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## From state sovereignty to responsibility to protect

Maria Mazzanti

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**FROM STATE SOVEREIGNTY TO RESPONSIBILITY  
TO PROTECT**

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# INTRODUCTION

The Responsibility to Protect (R2P) is an emerging international norm that provides that states are primary responsible for the protection of their populations from genocide, war crimes, crimes against humanity and ethnic cleansing. When the state fails on its primary responsibility to protect its citizens, this responsibility falls to the international community.

R2P is not synonymous of forcible intervention, but it consists of a continuum of actions, i.e. prevention, reaction and rebuilding. The concept was firstly put forward in 2001 by the International Commission on Intervention and State Sovereignty (ICISS)<sup>1</sup>. Four years later key elements of R2P were endorsed by the international community in the 2005 UN World Summit Outcome Document<sup>2</sup>. Further advancements in the discussion of R2P came after the election of Mr. Ban Ki-moon to the post of Secretary-General of the United Nations in 2007, and even more so after the appointment of Edward Luck to Special Adviser to the Secretary-General on R2P in 2008.

But R2P did not come out of the blue. In a certain sense we can say that it is not at all a new idea, as the concept of sovereignty as responsibility was somehow anticipated by Hugo Grotius, whose concept of law was based on the principle that rules governing the behavior of states exist for the benefit of the citizens. Furthermore, at least four of the criteria for forcible intervention proposed by the ICISS in 2001 - just cause, right intention, last resort, and proportionality of means – go back to the just

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<sup>1</sup> The Canadian government proposed in 2000 to establish the International Commission on Intervention and State Sovereignty (ICISS). The main purpose of the ICISS was to approach the whole issue of intervention for humanitarian purposes from a perspective different from that adopted in the 1990s.

<sup>2</sup> 2005 World Summit Outcome, UNITED NATIONS General Assembly doc. A/RES/60/1, 24 October 2005 available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/60/1](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/60/1) (last accessed 29/11/12)

war doctrine. These examples show that many of the elements of R2P are rooted in a longer legal tradition.

The purpose of this thesis is to argue that the R2P is, on one side, the result of a progressive modification of the international political and legal thinking. On the other, R2P marks a breaking point with the past as some of its constituent elements, such as the concept of collective responsibility in case of failure of a state to protect its population, are highly innovative.

To this end we looked into the modifications incurred into the concept of sovereignty prompted by an increased involvement of the international community in the internal affairs of individual states and a greater “moralization” of the relations between states, and between states and their citizens.

In addition we were also interested in analyzing how R2P builds upon the lessons learned out of the humanitarian interventions of the 1990s, while turning the debate on its head as Gareth Evans said<sup>3</sup>. We then looked into the definition and evolution of R2P in the last ten years with the aim at finding areas of agreement and controversies. As in the 1990s the main cause of controversy still lies in the use of force.

Finally, we wished to gauge whether R2P has been able to influence the behavior of the international community, and in particular of the Security Council.

We adopted a historical/legal approach on the basis of the conviction that new developments cannot be understood without a full comprehension of the circumstances that suggested them. A simple discussion of the definition of R2P and its recent developments would not have satisfied our desire to fully understand the dynamics beyond the facts. We realized that to understand what R2P exactly means one should also go back to the 1990s. The failure of the international intervention in Sudan, Rwanda and the former Yugoslavia clearly showed that new mechanisms had to be found to respond to mass violations of human rights. A way forward was found in the formulation of sovereignty as responsibility suggested in 1996 by Francis Deng

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<sup>3</sup> Foreign Affairs November/December vol.81 n.6 2002 page 101

and other scholars at Brookings Institution. In a book entitled 'Sovereignty as Responsibility: Conflict management in Africa' the authors affirmed that sovereignty could no longer be seen as a protection against external interference, but that *"national governments are duty bound to ensure minimum standards of security and social welfare for their citizens and be accountable both to the national body politic and the international community"*. The formulation of Deng became the conceptual base of the responsibility to protect.

The discussion of the evolution and historical roots of R2P served as background for the analysis of four specific case studies: Libya, Syria, Côte d'Ivoire and Sri Lanka.

The reason why we selected these four cases is twofold: firstly they are recent, and secondly they exemplify different action paths. In the case of Libya forcible intervention was authorized by the Security Council quite unanimously. In the case of Côte d'Ivoire the forcible intervention was authorized only after the mediation attempted by the regional/sub-regional organizations was unsuccessful. In the case of Sri Lanka the involvement of the Security Council and of the regional organizations was quasi-inexistent, notwithstanding external pressure from the Human Rights Council and civil society. Finally, in Syria no action has been taken to date (September 2012), notwithstanding various mediation attempts by the former Secretary-General Kofi Annan and by Mr. Lakdar Brahimi.

All four cases selected took place in 2011 and 2012. Sri Lanka is dated 2009 but important developments took place in 2012; Syria is ongoing at the time of writing. Consequently, the academic literature on them is relatively limited: in this respect, we hope that the thesis may offer an original contribution to the study of R2P and to the understanding of the variables that activate or hinder the international response.

Strictly speaking, R2P was officially invoked only in the cases of Libya and Yemen in 2011. In the case of Côte d'Ivoire the intervention was justified on the basis of resolution 1674/2006. Resolution 1674 on the Protection of Civilians in Armed Conflict was adopted by the Security Council in 2006 and refers specifically to paragraphs 138 and 139 of the 2005 World Summit Outcome Document on R2P.



In 2006 the Security Council adopted another R2P resolution, Resolution 1706, authorizing the deployment of UN peacekeeping troops in Darfur. After Resolutions 1674 and 1706 no other resolutions, referred to R2P until 2011<sup>4</sup>.

The cases of Sri Lanka and Syria represent situations in which the international community failed to take action under R2P (in the case of Syria, this was so at least until end September 2012, which is when the last draft of this thesis was finalized) notwithstanding the fact that there was sufficient ground to invoke it.

Consideration of these four cases allowed us to discuss which circumstances facilitated or hindered the adoption of R2P, with particular reference to Pillar three (response). To this end, the study focused on a set of “independent variables”, allowing for comparisons across cases. Proper statistical analysis is not possible because of the limited number of cases. In addition, all the relevant variables are qualitative by nature. However, in depth analysis of the four case studies yields some interesting generalizations and tentative conclusions.

Our research hypothesis has been that R2P is influenced by five main independent variables, namely: the dynamic within the Security Council (active involvement of some specific countries/country representatives); reasonable perspective of success/attractive cost-benefit profile; the role of the relevant regional/sub-regional organizations; the activity of the Human Rights Council; and the action of civil society.

1. We noted that while some countries (e.g. Russia and China) vote coherently and systematically in line with the principle of non-interference, the dynamic within the Security Council may be influenced by the active involvement/strong opposition of one or more countries of the region or, even more so, by the attitude of the Permanent Representative of the state in question.
2. Different circumstances may influence the implicit or explicit cost-benefit calculus of the main Security Council members, whose attitude is crucial for

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<sup>4</sup> A subsequent Resolution on Darfur (Security Council Resolution 1769) did not contain any reference to R2P

the final decision to invoke R2P. Costs may refer not just to the direct financial, material and human costs of the action envisaged, but also to the possible political costs, be it international or domestic. Benefits may refer to the perceived likelihood that the action envisaged might in fact deliver the intended outcome.

3. Regional and sub-regional organizations have been increasingly seen as key actors for both authorization and provision of personnel for intervention. The active involvement of regional organizations may in fact facilitate the formation of political will, as states are often more attentive to crises in their backyards. Furthermore, neighboring states possess the local knowledge to carry out missions more effectively. The involvement of regional/sub-regional organizations also serves the purpose of undermining the accusation that R2P actions are dictated by neo-colonial temptations.
4. The Human Rights Council plays an important role in developing and implementing R2P. It offers a representative international forum where alleged human rights violations can be discussed as a matter of urgency through its special sessions and urgent debates mechanism. The Commissions of Inquiry and fact-finding set up by the Human Rights Council have provided the international community with objective and up-to-date information while the universal periodic review mechanism, by reviewing the human rights records of all 192 UN Member States once every four years, may play a relevant role in preventing the occurrence of R2P situations.
5. As highlighted in the Reports of the Secretary-General on R2P, civil society and non-governmental organizations help enhancing understanding of the principle amongst the public, lobbying for firmer action, promoting respect for cultural diversities and raising awareness of the actual need of those in R2P situations. In our case analysis we looked at how effective NGOs and civil society have been to this end.

We may represent our model and key findings in tabular form according to the scheme below:

<b>Independent variables</b>	<b>Libya</b>	<b>Syria</b>	<b>Côte d'Ivoire</b>	<b>Sri Lanka</b>
<b>Security Council dynamics</b>	+	-	+	-
<b>Cost-benefit profile</b>	+	-	+	=
<b>Regional and Sub-regional organizations</b>	+	+/=	+	-
<b>Human Rights Council</b>	+	+	+	+
<b>Civil Society and NGOs</b>	+/=	+	+	+

Each variable may take a favorable (+), uncertain (=) or negative (-) value, and in the end only cases in which all five variables are either favorable or at least uncertain have led to official implementation of R2P.

For our research we consulted an extensive literature on sovereignty, humanitarian intervention and R2P put at our disposal by the Library of the United Nations Office in Geneva that has an extraordinary collection of books and articles on the subject. Furthermore, in the study of R2P and of the four case studies we relied on information originated by the main news agencies and newspapers ( e.g. BBC, Aljazeera, Reuters, the New York Times, the Guardian) and more substantially on UN documents (reports of meetings of the Security Council, verbatim reports of the official meetings of the Security Council, General Assembly and Human Rights Council as well as official statements and other information published by the UN) or the webcast of the official sessions of the Security Council, General Assembly and Human Rights Council. With reference to civil society, we looked at the web sites and reports published on the main organizations (Human Rights Watch, Amnesty International, International Crisis Group, International Coalition for R2P and Global Coalition for R2P).

This study is organized as follows:

- Chapter one focuses on the concept of state sovereignty and its gradual erosion both internally, with the development of democratic values and

institutions, and externally with international accountability, inter alia, on the basis of human rights and humanitarian standards.

- Chapter two investigates the development from state sovereignty to sovereignty as responsibility and the concept of humanitarian intervention. We started the analysis with the examination of interventions for humanitarian purposes that took place in the 19<sup>th</sup> century to then concentrate on interventions of the 1990s and in particular the cases of the Kurds in Iraq (1991), Somalia (1991-92), Rwanda (1994) and former Yugoslavia/Kosovo (1991-9).
- Chapter three focuses on the origin, definition and legal basis of R2P. An extensive section is dedicated to more recent developments and in particular to the four reports of Secretary-General Ban Ki-moon on R2P implementation (2009), Early Warning (2010) and Role of regional and sub-regional arrangements (2011) and timely and decisive response (2012) and as well as their discussion at the United Nations.
- Chapter four to seven are dedicated each to one of the four case studies (Libya, Côte d'Ivoire, Sri Lanka and Syria).
- Chapter eight concludes.

# THE CHANGING NATURE OF SOVEREIGNTY

## Chapter 1

The development of the concept of sovereignty can be understood through two opposed movements, namely the establishment of a system of sovereign states that began with the Peace of Westphalia in 1648, and the restriction of this same system, which started after World War II and has continued through the growth of an international body of laws and practices, mostly in the area of human rights, that have imposed limitations upon the states, de facto restraining their sovereignty. The creation of the European Union also modified the concept of Westphalian sovereignty, as it provides for an external authority, a supra-national authority, to interfere in the internal affairs of its Members.

This chapter focuses on the concept of state sovereignty and on its evolution. The analysis of the historical evolution of the concept does not pretend to be fully exhaustive as it is only instrumental to our research; it provides however a picture of the developments that took place since Westphalia until our time.

The main purpose of the chapter is to demonstrate that the Responsibility to Protect is the result of a progressive modification of international political and legal thinking that has brought to a decrease in importance of the Westphalian principle of sovereignty and an increased “moralization” of the relations between states and between states and their citizens.

We will see how in recent decades a series of issues and activities that were traditionally considered within the domestic sphere of influence of states have become the object of international examination and how in areas such as human rights governments, once solely responsible for the common good, now share

their responsibility with other institutions operating within and across state frontiers.

### **1.1 The development of the a system of sovereign states**

Sovereignty is the quality of having supreme, independent, internal and external authority over a geographic area.<sup>5</sup> Although the concept of sovereignty had different meaning in different historical periods certain essential characters are constant. The state is the political institution in which sovereignty is embodied. Internal sovereignty refers to the relationship between a sovereign power, the state, and its own citizens. It means that the government of a state is considered the ultimate authority within its borders and jurisdiction.

External sovereignty concerns the relationship between a sovereign power and other states. It means that a state is not subject to the legal power of another state or of any other higher authority and stands in principle on an equal footing with other states. The concept of sovereignty in international law is usually linked to external sovereignty, which on its turn depends on recognition by outsiders. Other derived principles are the right to political self determination and the principle of legal equality between states.<sup>6</sup> Another element of sovereignty is territoriality; supranational and international organizations such as the European Union and the United Nations consist of states whose membership is defined territorially.

Sovereignty is a concept that emerged in the Middle Ages. The renewed interest in Roman law and in the works of Aristotle<sup>7</sup> provided the basis for a discussion on

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<sup>5</sup> Definition of Sovereignty, Stanford Encyclopedia of philosophy <http://plato.stanford.edu/entries/sovereignty/> (last accessed 29/11/12)

<sup>6</sup> Island of Palmas case (1928) between the Netherlands and the United States: "Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state... Territorial sovereignty involves the exclusive right to display the activities of a State. Reports of the International Arbitral Awards vol. 2 (1949) pages 838 and 839

<sup>7</sup> Specific reference to can be found in Aristotle, Politics, book III. For Ancient Roman Law, Ulpian "quod principi placuit vigorem legem habet" (Dig. 1.4.1); "princeps legibus solutus

the concept of sovereignty. Claims to supreme authority arose first in the struggle for supremacy between the Pope and the Emperor and then in conjunction with jurisdictional disputes among feudal lords.

Until the Reformation in 1517, Europe was distant from the Westphalian system even if some developments can be found already in the XIV century. According to J.R. Strayer<sup>8</sup>, for example, Britain and France had a structure very similar to sovereign states by around 1300, their kings possessing supremacy within delimited territories.

Things started to change when Charles V of Spain came to the throne, uniting Castile, Aragon and the Netherlands, becoming at the same time Holy Roman Emperor. Charles V was, however, not strictly speaking “sovereign” in the sense of possessing supreme authority as princes and nobles retained prerogatives over which he exercised no control.

In 1555, a system of sovereign states gained ground when, following the Peace of Augsburg, German princes were allowed to enforce their own faith within their territory (*cuius regio, eius religio*). This system was however unstable and culminated in the Thirty Years War, which ended in 1648 with the Peace of Westphalia.

With the Peace of Westphalia in 1648 the transition from the Middle Ages to a world of sovereign states was consolidated. Attempts to impose a supranational authority in Europe ended and states became the primary agents in an interstate system of relations, having the monopoly of force within their mutually recognized territories.

The new system implied that the domestic and international spheres were kept separated and that states might not legitimately intervene in the domestic affairs of another state.

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est” (Dig. 1.3.31). Ulpian’s juridical works were drawn on in Justinian’s Digest (Dig. 1.4.0. De constitutionibus principum)

<sup>8</sup> Strayer Joseph R., *On the Medieval Origins of the Modern State*, Princeton University Press, 2005

According to F. Kratochwil sovereignty became a distinct institution when the claim to supreme authority was coupled with a specific rule of allocation for exercising this authority. *“By assigning mutually exclusive areas for the exercise of this supreme authority, the sovereigns thenceforth accepted only this form of political organization as legitimate. They also found thereby a convenient way of acquiring their claims to supremacy with the mutual recognition of equality. Sovereignty thus created both the territorial state and the international system. The template for such an arrangement was provided by the dominium of a property holder under Roman private law.”*<sup>9</sup> Although the sovereign is still subject to natural law and bound by his conscience, he now emerges as a lawgiver *“legibus solutus”* absolved from law. Law is based on will rather than on customs or reason and the question of its validity lays on whether it emanates from or is pronounced by an authoritative “source”.

