many tests, which eventually shape it to fit its purpose, and that applies, as Evans said, to the R2P. As an emerging norm, R2P is, according to Evans, the most important norm in the international scene, because of its scope that includes human security, human rights, and conflict prevention in a specific way that does not breach the sovereign right of states.

However, the norm still needs more to be achieved, Evans starts with the historical root causes that led to the founding of the R2P, when it was first drafted, and when it was officially adopted by the international community.

Ramesh Thakur opens his book, *The Responsibility to Protect: Norms, Laws, and the Use of Force*, with International Commission for Intervention and State Sovereignty's (ICISS) definition of R2P which, was published in the Commission report in 2001. Having states acknowledge and accept that definition at the UN world summit was an important step before the norm could be officially accepted. All member states of the UN are now aware of limitation their sovereign rights, and what their sovereign obligation are, in order to keep that right from external influence, and intervention.

Thakur's book explains in more details the emerging process of the R2P norm. He starts with the very basic definition of the key words like, norms, sovereignty, atrocity, human rights, and gives study cases of the non-intervention principle, humanitarian intervention, and military intervention. Then he explains the relationship between norms and international humanitarian law. For him, international law is not as clear as domestic law, even in the way both laws develop. International law is harder to enforce, even those states that show acceptance to its rules and regulations, which, according to Thakur, could undermine the very core principle of international relations. He views the ICISS effort in a way that shifts debate in the international relations arena from humanitarian intervention to redefining sovereignty as responsibility.²⁵

In chapter 8 of his book, Thakur discusses the developments in international relations that led to the need for protection of civilians more than any other time before. One of these developments is the changing nature of armed conflicts, which in the past took place between two state armies on classic battlefields. Those wars or conflicts rarely caused any civilian casualties because they took place among the combatants of two state parties or more, and mostly away from the cities, in rural areas close to border. After the end of the Cold War, the nature of these armed conflicts has changed, and conflict mostly occurs within states, often between the government and its citizens.

This, according to Thakur, if not solved politically and legally, would lead to the failure of the multilateral system represented by the UN, because the UN was formed to maintain peace and security among states, and not to interfere with its member states internal affairs. The development of existing human rights declarations goes hand-in-

²⁵ Thakur, Ramesh. *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*. London : Oxon Routledge, 2011, p77

hand with a new human security norm that could check the absolute power of governments, derived from its right of sovereignty, so that the state does not abuse its own population.²⁶

In Alex Bellamy's article *Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq, Ethics and International Affairs*, (2005), he argues that the invasion of Iraq in 2003 discredited the United States and the UK. Their rationale of humanitarian intervention in Iraq was bogus and hindered their efforts in the UN SC towards the Darfur humanitarian crisis, which began just after Iraq's war. The other effect of Darfur case was the changing of the debate language, while the debate was concentrated around the idea intervening in Darfur under the responsibility to protect and humanitarian intervention, it was switched by, R2P advocates who were opposing international intervention, to support R2P to be implemented by the state in question itself.²⁷

Bellamy asks two questions in his article: first, who should have the authority to mandate humanitarian intervention if the Security Council is blocked by veto? And second, when during a humanitarian crisis, should a military intervention be triggered? He argues in answering these question that despite the fact that there is mutual consensus on the above- mentioned question, but there is a deep division in relation to the "war on terror" and the invasion of Iraq.²⁸ He also refers to the mutual consensus that developed, especially among liberal states, which legitimized humanitarian intervention without the

²⁶ Thakur, Ramesh. *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*. London : Oxon Routledge, 2011, p 114

²⁷ Alex Bellamy, *Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq*, *Ethics and International Affairs*, Volume 19, Issue 2, pages 31–54, September 2005 p3

²⁸ I bid 34

authorization of the Security Council in a humanitarian crisis as a leading element in the development of the R2P later, (i.e. Kosovo in 1999).

After the 2005 world summit held in New York, R2P as a norm was transferred to the international level and agreed upon unanimously by the UN's member states. The norm then was more specific in its legal language, and it states that the purpose is to prevent war crimes, genocide, crimes against humanity, and ethnic cleansing, as drafted in paragraph 138, 139 of the summit outcome document. That was characterized later on in the UN Secretary General (SG) reports to follow with regards to implementation, early warning, role of regional organizations, the three-pillars report, and state responsibility and prevention report.

The United Nations officially supports the norm from its beginning and has offered more support since the 2005 world summit. The UN SG has issued 5 annual reports as of 2013. In his first report issued in Jan 2009, the UNSG said the report was to further explain the 2005 summit's outcome document, show how to better implement R2P, and to discourage states, from misusing the Responsibility to Protect. The use and misuse was referred to by the report is of concern.²⁹

The report tackled how to address and deal with one of "*the cardinal challenges of our time,*" and the challenges were and still are large-scale crimes against humanity. When it comes to how to properly use the most promising mechanism to prevent these atrocities from happening or stop it when it happened, then the report only "*discourages*" member states from misusing R2P. I wonder here, if the norm itself gives the right to the UNSC to decide on the use of force by member states against a sovereign state, because

²⁹ Report of the UN Secretary General, *Implementing the Responsibility to Protect*, United Nations, New York, A/63/677, January 2009, p1

of certain breaches of human rights and human security issues, then why not to make states, who executes the UNSC authorization, comply with certain rules of procedures, to properly use this authorization and avoid the misuse of force, and of the R2P itself?

Two things that I found problematic about the report, number one is that it sets the three pillars of how best to implement R2P, and stresses on the value of prevention action, then placed the timely and early response at the end of its priorities. But, and at the same time, the report affirms that it does not provide any set sequence for these pillars to be followed. That gives a vague picture of how to properly use the R2P, if not open a window for misusing it.³⁰ Two, the report stresses preventive action, and derives its mandate from the three paragraph of the 2005 world summit outcome: the first of these paragraphs (138), mentioned that all UN member states accept to “support UN establishing of early warning capability”³¹ which should serve the purpose of prevention. But when I read the report I found that the early warning mechanism was annexed to the report. That gives me the impression that this is either not important enough to be mentioned in the report itself, or the UN is not ready yet to implement it, or not sure about it.³² In short, the report put the main responsibility of protecting population on the states in general. It is evident that states with good management of its divers populations, and follow a policy of inclusion not exclusion are more likely not to experience any of the R2P’s four crimes and violations. Then the report bear part of the responsibility on the international community, saying that the international community can only help with matters regarding implementing R2P, through logistic and capacity building efforts.³³

³⁰ Ibid p2

³¹ Ibid p4

³² Ibid p4

³³ Report of the UN Secretary General, *Early warning assessment and the Responsibility to Protect*, United Nations, New York, A/64/864, July 2010, p10

A year later, a second report was issued by the UNSG in July 2010, and this time the report included the early warning system, and how the international community can, by gathering information, and analyzing it, stop or prevent atrocities from happening. The UNSG mentioned in the report that, even with the existence of the early warning system, characterized mainly by the office of the Special Representative for the Prevention of Genocide, and other UN regional and sub regional bodies, funds, and programs, it still has its weaknesses, and sometimes is not functional enough to fulfill its main purpose.

An important part of early warning is the handling of the information flow. R2P's early warning mechanism depends mainly on the continuous flow of accurate, and reliable information provided by UN-related agencies and member states. Then it would have to analyze it within the scope of the four R2P crimes and violations. The problem with that, according to the report, is either that the agency that gathers the information might analyze it in a different way that may not be necessarily compatible with the R2P profile. For example when the UN High Commissioner for Refugees gathers such information, they will analyze it to see if there is a foreseen refugee problem in a given country, which does not necessarily means there will be a breach of R2P norms.

The other weaknesses that is more likely to be faced by the UN, according to the report, is when gathering information from field missions, member states could become more hesitant when it comes to providing information to the UN regarding subjects that are mostly considered as internal affairs and case sensitive to be given to any organization even if it is the UN itself. These weaknesses do not mean that the early warning mechanism has failed, rather it needs more enhancement through more research and cooperation among different UN regional, subregional bodies, funds, programs, and

the member states on how to find a better way to collect information and analyze it within the scope of R2P mandate in order to prevent mass atrocities or halt them when they start to occur.

The role of regional and sub-regional organizations, and arrangements, and their participation in implementing R2P, was discussed in the UNSG third report, which was issued on June 2011. The report addresses the importance of neighboring countries, and what it can do to prevent and stop crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity through their participation in regional arrangements. Mr. Ban Ki-moon referred to the world summit outcomes of 2005, and how the world leaders foresaw this role, as a cornerstone to his report.

The 2005-summit outcome document mentioned this role in a narrow perspective. Paragraph 139 of the document referred to the cooperation with regional organization should be undertaken only, when timely and decisive action is considered under chapter VII. The Secretary-General in his report tried to make the collaboration between the international community and regional agencies, or organization as an effective tool in implementing the Responsibility to Protect.³⁴

The R2P still resides within the state itself, and regional or sub-regional participation can only add more value to the three pillars mentioned earlier in the UNSG first report. The report also distinguishes the legal responsibility of the state to prevent atrocities, which can be achieved through a partnership between the state and its civil society, including women and the private sector.³⁵

³⁴ Report of the UN Secretary General on “*the role of regional and subregional arrangements in implementing the responsibility to protect*”, A/65/877, United Nations, New York, June 2011, P3

³⁵ Ibid p2

Furthermore, the UNSG gives credit for taking the lead in protection, and the practical tools to implementing prevention to the regional and sub-regional bodies, such as the Economic Community of West African States (ECOWAS), the African Union, and the Organization for Cooperation and Security in Europe.. The UN Secretary General also added that the provisions of chapter VIII of the UN charter valued the ongoing relationship between global, regional, and sub-regional organizations for prevention and protection purposes.³⁶ However, he acknowledges that regions are different so regional arrangements are, by nature, different too, and there is no one set of arrangements that could fit all regions.

While collaborating, regional and sub-regional organizations should bear in mind two important points: on the one hand, any steps taken for prevention or protection, should be reported to the UN Security Council on a regular bases, according to Chapter VIII of the Charter. On the other hand, this collaboration in any given region, should not reinterpret, or go against what the world leaders agreed to in the 2005 World Summit outcome document, and its 138, 139, 140 paragraphs.³⁷

At the report's conclusion, the UNSG urges all of the UN member states, the Security Council, all related UN agencies, and regional and sub-regional organizations, to initiate a more interactive dialogue in how to better implement R2P with regards to regional arrangements, and he also mentioned that declaring a principle, such as the R2P and implanting it are two different things. The principle of R2P needs further research and lessons learned from previous experiences.³⁸

³⁶ Ibid p3

³⁷ Ibid p3

³⁸ Report of the UN Secretary General, *Responsibility to Protect: timely and decisive response*, United Nations, New York, A/66/874, July 2012, p10

The fourth UN Secretary General's report of July 2012 was more interesting than the previous ones, since it was able to shed light on the last stages of R2P, which is a timely and decisive response. The report reaffirms that the four crimes. Violations are attributed to individual states as the primary preventer. The international community must provide help as needed to each state and on case-by-case bases.³⁹

The UNSG's view of how to implement the third pillar of R2P was problematic, or at least controversial. He mentioned that it is not important which pillar to start with in a given situation, and pillars are not to be implemented in a certain order, because, he wrote, that would give the wrong impression that states are responsible to protect in a specific situation and not in others, which is not the case. States are always responsible at all times to protect. But what I found could be argued it that, when the UNSG mentioned that it does not matter which pillar is applied first, that would contradict with the outcome document of the 2005 summit, and the ICISS report of the responsibility to protect itself, which are clear with regard to how international community should exhaust all of diplomatic and peaceful means, which goes with the first two pillars, before relying on pillar three the use of force or a timely and decisive response.

From experience, and up to the date of writing his fourth report, the United Nations Secretary-General stated that each situation is different from the other. But at the same time he wrote that the "*principles of Responsibility to Protect should be applied as consistently and uniformly as possible.*"⁴⁰ However the way these principles are applied should be used according to the circumstances of each situation. To not be accused of using a double standard, the UNSG and as well as his advisors on the prevention of

³⁹ Ibid p1

⁴⁰ Report of the UN Secretary General, *Responsibility to Protect: timely and decisive response*, United Nations, New York, A/66/874, July 2012,P6

genocide, and on the responsibility to protect and the High Commissioner for Human Rights, should adhere to the general application of R2P in their statements. But that was not the case in the same report on page 8, when he mentioned that the UNSG, and his advisors, and the High Commissioner for Human Rights did call upon states with a situation of R2P, but the states were mentioned in their statements does not include all the states with R2P situations (i.e. Iraq), which should be addressed as a general rule, to avoid any accusation with being selective, and using double standards.⁴¹

The fifth UN Secretary-General's report of July 2013 came to shed the light on the individual state responsibility to protect and preventive measures. The SG in his report set many examples on how each state can uphold its responsibility to protect, and he cautioned that these are not to be considered as a one size that could fit all situations, rather it is meant to illustrate how some of the policy options worked as preventive measures in these examples. Moreover, the SG identifies six risk factors that are related to mass atrocities and he offers a four-stage of policy options that can be used as preventive measures.⁴²

The SG listed three challenges in his report that need to be addressed to produce an effective preventive policy: first of it is the need for a political will and leadership, the second is to address the lack of experience on the national and international level in how to understand the cause roots and the dynamics that could lead to the occurrence of atrocities through the use of the risk factors mentioned earlier so states are able to know what should be addressed first, and the third and last challenge is related to capacity

⁴¹ Ibid p8

⁴² Report of the UN Secretary General on “*Responsibility to Protect: State responsibility and prevention*”, A/67/929-S/2013/399, United Nations, New York, July 2013. P3

building within the society, and also needs to be done through the national and international cooperation.⁴³ Moreover, he affirms on the national, regional, and international partnership to produce more effective prevention policies, and he refer to the Latin American Network for Genocide and Mass Atrocities Prevention of 2012 as a practical example of that partnership.⁴⁴

In his conclusion the SG stats that its been a collective failure for the UN in the twenty-first century to prevent the mass atrocities in Syria, and would be a heavy moral burden on the UN for long time. He also blamed a key states in how have the primary responsibility for international peace and security, which was an indirect critic to the Security Council five permanent members, and to those who in different way prolonged the conflict.⁴⁵

In Ramah Mani and Thomas G. Weiss' book titled *Responsibility to Protect Cultural Perspective in the Global South*, R2P was discussed from a different point of view that is religion, and not all religious but only those of Christianity and Islam from the Global South point of view. The authors first distinguished between how the West or the Global North look at each religion and how the Global South look at it, then they gave a cultural explanation on why they think its important for the study and development of R2P to take the Global South religious and spiritual perspective on the issue.

Starting with the unique cultural spirituality of the Global South, concentrating more on Africa, the authors discussed how religions were adopted in the society. Then

⁴³ Report of the UN Secretary General on “ *Responsibility to Protect: State responsibility and prevention*”, A/67/929-S/2013/399, United Nations, New York, July 2013. p14

⁴⁴ Ibid p15

⁴⁵ Ibid p16

most importantly they pointed out how they are trying to analyze the responsibility to protect through multiple disciplines philosophy, religion and spirituality, anthropology, and aesthetics in addition to international relations and law endorsed the principles of R2P within those believes instructions and practices by referring that divine will in each of them came to free the peasant from the oppression of the dictators, and that the king or the monarch in earth should practice his power only to bring justice and peace, and his power, because its been driven from God, is not absolute. All religions and spiritual believes call for peace and reject violence and atrocities, and call believers to fight against it.⁴⁶

After giving a glance on most of the religions and spiritual believes around the world, and how it calls and prays for peace for all mankind and rejects violence, the authors concentrate on the religions and believe of the African continent as a cornerstone for their research, and that is because Africa considered the most region that suffers from mass atrocities and violence in the world. They started by offering a background on how African people accept the positive virtue of Christianity and Islam, because both religions, according to the writers, are involved in mass atrocities, colonialism, and slave trade activities in the continent. The African accept both religions, also because they have both believes in peace, love to all mankind, unity, solidarity, charity, and rejects violence, and that is similar to the original spiritual believes of African people.⁴⁷

The authors considered unity, solidarity, and charity as the main pillars and religious foundation of the Responsibility to Protect.⁴⁸

⁴⁶ Mani and Weiss “ Responsibility to Potect Cutral Perspective in the Global South” Routeldge, New York, 2011 p32-35

⁴⁷ Ibid p37

⁴⁸ Ibid p38

Authors affirms that religions is connected and collaborate with politics through their quote from Mr. Gandhi's autobiography, were he address it as a two connected concepts, politics is a result of human social activities, and religion is the moral foundation of that activity.⁴⁹ Then they concentrate on a four main principles that are most common among all religion and spiritual believes, and relevant to R2P at the same time and these are: the golden rule, sovereignty, nonviolence, and just war doctrine. The golden rule, that the authors find common in among Christianity, Judaism, Islam, and other religion and believes, is the good morality and the wellbeing, how each person should wish goodness to others despite of their race believe or nationality.

For sovereignty, most of religions looked at the international political system, and its immunity as a man made system, and since God is the creator of everything, it is been considered that no power on earth is absolute whither it is a state or borders or any shape of other rules and systems that was created by humans, so when it comes to R2P, and prevent mass atrocities it become a common sense that all man kind should intervene to help those in need even if they were strangers, because they are all brothers and sisters according to the religion. This reminds me of the NATO intervention in Bosnia.

Nonviolence or the rejection of violence in all religion believes, the authors mentioned, find its eco in the R2P principle of the strict prohibition of murder. They provide examples of Gandhi's nonviolence policy to stand against the British colonialism, and the response of Jesus to the Roman Empire, and how these examples were followed in South Africa by Desmond Tutu, and in the United States by Martin

⁴⁹ Ibid p43

Luther King.⁵⁰ If the nonviolence action was ignored or violently suppressed, then it become legitimate to fight back for self defense, and here it comes the just war doctrine in religion, which connect to what R2P calls for in the responsibility to react phase.

Authors concludes that while religion organizes mankind life and different activities it is more likely to be corrupted by people of fundamental way of thinking, and that can be proved through the history of religious reforms. However the authors affirms that it is important to work to gather to purify religions from all forms of corrupted thoughts of evil especially in areas of crises, by keeping the faith in God checked with reason. This will positively influence in the responsibility to react and to prevent mass atrocities.⁵¹

The book offers three study cases of R2P nature, but from a cultural prospective, and these were: the case of Rwanda, the case of Kosovo, and the case of Nepal. In the case of Rwanda the authors explains how the crises developed and why the international community neglected it. They trace the root that cause the crises in 1994 back to the Belgium colonial era, and how the religious thoughts of Christianity were wrongly interpreted and planted in the Rwandan society, which tear a part their cultural fabric and cause inequality among the Hutu and Tutsi after they were collaboratively living together.⁵² Atrocities could be avoided, and military intervention can be unnecessary only if cultural is will studied and understood along side with economic, social, and political factors of a given society at risk.⁵³ The failure to in intervene by the UN was due to lack of communication between the UN Secretariat and the UN Security Council, and

⁵⁰Mani and Weiss “ Responssibility to Potect Ctural Perspective in the Global South” Routeldge, New York, 2011 p47

⁵¹Ibid p53-55

⁵² Ibid p139-140

⁵³ Ibid p149-151

also the authors suggest that many actors have a share to blame for not properly responding to Rwanda's massacre, including the Rwandan people themselves.

For the case of Kosovo, the author offers a different set of narratives, but it was again connected to the cultural heritage of the local people. The fall of the Soviet Union was not only pinpoint the end of the Cold War era, it was the break of a big cultural pot. Many national movements were unleashed after that event, and Albanian in Kosovo were among these movements. The Kosovar Albanian wanted to practice their own traditions that was suppressed by the former communist regime, and they did the in the 1990, which resulted in reconciliation of relation among Kosovar Albanians. This was faced by the rejection from the Serbs dominant government of Milosevic, and resulted in a eight years of ethnic segregation and mass atrocities, that was ignored by most of the world government till the NATO intervene by force, only when the mass killing of civilians was increased to an alarming level.⁵⁴

It was a peaceful resistant, and an active solidarity against the systematic inequity and segregation policies practiced by Belgrade nationalist politics. The NATO intervene from a humanitarian stand point, when the UN Interim Administration Mission in Kosovo (UNMIK) participate in the peace building process after wards, it was criticized for the veto right that was given to the UN Secretary General Special Representative over any decision made by the Provisional Institutions of Self Governance established by the UNMIK.⁵⁵

For the case of Nepal the authors gives credit to the local civil society, cultural institutions, traditional leaders, and the people of Nepal in preventing mass atrocities, as

⁵⁴ Mani and Weiss “ Responsibility to Potect Cutral Perspective in the Global South” Routeldge, New York, 2011
p177-180

⁵⁵ Ibid p186

well as to the UN offices and agencies, and other diplomatic missions of regional organizations such as the European Union (EU) and other diplomatic missions of foreign governments, for their cooperation with the civil society in their capacity building efforts. These efforts contributed to R2P prevention action that resulted in preventing violent events from being escalated, especially if we know that these violent events took place in rural areas far from Nepal's government control. The Nepalese people worked together to protect themselves and each other from violence that break out between the Nepali government and the Nepali Communist party. The Nepali civil institution successfully lobbied for peaceful international intervention by the UN, EU and other governments through their diplomatic missions in Nepal.⁵⁶

These preventive efforts participated not only on stopping the breakout of violence, but also in a peaceful transition from a monarchic system to a secular democratic political system in May 2008. The three study cases mentioned above were of a societies in a transition process of a cultural traditions or believes, and this transition resulted in a different levels of violence in each case, and then it show us the role of the culture and traditions in each case, among many other political, social, and economic factors, to end that violence.

