

نشل تطبيق قانون مسؤولية الحماية الدولية في سوريا وتنفيذه في ليبيا

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ملخص: استعرضت الدراسة مبادئ مسؤولية الحماية الدولية، ثم حلت تطبيقها في ليبيا وإمكانية حدوث ذلك في سوريا من عدمه. وفي هذا السياق خلصت الدراسة إلى أن اعتماد قرار مجلس الأمن 1973 بشأن ليبيا، الذي تضمن فرض منطقة حظر جوي فوق الأراضي الليبية واتخاذ جميع التدابير اللازمة لحماية المدنيين، قد أضر بسمعة مسؤولية الحماية، كما شكك في إمكانية وصحة تطبيقه في أجزاء أخرى من العالم، وخاصة في سوريا. إن استخدام القوة الأممية ضد ليبيا بعد شهر واحد من اندلاع الأحداث فيها وعدم القدرة على استخدامها في سوريا على الرغم من انتهاكات حقوق الإنسان الموثقة وإراقة الدماء التي تحدث بشكل يومي، قد أثر بدوره سلباً على مصداقية وكفاءة مبدأ الحماية الدولية وتطبيقه المحتمل في الصراعات المستقبلية التي قد يتعرض لها المدنيون العزل من قبل أنظمتهم الحاكمة. وبيّنت الدراسة أن عدم القدرة على تطبيق مسؤولية الحماية ليس سوى دليل قاطع على إجحام المجتمع الدولي عن التدخل عسكرياً في سوريا نتيجة تعنت كل من روسيا والصين وإصرارهما على استخدام حق النقض لإفشال أي قرار يخول استخدام القوة ضد النظام السوري. لقد سعت الدراسة إلى محاولة الإجابة عن السؤالين التاليين: (1) هل تشكل الأحداث في سوريا مبرراً قانونياً للتدخل لأسباب إنسانية كما هو الحال في القضية الليبية؟ و(2) ما الأسباب الحقيقية التي تحول دون اللجوء إلى استخدام القوة ضد نظام الأسد؟

لقد كشفت الأدلة التي تم جمعها ودراستها وتحليلها في الدراسة أن أسباب التدخل في ليبيا وعدم التدخل في سوريا، تعود إلى مجموعة من العوامل التي أدت دوراً حاسماً في التدخل في ليبيا عسكرياً من خلال قرار أممي واستحالة تطبيق نفس المعايير في الشأن السوري، ومنها افتقار القذا في حينذاك إلى الحلفاء الإقليميين، ومن ثم لم تكن هناك معارضة دولية للتدخل، أما فيما يخص الأزمة السورية فقد أدت الإدراكات الجيوسياسية والمصالح الإقليمية والدولية دوراً كبيراً في سياسة عدم التدخل في سوريا.

المصطلحات الأساسية: القانون الدولي، حقوق الإنسان، مسؤولية الحماية، التدخل الإنساني، استخدام القوة، الربيع العربي.

Failure of Integrating the Responsibility to Protect Law in Syria and Its Implementation in Libya

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Abstract: The study examined the principles of Responsibility to Protect (thereafter R2P) and then analyzed its application in Libya and the possibility of its implementation in Syria, or the failure to do so. In this context, the study concluded that the adoption of the UNSC Resolution 1973 on Libya which indicated the enforcement of no-fly zone and taking all necessary measures against Libya to protect civilians has damaged the reputation of R2P and has also questioned the possibility and validity of its application in other parts of the world, especially in Syria. Given that the international community was able to manufacture consent regarding the Libyan case in only one month, but was unable to impose it in Syria despite documented human rights violations and bloodshed that occurred on a daily basis had negatively affected the creditability and efficiency of the doctrine and its possible application in future conflicts in which unarmed civilians might become the victims of their own state.

The inability to apply the R2P provides conclusive evidence of the reluctance of the international community to intervene militarily in Syria. This has led to questioning and disapproval among international public opinion, which in turn emphasized the inability and lack of seriousness to intervene for humanitarian reasons and motivations in Syria.

The foremost objectives of this study were to try to answer the following two questions: (1) do events in Syria constitute a legal justification to intervene for humanitarian reasons as in the Libyan case? And (2) what were the true reasons that prevented resorting to the use of force against Assad? The answers of these two questions form the core of this research paper.

Key words: International Law, Human Rights, Responsibility to Protect (R2P), Humanitarian Intervention, Use of Force, the Arab Spring.

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1. Introduction

The humanitarian conflicts that have been accumulated over the years and which have put civilians life at risk has caught the attention of the international community to intervene in order to protect the civilians rights. The human rights law has called for the necessity to change its terms to protect civilians and intervene in the conflicts that may occur at local and international levels (Evans, 2012; Harmer 2012). Violations against human rights have raised the international community awareness to intervene in order to achieve the purpose of human protection. Humanitarian intervention has gone through an inevitable transformation to provide more protection to civilians against regimes mistreatment. Thereby, the R2P law was developed by World Summit in 2005, and was adopted by the UN to prevent human abuse and also determine the level at which military and non-military measures are needed to preserve human rights (Patrick, 2012; Mikulaschek, 2010).

The R2P is the product of several years of international negotiations that specified the conditions under which the international community obtains the right to intervene in the affairs of another state in order to keep its citizens safe and protect them from being hurt. Moreover, this law stipulates the circumstances under which the international community may have the right to intervene and the methods that can be used to achieve that desired purpose. In addition, the international law prevents the use of armed force to attack sovereign states, unless the political unrest requires immediate intervention, in cases where basic human rights are fundamentally threatened (Welsh, 2010; Adams, 2015).

2. Research questions

What is the reason that hampers the UN intervention in the political situation in Syria, despite their immediate intervention in Libya? How close to truth is R2P law in saving the lives of innocent and unarmed civilians?

3. Research objectives

The objectives of the current study were set to include: presenting a clear theoretical analysis of R2P doctrine; applying R2P to the crises in both Libya and Syria; and examining whether or not using actual military force against Libya in 2011 pursuant to UNSC Resolution 1973 had damaged R2P doctrine's reputation, resulting in the silence of the

international community and its inability to apply R2P on the ongoing conflict in Syria despite the mass killings and genocides in Syria.

The article mainly covers the principles of the R2P law, as well as the circumstances under which the international community may have the right to interfere in the internal affairs of other states in order to protect its citizens. Moreover, it illustrates the relationship between the international law and R2P law. In this respect, it discusses the political situation in Libya and Syria, where the R2P law was only applied to interfere with the political tensions in Libya that led to the death of Muammar Gaddafi, and the toppling of the regime. However, the R2P law has never been enforced in the Syrian crisis despite the ongoing violence that obliged millions of Syrians to flee their country and resulted in the death of more than 220,000 in the period from 2011-2015 (Global Centre for the Responsibility to Protect, 2015).

The study also introduces some proposals to reform R2P in light of its evident failure to deal and cope with situations that might harm basic human rights and its inefficiency to act against major human rights violations, in particular its ineffectiveness in issuing a UNSC resolution that calls for immediate military intervention against the Syrian regime, in view of the Russian and Chinese Vetoes to block any attempt to enforce the R2P.

4. Methodology

The study employs a comparative method which is considered an appropriate approach to analyze the subject matter at hand and to achieve the desired conclusions of the research. By doing so, international legal texts, such as the United Nations documents of relevance, Security Council resolutions, and World Summit documents were consulted and examined to reveal whether or not there were any situations of dual treatment regarding international tensions and conflicts, where the R2P would be enforced as in the Libyan case, but not enforced as in the Syrian case. To achieve the desired objectives of the study, the literature and peer-reviewed articles were consulted in order to answer the set research questions.

5. Literature Review

The literature review demonstrates a variety of research and works concerning the R2P notion and its adoption by the UNGA in 2009 as a

result of the agreements achieved by the international community in 2005 World Summit. The literature review surveys the arguments of scholars from different perspectives with various views about the establishment of R2P and its implementation during the 2011 Libyan crisis and the failure to apply the same measures in Syria.

This study aimed at presenting a comprehensive analysis of the true reasons that hampered the implementation of R2P in Syria by international community, and at the same time uncovering the underlying motivations that encouraged the superpowers and drove them to activate their UN Charter's right to use power against a rogue state that failed to protect its own citizens, namely Libya.