Having emerged as an attribute of state power in a particular moment of history, sovereignty changed in the course of history to adapt to the changing socio-political circumstances. Hence, the concept of sovereignty has been subject to different interpretations with regard to the authority that holds sovereignty (king, dictators, people ruling through constitutions etc) and its absoluteness.

In *“History of the Theory of Sovereignty since Rousseau”* C.J. Merriam Jr<sup>10</sup> sketches the evolution of sovereignty in the political and philosophical thought. The first systematic discussion of the nature of sovereignty was proposed in France by Jean Bodin and in England by Thomas Hobbes. Partly in reaction to respectively the French wars of religion and the English Civil War, both Jean Bodin (1530-1596) and Thomas Hobbes (1588- 1679) elaborated theories of sovereignty characterized by a strong central authority in the form of absolute monarchy.

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<sup>9</sup> Lyons Gene M. and Mastaduro Michael (eds), *Beyond Westphalia? State Responsibility and International Intervention*, Johns Hopkins University Press, 1995, page 21 and following

<sup>10</sup> Merriam Jr. C.E., *History of the Theory of Sovereignty since Rousseau*, The Lawbook Exchange Ltd, Union, New Jersey, 1999



For Bodin sovereignty must be absolute and perpetual "*supreme potestas in cives ac subditos, legibus solute*"<sup>11</sup>. According to Oppenheim<sup>12</sup> the term sovereignty was introduced into the political scene by Bodin in his work "De la République" of 1577. The term had already been used at the end of the Middle Ages to indicate an authority that had no other authority above it but was Bodin, under the influence of the centralization policy implemented in France by Louis XI (1461-1483), that gave a new meaning to the concept.

In the *Leviathan* (1651) Hobbes affirms that to overcome the "nasty, brutish and short" quality of life without the cooperation of other human beings, people must join in a "commonwealth" and submit to a sovereign power that is able to compel them to act in the common good. Hobbes deduced from the definition of sovereignty that it must be absolute and indivisible. In *De Cive* he went beyond Bodin in his conceptualization of absolute sovereignty maintaining that the latter was not bound by anything and had a right over everything.<sup>13</sup>

Others political thinkers such as Althusius<sup>14</sup> (about 1563–1638), Pufendorf (1632-1694) Locke (1632–1704) and later Rousseau (1712-1778) considered the social contract as the basis of sovereignty and the "people" as the legitimate bearer of this sovereignty.

For Althusius the state is the final form in a series of contracts and the authority of the government results from an agreement, tacit or express, between the ruler and the ruled. Sovereignty, resting in the people through the different types

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<sup>11</sup> «Six Livres de la République » (1576). Hobbes, in *Leviathan* (1651) said that to overcome the "nasty, brutish and short" quality of life without the cooperation of other human beings, people must join in a "commonwealth" and submit to a "Sovereign Power" that is able to compel them to act in the common good. Hobbes deduced from the definition of sovereignty that it must be: absolute and indivisible.

<sup>12</sup> Oppenheim L. *International Law: a Treatise*, Third Edition R. Roxburgh (ed.), The Lawbook Exchange LTD. Clark, New Jersey, 2005 Vol. 1 page 129

<sup>13</sup> Hobbes Thomas, *De Cive* C.6 paragraphs 12-15 available at <http://www.unilibrary.com/ebooks/Hobbes,%20Thomas%20-%20De%20Cive.pdf> (last accessed 29/11/12)

<sup>14</sup> "Politica Methodice Digesta" (1603). The term Monarchomachs (French Huguenot theorists) was invented in 1600 by William Barclay (1548–1608) from the Greek *μόναρχος* ("monarch, sole ruler") and *μάχομαι* ("to fight"), meaning "those who fight against monarchs."

of associational arrangements, cannot be transferred because it is essential to the existence of the political community.<sup>15</sup>

The theory elaborated by Hugo Grotius stays between the two above-mentioned doctrines Bodin and Hobbes of absolute sovereignty characterized by a strong central authority and Althusius. In *De jure Belli ac Pacis* (1625) Grotius defines sovereignty as “*Summa autem illa dicitur, cujus actus alterius juri non subsunt* (that power whose acts are not subject to the control of another)”<sup>16</sup>. The supreme power is however not only limited by divine law, natural law and the law of nations, but also by such agreements as are made between rulers and ruled. The limitation in time does not affect the value of sovereignty, while absoluteness is not wise. While acknowledging that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere, Grotius argued that an oppressive state that violates basic human rights forfeits its moral claim to full sovereignty.

For Pufendorf (1632-1694) and Locke (1632 -1704) sovereignty is also not absolute. In *De Jure Naturae et Gentium* (1672) Pufendorf put the contract principle as the basis of the State, but requires two stages: a “*Pactum Unionis* (an agreement to form a civil society) and “*Pactum Subjectionis*”, a contract between the people and the government. It is not essential that the sovereign has all power; it is sufficient if he have the highest power. Sovereignty means therefore not absoluteness, but supremacy.<sup>17</sup>

For Locke the government derives its legitimacy from the consent of the governed. This consent creates a social contract between rulers and ruled that

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<sup>15</sup> Encyclopedia Britannica “Johannes Althusius” available at <http://www.britannica.com/EBchecked/topic/17707/Johannes-Althusius> (last accessed 29/11/12)

<sup>16</sup> Grotius Hugo, *De jure Belli ac Pacis*, L. I, ch. iii, sec. 7

<sup>17</sup> In “*De Jure Naturae et Gentium*” (1672) Pufendorf puts the contract principle as the basis of the State, but requires two stages in the process, i.e. a “*Pactum Unionis*” (an agreement to form a civil society) and a “*Pactum Subjectionis*” (a contract between the people and the Government). Sovereignty means therefore not absoluteness, but supremacy.

both sides have to respect. If the government breaks the contract, the people have the right to dissolve the government.<sup>18</sup>

The theory of the sovereignty of the people was further developed by Rousseau (1712-1778). In Rousseau sovereignty arises from the voluntary agreement of independent wills<sup>19</sup>. Sovereignty is absolute, infallible, indivisible and inalienable. Limits are set to the sovereign power, to the extent that it shall always act for the general good, and that it shall not discriminate between various classes of citizens, but of these restrictions the sovereign is the final judge. Rousseau assimilates the government in the people: the only true personality is that of the “corps collectif.” Rousseau’s theory became that of the French Revolution<sup>20</sup>.

The revolutionary changes in the late eighteenth and early nineteenth century gave rise to a new concept of sovereignty. According to Ninčić<sup>21</sup>, having become “popular”, sovereignty acquired certain characteristics derived from the prevailing bourgeois ideology. Hence the concept of equality of states became one of its essential elements.

The theory of popular sovereignty was later put into question by various schools of thought. After the French Revolution and subsequent Prussian constitutional reforms, a profound conceptual change, particularly in the German thinking, took place shifting from the idea of the sovereignty of the people to that of the State. Kant (1724-1804) formally accepted the contract theory of the French revolution, but by distinguishing between the ideal and the real agreement he *de facto* opposed it. In its ideal form, the State is formed by the voluntary agreement of individuals but there is also the sovereignty of fact, which is a result of the combination of force and reason. Later, even the form of the contract was

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<sup>18</sup> Locke John, Two Treatises of Government, 1690, The Second Treatise of Civil Government

<sup>19</sup> Merriam C.E. Jr. op.cit. page 17

<sup>20</sup> In the “Declaration of the rights of man and of the citizen,” 1789, it was declared (Art. 3) that “the principle of all sovereignty resides essentially in the nation.” In the French constitution of 1791, that “the sovereignty is one, indivisible, inalienable and imprescriptible” (Tit. III. Art.I)

<sup>21</sup> Ninčić Djura, The Problem of Sovereignty in the Charter and in the Practice of the United Nations, Martinus Nijhoff, The Hague, 1970 page 4

denied by Kant's followers, on the basis of the idea that participation into a State was not a matter of choice but a necessity.

The political restoration saw a revival of the influence of the Catholic Church in France and in the states of South Germany. In 1815 Russia, Prussia and Austria formed the Holy Alliance in which they declared "(...) to take for their sole guide the precepts of that Holy Religion, namely, the precepts of Justice, Christian Charity, and Peace, which, far from being applicable only to private concerns, must have an immediate influence on the councils of Princes, and guide all their steps, as being the only means of consolidating human institutions and remedying their imperfections."<sup>22</sup> The divine right theory of the state had as representatives among the others Joseph De Maistre (1753 – 1821) in France and Adam Müller and Friedrich Julius Stahl (1802 - 1861) in Germany. For both De Maistre and Stahl purely human power was inadequate to produce legitimate political institutions. The State was not the result of a contract, but of a divine command<sup>23</sup>. For Adam Müller the state represents the spiritual internal and external life of a nation.

Another theory that was elaborated in France during the Bourbons restoration (1814-1830) was that put forward by the so-called "Doctrinaires", a group of French Royalists who hoped to reconcile the Monarchy with the Revolution, and power with liberty. Victor Cousin (1792 –1867) and François Guizot (1787–1874) were representatives of this school of thought that assimilated sovereignty to reason: the true sovereign, it was said, was reason, justice, and abstract right. Both the followers of the divine command and the Doctrinaires placed the sovereignty outside and above men for different reasons: to support an existing government by a claim of divine right the former and to avoid altogether the question of human sovereignty the latter.

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<sup>22</sup> The Holy Alliance Treaty between Austria, Prussia, and Russia signed at Paris 18 / 26th September 1815. Translation available at [http://www.napoleon-series.org/research/government/diplomatic/c\\_alliance.html](http://www.napoleon-series.org/research/government/diplomatic/c_alliance.html) (last accessed 29/11/12)

<sup>23</sup> Merriam C.E. Jr. op. cit. page 22

In addition to the Kantian and the religious doctrines, this period saw also the return of the patrimonial theory of the State. The source of authority was then property, not men. The social contract was repudiated and the foundation of political power was laid in the relations that center around the possessions of an individual or a corporation. The representative of this school of thought is the Swiss jurist Ludwig von Haller (1768–1854). In his „*Restauration der Staats-Wissenschaft oder Theorie des natürlich-geselligen Zustandes, der Chimäre des künstlich-bürgerlichen entgegengesetzt*“ (1816), written primarily against Jean-Jacques Rousseau's *The Social Contract*, von Haller maintained that sovereignty is not the result of a contract but an assumed “natural right” to property. Von Haller's theory was harshly criticized by Hegel. “The theory of Haller went hand-in-hand with that of the religious reactionaries. The sovereignty was based upon the right to property, which was either a natural or a divine right. In either case, the people were no longer the source of the sovereign power, and the status quo was preserved.”<sup>24</sup>

The problem of the years around the middle of the nineteenth century was, as Merriam put it, “the establishment of a political status, reconciling the old ante-revolutionary regime with the new.” In this political status the king could no longer govern arbitrarily and would be flanked by a constitution. This principle permeated the German political theory which identified as the new bearer of sovereignty the State itself, regarded either as an organism or as a juristic personality, or both.

For the historical school the State was the result of a long process in which many generations had participated. According to this theory the State was not the result of a contract between individuals, but of tradition<sup>25</sup>. This theory was put forward by Gustav Hugo (1764 – 1844) and Friedrich Carl von Savigny<sup>26</sup> (1779 – 1861). The idea was then further elaborated in Hegel's *Philosophy of Law* (1821). For Hegel (1770 – 1831) the State is a natural necessity, *Naturnotwendigkeit*; it is

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<sup>24</sup> Merriam Jr. C.E. op.cit. page 37

<sup>25</sup> See Burke Edmund, *Reflections on the Revolution in France*, (1790).

<sup>26</sup> “On the Vocation of Our Time for Legislation and Jurisprudence” (1814) and the “System of the Modern Roman Law” (1839).

not imposed by the reason of the individual, as in Kant, but is the culmination of a moral action. The individual has a reality only as a member of the State.

The idea of State as shaped by Hegel was then interpreted by the “natural science” school, and later the State was seen as a real legal person, a bearer of legal rights and duties. The result was that sovereignty was attributed to the State, viewed in its organic-personal character, while at the same time the monarch was assigned the (secondary) role of the highest organ in the State. One of the main representatives of this school of thought was J. C. Bluntschli (1808 - 1881). For Bluntschli the State is not an instrument but a living entity „*keineswegs ein lebloses Instrument, nicht eine tote Maschine sondern ein lebendiges und daher organisches Wesen*”<sup>27</sup>.

Otto von Gierke (1841 –1921) elaborated the theory of the sovereignty of the State, with legal personality, on the German idea of association law, combined with the theory of organic development and evolution, rather than on ancient Roman law. His view of the *Rechtsstaat* and his emphasis on the federal nature of medieval states was amply discussed. For Gierke, the monarch is not the only expression of the State, as in earlier times, nor is he absolute; he is chief organ of the State, superior merely to other members of the State.

Differently from continental Europe, in England and the United States the doctrine of sovereignty took a different path. In England the monarch had renounced to his claims to exclusive sovereignty and the Parliament was sovereign. Among the most prominent scholars we find Jeremy Bentham (1748 – 1832). For Bentham men submit to authority not because they have tacitly or expressly agreed to do so but because they find it more favorable to their interest. His follower John Austin (1790 – 1859) further elaborated on Bentham’s theory. Austin held that the essential characteristic of sovereignty is its definiteness; the “sovereign” is a person (or determinate body of persons) who receives habitual obedience from the population, but who does not habitually obey to any other person or institution. Austin is best known for his attempt to

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<sup>27</sup> Bluntschli J.C., *Allgemeine Staatslehre*, 6te Auflage, 1886.

clearly separate moral rules from "positive law" and the development of the theory of legal positivism.

Another fact that according to Oppenheim<sup>28</sup> exercised an influence on the concept of sovereignty during the 19th century was that on the example of the United States other states in Europe, such as Switzerland and Germany, opted for the form of a Federal State. This prompted the discussion on the divisibility of sovereignty and on how to reconcile the principle of sovereignty with the existence of a Federal State.

In 1787 the United States changed from a Confederation of States to a Federal State. Hence, the idea that sovereignty may be divided between the Confederation and its members started to appear and received recognition through the jurisprudence of the Courts. In 1793 (case *Chisholm v. Georgia*) in South Carolina, Alexander Chisholm, the executor of the estate of Robert Farquhar, attempted to sue the state of Georgia in the Supreme Court over payments due him for goods that Farquhar had supplied Georgia during the American Revolutionary War. The defendant, Georgia, refused to appear, claiming that, as a "sovereign" state, it could not be sued without granting its consent to the suit. The Court affirmed that *"Every State in the Union, in every instance where its sovereignty has not been delegated to the United States, I consider to be as completely sovereign as the United States are in respect to the powers surrendered. The United States are sovereign as to all the powers of Government actually surrendered: each State in the Union is sovereign as to all the powers reserved."* Succeeding decisions reaffirmed the same theory that sovereignty can be divided. James Madison (1751– 1836) and Alexis de Tocqueville (1805 –1859) elaborated on the principle of divisibility of sovereignty. In his *Democracy in America* (1835) de Tocqueville maintained that there were two separate sovereignties, that of the Union — "an abstract being, which is connected with but few external objects;" and that of the States, which

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<sup>28</sup> Oppenheim L., *International Law: a Treatise*, op.cit. Vol. 1 page 131

is “perceptible by the senses, easily understood and constantly active.”<sup>29</sup> This system, although feasible for the United States in its isolated position, would however be impracticable for the States of Europe.

Since the Peace of Westphalia the German Empire had been fragmented into numerous in practice independent states. This prompted the necessity of recognizing a distinction between an absolute and a “relative” or “half” sovereignty. Notwithstanding some attempts to reconcile the sovereignty of the Confederation with that of each of its members (Georg Waitz)<sup>30</sup> the formation of the North German Confederation and subsequently of the German Empire made it more difficult to justify the existence of a plurality of sovereignties. The idea that the Confederation was the true and the only sovereign power obtained general recognition (Georg Meyer).<sup>31</sup>

The attempt to reconcile the sovereignty of the Bund and of its members was elaborated by Albert Hänel (1833–1918) and Georg Jellinek (1851–1911). For Hänel the central element of sovereignty is the “legal self-determination of its jurisdiction” (*die rechtliche Selbstbestimmung seiner Kompetenz*)<sup>32</sup>. No person or association in the State can extend or expand the field of its legal activity at will. The sovereign alone has the power to choose its own field of operation, to limit itself and to be limited by no superior. Following this reasoning Hänel found that the true sovereign was the Empire. The theory of the “*Kompetenz- Kompetenz*” is then defined as an institution’s ability to identify the scope of its competence. For Jellinek if the State can be compelled by itself only and by no other power, then it is sovereign. Consequently, sovereignty is defined the “possibility of self-

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<sup>29</sup> De Tocqueville, *Democracy in America*, Chapter VIII: The Federal Constitution Part V

<sup>30</sup> For Waitz (1813 – 1886) the central government and each member of the association have each its own sphere of operations. Therefore, two sovereigns in the State may coexist.