Charlotte Ku and Paul F. Diehl In their third edition book of "*International Law: Classic and Contemporary Readings*" talked about R2P from a legal standpoint. In chapter 16 of the book, stated that most of the killing among civilians during the twentieth century was caused by tyrannical regimes, and the numbers of innocent civilian whom lost their lives in such events was five times greater than the number of combatant

⁵⁶ Mani and Weiss " Responsibility to Potect Cutral Perspective in the Global South" Routeldge, New York, 2011 p196-200

casualties in intrastate conflicts. It is obvious that international law cannot accept this kind of crimes committed by governments against its own people, but at the same time it can do so little if nothing to prevent it, because of the state sovereignty and nonintervention principle. The author post the question of how to legally protect human rights and live from such atrocities without disrespect or breach the preeminent principle of state sovereignty? Then he seems to find the answer in the new emerging norm of the responsibility to protect. After reviewing how the norm was developed from the so-called “*humanitarian intervention*”.⁵⁷

The authors gives a back ground on how the world order, characterized in the UN, developed to maintain peace among member states, and to prevent or stop any armed conflict that could occur between states. But the they continue to explain that the armed conflict were developed and adjust itself to the new world order, through the occurring of such conflict within the state borders, and that would make it a matter of internal affairs were the UN cannot do anything about it, because of the sovereignty and non-interference principles, which the UN was found to protect. This change in armed conflict nature had force the UN to adjust its conflict resolution policies to preserve peace that it was founded for, and not to breach the sovereignty and non-interference principles⁵⁸

At the same time the author admits that one of the most challenging dimension of R2P, and most difficult to implement conceptually and politically is the responsibility to react, namely the use of the military force against a state with R2P situation to prevent or halt a mass atrocities. And since the use of force is the last resort for extreme cases, the question raised by the author is “*What precisely entails an “extreme” case?* And many

⁵⁷ Charlotte Ku and Paul F. Diehl *International Law: Classic Contemporary Reading* (Colorado: Layne Rienner, 2009), 320-321.

⁵⁸ Ibid p325

other questions related to who should decide, when, where and how. Then he suggest six threshold criteria, which should be considered by the decision maker/s to address this challenge, and these are: just cause, legitimate intention, last resort, proportionality, reasonable prospect, and legitimate authority.⁵⁹

At the end the author concluded that the authority of such action should be rest at the hand of UN Security Council, and if that body is for some reason is unable or unwilling to authorize such action, then the member states could collectively call for an emergency session of the UN General Assembly under Uniting for Peace resolution in order to authorize such action. But finally, and according to the author, it is the responsibility of the Great Powers at the UN to lead this way through their political cooperation and commitment.⁶⁰

⁵⁹ Ibid p327

⁶⁰ Ibid p332-333

Conclusion

In the literature review above, the authors and the Secretary-General touched on many different levels of who, where, when, and how the Responsibility to Protect should be used to properly serve its noble human goal of protecting civilians from mass atrocities of the specified crimes and violations. Only one thing, from my point of view, was missing or have not been discussed enough, and that is who should monitor the proper use of R2P in a given case?

The UN Secretary-General already noted in his fourth report on R2P, with regards to charges of suing double standards when the UN reacts to R2P situations around the world. That is why, in the same report, he calls for all UN organs, agencies, programs, and funds, to apply the general principles of R2P on all states without any distinction.⁶¹ However, the problem remain that viewing the collective interest as the national interest, as Mr. Annan described it, is still missing, and R2P is still advocated for and carried out by states over another on the view of the national interest of the intervener, who is more likely would one of the super powers of the UNSC permanent members.

It had been little done on the role or influence of the UN Security Council's five permanent members (P5), on the international efforts in responding to any R2P situation whither by facilitating or hindering these efforts. The reason that I saw behind that is the national interest that governs the foreign policy of the P5, and they prove that they cannot adopt the concept of seeing the collective interest as the national interest, which was described earlier by Kofi Annan, and that led to the abuse of R2P. For the chapters to be follow in this thesis, I will concentrate on the role played by the United Nations Security Council's P5 in the use or the misuse of R2P, and I am going to take the cases of Libya,

⁶¹ Report of the UN Secretary General on “ *the role of regional and subregional arrangements in implementing the responsibility to protect*”, A/65/877, United Nations, New York, June 28, 2011. P

Syria, and Iraq as a study cases to compare and prove that the norm was misused in with regard to R2P principles, and still is.

Chapter III

The Case of Libya

In February 2011, the people of Benghazi, an eastern regional city in Libya, went out on a peaceful demonstration, demanding Colonel Muammar Al Gadhafi step down from power, similarly to what happened in Egypt with Mubarak and in Tunisia with Ben Ali. Within a short period of about nine months, the world saw the whole country sink into a rapid civil war with international military intervention led by NATO, resulting in the demonstrators and opposition winning and gaining full sovereignty over the country. After the military intervention, a group of insurgent rebels captured the former dictator Col. Muammar Al Gadhafi and carried out an illegal execution by shooting him to death.⁶² Widespread speculation also circulated of the rebels' inhumane and mistreatment of the former Libyan dictator prior to his execution.

The revolution in Libya was not a sudden occurrence. There were many elements that fostered the passion of the Libyan people against their former head of state, or 'Brother Leader,' as he wanted to be addressed by the Libyan people.⁶³ The Arab Spring wave of revolution and regime changes in the region surrounding Libya was a major factor in bringing about its own revolution. The revolution in Tunisia to the west of Libya (2010) and in Egypt to its east (2011) encouraged the people of Benghazi to demand their own change.⁶⁴

Other reasons for the Libyan uprising can be found behind the long-standing regime of repression and economic hardship and inequalities. Benghazi and the rest of the eastern region were largely suffering from Col. Al Gadhafi's regime policies of economic

⁶² Pargeter, Alison, *Libya, The Rise and Fall of Qaddafi*, (Yale University Press 2012), p10.

⁶³ Ibid p96.

⁶⁴ Ibid p11.

negligence. Unlike the rest of the country, Col. Al Gadhafi doubted their loyalty due to their religious ties to the Sanunssiya order and the old Kingdom.

However, the rest of the country was under the same level of repression, with only a few differences in economic progress here and there. Libyans were fed up with the rule of Col. Al Gadhafi and were determined to take him down, with or without the help of the international community.

The events of the Libyan revolution rapidly escalated, unlike the other revolutions that occurred in its region, in terms of time, level, and international attention and reaction. In a matter of nine months, Libya was in the hands of its people and its forty-two years of dictatorship were over in this short period of time. It was also the level of consolidation of the Libyan people that was noteworthy and played an important role in the revolution and reconciliation. Last but not least, the rapid and unprecedented international attention and response is of notable mention. The utilization of the Responsibility to Protect (R2P) in the case of Libya, which included the use of force to prevent mass atrocities, helped in reducing the casualties among the civilian population. Thus the international community responded to the violence in a timely and decisive manner.

The international response to the crisis in Libya renewed the hopes of the “never again” R2P, the duty to protect civilians by the international community, and preventing mass atrocities. However, since the protection of civilians in Libya has ended, there has been an increase in civilian deaths due to the aftermath of regime change. Questions regarding “responsibility while protecting” were raised by the president and government of Brazil during the UN General Assembly debate in September 2011, and were included in the UN Secretary-General’s (UNSG) fourth report. The debate focuses on: whether or

not the international actors responsibly responded to the crisis in Libya in all its stages? And whether or not R2P leads to regime change, as we saw in Libya? In the following paragraphs I analyze both regional and international actions that were taken to end the crisis in Libya. I will also examine whether or not there was any possibility that the regional or international stakeholders could have acted differently or if there were any mistakes that could have been avoided.

How the UN Security Council (UNSC) addressed R2P in the case of Libya?

Among many other humanitarian crises around the world, the Libyan crisis brought to our attention the rapid result of regional and international cooperation and the ability to respond and prevent the conflict from continuing further. Also it is worth noting that according to the 2005 World Summit's outcome document, Libya was an ideal crisis where R2P could be properly applied. But was Libya the only case where R2P principles could be applied?

To answer this question, I closely researched how the crisis was dealt with among the stakeholders, especially among the UN Security Council members (since they were the sole authorities), when they authorized the use of force in such a crisis, and how it affected their strategic interests. I also looked at how other relevant regional parties reacted to it, mainly those such as the African Union (AU) and the League of Arab States (LAS). First of all, it is important to mention that the United Kingdom, France, and the United States of America were the most seriously motivated UN member states to react to the crisis. This was first evident in the French air attack on a Libyan tank column that was headed to crush Benghazi rebels, just three hours before the official NATO campaign

began. At that time the rapid French attack threatened the whole Alliance. The Italian Prime Minister was very upset with the French attack.⁶⁵ Second, all three countries as permanent members of the UNSC, did not allow much time for diplomatic initiatives to take place. The African Union (AU) had asked for the support of the Council members and the UNSG in reaching a diplomatic solution in their letter on July 7th, 2011.⁶⁶ Resolution 1973 (2011) called for a dialogue sponsored by the AU to try to reach a peaceful solution, as found below.

Stresses the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and *notes* the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution⁶⁷

The call for the use of force came from some of the members of the League of Arab States (LAS), who urged the UN to react to protect the Libyan people from mass atrocities. Arguably, that was also due to their national interests. For example, Col. Al Gadhafi had always supported militant and rebellion groups all over the Arab world wherever he found them, let alone the disrupting of all the formal Arab Summits during the 2000s by him blowing smoke from his cigarette in the face of his neighbors, and directing insults to the rulers of the Gulf countries.⁶⁸ He also practiced the same disrespectful and disturbing acts at the 2009 UN General Assembly's 64th session when

⁶⁵ Joby Warrick, 'Clinton credited with key role in success of NATO airstrikes, Libyan rebels' Washington Post, webpage accessed on, Oct 30, 2011, http://www.washingtonpost.com/world/national-security/hillarys-war-how-conviction-replaced-skepticism-in-libya-intervention/2011/10/28/gIQAhGS7WM_story.html?wpisrc=al_national.

⁶⁶ Letter dated 22 July 2011, from the Secretary-General addressed to the President of the Security Council, S/2011/455.

⁶⁷ Paragraph 2 of the United Nations Security Council resolution 1973 (2011), New York, March 17, 2011.

⁶⁸ BBC News, 'The Muammar Gaddafi Story', 18/11/2011, BBC website, <http://www.bbc.co.uk/news/world-africa-12688033>, accessed on 18/7/2013.

he delivered a 1.15 hour-long speech while he was allocated a 10-minute time slot during which he tore out pages of the UN Charter and threw it in face of the president of the General Assembly.⁶⁹ There were many previous disagreements that made the Gulf rulers want Col. Muammar Al Gadhafi out of power at any given chance. That could also be observed from how the Gulf countries responded quite differently through the League of Arab States, to similar crises in Yemen, Egypt, and Bahrain.⁷⁰

It was also, arguably, in the national interest of France, UK, and the US (referred to as the P3, permanent members of the UNSC) to react the way they did in the UNSC. For France, the Libyan intervention was a strategic step in its new foreign policy to re-engage in the region and correct its previous failure to ‘properly’ react in Tunisia.⁷¹ Migration movements expected from Libya to the European Union (EU) in general, and France in particular, during the crisis could also have served as a priority interest for France’s intervention. For the UK, there was no reason to make an intervention in Libya one of Britain’s national interests, neither on the short or long term. However, and according to the Whitehall report of 2012, it was quick and a welcomed success that responded to many critics of David Cameron’s government, which had faced criticism due to large expenditure cuts, mainly from the defense budget. The report shows that the Libya intervention proved how the British military was prepared to carry out such a mission, and was not negatively affected by the budget cuts.⁷²

⁶⁹ General Debate of the UN General Assembly 64th Session (2009), UN website, <http://www.un.org/en/ga/64/generaldebate/L.Y.shtml>, accessed on July 20, 2013.

⁷⁰ Report of the UN Secretary General, *Responsibility to Protect: timely and decisive response*, United Nations, New York, A/66/874, July 2012, p11.

⁷¹ Johnson, Adrian. Mueen, Saqep “*Short War, Long Shadow*”, Whitehall report 1-12, Royal United Service Institute for Defense and Security Studies, UK, 2012 pp16-17.

⁷² Ibid p7.

The crisis in Libya was viewed as the ideal case of R2P, according to international standards, but it was unfortunately not ideal. There are two reasons for this argument: first, it was not given the required and requested amount of time for a peaceful solution to take place, even though Col. Al Gadhafi was moving quickly against the opposition, he did not allow time for a peaceful solution. Second, it ended with a regime change, which was not part of the UNSC mandate. R2P, from the start, was aiming to end mass atrocities, to protect civilians, to help states meet their responsibility to protect populations and to do so by either peaceful or coercive measures; but R2P never mentions regime change at all. Even the UNSC resolution 1973 did not mention regime change in its paragraphs. According to the media coverage, it appears that Al Gadhafi at any time could have negotiated a peaceful transition but refused any credible process. However, UNSC documents suggest that the AU had been able to reach an agreement with Col. Al Gadhafi, which will be addressed later in the thesis.

This leads us to two questions, 1) did the UN use double standards in the Libyan case? 2) Was the norm of R2P misused in that case? The UNSG answered the first question in his fourth report dated July 22nd, 2012, when he talked about lessons learned from the Libya experience in page six of the report. The UNSG explained how each R2P situation is distinct, and how all UN officials (including himself) should address that distinction.

He explained these lessons in the following quotation:

-One. Each situation is distinct. The principles of the responsibility to protect should be applied as consistently and uniformly as possible. However, the choices of methods and tools employed in each situation should be shaped by the circumstances on the ground and by informed judgment of the likely consequences. As each situation is different, it would be counterproductive to try to make the application of these

principles appear identical in all situations.

- *Two*. Such distinctions may lead to charges of double standards and selectivity. Perceptions matter. It is therefore essential that I apply these principles consistently in my statements and actions, as should my Special Advisers, the High Commissioner for Human Rights, and other ranking United Nations officials.⁷³

In Libya, two learned lessons are of notable mention: first, the special application of R2P principles in the case of Libya, which should be generally applied according to the UNSG's report; and second, the African Union's initiative to try a peaceful solution to the crisis, which was not given the required time and support. This would be clear in the following quoted letter from the AU Permanent Observer to the UN to the President of the Security Council:

I have been instructed by the Chairperson of the Commission of the African Union, Jean Ping, to inform you that the African Union Ad Hoc High-level Committee on Libya, established pursuant the communiqué of the 265th meeting of the African Union Peace and Security Council, is planning to travel to Tripoli tomorrow, Saturday, 19 March 2011, to meet with the Libyan Authorities.

The Committee is also planning to travel to Benghazi on Monday, 21 March 2011.

The above-mentioned High-level Committee is composed of the Heads of State of the Islamic Republic of Mauritania, the Republic of the Congo, the Republic of Mali, the Republic of South Africa and the Republic of Uganda, as well as the Chairperson of the African Union Commission.

Taking into account the adoption, by the Security Council, of resolution 1973 (2011), the African Union would like to make sure that this mission

⁷³ Report of the UN Secretary General, *Responsibility to Protect: timely and decisive response*, United Nations, New York, A/66/874, July 2012, p6

is carried out without any safety concerns.⁷⁴

The quoted part of the letter above indicates that the AU wanted to act fast in pursuant with paragraph (2) of the 1973 resolution to reach an agreement for a peaceful dialogue and ceasefire in Libya before the military campaign began, but the French government acted even faster when president Sarkozy declared the start of the aerial operation 48 hours earlier. Furthermore, the US and the UN had informed the President of Mauritania, who was part of the visiting Ad Hoc Committee, that there would be no security guarantees for the intended visit to Libya by the Ad Hoc High-level Committee.⁷⁵

The only reason the AU voted in favor of resolution 1973 (2011) was because they sought a political solution to the crisis with their role in it, which is evident by knowing that it was the AU who presented and insisted on the inclusion of paragraph (2) of the above-mentioned resolution.

Unlike the AU's perspective of approaching the crisis, the League of Arab States (LAS) saw the crisis from a different angle. When demonstrations broke out in Libya, Col. Al Gadhafi started to threaten to use force coercively to deal with unarmed civilian protestors. It was alarming for the LAS to take an emergency action, which they did, by calling for an extraordinary session for the Council of the Arab League in (CAL), Cairo, Egypt on March 12th, 2011. At that meeting the member states evaluated the situation in Libya as a brutal massacre, and it decided that it must be prevented by all means. LAS did not have the authority and capability to do so, because on the one hand, the 2005

⁷⁴ Letter dated 18 March 2011 from the President of the Security Council addressed to the Secretary-General, UN Security Council document, S/2011/151.

⁷⁵ De Waal, Alex, 'African roles in the Libyan conflict of 2011', International Affairs 89: 2, (2013) 365-379, p371.

World Summit Outcome document, recognizes the Security Council as the only authority to authorize interventions in other states with issues of R2P nature.⁷⁶ On the other hand, the LAS did not have the institutional or structural capability to do so. Thus, the (CAL) adopted resolution 7360 (2011) called on the United Nations Security Council to enforce a no-fly zone over Libya to protect civilians and civilian populated areas from Al Gadhafi's forces.

To call on the Security Council to bear its responsibilities towards the deteriorating situation in Libya, and to take the necessary measures to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighboring States,⁷⁷

This shows that the two regional organizations, the AU and the LAS, were in favor of UNSC resolution 1973 (2011), but from two different approaches and different reasons.

Alex J. Bellamy has argued in his article "Libya and the Responsibility to Protect: the Exception and the Norm," that the UN reaction towards Libya proves that the norm is practically accepted by the international community, thanks to the dedicated efforts made by the UN Secretary-General Ban Ki-moon in further advancing the norm after its adoption in World Summit of 2005.⁷⁸ He gives credit to resolution 1973 (2011) by saying that it was the first time the UNSC authorized the use of force for humanitarian protection purposes. But the question here is: if it were really for humanitarian protection,

⁷⁶ Omorogbe, Eki, 'The African Union, Responsibility to Protect and the Libyan Crisis' *Netherlands International Law Review*, August 2012, Vol.59 Issue 2, p141-163, p147.

⁷⁷ Resolution 7360 of The Council of the League of Arab States' extraordinary session at the ministerial level, March 12, 2011, Cairo / Egypt, para (1).

⁷⁸ Bellamy, Alex 'Libya and the Responsibility to Protect: the Exception and the Norm' *Ethics in International Affairs*, 25, no. 3 (2011), p2.

then why did it go further to end up with regime change? It could be over the years, he had created an overwhelming number of enemies: i.e. Lockerby case, supporting rebel movements in many different Arab and African countries, and his last disrupting speech and tearing apart of the UN Charter at the 2009 UNGA General Debate.

Admitting that the military mission was not easy, it was possible for the NATO air campaign to concentrate on the purpose of protecting civilians from the Libyan regime's forces until the regime was forced to accept a political solution and step down. On April 29th, 2011, the African Union informed the UN Security Council of the positive response they received from both sides in Libya. Surprisingly, the UNSG sent the above-mentioned letter to the UNSC two weeks after, on May 16th, 2011. Both the NATO and the UNSC members did not wait for that initiative or give it the time required, below is a quote from the AU's letter to UNSC:

We at the African Union feel encouraged to pursue our efforts in view of the unconditional acceptance of the African Union road map by the Libyan Government, and the commitment made by the Transitional National Council to study our proposals in depth and provide a feedback. Indeed, after the Committee's two separate interactions with the delegation of the Libyan Arab Jamahiriya and with the Transitional National Council in Addis Ababa, on 25 and 26 April 2011, it requested them to forward a document outlining their respective positions on the conditions and modalities of the implementation of the elements of the African Union road map.⁷⁹

A previous example might have been used such as when the Coalition, led by the US and UK, expelled the Iraqi Army out of Kuwait in 1991 and stopped right on the border. Most of the observers expected a regime change in that war, especially given the mass atrocities of Saddam Hussein's regime against his own people, but the Coalition

⁷⁹ Letter dated May 16, 2011, from the UN Secretary-General to the President of the UN Security Council, United Nations Security Council website, exchanges of letters, S/2011/307 p2, accessed on August 3, 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2011/307

strictly followed their mandate of Security Council resolution 678 (1990), which authorized member states to use all necessary means to “*bring Iraq into compliance with previous Security Council resolutions if it did not do so by January 15th 1991.*”⁸⁰ At that time, they were fully capable of ousting Saddam Hussein’s regime but they did not, even though there was full international awareness of humanitarian violations and suppression in Iraq. Regime change was not the objective set by that mandate, and so was the case of resolution 1973 (2011) in Libya.

The difference in Iraq in 1991 was that the Coalition would have lost the support they had from Egypt and Saudi Arabia if they had removed Saddam, and the US feared a break-up of Iraq that might weaken Iraq, vis-a-vis Iran. In the Libyan case neither the LAS nor the AU supported Al Gadhafi. Still, that reason alone is not a legitimate cause to pursue regime change while not mandated to do so.

Thomas G. Weiss also wrote a short article on “Ethics in International Affairs,” but he was more precise about the use of force for civilian protection purposes. He explained that it only becomes necessary when there is no other way to stop mass killings of civilians, otherwise the use of force is considered to worsen situations not to solve them, and thus is not welcomed. Weiss described the diplomatic efforts that led to the intervention as a success, because diplomacy could gather the consensus wanted for military intervention to stop mass atrocities. Moreover, his opinion regarding regime change in Libya was to be considered as a “collateral benefit.”⁸¹

A lecture titled “Libya, Syria and R2P” delivered by Professor Michael Ignatieff on September 12th, 2013, at the Global Center for R2P on the occasion of the Third

⁸⁰ United Nations Security Council resolution 678 (1990), New York, November 29, 1990

⁸¹ Thomas G. Weiss, “*RtoP Alive and Well after Libya*” Ethics in International Affairs, (2011), p6.

Annual Gareth Evans lecture, focused on the issue of the meaning of R2P, and why the norm is not supported as it needs to be, causing the reluctant application of it. The first words of Prof. Ignatieff were that R2P means “the responsibility of citizens and states in zones of safety is to protect fellow human beings in zones of danger especially from ‘tyrants.’ ” In this definition he acknowledged the protection mission is operated and supported by leading states and citizens from the zone of safety.

By closely looking at the language used in drafting resolution 1973 (2011), it appears that, despite the recognition by the Council of the regional efforts to solve the conflict, it gives more credit and support to the League of Arab States than to the African Union. This is bearing in mind that the AU member states are closer to the Libyan regime than the LAS members, and some of the LAS members logistically supported the rebels and were in favor of regime change efforts. That is evident in the effort of some of the LAS members’ military participation in the air campaign without offering or supporting any political solution. While on the other side the AU was, until the last moment and on the highest level (i.e. Heads of State), trying to find a political solution and ceasefire.