In his influential study, Farahat (2013) stresses that economic and commercial interests do not solely explain the Russian and Chinese behavior towards Arab Spring revolutions and their endless firm support to Assad's regime. Rather, according to him, there are four interrelated elements that explain their behavior during Arab Spring: (1) international relations transformation from unipolar to multipolar system that arose during the 1980s, and thus the Syrian crisis is considered an ideal opportunity to achieve this desired objective; (2) Russia and China's firm belief in the necessity to maintain traditional principles of state sovereignty and prohibition of any interference in the internal affairs of other states; (3) the nature of the political systems of both Russia and China and its reflection upon their foreign-policy, and their history of some human rights violations that might construct a soiled case against them by western nations in the near future; and (4) Arab Spring is a major threat to stability in Russia and China and their economic and political reforms efforts, given that Syria is not far from both Russia and China and there is fear of spread and proliferation of radicalism and extremists that may reach them.

Other studies, however, examined the Russian and Chinese stance toward the Syrian crisis from a different perspective. Most of these studies aimed at explaining endless support of the two state of Assad's regime based on the estimation of economic costs and benefits. Recently, the desired objective of the Chinese foreign policy has been shaped as to promote its international economic interests so that it can maintain geostrategic balance with the US economically. In addition, Syria is considered by the Chinese an important trading center which can secure

its trading paths, and hence stable Syria under Assad's regime is an everlasting profitable commercial objective. As for Russia, the long-standing defensive relationships with Syria could present a clear clarification of its behavior since the beginning of the crisis. The Russian naval base in the Syrian coastal city of Tartus, along with the huge arms sales to Syria, provides examples of economic benefits to Russia. In its efforts to limit the US dominance in the Middle East, Russia aimed at raising its diplomatic relations with Arab States and also increased its arms sales, economic engagements, and energy opportunities. (Ferdinand, 2013; Siddiqui, 2016; Sokolsky & Stronski, 2017, Swaine, 2012).

Comparing between the implementation of R2P in Libya and the failure to do so in Syria gained the attention of Alex Bellamy, the director of the Asia Pacific Center for the Responsibility to Protect, and Tim Dunne, the co-director of the center, but they both did not try to condemn the notion or even propose carrying out some reforms to rectify the selective treatment of the UNSC. They never found evaluating grounds for non-intervening in Libya, and their arguments were centered on the legality of the military intervention despite the fact that UNSC resolution only indicated using necessary measures, but it did not have any reference to using military power. Bellamy and Dunne's analysis also lacked any logical comparison between the two cases of Libya and Syria. Bellamy and Dunne (2013) stressed that all requirements to impose R2P were met in the Libyan case; therefore, the UNSC resolution 1973 was issued to authorize a no-fly zone and to take all necessary measures to protect Libyan civilians, but in the Syrian case both Russia and China casted their veto right and thus blocked the implementation of military intervention against Assad's regime. Bellamy and Dunne highlighted the barbarous and inhuman acts carried out by the formal Syrian military in cooperation with major allies (Russia and Iran) against the Syrian population in violation of human rights. They also emphasized that implementing the R2P required full permanent consent as agreed upon in GA meeting of 2009 when the law was adopted. They concluded by arguing that any actions taken against Syria would be a major breach of R2P law; however, it will gain international legitimacy.

In his in-depth analysis of the applicability of R2P in Libya and Syria, (Norooz, 2015) indicated that the Libyan intervention by NATO in 2011 fulfilled the six criteria of R2P, namely just cause, *right intention*,

support of regional states, proportionality of the intervention, reasonable prospect, and right authority. However, NATO actions exceeded its authorization that had been mandated by Resolution 1973. Norooz further emphasized that, as a response to Syrian and Libyan crises, the international community and the regional players vehemently condemned the systematic governmental attacks against innocent civilians in both states and declared that Gaddafi and Assad committed major crimes against humanity. As a response to the criminal actions committed by Gaddafi's armed forces, the international community was able to enforce a no-fly zone over Libya and NATO launched air strikes against Gaddafi's forces, which weakened Gaddafi's military strength. In Syrian case, however, and despite the brutal crimes committed by Assad's regime which constituted a major breach of human rights that overweighed the crimes committed by Gaddafi, the international community has been reluctant to act effectively thus far. Norooz concluded by arguing that "in the case of Syria, the assessment of the R2P principle revealed that there was a lack of a right intention because the Security Council could not reach an agreement on imposing sanctions against Assads regime, while the opposition parties were deeply divided". Norooz further demonstrated that the reasons behind the failure of implementing R2P in Syria could be attributed to multiple factors: (1) the involvement of various groups from moderate Islamists to Salafi-jihadists; (2) the criterion of reasonable prospects was not fulfilled because military intervention would not meet all the challenges in this country; (3) due to lack of UNSC authorization to use force against Syria (as a result of the Russian and Chinese vetoes) intervention was not expected at any time soon.

Tarnogorski (2012) raised a very important point regarding the implementation of R2P in Libya. He stressed that the law had never been formulated to overthrow existing regimes; rather it was designed to cope with human rights violations in a host state. As the Libyan government failed to protect its population, the international community issued UNSC resolution 1970 which was in accordance with R2P and which was later broadened to resolution 1973. These measures were legally based on international law status. Actions taken against the then Libyan leader, Gaddafi, escalated to not only to use extensive strikes against the government forces to protect civilians from fundamental human rights

violations, but also to make immediate regime change. This objective was achieved through abusing the military force used to weaken the regime and ultimately topple the regime. As for the Syrian case, Tarnogorski (2012) pointed out that the crimes committed by the regime were worse than the ones committed by Gaddafi before the adoption of UNSC resolution 1973. Countries that insisted on activating R2P against Libya could not take the same military action against Syria, despite the fact that "violence in Syria has met with universal condemnation, but no world power was willing to apply R2P. In the case of Syria, there was a lack of the "Proper Authority" criterion, which was needed to use the machinery of R2P" (Tarnogorski, 2012: 4).

6. Responsibility to Protect: Theoretical Framework

It has become evident that R2P has been designed to protect potential victims in distant states from systematic genocides and mass atrocities. The doctrine was approved by the international community during the United Nation's World Summit in 2005, when almost 150 countries convened. Six months after the world approval of the doctrine, the United Nations Security Council issued Resolution 1674, which endorsed the World's Summit R2P. It consisted of three interrelated pillars: (1) the responsibility of the state to protect its own population from genocide, ethnic cleansing, war crimes, crimes against humanity, and any attempts to stimulate one of these mentioned four crimes; (2) it is the international community responsibility to aid states during its protection of civilians against the above mentioned crimes; and (3) in cases where a given state failed to fulfill its protection duty, the responsibility shall, therefore, be shifted to the international community who could legally take decisive and efficient measures and actions in accordance with the United Nation's Charter (Bellamy, 2010). It has been argued that R2P principles differ fundamentally from the humanitarian intervention concepts; the R2P underscored the crucial role of states in protecting their own masses from harmful crimes, the international community has the duty of assisting these states in their humanitarian endeavors, and a broader legitimacy was given to intervene militarily in proven cases of mass atrocities and genocide (Ibid: 143, Adams, 2015).

The doctrine of R2P did not emerge suddenly and out of the blue, it was the outcome of extensive and strenuous negotiations that extended from 2001

to 2005. In this context, it is crucial to shed some light on the way in which the previous doctrine of intervention, namely “Humanitarian Intervention” transformed into a broader theme, the so-called newly adopted “Responsibility to Protect” doctrine that gave more international authority to intervene in cases where crimes against humanity were committed.

In 2001, the International Commission on Intervention and State Sovereignty (thereafter ICISS), which was sponsored by the Canadian government, was trying to find a feasible approach to handle the dilemmas of state sovereignty and to provide a legitimate excuse to justify intervention in states, where crimes against humanity were proven and documented (Norooz, 2015). The approval and endorsement of the R2P principle by ICISS in 2001 was a major breakthrough. This breakthrough was able to cope with state sovereignty and the long-lasting Westphalian International System, given the fact that there is no sovereignty above state sovereignty, and that no state has the right to intervene in the internal affairs of other states. Nevertheless, ICISS report stressed that if states failed to protect their own citizens then the international community has the responsibility to do so, and in this case it is not a matter of protecting the state’s sovereignty, but rather protecting innocent civilians from brutal acts. One scholar discussed state’s sovereignty in cases if it fails to protect its citizen through arguing that in cases if states failed to protect its citizens then international intervention is necessary of states’ to maintain its sovereignty Garrigues (2007).