<sup>31</sup> Georg Meyer (1841-1900), *Staatsrechtliche Erörterungen über die deutsche Reichsverfassung*, 1872, acknowledged the statehood of the individual States, but not their sovereignty. Therefore only the Confederation was considered sovereign.

<sup>32</sup> Hänel Albert, *Studien zum deutschen Staatsrechte*, Part I, 1873 *Deutsches Staatsrecht*, 1892 in C.E. Merriam Jr page 99;



limitation” (*die Möglichkeit der Selbstbeschränkung*)<sup>33</sup>. The theories of sovereignty in the form of “*Kompetenz- Kompetenz*” or as “exclusive legal self-determination,” replaced the idea of a double sovereignty of the *Gliedstaaten* and of the *Bundesstaat*<sup>34</sup>.

The theorists of the Weimar Republic, and in particular Carl Schmitt (1888–1985), distanced themselves from Jellinek. For Carl Schmitt, who embraced the Nazi ideology, sovereignty is the power to decide the state of exception “*Ausnahmezustand*” which frees the executive from any legal obstacle to its power that would normally apply.<sup>35</sup> Schmitt thought that the sovereign was above any constitutional law and should be able to “make a decision” on behalf of the good of the state during this state of exception.

As a result of the horrors of World War I doctrines emerged that sought to establish the supremacy of international law over national law. The need to adjust sovereignties in an increasing interdependent international community led many scholars to depart from the ideology of “absolute” sovereignty to favor a more “relativist” approach. States can no longer act completely independently of each other, as there remain few aspects of life which are not dependent on, or do not respond to, activities outside the state’s boundaries, and the independence of a state is subjected to international law.

In “*Das Problem der Souveränität und die Theorie des Völkerrechts*” published in 1920, Hans Kelsen (1881-1973) approached for the first time the nature of the international legal system. For Kelsen there exists only one legal system, which

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<sup>33</sup> Jellinek G., *Staatenverbindungen* page 36 available at <http://www.scribd.com/doc/27815393/Jellinek-Georg-Die-Lehre-von-den-Staatenverbindungen-1822> (last accessed 29/11/12)

<sup>34</sup> Merriam Jr. C.J. op. cit. page 101; Kelly Duncan, “Revisiting the Rights of Man: Georg Jellinek on Rights and the State”, *Law and History Review* Fall 2004, Vol. 22 n. 3;

<sup>35</sup> Schmitt Carl, *Political Theology Four Chapters on the Concept of Sovereignty*, George Schwab (trans.), Chicago: University of Chicago Press, 2005 (originally published in 1922) available at [http://pdflibrary.files.wordpress.com/2008/02/schmitt\\_polittheology.pdf](http://pdflibrary.files.wordpress.com/2008/02/schmitt_polittheology.pdf) (last accessed 29/11/12)

includes both domestic and international law.<sup>36</sup> Central to Kelsen's *Pure Theory of Law* is the notion of a "basic norm" (*Grundnorm*), a hypothetical norm, from which all 'lower' norms in a legal system, beginning with constitutional law, derive their authority. As nations recognize the equality of each other's legal orders, the doctrine of equality must mean that they recognize a "*Grundnorm*" higher than the "*Grundnormen*" of their own legal orders. For Kelsen, if international law is considered as being logically higher than national legal systems in the worldwide hierarchy of norms, then the international legal system is the highest sovereign legal order. States are nevertheless sovereign in the sense that their national legal orders are subordinated only to the international legal order.

Other representatives of the Vienna school, Alfred Verdross (1890-1980) and Joseph Kunz (1890-1970) went beyond Kelsen and argued that the logical primacy of the international legal system over national ones can be demonstrated objectively. For Hersch Lauterpacht (1897-1960), another of Kelsen's scholar, sovereignty can be described as "an artificial personification of the metaphysical state". As such, sovereignty has no real essence and is only a bundle of rights and powers accorded to the state by the legal order. Therefore, sovereignty can also be divided and limited<sup>37</sup>.

Other thinkers elaborated theories according to which sovereignty would disappear altogether or be drastically reduced.<sup>38</sup> This school of thought drew its origin from the French internationalist Antoine Pillet (1857-1926) and was further developed by, among others, Dionisio Anzilotti (1867-1950), Léon Duguit

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<sup>36</sup> Zolo Danilo, Hans Kelsen: International Peace through International Law, *European Journal of International Law* 9 (1998), pp. 306-324

<sup>37</sup> Lauterpacht H., *Private Law Sources and Analogies of International Law*, Longmans, Green and Co Ltd (1927) see also Koskenniemi Martti, *Lauterpacht: The Victorian Tradition in International Law*, *European Journal of International Law* EJIL (1997) pages 215-263 Kwiecień, Roman, *Sir Hersch Lauterpacht's Idea of State Sovereignty - Is It Still Alive?*, *International Community Law Review*, Volume 13, Numbers 1-2, 2011 , pp. 23-41

<sup>38</sup> Ninčić D., *op. cit.* page 10

(1859–1928), Joseph Barthelemy (1874-1945), Paul Duez (1888-1947) and Nicolas Politis (1872-1942).

To conclude, we can say that the beginning of a new concept of sovereignty takes place as a reaction of the horrors of World War. In that period the definition of sovereignty as an absolute concept of unlimited freedom and authority is put into question. States start to realize that they need to co-operate and can no longer act completely independently of each other, as they should increasingly respond of activities outside their boundaries.

## **1.2 Sovereignty and the legacy of World War II**

In general terms one can say that the act whereby a state joins an international organization and accepts the limitations inherent in the purpose of the organization is by its nature a voluntary limitation of the state's sovereignty. Through this act the state assumes obligations and transfers certain of its prerogatives to the organization. The broader these limitations are, the more far-reaching the repercussions with regard to the state's sovereignty will be. "Absolute" sovereignty is therefore, by its very nature, incompatible with membership of an international organization, while "relative" sovereignty can be reconciled with the requirements of such membership.

During the 20th century important restrictions to the freedom of action of states began to appear. The Hague conventions of 1899 and 1907 established detailed rules governing the conduct of wars on land and at sea. The Covenant of the League of Nations, the forerunner of the United Nations, restricted the right to wage war, and the Kellogg-Briand Pact of 1928 condemned recourse to war for the solution of international controversies and its use as an instrument of national policy. In consequence of such developments, sovereignty ceased to be considered as absolute.

The League of Nations was established in 1919 at the Paris Peace Conference that ended World War I. Its primary goals, as stated in its Covenant, included preventing war through collective security and disarmament, and settling

international disputes through negotiation and arbitration. It was not fortuitous that the League of Nations appeared at a time in which the theories of relative sovereignty that we have seen in the preceding paragraph were most popular.<sup>39</sup> On the other hand, the Covenant did not deprive states of their "*ius ad bellum*"; it limited the exercise of this right removing its discretionary power.

The procedure used by an international organization to make decisions, the subject matter of this decision and their legal effects are of great importance in identifying the impact said organization has on the sovereignty of its member states. Three elements are of particular importance, namely, the procedure whereby the decision is reached, i.e. the voting system and whether all members take an equal part in its adoption; the nature of the matters to which the decision relates; and their legal effect, i.e. the extent to which the decision is legally binding. The principle of unanimity presupposes a rather absolutist concept of sovereignty whereby states are reluctant to be bound by decisions taken by others. Unanimity was required for the decisions of the two main organs of the League - the Assembly and the Council- except in matters of procedure and some other specific cases, such as the admission of new members. In this sense the League "protected" the sovereignty of its members by limiting its functions in most matters to advice, requiring unanimity for the passage of important decisions and permitting withdrawal from the organization.

The outbreak of World War II demonstrated that the League of Nations had failed in its primary purpose to prevent war, so it was dissolved in 1946. In 1945 the United Nations was formally established. The origin of the UN should be dated back to January 1942 when representatives of twenty-six Allied nations fighting against the Axis Powers met in Washington, D.C. and signed the "Declaration by United Nations". Other meetings took place in 1943 in Moscow and Teheran and in 1944 at Dumbarton Oaks in Washington, D.C. where the first blueprint of the UN was prepared. International economic and social challenges were already included in the discussion from its beginning in 1942. Though, it

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<sup>39</sup> Ninčić D., op. cit page 24

results evident that the main aim of the Allied forces was to create a mechanism of collective security. This explains the role of the Security Council and the emphasis placed upon enforcement action<sup>40</sup>.

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. Two are the main principles on which the Charter is based: the “sovereign equality of all its members” (Art 2 paragraph 1) and the obligation to refrain from the threat or use of force against the territorial integrity or political independence of any state (paragraph 4)<sup>41</sup>. The Charter is considered a *sui generis* treaty as it binds the signatory states and in the same time creates an organization. It not only alters the sovereign prerogatives of its members, but it also obliges them to abide by future decisions of the organization, sometimes even without the consent of the particular state, in areas that were formerly the subject of state-sovereignty. By reducing the actual inequality of states and attributing to the organization certain functions,

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<sup>40</sup> DUMBARTON OAKS - Washington Conversations on International Peace and Security Organization - October 7, 1944:

PROPOSALS FOR THE ESTABLISHMENT OF A GENERAL INTERNATIONAL ORGANIZATION [1]  
There should be established an international organization under the title of The United Nations, the Charter of which should contain provisions necessary to give effect to the proposals which follow.

CHAPTER I. PURPOSES

The purposes of the Organization should be:

1. 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 the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means adjustment or settlement of international disputes which may lead to a breach of the peace;
2. To develop friendly relations among nations and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in the solution of international economic, social and other humanitarian problems; and
4. To afford a center for harmonizing the actions of nations in the achievement of these common ends.

<sup>41</sup> Kelsen observes that the “sovereign equality” referred to Article 2 of the Charter is not identical to the equality formulated in the Preamble of the Charter where reference is made to “equal rights” of nations. Furthermore, the privileges conferred in Articles 27, 108 and 109 upon the States which are permanent Members of the Security Council are incompatible with the principle of “equal rights” as well as with the principle of “sovereign equality” of the Members. Hans Kelsen, *The Law of the United Nations*, London Stevens and Sons Limited 1950, page 51.

which had previously belonged to states in the form of self-help, the Charter introduced new elements of “relativity” into the concept of sovereignty.<sup>42</sup>

The Charter signs a further development in the limitation of sovereignty as it distances itself from the tradition of unanimity but still not fully as it limits the legal effects of the decision taken by simple and majority voting and attributes a special status to the five permanent members of the Security Council. The General Assembly adopts its recommendations by a simple or a two-thirds majority, but they are generally considered non-binding on member states, with the exception of those dealing with matters internal to the United Nations, such as budgetary decisions or instructions to lower-ranking organs, which are legally binding.<sup>43</sup> On the other hand, the decisions of the Security Council on matter other than procedural are adopted by an affirmative vote of nine members out of fifteen members including the concurring votes of the permanent ones<sup>44</sup> and each of the five permanent members has the right to veto and to hold any decision taken by the majority. Although the “power of veto” is not explicitly mentioned in the UN Charter, the fact that “substantive” decisions by the Security Council require “the concurring votes of the permanent members” means that any of those permanent members can prevent the adoption of any draft resolutions on “substantive” matters. The “power of veto” is considered as one of the main problems of the United Nations as it often prevents the Council from acting and affords the “P5” great influence within the UN as a whole.

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<sup>42</sup> Ninčić D., op. cit. pages 24 -27

<sup>43</sup> Similarly, among the specialized agencies of the United Nations, the IAEA Board requires a two-thirds majority for budgetary issues and a simple majority for all other matters. At the IAEA General Conference issues of budget, Statute amendment and suspension of a member’s privileges require a two-thirds majority and all other issues require a simple majority. The Food and Agriculture Organization requires a majority; UNIDO a two-thirds majority of the Members. At WIPO, the General Assembly decides by a majority of two-thirds of the votes cast; the approval of measures concerning the administration of international agreements require a majority of three-fourths of the votes cast, while the approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations requires a majority of nine-tenths of the votes cast.

<sup>44</sup> The Charter distinguishes between important questions (Article 18 paragraph 2) and other questions (Article 18 paragraph 30). Decisions on “important questions” shall be made by a two-thirds majority of the members of the Security Council present and voting. On “other questions” decisions are made by a majority of the members present and voting.

Discussions on improving the United Nations' effectiveness and responsiveness to international security threats include reform of the veto power. Proposals include: limiting the use of the veto to vital national security issues; requiring agreement from multiple states before exercising the veto; and abolishing the veto entirely. For Weiss and Chopra<sup>45</sup> the decision making by majority but also the veto power of the permanent members of the Security Council vitiates the concept of sovereignty of all other members as, by definition, one state cannot be "more" sovereign than another.

Other developments that contributed to weakening the concept of sovereignty included in the Charter are the independent capacity of the Secretary-General under Article 99 of the Charter<sup>46</sup>. Article 99 gives the Secretary-General considerable discretion to bring to the attention of the Security Council any matter that in his opinion may threaten the maintenance of international peace and security<sup>47</sup>.

Schrijver observes that the UN Security Council with its flexible interpretation of the concept of "threat and security" in the case of South Rhodesia, South Africa (apartheid), Iraq (protection of Kurds and Shi'ites) and Haiti (restoration of democratic government) also helped modifying the concept of sovereignty as it intervened in situations which were considered by the states concerned as internal matters. For Schrijver the challenges to sovereignty that states have experienced in the last decades were either originated from "within", "bottom up" or "top-down". The growing international recognition of the rights to self-determination and of minorities falls in the category of bottom up challenges. Regional integration (the European Union) and the Peace and Security

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<sup>45</sup> "Beyond Westphalia?" op. cit. page 11

<sup>46</sup> See the UN General Assembly of 16 October 1990 resolution admitting the International Committee of the Red Cross as the first NGO with observer status (A/RES/45/6).

<sup>47</sup> Ann Orford argues that it was Hammarskjöld who helped transforming the United Nations into a "powerful international executive able to undertake wide-ranging forms of police action". Orford A., *Global Responsibility to Protect*, 3 (2011) pages 400– 424. Hammarskjöld argued that it was necessary to stop thinking of the UN merely as a forum for 'static conference diplomacy' and instead reimagining it as a 'dynamic instrument' for 'executive action, undertaken on behalf of all members'. On this point see also Kelsen H., *The law of the United Nations*, London Stevens and Sons Limited 1950, page 302.

resolutions of the UN Security Council can be placed in the top-down category. International agreements on certain natural resources/eco systems and a number of trends such as the growth of global capital markets and the increasing role of multinational enterprises are also to be included in this category. The challenges to national sovereignty “from within” are for example those often imposed in the form of the conditionality dictated by the Bretton Woods institutions<sup>48</sup>.

While acknowledging that infringements to sovereignty took place also in the past and are not limited to the period after World War II, Krasner confirms that since World War II voluntary or involuntary violations of the Westphalian model with respect to territoriality and autonomy have been a numerous. Trying to classify the nature of these violations he lists them according to the way through which they were carried out, i.e. conventions or contracts, and whether they impinge on territoriality or autonomy, the two basic element of the Westphalian model of sovereignty.<sup>49</sup> Among the territorial violations Krasner includes the creation of authority structures in which authority is not coterminous with territory such as the British Commonwealth (but not colonial empires in which authority and territory are coterminous, even if tracts of land are not contiguous) and the European Union. The establishment of the Exclusive Economic Zone is another example of a structure which, according to Krasner, violates the Westphalian model. The EEZ is an area between 12 and 200 miles from the coast in which states can exercise control over the exploitation of fishing and minerals but not over shipping. Because some activities are subject to the littoral states but others are not, the link between territory and authority is broken. Among the contractual arrangements that violate autonomy Krasner includes the conditionality requirements imposed by the International Financial Institutions, although in theory consistent with the formal legalistic concept of sovereignty, as lenders can induce changes in domestic policy and influence institutional

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<sup>48</sup> Schriver N., *The Changing Nature of State Sovereignty*, *British Yearbook of International Law*, Vol. 70 issue 1, pages 65-98

<sup>49</sup> Krasner S.D, *Compromising Westphalia*, in *International Security*, Vol. 20, No. 3 (Winter, 1995-1996), pp. 115-151



structures. He also points out that the European Bank for Reconstruction and Development (EBRD) is the first international financial institution to explicitly include political conditionality. The preamble to the bank's Articles of Agreement, for example, provides that contracting parties should be "committed to the fundamental principles of multiparty democracy, the rule of law, [and] respect for human rights and market economies."