For instance, in resolution 1973 (2011) the UNSC only took note of the March 10th communiqué of the Peace and Security Council of the African Union, without mentioning why that Committee was established. While in the same text (res.1973) and in a separate paragraph, the Council also took note of the March 12th decision of the Council of the League of Arab States, but this time the text explained what the decision was and what it asked for, which was the call for imposing a no-fly zone on Libyan military aviation. The AU’s communiqué of establishing an Ad Hoc High Level Committee was to negotiate a peaceful and political solution to end the crisis, but was not

mentioned in the resolution's introductory text, while on the other side the LAS' call for imposing a no-fly zone was clear on the text, which at the end required a military intervention and the use of force.⁸²

However, in paragraph 2, the resolution stressed the need to find a solution to the crisis (without mentioning if it should be a peaceful or coercive one), and took note of the role of the UN Secretary-General to send his special envoy to Libya and the AU's decision to send its Ad Hoc High Level Committee to Libya for the purpose of opening a dialogue to peacefully end the crisis.⁸³ The Whitehall report of 2012 indicates that this language and the issue of humanitarian protection were used to gather as much support as needed from the public and stakeholders to make the resolution pass in the UNSC.

By reading letters sent to the UNSC and UNSG from the African Union, NATO, and later from the Libyan Transitional National Council (TNC), one can find further evidence of the UN's negligence of the idea of a peaceful solution to the crisis in Libya. This can be found in the quotes below, from the two letters from the UN Secretary-General addressed to the President of the UN Security Council. In both letters the UNSG was transmitting letters he received from the AU and the TNC respectfully. The difference though is that the first letter of the AU was transmitted 18 days after the day it was received, despite its important content and the importance of the organization sending it. While the second letter of the TNC was transmitted the following day with further explanation made by the UNSG to the President of the UN Security Council that the TNC is welcoming the UNSG's intention to establish a United Nations support mission in Libya, while the AU letter was merely a late mail delivery. The TNC was just

⁸² United Nations Security Council resolution 1973 (2011), New York, March 2011, p1

⁸³ Ibid p2.

recognized as an interim representative of the Libyan people and the AU is an actual regional intergovernmental organization.

Letter dated 16 May 2011 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit the attached communication dated 29 April 2011, which I have received from the Chairperson of the African Union Commission, Mr. Jean Ping, forwarding the communiqué on the situation in Libya adopted by the Peace and Security Council of the African Union at its 275th meeting, held in Addis Ababa on 26 April 2011 (see annex).

I should be grateful if you would bring the present letter to the attention of the members of the Security Council.⁸⁴

Letter dated 15 September 2011 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit the attached letter dated 14 September 2011 (see annex), from the Prime Minister of the National Transitional Council of Libya, Mahmoud Jibril, seeking the assistance and support of the United Nations and the international community in implementing the plans of the Council for stabilizing and rebuilding the country.

The letter also welcomes my letter dated 7 September 2011 to the President of the Security Council on the proposed United Nations mandate, particularly my intention to establish a United Nations support mission in Libya (S/2011/542).

I should be grateful if you would bring the present letter to the attention of the members of the Security Council.⁸⁵

When the NATO military air strikes started on March 19th, 2011, after Col. Al Gadhafi delivered a speech when he announced that he was going to go house-to-house

⁸⁴ Letter dated May 16, 2011, from the UN Secretary-General to the President of the UN Security Council, United Nations Security Council website, exchanges of letters, S/2011/307, accessed on August 3, 2013.

⁸⁵ Letter dated September 15, 2011, from the UN Secretary-General to the President of the UN Security Council, United Nations Security Council website, exchanges of letters, S/2011/578, accessed on August 3, 2013.

and kill all the rebels, the response to the crisis increased even more rapidly. The first reaction and statement of the Arab League's (former) Secretary-General Mr. Amr Moussa were:

What has happened in Libya differs from the goal of imposing a no-fly zone and what we want is the protection of civilians and not bombing other civilians. From the start we requested only that a no-fly zone be set up to protect Libyan civilians and avert any other developments or additional measures.⁸⁶

This statement was made on March 20th, 2011 only two days after the airstrikes began. However, the League of Arab States did not provide any alternative solution when it criticized NATO's bombing. Clearly they did not understand that creating a no-fly zone in a hostile environment meant literally to clear out any capabilities of the Al Gadhafi regime to use any type of military air offence or defense.

From its point of view, the African Union viewed the NATO action as a fast and unstoppable one that did not give the space or time needed for the peaceful solution to take place, especially when five African Heads of State were able to negotiate a peace deal with Col. Al Gadhafi. During the NATO campaign, the AU states were working hard on the highest level to accomplish a political and peaceful solution to the crisis that would participate in the peaceful part of resolution 1973 (2011). That is why the AU believed that resolution 1973 (2011) was "largely abused in some specific respects."⁸⁷ South African representatives at the UNSC also accused the leading nations of the United States, France and the United Kingdom (P3) at the Council for selectively implementing

⁸⁶ Beckford, Martin, 'Libya attacks criticized by Arab League, China, Russia, and India', The Telegraph website, 21 Mar, 2011, accessed on September 8, 2013
<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8393950/Libya-attacks-criticised-by-Arab-League-China-Russia-and-India.html>,

⁸⁷ De Waal, Alex, 'African roles in the Libyan conflict of 2011', International Affairs 89: 2, (2013) 365-379, p367

the provisions that were in favor of their sole interests, and ignoring others that acknowledged the AU peace initiative.⁸⁸

We at the African Union feel encouraged to pursue our efforts in view of the unconditional acceptance of the African Union road map by the Libyan Government, and the commitment made by the Transitional National Council to study our proposals in depth and provide a feedback.⁸⁹

Reiterates its full support for the work of the Ad Hoc Committee, which is appropriately placed to facilitate the early resolution of the crisis in Libya.⁹⁰

The African Union had played an important role in enabling the resolution to pass. There were three African states as non-permanent members of the UN Security Council at that time and if they abstained or voted against the resolution, it would never have passed. The reason they voted in favor was to stop the atrocities, and to create an environment for a peaceful solution, but not for regime change. The AU argument is grounded in the outcome document of 2005, the relevant UNSG's R2P reports, and the ICISS report. The AU understood that the use of force would be used as a deterrent to force Al Gadhafi's regime to stop killing civilians and resume the state's responsibility to protect, which did not mention regime change. Alex De Waal's article in the journal *International Affairs* (2013) implies that the main three Western powers (United States, France, and the United Kingdom) as the Security Council (P3) who led the military campaign, were determined to pursue a regime change in Libya when they drafted resolution 1973 (2011). He also implies that they drafted it within the R2P framework so

⁸⁸ Ibid p368.

⁸⁹ Letter dated May 16, 2011, from the UN Secretary-General to the President of the UN Security Council, United Nations Security Council website, exchanges of letters, S/2011/307, accessed on August 3, 2013 p2.

⁹⁰ Ibid p4.

that they could hold and continue to keep international consensus to support the military intervention in Libya. The P3 knew that the resolution would not pass and that consensus would not last if they put 'regime change' within the text of the above-mentioned resolution.⁹¹

Moreover, De Waal accused the political leaders of the P3 of lying to the other member states to get their approval. He states that they all knew what it meant to enforce a no-fly zone militarily. It was an act of war that would only end with regime change. It is also evident that neither the United States nor the United Nations presented a plan for a negotiated political solution, and never gave support to suggest one (i.e. the AU initiative). Even the media in these three Western countries was supportive and, more or less, promoted the idea of regime change, and gave a negative picture to undermine the AU's peaceful approach. The media mentioned the LAS' call for intervention but never announced the AU plan for peaceful solution, which was part of resolution 1973 (2011).⁹²

The AU's major missed opportunity was that it did not carry out a public campaign for its diplomatic initiative. Many nations were using different media channels to influence international opinion, which the AU could also have done. They could have used the international press to inform key actors, public opinion and other concerned non-government organizations (NGOs). Even if that effort had failed, it still might have informed the public that there were two sides to the story, not only one. For example, the Ad Hoc Committee managed to meet in Mauritania on March 19th, 2011, and decided to visit Libya the next day to meet with Col. Al Gadhafi and the opposition to open a

⁹¹ De Waal, Alex, 'African roles in the Libyan conflict of 2011', *International Affairs* 89: 2, (2013) 365-379, p 369

⁹² *Ibid* p369.

dialogue on a political solution. President Sarkozy of France criticized that meeting and considered that it would slow down their efforts to stop the atrocities. Even the UNSC informed the AU that it took note of their visit to Libya but the safety of the AU delegation could not be guaranteed, and it was postponed to April 2011.⁹³

Another weakness of the AU position was its internal divisions. Most of the AU countries wanted Col. Al Gadhafi to step down, except for the few who share their borders with Libya because they feared the spillover of the conflict would affect their own countries. At the same time, those countries that wanted Al Gadhafi out of power were not clear about it, and did not draft it clearly to the AU Ad Hoc Committee on Libya. There were vague talks here and there about which country would accept Col. Al Gadhafi if he would step down, and some talks suggested having him retire in one of Libya's cities with African protection. Even when the Ad Hoc Committee called for the immediate end of all forms of hostilities and setting up a monitoring mechanism for that purpose, they did not agree on whose forces should be there to monitor the ceasefire. This was mainly because the AU did not have the capacity to do so. However, they agreed to have UN Peacekeepers in Libya, but even then the question arose of who would contribute troops on the ground in such a hostile environment.

All of those divisions among the AU members simply encouraged Western powers to ignore the AU initiative, and not to give it the support and attention it actually needed. But even with that in mind, it should not have been considered a green light for regime change, as the P3 thought. No matter how weak the AU consensus was, it should not have been taken as an excuse to replace or extend a civilian protection mandate into a

⁹³ Ibid p371.

mandate for regime change.

The League of Arab States had a different vision for Libya. From the meetings of the Arab Group at the United Nations, it was clear from the beginning and through all of the plenary meetings of the Group at the UN headquarters, that the LAS was determined to oust Al Gadhafi from power. In its meeting on March 11th, 2011, the Arab Group invited the Permanent Representatives of both Hungary and Portugal to discuss, among many joint issues, the Libyan crisis in particular. In his comment on the situation in Libya, when asked if the UNSC discussed any military options or the no-fly zone, the Permanent Representative of Portugal said that the UNSC gradually dealt with the situation in Libya, as a step-by-step process, which started from a press statement and condemnation to the first SC resolution 1970 against Col. Al Gadhafi's regime, he said that "political problems needs political solutions to resolve it, but not a military one."⁹⁴

He also made it clear that any military intervention by NATO would be limited to an aerial campaign. And for the no-fly zone idea, he commented that the UNSC did not discuss this option yet, and this would need more logistical and military efforts to be implemented. "The rules of engagement in such a type of military action are even more complicated. It would also require that all ground defenses of the Libyan regime must be destroyed."⁹⁵ However, he also mentioned that the situation in Libya could take months or a year before the Al Gadhafi regime falls, and that there may be a civil war during this time. The Permanent Representative of Hungary delivered a message from his government to the Arab Group, and he said that the events going on in the Middle East

⁹⁴ Interview with Dr. Muhannad Al Hassany (PhD in Strategy from Al-Nahrain University Iraq – Baghdad), Councilor at the Permanent Mission of Iraq to the UN, August 8, 2013, Dr Al Hassany was the rapporteur of that meeting.

⁹⁵ Ibid.

were a sign of a big change that was going to take place, and it would affect the whole region for decades to come.

At the end of the Arab Group meeting of March 11, 2011, the Representative of Egypt informed the Presidency that the Libyan Foreign Minister sent a letter to the UNSG informing him that the mission of the recent Permanent Representative of Libya and his Deputy had ended and that the Government of Libya would appoint a new Ambassador/Head of Mission for the position soon. The UNSG received the letter and transferred it to the credentials committee to reserve it until further notice. The Egyptian Representative further explained that there was a previous agreement between the UNSG and the US for the occurrence of such an event, and that the US would not grant a visa for the new Libyan Representative until the crisis ended.⁹⁶

There is no doubt that R2P was successfully used as a protective tool to prevent mass atrocities among civilians, but at the same time it seems that it was also misused by the P3 at the UN Security Council in order to serve and achieve more narrow national interests, which makes it less credible for the international community to endorse or reach consensus on future events. Maybe the crisis in Syria, which will be discussed in the next chapter, could serve as an example of the difficulties of such a consensus.

The AU did not get any of the support or time it requested from either the UNSG or the UNSC. It appears that in both situations the UN misused the norm when implementing UNSC resolution 1973 (2011). This then led to regime change in the name of civilian protection. The UN Security Council can be accused of using a double

⁹⁶ Ibid.

standard. Because on the one hand, and according to the UNSG reports, the UN intervened under R2P principles in the case of Libya, and on the other hand, it did not intervene in other cases (i.e. Iraq, South Ossetia, or even in Syria). In addition, the role of regional arrangements was written into res.1973 (2011) and was critical to the UN. Then why did the UNSG and UNSC not give the time and support needed for the AU's initiative to peacefully end and prevent the crisis from getting worse? Furthermore, they did respond to calls from the LAS and some European member states for a no-fly zone and its implementation by coercive measures.

Chapter IV

The case of Syria

In Syria, the development of the crisis was similar to the crisis in Libya and other Arab countries. However, the response of the international community and the region was quite different. In March 2011, a month after the crisis took place in Libya, about 200 Syrians followed their counterparts in Libya to peacefully demonstrate. It started as a peaceful civil demonstration, with the people demanding that the government release political prisoners and demanding basic freedoms of speech, press, and political participation in their country.

The first response by the Syrian government was a brutal crackdown on the peaceful, unarmed demonstrators, killing tens of them, preventing those who were injured from being hospitalized, and detaining injured ones who managed to get to a hospital, as suspects, who, in turn, faced even more ill treatment and torture in the government detention centers all across the country. Moreover, the government-backed and sponsored militia (Locally known as ‘Shabiha’) violently used their heavy arms to suppress civilian protesters, and even used artillery to shell different cities. As for the Syrian President Bashar al Assad, he refused to respond to the demands of his people or even halt the military crackdown of his government on the protestors, which later were reported to shell civilian populated areas.⁹⁷

The Assad regime kept denying that war crimes and crimes against humanity were committed against civilians in Syria, and described that the government forces were

⁹⁷ International collation for the Responsibility to Protect website, ‘*The crisis in Syria*’ Accessed on September 30, 2013, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria>

fighting ‘terrorist activities’ in certain parts of Syria. Moreover, the regime also kept denying UN and other NGOs access to provide humanitarian aid and basic services, to populations in the affected areas undergoing military operations.

A third year has almost closed on the crisis in Syria with no genuine action to protect the civilian suffering, almost no light of hope to end the bloody civil war there, that took over 100,000 civilian lives and forced millions to flee the country. An uprising that started as a peaceful demonstration turned into armed groups fighting against brutal government security and armed forces. Syria has not carried out its responsibility as a sovereign government to protect its population. These armed groups took different forms as the revolution developed. Some of these groups were affiliated with the political entity that was formed by the opposition themselves and formed what later was known as the Free Syrian Army (FSA). These groups were basically well-organized and constitute among its members many Syrian military officers and soldiers who decided to defect from the regime’s army and join the opposition.

Others decided to align with Al Qaida terrorist organization and form their own Jihadist arm in the country (i.e. Al Nusrra Front (ANF) and Islamic States in Iraq and Sham, (‘Sham’ here is an ancient name for Syria) (ISIS). Those are mostly independent from other armed opposition groups and their goal is different, which is to form an Islamic state in Syria that is governed by Sharia (Islamic laws).

The first group however, had the goal of forming a free and secular government, created by the participation of the Syrian people in a free general election and to replace the Assad dictatorship.

R2P and the Syrian crisis

A closer look at the literature written about R2P norms from its very beginning until recent days, will show us with no doubt that the crisis in Syria made a perfect scenario for the application of R2P in all its stages and levels. It is important to note that the Syrian crisis is much different from Libya and other Arab crises from a geopolitical point of view and the involvement of key players. As for geography, Syria's location at the Mediterranean, neighboring Israel and within the sphere of Russian interests, alone make resolving the crisis even more complicated. Also, key players are represented in its neighborhood. A strategic ally, such as Turkey is the most important player due to its regional leadership and the influence of the Muslim Brotherhood. Israel comes next as a neighbor, which has lately launched limited attacks against Syria. Then Russia and Iran emerge as the most important strategic allies of the Syrian government. Each of those key players has its own interest in keeping or ousting the Assad regime, which was not the case with Libya, as was described earlier.

First, the current Syrian regime not only failed to protect civilians within the Syrian territory, but there is evidence that the same regime was participating in committing crimes and other violations against Syrian civilians from the beginning. Second, the total size of casualties among civilians during the approximate three year crisis, has escalated to alarming numbers in terms of R2P, human rights and humanitarian law. In addition Assad's regime continues to deny humanitarian assistance to reach those victims and the large numbers of internally displaced persons. Refugees have flowed into neighboring countries, now reaching millions.

If we go back to the report of the ICISS and its criteria for “Just cause”, we will find large-scale of civilian casualties, and a government that is both unwilling and unable to protect its population from atrocities.⁹⁸ Moreover, looking at the crisis through the lens of the 2005 World Summit outcome document also proves that this is a case that the world agreed upon would require intervention that the international community should take action according to the commitment made in that document.⁹⁹ All the criteria mentioned above should be, in theory, more than enough to trigger the R2P alarm in the region and international community. However, the response was disappointing and the UN has been accused of using double standards in responding to the crisis in Syria.

According to Alex Bellamy, the crisis in Syria shows state failure to protect the fundamental rights of its people; the regime in Syria was and still is the perpetrator of the violation of these rights. It is also, by Bellamy’s definition, the government of Syria that caused the breakout of the conflict in Syria.¹⁰⁰ The crisis in Syria also reflects Ramesh Thakur’s vision of how the international community is characterized by the UN failure to act in many humanitarian crises because the UN promises more than it can deliver. Sovereignty should be as much a responsibility.¹⁰¹ It is also notable that the five UNSG reports were not very useful to prevent, halt or properly address the crisis in Syria within the scope of R2P.

Rama Mani and Thomas G. Weiss explain the crisis in their book titled

⁹⁸ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: ICISS, 2001), p xi-xii

⁹⁹ United Nations General Assembly’s Sixtieth Session, Resolution A/60/L.1, “*2005 World Summit outcome*”, New York, September 15, 2005 paragraphs 138-140.

¹⁰⁰ Alex J. Bellamy, *Global politics and The Responsibility to Protect: from words to deeds*, London: Oxon UK Routledge , 2011, p 2.

¹⁰¹ Thakur, Ramesh. *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*. London : Oxon Routledge, 2011, p77

Responsibility to Protect: Cultural Perspective in the Global South. The authors describe how the divine gives his power to the kings only to bring justice to the poor and when rulers fail to do this, people have the right to topple a ruler in order to bring back justice.¹⁰²

Regional response to the crisis in Syria

It is important to mention that the crisis in Syria has been considered the largest humanitarian crisis in 2013, in terms of refugees and human rights violations. Over 6.8 million refugees, most of whom are internally displaced, and an estimate number of 1.5 million distributed in Jordan, Lebanon, Turkey, Iraq and Egypt have had to leave their homes. This is likely to be a greater number according to the United Nations High Commission for Refugees (UNHCR) because they said not all Syrian refugees come forward to register in host countries.¹⁰³ Unlike Libya, Syria's regime, despite the fact of being the perpetrator of human rights violations and crimes, also participated in one of the largest humanitarian assistance plans in recent history.¹⁰⁴ At the same time, the UN and other humanitarian organizations officials have accused the Syrian regime of denying humanitarian assistance to many affected areas.

The League of Arab States (LAS) first responded to the crisis in June 2011, when its Secretary General Mr. Amr Moussa publicly criticized the Syrian government's

¹⁰² Mani and Weiss "Responsibility to Protect Cultural Perspective in the Global South" Routledge, New York, 2011 p37

¹⁰³ United Nations High Commission for Refugees, "Syria Regional Response Plan 5" UNHCR website <http://www.unhcr.org/cgi-bin/txis/vtx/home/opendocPDFViewer.html?docid=51b0a56d6&query=regional%20plan> accessed on Jan 11, 2014. P6

¹⁰⁴ United Nations High Commission for Refugees, "Syria Regional Response Plan 6" UNHCR website <http://www.unhcr.org/syriarrp6/docs/Syria-rrp6-full-report.pdf> p4 viewed Jan 11 2014

crackdown on protestors.¹⁰⁵ It supported the demands of the Syrian people, then suspended the Syrian regime from the League meetings and later its membership in November 2011.¹⁰⁶ One might think that the LAS would react similarly as it did with the crisis of Libya, but it did not, because, as was described by Mr. Moussa, “their views differ” towards the Syrian crisis.¹⁰⁷ Mr. Moussa’s successor, Mr. Nabil el Araby was even more criticized and released a tougher statement on the situation in Syria on August 6, 2011, expressing the League’s growing concerns regarding the escalating military operations against unarmed civilians. He also urged the Syrian government to respond positively to the legitimate demands of the Syrian people represented by political reform, freedom, and the release of political prisoners before its too late.¹⁰⁸

The first official response by the LAS took place on August 28, 2011, at the urgent meeting of the LAS foreign ministers in Cairo. The foreign ministers asked the League’s Secretary-General to carry out a mission to Damascus and transmit the Arab initiative to resolve the crisis to the Syrian regime. There were no further details about the initiative, but some sources learned that it called for immediate halt of the security and military campaign against civilians, to execute political reforms, release political prisoners, and the immediate withdrawal of the armed forces from the cities.¹⁰⁹ However, the mission was later postponed.¹¹⁰ Another ministerial meeting was called in September

¹⁰⁵ M Küçükkeleş, ‘Arab League’s Syria policy’, SETA Policy Brief, no. 56, April 2012, viewed Jan 11 2014, <http://setad.org/arab-leagues-syrian-policy/policy-papers/1036> p3

¹⁰⁶ Ibid

¹⁰⁷ Martin Chulov, ‘Arab League issues first condemnation of Syria violence’, The Guardian, 14 June 2011, viewed 13 Jan 2014, <http://www.guardian.co.uk/world/2011/jun/14/arab-league-condemnation-syria-violence>

¹⁰⁸ ‘Arab League Chief Calls on Syria to stop violence immediately’, Trend News Agency, August 7, 2011, accessed on Jan 13, 2014, <http://en.trend.az/regions/met/arabicr/1915213.html>

¹⁰⁹ ‘Arab States seeks to end Syria crisis’, Al Jazeera English, August 28, 2011, accessed on Jan 13, 2014, <http://www.aljazeera.com/news/middleeast/2011/08/201182743723676965.html>.