In the same vein, the report of the High Level Panel on Threats, Challenges and Change: A More Secure World: Our Shared Responsibility discussed a state’s sovereignty in a coherent matter, in which it demonstrated that states by signing the UN Charter they do not only benefit from privileges of the sovereignty but they should also respect their responsibilities. (UN, 2004).

The major development that resulted from the commission was the notion of “Responsibility to Protect”, which came out in a form of report (Responsibility to Protect.org, 2011). The report re-categorized the notion of sovereignty to abandon the theme of control and replace it by responsibility, meaning that the states main goal is not to control its citizens but rather to be responsible for protecting them from mass-killing and genocide. If states failed to do so, then the responsibility of saving innocent people is automatically shifted to the international

community (Evans, 2006). The Commissions report emphasized that we would be mistaken if we separated sovereignty from responsibility, as logically and practically sovereignty indicates responsibility, and thus the responsibility of the state is to protect its own citizens (Cited in Ibid: 4).

It should be noted that the Commissions report outlined dual responsibilities of the state; on the one hand, it is obligated on the internal level to be responsible for the safety of its population, and on the other hand, the international community as an external player is responsible through the role of the United Nation to monitor the states behavior in that matter and intervene in cases if states violate or fail to fulfill their duties. (International Research Center, 2001). Although the international community involvement is considered legitimate according to the ICISS's report (2001), there are exceptional circumstances, such as a major breach of human rights and/or inhuman acts committed against innocent people that require a legitimate military intervention on grounds of human protection. (ICISS, 2001).

Most importantly, the ICISS's report summed up the principles of R2P which addressed the legality of United Nations Security Council (UNSC) actions being the only body that is authorized to employ military intervention to protect innocent civilians in distance. There are four interrelated principles that include the right intention, meaning that its goal is to put an end to human suffering, the last resort which indicates that peaceful resolutions are explored and exhausted, the proportional means which indicate that the use of necessary military force is only to right the aggressor, and the reasonable prospects that should make sure of the chances of defeating the rogue states and thus bringing them to the court of justice (ibid). It is worth noting here that the report pointed out that in cases of failure of the UNSC to respond, the United Nations General Assembly (UNGA), regional organizations, and any coalition of collective states could intervene to ensure the protection of civilian lives. This is considered a major development regarding humanitarian intervention as UNSC's authorization is not needed to legitimate the actions of international community if citizens of a given state were in real danger. However, one has the right to question the US and its allies intervention in Iraq in 2003 as it was a major breach of international law bindings rules, given that there was no explicit UNSC resolution authorizing the use of force against Saddam's regime. (AL-Qaralleh, 2012)

Three years after the announcement of ICISS's report, the former UN Secretary-General, Kofi Annan, launched an initiative aiming to develop the doctrine of R2P. The outcome was forming the High Level Panel on Threats, Challenges and Change: A More Secure World: Our Shared Responsibility (UN, 2004). The Panel considered R2P doctrine as a suitable mechanism to add more strength to the collective security system in which every state is obligated to be responsible for the protection of its population against acts of rape, mass-murder, ethnic cleansing, torture, terror, starvation, and exposure to fatal diseases (Evans, 2008). In this concern, Stahn (2007) stressed that the initiative of the High panel aimed to remind the international community of the crimes outlined in the Geneva Convention of 1949, and its subsequent 1973 four protocols which included genocide, torture, and which ultimately gave rise to R2P.

A year later, a report, prepared by the former United Nations Secretary General and presented in front of the UNGA, highlighted that R2P should be utilized by the international community collectively to respond against ethnic cleansing, genocide and mass-murder. To achieve the desired objective, according to Kofi Annan, states are obligated to be responsible for the safety of its own citizens; if national authorities fail to accomplish that responsibility then the responsibility becomes in the hands of international community, meaning that a UNSC enforcement action is therefore required pursuant to the UN Charter (United Nations General Assembly, 2005).

As a result of the World Summit convened in 2005, the majority of the participating state parties agreed on adopting paragraphs 138-140 of the 2001 ICISS report. Paragraphs 138-140 outlined the R2P doctrine, in which major considerations were given to the responsibility to protect populations from ethnic cleansing, genocide, war crimes, and crimes against humanity, both internally by local governments and externally through collective will (Norooz, 2015: 6). More implementations of the R2P doctrine took place during the years 2009-2010. Two separate reports on R2P were issued by United Nations General Assembly, both emphasizing the importance of R2P and the adherent commitment not to abandon it (Secretary General, 2009; Gierycz, 2010 cited in Norooz, 2015). The two reports introduced the three-pillar approach of R2P, outlined in the UN Secretary General strategy to save innocent civilians

in distance in cases of crimes committed against them. The pillars are: (1) the protection responsibilities of the state, (2) international assistance and capacity building, and (3) timely and decisive response (Secretary General, 2009).

In his analysis of the above mentioned pillars adopted by UNGA, Norooz (2015) indicated that the three pillars downplayed the role of military intervention but emphasized the notion of R2P as mentioned in Pillars One and Two; therefore, it is the international community responsibility to prevent the undesired actions of rogue states, through monitoring human rights violations and acting peacefully.

Before we end the discussion of this section; it is of a crucial importance to examine two issues: first, to evaluate the impact of globalization on the establishment and progress of R2P, which is essential to determine the influence of globalization on international relations; second, to examine the differences and similarities between humanitarian interventions and R2P in order to obtain a clearer view and a better understating of R2P doctrine.

It can be said that key legal international developments in relation to protecting human rights emerged as a result of globalization. Also, the same can be said in regard to the adoption of the R2P by UNGA in 2009. It has been argued that the influence of globalization on human rights issues was due to four interrelated reasons: (1) the impact of the information age which created a global civil public opinion that is more aware of human rights violations that took place on the international arena, and this was the result of immediate TV coverage, which in turn created global reactions to events impacting innocent civilians in a distant state that require simultaneous involvement; (2) human rights institutions, such as Amnesty International and Human Rights Watch, along with human rights activists, asserted the primacy of human right law over some other international laws; (3) intergovernmental organizations became more obligated to conform to general international law binding rules and sometimes exceeded its constitutional rights; and (4) it has become the international community's responsibility to confront both state and non-sate violators of human rights (Shelton, 2002).

R2P differs from humanitarian intervention both in purpose and implication. The fundamental differences between the two doctrines received an extensive discussion by the former Australian Foreign Affairs

Minister Gareth Evans (2008), who pointed out that although humanitarian intervention paved the way for the establishment of R2P, it remained narrow as it concentrated only on employing military force, while on the contrary the R2P involved several peaceful steps, such as prevention, diplomacy, negotiation, reaction, rebuilding, and sharing reliable information regarding any breach of human rights norms.

Also, the R2P document made it obvious that both UNSC's authorization and UN Charter framework are required to deploy military intervention. On the contrary, the humanitarian intervention doctrine does not require the above mechanism, and explicit authorization is not needed, which means that under any circumstance a powerful state can and shall allegedly intervene in any given state on grounds of humanitarian causes. The Advisory Council On international Affairs (2010) highlighted the differences between R2P and humanitarian intervention through indicating that one of the main differences between the two doctrines is that "R2P doctrine only covers the specific crimes of genocide, crimes against humanity, war crimes and ethnic cleansing and no other humanitarian catastrophes as humanitarian intervention does"; (The Advisory Council on International Affairs, 2010).