As we have seen economic and social progress has gradually eroded the boundaries between states. The development of a body of instruments for the protection of human rights and the establishment of the International criminal courts have further contributed to the modification of the concept of sovereignty more in line with the expectations of present-day society.

### **1.3 Human Rights<sup>50</sup>**

After World War II human rights began to take precedence over sovereignty both in the foreign policies of numerous states and in the United Nations. The Nuremberg trials showed that if a State abused its sovereignty, its leaders could be accountable directly to the international community for criminal conduct. The international human rights regime that developed after World War II led to the idea that individuals also have rights and obligations directly under international law and that international law can be applied to them.

The promotion of international human rights is a fundamental objective of the United Nations. In the Preamble of the Charter it is stated that the United Nations is determined to reaffirm faith in fundamental rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. Especially with regard to the protection of human rights, the Charter not only limits the sovereignty of a state in respect of its relations with other states in the international community, but also with regard to its subjects within its own territory. Article 55 of the Charter of the United Nations

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<sup>50</sup> The main source of the information contained in this paragraph was the website of the UN and of the OHCHR [www.ohchr.org](http://www.ohchr.org) (last accessed 29/11/12).

links the international protection of human rights to the maintenance of international peace and security; it provides, inter alia, that, with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations between states and self-determination of peoples, the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Charter is supplemented by the Universal Declaration of Human Rights, adopted by the General Assembly in 1948, and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both adopted by the General Assembly in 1966. The Universal Declaration of Human Rights was conceived as a statement of objectives to be pursued by Governments; it was not a legally binding document and contained no enforcement provisions. It inspired in turn more than one hundred human rights instruments, which, taken together, constitute international human rights standards. These legal instruments go beyond articulating the responsibilities of states, and establish mechanisms of oversight and investigation to induce compliance. The overall result of these developments is that human rights are no longer exclusively a subject of domestic jurisdiction.

Although international human rights are mostly contained in treaties, some of these human rights have already attained the status of customary international law and even *ius cogens*, in other words, principles from which derogation either by legislation or by treaty is prohibited. Human rights principles can, therefore, be binding on states without specific consent on their part. The implication of this is that if states are bound by these principles, part of their sovereignty has been eroded. One example is the Genocide Convention of 1948. The Convention marks another step towards the weakening of the Westphalian model of sovereignty because it establishes a legal obligation on state parties to prevent

and punish genocide (Article I)<sup>51</sup>. This provision has been interpreted by the International Court of Justice in the case *Bosnia and Herzegovina v. Serbia and Montenegro* (judgment of 26 February 2007) to say that a State incurs responsibility "if (it) manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide".

Alongside the development of international human rights law, a number of United Nations human rights bodies have also been established. There are currently ten human rights treaty bodies, which are committees of independent experts. Nine of these treaty bodies monitor implementation of the core international human rights treaties while the tenth treaty body, the Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention against Torture, monitors places of detention in States parties to the Optional Protocol. States must submit regular reports to the treaty bodies so that the implementation of their commitments can be examined. States present their reports publicly and the committees make observations and recommendations. Furthermore, several of the human rights treaties have

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<sup>51</sup> The Convention was adopted by the United Nations General Assembly on 9 December 1948 and entered into force on 12 January 1951. Unfortunately, after its ratification, the Genocide Convention was almost forgotten until the dramatic events of the Balkans in the 90's revived it. Unlike other human rights treaties, the Convention does not establish a specific monitoring body or expert committee. It stipulates that any Contracting Party may call upon the competent organs of the United Nations to take such action under the United Nations Charter, which they consider appropriate for the prevention and suppression of acts of genocide. On the other hand, Article VI provides that persons charged with genocide shall be tried by a competent tribunal of the State in the territory in which the act was committed or by "such international penal tribunal as may have jurisdiction". In fact the draft text of the Convention prepared by the UN secretariat foresaw the establishment of an international court *inter alia* if the genocide had been committed by "individuals acting as organs of the State or with support or the tolerance of the State". The provision that the person charged of genocide should be tried by an international tribunal was later deleted and the General Assembly adopted a proposal put forward by the Netherlands and Iran by which the International Law Commission (ILC) was invited "to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction would be conferred upon that organ by international conventions". The ILC drafted two statutes by the early 1950s but the political situation in the following years made the establishment of an international criminal court politically unrealistic. Article I of the Convention states that "genocide whether committed in time of peace or in time of war is a crime under international law which [States] undertake to prevent and to punish."

individual complaints procedures which allow the treaty bodies to consider complaints of human rights violations from individuals. If the treaty body concludes that there has been a violation, the State concerned is expected to provide a remedy.

The United Nations Commission on Human Rights, established in 1946 and reporting to the Economic and Social Council, was the key United Nations intergovernmental body responsible for human rights until it was replaced by the Human Rights Council in 2006. In addition to assuming mandates and responsibilities previously entrusted to the Commission, the Council undertakes a Universal Periodic Review (UPR) of the fulfillment of each State of its human rights obligations and commitments. UPR involves a review of the human rights records of all UN Member States once every four years. The review is a State-driven process, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. No other universal mechanism of this kind exists. Special Procedures is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Special Procedures are either an individual –a special rapporteur or representative, or independent expert—or a working group. They are prominent, independent experts working on a voluntary basis, appointed by the Human Rights Council.<sup>52</sup>

A very strong regional human rights regime exists in Europe for the parties to the European Convention of the Protection of Human Rights and Fundamental Freedom. The European Convention for the Protection of Human Rights and Universal Freedom was adopted in 1950. In 1959 the European Court of Human Rights (ECtHR) was established. According to the statute of the Court any person who feels his/her rights have been violated by a State party can take a case to the Court. Judgments finding violations are binding on the States concerned and

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<sup>52</sup> <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (last accessed 29/11/12)

they are obliged to execute them. The establishment of a Court was an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only States are considered actors in international law). The European Convention is still the only international human rights agreement providing such a high degree of individual protection. A strong regime also exists for the 23 members of the Council of Europe. Art. 3 of the Council's statute requires each member to "accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms" Such provisions have been considered so relevant to prevent Spain and Portugal from being members until after the fall of those nations' fascist military governments in the mid-70s. Furthermore, Greece (in 1969) and Turkey (1981) have been suspended for systematic human rights violations.

Other regional human rights regimes exist for the Americas - the Inter-American Commission and Court of Human Rights both established in 1959 as a part of the Organization of American States (OAS) - Africa – the regime has been established within the African Union (AU) under the 1981 African Charter on Human rights and People's Rights and the Middle East -the Permanent Arab Commission on Human Rights, established in 1968.

#### **1.4 The investigation and prosecution of international crimes**

The international legal order has progressively constructed a regime designed to hold individuals responsible for war crimes, crimes against humanity and genocide. The establishment of an international tribunal to judge political leaders accused of war crimes was first made during the Paris Peace Conference in 1919 (the Commission of Responsibilities composed of fifteen members). The issue was addressed again at the Conference held in Geneva under the auspices of the League of Nations on 1–16 November 1937, but no practical results followed.

After the Nuremberg and Tokyo Trials the UN General Assembly recognized the need for a permanent international court to deal with atrocities of the kind

committed during World War II and asked the International Law Commission to study the matter<sup>53</sup>. Between 1949 and 1954 the International Law Commission prepared several draft statutes for an International Criminal Court (ICC) but Cold War tensions undermined these efforts: the Security Council was permanently divided, and even the General Assembly was unable to agree on a definition of 'acts of aggression'. However, with the end of the Cold War efforts began anew to establish an international criminal court. In 1989, in response to a request by Trinidad and Tobago, the U.N. General Assembly requested the ILC to resume work on an international criminal court with jurisdiction to include drug trafficking. The following five years saw the tragic events of the former Yugoslavia and Rwanda, as well as the establishment of two ad hoc international tribunals. In 1994, the ILC presented a draft ICC statute to the United Nations General Assembly, which after further review led to the 1998 meeting in Rome, where 160 countries negotiated the Rome Statute, establishing the International Criminal Court. The treaty establishing the Court was adopted by a vote of 120 to 7, with 21 countries abstaining. The seven countries that voted against the treaty were China, Iraq, Israel, Libya, Qatar, United States, and Yemen. The Statute of the Court entered into force on 1 July 2002. 121 countries (effective as of 1 July 2012) have joined the ICC. Out of them 33 are African States, 18 are Asia-Pacific States, 18 are from Eastern Europe, 27 are from Latin American and Caribbean States, and 25 are from Western European and other States. The United States, Russia, China, and India have, however, not yet joined the court.

In 1994 after the tragic events in the former Yugoslavia and Rwanda two ad hoc tribunals, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), were established respectively to prosecute serious crimes committed during the wars in the former Yugoslavia and judge people responsible for the Rwandan Genocide.

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<sup>53</sup> Res. 260 III B of 9/12/1948

Alongside of the ICC the ICTY and the ICTR have received the most attention although there are other tribunals including the mixed one in Sierra Leone and Cambodia.<sup>54</sup>

Contrary to the ad hoc tribunals for the former Yugoslavia and Rwanda, the ICC is a permanent autonomous court. The ICC also differs from the International Court of Justice (ICJ), which is the principal judicial organ of the United Nations for the settlement of disputes between States. The mandate of the Court is to try individuals rather than States, and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes and crimes against humanity. The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine. The Court does not have its own police force and relies on State cooperation, which is essential to the arrest and surrender of suspects. Investigations may be initiated when a State party refers a situation to the Court, when the Security Council does so acting under Chapter VII of the UN Charter, or when the Prosecutor begins an investigation *proprio motu* (Art. 13 of the Statute of the Court). When the Court's jurisdiction is triggered by the Security Council, the duty to cooperate extends to all UN Member States, regardless of whether they are a Party to the Statute or not. The crimes within the jurisdiction of the Court are the gravest crimes against humanity and, as provided for by article 29 of the Statute, they shall not be subject to any statute of limitations.

So far 14 cases in 7 situations have been brought before the ICC. Three States Parties to the Rome Statute – Uganda, the Democratic Republic of the Congo and the Central African Republic – have referred situations occurring on their territories to the Court. In addition, the Security Council has referred the situation in Darfur, Sudan, and in Libya all both non-States Parties. On 31 March 2010, Pre-Trial Chamber II granted the Prosecution authorization to open an investigation *proprio motu* in the situation of Kenya. On 3 October 2011, Pre-Trial

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<sup>54</sup> Ed Tracy Isaacs and Richard Vernon (eds.), *Accountability for collective wrongdoing*, Cambridge University Press 2011 Page 115

Chamber III granted the Prosecutor's request for authorization to open investigations *proprio motu* into the situation in Côte d'Ivoire.<sup>55</sup>

But in which measure does international criminal law affect state sovereignty? For Antonio Cassese, international justice and sovereignty are incompatible; either one supports the rule of law, or state sovereignty. Cassese argued that the emergence of such a system of justice has brought about a "revolutionary innovation ... a seismic shift in thinking about sovereignty" as with the establishment of international criminal tribunals, for the first time, international bodies "penetrated that powerful and historically impervious fortress — state sovereignty — to reach out to all those who live within the fortress"<sup>56</sup>. Others scholars, like Robert Cryer<sup>57</sup> believed that the prevention of international crimes cannot occur without sovereignty.

Thomas Frank articulated the idea of fundamental rules, such as those underlining international criminal law, as forming conditions on membership in the international community that, contrary to the ordinary practice of international law are not themselves subject to the specific consent of states except in the very act of accepting membership in the community itself. According to Frank such 'associative' norms are part of an 'ultimate canon' acting as preconditions to the very recognition of sovereignty that constitutes a given state as a participant in the international community.<sup>58</sup>

For Bruce Broomhall<sup>59</sup> the justification for the departure from the requirement of domestic legality lies in the assumption that these crimes undermine the international community's interest in peace and security and by their exceptional

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<sup>55</sup> [http://www.icc-cpi.int/EN\\_Menus/ICC/Situations%20and%20Cases/Pages/situations%20and%20cases.aspx](http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Pages/situations%20and%20cases.aspx) (last accessed 29/11/12)

<sup>56</sup> Cassese A., Reflections on International Criminal Justice, Oxford Journals Law, Journal of International Criminal Justice, Volume 9, Issue 1, pages 271-275.

<sup>57</sup> Cryer R., International Criminal Law vs. State Sovereignty: Another Round?, The European Journal of International Law Vol. 16 no.5, pages 979–1000

<sup>58</sup> Frank T., Fairness in the International Legal and Institutional System, op. cit. page 42

<sup>59</sup> Broomhall B., International Justice and the International Criminal Court: between Sovereignty and the Rule of Law, New York: Oxford University Press, 2003.



gravity shock the conscience of humanity. Broomhall further states that the broadening of international criminal law represented a movement within international law parallel to that which gave birth to the modern system of Human rights protection and which arose out of the same historical circumstances. Hence, the importance of Nuremberg extends beyond the confines of international criminal law and modifies the relationship between sovereignty and the international system. The establishment of direct international responsibility for individuals is justified by the fundamental interest of the international community in international peace and security and relies on such global norms as "the collective conscience of mankind." These norms of justice, however, have advanced much more quickly than enforcement mechanisms. Broomhall nevertheless argues that globalization and the growth of international civil society have created a new environment, in which governments are under increased pressure to justify their decisions and abide by global norms of accountability.

### **1.5 The Humanization of International Law**

In her article "Humanity as the A and the  $\Omega$  of Sovereignty" Anne Peters argued that State sovereignty is not only limited by human rights, but that it has a legal value only to the extent that it respects them. "... (C)onflicts between state sovereignty and human rights should not be approached in a balancing process in which the former is played off against the latter on an equal footing, but should be tackled on the basis of the presumption in favor of humanity."<sup>60</sup>

Peters said that even if subject to state actions, individuals have progressively emancipated themselves and they have become active legal subjects. The first aspect of this emancipation or empowerment is the internationally recognized right to participation, mostly through NGOs or ethnic minority groups, in international legal process or transnational governance. The second mechanism for emancipation is individual standing to initiate judicial or arbitral proceedings.

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<sup>60</sup> Peters A., *Humanity as the A and  $\Omega$  of Sovereignty*, *The European Journal of International Law*, Vol.20 n.3 2009

Anne Peters argued that the humanization of sovereignty has two main corollaries: external state sovereignty requires a justification – just as internal sovereignty – and that sovereignty implies responsibility. This also suggests a reassessment of humanitarian intervention. The reasoning has an impact on the role of the UN and in particular of the Security Council. The latter has a duty under strict conditions to authorize proportionate humanitarian actions to prevent or stop violations such as genocide and other crimes against humanity. Anne Peters also argued that the use of veto by the permanent members of the Security Council should in these circumstances be considered illegal or abusive.