¹¹⁰ Harris, Marty, ‘International Response to the Syrian uprising: March 2011-June 2012’, Parliament of Australia, July 13, 2012, accessed on Jan 13, 2014,

2011 in Cairo; Sheikh Hamad Al Thani the foreign minister of Qatar who headed the meeting declared:

We are keen to protect the unity of Syria, prevent foreign interference, stop the bloodshed and violent acts in addition to the army withdrawal from all the Syrian cities soon. I wish from the bottom of my heart a dialogue will be established to achieve the ambitions of the Syrian people.¹¹¹

At the same meeting the League agreed on a 13-point peace plan to end the violence in Syria and to start political reform.¹¹²

The Syrian government announced its acceptance of the LAS Plan of Action of November 2, 2011, which called for an immediate and comprehensive cease-fire, withdrawal of the army from Syrian cities, the release of prisoners, and to start a national dialogue.¹¹³ At the end of November, Syria failed to fulfill its commitment. Although the plan was still supported by the UN General Assembly resolution 176 of December 2011. As a result of its failure, Syria's membership was suspended from the Arab League. In addition the League decided to impose economic sanctions and a travel ban on senior Syrian officials. The League also called on member states to withdraw their ambassadors from Damascus. All members accepted to implement those sanctions except for two of Syria's neighbors, Iraq and Lebanon.¹¹⁴

The Syrian government later signed in December 2011 an agreement with the

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SyrianUprising?print=1#_ftn31 p4

¹¹¹ Ibid

¹¹² Ibid

¹¹³ 'Syria Agrees to end crackdown, Arab League says', CNN, November 3, 2011, accessed on Jan 13, 2014, <http://edition.cnn.com/2011/11/02/world/meast/syria-unrest/index.html>

¹¹⁴ 'Syria unrest: Arab League adopts sanctions in Cairo' BBC, November 27, 2011, accessed on Jan 13, 2014, <http://www.bbc.co.uk/news/world-middle-east-15901360>

League fearing international attention to the crisis. The agreement allows an Arab observer team of 170 observers to travel to Damascus to reach an end to the crisis through monitoring different locations in the country that were known for increased use of violence and human rights violations that resulted from the government crackdown.¹¹⁵ But the Syrian regime demanded the team to be under government protection and restricted it from visiting sensitive military sites.¹¹⁶ The mission was mandated for a one-month time frame and could be renewed if both sides agreed. However, it failed to complete its mission because of the continuing deterioration of the security situation in Syria, as stated by el Araby, the LAS Secretary General, who also said that he would take the peace plan initiative to the UN Security Council (UNSC).¹¹⁷

Before the mission was withdrawn, the League presented on January 22, 2012, a second peace plan to the Syrian regime and asked the UNSC to support it. That plan included: Al Assad to transfer power to his deputy, forms a national unity government, and hold early general elections. The plan was accepted only by the Syrian opposition represented by the Syrian National Council (SNC) and rejected by the Syrian government.¹¹⁸ The League decided to refer the crisis to the UNSC and asked for the adoption of a resolution that included its peace plan, after this failure to establish an agreed solution to the crisis with the Syrian regime. That was the first international referral of the crisis from the LAS. That suggested resolution though was vetoed later by

¹¹⁵ 'Syria signs deal to allow Arab League observers into country', The Guardian, December 19, 2011, accessed Jan 13, 2014, <http://www.theguardian.com/world/2011/dec/19/syria-to-admit-arab-league-observers>

¹¹⁶ Ibid

¹¹⁷ Samir, Ayman, Solomon Erika 'Arab League suspend Syria mission as violence rages', Reuters, Jan 28, 2012, accessed on Jan 13, 2014, <http://www.reuters.com/article/2012/01/28/us-syria-idUSTRE8041A820120128>

¹¹⁸ 'Syria rejects Arab League plan for power transition', Al Arabiya news, Jan 23, 2012, accessed on Jan 13, 2014 <http://www.alarabiya.net/articles/2012/01/23/189957.html>

Russia and China.¹¹⁹

This LAS response shows us how the Syrian crisis differentiates from the Libya case, mainly in how long it took the LAS to refer the matter to the UNSC with a soft peaceful resolution proposal. This could be also observed as another different approach from the one used to respond to Libya. It indicates the LAS was not eager for international intervention, but now looking back regrets this delay.

The international response to the crisis

The crisis in Syria gained the attention of the international community immediately. It is important to note that the United Nations Human Rights Council (UNHRC) was the first international actor to respond to the Syrian crisis. Only a month after the demonstrations started in Syria, the Council held its first special session on the humanitarian situation in Syria, and that was by a request from the US representative, dated on April 27, 2011.¹²⁰ This early response led by the US through the UNHRC gives evidence that the US and the rest of the UNSC permanent members are not on the same page regarding the crisis in Syria. Otherwise, why did the US not request for such a special session to be held by the UNSC, which can have a more effective outcome than the UNHRC?

In the above-mentioned session the UNHRC adopted its first resolution S-16/1. The resolution in its first paragraph acknowledged the peaceful nature of the Syrian demonstrators, and acknowledged and condemned the brutal response by the Syrian

¹¹⁹ Ibid

¹²⁰ Note Verbal from the Office of the High Commissioner for Human Rights addressed to the Human Rights Council's member states and all other UN agencies, OHCHR website accessed on Jan19,2014, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/Session16/NoteVerbale.pdf>

authorities, as follows:

Unequivocally condemns the use of lethal violence against peaceful protesters by the Syrian authorities and the hindrance of access to medical treatment, urges the Government of the Syrian Arab Republic to immediately put an end to all human rights violations, protect its population and respect fully all human rights and fundamental freedoms, including freedom of expression and freedom of assembly, and also urges the authorities to allow access to the Internet and telecommunications networks and to lift censorship on reporting, including by allowing appropriate access by foreign journalists.¹²¹

The resolution in its seventh paragraph also called for the dispatch of a fact-finding mission to “investigate all alleged violations of international human rights law and to establish the facts and circumstances of such violations and of the crimes perpetrated.”¹²² The mission was later denied access to Syria. During that time, the Syrian government was applying for UNHRC membership. However, due to pressure on the UN by many human rights groups to reject Syria’s application, it was moved down on from the candidates’ list.¹²³

The call to the Syrian government to grant entry to the fact-finding mission was renewed by the HRC during its 17th regular session in June 2011. A preliminary report of the High Commissioner for Human Rights was presented in the above-mentioned session. The report reaffirms the urgent need for the fact-finding mission to perform its mandated task in Syria. The mission was again refused entry to Syria. However, it published its

¹²¹ Report of the Human Rights Council on its sixteenth special session, Office of the High Commissioner for Human Rights’ website, accessed on Jan 19, 2014, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/Session16/A-HRC-S-16-2.pdf> p3

¹²² Ibid p4

¹²³ Harris, Marty, “*International Response to the Syrian uprising: March 2011-June 2012*”, Parliament of Australia, July 13, 2012, accessed on Jan 13, 2014, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SyrianUprising?print=1#_ftn31 p3

report on August 18, 2011. On page 13 of that report the mission found many patterns of human rights violation that could amount to crimes against humanity. The report stated the following:

The Mission found a pattern of human rights violations that constitutes widespread or systematic attacks against the civilian population, which may amount to crimes against humanity as provided for in article 7 of the Rome Statute of the International Criminal Court.¹²⁴

On August 22, 2011 the UNHRC held its second special session on Syria and passed a resolution that condemned the Syrian government. The UNHRC held a further two special sessions on the Syrian crisis in December 2011, and June 2012. In both the Council passed resolutions that condemned the Syrian government. Russia and China voted against all of these resolutions.¹²⁵

At the special session of August 2011 the UNHRC established the Independent International Commission of Inquiry on the Syria Arab Republic. The Commission was mandated to investigate all alleged violations of international human rights law committed in Syria, and also mandated finding the root causes and circumstances that led to the violations and crimes committed. And where possible, identify those responsible for it.¹²⁶ The Commission stated in its report of February 2012 that:

The Government has manifestly failed in its responsibility to protect its people. Since November 2011, its forces have committed more widespread, systematic and gross human rights violations. Anti-

¹²⁴ UNHCHR, report of the fact-finding mission on Syria pursuant to Human Rights Council resolution S-16/1, Geneva, Office of the High Commissioner for Human Rights, August 18, 2011, p13

¹²⁵ Human Rights Council sessions, Office of the High Commissioner for Human Rights' website, accessed on Jan 19, 2014, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx>

¹²⁶ Independent international commission of inquiry on the Syrian Arab Republic, About the commission of inquiry, Office of the High Commissioner for Human Rights website, accessed on Jan 18, 2014, <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/AboutCoI.aspx>

Government groups have also committed abuses, although not comparable in scale and organization to those carried out by the State.¹²⁷

Mentioning the human rights violations committed by both sides indicates the neutrality of the Commission's work in monitoring human rights violations.

At the main headquarters of the UN in New York, five months passed before it had its first soft response to the crisis in Syria. There were six occasions where the UNSC addressed the crisis in Syria. Among these six, three resolutions were adopted. The UNSC was not acting under chapter VII of the UN Charter and the resolutions did not impose any serious obligations like economic sanctions or no-fly zones, as in Libya. On August 3, 2011, the United Nations Security Council adopted its first Presidential statement that addressed the crisis in Syria. The council members agreed to express their concerns about the widespread violence there. The Presidential statement is legally less binding than a resolution, and it came after the Council had failed to adopt a suggested resolution. Here are some of its paragraphs:

The Security Council expresses its grave concern at the deteriorating situation in Syria, and expresses profound regret at the death of many hundreds of people.

The Security Council condemns the widespread violations of human rights and the use of force against civilians by the Syrian authorities.

The Security Council calls for an immediate end to all violence and urges all sides to act with utmost restraint, and to refrain from reprisals, including attacks against state institutions.¹²⁸

¹²⁷ Report of the international commission of inquiry on the Syrian Arab Republic, UNOHCHR' website, accessed on Jan 19, 2014, p1

¹²⁸ Presidential statements by the United Nations Security Council in August 3, 2011, New York, accessed on Jan18, 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2011/16

The statement did condemn the violations of human rights committed by the Syrian authorities, however, in another paragraph it equalizes the regime with the civilian protestors by “urging all sides to act with utmost restraint ...etc.”. The protestors here were civilians defending themselves from the government crackdown, and according to all observers, including the United Nations Human Rights Council (UNHRC), they did not start or want to start the violence. Amnesty International described the statement as follow:

After more than four months of violent crackdown on predominantly peaceful dissent in Syria, it is deeply disappointing that the best the Security Council can come up with, is a limp statement that is not legally binding and does not refer the situation to the International Criminal Court.¹²⁹

In February 2012, the General Assembly in cooperation with the League of Arab States adopted its 253 resolution that appointed Mr. Kofi Annan as the Joint Special Envoy for the United Nations and the League of Arab States.¹³⁰ The UNSC followed the above-mentioned resolution by a second Presidential statement on March 21, 2012, in which the Council welcomed and supported the GA and LAS joint efforts to find a peaceful solution to the crisis in Syria.¹³¹

The Security Council welcomes the appointment of Joint Special Envoy for the United Nations and the League of Arab States, Kofi Annan, following the General Assembly resolution A/RES/66/253 of 16 February 2012 and relevant resolutions of the League of Arab States.¹³²

¹²⁹ Amnesty International, UN Security Council Syria statement completely inadequate, media release, August 4, 2011, accessed Jan 18, 2014, <http://www.amnesty.org/en/news-and-updates/un-security-council-syria-statement-%E2%80%98completely-inadequate%E2%80%99-2011-08-04>

¹³⁰ United Nations General Assembly resolution A/RES/66/253 A, New York, February 16, 2012

¹³¹ United Nations Security Council Presidential statement S/PRST/ 2012/6, of March 21, 2012, p1

¹³² Ibid

Mr. Annan traveled to Syria on March 10, 2012, and upon his meeting with Syrian President Bashar Al Assad the same day he presented a six-point proposal to end the ongoing civil conflict. The Syrian government accepted the proposal by March 27, 2012.¹³³ The UNSC members agreed on the Envoy's suggested plan and annexed it to the UNSC's resolution 2042 of April 14, 2012. Seven days later the UNSC also adopted another resolution 2043 (2012) that created the United Nations Supervision Mission in Syria, under military command and 300 unarmed observers, to monitor the implementation of the Special Envoy's proposal.¹³⁴ The six-point proposal was:

(1) commit to work with the Envoy in an inclusive Syrian-led political process to address the legitimate aspirations and concerns of the Syrian people, and, to this end, commit to appoint an empowered interlocutor when invited to do so by the Envoy;

(2) commit to stop the fighting and achieve urgently an effective United Nations supervised cessation of armed violence in all its forms by all parties to protect civilians and stabilize the country;

To this end, the Syrian government should immediately cease troop movements towards, and end the use of heavy weapons in, population centres, and begin pullback of military concentrations in and around population centres;

As these actions are being taken on the ground, the Syrian government should work with the Envoy to bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism.

Similar commitments would be sought by the Envoy from the opposition and all relevant elements to stop the fighting and work with him to bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism;

¹³³ Hamilton, Douglas, "*Text of Annan's peace plan for Syria*", Reuters.com, April 4, 2012, accessed on Jan 20, 2014, <http://www.reuters.com/article/2012/04/04/us-syria-ceasefire-idUSBRE8330HJ20120404>

¹³⁴ United Nations Security Council resolution S/RES/2043 (2012), New York, April 21, 2012, p2

(3) ensure timely provision of humanitarian assistance to all areas affected by the fighting, and to this end, as immediate steps, to accept and implement a daily two hour humanitarian pause and to coordinate exact time and modalities of the daily pause through an efficient mechanism, including at local level;

(4) intensify the pace and scale of release of arbitrarily detained persons, including especially vulnerable categories of persons, and persons involved in peaceful political activities, provide without delay through appropriate channels a list of all places in which such persons are being detained, immediately begin organizing access to such locations and through appropriate channels respond promptly to all written requests for information, access or release regarding such persons;

(5) ensure freedom of movement throughout the country for journalists and a non-discriminatory visa policy for them;

(6) respect freedom of association and the right to demonstrate peacefully as legally guaranteed.

The ceasefire took place on April 12, 2012, but was not respected afterward by either side, as stated later by the UN Under-Secretary-General for Peacekeeping Operations.¹³⁵ On June 4, 2012, the Free Syrian Army declared that they were no longer going to observe a ceasefire. This came after the Houla massacre on May 25, 2012, when 108 people were killed mostly in house-to-house executions, by a pro-regime militia, and the UNSC blamed the Syrian government.¹³⁶

The Western countries, as a response to the regime-committed massacre in the Syrian village of Houla and to put diplomatic pressure on the Syrian regime to abide by the UN ceasefire, adopted diplomatic expulsion measurements, which began with the Government of Australia on May 29, 2012. Australia decided on the expulsion of two

¹³⁵ AP, 'UN: Both sides in Syria violating the truce', CBS news, May 1, 2012, accessed on Jan20, 2014, http://www.cbsnews.com/8301-202_162-57425707/un-both-sides-in-syria-are-violating-the-truce/

¹³⁶ Marrouch, Rima, McDonnell, Patrick, 'Syria's President Bashar Assad denies role in massacre', *Lose Anglos Times*, June 4, 2012, accessed on Jan 20, 2014, <http://articles.latimes.com/2012/jun/04/world/la-fg-syria-assad-20120604>

senior Syrian diplomats from Canberra, and similar steps were taken by the U.S., U.K. and other European countries.¹³⁷

On July 19, 2012, Russia and China vetoed a UNSC draft resolution that would impose economic sanctions on the Syrian regime for not complying with Mr. Annan's six-point plan.¹³⁸ This was also connected to President Al Assad's speech when he addressed the Syrian parliament justifying his regime's brutal crackdown on protestors and preparing Syrians for more to come.¹³⁹

Fear that the UNSMIS mission and the six-point plan would fail, Mr. Annan, as his last attempt to make his plan work, formed a UN backed 'Action Group on Syria'. This group included the five permanent members of the Security Council, Turkey, Iraq (as the chair of the LAS), Kuwait (as the chair of the foreign ministerial committee of the LAS), and Qatar (as the chair of the follow up committee of the LAS). The main purpose of the Group was to hold a multilateral conference among the stakeholders to agree on guidelines and principles on a Syrian-led political transition that could represent most of the Syrian people's desire for change.¹⁴⁰ Russia and the United States argued over the scope of the group and the transition process. The U.S. wanted to have a meeting without inviting Iran, because the U.S. and other Western states believed that Iran would only

¹³⁷ Harris, Marty, "*International Response to the Syrian uprising: March 2011-June 2012*", Parliament of Australia, July 13, 2012, accessed on Jan 13, 2014,

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SyrianUprising?print=1#_ftn31 p6

¹³⁸ Gladstone, Rick, '*Friction at the U.N. as Russia and China Veto Another Resolution on Syria Sanctions*', NYTimes, July 19, 2012, accessed on Jan 22, 2014, <http://www.nytimes.com/2012/07/20/world/middleeast/russia-and-china-veto-un-sanctions-against-syria.html>

¹³⁹ Marrouch, Rima, McDonnell, Patrick, '*Syria's President Bashar Assad denies role in massacre*', Lose Anglos Times, June 4, 2012, accessed on Jan 20, 2014, <http://articles.latimes.com/2012/jun/04/world/la-fg-syria-assad-20120604>

¹⁴⁰ Harris, Marty, "*International Response to the Syrian uprising: March 2011-June 2012*", Parliament of Australia, July 13, 2012, accessed on Jan 13, 2014, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SyrianUprising?print=1#_ftn31 p6

participate in prolonging Assad's power as long as possible. The U.S. also wanted a transition with no role for Assad in it, and to bring regime change as soon as possible. Russia wanted to have Iran in the meeting and did not have a clear view about how the transition process should look like.¹⁴¹

On June 30, 2012, without the participation of Iran, the group met in Geneva and at the end of the meeting an agreed communiqué was released that was later known as the Geneva communiqué, which called for all parties to the conflict to immediately re-commit to ceasefire and implement the six-point plan without waiting for others to do so. It also called on the Syrian government for the immediate access of humanitarian aid and personnel to the affected areas. The most important point of that communiqué was paragraph 4 that reads:

To secure these common objectives, the Action Group members (i) identified steps and measures by the parties to secure full implementation of the six-point plan and Security Council resolutions 2042 and 2043, including an immediate cessation of violence in all its forms; (ii) agreed on guidelines and principles for a political transition that meets the legitimate aspirations of the Syrian people; and (iii) agreed on actions they would take to implement the above in support of the Joint Special Envoy's efforts to facilitate a Syrian-led political process. They are convinced that this can encourage and support progress on the ground and will help to facilitate and support a Syrian-led transition.¹⁴²

Point ii of the above paragraph stated agreed guidelines and principles for a political transaction process. This transition should produce a governing body with full executive power, and it may include members from the current government, opposition

¹⁴¹ Tabler, Andrew J, 'Anna's Syria Action Group A hopeful Sign', The Washington Institute, June 27, 2012, accessed on Jan 22, 2014, <http://www.washingtoninstitute.org/policy-analysis/view/annans-syria-action-group-a-hopeful-sign>

¹⁴² 'Action Group for Syria Final Communiqué', UN.org, June 30, 2012, accessed on Jan 23, 2014, <http://www.un.org/News/dh/infocus/Syria/FinalCommuniqueActionGroupforSyria.pdf>

and other groups, and shall be formed on the basis of mutual consent.¹⁴³ The U.S. viewed this process to lead to a regime change and to end Assad's era. The Russian insisted that there was nothing in the communiqué that referred to any regime change or that the transition process should be without the participation of the current regime. It is also notable that paragraph 7-12 came to support and ensure the essential role of the Action Group members in the process, which means that the P5 still had to agree among each other and with the Syrians from the regime and opposition on every step down the road.¹⁴⁴

On August 2, 2012, Mr. Annan announced his resignation as a Special Envoy after months of refusing to comply with his peace plan by both sides in Syria. Before that the team of observers also suspended their missions for security concerns in June 2012.¹⁴⁵ Mr. Annan blamed both sides for not being willing to compromise, he also blamed the five permanent members of the Security Council for letting their partial interest in taking sides in Syria's conflict from reaching a peaceful solution to the crisis.¹⁴⁶ He said, "As an envoy, I can't want peace more than the protagonists, more than the Security Council."¹⁴⁷

The UN Secretary-General, along with the Secretary-General of the LAS, announced on August 17, 2012 the appointment of Mr. Lakhdar Brahimi as Mr. Annan's

¹⁴³ Ibid p3

¹⁴⁴ Ibid p5

¹⁴⁵ Blair, David, 'Kofi Annan resigns as Syria envoy' The Telegraph, August 2, 2012, accessed on Jan 20, 2014, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9447274/Kofi-Annan-resigns-as-Syria-envoy.html>

¹⁴⁶ Blair, David, 'Kofi Anna's time as envoy for Syria: a story of failure' The Telegraph, August 2, 2012, accessed on Jan 20, 2014, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9448022/Kofi-Annans-time-as-envoy-for-Syria-a-story-of-failure.html>

¹⁴⁷ Ibid

successor for the post of Arab League-United Nations Special Envoy for Syria.¹⁴⁸ It was said that the international community and the Security Council along with other stakeholders are unified to end suffering in Syria, and they all promote peaceful resolution to the conflict there.¹⁴⁹ However, facts on the ground prove that the UNSC members are to blame being disunited on how to end the long suffering of the Syrian people.