One might raise the question of what differences between R2P and humanitarian interventions were drawn by the US in Somalia and Haiti. It should be noted that humanitarian interventions gained a keen attention immediately after the end of the so-called Cold War; as developed and democratic nations responsible became aware of crimes of genocides and massive violations of human rights in some of the developing countries. These violent crises mainly in Somalia and Haiti led to a heated debate that indicated the necessity of the US involvement on humanitarian intervention grounds. In the cases of Somalia and Haiti there were explicit UNSC resolutions (i.e. 794, 940 respectively) that authorized humanitarian intervention to protect innocent civilians based on the view of "liberal intervention". It worth noting that the US involvement in the above mentioned internal conflicts were questioned by the developing countries as to who has the right to define and determine the right to intervene? Why intervening in Somalia and Haiti but not in some other states? What sort of humanitarian intervention is deemed necessary? (Garrigues, 2007; Strauss, 2009; Robert, 2001; Westem, 2009). Considering those logical questions in relation to humanitarian inter-

vention, one can emphasize that R2P has indeed the same dilemma as this research aims to uncover the reasons underlying the UNSC valid intervention in the Libyan case in accordance with the R2P doctrine but not in the Syrian case by referring to the Veto right dilemma. Also, the research will discuss whether necessary measures mean, for instance, no-fly zones, economic sanctions, or military involvements.

International Humanitarian Law indicates the right of the UNSC to issue a resolution to authorize the right to intervene in a given state only after exhausting all peaceful venues to protect innocent civilians in cases of genocide, atrocity, mass-killing, torture, and ethnic cleansing. Humanitarian intervention is considered to be an ethical and moral responsibility of the international community to act in response to human rights violations; nonetheless, the R2P has become an efficient and a binding international humanitarian law after it was adopted by UNGA in 2009. Needless to say that both humanitarian intervention and R2P require explicit UNSC resolution to function; if there is no UNSC resolution then all actions taken shall be considered neither legal nor legitimate. Hence, it can be argued that R2P is in fact a major advancement of humanitarian international law but with major differences, which include: (1) R2P is individual-centered, but humanitarian intervention is intervener based; (2) R2P relies on three pillars that include intervention, prevention, and reaction and rebuilding, while humanitarian intervention consists of one pillar only, namely intervention; and (3) R2P eliminates the conflict between intervention and state sovereignty, as it starts to function in cases where the host state fails to fulfill its responsibility of protecting its own citizens, but humanitarian intervention acts immediately (regardless of the state's sovereignty) if crimes against humanity have been committed, with the requirement of a UNSC explicit resolution (Strauss, 2009; Westem, 2009).

7. Libya and the Enforcement of R2P Doctrine

Situations leading to apply R2P on the Libyan crisis

On the 15th of February 2011 protests of the Arab Spring broke up in Libya as the fever of reforms spread from Egypt and Tunisia. The incident that triggered the Libyan uprising was the arrest of human rights activist in Benghazi (Turkmen, 2014). Situations at first seemed peaceful as masses requested some major economic and political reforms and due

to the lack of serious response from former President Gaddafi, a radical shift occurred when Libyan population escalated their demands to request immediate regime change and thus a revolution started aiming at toppling the existing regime. In just a short period of time the uprising turned violent, because of the brutal acts of the existing regime of Al Gaddafi. Direct threats were made by Gaddafi to wage large-scale massacre if protests did not compel to his will (Turekmen, 2014: 9).

What marked a major surprise in the Libyan uprising was the participation of Libyan high ranked officers next to rebels, as they joined the opposition in their efforts to oust the regime. Consequent to that the Interim Transnational National Council was created to organize the opposition against Gaddafi. As a response Gaddafi waged full-scale anti-opposition military campaign. As a result, Gaddafi's forces and loyalties re-gained a full control of territories that were under the control of opposition. Needless to say that during the three months of fighting, Gaddafi breached all the norms of international humanitarian law, and the conclusion was mass-killing, chaos and random executions.

Due to human rights violations, many regional and sub-regional organizations along with the UN believed that an intervention is needed to prevent Libyan innocent civilians from the brutal acts of the regime. As a result of this understanding, the UN High Commission for Human Rights called in February for an immediate cease of hostilities and systematic violence directed towards demonstrators which amounted to crimes against humanity (Reuters, 2011). On the 22nd of February 2011, the UN announced that the situation in Libya presents a clear case that necessitates imposing the R2P principle in view of the regimes inhuman behaviors which amounted to crimes against humanity, and the UN officials insisted that Gaddafis regime should fulfill its commitment stipulated in R2P which was adopted in the World Summit of 2005 (UN Press Release, 2011 Cited in Norooz, 2015). Meanwhile, all of the regional and sub-regional organizations condemned the cruel acts of Gaddafi and demanded an immediate and firm stance to face Gaddafi and safeguard the Libyan civilians. On the 20th of February of 2011, the spokeswomen of the European Union, Catherin Ashton, declared that it was urgent for Gaddafi to stop human rights violations against his own people (European Union, 2011). Two days later, the Arab League

announced that Libya is banned from attending its meetings because of the violent acts committed by Gaddafis forces. In view of the excessive use of force against civilians in Libya, and on the same day of suspending Libya's membership by the Arab League (Norooz, 2015).

The Libyan situation became heated as huge media reports cycled intensively world-wide, which showed that the Gaddafi forces and mercenaries were carrying out massive killings. At this point, the international community was determined to charge Gaddafi of such acts. Consequently, S-15/1 Resolution was adopted by UNSC on the 25th of February, in which the Council demanded the regime to fulfill its responsibility of protecting its own population and the necessity to put an end to all types of crimes (UNSC Resolution S-15/1, 2011). Due to lack of response from the Libyan authorities to the above mentioned Resolution, the Security Council, in its efforts to stop the bloodshed, issued Resolution 1970, which considered the systematic attacks against people to be crimes against humanity (UNSC Resolution 1970, 2011). Resolution 1970 contained four concrete correlations with R2P principles, as it: (1) demanded Libya to respect its obligations of responsibility to protect its people; (2) imposed weapons embargo on it; (3) imposed sanctions on the Libyan government and Gaddafis family; and (4) violations would be notified accordingly to the International Criminal Court (ICC) which aimed to deliver a strong message to Gaddafi of the consequences of his brutal acts (Norooze, 2015). The message was never conceived by Gaddafi who was reckless, thoughtless, and suffering from misperception; As a result, the ICC found that Gaddafi was guilty of crimes against humanity. As a response, the meeting of the Foreign Ministries of the Member States of the Arab League approved on March 12th Resolution 7360 in which they demanded the Security Council to issue a resolution of no-fly-zone over the Libyan territory to protect the population (Arab League Resolution 7360, 2011). A major turn happened when the Security Council approved Resolution 1973 on the 17th of March, 2011, which authorized all necessary measures to protect the Libyan civilians. The Resolution was approved by the votes of 10 in favour with 5 abstentions, which included India, Russia, Germany, China, and Brazil (UNSC Resolution 1973, 2010).

Adopting R2P and assessing the legality of the intervention in Libya

According to the UNSC Resolution 1973, the Gaddafis aggressive behaviors constituted a major breach of the international law norms and values and thus posed an undeniable threat to international peace and security (UNSC Resolution 1973, 2011). Some argued that the authorization of resolution 1973 without a Veto marked a victory for the R2P concept and accordingly caused a major contemporary development of international law (Rothwell & Nasu, 2011). It is unquestionable that the Security Council acted militarily under the authorization of Chapter VII, Article 42 which allows the use of collective power in cases that put International Peace and Security in danger. Thus, Resolution 1973 acted under that umbrella, and it outlined the ways in which SC can restore international peace and security. The measures indicated in the Resolution refer to the methods that can be implemented to protect civilians, such as creating a no-fly zone, freezing the assets of the Gaddafis regime, banning flights, and enforcing an embargo on arms. (UNSC Resolution 1973, 2011).

On March 19th 2011, French jetfighters began their first air strikes against Libyan ground armed forces. On the 24th of March they participated heavily through implementing Resolution 1973 which was imposed through declaring the “Operation Unified Protector” that became operative on April 1st 2011. A declaration was issued by the NATO headquarters on April 14th indicating that the operations would continue unless the Gaddafis regime complies with three conditions: (1) All hostilities against Libyan population must be ceased immediately, (2) All military forces must retreat to their bases, and (3) humanitarian assistance must be allowed to reach the affected areas (NATO Statement on Libya, 2011). Gaddafi failed to comply with these conditions, so fighting continued for seven months, and after carrying out about 26.281 sorties by the coalition air forces under the NATO command, victory was declared on the 31st of October 2011 (NATO, 2011). On October 20th, 2011 Gaddafi was captured by the rebels and was immediately slaughtered, marking the end of his era. (Rothwell & Nasu, 2011: 11).