Anne Peters is not the only scholar to speak of a progressive humanization of the international law. Christian Tomuschat had already argued that, even though states remain the main actors at international level, this affirmation needs to be nuanced. “Today, the international legal order cannot be understood any more as being based exclusively on State sovereignty.(...) protection is afforded by the international community to certain basic values even without or against the will of individual States. All of these values are derived from the notion that States are no more than instruments whose inherent function it is to serve the interests of their citizens as legally expressed in human rights...”.. Tomuschat affirmed however that this transformation from international law as State-centered to individual-centered “... has not yet found a definitive equilibrium...”<sup>61</sup> Fernando Tesón, in his book “A Philosophy of International law”<sup>62</sup> affirmed that, contrary to the prevailing opinion that countries act simply out of self-interest, a shared respect for individual human rights supports not simply the obligations countries feel to follow in international law but also international law itself and even the very legitimacy of nations in the eyes of the international community. Tesón’s theory goes against the realism theory according to which nation-states and not individuals are the units of analysis in international relations. Human rights and democracy require national as well as international constitutionalism. The

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<sup>61</sup> C. Tomuschat, *International law: ensuring the survival of mankind on the eve of a new century: general course on public international law*, Martinus Nijhoff 1999, Vol. 281 page 161- 162

<sup>62</sup> F. Tesón, *A Philosophy of International law*, Westview Press, 1998

democratic legitimacy of the various levels of government derives from respect for human rights and from democratic participation of citizens in the exercise of national and international government powers. It follows from the above that citizens must be recognized also as legal subjects of international law and international organizations (as they are already at European level). Their democratic participation and more effective representation in international organizations asks for constitutional reforms of the state-centered international legal system so as to enable citizens worldwide to invoke international guarantees of freedom before international and domestic courts and participate more actively in institutions at international level.

## 1.6 Conclusions

Few subjects of international law and international relations are as sensitive as the notion of state sovereignty<sup>63</sup>. In the Encyclopedia of Public International Law, Steinberger refers to it as “the most glittering and controversial notion in the history, doctrine and practice of international law”<sup>64</sup>. After World War I but most significantly since the United Nations was founded in 1945, the concept of sovereignty has experienced profound modifications. As a result of improvements, inter alia, in communications and international trade, states became more interdependent. International organizations were the main vehicle of this developments, particularly those established to promote and coordinate state endeavors in various fields such as economic development, health etc. As a consequence, in the last decades an increasingly wide range of issues and activities, which were traditionally considered domestic and beyond the reach of international society, have become the objects of international scrutiny. In the field of foreign investment regulation we can cite the Energy Charter Treaty (1991), which offers an example of how some essential elements of national sovereignty such as protection of employment and the primacy of national jurisdiction system were derogated at international level. International

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<sup>63</sup> Schrijver N., op. cit.

<sup>64</sup> Steinberger H., Sovereignty, in R. Bernhardt (ed.) Encyclopedia of Public International Law vol. 10 1987 page 397

monitoring procedures are steadily being expanded and refined with reports, monitoring, expert review and inspection and sanction mechanism<sup>65</sup>; sovereignty has become a dynamic concept.

We wish to conclude this first Chapter with the words of Arnaud Blin: “Depuis quelques années, l'érosion de l'État-nation ... est un phénomène qu'on ne peut pas non plus négliger. Cette érosion a plusieurs causes. La première, la plus visible, est due au développement des rapports transnationaux non étatiques, dont l'internet est la manifestation la plus spectaculaire et la plus palpable .... La seconde cause tient à la création de l'Union européenne dont le développement surprenant remet en question certaines croyances sur le concept de souveraineté. Pour les partisans de la doctrine réaliste, l'indivisibilité de la souveraineté nationale constituait l'une des lois fondamentales de la politique. Or la création de l'Union européenne a démontré en quelques années que le principe de souveraineté nationale était plus malléable qu'on ne voulait bien le croire auparavant. ... La troisième cause, qui est la plus importante, tient à ce que depuis quelques années, la morale a fait un retour tonitruant dans la politique internationale. »<sup>66</sup>

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<sup>65</sup> E.g. The Human Rights Council, the Non Proliferation Treaty and the African peer review mechanism established in 2003

<sup>66</sup> Blin A., 1648, la Paix de Westphalie ou la naissance de l'Europe politique moderne, Editions Complexe, 2006, pages 203-206

# HUMANITARIAN INTERVENTION

## Chapter 2

In the previous chapter we have seen how sovereignty, once absolute, has been gradually eroded both internally, with the development of democratic values and institutions, and externally, with international accountability, inter alia, on the basis of human rights and humanitarian standards.

We will now consider the next element, i.e. the attempt to reconcile state sovereignty with responsibility. The aim of this chapter is to investigate this development through the analysis of the concept of humanitarian intervention and its evolution into the new concept of Responsibility to Protect. To this end we will examine some of the interventions of the 19<sup>th</sup> century as well as those that took place in the 1990s and in particular the interventions in Iraq, Somalia, Rwanda and former Yugoslavia. With reference to the latter interventions our aim is to understand the political balance, the role of the regional organizations and the media as well as the changes the interventions triggered to the United Nations.

### **2.1 Humanitarian Intervention – from the 19<sup>th</sup> century to the League of Nations**

Humanitarian Intervention can be defined as a forceful (and for some scholars non-forceful) intervention undertaken without the express consent of the target country's government, but with collective authorization or, in some limited circumstances, unilaterally or multilaterally for the purpose of defending or alleviating the mass suffering of people or to prevent mass abuses like massacres, persecutions and destruction of living conditions<sup>67</sup>

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<sup>67</sup> Definition borrowed from Scheffer D.J., *Toward a Modern Doctrine of Humanitarian Intervention*, University of Toledo Law Review, vol. 23 1992, page 254

While it is believed that humanitarian intervention is a 21<sup>st</sup> century phenomenon, already in the 19th/early 20th century the international community, under the aegis of the Concert of Europe<sup>68</sup>, claimed a moral and political right to intervene in other states' affairs to save strangers from massacre, atrocity, or extermination. This matter was explored by David Scheffer,<sup>69</sup> Davide Rodogno<sup>70</sup> and Tonny Brems Knudsen<sup>71</sup>. As examples of intervention for humanitarian purposes we can mention the intervention of Great Britain, France and Russia in 1827 at the request of the Greeks to protect their rights of self-determination as well as the Christian population "because public opinion was horrified at the cruelties committed during this struggle"<sup>72</sup>, the French intervention in Syria in 1860 to stop the massacres of the Christian Maronites,<sup>73</sup> the intervention by Austria, France, Italy, Prussia and Russia of 1866-68 in Crete in favor of its Christian population, the collective European powers' and Russia's Intervention of 1877-1878 in favor of the Christian insurrectionist in Bosnia, Herzegovina and Bulgaria<sup>74</sup> and the intervention of 1903-8 in favor of the Christian Macedonian population. In that period international intervention to protect Christian populations was regarded as legitimate by a large community of international law scholars, even though in fact, as Davide Rodogno pointed out, the European

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<sup>68</sup> Scheffer D.J., op cit. The Concert of Europe was established in 1815 as a mechanism to enforce the decisions of the Congress of Vienna. Its founding powers were Austria, Prussia, the Russian Empire and the United Kingdom.

<sup>69</sup> Scheffer D. J., op cit

<sup>70</sup> Rodogno D., "Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914" Princeton University Press 2011

<sup>71</sup> Brems K. T., History of Humanitarian Intervention, Paper for the 50th ISA Annual Convention, New York, February 15-18 2009

<sup>72</sup> L. Oppenheim, "International Law: A Treatise", Vol. I, Peace, page 186 paragraph 181 and ss. <http://gallica.bnf.fr/ark:/12148/bpt6k93562g/f220.image> (last accessed 29/11/2012)

<sup>73</sup> In 1860 France was authorized by a number of the powers of the Concert of Europe to intervene in Syria to restore order after the massacre of thousands of Maronite Christians. As a consequence 6,000 French troops were deployed in Lebanon and a new constitution for Lebanon was drafted. French forces withdrew in 1861.

<sup>74</sup> Bosnia Herzegovina and Bulgaria 1877-1878. Turkish treatment of the Christian populations was such that several of the Concert of Europe powers required the establishment of an International Commission. Turkey refused. The Concert of Europe powers signed a Protocol stating that they reserved to themselves the right of action should the Ottoman Empire fail to maintain the minimum conditions demanded. Russia declared war on Turkey. It is probable however that Russia's real motivation was to acquire control of the Straits and Constantinople.

powers intervened for humanitarian purposes only against the Ottoman Empire to protect Ottoman Christians<sup>75</sup>.

In 1836 Henry Wheaton spoke of a customary legal right of humanitarian intervention “where the general interests of humanity are infringed by the excesses of a barbarous and despotic government<sup>76</sup>”. For Wheaton humanitarian intervention was an exception to the general rule of non-intervention in the internal affairs of a sovereign state. This opinion was supported by other contemporary European and American international jurists and political scientists.

Among those who believed that a right of humanitarian intervention existed were Theodore D. Woolsey and Antoine Rougier, who wrote an article to this extent on the *Revue Générale de Droit International Public* in 1910. Woolsey identified two instances in which intervention was justified: self-preservation and if “some extraordinary state of things is brought about by the crime of a government against its subjects”. Woolsey said that the 1827 intervention by Great Britain, France and Russia on behalf of the Greeks was “avowedly dictated by motives of humanity.”<sup>77</sup> While recognizing that the theory of humanitarian intervention may not be in line with the principles of independence and equality of states, Antoine Rougier argued that humanitarian interventions may be undertaken under certain circumstances by third parties for solidarity of mankind.

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<sup>75</sup> Rodogno D., op cit. see also Hans Köchler H., *Humanitarian Intervention in the Context of Modern Power Politics Is the Revival of the Doctrine of the "Just War" Compatible with the International Rule of Law?*, Vienna, 2001

<sup>76</sup> Wheaton H. *Elements of International Law* 1866 page 103 <http://archive.org/stream/wheatonselements00whearich#page/n5/mode/2up> (last accessed 29/11/12)

See also *Commentaire sur les "Éléments du droit international", et sur l'"Histoire du progrès du droit des gens, par Henry Wheaton"* available at <http://gallica.bnf.fr/ark:/12148/bpt6k5575110d/f152.image.r=intervention+humanitaire.langEN> (last accessed 29/11/12),

Rolin-Jaequemyns G., *Le Droit International et la Question d'Orient*, 1876 pages 79-80 available at: <http://archive.org/stream/ledroitinternat00jaegoog#page/n9/mode/2up> (last accessed 29/11/12)

<sup>77</sup> Woolsey T. D., *Introduction to the Study of International Law*, 1883 paragraphs 41 and 50 available at <http://www.archive.org/stream/introductiontost00wooliala#page/n7/mode/2up> (last accessed 29/11/12)

“La théorie de l’intervention d’humanité est proprement celle qui reconnaît pour un droit l’exercice du contrôle international d’un État sur les actes de souveraineté intérieure d’un autre État contraires « aux lois de l’humanité », et qui prétend en organiser juridiquement le fonctionnement....Suivant cette doctrine, chaque fois que les droits humains d’un peuple seraient méconnus par ses gouvernants, un ou plusieurs États pourraient intervenir au nom de la Société des nations, soit pour demander l’annulation des actes de puissance publique critiquables, soit pour empêcher à l’avenir le renouvellement de tels actes, soit pour suppléer à l’inaction du gouvernement en prenant des mesures conservatoires urgentes, et en substituant momentanément leur souveraineté à celle de l’État contrôlé.»<sup>78</sup>

In ‘*Droit International et le question d’Orient*’ (1876) Gustave Rolin-Jaequemyns considered the situation in the Near East of particular importance for Europe and concluded that European powers acting collectively had the right to intervene in the internal affairs of the Ottoman Empire to protect the peace in Europe and in the interests of humanity.<sup>79</sup> In writing in favor a collective intervention in the Balkan crises Rolin-Jaequemyns even evokes a collective responsibility of the main European powers.<sup>80</sup>

William Vernon Harcourt was more doubtful respect the legality of interventions and on their efficacy. He argued that intervention is a question of policy than law and is likely to make things worse. “The records of history will teach us that interventions have not been accomplished with Foreign-office rose-water

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<sup>78</sup> Rougier A., *La théorie de l’intervention d’humanité*, RGDIP, 1910, pp. 486-526

<sup>79</sup> Rolin-Jaequemyns G., *Le Droit International et la Question d’Orient*, 1876 pages 79-80

<sup>80</sup> « *Cependant il y a un genre de sentiment... que nous éprouvons...au récit de ce qui se passe en Bulgarie, en Serbie, en Herzégovine, en Bosnie. Ce sentiment, embarrassant à définir, ressemble singulièrement, dans sa généralité, au malaise que produit dans la conscience d’un coupable le souvenir d’une faute commise : c’est une sorte de remords collective, ou tout au moins l’inquiétude d’une responsabilité (italics in the original text) encourue, le sentiment d’un devoir à accomplir. Or là où il y a devoir et responsabilité il y a au moins en droit international, une obligation en droit.* » In « *Le Droit International et la Question d’Orient*” 1876 page 7



alone.”<sup>81</sup> The treatise on international law Oppenheim-Lauterpacht (1948-1952) confirmed that many jurists considered an intervention admissible “when exercised in the interest of humanity for the purpose of stopping religious persecutions and endless cruelties in time of peace and war.” However, the treatise further says that “whether there is really a rule of law of Nations which admits such intervention may well be doubted. Yet, on the other hand, it cannot be denied that public opinion and the attitude of the Powers are in favor of such interventions.”<sup>82</sup>

Lauterpacht was probably one of the last to defend the legal basis of humanitarian intervention before the establishment of the United Nations linking it to the Grotian tradition of international law. In an article published in the British Yearbook of International Law in 1946 Lauterpacht argued that intervention was legally permissible when a state was guilty of cruelties against its nationals in such a way that denied their fundamental human rights and shocked the conscience of mankind. He acknowledged that “The doctrine of humanitarian right of humanitarian intervention has never become a fully acknowledged part of positive international law. But it has provided a signpost and a warning. It has occasionally acted upon and it was one of the factors that paved the way for the provisions of the Charter of the United Nations relating to fundamental human rights and freedom.”<sup>83</sup>

Thus, we can say that until the beginning of the 20th century there existed a doctrine, although not one universally agreed, arguing that humanitarian intervention could be legally justifiable. According to Knudsen, since the principle of non-intervention was considered the main rule, and legitimate intervention the exception, it was important for an intervening state or coalition of states (as

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<sup>81</sup> Vernon Harcourt W., *Letters by Historicus on Some Questions of International Law*, Macmillan and Co, London and Cambridge 1863 pages 41-51 available at <http://archive.org/stream/lettersbyhistor01harcgoog#page/n67/mode/1up> (last accessed 29/11/12)

<sup>82</sup> *International Law: A Treatise*, Oppenheim Lassa, 7th Edition, op. cit Volume I page 229 paragraph 137

<sup>83</sup> Lauterpacht H., *The Grotian Tradition of International Law*, 23 *British Yearbook of International Law*, 1946, page 46

it happened in the majority of the cases of humanitarian interventions in the 19th/early 20th century) to articulate its motives clearly and defend them against accusations of self-interested aggression.