Mr. Brahimi started his mission right a way by visiting Cairo, Damascus and other key capitals, and met with the opposition leaders to discuss the best way to resolve the crisis in Syria. He reported back to the UNSG and UNSC in an effort to identify the best choice approach that could peacefully solve the crisis in Syria. His mission took the Geneva communiqué of June 30, 2012, as the base for any forthcoming negotiated peace deal, which was agreed on by all parties to the conflict including the UNSC P5. Brahimi spent most of 2013 trying to negotiate an agreement among key actors to meet again in Geneva on the basis mentioned above, and that is a long time during which the humanitarian situation continues to deteriorate dramatically. One third of the Syrian people are in urgent need of humanitarian assistance. By September 19, 2013, there were about five million internally displaced Syrians and most of them were unable or unwilling to leave the country. Another two million left the country to neighboring Turkey, Jordan, Lebanon, Iraq, and Egypt.¹⁵⁰

¹⁴⁸ 'UN Secretary General Announces Appointment of Lakhdar Brahimi as Joint Arab League-United Nations Special Representative for Syria', United Nations news and media division, New York, Aug 17, 2012, accessed on Jan 22, 2014, <http://www.un.org/News/Press/docs/2012/sgsm14471.doc.htm>

¹⁴⁹ Ibid

¹⁵⁰ 'Examining the Syrian Refugee Crisis', Hearing before the subcommittee on the middle east and north Africa of the Committee on Foreign Affairs, House of Representatives, September 19, 2013, U.S. Government Printing Office, Washington D.C., Serial No. 113-66, p1-2

That humanitarian crisis was a result of both, the government and the opposition's mistreatment, and failure to follow the rules of engagement according to relative international treaties and conventions. On the opposition's side, the picture was even unclear than ever before. There are as many as 1200 fighting groups that are not unified under one command, and working towards their own agenda, which makes it more difficult later for Mr. Brahimi to bring them to the negotiating table as one unified group.¹⁵¹ Even those who were unified abroad in Turkey or Syria did not really have any real control over the armed fighters inside Syria.¹⁵²

On the regime's side, this was an advantage for them on the ground since this blurred relation among the opposition themselves gives the regime the time needed to push its military forces harder to regain the territories that were lost earlier in the uprising. The regime was very brutal on civilians. The regime also politically exploited these differences between the opposition, by stating to the international community that the regime is fighting terrorism not the political opposition as being pictured. Of course, Russia, China and Iran support that approach. The HRC in Geneva along with other human rights organizations and activists describe the crisis in Syria as one of the world's greatest in recent history.¹⁵³

¹⁵¹ Dr. Al Jaafary, Bashar, Permanent Representative of Syrian Arab Republic to the UN '*Geneva and the Game of the Nations TV Show*', Al Mayadeen Arabic News Channel, Feb 12, 2014, accessed on Feb 13 2104, http://www.youtube.com/watch?v=wV3ro-t6_9k&feature=c4-overview-vl&list=PLwSdSI6vdrsUIQqCDVi329vTmaHwxqzSz

¹⁵² Ibid

¹⁵³ Report of the UN High Commissioner for Refugees '*2014 Syria Regional Response Plane: Strategic Overview*', UNHCR Office, Dec 16, 2013, accessed on Jan 25, 2014, <http://www.unhcr.org/syriarrp6/> p6

The use of Chemical Weapons in the Syrian conflict

On August 21, 2013, rockets with chemical warheads attacked the Damascus suburb of Ghouta. Unlike other alleged chemical attacks, this was the first documented and certified chemical attack, which took place in Syria. All states concerned with the civil conflict in Syria condemned the attack, the U.S. President in particular. Other Western allies were put to the test by this attack, as they stated earlier during the conflict that using chemical weapons by the Syrian regime would be a red line.

As mentioned above, there were about 14 occasions of alleged chemical weapons used during 2012. The Syrian regime formally requested from the UNSG, in March 2013, to investigate the possible use of chemical weapons in Syria.¹⁵⁴ The UNSG responded to the Syrian request by launching an independent investigation mission to look into the matter, as it is within his mandate to do so, according to relative General Assembly and Security Council resolutions if a member state brings such subject to his attention. A team of experts was formed and headed by Professor. Åke Sellström of Sweden, who previously served as a Chief Inspector of the United Nations Special Commission (UNSCOM) to disarm Iraq in 1991.¹⁵⁵

The Syrian government did not agree on the scope and the mandate of the mission appointed by the UNSG, and denied their entry to Syria until July 31, 2013 when the Syrian regime reached an agreement with the UN and agreed to allow the fact-finding

¹⁵⁴ UN chief announces independent probe into allegations of chemical attack in Syria, UN News Center, March 21, 2013, accessed on Jan 24, 2014, <http://www.un.org/apps/news/printnewsAr.asp?nid=44450>

¹⁵⁵ *Secretary-General appoints head of Fact-Finding mission on alleged chemical weapons use in Syria*, UN department of public information, March 26, 2013, accessed on Jan 24, 2014. <http://www.un.org/News/Press/docs/2013/sga1397.doc.htm>

mission into Syria.¹⁵⁶ The inspectors arrived in Syria on August 18, 2013, just a couple of days before the major chemical attack of August 21, 2013.¹⁵⁷ As mentioned above, the mission was there to conduct an investigation into the previous alleged use of chemical weapons in 2012. When the Ghouta attack happened, the UNSG instructed them to redirect their investigation mission to this particular attack.¹⁵⁸

A ceasefire window of five hours was agreed between both conflicting sides to allow the mission to conduct its investigation, which it did from August 26-29.¹⁵⁹ On Sept 16, 2013, the mission submitted its report to the Secretary-General and the Security Council. The mission concluded that chemical weapons were used in the area investigated on a large scale and caused death among the majority civilians. The report says:

27. On the basis of the evidence obtained during our investigation of the Ghouta incident, the conclusion is that, on 21 August 2013, chemical weapons have been used in the ongoing conflict between the parties in the Syrian Arab Republic, also against civilians, including children, on a relatively large scale.

*28. In particular, the environmental, chemical and medical samples we have collected provide clear and convincing evidence that surface-to-surface rockets containing the nerve agent Sarin were used in Ein Tarma, Moadamiyah and Zamalka in the Ghouta area of Damascus.*¹⁶⁰

¹⁵⁶ Secretary-General Notes to Correspondents remarks, Note to Correspondents on Syria, Secretary-General Ban Ki-moon's spokesperson, New York, July 31, 2013, accessed on Jan 24, 2014, <http://www.un.org/sg/offthecuff/index.asp?nid=2908>

¹⁵⁷ Secretary-General Notes to Correspondents remarks, Note to Correspondents on Syria, Secretary-General Ban Ki-moon's spokesperson, New York, July 31, 2013, accessed on Jan 24, 2014, <http://www.un.org/sg/offthecuff/index.asp?nid=2932>

¹⁵⁸ Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013, A/67/997-S/2013/553, New York, September 16, 2013, accessed on Jan 24, 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/997 p6

¹⁵⁹ Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013, A/67/997-S/2013/553, New York, September 16, 2013, accessed on Jan 24, 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/997 p6

¹⁶⁰ Ibid p8

The mission report did not mention who was responsible for the use of chemical weapons in Ghouta, because it was not mandated to do so. However, intelligence agencies of the P3 and Human Rights Watch had assessed “with high confidence” the Syrian regime carried out the chemical attack.¹⁶¹ The Syrian regime, along with Russia, rejected those assessments and challenged the Western powers to present their incontrovertible proof.¹⁶² The P3 were put into a critical situation after the Ghouta chemical attack, as they, especially the U.S., warned many times that using chemical weapons by the Syrian regime in the conflict would be crossing a red line. What would be the right response by Russia and China, whom strongly back Assad regime?

Many R2P observers expected that Western powers would intervene militarily in Syria after the chemical attack, even if that intervention was not authorized by a Security Council resolution, like they previously had done in Kosovo in 1999. Although the situation was more difficult than it looked. For the U.K., the public did not support any sort of intervention of their military, especially in the Islamic world, even if the government was an advocate for intervention. The U.K. Prime Minister lost the vote when parliament rejected his proposal to intervene in Syria, and made it more difficult for other Western Allies like France and the U.S. to take such a decision.¹⁶³

The U.S. President described a limited military intervention option that would not include boots on the ground in Syria. The U.S. is able to take that action alone without

¹⁶¹ ‘*Syria chemical attack: What we know*’, BBC News report, September 24, 2013, accessed on Jan 24, 2014, <http://www.bbc.co.uk/news/world-middle-east-23927399>

¹⁶² Ibid

¹⁶³ Watt, Nicolas & Hopkins, Nick, ‘*Cameron forced to rule out British attack on Syria after MPs reject motion*’, The Guardian, August 29, 2013, accessed on Jan 24, 2014, <http://www.theguardian.com/world/2013/aug/29/cameron-british-attack-syria-mps>

waiting for Britain to join in, but was also willing to take a collaborative action.¹⁶⁴ France showed support for any Western military action in Syria.¹⁶⁵ The U.S. administration was working under a compressed timeline, as described by the White House, and the U.S. might seek congressional approval before taking any military action against Syria.¹⁶⁶ Putting all the choices on the table, the P3 were afraid of giving the wrong signal of impunity to the Syrian regime if they failed to react.¹⁶⁷

When the G20 held their summit on Sept 5, 2013, in Russia, it was planned to discuss economic problems, but its meetings largely focused on the Syrian crisis. Russia threatened to provide the Syrian regime with S-300 air defense, if the U.S. chose to intervene in Syria unilaterally and without UNSC authorization.¹⁶⁸ The British Prime Minister, after parliament voted against intervention in Syria, shifted his policy to concentrate on disarming the Syrian regime from its chemical weapons capabilities and urgently open humanitarian aid corridors to the country.¹⁶⁹

On September 9, 2013, Russia's Foreign Minister Sergey Lavrov called on Syria, in an unexpected diplomatic move, to put its chemical arsenal under international control to be destroyed later, his statement was:

We are calling on the Syrian authorities not only to agree on putting chemical weapons storage facilities under international control, but also for its further destruction and then joining the Organization for the

¹⁶⁴ Ibid

¹⁶⁵ Pleitgen, Fred, Levs, Josh, Carter, Chelsea, 'Obama: U.S. concludes Syria carried out chemical weapons attacks', CNN.com, Aug 28, 2013, accessed on Jan 24, 2014, <http://www.cnn.com/2013/08/28/world/meast/syria-civil-war/>

¹⁶⁶ Smith, Matt, Carter, Chelsea, pleitgen Frederik 'Official: U.S. may take unilateral action against Syria', CNN.com, August 29, 2013, accessed on Jan 24, 2014, <http://www.cnn.com/2013/08/29/world/europe/syria-civil-war/>

¹⁶⁷ Ibid

¹⁶⁸ Wintour, Patrick, Robert, Dan 'Barack Obama and Vladimir Putin set for collision over Syria at the G20 summit', the guardian.com, Sep 4, 2013, accessed on Jan 24, 2014, <http://www.theguardian.com/world/2013/sep/04/obama-putin-syria-g20-summit>

¹⁶⁹ Ibid

Prohibition of Chemical Weapons.¹⁷⁰

The Obama administration welcomed the Russian initiative with caution. It also emphasized that if the Syrian regime accepted and implemented the Russian initiative, it would avoid a U.S. strike as retaliation to the regime's alleged use of chemical weapons of August 21, 2013.¹⁷¹ On the same day, the Syrian Foreign Minister Mr. Walid al Muallem welcomed Russia's initiative when he met his Russian counterpart in Moscow, he said: "*The Syrian Arab Republic welcomes Russia's initiative, based on the Syrian's government care about the lives of our people and security of our country.*"¹⁷² The British Prime Minister also welcomed the initiative but warned that it should not be used as a "distraction tactic."¹⁷³ It seems that the chemical attack put all great powers at the G20 to a test; on one hand there was the P3 pro-military intervention in Syrian crisis, and on the other hand was Russia and China standing strongly with the Assad regime and against any idea of intervention. From the statement made above, it seems that Russia was faster in ending any plan for intervention from the P3.

On Sep 14, 2013, Syria made accession to the Convention of the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction. This step was welcomed by the UNSG, who on the same day welcomed the agreement reached between Russia and the U.S. on the framework of safeguarding and

¹⁷⁰ Syria welcomes Russia's offer to put its chemical weapons under international control, rt.com news, Sep 9, 2013, accessed on Jan 24, 2014, <http://rt.com/news/syria-chemical-weapons-handover-619/>

¹⁷¹ Borger, Julian, Wintour, Patrick, 'Russia calls on Syria to hand over chemical weapons', The Guardian, Sep 9, 2013, accessed on Jan 24, 2014, <http://www.theguardian.com/world/2013/sep/09/russia-syria-hand-over-chemical-weapons>

¹⁷² Syria welcomes Russia's offer to put its chemical weapons under international control, rt.com news, Sep 9, 2013, accessed on Jan 24, 2014, <http://rt.com/news/syria-chemical-weapons-handover-619/>

¹⁷³ Ibid

the destruction of Syria's chemical weapons.¹⁷⁴ The agreement came after a week of discussions between the U.S. and Russian foreign ministers, along with Mr. Brahimi in attendance with them, which aimed to secure another track of bringing the conflicting parties in Syria to sit at the negotiation table in Geneva, which was known as Geneva II.

It seems that there were two tracks to the chemical weapons crisis from the beginning, especially during the G20 and Geneva talks in September 2013. While major powers were working on the chemical weapons problem, Mr. Brahimi was trying to use that to achieve a peaceful political solution approach to the crisis and he managed to achieve it.¹⁷⁵ In explaining Russia's move to put Syria's chemical weapons under international control and destruction, observers noted that this might have been done to avoid a U.S strike on Syria. But others said that even for a close ally like Russia, Syria's use of chemical weapons in the conflict was not acceptable, so they made that proposal as a 'no' signal to the Syrian regime for any future use of chemical weapons.¹⁷⁶

On Sep 27, 2013, the Executive Council (EC) of the Organization on the Prohibition of Chemical Weapons (OPCW), made a decision on the destruction of Syria's chemical weapons.¹⁷⁷ On the same date the UNSC adopted resolution 2118 (2013) regarding Syria's chemical weapons.¹⁷⁸ The resolution welcomed the OPCW Executive Council's decision, and condemned the use of chemical weapons in the attack of August

¹⁷⁴ Secretary-General receives Syria's formal accession to treaty banning chemical weapons, UN.org, Sep 14, 2013, accessed on Jan 14, 2014, <http://www.un.org/apps/news/story.asp?NewsID=45852#.UwwAX3nmeMM>

¹⁷⁵ UN-Arab League joint envoy says US-Russia talks on Syria 'extremely important', UN.org, Sep 13, 2013, accessed on Jan 24, 2014, <http://www.un.org/apps/news/story.asp?NewsID=45842&Cr=syria&Cr1=#.UwwBd3nmeMM>

¹⁷⁶ Katz, Mark, 'The Lavrov Proposal: What Are Moscow's Motives?' LobeLog.com, Sep 10, 2013, accessed on Jan 24, 2014, <http://www.lobelog.com/the-lavrov-proposal-what-are-moscows-motives/>

¹⁷⁷ Distraction of Syrian Chemical Weapons, decision by the Executive Council of the Organization for the Prohibition of Chemical Weapons, Sep 27, 2013, accessed on Jan 24 2014, http://www.opcw.org/index.php?eID=dam_frontend_push&docID=16747

¹⁷⁸ United Nations Security Council resolution S/res/2118 (2013), New York, Sep 27, 2013

21, 2013, in Damascus. It also stated that individuals who used this weapon should be held accountable, although it avoided referring who was responsible for the attack.¹⁷⁹ It also called for parties to the conflict in Syria to negotiate a political solution to the crisis through an international conference in Geneva and on the basis of the Geneva communiqué of June 2012.¹⁸⁰

The resolution this time included a threat of imposing measures under chapter VII of the UN Charter in case of non-compliance, and gave the Syrian government a time frame to fully implement the resolution with its annexed OPCW Executive Council decision. It also held the Syrian government accountable for the safety and security of UN and OPCW personnel who will execute the chemical weapons distraction plan.¹⁸¹

Geneva II

After the adoption of UNSC resolution 2118 (2013), Mr. Brahimi kept pushing harder to create the conditions for the Geneva II conference as soon as possible. He first went through many trilateral meetings with representatives of Russia and the U.S., then with other UNSC P5 members and neighboring countries of Syria. It seems that the trilateral meetings were the most important at the end of November 2013, where it was decided to convene the conference in Geneva on Jan 22, 2014.¹⁸²

The UNSG urged both sides to seize this opportunity to bring peace to Syria. The Syrian regime decided to participate with its Foreign Minister, his deputy, President

¹⁷⁹ Ibid p4

¹⁸⁰ Ibid p4

¹⁸¹ Ibid p3

¹⁸² Press statement by the Joint Special Representative for Syria Lakhdar Brahimi, Nov 25, 2013, Geneva, accessed on Jan 24, 2014, <http://www.un.org/apps/news/infocus/Syria/press.asp?NewsID=1275&SID=45>

Assad's advisor, and Syria's permanent representative to the UN. The opposition, represented by the Syrian National Coalition (SNC), had some differences on whether to participate or not, but at the end they voted in favor of participating in the conference. However, they put some conditions on their participation, which involved the release of some political prisoners. The regime replied with signs of good will and agreed on a prisoner swap before going to Geneva.¹⁸³

The first time ever, after nearly three years of armed conflict, both conflicting sides met face to face in Switzerland. About 40 countries and organizations participated in the conference; however Iran opted out at the last minute, after the UNSG withdrew his invitation to Iran, explaining his action that he was disappointed with Iran's public statements, as his spokesperson said, "The Secretary-General is deeply disappointed by Iranian public statements today that are not at all consistent with that stated commitment."¹⁸⁴

The international conference on Syria was held as planned on Jan 22, 2014, and both sides came along with their allies to negotiate a peaceful solution to the conflict and end the three-year war. However, they came to Geneva II without any reduction in military combat from either sides, it was reported that the government forces even escalated their military operations on the eve of the conference.¹⁸⁵ Moreover, both sides were still receiving military support from their allies, the Syrian regime from Russia and

¹⁸³ Atassi, Basma, 'Explaining the Geneva II peace talks on Syria', Aljazeera News, Jan 19, 2014, accessed on Jan 25, 2014, <http://www.aljazeera.com/indepth/features/2014/01/explaining-geneva-ii-peace-talks-syria-2014118142853937726.html>

¹⁸⁴ 'Ban withdrew Iran's invitation to Syria talks, saying its statements contradict assurances', UN News Service,

¹⁸⁵ Gordon Michael, Sanger, Dived, and Schmitt Eric, 'U.S. Scolds Russia as It Weighs Options on Syrian War', NYTime.com, Feb 17, 2014, accessed on Feb 18, 2014, <http://www.nytimes.com/2014/02/18/world/middleeast/russia-is-scolded-as-us-weighs-syria-options.html? r=0>

Iran, and the opposition from the Gulf States and other Western powers.¹⁸⁶ The key international players, namely Russia and the U.S., have two different interpretations of the Geneva communiqué, which should be the base stone for Geneva II talks. Russia supports the negotiation but would not accept the U.S. interpretation that Assad has no role in any future political settlement.¹⁸⁷

It is evident that Russia and China, during this particular crisis, had balanced all of the P3 at the Security Council and their allies. A close look at the language used in the UN investigation mission's report, the OPCW Executive Council decision, and the UNSC resolution 2118 (2013), will show clearly that all of it avoided any direct accusations of who was responsible for using the chemical weapons in Syria and only condemned in general the use of chemical weapons in the conflict and referred that those who used it should be held responsible.

The UNSG and his Special Envoy for Syria both stated that Geneva II would be difficult and there was no easy breakthrough to be expected. Many major powers participating in the conference stated the same.¹⁸⁸ The start of the talks was not very promising as both sides selected two different items as a priority to start the negotiations. The Syrian opposition wanted to start with the transitional authority with no role for Assad. While the regime's delegation rejected that notion and wanted to start with fighting terrorism as the main agenda item. It was known that the regime labeled all

¹⁸⁶ Gordon Michael, Sanger, Dived, and Schmitt Eric, 'U.S. Scolds Russia as It Weighs Options on Syrian War', NYTime.com, Feb 17, 2014, accessed on Feb 18, 2014, http://www.nytimes.com/2014/02/18/world/middleeast/russia-is-scolded-as-us-weighs-syria-options.html?_r=0

¹⁸⁷ Meichtry, Stacy, 'Russian Support of Assad Upend Peace Talks', WSJ.com, Feb 13, 2014, Accessed on Feb 18, 2014, <http://online.wsj.com/news/articles/SB10001424052702303704304579381111673397206>

¹⁸⁸ Pearson, Michael, Labott, Elise, Abedine, Saad, 'Syria defiant at conference: Kerry rules out al-Assad', CNN.com, Jan 22, 2014, accessed on Feb 14, 2014, <http://www.cnn.com/2014/01/22/world/europe/syria-geneva-talks/>

opposition rebels as terrorists.

After two rounds of negotiations in Geneva, the UN-Arab League Special Envoy for Syria apologized to the Syrian people for not making progress in the peace talks.¹⁸⁹ Meanwhile, the Syrian regime forces kept escalating violence using many brutal tactics like seizing villages and major cities, consequently making the population (mainly civilian) starve to death, denying access for humanitarian aid to about 2.5 million who are live in inaccessible areas.¹⁹⁰ The UNSC remained divided on Syria, which the UNSG described as a “proxy war, with regional and international players arming one side or the other.”¹⁹¹ Friction increased within the opposition bloc due to the emergence of radical Islamic groups, which began to threaten other moderate rebel groups and fight with them over control on many occasions, which is becoming a weakening element to their position in Geneva II.¹⁹²

As for the Responsibility to Protect, it is now hard to say whether the norm has really advanced since the Libya crisis. Also, from looking at the huge toll of lives lost in Syria, and the staggering numbers of refugees, the international community has yet to keep its vow of “never again” as mass atrocities are still being committed in the 21st century, and in many parts of the world. The national interest of states are still the main motive that governs international relations, and has not yet become the collective interest, as Mr. Annan called for, as a starting point to end mass atrocities once and for all.

¹⁸⁹ Holmes, Oliver, Miles, Tom, ‘*Mediator Apologize to Syrians for lack of peace progress*’, Reuters.com, Feb 15, 2014, accessed on Feb 16, 2014, <http://www.reuters.com/article/2014/02/15/us-syria-crisis-brahimi-idUSBREA1E0G220140215>

¹⁹⁰ ‘*Population at Risk*’, Global Center for the Responsibility to Protect: Syria, Feb 14, 2014, accessed on Feb 14, 2014, <http://www.globalr2p.org/regions/syria> p1

¹⁹¹ Ibid p2

¹⁹² Ibid

The third pillar of the report of the UNSG on R2P and the “timely and decisive response” are obviously not in place for the crisis in Syria. The UNSG’s fifth report on the R2P gave a strong message describing the crisis in Syria as a major failure to the international community and would bear a heavy burden for years to come.¹⁹³ At the end it is hard to predict or even analyze what would be the role of R2P in the Syrian crisis, or if there is any chance for its use, or even if the civil war will ever reach a peaceful settlement. Even if it reached any solution, it would take a long time to be implemented and it is already too little too late.