After examining the surrounding circumstances that led to the adoption of Resolution 1973, it is now crucial to assess the adoption of R2P and its legality. This will be done through evaluating and analyzing the grounds for intervention and the grounds for non-intervention.

Grounds for intervention

Intervening in Libya occurred due to multiple reasons: (1) it was evident that many Member States of the United Nations welcomed the use of force against Gaddafi and stressed the crucial need to protect innocent Libyan civilians from the brutal acts and atrocities of the regime. As such, the Security Council as the Right Authority took the decision to take all necessary measures to protect Libyan civilians through approving Resolution 1973 in which designed the objective aimed at intervening to achieve humanitarian purposes, Accordingly, the criterion was fulfilled, given that the R2P doctrine document adopted in 2005 in which it emphasized the crucial importance of "right intention" which is based on protecting civilians from mass-murder and genocide, and to achieve that multilateral operations should be supported by both international and regional opinion (ICSS document cited in Norooz, 2015); (2) international community supportive efforts to intervene in Libya relied on Libya's past human rights record, and thus it was urgent to stop Gaddafi's brutal acts before it was too late. Such record includes Gaddafi's banning of political parties, groups, independent civil organizations, and non-supportive media outlets for the last 45 years (Siskind, 2011); and (3), one also can argue that intervening in Libya was considered a solid case of R2P policy which was first adopted at the World Summit in 2005, and later confirmed by the UN. Accordingly, it was all about binding legal rules that have to be respected and obeyed and thus intervening in Libya was justified to protect Libya's people (Evans, 2011).

Grounds for non-intervention

As mentioned above, there were many legal and moral foundations for military intervention in Libya since all R2P criteria were met to issue an explicit authorization from the United Nations Security Council that lent more creditability to the actions undertaken by the international community. However, massive criticism arose on the surface during the application of R2P mechanisms and thereafter the toppling of the regime. Such oppositions were mainly initiated by Russia and Brazil. Therefore, this section is dedicated to highlighting the viewpoints of these two states by primarily documenting their arguments for opposing the intervention. The counter-arguments for non-intervention include the following:

- 1 - In an op-editorial in the New York Times written by Ellen Barry (2011) on April 26th, 2011 entitled *Putin Criticizes West for Libyan Incursion*, the Russian stance towards the intervention was examined and evaluated. Barry (2011) indicated that Putin opened the fire against the intervention and considered resolution 1973 as a “medieval call for crusade” claiming that if he had been the President of Russia then, he would have vetoed the resolution; this meant that he opposed the policy of the then Russian President Dmitri Medvedev who gave his approval of UNSCR 1973, which never authorized the use of actual military power against Gaddafi’s regime, but emphasized the urgent need to employ all necessary measures to protect innocent Libyan civilians.
- 2 - Brazil questioned the applicability of R2P upon Libya as UNSC Authorization never called for the toppling of the existing regime, but aimed to protect the lives of innocent civilians. This expansion of the Resolution indicated a foremost breach of international binding rules. (Boreham, 2011).
- 3 - In our discussion of R2P principles which were originated from ICISS report that was adopted by both World Summit and United Nations respectively, it was evident that the international community took into consideration three interrelated elements of the doctrine, namely, the responsibility to respond to any violation of human rights, the responsibility to prevent, and the responsibility to rebuild. In this context, an ideal argument regarding the failure of the R2P doctrine to fulfill the third requirement of the “Responsibility to rebuild” can be found in Ramesh Thakur’s (2012) analysis of the legality of the 2011 intervention in Libya. Thakur (2012) pointed out that the “success has been undermined by the failure of the international community to implement the responsibility to rebuild”, he further indicated that “the international responsibility to rebuild should deal with sustainable development and economic growth in Libya, as well as disarmament, national reconciliation and recovery built from the ruins of Libya’s political infrastructure”. As such, if negative outcome overweighed the positive one then it can be argued logically and legally that the intervention was neither legitimate nor moral, given that the Libyan people for the last six years have been suffering from instability, chaos, and insurgency. In

a different context, a counter argument had been presented to explain why intervening states were not able to commence rebuilding in Libya.

8. The failure to Integrate R2P in Syria

In this section, the study aims to examine and reveal the immediate reasons underling the reluctance of the international community to enforce the R2P in Syria despite massive documented human rights violations. The discussion shall shed light on the crimes committed by the Syrian Ba'ath Regime during the last six years; furthermore, it shall thoroughly investigate the case to reveal the true reasons underlying the International community silence towards the inhumane acts committed in Syria.

Background to the Syrian uprising

The Arabic Spring fever reached Syria in February of 2011 after it had its unforgettable reminiscences of the events that took place in both Tunisia and Libya. Protests started at Deraa governorate after arresting and torturing 15 school students who posted anti-regime posters on the walls of the city. As a response, on 18th March, masses started their demonstrations demanding the immediate release of the teenagers. What made the incident escalate further were the actions undertaken by the Security Forces that started to target civilians and caused casualties. (CNN, 2012). One month after the start of the uprising, the Syrian military forces intensified their oppression, and reliable reports revealed by the UN Undersecretary General for Political affairs indicated that military artillery fires were used against unarmed civilians (Achiume, 2015).

Shockingly, Assad denied any responsibility of the acts of violence and accused the rebels to be behind the chaos and the killing in Syria. (Zifeak, 2012). Despite the announcement released by Assad, he declared in April of 2012 the end of the 45 year old State of Emergency Law and allowed peaceful government controlled demonstrations, in an effort to calm the masses (Global Center for the Responsibility to Protect, 2012). Assad's attempt failed, as rebels rejected the reform and voices arose demanding the urgent need to overthrow the regime.

As a result of the measures taken by the regime that exercised extensive and systematic violence against the rebels in Deraa by adopting a harsh strategy and bombardment, the uprising spread in 2012 across

Syria to include the major cities of Damascus and Aleppo and some other major cities as well. Accordingly, a civil war broke out in form of insurgency acts, and it became evident that violence had shaped the Syrian reality (Thomson & Wilkinson, 2012). In just few months, almost 8,000 Syrians lost their lives due to state violence and consequently the death toll rose dramatically (Turkmen, 2014).

By 2012, the military attacks launched by the Syrian government had caused more than 75,000 deaths among civilians and forced around 1000,000 civilians to flee their country seeking refuge in neighbouring countries, such as Jordan and Lebanon (Hague, 2013). Moreover, the UN Human Rights Council stated that the humanitarian crisis arising in Syria was the result of “state policy” that launched its offensive against civilians, and it called for the urgent need for military intervention to prevent the atrocities committed against the Syrian civilians; however, the Security Council was reluctant to take any action in regard to this issue (Human Rights Council, 2012). It should be noted that because of Assad's refusal to step down, two competing axes were formed; the first one was the pro-Assad axis represented by the countries that supported Assad, namely Russia, China, Iran, Venezuela and North Korea, while the second one was the anti-Assad axis which consisted of the U.S, European countries, some Arab states and Turkey. Norooz (2015) argued that the efforts made by these two axes had been centralized around “supporting either the Assad regime or the rebels in accordance with their own interests.

In order to organize the efforts of opposition, two separate bodies were created in Turkey and Syria, respectively. Externally, in October 2011, the Syrian National Council (SNC) was formed in Turkey which was calling for regime change and demanded the intervention of the International Community to stop the bloodshed (New York Times, 2013). Internally, the Syrian Free Army (FSA) was established to handle fighting responsibility against Assad's military forces in an attempt to liberate Syria from the ruling of the existing regime (Ibid).

From 2011 to 2015 the situation in Syria deteriorated as war crimes, crimes against humanity, and other gross human rights violations were committed continually. Massive destruction of both infrastructure and public assets was expanded due to the irrational hostilities. Massacres were committed on a daily basis, and many documented incidents

confirmed the usage of chemical weapons against innocent civilians. Syrian people not only suffered from violence, but they were also forced to flee their own villages and cities in a massive internal and external displacement, aiming at securing their lives. As a result of the acts of mass-killing and genocides committed by the regime (on a daily basis) almost 191,369 documented deaths were reported as of April of 2014. It was also documented and reported in March of 2013 that almost one Million Syrian civilians fled Syria seeking refuge in the neighbouring countries of Jordan, Lebanon, Turkey, and Iraq. This number had more than quadrupled by year 2015 (Achiume, 2015).