## **2.2 From the UN Charter to the “Era of Humanitarian Emergences”**

We have seen as the first restrictions on recourse to war were included in the Kellogg-Briand Pact in 1928. With the partial prohibition to wage war established by the Covenant of the League of Nations<sup>84</sup>, the idea of *bellum iustum* was then superseded by the norm of non-interference in the internal affairs of another state. This was later incorporated in the United Nations Charter under article 2(4). The UN Charter’s prohibition on the use of force, except in cases of self-defense or at the direction of the Security Council, delegitimized any interference in the internal affairs of another state, and the legal debate on interventions for strictly humanitarian purposes was largely forgotten until the end of the Cold War period. In fact, no resolution of the Security Council referred to the humanitarian dimensions of any conflict from 1945 until the Six Day War of 1967. From 1946 to 1980 the Security Council authorized the use of force only twice, i.e. during the Korean War in the 1950 (Resolution 83) and in 1961 (Resolution 161) in the Congo when the death of Lumumba forced the Security Council to review the mandate it had given to the Secretary-General Hammarskjöld.<sup>85</sup> The interventions of India in East Pakistan (1971), Viet Nam in Cambodia (1978) and Tanzania in Uganda (1979) as well as the French Government’s support for the coup against Jean-Bédel Bokassa in Central Africa (1979), which are considered by some scholars as the first examples of 21<sup>st</sup> century intervention for humanitarian purposes, were not authorized by the Security Council and were

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<sup>84</sup> Articles 10, 12 and 15 of the Covenant

<sup>85</sup> From 1946 to 1980 the Security Council authorized explicitly the use of force only twice, i.e. during the Korean War in the 1950 (Resolution 83) and in 1961 (Resolution 161) in the Congo when the death of Lumumba forced the Security Council to review the mandate it had given to the Secretary-General Hammarskjöld. On 21 February 1961 it passed Resolution 161 which authorized the ONUC (United Nations Operation in the Congo) to take all appropriate measures to prevent the occurrence of civil war in the Congo, including “the use of force, if necessary, in the last resort.” <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/171/68/IMG/NR017168.pdf?OpenElement> (last accessed 29/11/12)

considered illegal. It is interesting to note that in those cases India, Viet Nam and Tanzania justified their action on the basis of the right of self-defense under Article 51 of the UN Charter and did not refer to the humanitarian aspects linked to the interventions. The Indian ambassador at the UN Security Council was the only one who mentioned the humanitarian purposes. He declared that the military repression in East Pakistan was on a sufficient scale to “shock the conscience of mankind” (“What ... has happened to our conventions on genocide, human rights, self-determination, and so on?”). However, this was later replaced by the claim that the intervention was an act of self-defense.<sup>86</sup>

As Thomas Weiss rightly pointed out, at that time the notion of humanitarian intervention was “too far from the mainstream to be used successfully as a justification for state actions. International order was firmly grounded on the inviolability of sovereignty, and humanitarian considerations were beside the point.”<sup>87</sup>

In his book “Saving Stranger: Humanitarian Intervention in International Society” Nicholas Wheeler stated that the slaughter and mass rape in East Pakistan

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<sup>86</sup> UNITED NATIONS Security Council Official Records 1606<sup>th</sup> of 4 December 1971 Doc S/PV.1606(OR) available at [http://search.un.org/search?q=UNITED+NATIONS+Security+Council+Official+Records+1606th&btnG=Search+the+ODS&ie=utf8&oe=UTF-8&ie=UTF-8&output=xml\\_no\\_dtd&proxystylesheet=UN\\_ODS\\_test&client=UN\\_ODS\\_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&num=10&metaTitle=&ie=utf8&output=xml\\_no\\_dtd&proxystylesheet=UN\\_ODS\\_test&client=UN\\_ODS\\_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&sort=date%3AD%3A%3Ad1&entqr=3&entsp=a&ud=1&num=&filter=0&num=&site=ods\\_un\\_org](http://search.un.org/search?q=UNITED+NATIONS+Security+Council+Official+Records+1606th&btnG=Search+the+ODS&ie=utf8&oe=UTF-8&ie=UTF-8&output=xml_no_dtd&proxystylesheet=UN_ODS_test&client=UN_ODS_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&num=10&metaTitle=&ie=utf8&output=xml_no_dtd&proxystylesheet=UN_ODS_test&client=UN_ODS_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&sort=date%3AD%3A%3Ad1&entqr=3&entsp=a&ud=1&num=&filter=0&num=&site=ods_un_org) (last accessed 30/11/12) and

UNITED NATIONS Security Council Official Records 1607<sup>th</sup> Doc S/PV.1607(OR) of 5 December 1971 available at [http://search.un.org/search?q=UNITED+NATIONS+Security+Council+Official+Records+1607th&btnG=Search+the+ODS&ie=utf8&oe=UTF-8&ie=UTF-8&output=xml\\_no\\_dtd&proxystylesheet=UN\\_ODS\\_test&client=UN\\_ODS\\_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&num=10&metaTitle=&ie=utf8&output=xml\\_no\\_dtd&proxystylesheet=UN\\_ODS\\_test&client=UN\\_ODS\\_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&sort=date%3AD%3A%3Ad1&entqr=3&entsp=a&ud=1&filter=0&num=&site=ods\\_un\\_org](http://search.un.org/search?q=UNITED+NATIONS+Security+Council+Official+Records+1607th&btnG=Search+the+ODS&ie=utf8&oe=UTF-8&ie=UTF-8&output=xml_no_dtd&proxystylesheet=UN_ODS_test&client=UN_ODS_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&num=10&metaTitle=&ie=utf8&output=xml_no_dtd&proxystylesheet=UN_ODS_test&client=UN_ODS_test&getfields=DocumentSymbol.Title.Size.PublicationDate&ProxyReload=1&sort=date%3AD%3A%3Ad1&entqr=3&entsp=a&ud=1&filter=0&num=&site=ods_un_org) (last accessed 30/11/12). See also Nicholas J. Wheeler, “Saving Strangers: Humanitarian Intervention in International Society” (Oxford University Press, New York, 2000), page 63

<sup>87</sup> Weiss T. G., *The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era*, Security Dialogue, vol. 35, issue 2, 2004 page 144

caused the displacement of some 9/10 million people across the border to West Bengal. This situation created enormous social and economic tensions in the West Bengal's border areas, which produced a public outcry in India and a call for the army to intervene in the territory. Though, news of the dramatic situation did not succeed in mobilizing Western public opinion. According to Secretary-General U Thant's memoirs the major powers did not even discuss the matter and the Secretary-general, given the "extraordinary apathy of the Security Council, limited himself to organizing an international aid program".<sup>88</sup>

After the collapse of the Soviet Union humanitarianism saw a revival as well as the active involvement of the United Nations. In this context the idea (re)started to emerge that an intervention into the domestic affairs of another state might be sometimes justified on moral grounds to protect civilians, and that humanitarian aid should be delivered without regard to national frontiers. Suddenly from 1990 to 1994, through repeated references, in the context of Chapter VII, to humanitarian crises as threats to international peace and security, the Security Council changed its approach. The 1990s were also the period in which long-standing political problems in Namibia, Cambodia, and Latin America were resolved with success by United Nations peacekeeping missions. The point of departure of this new political approach is represented by the central role played by the Security Council in legitimizing the threat or use of force in defense of humanitarian values.

From a legal point of view one important antecedent was the judgment *Nicaragua vs. United States of America* by the International Court of Justice (ICJ) in 1986<sup>89</sup>. In the dispute the US government had claimed that its military assistance to the rebel Contras was humanitarian. In finding against the US, the ICJ judged that while states could refuse assistance, the "provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliation or objectives, cannot be regarded as *unlawful intervention*, or as in any

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<sup>88</sup> Wheeler N. J., op. cit. page 59

<sup>89</sup> International Court of Justice: <http://www.icj-cij.org/docket/index.php?sum=367&code=nus&p1=3&p2=3&case=70&k=66&p3=5> (last accessed 29/11/12)

other way contrary to international law.” The Court found that although the provision of military assistance by the US was unlawful, the provision of genuine humanitarian aid without the consent of the host state would not have been an unlawful act under international law provided that such aid “be limited to the purposes allowed in the practice of the Red Cross, and above all be given without discrimination.”<sup>90</sup>

An intense debate was triggered among academics already in the 1970s after the conflict in Bangladesh and the US intervention in the Dominican Republic and continued throughout the 1980s and the 1990s. The center of the debate was the legality of the (unilateral or multilateral) recourse to force also for democracy-restoring intervention as well as the degree to which the notion of humanitarian intervention is linked to the whole idea of spheres of influence in international societies. This debate is still at the center of today’s discussion and the main cause of the reformulation of the principle as Responsibility to Protect.

For some scholars the proscription of the use of force in the UN Charter was an insurmountable obstacle established in international law. It was stressed that the principles appealed to by state to justify intervention in the past were of moral or political nature and as such did not have any real part in international law. On the other hand, a reinterpretation of both customary and conventional sources of international law led many to the conclusion that humanitarian intervention may be legally defensible, if certain circumstances take place, and thus criteria to differentiate permissible and impermissible humanitarian intervention should be developed. Another issue on the table was whether humanitarian intervention should be permissible in situation in which a modification to the political structure of the state itself was essential for the intervention to succeed.

Opponents to the humanitarian intervention affirmed that any interference in the affairs of a sovereign state directly breaches the UN Charter; that humanitarian intervention has no foundation in the law of nations and no international convention allowing such intervention exists and no customary

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<sup>90</sup> Merit par. 242

right of humanitarian intervention has been established. It was said that to allow a right to intervene for humanitarian purposes left far too much discretion as to whether, where, and under what circumstances intervention would take place. Consequently, intervention for humanitarian purposes could lead to abuse or serve as a pretext for other reasons such as national self-interest. Already in 1963 Sir Ian Brownlie denounced the abuse and 'abusability' of humanitarian intervention and concluded that "*no genuine case of humanitarian intervention has occurred with the possible exception of the occupation in Syria in 1860 and 1861*" and that, on the basis of all available definitions, humanitarian intervention "would be an instrument wide open to abuse".<sup>91</sup> Oscar Schachter objected to an expansive interpretation of Article 2(4) of the UN Charter to overthrow a repressive regime, since such use of force would be contrary to the spirit of the Charter. For Schachter there are only five situations in which a State might lawfully resort to unilateral use of force outside its territory, i.e. a) self-defense; b) anticipatory self-defense; c) collective self-defense; d) by invitation and e) when its nationals in a foreign country are in imminent peril of death or grave injury and the territorial sovereign is unable or unwilling to protect them<sup>92</sup>. Joseph Samuels also stressed that the joint reading of Article 2 paragraphs 4 and 7 brings to the conclusion that no forceful intervention is allowed whatsoever.<sup>93</sup> For Thomas Franck the collective use of military force to protect the people's right to democracy "is an extremely remote bridge which needs not to be crossed at present."<sup>94</sup> Also for Vladimir Kartashkin humanitarian intervention by one state in favor of citizens of another state is unlawful and cannot be reconciled with the UN Charter. Various international agreements such as the 1948 Genocide Convention, the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid as well as the work of the UN International

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<sup>91</sup> Himes K.R., The morality of humanitarian intervention, 4 Theological Studies, Vol. 55, 1994 (for the position of the Catholic Church on Humanitarian Intervention) <http://www.questia.com/googleScholar.qst?docId=5000191368> (last accessed 29/11/12)

<sup>92</sup> Schachter O., The Lawful resort to Unilateral Use of Force, Yale Journal of International Law, vol. 10 (1984) pages 291-294

<sup>93</sup> Lillich op cit page 43-44

<sup>94</sup> Franck T.M., Intervention Against Illegitimate Regime" in "Law and Force in the New International Order", Damrosch L.F. and D. J. Scheffer, Westview University Press 1991 page 165

Law Commission on Responsibility of States – he stated - offer mechanisms against abuse without recurring to forcible intervention. Measures involving the use of armed force, if any, should however be taken only on behalf of the UN on the basis of a decision of the Security Council and not at the individual initiative of a member state.

Unilateral military action for humanitarian purposes violates the prohibition on use of force under Article 2(4) also for Lori Fisler Damrosch, who considered the legal argumentations put forward by the proponents of forcible intervention '*both fallacious and dangerous*'. Damrosch maintained that instead States should adopt non-forcible measures either unilaterally or through collective mechanisms such as the United Nations or regional organizations.

Tom J. Farer suggested that the dispute over the legal status of humanitarian intervention depends on the disputants' divergent approaches about how international legal principles come into existence. Farer distinguishes between the so-called classical and realist schools of thought in international law. The classical school emphasizes the traditional sources of that law, including formal texts, a narrow interpretation of intentions, and state practice itself. "Classicists aspire to identify and publicize a qualitatively distinct corpus of norms for evaluating state behavior and to maintain a system of procedural norms for modification of the behavioral ones as alterations occur in the consensus among states about the requirements of international order."<sup>95</sup> Hence, it is not possible to support a right of humanitarian intervention if one takes the classical approach. Farer expressed doubts that a strong support existed in favor of humanitarian intervention and in various occasion expressed his preference for the classical approach stressing that all force is against human life. He noticed, however, with reference to the cases of East Pakistan, Uganda and Cambodia

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<sup>95</sup> Lillich op. cit Page 187

seen above, that even though a number of states criticized the interventions, no one at the United Nations took any formal action<sup>96</sup>.

Other scholars criticized the fact that even when the objectives of an intervention were less objectionable and not motivated by strategic, economic or political interests the paternalism of the intervening powers – self-proclaimed custodians of morality and guarantors of the international order – undermined the credibility of the operation.<sup>97</sup> Anne Orford said that humanitarian intervention should be considered as a modern manifestation of Western colonialism and is constitutive to the identity of the West as a benevolent father “parenting the child-like victim peoples, schooling them in Western democracy, often governing for them until they have proven their ability to handle self-determination responsibly”<sup>98</sup>. For Noam Chomsky dominant countries, especially the United States used humanitarian pretexts to pursue geopolitical goals and to circumvent the legal prohibitions on the use of international force. “The United States is not significantly different from others in its history of violence and lawlessness. Rather, it is more powerful, therefore more dangerous, a danger magnified by the capacity of the elite culture to deny and evade the obvious.”<sup>99</sup> Ghassan Salamè also denounced the specious nature of the humanitarian intervention and considered it as an excuse for putting in place hidden power struggles (or the evidence of the absence of any strategies tout court). The independence of the United Nations *vis à vis* its most important State member, the United States, was also put into question.<sup>100</sup>

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<sup>96</sup> Farer T.J., *An Inquiry into the legitimacy of Humanitarian Intervention*, (1991) in *Law and Force in the New International Order*, Lori Fishler, Damrosh and David J. Scheffer, Westview University Press 1991 pages 185-2001.

<sup>97</sup> See Weiss T.G., *Military-Civilian Interaction: Humanitarian Crisis and Responsibility to Protect*, Rowman and Littlefield, 2005

<sup>98</sup> Orford A., *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003

<sup>99</sup> Chomsky N., *Humanitarian Intervention*, Boston Review, December 1993 - January 1994. See also : « Impérialisme humanitaire », Bricmont J., Les Éditions Aden, 2009 Préface de Noam Chomsky pages 5-53.

<sup>100</sup> Salame G., *Appels d'empire. Ingérences et résistances à l'âge de la mondialisation*, Fayard, 1996 page 147 « Depuis la fin de la guerre froide, et notamment au Cambodge, en Somalie ou en Angola, l'ONU a troqué ses vieux habits de témoin des trêves et d'observateur des cessez-le-feu pour une mission bien plus ambitieuse : arrêter les



For Richard Falk humanitarian intervention failed because of the relatively “shallow” commitment on the intervening side. Humanitarian interventions resulted from societal pressures (manipulated by the media) that compelled political leadership to act against its sense of the national interest and that tried to limit its commitments to the extent possible politically. The transfer of the formal responsibility to the United Nations can be seen as a mechanism to defuse societal pressures to act while avoiding an open-ended interventionary commitment.<sup>101</sup>

On the other hand, in favor of intervention for humanitarian purposes, Richard B. Lillich affirmed that a presumptive legal right of humanitarian intervention may be identified in international law; such intervention is legitimate not only when human rights are being violated but also in the presence of a clear danger of such violations.<sup>102</sup> Myres McDougal and Michael Reisman, Jean-Pierre Fontayne, David J Scheffer and Fernand Tesón also supported the legal right to humanitarian intervention. For McDougal and Reisman humanitarian intervention, which finds its roots in Grotius and which derives from a long tradition of natural law, is an extraordinary remedy based on a principle, antinomic respect to the one of State’s territorial inviolability but equally strongly rooted, of the sanctity of human life “without reference to place or transient circumstances”.<sup>103</sup> The creation of the United Nations neither terminated nor weakened the customary institution of humanitarian intervention. The UN Charter not only confirmed the legitimacy of the latter, but also ‘strengthened’ it as it confirmed the homocentric character of international law. In the opinion of McDougal and Reisman, Article 2(4) of the Charter prohibits the use of force only for

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guerres civile et remplacer, pour mieux les reconstituer en suite., les Etats défailants. La question de la souveraineté étatique comme bouclier contre l’ingérence onusienne a ainsi ressurgi, surtout lorsqu’il apparaissait aux parties concernées que l’ONU n’était plus qu’un masque pour l’ingérence occidentale. »

<sup>101</sup> The Complexities of Humanitarian Intervention: a new world order challenge”, Richard Falk, 17 Mich. J. Int'l L. 491 (1995-1996)

<sup>102</sup> Lillich R. B. (ed), Humanitarian Intervention and the United Nations, University Press of Virginia, 1973,

<sup>103</sup> “Humanitarian intervention and the United Nations” op cit page 169 (in Humanitarian Intervention to Protect the Ibos)

“illegitimate purposes” such as violations of territorial integrity or political independence of states, while Article 55 reaffirms that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedom for all “and Article 56 transforms that commitment into an active obligation for joint and separate action. On the same line J-P Fonteyne, who affirmed that the prohibition on the use of force contained in the UN Charter does not cover humanitarian intervention and implementation of the self-determination principle, while Article 2(7) of the Charter prohibits the United Nations, and not the member states, from interfering in the internal affairs of another member. For Julius Stone ‘Article 2(4) forbids the threat or use of force only when directed against the territorial integrity or political independence of any state’, hence Fernando Tesón concluded that if a “genuine humanitarian intervention does not result in territorial conquest or political subjection ... it is a distortion to argue that [it] is prohibited by article 2(4)”<sup>104</sup>. Tesón acknowledged the fact that international law in general bans the use of force but affirms that intervention may be justified. The central point of the argument is that states derive their legitimacy and their sovereignty from popular consent and the protection of basic human rights. Therefore, governments lose their legitimacy at international level when they turn against their citizens and “betray the ethical end that justifies their existence.” For this reason in some cases forcible humanitarian interventions are morally permitted, although subject to several constraints. These reasons gain in strength when the intervention is collective because this eliminates the dangers of unilateral abuse.<sup>105</sup> For David Scheffer humanitarian intervention should be understood to encompass nonconsensual, non-forcible methods, namely intervention undertaken without military force, such as the work of non-governmental organizations like the International Committee of the Red Cross (ICRC) and *Médecins sans Frontières*<sup>106</sup>.