Friends of Syria Group

Following the veto of October 4th, 2011 by Russia and China on the draft resolution at the UNSC that would condemn the Syrian government and call for immediate end of human rights abuse,¹⁹⁴ the P3 of the UNSC were frustrated. However, they were looking for an exit strategy outside the constraints of the UNSC to help the Syrians. As I mentioned in the literature review, Alex Bellamy referred to the mutual consensus developed among liberal states to legitimize intervention for humanitarian crises and how that enables them to act without a Security Council mandate (i.e. Kosovo 1999).¹⁹⁵ However, the P3 wanted to avoid direct military intervention in Syria and help the Syrians indirectly, so they thought of forming a contact group to provide support for the Syrian opposition efforts to reach their goal.

¹⁹³ Report of the UN Secretary General on “ *Responsibility to Protect: State responsibility and prevention*”, A/67/929-S/2013/399, United Nations, New York, July 2013. p14

¹⁹⁴ UN News Center ‘*Russia and China veto draft Security Council resolution on Syria*’, UN website, Oct 4, 2011, accessed on Jan 22, 2014, <http://www.un.org/apps/news/story.asp/www.iaea.org/story.asp?NewsID=39935&Cr=syria&Cr1=#>

¹⁹⁵ Alex Bellamy, *Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq*, Ethics and International Affairs, Volume 19, Issue 2, pages 31–54, September 2005 p3

A few months later, France and the U.S. formed a contact group, which was known later as the “Friends of Democratic Syria Group”, or the short term “Friends of Syria” which is basically a group of likeminded countries mostly Western and Gulf states, that work to support the Syrian people in ending their crisis after it reached a dead-end many times in the UNSC. The group includes about 82 countries that were reduced to 11, without any formal or international statute, and held 12 meeting as of Jan 12, 2014.¹⁹⁶

Through its meetings, most notably starting from its second meeting, the group recognized the Syrian National Council (SNC) as a legitimate representative of all Syrians, the right of the Syrian opposition to defend themselves, and agreed to support them financially and with basic equipment like generators, communications, search and rescue, and other civil administrative equipment, because they are already controlling large parts of Syria and they need to be able to run these areas.¹⁹⁷ There was no agreement within the group to arm the rebels. The group also tried to put pressure on the Syrian government to allow humanitarian aid access to help victims inside Syria.¹⁹⁸ As of this date, the conflict continues and Syrian civilians are suffering.

¹⁹⁶ Irish, John, Strobil, Warren, ‘*Friends of Syria group urges opposition to attend Geneva talks*’, Reuters, Paris, Jan 12, 2014, accessed on Jan 22, 2014, <http://www.reuters.com/article/2014/01/12/us-syria-france-idUSBREA0B0B520140112>

¹⁹⁷ Press Release, ‘*London 11’ Meeting on Syria*’, Foreign and Commonwealth Office, GOV.UK, Oct 22, 2013, accessed on Jan 22, 2014, <https://www.gov.uk/government/news/london-11-meeting-on-syria>

¹⁹⁸ Harris, Marty, ‘*International Response to the Syrian uprising: March 2011-June 2012*’, Parliament of Australia, July 13, 2012, accessed on Jan 13, 2014, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SyrianUprising?print=1#_ftn31 p6

Chapter V

The Case of Iraq

For a better understanding of the crisis in Iraq, it is noteworthy to start with a brief explanation of the chain of actions and circumstances that led to the invasion of the country in 2003. It first started with Iraq's invasion and annexation of Kuwait on August 2, 1990. This was the first act of aggression of its kind since the end of World War II in 1945, and such an event requested an immediate response from the United Nations Security Council (UNSC) as the main organ in the UN to collectively respond to threats to international peace and security. The UNSC adopted resolution 660 on August 2, 1990, this resolution condemned the invasion and states that the council was alarmed by the Iraqi invasion of Kuwait and considers it a breach of international peace and security.¹⁹⁹

Iraq did not comply with UNSC resolution 660(1990), which resulted in the adoption of a series of subsequent relevant resolutions that among many other things, imposed a commercial embargo, financial and asset freeze on Iraq.²⁰⁰ However, within two-month time frame after imposing the embargo, the Security Council decided that Iraq had not complied with resolution 660(1990), and on November 29, 1990, the UNSC adopted resolution 678(1990) of which the Council authorized all member states to “use all necessary means” to expel Iraq from Kuwait and restore international peace and

¹⁹⁹ UN Security Council Resolution 660(1990) ‘*The situation between Iraq and Kuwait*’, New York, United Nations Security Council, August 2, 1990, accessed on Feb 10, 2014, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement> p1

²⁰⁰ UN Security Council Resolution 661(1990), ‘*The situation between Iraq and Kuwait*’, New York, United Nations Security Council, August 6, 1990, accessed on Feb 10, 2014, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/11/IMG/NR057511.pdf?OpenElement>

security.²⁰¹

A coalition of international forces was formed and an authorized military operation was executed, which was able to push the Iraqi army out of Kuwait and bring Iraq to agree to a cease-fire and terms of peace that were set and drafted by the United Nations Security Council in resolution 687 of April 3, 1991.²⁰² Iraq also agreed under that resolution to give up and destroy all of its Weapons of Mass Destruction (WMD) and its means of delivery, and committed never to produce, purchase, or stockpile any such weapons. The United Nations Special Commission (UNSCOM) was formed by resolution 687(1991) and was mandated to be independent from the UN Secretariat and the UN budget.²⁰³

Since the adoption of resolution 687 of April 3, 1991, which was famously known as the “mother of all resolutions”, Iraq was under an unprecedented regime of economic sanctions, financial compensation, and on site inspections for the destruction of its WMDs and related facilities and materials.²⁰⁴ It also included verification and monitoring mechanisms to make sure Iraq was not to develop such capabilities in the future.²⁰⁵ All of this was drafted and authorized by the UNSC, and conducted under its direct supervision. Moreover, it was also the first time in UN history that an intergovernmental organization,

²⁰¹ UN Security Council resolution 678(1990), ‘*The situation between Iraq and Kuwait*’, New York, United Nations Security Council, November 29, 1990, accessed on Feb 10, 2014, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement>

²⁰² UN Security Council resolution 687(1991), ‘*The situation between Iraq and Kuwait*’, New York, United Nations Security Council, April 3, 1991, accessed on Feb 10, 2014, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/23/IMG/NR059623.pdf?OpenElement>

²⁰³ Ibid

²⁰⁴ Krasno, Jean E and Sutterlin, James S, ‘*The United Nations and Iraq: Defanging the viper*’, West Port, Praeger Publisher, 2003, p7

²⁰⁵ Ibid

such as UNSCOM, conducted such a mission over member state of the UN.²⁰⁶

When Iraq invaded Kuwait in August 1990, it took only a matter of hours until the international community, namely the UNSC, responded and considered the Iraqi action as “a breach of international peace and security as regards the Iraqi invasion of Kuwait.”²⁰⁷ Several resolutions were adopted under chapter VII of the UN Charter that authorized the use of military force to expel Iraq from Kuwait and to impose the most comprehensive sanctions regime that had ever been known before.

After Iraq was expelled from Kuwait in February 1991, resolution 687(1991), another milestone was adopted by the UNSC to disarm Iraq from its Weapons of Mass Distraction (WMD) and long-range missile capacities. UN Special Commission (UNSCOM) for the inspection and destruction of Iraqi WMDs was established for this purpose and conducted its works from 1991 until 1998. It was followed by another body called the Mentoring, Verification and Inspection Commission (UNMOVIC) that carried out its work until it was terminated in June 2007.²⁰⁸

With more than a decade of inspections, disarmament, compensation, and economic sanctions, Iraq had been disarmed and according to UN mission reports, was no longer was capable of being a threat to international peace and security. The sanctions, as stated many times by UNSC members, were targeting the Iraqi regime to bring it into compliance with international law. However, from personal experience, and scholarly

²⁰⁶ Krasno, Jean E and Sutterlin, James S, *The United Nations and Iraq: Defanging the viper*, West Port, Praeger Publisher, 2003, p42

²⁰⁷ UN Security Council resolution 660(1990), ‘*The situation between Iraq and Kuwait*’, United Nations Security Council, New York, Aug 2, 1990, accessed on Feb 18, 2014, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement>

²⁰⁸ The United Nations Monitoring, Verification and Inspection Commission, ‘*UNMOVIC: Basic Facts*’, UNMOVIC.org, accessed on Feb 10, 2014, <http://www.unmovic.org>

writings about the effect of the sanctions, it seems that the regime did not suffer from sanctions, but the Iraqi civilians were very much harmed by them.²⁰⁹

It is understandable, from a legal perspective, the implementation and application of international law in the case of Iraq's invasion of Kuwait. However, the UN took many unprecedented steps that expanded the UN mission. The UN Charter is very clear. Its first chapter and first paragraph read:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.²¹⁰

However, this does not answer why the UNSC did not act the same or at least condemn the invasion of Iraq in 2003, by a U.S.-led coalition when they invaded Iraq on the basis of false allegations and without any legal authority. This has occurred in many occasions in the past (i.e. Soviet invasion of Afghanistan in 1979).²¹¹ The condemnation of such an acts can be traced back to the International Military Tribunal of Nuremberg, Germany in Nov. 14-30, 1945, when Justice Jackson said:

while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by any other nations, including those which sit here now in judgment... This trial represents mankind's desperate effort to apply the discipline of the law to statesmen who have used their powers of state to attack the foundations of

²⁰⁹ Krasno, Jean E and Sutterlin, James S, *The United Nations and Iraq: Defanging the viper*, West Port, Praeger Publisher, 2003, p147

²¹⁰ United Nations charter *'The Purpose of the United Nations'*, Article I, para1, New York, United Nations press, 1981, p4

²¹¹ United Nations Security Council resolution 462, *'International Peace and Security'*, United Nations Security Council Documents, New York, Jan 9, 1980

the world's peace and to commit aggressions against the rights of their neighbors.²¹²

Since 1945, and from the very beginning of the United Nations itself, the act of aggression was rejected and perpetrators of such acts should be held accountable for their crimes including the victors of WWII.

This chapter will examine the application of the Responsibility to Protect in the case of the illegal U.S.-led invasion of Iraq in 2003. It will focus more precisely on the era of the U.S. occupation of Iraq during 2003-2004, and the responsibility of the occupying powers and the interim government of Iraq to protect the Iraqi people during and in the after math of that armed conflict according to relative Security Council resolutions, International Law, and International Humanitarian Law.

First, it is very important to set clear the facts about the invasion of Iraq in 2003. As some may think that this war was legal or authorized by the United Nations Security Council, it was not. It was an unlawful war and illegally waged for false and unconvincing reasons. That is why I intentionally quoted parts of the International Military Tribunal proceedings of Nuremberg, Germany (1945) in the introduction of this chapter, because I believe that the same recognized legal rules established back then should be applied to the 2003 invasion of Iraq.

More specifically, article six of the Nuremberg charter, refers to crimes against peace, of which high-ranking Nazi officers were accused of committing. The prosecutors of Nuremberg also emphasized clearly that these rules should apply now and in the future

²¹² Jackson, Justice 'Opening Statement for the Prosecution', second day, Wednesday, Nov 21, 1945, part 4, in the Trail of Major War Criminals before the International Military Tribunal, Volume II, Proceedings: 11/14/1945-11/30/1945, University of Missouri-Kansas City, School of Law, accessed on Jan 30, 2014, <http://law2.umkc.edu/faculty/projects/ftrials/nuremberg/jackson.html>

on all states. However, agreement on the proper definition of aggression is yet to be reached by the international community.

These international regulations were applied to the Iraqi invasion and annexation of Kuwait in 1990, and should have applied to the U.S.-led invasion of Iraq in 2003 equally. However, it was only applied to the invasion of Kuwait by Iraq when it was recognized as a breach of international peace and security.²¹³

In paragraph 2 of UNGA resolution 37(1982), it recognized the people's right under any form of alien domination, to seek self-determination, freedom and independence.²¹⁴ Although, the occupant authority in Iraq gives the controversial term of 'insurgents' to the resistant movements that developed during the occupation, for reasons concerning duties and rights under international humanitarian law of the occupying power to maintain law and order in the occupied territory through security measures. However, the Coalition Provisional Authority (CPA) in Iraq could not avoid many violations concerning The Hague Regulations of 1907, and the four Geneva conventions.²¹⁵

From the above-mentioned introduction, one can observe how the Iraq War of March 2003 is a different case from those of Libya and Syria explained above in both nature and scope. However, I argue that it has the same application of the responsibility

²¹³ UN Security Council resolution 660(1990), 'The situation between Iraq and Kuwait', United Nations Security Council, New York, Aug 2, 1990, accessed on Feb 18, 2014, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement>

²¹⁴ United Nations General Assembly resolution 37 (1982), 'Importance of the Universal realization of the right of the peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights', United Nations General Assembly, New York, Dec 3, 1982, A/RES/37/43, p2

²¹⁵ Watkin, Kenneth, 'Use of force during occupation: law enforcement and conduct of hostilities', International Review of the Red Cross, V94, No 885, spring 2012, accessed on Feb 12, 2014, doi: 10.1017/S1816383112000513, pp.276-315, p280

to protect, yet from a different perspective. The invasion of Iraq in 2003 was an act of aggression, in the least it can be classified as an unlawful war according to the Hague Regulations of 1907, the four Geneva conventions of 1949, and most importantly to the UN charter itself.

The United States and its allies unilaterally invaded and occupied a member state of the UN without the UN's consent, ousted the standing regime of Saddam Hussein, and created the Coalition Provisional Authority (CPA), which was the new military administration of occupied Iraq. "Operation Iraqi Freedom" was the name of the military campaign, and the 'legal justification' used for waging that war was to disarm Iraq from its alleged Weapons of Mass Destruction (WMDs), which later proved to be a totally false. When nothing was found a few years later, both the U.S. and U.K. used a humanitarian justification for their invasion of Iraq.

The U.S. administration advocated the war and regime change in Iraq as early as 1997, when U.S. Secretary of State Albright stated:

We do not agree with the nations who argue that if Iraq complies with its obligations concerning weapons of mass destruction, sanctions should be lifted ... Iraq must prove its peaceful intention ... the evidence is overwhelming that Saddam Hussein's intentions will never be peaceful.²¹⁶

This position of the U.S. was shared by the U.K as well, however the other three permanent members of the Security Council shared the view that the inspections had

²¹⁶ Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p27

completed the work and it was time to start the verification and monitoring phase. The called for easing the sanctions on Iraq due to public pressure and criticism that the UN sanctions were only increasing the Iraqi people's suffering due to economic, and social hardship, let alone the death toll among civilians, specifically children and infants, due to the shortages of medicine and other health sector services.

The root causes of the Iraq crisis can be traced back to the crisis between the Iraqi government and the UNSCOM team of inspectors, when the latter was denied further inspections in Iraq unless the sanctions were lifted. The Iraqi government insisted that it had complied with all Security Council resolutions concerning locating, finding and destroying its WMDs program, means of delivery, and all related subjects.²¹⁷ However, the Iraqi government reached a conclusion in late 1998, that no matter what level Iraq reached in complying with resolution 687(1991), the sanctions would never be lifted.²¹⁸ The reason is that the Iraqis were convinced that the U.S. and U.K. would not let a resolution pass in the Security Council that might lift or even lesser the sanctions on Iraq as long as Saddam Hussein stayed in his position as president of Iraq.²¹⁹

It is a fact that the Iraqi government had proven many times to be uncooperative with regard to its WMDs programs through the information it provided to UNSCOM and UNSC. However, it is also a fact that UNSCOM in Iraq carried out a successful disarmament, according to UNSCOM reports itself. The bluffing conducted by the Iraqi government was, to some point, justified, and unsurprising, because on the one hand the mission tasked to UNSCOM was first of a kind and a completely new experiment to the

²¹⁷ Krasno, Jean E and Sutterlin, James S, '*The United Nations and Iraq: Defanging the viper*', West Port, Praeger Publisher, 2003, 127

²¹⁸ Ibid

²¹⁹ Ibid, p 153

UN system, and was conducted over a defeated member state, which was obliged to pay most of the Commission's financial expenses.²²⁰ Moreover, the disarmament methods through the UN system might have carried one phase of disarmament at a time, however UNSCOM dealt with all Iraq's WMDs at once.²²¹

On the other hand, Iraq already had a history of an 8 years war with its neighbor Iran, where Iraq did use its WMDs as deterrence against the massive human waves strategy of the Iranian attacks at the time. Moreover, Iraq, from a regional balance of power point of view, must be concerned to not expose its weakness in the region. To be publicly and forcibly disarmed from any means to stand against or deter enemies that Iraq has in the region is not acceptable and cannot be accepted, given the fact that Israel is producing and stockpiling such weapons.²²²

UNSCOM left Iraq in 1998, and the division among the P5 of the Security Council later that year left the U.S. and U.K., acting unilaterally to launch a missile attack on Iraq, targeting the disputed sensitive places where UNSCOM had been denied access.²²³ UNSCOM then was ended and replaced in 1999 when the UNSC adopted resolution 1284 (1999) creating the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), this Commission replaced UNSCOM and gave the Iraqi authority the impression of moving forward to end this long episode of disarmament. However, Iraq kept refusing to grant access to UNMOVIC until Sept, 2002.

²²⁰ Krasno, Jean E and Sutterlin, James S, *The United Nations and Iraq: Defanging the viper*, West Port, Praeger Publisher, 2003, p26-27

²²¹ Fabri, Hélène Ruiz, *The UNSCOM Experience: Lessons from an Experiment*, European Journal of International Law, Vo. 13, No. 1 (2002), 154-159, p154 accessed on Feb 22, 2014, <http://www.ejil.org/article.php?article=460&issue=29>

²²² Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p97

²²³ Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p27

Officially, UNMOVIC entered Iraq on November 27, 2002, after the UNSC adopted resolution 1441 of Nov 8th, 2002, which demanded Iraq to allow with full and unconditional cooperation, access for the inspectors of UNMOVIC to conduct their tasks. Iraq shall report to the Council by December 2002. Resolution 1441, also stated that it would be Iraq's last chance to comply with Security Council resolutions relevant to its disarmament. Paragraph 2 of the above-mentioned resolution says:

Decides, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;²²⁴

On February 5, 2002, U.S. Secretary of State Colin Powell called for a Security Council meeting, at which, he briefed the Council members on the reasons behind the call for the meeting.²²⁵ Secretary Powell tried to convince the Council members that Iraq had not complied with disarmament obligations, and was still producing and possessing WMDs. With the use of multimedia tools, the U.S. claimed that it had enough evidence to prove that Iraq was not complying with the Council resolutions relevant to its disarmament.²²⁶

UNMOVIC worked in Iraq from Nov 27, 2002, until March 17, 2003, when the UNSG decided to withdraw the UNMOVIC team from Iraq for their safety as he learned

²²⁴ United Nations Security Council resolution 1441(2002), '*Situation between Iraq and Kuwait*', United Nations Security Council, New York, Nov 8, 2002, accessed on Feb 18, 2014, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1441\(2002\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1441(2002))

²²⁵ United Nations Security Council 4701 meeting, '*The Situation between Iraq and Kuwait*', United Nations Security Council, New York, Mar 7, 2003, accessed on Feb 19, 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.4701 p2

²²⁶ Ibid p3-5

that war was imminent.²²⁷ On March 7, 2003, Mr. Hans Blix the Executive Chairman of UNMOVIC, briefed the UNSC about their progress in Iraq so far, he stated that:

As I noted on 14 February, intelligence authorities have claimed that weapons of mass destruction are moved around Iraq by trucks and, in particular, that there are mobile production units for biological weapons. The Iraqi side states that such activities do not exist. Several inspections have taken place at declared and undeclared sites in relation to mobile production facilities. Food-testing mobile laboratories and mobile workshops have been seen, as well as large containers with seed-processing equipment. No evidence of proscribed activities has so far been found.²²⁸

This statement suggested that no grounds for existing WMDs could be found. Furthermore, it gave no impression or reason for waging a war on Iraq under noncompliance with disarmament obligations. Mr. Blix further explained that Iraq decided to cooperate with inspectors, and then the U.S. started to raise doubts about the successful of the inspections.²²⁹

Public and media antiwar movements

It is also worth noting that the Iraq crisis gained public opinion attention. Antiwar movements took place almost all over the world and were considered unprecedented. An estimate of 10 million people gathered in more than 100 cities from different countries around the globe in protested with “The world says no to war” as their slogan against the

²²⁷ Crail, Peter, ‘Disarming Saddam – A Chronology of Iraq and UN Weapons Inspections From 2002-2003’, Arms Control Association, July 2003, accessed on Feb19, 2014, <http://www.armscontrol.org/factsheets/iraqchron>

²²⁸ United Nations Security Council 4714th meeting, ‘The Situation between Iraq and Kuwait: Note by the Secretary-General (S/2003/232)’, United Nations Security Council, New York, Mar 7, 2003, accessed on Feb 19, 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.4714

²²⁹ Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p 359

U.S.-led campaign to wage the war on Iraq.²³⁰

The February 15, 2003, demonstration marked the highest level of public mobilization ever known, it took only a few months to reach that level, which had taken years with other anti-war movements (i.e. Vietnam War).²³¹ This might be explained by the international nature of the Iraqi crisis, especially with the harm caused by the economic sanctions that hit mostly ordinary Iraqi civilians.

Despite the strong position against the war on Iraq, these global demonstrations still cannot be understood to support the Iraqi regime of Saddam Hussein. Rather it was more the rejecting the attitude of some leading Western governments to mobilize and militarize relations among states through the resort to hostile actions, instead of peaceful means in resolving international conflicts or disputes. Peace was also the purpose of forming the United Nations in the first place. Moreover, that anti-war global movement can also be observed from its calls that peaceful means to disarm and make Iraq comply had not been exhausted yet.²³²

War of choice

On March 20, 2003, the military coalition led by the United States of America launched a full-scale military attack to invade Iraq. The actual military campaign took about 20 days and ended with the fall of Baghdad on April 9, 2003. On the one hand, many military observers considered the operation as a swift military victory. On the other hand, that military victory was obvious and expected due to the 13 years of economic and

²³⁰ Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p 75

²³¹ Ibid

²³² Ibid p77

military sanctions and disarmament that was imposed on Iraq, which left the country almost defenseless.²³³

On May 1, 2003, U.S. President George W. Bush announced in his historic “mission accomplished” speech on board the USS Abraham Lincoln, “that major combat operations in Iraq have ended” he also declared “ The United States and our allies have prevailed”, and the mission now is to secure and construct the country.²³⁴ That quick victory turned out to be a disastrous security and humanitarian aftermath. In the months that followed the invasion and then the years that followed the occupation, it proved that the Bush administration was far from “mission accomplished.”²³⁵

The president’s speech was well drafted, especially from the legal point of view, and it covers a wide range of subjects. By referring to technological advances, the U.S. armed forces showed how this was used to avoid casualties among civilians during the war and even compare it with civilian casualties caused in World War II. It stated that the battle was conducted according to international humanitarian law through the use of proportionality and distinction.