Due to the state of instability and the mass-killing conducted by the regime, 13.5 million Syrian people are in need for humanitarian aid. More than 6.3 of them have been displaced internally, and 5 million have been displaced externally (UN Central Emergency Response Fund, 2016). In August 2014, an analytic study prepared by Human Rights Data Analysis Group (2104) presented its findings of documented conflict-related killings in Syria from 2011 to 2014. The study showed that a total of 191,369 Syrian people were killed during the three years. Documented evidence gathered by Amnesty International also indicated that the Syrian regime during the period from 2011-2015 systematically detained innocent civilians and tortured them causing almost 17,723 killings among them (The World Post, 2015).

It became evident that Assad's regime not only used conventional weapons against innocent civilians but also employed explosive barrels and chemical weapons stockpile in different occasions causing unnecessary sufferings and large numbers of deaths of civilian targets and a massive destruction of properties. A deadly chemical weapon attack targeting the eastern and western parts of Damascus on 21st August, 2013 killed hundreds of people. (BBC News, 2104).

On November 20th 2016, the regime forces along with Russian air-forces assistance waged a massive airstrike attack against the city of Aleppo leaving at least 300 hundred killings among civilians and forcing others to flee the city (CNN News, 2016). Most recently, the Syrian regime carried out banned nerve agent Sarin attacks on April 5th 2017 against rebels situated in the town of Khan Sheikhounin Edlib governorate. This attack was the worst since the start of the uprising, as dozens of people, mostly of children, lost their lives (The New York

Times, 2017). Days later, Trump ordered to launch an attack against the Syrian regime. (The Guardian, 2017).

International reactions to events taking place in Syria

By now, the Syrian crisis has attracted the attention of the international community, because of the intensive measures undertaken by the existing regime to silence the masses that were determined to overthrow Assad. Due to this international attention, there was division among the world community: some states maintained its continuous argument of Assads responsibility to protect his own people, while others denied the rebels their right to demand Assad to step down and they were thus considered as the major reason for the killings in Syria. The Arab league as a regional organization waited months before it condemned the actions of the regime against civilians. Meanwhile, influential regional powers, such as Saudi Arabia, Egypt and Turkey declared that a political resolution of the crisis is crucially needed to put an end to the mass-killings, and in later stages they became more involved in the matter (Norooz, 2015).

From the very beginning of the uprising, both the US government and European Union (EU) condemned the bloodshed in Syria and imposed economic sanctions against the regime (Chambers, 2012). However, it should be noted that UNSC suffered from high levels of division when debating the Syrian crisis, as both Russia and China were enormously supportive of Assads regime, whereas the US and EU argued for the urgent need to issue a SC resolution that would authorize the use of military forces against Syria for humanitarian reasons, which would be a true implementation of R2P doctrine in a similar was to the Libyan scenario.

The UNSC disagreement regarding the Syrian crisis was clear and evident from the beginning. On October 4th 2011, all of Germany, France, Portugal and the United Kingdom presented a draft Resolution that would urge Assad to assume responsibility to protect his citizens, and they also condemned the gross human rights violations. A heated debate and discussion occurred inside the SC concerning that draft, and as a result both Russia and China expressed their dissatisfaction of that draft Resolution by casting their Veto claiming that an inside Syrian-led political process would resolve the crisis (UNSC, 2011).

A major development concerning the Syrian crisis took place on December 19th 2011, when the United Nations General Assembly reached an agreement and issued a Resolution urging Syria to implement the Arab League plan of action “in its entirety,” that indicated the need to cooperate with the Human Rights Commission of inquiry (Nada, 2013). Resolution 66/176 also condemned arbitrary actions taken by the regime (UNGA Resolution 66/176, 2011).

In the wake of the massacre committed in the city of Homs in which almost 270 civilians lost their lives, the Security Council held a meeting on February 4th, 2012 to discuss a draft Resolution calling for the resignation of President Assad and imposing severe sanctions against the regime. The Resolution also condemned the ongoing violence (Nada, 2013). A Resolution sponsored by France, Germany, the United Kingdom, Portugal and the United States to impose more intensive sanctions against the regime, failed on July 19th, 2012, as both Russia and China exercised their Veto for the third time (UNSC Draft Resolution S/2012/538, 2012). A fourth Veto by Russia and China on December 4th, 2016, was employed to block draft Resolution that called for a seven-day cease-fire in Aleppo after the comprehensive and systematic attacks carried out by the regime to force rebels to surrender or leave the city (BBC News, 2016).

At the time of writing this paper, the Syrian regime conducted huge poisoned- gas attack against civilians in Idlib killing 72 people, including 11 children and almost 550 were injured. The Khan Sheikoun’s attack drew international outrage as almost every state condemned the inhuman action, except for nations that supported Assad (Aljazeera News, 2017). The UN Secretary-General Antonio Guterres declared that he was deeply disturbed by the attack. Meanwhile, an emergency meeting of the SC was scheduled as the US, UK and France proposed a Resolution calling for the use of military force against the Syrian regime, but it was anticipated that both Russia and China would veto the resolution. In the light of these events, it can be argued that the Trump administration might be keen on issuing the resolution, but this might as well widen the between Russia and the US and trigger a direct confrontation between the two superpowers, taking into consideration that Russia opposed and condemned the US recent airstrikes against military bases in Syria (The Washington Post, 2017).

Because of the Russian and the Chinese extensive support to Assads regime internationally and locally, Assad forces started to wage chemical attacks against Syrian civilians. On August 2013, Sarin rockets were fired against Ghouta suburb killing almost 1430 civilians (Human Rights Council, 2014). Although Assad denied any involvement and blamed rebels for the attack, he agreed to a US-Russian deal to destroy all chemical weapons. Accordingly, SC Resolution 2128 was adopted in which Syria was requested to remove and destroy its chemical capability by mid - 2014 (Turkmen, 2014).

One more chemical attack targeting civilians was waged by the Syrian regime on September 2014. An investigation conducted by UN chemical weapons team confirmed the usage of chemical weapons. As a response, the then UN Secretary General, Kofi Annan, called the attack a war crime. Meanwhile, the UK, the US and France accused the regime of being behind the Sarin attack and refuted the regimes claim that opposition fighters were behind the attack, which for them was mere manipulation. (Norooz, 2015).

It is important to stress that although Assad had given his approval of the items of Geneva I and 2 in 2012 and 2014, respectively, which called for the establishment of a transnational governing body in Syria, he breached his commitments by refusing to discuss the opposition demands, and insisting that the regime was in fact fighting terrorism. This behaviour shaped the Assad insistence on staying in power and thus both Geneva 1 and 2 broke down and failed, leaving no space for peaceful settlement (Ibid).

Due to full understanding of the danger of violations conducted by the Syrian regime in handling the situations in Syria, the Arab Parliament stated that Syria clearly violated the Arab League protocol that emphasized the duty of Assad to protect the Syrian people. The Parliament also pointed out that the Arab League failed to involve itself more in the Syrian crisis as the violence increased and more people were killed. As a response to Assads breach of the Arab Peace Plan manifested by his invasion of Homs, the Arab League suspended Syrias membership in November of 2011 and imposed tough economic sanctions in an attempt to isolate Syria from its Arabic environment. The Organization of Islamic Cooperation (OIC) suspended Syrias membership in August of the same year, after declaring that Assad's inhumane acts along with the

massacres conducted against unarmed civilians were the true reasons behind the decision (Nada, 2013).

To sum up, both International and regional communities failed to act in response to the situation in Syria as UNSC was not able to authorize the use of force against Syria due to various Vetoes casted by the two permanent States of SC, namely China and Russia (Harmer, 2012). Also, it was evident that the Arab league role to resolve Arabic tensions and crises had always been weak and inefficient. Giving that the only authority the League has to intervene is when there is a major threat against a given Arab System in order to protect the ruling elites. An illustration of the above mentioned argument is evident in the negative role of the League during the Iraq invasion of Kuwait in 1990, and most recently during the Arabic Spring, as internal Arabic tensions and conflicts were resolved through external factors and involvements; Libya is a clear prototype.