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<sup>104</sup> In Holzgrefe “The Humanitarian Intervention debate” page 37

<sup>105</sup> Tesón F., Collective Humanitarian Intervention, 17 Mich. J. Int'l L. 323 (1995-1996) page 342

<sup>106</sup> Scheffer D.J., Toward a Modern Doctrine of Humanitarian Intervention, 23 U. Tol. L. Rev. 253 1991-1992

In discussing the reason why states care about civilian slaughter in distant lands, Stefan Wolff identified it in the direct challenge they pose to important international norms of behavior, “the maintenance and promotion of which is in the interest of the international community as a whole”. The refugees’ problem is one of these challenges that justify an intervention. “(W)hen refugee problems pose threats to “international peace and security” as they often do, the UN has a right, if not an obligation to consider intervening in the crisis”, Wolff affirmed. Another reason for caring about - and taking action against – civilian slaughter is that tolerating it is morally diminishing.<sup>107</sup> Michael Walzer<sup>108</sup> in his book “Just and Unjust Wars” affirmed that humanitarian interventions are justified when they are a response, with reasonable expectation of success, to acts that shock the moral conscience of mankind. “It is not the conscience of political leaders that one refers to in such case.... The reference is to the moral convictions of ordinary men and women, acquired in the course of their everyday activities.” This requires that states intervene if gross violations of human rights take place in another state. “The question is rhetorical. Any state capable of stopping the slaughter has a right, at least, to try to do so”. Evaluating the experiences of humanitarian interventions in the 1990s Seybold Taylor<sup>109</sup> affirmed that military intervention succeeded more often than it failed.<sup>110</sup>

Nicholas Wheeler argued that the view that US and Western policy-makers manipulated the legitimating ideology of humanitarianism to serve selfish

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<sup>107</sup> “Ethnic wars and Civilian Slaughter”, Stefan Wolff, page 17 -22

<sup>108</sup> “Just and Unjust War”, Walzer M., Basic Book Inc., 1977

<sup>109</sup> Taylor B S., Humanitarian military intervention: the conditions for success and failure, Oxford University Press, 2007, pages 270-281

<sup>110</sup> The operations that according to Taylor saved lives were Operation Provide Comfort in northern Iraq, Operation Provide Relief and Restore Hope in Somalia, Operation Deliberate Force in Bosnia and Herzegovina and Rwandan Patriotic Army and Operation Support Hope in Rwanda, Operation Allied Harbor (Albania) and Joint Guardian in Kosovo and INTERFET in East Timor.

The operations that failed to save lives were the UN Guard Contingent in Iraq, the first and second operations in Somalia (UNISOM I and II) and Operation Allied Force in Kosovo. UNOSOM II and Operation Allied Force made the humanitarian situation worse by increasing the level of violence. The operation with mixed record were UNPROFOR in Bosnia and Herzegovina, UNAMIR and Operation Turquoise in Rwanda and KFOR in Kosovo

interests ignores the extent to which the solidarity claims advanced by Western States were a result of pressure from domestic publics, shocked by television pictures of slaughter and suffering, demanding that 'something be done'. "The key normative change in the 90s was that the Security Council under pressure from Western governments increasingly interpreted its responsibilities under Chapter VII as including the enforcement of global humanitarian norms."<sup>111</sup> According to Wheeler, there are four requirements for an intervention to be considered humanitarian: 1) "There should be a supreme humanitarian emergency; 2) The use of force must be a last resort; 3) It must meet the requirement of proportionality; 4) There must be a high probability that the use of force will achieve a positive humanitarian outcome."

At the political level consensus on multilateral forcible intervention started to coalesce in 1988, when the UN General Assembly adopted Res 43/131. The latter formally recognized the right of civilians to international aid and the role of nongovernmental organizations in natural and man-made disasters. Two years later, UN General Assembly Resolution 45/100 of December 1990 reaffirmed these rights and provided specific access corridors for humanitarian aid workers. With the adoption of Security Council Resolution 688 four months later, in April 1991, the issue of humanitarian intervention attracted the general attention when the situation of some 1.5 million Kurds was considered a threat to international peace and security.

### **2.3 Iraq 1991**

The initiative to bring the issue of the Kurds to the Security Council was taken by France and Turkey, both worried of the possible exodus of refugees. Respectively on 2 and 4 April 1991 both countries sent letters to the Security Council to request the convocation of a meeting to discuss the issue.<sup>112</sup> On 3 April the Representative of France, Mr. Jean-Marc Rochereau de la Sablière, raised the

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<sup>111</sup> Wheeler N. op cit. page 295

<sup>112</sup> Doc S/PV 2982 available at <http://documents.un.org/results.asp> ODS search webpage (last accessed 30/11/12)

question of the Kurds during discussion of the Gulf War ceasefire resolution<sup>113</sup>. Pushed by internal political pressures, France played an active role at the Security Council. French Foreign Minister Roland Dumas argued that the fate of the Kurds should lead the international society to recognize a '*droit d'ingérence*'. On 16 April 1991 the French President Mitterrand spoke of the "*birth of a new right*" in cases where human rights were massively violated.<sup>114</sup> The opinions expressed by Mitterrand and Dumas reflected the conviction of the French presidency as well as the demand of a growing constituency within French society that believed that the principles of state sovereignty and non-interference should not hinder the delivery of humanitarian assistance. This idea was at the basis of the establishment of *Médecins sans Frontières* (MSF) during the Biafran War of Independence and permeated the French Government in the 1990s. In 1988 Bernard Kouchner, co-founder of MSF, was nominated *Secrétaire d'état* for Humanitarian Action, a role in which he was strongly supported by the President's wife, Danielle Mitterrand, who was outspoken in her support to the Kurds. The concept of '*devoir d'ingérence*' finds its origin already in the late 1970s/ 80s few years after the Biafran war. The French philosopher Jean-François Revel was the first to use the term in an article published on 'L'Express' in June 1979 with reference to Bokassa and Amin Dada. The concept was then referred to by Bernard-Henri Lévy the following year in connection with Cambodia and further developed by Mario Bettati and Bernard Kouchner in 1988. The obligation took then the shape of a right of intervention that implied the use of force, if needed, to protect the NGOs and other humanitarian agencies of the United Nations. The legal basis for this moral right to intervene was however considered weak and generated some criticism both because it was not clearly defined and for a possible double standard in its application. Wheeler argued that the humanitarian claims advanced by France for a duty of intervention to protect the Kurds failed to secure support from other members of the Security Council, who were afraid that this would weaken the principle of non-

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<sup>113</sup> Doc S/PV 2981 <http://documents.un.org/results.asp> ODS search webpage (last accessed 30/11/12)

<sup>114</sup> Déclaration de François Mitterrand Antenne 2 - Journal de 20h - 19 avril 1991 available at <http://guerredugolfe.free.fr/avril.htm> (last accessed 30/11/12)

intervention. However, he affirmed, “it was increasingly apparent to many members of the Security Council that they had a responsibility to involve themselves in the humanitarian crisis inside Iraq”.

On 5 April 1991, a draft resolution submitted by France and Belgium and co-sponsored by UK and USA was adopted as Resolution 688. Ten members voted in favor, three against (Cuba, Yemen and Zimbabwe) and two abstained (China and India). On 6 April, Operation Provide Comfort began to bring humanitarian relief to the Kurds. A No-Fly Zone was established by the U.S., the UK and France north of the 36th parallel. This was enforced by American, British and French aircraft. Resolution 688 did not specifically invoke Chapter VII or authorize “the use of all necessary means” or mandate the “no-fly zones” in northern and southern Iraq but allowed the Allies to justify their intervention.

Jane Stromseth affirmed that resolution 688 demonstrated that the Security Council was willing to act in response to internal repression when it resulted in substantial trans-border refugees flown but was reluctant to explicitly authorize the use of military force. “Resolution 688’s open-endedness was both a necessity and a virtue – she wrote - a necessity because of the unwillingness of the Security Council to provide a more definitive authorization, and a virtue because it permitted the Allies to take action during period of evolving norms while not forcing the hand of the Chinese and others who were willing to tolerate actions de facto that they would not authorize the *iure*.”<sup>115</sup> For Wheeler this argument is supported by the fact that – in contrast to the case of Uganda in the 1970s mentioned above – the Western powers publicly justifies their action on humanitarian grounds. Britain and the USA initially excluded any military action to rescue the Kurds but they quickly reversed their decision due to media coverage of the tragic situation<sup>116</sup>.

The new proactive role played by the United Nations and in particular by the Security Council is also recognizable in the statements of Perez de Cuellar, who

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<sup>115</sup> In Weiss T. G., *Military-Civilian Interaction: Humanitarian Crisis and Responsibility to Protect*, Rowman and Littlefield, 2005 page 46

<sup>116</sup> in *Military-Civilian Interaction*, op. cit. page 139 and ff

was Secretary-General of the United Nations from 1982 to 1991. Toward the end of his mandate Perez de Cuellar called for a reinterpretation of the Charter's principles of sovereignty and non-interference in domestic affairs to allow for intervention on humanitarian grounds, as well as identification of the objective conditions under which it should be carried out. In an address at the University of Bordeaux in April 1991 the then Secretary-General of the United Nations, stressed the importance of striking a balance between the rights of states, as confirmed by the Charter, and the rights of the individuals, as confirmed by the Universal Declaration of Human Rights. "The right to intervene has been given renewed relevance by recent political events (...) We are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents" Recognizing the tension between the necessity of intervention and the prevailing norms of international society, Perez de Cuellar called upon the international legal community to help develop a new concept, "which marries law and morality". Furthermore, in the Annual Report on the Work of the United Nations in September 1991 de Cuellar stressed the renewed importance of the "protection of human rights "which had "become one of the keystones in the arch of peace... It is now increasingly felt that the principle of non-interference within the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity. The fact that in diverse situations the United Nations has not been able to prevent atrocities cannot be cited as an argument legal or moral against the necessary collective action, especially where peace is also threatened." However he stressed that:" What is involved is not the right of intervention but the collective obligation of States to bring relief and redress in human rights emergencies." <sup>117</sup>

This trend continued with the first Summit of the Security Council in January 1992, which reflected the expanding role of the United Nations in a variety of

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<sup>117</sup> UNITED NATIONS General Assembly Official Record 46<sup>th</sup> Session Supplement n.1 page 5 available at <http://www.undemocracy.com/A-46-1.pdf> (last accessed 29/11/12)

tasks, including election monitoring, promoting human rights and humanitarian affairs, which had formerly been considered beyond the competence of the Security Council. In the following weeks, the Security Council authorized the deployment of UN troops into Yugoslavia<sup>118</sup> and Cambodia<sup>119</sup>. The fifteen members of the Security Council concluded the Summit by issuing a statement calling the then-Secretary-General, Boutros Boutros-Ghali, to prepare for circulation to the Members States an "analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping."<sup>120</sup> In June 1992 Boutros-Ghali, who had replaced Perez de Cuellar in January of the same year, presented "An Agenda for Peace". In it, the Secretary-General outlined a number of preventative diplomacy measures the international community could use before peacekeeping, or simultaneously. Presenting "An Agenda for Peace" Boutros-Ghali stressed that the "adversarial decades of the cold war made the original promise of the Organization impossible to fulfill" and that the January 1992 Summit represented an unprecedented recommitment, at the highest political level, to the "Purposes and Principles of the Charter". "Respect for (a state's) fundamental sovereignty and integrity" he wrote, is "crucial to any common international progress." Nevertheless, he continued, "the time of absolute and exclusive sovereignty ... has passed". He also emphasized the need for governments to understand that sovereignty is not absolute and "to find a balance between the needs of good

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<sup>118</sup> UNPROFOR was established by Security Council Resolution 743(1992) of 21 February 1992 during the Croatian War of Independence. The initial mandate was to ensure conditions for peace talks, and security in three demilitarized "safe-haven" enclaves designated as United Nations Protected Areas (UNPAs)

<sup>119</sup> UNTAC was established by Security Council resolution 745 (1992) of 28 February 1992. The mandate included aspects relating to human rights, the organization and conduct of elections, military arrangements, civil administration, maintenance of law and order, repatriation and resettlement of refugees and displaced persons and rehabilitation of Cambodian infrastructure

<sup>120</sup> UNITED NATIONS Security Council doc S/23500 of 31 January 1992 page 3 available at <http://unbisnet.un.org:8080/ipac20/ipac.jsp?menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=bib&ri=&index=.UD&term=S%2F&matchopt=0%7C0&oper=and&aspect=power&index=.PD&term=199201??&matchopt=0%7C0&oper=and&index=.AW&term=&matchopt=0%7C0&ultype=&uloper=%3D&ullimit=&ultype=&uloper=%3D&ullimit=&sort=3100054&x=10&y=#focus> (last accessed 30/11/12)



internal governance and the requirements of an ever more interdependent world.”

## **2.4 Somalia 1992-1993**

In the meanwhile, outside the United Nations, the situation in Somalia was rapidly deteriorating. The humanitarian tragedy that unfolded in Somalia in 1991-1992 was the result of the civil war and subsequent disintegration of the state that followed the fall of Siad Barre in January 1991. Subsequently, various factions among the rebels who expelled Barre started fighting between themselves. Violence and drought followed and precipitated a terrible famine throughout the country. Armed clansmen took over food production and distribution, and the national government ceased to function. It is estimated that between November 1991 and March 1992 approximately 30,000 to 50,000 people died.<sup>121</sup> Until 1992 the United Nations did not do much to improve the situation. On April 24 1992 with Resolution 751, the Security Council requested the Secretary-General to deploy 50 UN observers to monitor the ceasefire in Mogadishu. This was the result of consultations held in New York from 12 to 14 February 1992 to which delegations representing the factions of the Interim President, Ali Mahdi Mohamed, the Chairman of the United Somali Congress, General Mohamed Farah Aidid as well as representatives of LAS, AU, and OIC had participated. On 14 February 1992, the two factions had committed themselves to an immediate cessation of hostilities and to the maintenance of a ceasefire in Mogadishu. They had also agreed to a visit to Mogadishu by a high-level delegation from the United Nations, the League of Arab States (LAS), the Organization of African Unity (OAU) and the Organization of the Islamic Conference (OIC). The joint delegation arrived in Mogadishu on 29 February 1992<sup>122</sup>. In the book ‘UN interventionism 1991-2004’, Ioan Lewis and James Mayall argued that the United States was reluctant to face Congress on the issue

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<sup>121</sup> In *Military-Civilian Interaction*, op. cit. page 60

<sup>122</sup> “Repertoire of the Practice of the Security Council” 1992 page 312 and ff available at [http://www.un.org/en/sc/repertoire/89-92/Chapter%208/AFRICA/item%2006\\_Somalia\\_.pdf](http://www.un.org/en/sc/repertoire/89-92/Chapter%208/AFRICA/item%2006_Somalia_.pdf) (last accessed 30/11/12)

of establishing a UN peacekeeping force in Somalia and had to be persuaded by the other members of the Council to allow the observer mission to be paid for out of assessed rather than voluntary contributions over which it had discretionary control.<sup>123</sup> In April Mohammed Sahnoun, a former Algerian diplomat, was nominated UN special representative to Somalia, where he arrived in May 1992. Sahnoun managed to establish good relations with warlords and clan elders but failed to get sufficient political support in New York, a fact that eventually forced his resignation in October 1992 after he had repeatedly and publicly criticized the performance of the UN agencies in Somalia. On April 1992 the Security Council created the UNOSOM I mission but the intransigence of the local warlords made any progress impossible and the situation continued to worsen with hundreds of refugees starving to death every day. Wheeler observes that growing criticisms on the role of the United Nations led the Secretary-General to mobilize the organization into greater involvement.