In his speech, the president emphasized his neoconservative doctrine, speaking of the U.S. standing for freedom and liberation that can fit any culture and should be exported and advanced as a way of fighting terror:

Men and women in every culture need liberty like they need food
and water and air. Everywhere that freedom arrives, humanity rejoices and

²³³ Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p 97

²³⁴ Transcript of President George W. Bush speech, “*Bush makes historic speech abroad warship*”, CNN.com, May 1, 2003, accessed on Feb 22, 2014, <http://www.cnn.com/2003/US/05/01/bush.transcript/>.

²³⁵ Katsumata, Hiro, “Introduction” in “*Beyond Iraq The Future of World Order*”, edited by Acharya Amitav, and Katsumata, Hiro, 1-13, Singapore, World Scientific Publishing, 2001

everywhere that freedom stirs, let tyrants fear... The advance of freedom is the surest strategy to undermine the appeal of terror in the world.²³⁶

But he also pictured Iraq in his speech as a Nazi Germany and as Imperial Japan, which was far from accurate. The President described the recent mission of the Coalition forces:

We're bringing order to parts of that country that remain dangerous. We're pursuing and finding leaders of the old regime who will be held to account for their crimes. We've begun the search for hidden chemical and biological weapons, and already know of hundreds of sites that will be investigated.²³⁷

On the regional and international dimension of his speech, the President Bush sought to urge the people of the Arab world in particular and other countries in the world in general to revolt and change their regimes and the U.S. would stand by their side, when he said:

And anyone in the world, including the Arab world, who works and sacrifices for freedom has a loyal friend in the United States of America.²³⁸

There is no doubt that the war on Iraq of 2003 was a breach of the UN Charter and violations of international law, however no international and namely no UN condemnation was ever released to address that war. And it seems that powerful states are able to choose the time and place of their own wars without worrying much about the international community, as was pointed out by of former U.S. Secretary of State

²³⁶ Transcript of President George W. Bush speech, "*Bush makes historic speech abroad warship*", CNN.com, May 1, 2003, accessed on Feb 22, 2014, <http://www.cnn.com/2003/US/05/01/bush.transcript/>.

²³⁷ Ibid

²³⁸ Ibid

Madeleine Albright, who said it was a “war of choice” rather than a war of necessity.²³⁹

International Response to the invasion of Iraq

In the case of the U.S.-led invasion of Iraq, despite the illegality of the military action led by the U.S., Iraq was already in a process of complying with the international terms of defeat from the Gulf War of 1991, which was encoded in UNSC resolution 687(1991) under chapter VII of the UN Charter. Furthermore, it was interpreted from a different point of view, especially from both the U.S. and U.K. governments. Both governments saw the use of military force within the mandate of the main Security Council resolution 678(1990) and 687(1991), which they state authorized the use of military force to bring Iraq into compliance.

It is also important to emphasize scope the well-managed campaign that was executed by both U.S. and U.K., to provoke the war against Iraq within the UN system and specially the UNSC. It started as early as 2002 and reached its peak just a couple of months before the military march to Baghdad. This campaign involved many intelligence reports, using pieces of UNSCOM and UNMOVIC reports or sections from reports that referred to Iraq’s lack of cooperation and concealment of information, and many other media and well-presented evidence that even though it was not enough to convince the UNSC to pass the desired authorization of use of force, it had enough influence to divide many UN member states about that war.

The United Nations did not authorize the use of force and yet it did not condemn it after it took place. The first UN response came from the Security Council by adopting

²³⁹ Albright, Madeleine K., *Bridges, Bombs, or Bluster?*, Foreign Affairs, Vol. 82, Issue 5, September/October 2003, p7

resolution 1472 of March 28, 2003. This resolution was adopted under chapter VII of the UN charter, but during the march to Baghdad, it did not mention or condemn the invasion. Rather it recognized the Occupying Power duty only in article (55) and its provisions of the fourth Geneva Convention of 1949.²⁴⁰ This convention is all about the protection of civilians during the time of war; however the Security Council noted only one article, which covers only “*Food and Medical Supplies for the Population.*”²⁴¹

It is clear that the U.S. and the U.K. intentionally avoided any reference to the protection of civilians under the above-mentioned convention because they would have to hold their governments accountable for the casualties among civilians that might arise later from the hostilities. This does not mean that the convention cannot be applied, because its purpose is to be applied during the time of war to protect civilians. However, the resolution did mention protection in one of its paragraphs, which says:

Urges all parties concerned, consistent with the Geneva Conventions and the Hague Regulations, to allow full unimpeded access by international humanitarian organizations to all people of Iraq in need of assistance and to make available all necessary facilities for their operations and to promote the safety, security and freedom of movement of United Nations and associated personnel and their assets, as well as personnel of humanitarian organizations in Iraq in meeting such needs;²⁴²

This paragraph recognized both the Geneva Conventions and the Hague Regulations, but only for the protection and security of the UN and associated personnel. Other than that, the resolution was merely regulating the flow of food and medical

²⁴⁰ United Nations Security Council, “*The situation between Iraq and Kuwait*”, United Nations, New York, March 28, 2003, accessed on Feb 24, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/302/09/PDF/N0330209.pdf?OpenElement>

²⁴¹ Pictet, Jean S., *IV Geneva Convention relative to the Protection of Civilians Persons in Time of War*, The International Committee of the Red Cross, Geneva, Switzerland: ICRC, 1958, 309

²⁴² United Nations Security Council, “*The situation between Iraq and Kuwait*”, United Nations, New York, March 28, 2003, accessed on Feb 24, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/302/09/PDF/N0330209.pdf?OpenElement>

materials to the people of Iraq, and place the responsibility under the UNSG's to carry out this mission. It did not even mention the word "war" and used "hostilities" instead.

On May 8, 2003, both the U.S. and U.K. representatives to the UN submitted a letter addressed to the President of the Security Council. The letter explained that the United States, United Kingdom, and allies continued to act together to disarm Iraq in accordance with the UNSC resolutions. They also obliged themselves under international law, yet tried to direct attention away to the essential humanitarian needs. The only commitment of protection the letter made was to protect Iraq's oil, as follow:

The United States of America, the United Kingdom of Great Britain and Northern Ireland and Coalition partners continue to act together to ensure the complete disarmament of Iraq of weapons of mass destruction and means of delivery in accordance with United Nations Security Council resolutions. The States participating in the Coalition will strictly abide by their obligations under international law, including those relating to the essential humanitarian needs of the people of Iraq. We will act to ensure that Iraq's oil is protected and used for the benefit of the Iraqi people.²⁴³

From the quoted paragraph above, I have noticed that it was carefully drafted to avoid any legal or accountability issue on the occupying power's side, and they already expended their disarmament mission to the protection of Iraq's oil. If that is considered as a compliance by the occupiers with the related Geneva conventions (1949) and the Hague Regulations of (1907), then why were they committing to the protection of the oil and not the civilians or the state institutions, or other infrastructure of the occupied territory?

²⁴³ United Nations Security Council, "Letter dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Addressed to the President of the Security Council", United Nations, New York, May 8, 2003, accessed on Feb 24, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/353/19/PDF/N0335319.pdf?OpenElement>

The answer to the above raised question might be found in the report of the National Energy Policy Development Group of May 2001, Vice President Dick Cheney who headed the group. In its report to the President it stated that:

Middle East oil producers will remain central to world oil security. The Gulf will be a primary focus of U.S. international energy policy, but our engagement will be global, spotlighting existing and emerging regions that will have a major impact on the global energy balance.²⁴⁴

The report also noted that at time that oil account for 89 percent of net U.S. energy imports.²⁴⁵ This is not to say that oil is the reason behind the war on Iraq, however, securing the third largest reserve of such an energy source is one of the most important reasons to account for the war against Iraq. This preventive strategy that was adopted by the Bush administration in 2002, came from the influence of the -now defunct- Project for the New American Century (PNAC), and the American Enterprise Institute (AEI).²⁴⁶ Many members of PNAC held key roles in foreign and defense policy in the Bush administration.²⁴⁷

Following the above-mentioned joint letter of the U.S. and the U.K. addressed to the President of the UN Security Council, the UNSC adopted resolution 1483 on May 22, 2003. This resolution recognized the letter sent to the President of the UNSC by the representatives of U.S. and U.K. on May 8, 2003, and recognized further the U.S. and its allies as occupying powers, and the Coalition Provisional Authority (CPA), which was

²⁴⁴ Report of the National Energy Development Group, "*Reliable, Affordable, and Environmentally Sound Energy for Americas Future*", U.S. Government Printing Office, Washington DC, May 16, 2001,p8-5

²⁴⁵ Ibid p1-11

²⁴⁶ Abelson, Donald E., "*Old world, new world: the evolution and influence of foreign affairs think tanks*", International Affairs, Vol. 90, Issue 1, Jan 2014, accessed on Feb 25, 2014, DOI: 10.1111/1468-2346.12099. p139

²⁴⁷ Shank, Duane, "*The Project for a New American Empire*", Sojourners Magazine, Vol. 32, Issue 5, Sep/Oct2003, p28

created by the occupying powers, as the official authority of occupied Iraq.²⁴⁸ Here I would like to refer to the drafting language of resolution 1483(2003), where it says:

Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council (S/2003/538) and recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the “Authority”).²⁴⁹

The resolution recognized the authorities, responsibilities and obligations of the occupying powers under applicable international law, which means the occupiers, in addition to the authority they have over Iraq as occupied territory, they also have responsibilities and obligations that are regulated by international law. Including, but not limited to, to the Third and Fourth Geneva Conventions (1949) and The Hague Regulations (1907), which regulate the protection of prisoners of war (or detainees in case of Iraq) and civilians in occupied territories is a responsibility and obligation of the occupiers to fulfill.

The UNSC was acting under chapter VII of the Charter when they adopted resolution 1483(2003), which means that the applicable international law is binding to occupying powers and all those concerned with the crisis in Iraq.²⁵⁰

The UNSC was acting under chapter VII of the Charter in both resolutions 1472(2003) and 1483(2003), and according the UN Charter the Security Council acts under chapter VII only with “respect to threats to the peace, breach to the peace, and acts

²⁴⁸ United Nations Security Council resolution 1483(2003), “*The situation between Iraq and Kuwait*”, United Nations, New York, May 22, 2003, accessed on Feb 20, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement>

²⁴⁹ Ibid p1

²⁵⁰ Ibid p2

of aggression.”²⁵¹ But the above-mentioned resolutions did not clarify or pointed to any threats to international peace and security. Resolution 1472 only stated that the Council was “*Acting under chapter VII of the charter of the United Nations*”.²⁵²

Resolution 1483(2003) stated that:

Determining that the situation in Iraq, although improved, continues to constitute a threat to international peace and security,²⁵³

Iraq was recognized as an occupied country by this resolution and yet the situation was considered to be improved by the UNSC. One might ask in what way the situation was improved. If so, then why does it 'continue to constitute a threat to international peace and security? The phrase simply contradicts itself. According to the UN Charter, it should use the same or similar language of resolutions 660 and 661 of 1990, when Iraq invaded Kuwait, considered a threat and breach of international peace and security. The Council was not acting under chapter VII of the Charter in resolutions 660(1990), however it was “determining that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait.”²⁵⁴

²⁵¹ Charter of the United Nations ‘chapter VII of the charter’, UN.org, accessed on Feb 23, 2014, <http://www.un.org/en/documents/charter/chapter7.shtml>

²⁵² United Nations Security Council resolution 1472(2003), “*The situation between Iraq and Kuwait*”, United Nations, New York, March 28, 2003, accessed on Feb 20, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/302/09/PDF/N0330209.pdf?OpenElement> , p1

²⁵³ United Nations Security Council resolution 1483(2003), “*The situation between Iraq and Kuwait*”, United Nations, New York, May 22, 2003, accessed on Feb 20, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement> p2

²⁵⁴ United Nations Security Council resolution 660(1990), “*The situation between Iraq and Kuwait*”, United Nations, New York, August 2, 1990, accessed on Feb 25, 2014, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement>

Breach of UNSC resolutions and international law

April 9, 2003, marked the day that Baghdad was captured and became under the administration of the occupying powers. The days following the U.S. military invasion were almost quiet with no incident or clashes with civilians that can be mentioned, and this situation proceeded until late 2003 and early 2004. It seems that the U.S. military was not instructed or given any kind of awareness of their responsibility after this stage of the war, the law enforcement and to maintain order as an occupying power according to relevant Geneva Conventions of 1949 and the Hague Regulations of 1907.

Pictures of looting and lawlessness in Baghdad and other parts of Iraq were broadcasted from many TV channels that covered the military operations and the aftermath, were proof of the lack of planning for the aftermath of the military operation or “Operation Iraqi Freedom” as it was named by the Bush administration. Furthermore on April 10-12, 2003, the Baghdad National Museum was looted, and the U.S. military did nothing until mid May. The looting of the museum took only 48 hours. This was a breach of articles 55 and 56 of the Hague Regulations of 1907. The UNSC did not mention this breach in resolutions 1472 and 1483 of 2003 while acting under chapter VII of the UN Charter.

It also explains why the U.S. and the U.K. committed themselves only to humanitarian aid in their joint letter of May 8, 2003, addressed to the President of the Security Council and neglected the other protection obligations and responsibilities, which they should presume as occupying powers.

Civilians under occupation in Iraq

In January 2003, about two months before waging the war, the U.S. department of Defense established the Office of Reconstruction and Humanitarian Assistance (ORHA), headed by Army Lieutenant General Jay Garner (Ret.). The plan was that after the war was over, the goal would be cooperating with the existing Iraqi state's institutions to rebuild the country.²⁵⁵ But it seems that they assumed wrong, and ORHA was short lived, and lasted about three months after the military campaign ended.

Before going to war in Iraq in March 2003, the U.S. and Coalition were already aware of the level of harm caused to ordinary Iraqis since the start of the sanctions regime in 1990. Moreover the military campaign had the freedom slogan as its name, which appears stooge. Most observers were expecting that a reconstruction campaign would start right after the "mission accomplished" in Iraq. None of that has happened. The situation in Iraq instead of starting to develop better living conditions has started to even worsen.

Early after his arrival in Baghdad in May 2003, Ambassador Paul Bremer, head of the Coalition Provisional Authority (CPA), which succeeded ORHA, and the civilian ruler of occupied Iraq, issued the first two important decrees of the CPA in Iraq. The first decree removed about 30,000 of high ranking Ba'ath party members from the public service institutions. They had been the most skillful and capable cadre of state building

²⁵⁵ Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*, California, RAND, 2009, p xiv

efforts, with no qualified alternatives. The second decree dismissed the Iraqi army and security forces, which made the already unsecure environment even worse.²⁵⁶

Nothing serious was made to rebuild the health section, given the fact that the bombing by the coalition forces damaged 70% of the hospitals.²⁵⁷ Many civilians had died due to the shortage of medical care, especially for infants. Let alone, many problems arose from the mental health that caused alcoholic, drugs, and suicide related problems, all that affected the increased rate of social and domestic violence.²⁵⁸ The curfew from 8:00 PM until 8:00 AM that was enforced in Iraq by the coalition forces is still in effect today in some provinces. This was a major cause for death among civilians, many with critic health conditions who were unable to reach the hospital. There were some cases of people being shot and who died because they left their homes during the curfew time trying to reach the emergency room of a nearby hospital.

The lawlessness in Iraq after the invasion was unprecedented. Given the fact that Saddam Hussein released many prisoners right before the war, CPA policies also made the perfect conditions for forming different kinds of mobs. Kidnappings and assassination of targeted political figures and official personnel started to take place in Baghdad. This kind of criminal acts was new to the Iraqi community, and that made people easy targets for those criminals. These acts further participated in the demoralization of the Iraqi community.²⁵⁹

²⁵⁶ Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*, California, RAND, 2009, p xv

²⁵⁷ Hil, Richard, "A Fatal Burden: Civilian Casualties and the Conflict in Iraq", *Social Alternatives*, Vol. 24, Issue 2, 2005, p63

²⁵⁸ Ibid

²⁵⁹ Hil, Richard, "A Fatal Burden: Civilian Casualties and the Conflict in Iraq", *Social Alternatives*, Vol. 24, Issue 2, 2005, p63

State building and democratization was not a new mission for the U.S. and Allies. Iraq is the seventh society for this kind of mission.²⁶⁰ It has been the daily concern of the Iraqis to protect their lives with nothing much but to watch their back all the day until they get back home safe. Since the CPA also ordered the prohibition of owning any kind of light arm at home or to be carried, made civilians even more vulnerable than before and unable to protect their homes and families from mobsters. Even after the CPA allowed the ownership of one piece of firearm in the home, it was not useful because the Coalition forces did not honor this order by confiscating any type of arm they found during their night raids to civilian homes searching for wanted Ba'ath party figures or resistance members.

Another problem grew rapidly after the invasion and as a result of the CPA early order of dismissing the Iraqi armed forces. That was the growing number of militias in Iraq. Almost every political party from the Iraqi opposition who came from countries outside Iraq has its own armed militia, and since there was a big security vacuum after dismissing the army and the security forces, those militia groups, which according to the CPA numbered around 30 at the end of 2003, acted freely to fulfill that vacancy, and with immunity because they were backed by their political parties which they affiliate with.²⁶¹

In late May 2004, the CPA tried and initiated a plan to dissolve those militias, but it was not able to do so for reasons related to the deteriorating security situation, the desire for power, and the lack of confidence in the newly established Iraqi security

²⁶⁰ Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*, California, RAND, 2009, p iv

²⁶¹ Ibid p315

forces.²⁶² Furthermore some of those militias participated in what was later known as the death squads who were killing innocent civilians for sectarian reasons, which the CPA also failed to counter.

In the public service sector, the CPA failed to provide basic services to the public like clean water, sanitation, sewer services and basic healthcare. Education, in its stages and especially in the elementary level, started to deteriorate due to the removal of key persons from the educational system because they were senior Ba'ath Party members and applicable to the CPA order of being disbanded from their jobs.²⁶³

In July 2003, Mr. Bremer, the U.S. administrator in Iraq, appointed a 25 seat Iraq Governing Council (IGC). The appointments were based on ethnic and religious grounds and members were picked from returned anti-Saddam Iraqi exiles, and other parties from inside Iraq, like the Kurdish parties, all of whom worked closely with Washington before the war, and most of them had been absent from Iraq for decades.²⁶⁴ This Council was a response to paragraph 8 (c) of the UNSC resolution 1483(2003), and advice from the UNSG special representative.²⁶⁵

On the law enforcement level and rules of engagement, the Coalition forces were accused by organizations like the Red Cross, of ill treatment of Iraqi civilians, excessive

²⁶² Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*, California, RAND, 2009, p 320

²⁶³ Katsumata, Hiro, "Introduction" in *Beyond Iraq The Future of World Order*, edited by Acharya Amitav, and Katsumata, Hiro, 1-13, Singapore, World Scientific Publishing, 2001, p132

²⁶⁴ Al Kadiri Raad, Toensing, Chris, *The Iraqi Governing Council's Sectarian Hue*, Middle East Research and Information Project, August 2, 2003, accessed on Mar 12, 2014, <http://www.merip.org/mero/mero082003>

²⁶⁵ United Nations Security Council resolution 1483(2003), *The situation between Iraq and Kuwait*, United Nations, New York, May 22, 2003, accessed on Feb 20, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement> p3

use of force during home raids, and house-to-house searches.²⁶⁶ It is important to mention the lack of cultural understanding of the coalition troops to Iraqi society traditions (i.e. most of the Iraqis do not use banks for their life savings or jewelry). They should have been briefed on this before the war as well as receiving training on law enforcement.²⁶⁷

Not knowing the language was another element that led to misconduct and mistreatment. Many Iraqis were insulted and robbed during the Coalition troops night raids at their homes, which mostly ended up with either money and jewelry being confiscated or young men in the house being detained or both. Justifications for detention and confiscation have usually due to suspicions of being loyal to the Saddam regime or to the insurgencies or providing financial packing. In most of these raids the targeted civilians were innocent and if detained the possibility of releasing them from detention centers was a long process even when they were proved innocent.

On August 19, 2003, the UN headquarters in Baghdad were targeted by a suicide car bomb that left 22 people dead, including the United Nations envoy in Iraq Sergio Vieira de Mello. The attack was unprecedented in UN history, and yet was not followed by serious investigation by the CPA nor by the UN itself.²⁶⁸ Moreover, this sort of attack indicates the lack of security that the CPA provided and was mandated to provide under

²⁶⁶ Schmitt, Eric, "Army is Investigating Reports of Assaults and Thefts by G.I.'s Against Iraqi Civilians", NY Times.com, May 31, 2004, accessed on March 14, 2014, <http://www.nytimes.com/2004/05/31/international/middleeast/31ABUS.html?src=pm&pagewanted=2>

²⁶⁷ Ibid

²⁶⁸ Suarez, Josefa, "UN failed to properly probe Baghdad bombing: de Mello partner", Fox News, August 19, 2013, accessed on March 13, 2014, <http://www.foxnews.com/world/2013/08/19/un-failed-to-properly-probe-baghdad-bombing-de-mello-partner/>

paragraph 8 of the UNSC resolution 1473(2003). As a result of that deadly attack the UN left Iraq but did not disengage from an ongoing process to hand over sovereignty from the coalition to the Iraqis. However its role was less effective.