Applying the “Responsibility to Protect” doctrine on the Syrian Crisis

The Syrian crisis is another case that highlighted the urgent need to apply the principles of R2P on situations where major violations of basic human rights were conducted on a daily basis and thus a serious international response is legitimate to stop mass-murder, torture, displacement, inhumane detainee treatments and atrocities. Accordingly, as discussed earlier and because of documented crimes against humanity, the Syrian crisis constituted a true case for the implementation of R2P; Norooz (2015) stated that “based on the International Commission of Inquiry (COI) on the Syrian Arab Republic, the situation in Syria is a tangible case of R2P” (Norooz, 2015).

During the last six years of the conflict in Syria, the Syrian regime waged systematic violence that breached all the norms and values of both international humanitarian law and human rights foundations, which it is a signatory of; it is evident by now that the Syrian regime failed to truly fulfil its responsibility to protect civilians and instead committed crimes without even considering the consequences that might follow (Luck & Ding, 2011; International Commission of Inquiry, 2012).

In our analysis of the principles of R2P doctrine earlier, we mentioned that if a given state failed to fulfil its duty of protecting its civilians from situations where their lives might be in danger then the

responsibility to protect would be shifted to the international community. In this case, the use of actual military force is, therefore, moral and legitimate. However, all peaceful paths should be exhausted before driving the regime to assume its responsibilities by force. Hence, R2P considers military intervention as a last resort to right the aggressor. Dozens of documented incidents proved without any reasonable doubt that the Syrian regime had crossed all the limits by committing mass atrocious crimes that mounted to war crimes and crimes against humanity, as reported by Human Rights Watch (2012). Yet, the international community was helpless and unable to exercise its UNSC power, as all drafted resolutions to activate SC enforcement against the regime pursuant to Chapter VII of the UN Charter, were confronted by the Veto right of both Russia and China.

In his extensive study of R2P in both Libya and Syria, Norooz (2015) came cross the assessment of R2P in Syria through applying the principles of Just Wars that were considered the concrete foundation of both Humanitarian Intervention and Responsibility to Protect, on later stages. In doing so, he discussed the applicability of six requirements, namely *just cause*, *right intention*, *last resort*, *proportional means*, *reasonable prospect*, and *right authority*.

Norooz (2015) indicated that Assad regime targeted civilians causing large numbers of deaths and forcing millions to flee Syria. Meanwhile, the regime committed state-wide, systematic gross violations that were shaped to execute torture and detain civilians without reason, and all this was combined with full destruction of civilian properties. Accordingly, as argued by Norooz (2015), the situations in Syria established a *prima facie* case (meaning that the evidence exists in fact) of daily ongoing mass-killing reported and documented by international organizations. Hence, the Syrian case fulfils the "just cause" requirement.

The 'right intention' requirement relies mainly on three interrelated elements that should be met to fulfil the criterion: **first**, intervention should be taken collectively; **second**, the population of that given state must support the intervention, and **third**, the regional states must support the action. As for the collective will, as discussed before, it was evident that due to veto casting by both Russia and China, the SC was unable to issue a resolution to intervene in Syria. (Ibid: 37).

The third benchmark set forth by R2P, namely the last resort is valid, given that the international community had in reality exhausted all peaceful venues to resolve the Syrian crisis. Global community failed to put an end to the inhumane acts committed in Syria, as it became evident that Assad rejected any effort to negotiate. (Ibid: 37).

According to R2P concept, "proportional" means that it should be employed to ease the sufferings. As noted before, Assad waged direct air-attacks against civilians; therefore, a response to impose a no-fly zone was in fact a proportional military reaction to save civilians. It had been mentioned that SC Resolution 1973, which called for the creation of no-fly-zone was indeed imposed in Libya; hence, through establishing those zones civilians would be protected against direct air-strikes (Ibid:38).

Military intervention must cause more good than harm. This comprises the fifth requirement of R2P, as the success of those actions would better the situations of innocent civilians who had suffered from the criminal regime. As discussed before, it was understood that there were two axes that dominated the scene in Syria. On the one hand, there was the pro-Assad axis consisting of Russia, China, and Iran, which unquestionably supported Assad. On the other hand, there was the anti-Assad axis consisting of the US, European States, Turkey and the majority of Arab and Islamic States, which believed in the urgent need to topple the regime. The fact that there were multiple influences, involvements, and interests of various players made it very hard to intervene (Ibid: 38).

The UN security council is the authority that can impose a resolution that shall exercise actual military power in cases where international peace and security are threatened or there are major human rights violations. The R2P concept has made it clear that the SC is the only legitimate, rightful and primary body that can authorize the use of force. Hence, to use force against Assad by an explicit authorization from the SC is, therefore, an action that is deemed necessary. In the Syrian case, it became evident that this mechanism was impossible, as both Russia and China rejected any use of force against Assad, and casted many Vetoes to disable the UNSC functionality (Ibid:38). The last benchmark was missing in dealing with the situations in Syria (Ibid: 38).

To make it clear, therefore, it was understood that Assad breached every norm and value of international law through the barbarian acts he

committed against his own people in Syria. However, the employment of military force to oblige Assad either to step down or to accept political resolution, became unachievable tasks. Three major requirements of the R2P were missing when dealing with the Syrian issue, namely the right authority, right intention, and "reasonable prospects".

9. Analytical Comparison between Situations in Libya and Syria (R2P as a case study)

As situations in Syria worsened, a heated international debate arose and jurists of international law started to question the validity of R2P concept. This debate was centered on a major question: why was it an easy mission to authorize the use of force against Gaddafi, but it seemed impossible to enforce collective military power against Assad? Situations in Libya never escalated to reach the point in Syria.

Alex Bellamy, one of the most reputable international law scholars, uncovered the true reasons for the lack of actions against the Syrian regime despite documented human rights violations. Bellamy (2012) pointed out that enforcement of R2P relies mainly on two political principles; first, the five permanent members of the SC must support the action, and if the SC was divided then it could not deliver a Resolution to implement the doctrine. Second, the actions to be taken must be in line with each states specificity. Therefore, what might have been suitable in the Libyan case, might not be necessarily appropriate in Syrian case, given that any international involvement might inflame the situation. It can be argued that R2P is not one size that fits all.

Returning back to the ways in which Syria is not Libya when discussing reasons for inability to enforce R2P on situations in Syria, one might argue that the international community was able through the SC to use all necessary measures to protect innocent civilians in Libya after only one month of the revolution; however, in Syria, whose people have been suffering for the last six years from inhumane acts, torture, genocides, ethnic cleansing and atrocities, the UNSC has been unable to issue a resolution (by referring to UN charter's Articles 42 or 141) that shall authorize the use of military force to save the Syrian people. or impose economic sanctions.

Many scholars argue that the situation in Syria is not the same as in

Libya, realizing that the Syrian case is entirely different from the Libyan case in a number of ways:

- 1 - When comparing the risks of any intervention in Syria by the one faced in Libya, one should consider the military capabilities of the Syrian army, which in reality is strong and more equipped than the Libyan army (Norooz, 2015; Hasler, 2012); Lenarz (2012) indicated that the military capabilities are varying in both countries, as Libyan army has always been considered weak and unorganized in contrast to the Syrian army which has been strong and highly organized. Also, Syrian opposition fighters who may aid intervening forces in Syria are not well-armed in comparison and are diverse, whereas the Libyan fighters were well-armed and homogeneous, and that assisted the coalition forces. (Lenarz, 2012; Hasler, 2012: 151- 152).
- 2 - It is clear that religious, sectarian and tribal divisions in Syria overweighed the ones in Libya (ibid: 7; Norooz, 2015; Hasler, 2012: 152). This was combined with certain involvement of ISIS, Al-Qaida and Assad's major allies, particularly, Russia, Iran, and Hezbollah, which made the situation foggy. The existence of these participants would make international involvement very bitter, and thus calculating and evaluating the risks carefully should be a top priority for those who support military actions. In contrast, Gaddafi was, to a large extent, isolated and with no genuine regional or international allies. (Lenarz, 2012; Norooz, 2015; Hasler, 2012: 154).
- 3 - The Libyan population is three times less than the Syrian population; accordingly, the international community is well aware that in Syria there is a high possibility of the eruption of severe post-intervention violence (Norooz, 2015; Hasler, 2012).
- 4 - The role played by both regional and sub-regional actors in the case of Libya was positive and assisted the coalition forces. However, in the Syrian case, it is evident that regional and international actors maintained their passive policy and have been less active. (Norooz, 2015; Lenarz, 2012; Hasler, 2012).
- 5 - Both Russia and China were a major preventive factor in allowing any actions against Syria (Norooz, 2015; Lenarz, 2012; Farahat, 2013). Accordingly, they attended SC meetings that aimed at issuing a resolution to use force against Syria, but casted their Vetoes. On the contrary, the two states never attended the SC meeting that

authorized Resolution 1973 against Libya, and argued back then that R2P was abused in the Libyan case, claiming that the Coalition led-attack had expanded the UN mandate into a legal licence to achieve regime change. They also demonstrated that intervening in Libya had in fact given R2P a bad reputation (Narooz, 2015).