It is true that the CPA managed to broker for the state of Iraq the largest debt relief package in history. However it raises the question whether this was worth the price the civilians paid and are still paying? After forming the Iraqi Governing Council (IGC), the CPA started to prepare for the process of transition of power to an Iraqi interim government. In February 2004, the CPA and IGC invited the UN special representative Mr. Lakhdar Brahimi to have the UN facilitate the forming of an interim Iraqi government that represented most of the Iraqi people.²⁶⁹ Mr. Brahimi was supposed to serve as a participant with a vital role in postwar Iraq, reconstruction and ending the occupation according to the relevant UNSC resolutions, but the CPA narrowed this role.²⁷⁰

During the process of power handover to the Iraqis, feelings of hatred against the occupying powers were ignited and started to develop through the excess of Coalition forces, and their insulting acts. The law and order enforcement by the coalition forces was greatly mismanaged and caused the population to support resistance efforts that was going. For example, while conducting a house-to-house search operation for alleged Saddam loyalties or insurgent in the city of Fallujah that is famous for having a

²⁶⁹ Coalition Provisional Authority, “*Fact Sheet: The Interim Iraqi Government*” Iraqcoalition.org, May 2004, accessed on March 14, 2014, http://www.iraqcoalition.org/government/press_packet.pdf

²⁷⁰ Steele, Jonathan, “*How honest broker was defeated – and with him hopes of credibility*”, The Guardian, June 2, 2004, accessed on March 14, 2014, <http://www.theguardian.com/world/2004/jun/03/iraq.jonathansteele>

conservative population who hold Islamic and tribal traditions, the Coalition forces once raided a house where its inhabitant were having a wedding party and in addition to ruining the party they took the bride hostage and offered to exchange her for whom they were looking for.²⁷¹ This was, one of the main reasons behind the escalating insurgency that led to the killing of the four Blackwater contractors on March 31, 2004.

That incident led to two military campaigns, one in April and the other in November 2004. The Coalition forces were tasked to control the city and capture the perpetrators. The U.S. Secretary of Defense Donald Rumsfeld wanted Fallujah campaign to be an example of American power to all other cities in Iraq. He said, “ We must do more than just get the perpetrators of the Blackwater incident. We need to make sure that Iraqis in other cities receive our message.”²⁷² Over 600 people were killed during the Fallujah campaign in April 2004; most of them were civilians. It was considered a revenge action rather enforcement of law and order. ²⁷³

Furthermore, the military operation was conducted without any warning to the civilians to leave the city or at least take precaution to avoid the atrocity, except for few flyers that were written in English and said only “call upon the people Fallujah to support the legitimate Iraqi authorities in bringing this crime to an end.”²⁷⁴ This cannot be interpreted that people should be careful or leave the city because the U.S. army is about to conduct an offensive military operation, and not the “legitimate Iraqi authorities.”

²⁷¹ Al Jumaily, Mohammad, Iraqi Diplomat, Third Secretary at the Iraqi Ministry of Foreign Affairs, Fallujah resident, e-mail message to author on March 22, 2014

²⁷² Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*”, California, RAND, 2009, p 308

²⁷³ Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p 468

²⁷⁴ Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*”, California, RAND, 2009, p 309

The first Fallujah battle occurred in April while the CPA and the UN Special Envoy were engaging in the transfer of sovereignty and choosing an interim Iraqi government. From his side, Mr. Brahimi insisted that the people of Fallujah must have their voice in the interim government, and threatened to abort his mission and leave and that was the only UN response to the crisis in Fallujah. Similar positions were given by some of the Iraqi Governing Council members who threaten to quit if the Fallujah offensive was not called off.²⁷⁵ After 48 hours, the operation in Fallujah was called off by Washington, due to report assessments received from senior CPA officials.²⁷⁶

Shortly after Fallujah was called off, another crisis surfaced from Iraq, the Abu Ghraib prison scandal where evidence emerged of abuse and torture Iraqi detainees by Coalition forces. It started in late April with the CBS Televised program 60 minute showing army leaked pictures and videos of many Iraqi detainees being abused and tortured.²⁷⁷ Later reports indicated that the army reported the abuse as early as October 2003.²⁷⁸ The story was on the headlines about the matter in January 2004.²⁷⁹ The first reaction of the Bush administration was to isolate the scandal by stating that it

²⁷⁵ ²⁷⁵ Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*, California, RAND, 2009, p 312

²⁷⁶ Ibid

²⁷⁷ Tucker, Bruce, and triantafyllos, Sia, "Lynndie England, Abu Ghraib, and the New Imperialism", *Canadian Review of American Studies*, Vol. 38, Issue 1, 2008, p 84

²⁷⁸ Human Rights Watch, "The Road to Abu Ghraib", HRW.org June 2004, accessed on March 28, 2014, <http://www.hrw.org/sites/default/files/reports/usa0604.pdf>

²⁷⁹ Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*, California, RAND, 2009, p 170

represented only a few persons who were acting out of the chain of command, and did not take any official responsibility for it.²⁸⁰

Coalition forces were targeting mainly young people in their detention activities. The justification for this was that those young people were potential anti-coalition fighters or insurgents. The problem evolved due to the lack of management and processing of the growing numbers of security internees, as many of them were detained for only suspicion reasons without sufficient evidence that they could pose a threat to coalition forces. They were unnecessarily held for a long time before being interviewed, screened or cleared.²⁸¹ Even those who had been interviewed and cleared for release were locked in, some of them even did not have an existing file at all.²⁸²

Furthermore, many detentions were conducted in the middle of the night during home raids when people were taken from their homes and denied access to lawyers, family visits, or the release of basic information that could let their families know about their whereabouts and if they were still alive. Such practices were compared, in an internal CPA memo to Bremer, to the former regime.²⁸³ In one of his staff meetings, Bremer rose the question of how Iraqi families were being informed about their relative status within U.S. custody. The answer came that the information is being posted on the Internet, but then, Bremer wondered, how many Iraqis have access to the internet?

²⁸⁰ Tucker, Bruce, and triantafyllos, Sia, “*Lynndie England, Abu Ghraib, and the New Imperialism*”, *Canadian Review of American Studies*, Vol. 38, Issue 1, 2008, p 86

²⁸¹ Dobbins, James, Jones, Seth G, Runkle, Benjamin, Mohandas, Siddharth, *Occupying Iraq: A History of the Coalition Provisional Authority*”, California, RAND, 2009, p 167

²⁸² *Ibid*, P165

²⁸³ *Ibid*, p166

Bremer also stated that the information management technology to track detainees used by the Combined Joint Task Force-7 was completely inadequate.²⁸⁴

The administration in Washington responded to the Abu Ghraib prison scandal as an isolated incident conducted by “bad apples”, claiming it did not reflect the values of the United States military. However, a reporter who interviewed Lynndie England, one of the abuse perpetrators, said the orders of such behavior “have come from as high up as the Secretary of Defense Donald Rumsfeld.”²⁸⁵ Another article noted that the Pentagon used information on how to humiliate Arab men in different ways including sexual humiliation in order gain information and trained U.S. military interrogators on such methods.

Further evidence on allowing if not encouraging, the abuse of prisoners can be found in a memo written to President Bush by Albert Gonzales, his legal adviser, on Jan 25, 2002, the memo argued that the Geneva Conventions do not apply in failed states such as Afghanistan and advised the U.S. interrogators not to abide by them when dealing with prisoners that were taken during the invasion of Afghanistan.²⁸⁶ Because the “war on terror” is not like any traditional war, Gonzales further explained that this interpretation of exemption would benefit the U.S. by exempting Americans from being prosecuted for war crimes due to their ill treatment of Taliban prisoners. However the cons for adopting such a policy would exempt the Taliban too from being held responsible under the War Crimes Act, but he noted that the benefits are much more than the negative reaction.²⁸⁷

²⁸⁴ Ibid, P167

²⁸⁵ Tucker, Bruce, and triantafyllos, Sia, “*Lynndie England, Abu Ghraib, and the New Imperialism*”, Canadian Review of American Studies, Vol. 38, Issue 1, 2008, p87

²⁸⁶ I bid, p88

²⁸⁷ I bid

An independent investigative panel into the Abu Ghraib prison found that the same policy and interpretation by Gonzales was applied on Iraqi prisoners by considering them as unlawful combatants.²⁸⁸ It appears that the only isolated incident at Abu Ghraib prison was the leak of photographed prisoner abuse.

The sovereignty was handed over on June 30, 2004, and the occupation officially was over. However the security and military authority remained within the jurisdiction of the Multinational Forces in Iraq (MNF-I). A few months after the hand over of sovereignty two major attacks happened, one was with the anti-American Shiite Clerk Muqtadda Al Sadder and militia of Al Mahdi Army in the holy city of Najaf south of Baghdad, and the second was reengaging the city of Fallujah in November 2004. This time it was on a larger scale with much more destruction to the infrastructure and many more civilian casualties.

Advocating and waging war on a wrongful basis, and mismanaging it without even having a plan to provide law and order, should be grounds for holding the United States and the United Kingdom responsible under international law and the United Nations Charter. Let alone the many breaches to the UNSC resolutions 1472(2003) and 1483(2003) and other subsequent relative resolutions that concerned the invasion of Iraq under the U.S.-led force. The most important result of the invasion of Iraq is that the U.S. and the U.K., who relied on liberty, freedom and human rights to justify the war,

²⁸⁸ Ibid p89

failed as occupying powers to protect the Iraqi civilians. The death toll reached about 100.000 innocent civilian deaths and still counting. ²⁸⁹

How R2P apply to Iraq?

It might not be clear why R2P should apply to the case of Iraq, but I argue that Iraq should be seen and recorded as a strong case of R2P application that the international community still until today has failed to address under R2P. This thesis is limited to the 2003-2004 period, and dose not discuss the situation in Iraq after the 2005 World Summit when R2P was adopted by all member stats. However, R2P as a norm was well established by the years of 2003-2004 and gained the support of many likeminded states like the U.S. and U.K.

I have discussed all the above abuses of military force in Iraq during and after the 2003 invasion when innocent civilians in the country were the targets of violence. The illegality of the war itself, and the efforts of the occupiers to find legal ground to their presence in Iraq through the UNSC resolutions that were adopted with reference to the Fourth Geneva Convention and The Hague Regulations, suggest that Iraq should be classified as an important R2P case, one that has not yet gained enough international attention.

²⁸⁹ Thakur, Ramesh, Sidhu, Waheguru Pal Singh. , *The Iraq crisis and world order: institutional and normative challenges*, (Tokyo: United Nations University Press, 2006), p388

Conclusion on R2P

The Responsibility to Protect (R2P) as a norm in international relations has been put into practice in many international crises and more than the three cases discussed here. In one of the crises, the norm was stretched beyond its scope as in the case of Libya. Yet it was not used as its early warning mechanism should be, as in the case of Syria. It is also clear that national interests cannot automatically be merged with R2P. Rather it has to be expressed through the collective interest, as Mr. Annan has described.²⁹⁰

The occupation of Iraq in 2003 might look different from the cases, Libya and Syria, but it is not. Iraq under occupation demanded another form of R2P. The emerging shifts in international order from immunity to accountability would strongly imply that R2P responsibility also should be required of the occupiers, especially when the occupier has justified its actions as humanitarian and that the war was waged for the purpose of making peace. The abuse of R2P, I would argue, gravely took place in Iraq and should be recorded in history as in any other crisis. Iraq was under many international treaties, conventions, and UN Security Council resolutions that were adopted under chapter VII, and yet this abuse did not gain much attention; it was ignored.

R2P advocates like Michael Ignatieff can argue that R2P was a victory when applied in the case of Libya through the adoption of UN Security Council Resolution 1973 (2011). However, it can also be argued that R2P was abused by interpreting resolution 1973(2011) to enable regime change instead of keeping with the protection of civilians and civilian-populated areas. Another argument can be made that the major powers ignored a peaceful resolution to the crisis by not giving the AU the required time needed. The tremendous efforts by the African Union states was wasted when to them

²⁹⁰ Kofi Annan, interview by *The Economist*, Sep 18th 1999. P81

peaceful means was the main reason for them to support resolution 1973 (2011) was because they thought it help create peaceful resolutions. Plus, looking at Libya raises the questions whether civilians are now really more protected in Libya?

For Syria, the case offers a clear-cut failure of applying the R2P norm. The situation strongly proves that efforts for a peaceful solution have been exhausted. However, the UNSC is still crippled and can only watch more civilians suffer through this bloody conflict. However, the case of Syria did show that the early-warning system of R2P is functioning well enough. That it can be seen informing officials of the conflict during the special sessions of the Human Rights Council that were convened in Geneva during the early days of the crisis and warned of an emerging crisis. It also proves the first point of view raised by ICISS in its report that when there is a UNSC deadlock crisis situations can be moved to the management of the General Assembly. However, this suggestion was omitted by the P5 at the 2005 World Summit outcome document.

Another setback for R2P was in Iraq. After the UN headquarters was attacked in Baghdad on August 19, 2003, when the UN role was dramatically diminished in Iraq, especially in terms of following the impact of the war on the lives of ordinary Iraqi civilians. Except for the statement of Bertrand Ramcharan, the Acting UN High Commissioner for Human Rights, who warned of the possibility of war crimes being committed in Iraq when he learned of the Abu Ghraib prison scandal, which was leaked by the U.S. military itself. Nothing much was reported by the UN during the 14-month occupation of Iraq between March 2003 and June 2004.

That said, the implementation of R2P during the Iraq war of 2003 was weak and was not adopted globally until the 2005 World Summit. However, the application of the

norm can be seen through the related UNSC resolutions of 1472 (2003) and 1483 (2003) that were adopted under chapter VII of the Charter and called for the occupying powers to abide by the Geneva Conventions of 1949 and Hague Regulations of 1907. But the occupying powers, through their observed acts in Iraq, were trying their best to avoid the above-mentioned conventions and regulations. The United States further used excessive force against civilians (i.e. Fallujah) to set an example for other parts of Iraq of what they would face if they resisted the occupying powers.

The three cases mentioned in this paper each constitute a certain degree of abuse of the R2P norm. However, each also shows some degree of the use of one or more of R2P's pillars. In the case of Libya for instance, the application and use of R2P's third pillar through the mandate of UNSC resolutions was a success in terms of early warning mechanisms and use of force to protect civilians, though it went far beyond the mandate when it led to regime change. Limits to R2P in the case of Libya were not well defined, and in drawing attention to the African Union peaceful initiative, I argue that peaceful means were not exhausted as they should have been according to the ICISS report, the 2005 World Summit Outcome document, and the UN Secretary-General's five reports about how to properly implement and use R2P. The UN system should apply R2P to promote human rights and most importantly to prevent and protect civilians from being victims of the four prohibited crimes.

All those who wrote about R2P agreed that coercive measure should be part of the norm options but the last one to be used. The case of Libya proves the opposite, as does the case of Syria. In Libya, there was an unprecedented rush to take advantage of the political unity of the UNSC to choose the coercive or military option and neglected the

AU offer for a peaceful solution to the crisis. The UNSC even neglected the new initiative of “responsibility while protecting” an important tool that was mentioned in the UNSG fourth report for post conflict situations, especially Libya while the military option prevailed in the short run, and failed to protect civilians in the aftermath in Libya.²⁹¹

In the case of Syria, peaceful means were not exhausted and “inadequate” as the UNSG described in reports. However, no reference had been made to any collective coercive action applied in Syria, noting that both crises took place at the same time in different places. Crimes committed in Syria against civilians cannot be compared to those of Libya, but still the UN in general and its Security Council in particular were unable to prevent these crimes, and the main reason for that is nothing more than a political. What was politically achievable in Libya was not in Syria.

In Iraq, the assumption was that the U.S. was waging a war to disarm an outlaw regime retaining WMDs and also to protect and liberate the people of Iraq. However, the reason for waging the war was false and even the rationale of protecting and liberating the Iraqi people proved to be false also. Using excessive military force in Iraq from 2003-2004 against civilians and civilian-populated areas was well documented, however, international response almost neglected it. This paper is limited to discuss the occupation period of Iraq from 2003-2004, but even in the years that followed the official end of the U.S.-led occupation especially during the years of 2005-2007, that followed the adoption of the 2005 World Summit Outcome document, the Multi-National Force continued to use excessive military forces against civilian and civilian populated areas. At least one of

²⁹¹ Report of the UN Secretary General, *Responsibility to Protect: Timely and decisive response*, United Nations, New York, A/66/874, July 2012, p13

the four crimes that are addressed by R2P was committed against Iraqi civilians; however, the UN did not address the situation in Iraq as an R2P issue and no government was held responsible or accountable for committing these crimes. As a matter of fact, military members and civilian contractors were enjoying the privilege of impunity from being prosecuted, punished, or even held accountable, which was granted to them by Pule Primer, the civilian administrator of Iraq.

This research gives no conclusive answers to the nine questions I have raised on page 10 of this paper, rather it provides facts regarding abuse of the norm of R2P by the United Nations in general and the five permanent members of the UNSC in particular during short period in the life of R2P. It also provides facts showing that even when R2P was truly served in certain crises, it was actually a collateral benefit.

Has the UNSC abused the norm of R2P? I would that it did abuse the norm on many occasions and at the very early stage of the norm's involvement in international relations. The two cases of Libya and Syria are clearly evidence of how the norm was abused, not to mention the French intervention in Côte d'Ivoire (Ivory Coast) (2010), the UN mission was on the right track in addressing an R2P issue but it went far beyond, which represented France national interests in re-engaging its former colonies in West Africa.²⁹² The Russian intervention in Georgia (2008) and recently in Ukraine, which is justified lately by Russia saying, "it has the obligation to protect Russian speakers everywhere."²⁹³ In Iraq after 2003, the CPA breached UNSC relevant resolutions.²⁹⁴ I

²⁹² Interview with Dr. Ammar AL Khalidi, (PhD in International Law from Baghdad University/ Law College, and Second Secretary at the Permanent Mission of Iraq to the United Nations 2008-2012

²⁹³ Kinstler, Linda, 'Which Former Soviet State Could be the Next Ukraine', New Republic.com, April 21, 2014, accessed on April 21, 2014, <http://www.newrepublic.com/article/117440/which-former-soviet-state-could-be-next-Ukraine>

²⁹⁴ The International Coalition for Responsibility to Protects' website, accessed on June 27, 2013, 6:00pm, <http://www.responsibilitytoprotect.org/index.php/crises>

argue that all of these crises constitute clear abuses of the norm by the UNSC permanent members.

As I mentioned previously, peaceful means were far more exhausted in some cases and neglected in others, and by both neglecting and exhausting peaceful means serious abuses of the R2P norm took place. In Iraq, peaceful means were totally overruled when the U.S. and U.K. led an unauthorized military intervention against Iraq in 2003.

It is clear now that the veto power has played an important yet negative role in hindering the proper use of R2P. The veto power is an expression of the national interests of the five permanent members of the Security Council. National interests always contradict with collective interest when it comes to the use of veto power in the UNSC. When the veto was not used in the case of Libya, it allowed a military intervention in Libya and in a wide interpretation of R2P. This led to a regime change in the country and a more insecure environment. The use of the veto power on two occasions in the case of Syria prevented the needed intervention in the country in a timely and decisive manner. In Iraq, the case was different because military intervention was executed against the will of the international community.

It is highly unlikely to see the five permanent members waving their veto power in cases concerning the application of R2P or any other case, simply because of the original basis of which the UNSC was formed. The veto still resides in those who won World War II. The veto power keeps the balance in the hands of super powers so as to maintain their superiority. Efforts to reform the Security Council have reached a dead end.

The ICISS report lays over the guidelines for what is politically achievable. However, it seems that not all of these guidelines are politically achievable. Making use of the uniting-for-peace principle in cases where the Security Council is deadlocked and unable to take action in R2P situations can be used and has been taken up by the GA on Syria. However, this was omitted from the agreed document of the 2005 World Summit Outcome.

I argue that to some extent the United Nations succeeded in creating an early warning mechanism for R2P situations. However, this mechanism cannot be fully functional unless it is followed by a timely and decisive response. The mechanism can only state the facts of the existing threat of atrocities, but it cannot urge the concerned stakeholders to react properly. For example, in the Syria crisis, the mechanism worked through the Human Rights Council and other UN agencies and brought the knowledge of an impending threat. However, it was not able to persuade some permanent members on the Security Council to take timely and decisive action.

I argue that Iraq from 2003-2004, and Syria from 2011 until the time of writing this paper are applicable cases of R2P and were neglected by the international community. Exhausting the peaceful means of the good offices, efforts to resolve and reduce tensions one of the most important roles that regional or global organizations can play. I also argue here that in the case of Libya, the African Union did its best to undertake this role, even though the UN ignored the AU efforts.

The United Nations Secretary General in his fourth report on R2P expected that the UN would be charged with using R2P as a selective political tool, and he was right. Each state has its own interpretation of the norm, especially in cases that are brought to

the attention of the Security Council to decide. National interests often override the common good. Lessons learned from misusing the norm in Libya have a direct effect on the crisis in Syria. When Russia and China saw the abuse of the norm in Libya, they were determined not to take the same path in Syria. But in the end, politics is a major part of implementing R2P. The norm cannot escape being a selective political tool that serves the national interests of the 5 permanent members of the UNSC (P5).

That been said, there were many cases that renew the hopes of never again. Crises such as in the Democratic Republic of Congo (DRC) 2013, Mali, and even the Ivory Coast were dealt with neutrally and was backed the UNSC members who found a common grounds in taking action. In the DRC for instance, the Council took an unprecedented step when unanimously adopted resolution 2098(2013) that created a first ever offensive combat forces to intervene and put an end to the human rights violations that were widely committed by Congolese and other foreign armed groups in the region.²⁹⁵ There is now a standing AU intervention brigade that is been financed by the UNSC itself. This is an improvement in the path of R2P future, and evidence that lessons learned is been taken into consideration. In Mali, there was a coup that took place in March 2012 and left a power vacant in the north region of the country that was rapidly seized by Al Qaida extremist who were armed with weapons picked from the conflict in neighboring Libya. However, international community responded vigorously to ongoing crisis in Mali, which was a threat of imminent atrocities.

In conclusion, human rights crises and armed conflicts where human rights being abused and violated are continues to draw lessons on how properly use R2P in a way that

²⁹⁵ Security Council's 6943rd meeting, "*Resolution 2098(2013) enables Offensive combat force to Naturalize and Disarm Congolese Rebels, Foreign armed groups*", Security Council press release, New York, March 28, 2013, accessed on May 5, 2014, <http://www.un.org/News/Press/docs/2013/sc10964.doc.htm>

best protect innocent human lives. It also continues to provide evidences on how R2P was abused as previously explained in this paper. Keeping up with the lessons learned and adding suggested improvements such the principle of responsibility while protecting that was raised by the UNSG's fourth report on R2P would better serve the goal of never again.

Thus, it would be too early to decide whether R2P is relevant or not to the issue of the protection of civilians. Despite all encountered mistakes, but R2P still considered one of the best norms that practically served the promotion of human rights.

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