- 6 - If the Chinese government had accepted to intervene in Syria, it might have put its future interests with Iran at risk; in case R2P was applied in Syria, this might have led to targeting Iran given that any intervention in Syria may create a golden opportunity for the West and Israel to strike Iran's nuclear facilities. (Norooz, 2015).
- 7 - It is fully understood that the absence of both Russia and China during authorizing Resolution 1973 against Libya, did neither hurt nor benefit any of the interests of these two countries. However, in the Syrian case, both Russia and China have an obligation to protect their own interests in the region; hence it is a matter of benefit or loss for them (ibid; Lenarz, 2012).
- 8 - During the term of Barak Obama's presidency, the US government strategy towards Syria was shaped as not to insist on intervening there for a number of geopolitical reasons: first, to protect its major ally in the region namely Israel (Syria's neighbor). Second, regime change in Syria is not US desire, given that there have never been clear interests for the US in Syria. Unlike the Libyan case, in which European Union nations recognize the crucial importance of Libyan petroleum resources, given that both Italy and France rely extensively on Libya's oil. Hence, the then Obamas administration aimed at securing its Western allies interests in Libya that might have been threatened in case Gaddafi remained in power (Nozooz, 2015; Hasler, 2012: 153-158).
- 9 - Militarily, the geography of Libya differs from Syria. This in turn made it easy to intervene in Libya where 95% of its territory is desert and major communities are centered along the Mediterranean. As a result, this kind of nature is, militarily, "much more suitable for quick and decisive military manoeuvres than the mountainous Syrian hinterland with its heavily populated areas" (Hasler, 2012: 153).

Considering the arguments mentioned above, which compared the R2P employment in Libya with the failure of implementing the same

measures in Syria, made it clear that all requirements to legally justify future human intervention in Syria are met. However, it is evident by now that the superpowers bring R2P into exercise on a case-by- case basis, and sadly, their vital national interests outweighed any human rights violations executed by a rogue and barbarian ruler.

10. Proposals to reform R2P

After the extensive analysis of the concept of R2P and its employment in Libya and the failure to implement it in Syria, it is now of a great importance to present some proposals to reform the doctrine in order to extract the best from it. As it was shown earlier, it is evident that R2P is selective and it functions on a case- by- case basis; also, no one can deny the major powers interests when considering victims in distant states. Strangely, the noble end of the establishment of R2P was to protect civilians at the first place; however, the Libyan case indicated that the international community was in fact after achieving regime change. This marked a major shift of the so-called humanitarian intervention, and hence R2P lost directions.

In this section, we will present six proposals that might strengthen the R2P and thus help in regaining its former reputation:

Firstly, some legal power (expanding the authorization rather than SC authority in R2P) should be given to regional organizations, such as the League of Arab States (LAS); Organization of Islamic Cooperation (OIC), and Gulf Cooperation Council (GCC) or coalition to use limited force to protect civilians against crimes of a given regime.

Secondly, a full review is needed to advance the concept of R2P, as many international lawyers believe that the failure to act in Syria may damage R2P creditability and reputation. In this context, a set of questions may be raised: what if another human rights violation occurred in any other state? What would the response be in cases where SC members were divided and, therefore, a Resolution was blocked by a Veto right? A substantive and functional cure for these setbacks might reside in granting the United Nations General Assembly more power to handle states breaches of their own responsibility to protect civilians.

Thirdly, intervening states must distinguish between military operations and sovereignty of the state. This could be achieved through declaring that the objective is merely protecting innocent civilians

without impacting the sovereignty and political independence of that state; this means that after the intervening states reestablish stability and security and arrest the responsible government officials, their responsibility shall shift to include efforts of rebuilding and spreading democracy.

Fourthly, the SC should not act selectively; rather, it should react relying on equity principle. This means that each case is the same if innocent people are in danger, and thus one concept suits any human rights violations regardless of the peculiarity of a given state, which might include actors and participants in the crises, namely allies of the regime or anti-regime coalition. However, there is - at least now- no possible way to limit the authority given to the Five Permanent members of the SC, as they have a legal right indicated in Article 27 of the UN Charter that explicitly grant them the power to determine whether or not a given crisis threatens international peace and security and thus might lead to World War.

Fifth, the Major Powers that are permanent members of the SC must marginalize self-interests if they are in fact after human justice. This might restore the reputation of R2P, but in cases where those powers put their interests in the forefront then the creditability of R2P in the near future could be undermined.

And **lastly**, R2P must be all about preventing, responding and rebuilding. Consequently, it should be employed to its full potential, meaning that the reaction must be fast, decisive and agreed upon in the SC regardless of alliance system that dominated international relations.

11. Conclusion

The article aimed at shedding some light on the doctrine of R2P that was first adopted by the 2005 World Summit, then in a later stage, confirmed by the United Nations Security Council. The concept was examined in depth, and the three pillars that constituted the R2P were introduced in order to gain clearer understanding of the doctrine. **Pillar one** indicates the states responsibility to protect their own population; **pillar two** emphasized the international community assistance to states to fulfill their responsibility; and **pillar three** stressed that in cases of states failing to fulfill their responsibility, the international community shall then be responsible to take decisive and timely measures in accordance with the UN Charter. Crimes that would draw the attention of

international community can be classified in four categories as: genocide; war crimes; ethnic cleansing and crimes against humanity.

The study presented a background to the uprisings in Libya, and it also discussed the circumstances that led the international community to take all necessary measures to protect innocent civilians of Libya. In doing so, the coalition relied on resolution 1973 that gave them the authority to intervene to resolve the humanitarian crisis. Furthermore, the research analyzed the harsh situations in Syria after the onset of the uprisings in 2011. It is evident, by now, that although the Syrian people have been suffering from systematic violence for the last seven years, the international community has failed to issue a resolution that would authorize the use of force to save the lives of unarmed civilians.

Also it was argued and demonstrated that, in the case of Libya, R2P concept was applicable as all requirements for the doctrine were met, despite the fact that coalition forces intentionally misused resolution 1973. In the Syrian case, which is similar to the Libyan case, the majority of the international community condemned Assad human rights violations, but were never been able to issue a UNSC resolution that would authorize the use of force. It has been shown that because of continued Russian and Chinese support to Assad through casting their vetoes, it became impossible to manufacture entire consent in the SC supportive of using military force against the Syrian regime.

Evidence gathered and examined in the study revealed that situations in Syria seem to be very complicated, given that groupings in Syria are more involved than in Libya and that the oppositions are deeply divided. These two factors made regional and international community think twice before getting involved, as any involvement might disturb both regional and international peace and security.

Throughout the study, it was evident that both Gaddafi and Assad violated the norms of the International Humanitarian Law, as they both brutally committed unforgettable crimes against their own population. Assad distinguished himself criminally from Gaddafi, as he used both explosive barrels and chemical weapons against residential areas, aiming to cause more suffering and casualties not only among men but also among children and women.

Grounds to intervene in Libya and non to intervene in Syria were

also analyzed and discussed, and the results indicated that many factors played a crucial role to intervene in Libya, while other factors revealed the impossibility to do so in Syria. Gaddafi lacked regional and international allies; accordingly, there was no opposition to the international community intervention. In the Syrian matter, one can cite geopolitical circumstances and regional interests as being behind the policy of non-intervention in Syria.

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Submitted: January, 2018

Accepted: May, 2018