On 29 November 1992, the Secretary-General submitted to the Security Council a letter, in which he outlined five options for creating conditions for the delivery of supplies to the Somalis; these included a reconciliation process and a peacekeeping mission. Furthermore, the Secretary-General informed the Council of a visit he received on 25 November from Mr. Lawrence Eagleburger, then Acting Secretary of State of the United States, who indicated that, should the Security Council decide to authorize Member States to ensure the delivery of relief supplies the United States would be ready to take the lead in organizing and commanding such an operation, in which a number of other Member States would also participate.<sup>124</sup> Finally, on 3 December 1992 the Security Council unanimously adopted Resolution 794 authorizing the use of “all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”. Resolution 794 marked the first time in which the United Nations was involved in an armed intervention without the prior consent of the

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<sup>123</sup> “UN interventionism 1991-2004”, Mats Berdal and Spyros Economides (eds), Cambridge University Press, 2007 page 121

<sup>124</sup> <http://www.un.org/en/peacekeeping/missions/past/unosom1backgr2.html> (last accessed 30/11/12)

authorities of the state concerned. The US unified task force UNITAF, also called Operation Restore Hope (ORH), took over in December 1992 on the basis of SC Resolution 794. The 37,000 soldiers (26,000 of whom were from the US and the rest from twenty-three other countries) remained in Somalia until April 1993 with the mandate to use force to ensure the delivery of humanitarian assistance. Thomas Weiss highlighted that UNITAF was a first example of the so-called “CNN effect”<sup>125</sup>. Laurence Eagleburger said in an interview given in 1994 that ‘television had a great deal to do with President Bush’s decision to go in.’<sup>126</sup> George F. Kennan wrote in a New York Times editorial dated September 30, 1993 “There can be no question that the reason for this acceptance [by Congress of President Bush’s intervention] lies primarily with the exposure of the Somalia situation by the American media, above all, television.”<sup>127</sup> This, together with pressure of the election and a miscalculation of the political and financial costs of the operation, prompted the US intervention<sup>128</sup>. In the meantime preparations started for the establishment of UNOSOM II, which was due to take over from UNITAF. Security Council Resolution 814 authorized UNOSOM II to assume control from UNITAF on 4 May 1993. UNOSOM II had strength of 28,000 personnel, including 22,000 troops and 8,000 logistic and civilian staff from thirty seven countries<sup>129</sup> The US also provided 1,167 troops for a Quick Reaction Force under US operational control.

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<sup>125</sup> Of different view Matthew A. Baum, who said media coverage increased after the Bush administration’s offer to provide U.S. troops to lead a large-scale UN ground force into Somalia

<sup>126</sup> In “Military-Civilian Interaction”, op. cit

<sup>127</sup> In “How Public Opinion Constrains the Use of Force: The Case of Operation Restore Hope”, *Presidential Studies Quarterly*, June 2004 page 204

<sup>128</sup> President Bush’s National Security Advisor, Brent Scowcroft, commented that Somalia was looked upon as “very limited, doable.” He added: “We thought the political costs [in Somalia] were low... I think we thought generally it would be a political plus. And since the military costs would be low, and the chances of something going wrong which would turn it into a PR or a political problem were almost non-existent, the net was clearly a plus.” Eagleburger and Scowcroft thus concluded that, unlike other humanitarian tragedies unfolding at the time (e.g., Bosnia), the expectation of success in Somalia was relatively high and the risks to U.S. forces relatively small. In *Presidential Studies Quarterly*, June 2004, page 204.

<sup>129</sup> Australia, Austria, Bangladesh, Belgium, Botswana, Canada, Egypt, Fiji, Finland, France, Germany, Greece, India, Indonesia, Ireland, Italy, Kuwait, Jordan, Malaysia, Morocco, Nepal, New Zealand, Nigeria, Norway, Pakistan, Spain, South Korea, Romania, Saudi

On 5 June 1993, a Pakistani blue helmet party was attacked by Somali forces, presumably under the Aidid's command, killing twenty-four soldiers. The UN responded the next day with Resolution 837, reaffirming that the Secretary-General was authorized to "take all necessary measures against those responsible for the armed attacks and to establish the effective authority of UNOSOM II throughout Somalia". This led to numerous confrontations between UNOSOM II personnel and Aidid's militia. On 12 June 1993 U.S. troops started attacking targets in Mogadishu in the hope of finding Aidid. The military operations began to cause civilian casualties and affected the relationship between the UN troops and the Somali people. The UN troops were portrayed as foreign intruders. On July 12, a house where clan leaders were meeting was attacked by US AH-1 Cobra helicopters. Several buildings were destroyed and many Somalis died. When four western journalists went to investigate the scene, they were beaten to death by a Somali crowd<sup>130</sup>. On 8 August, Aidid's militia detonated a remote controlled bomb against an American military vehicle, first killed four American soldiers and then, two weeks later, injured seven more. In response, President Bill Clinton, who had replaced Bush at the White House in January 1993, announced that he was sending an additional 1,700 army troops and 104 army vehicles plus an aircraft carrier and two amphibious groups of Marines. On October 3, 1993, Task Force Ranger raided a hotel in Mogadishu in which Aidid was thought to be hiding. Eighteen US soldiers were killed. Images of their dead bodies being dragged through the streets were broadcast on television stations all over the world. Four days later, on October 7, President Clinton announced the end of the US involvement in Somalia and called for the withdrawal of all US forces no later than March 31, 1994. American soldiers completely withdrew from Somalia on March 3, 1994. The Belgians, the French and the Italians also announced that they would withdraw their forces in early 1994.

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Arabia, Sweden, Tunisia, Turkey, the United Arab Emirates, the United Kingdom, the USA and Zimbabwe

<sup>130</sup> The journalists were Hansi Krauss of Associated Press and Dan Eldon, Hos Maina and Anthony Macharia, all of Reuters.

The humanitarian interventions in Somalia proved very costly both in terms of human lives and money. Eight soldiers lost their lives under UNOSOM I; seventeen under UNITAF; and a hundred and thirty six personnel were killed under UNOSOM II (143 militaries, 3 international civil servants and 1 local staff). In addition, 10,000 Somalis were either injured or killed because of the intervention. Furthermore, the financial costs of Operation Restore Hope amounted for the US to about 3 times Washington's total aid contribution to Somalia since independence.<sup>131</sup> Assessing ex post the intervention in Somalia, Ioan Lewis and James Mayall affirmed that the failure was political rather than humanitarian. The Somali experience, they argued, stressed the vital importance of paying close attention to the local political culture in any operation. In a situation like Somalia in which the state had not only failed but was also founded on very shallow roots, the legitimacy of the intervention had to be established on the local, rather than national, level.<sup>132</sup>

## 2.5 Rwanda 1993-1994

The 1990s proved to be a very difficult period for the UN with a number of internal conflicts of global relevance taking place at the same time.

As early as February 1993 the representatives of Rwanda and Uganda with letters addressed to the President of the Security Council had informed the Council of the deteriorating situation in Rwanda and asked for an international force's assistance. The representative of France also made a similar request by a letter dated 4 March 1993. Other requests were sent by the representatives of Rwanda and Senegal to the Secretary-General respectively on 8 March (a note

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<sup>131</sup> Data published in "Military-Civilian Interaction" op. cit. Philippe Leymarie wrote on *Le Monde Diplomatique* that the cost of UNOSOM II between May and December 1993 would have amounted to 1,5 billion dollars. « La Guerre perdue de l'Humanitaire. L'ONU enlisée en Somalie », Novembre 1993 available at <http://www.monde-diplomatique.fr/1993/11/LEYMARIE/45733> (last accessed 30/11/12) see also Glanville, L, "Somalia Reconsidered: An Examination of the Norm of Humanitarian Intervention" <http://sites.tufts.edu/jha/files/2011/04/a178.pdf> (last accessed 30/11/12);

<sup>132</sup> Berdal M. and S. Economides (eds), *UN interventionism 1991-2004*, Cambridge University Press, 2007 page 137

verbale) and on 10 March 1993 (a letter)<sup>133</sup>. On 22 June 1993, UNOMUR, a small UN monitoring mission to the Rwanda-Uganda border, was approved by the UN Security Council.

In August 1993 the UN Secretary-General Boutros-Ghali decided to send a mission to Rwanda led by Brigadier-General Romeo Dallaire, at the time the Force Commander of UNOMUR. During meetings in Kigali Rwandan officers stressed the urgency of a mission and the fact that following the Arusha Peace Accords<sup>134</sup> a neutral force should be established to guarantee security throughout the country. At the Security Council it became rapidly clear that there was limited support to the deployment of a large mission to Rwanda. Both the UN and Russia initially objected to another peacekeeping operation while the US also made it clear that it did not want to be involved<sup>135</sup>.

On 5 October 1993 the Security Council adopted unanimously resolution 872 with which it established UNAMIR. Bruce Jones maintained that at that time in New York Rwanda was depicted as a “winnable” mission that could restore the credibility of the UN peacekeeping after the trauma of the UN’s operations in Somalia. “However – he argued – the perception that Rwanda was going to be an easy success meant that the mission was only approved with a minimum of political backing.”<sup>136</sup> After the vote, the Representative of France stressed that the Council had clearly indicated that the UN did not intend to stay in Rwanda indefinitely. UNAMIR had, in fact, been set up with a specific deadline and the Council would soon consider a report reviewing the implementation of the Arusha peace agreement, on which successive deployments might depend. The representative of the UK regarded the Arusha peace agreement as a good example of the way in which a regional organization could contribute to conflict

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<sup>133</sup> “SC Repertoire 12th Supplement 1993-1995”: [http://www.un.org/en/sc/repertoire/93-95/Chapter%208/AFRICA/93-95\\_8-5-RWANDA.pdf](http://www.un.org/en/sc/repertoire/93-95/Chapter%208/AFRICA/93-95_8-5-RWANDA.pdf) (last accessed 30/11/12)

<sup>134</sup> The Arusha Accords are a set of five accords signed in Arusha, Tanzania on August 4, 1993, by the government of Rwanda and the rebel Rwandan Patriotic Front (RPF) to end a three-year Rwandan Civil War. Organized by the US, France and the OAU, the talks began on July 12, 1992, and lasted until June 24, 1993, with a final week-long meeting in Rwanda, July 19 to July 25, 1993.

<sup>135</sup> Berdal M. and S. Economides (eds), *UN interventionism 1991-2004*, op. cit. page 149

<sup>136</sup> Berdal M. and S. Economides (eds), *UN interventionism 1991-2004*, op. cit page 145-149

resolution. He said that it was for the Rwandese themselves to bring about a solution and ensure the return of refugees and the resettlement of displaced persons. The representative of the US said that his Government was deeply concerned about the increasing burden – both in terms of manpower and financial resources – which the United Nations was being asked to bear. For that reason, it was pleased to note that resolution 872 had a tightly focused mandate. While the Arusha Agreement asked for a peacekeeping force that could guarantee the overall security of the country, the mandate of UNAMIR was limited to the security of Kigali.

For Grünfeld and Huijboom<sup>137</sup> this meant that the Security Council devalued the mandate of the peacekeeping mission. Furthermore, the mandate of UNAMIR did not provide for the possibility to search for arms, while Arusha had asked for a force that would help in the tracking of arms caches.<sup>138</sup> Its authorized strength was 2,500 personnel, but it took approximately five months for the mission to reach this level. The head of the mission was Jacques-Roger Booh-Booh of Cameroon, and the Force Commander Romeo Dallaire. Approximately 400 members of the troops at the beginning of the mission were Belgian soldiers, even though Rwanda had been a Belgian colony and normally the UN bans the former colonial power from serving in such peace-keeping operations. The biggest contributing countries along with Belgium were Ghana, Tunisia, Bangladesh, and Canada.

On 11 January 1994 Force Commander Dellaire sent a cable to the UN Headquarters in New York informing of the alarming situation and asking repeatedly for the permission to seize the arms caches but his requests were always rejected. On 5 April 1994, the Council discussed the second report of the

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<sup>137</sup> Grünfeld F. and A. Huijboom, *Failure to Prevent genocide in Rwanda: the role of bystanders*, M. Nijhoff, 2007

<sup>138</sup> The mandate of UNAMIR included "ensuring the security of the capital city of Kigali; monitoring the ceasefire agreement, including establishment of an expanded demilitarized zone and demobilization procedures; monitoring the security situation during the final period of the transitional Government's mandate leading up to elections; assisting with mine-clearance; and assisting in the coordination of humanitarian assistance activities in conjunction with relief operations."

Secretary-General and adopted resolution 909 in which it extended the duration of UNAMIR until July 1994. The representative of the US strongly supported the Council's decision to limit the extension of UNAMIR's mandate and to review within six weeks the progress made by the parties towards implementing the Arusha peace agreement and the role of the United Nations, including UNAMIR's future<sup>139</sup>. The recent negative experience in Mogadishu had left a mark.

The day after the adoption of Resolution 909 a plane carrying President Habyarimana and President Cyprien Ntaryamira of Burundi was shot down near Kigali. The result was the collapse of the unstable peace in Rwanda and the Rwandan Genocide that caused the death of some 250,000 to 500,000 individuals, while tens of thousands more were maimed or wounded. One of the first targets of the genocide was the UN. In an attempt to provoke the withdrawal of the peacekeepers ten Belgian soldiers were kidnapped and subsequently killed; their bodies horribly mutilated. Bruce Jones reported that a senior Rwandan official familiar with planning of the genocide talked about the inspiration of the attack to UN Belgian peacekeepers in January 1994 as having come from watching the UN's experience in Somalia.<sup>140</sup> Five days after the attack to the Belgian troops, despite Dallaire's plea for more forces and a broadened mandate, the UN decided to reduce the contingent from 2500 to 270. Troops from Ghana, Bangladesh and Belgium left the country. Only in June the Security Council took the decision to authorize a 5500-men strong U.N. force for Rwanda. However, by letter dated 19 June 1994 addressed to the President of the Council, the Secretary-General informed that due to the failure of Member States to promptly provide the resources necessary for the implementation of its expanded mandate, UNAMIR might not be in a position, for about three months, to fully undertake the tasks entrusted to it. Meanwhile, the situation in Rwanda had continued to deteriorate and the killing of civilians had not stopped. In those circumstances, the Secretary-General suggested that the Council might wish to consider the offer of the Government of France to undertake, subject to the

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<sup>139</sup> SC Repertoire 12th Supplement 1993-1995 [http://www.un.org/en/sc/repertoire/93-95/Chapter%208/AFRICA/93-95\\_8-5-RWANDA.pdf](http://www.un.org/en/sc/repertoire/93-95/Chapter%208/AFRICA/93-95_8-5-RWANDA.pdf) page 343 (last accessed 30/11/12)

<sup>140</sup> Confidential author interview in "UN Interventionism", op. cit page 155



Council's authorization, a French-commanded multinational operation under Chapter VII of the Charter. Resolution 929 was adopted on 22 June 1994. Suspicion that France's offer might be motivated by national interest meant that the resolution was adopted by 10 votes in favor and 5 abstentions (Brazil, China, New Zealand, Nigeria, and Pakistan).

According to Wheeler the reason why the government of France became so engaged with the suffering in Rwanda was that the media coverage of the genocide emphasized the French government's links with the Habyarimana regime and its responsibility for arming and training the killers.<sup>141</sup> Jakobsen<sup>142</sup> stressed that the French Government was divided on the issue. While President Mitterrand was in favor of maintaining France's high profile in Africa, Prime Minister Balladur and Defense Minister Leotard opposed an intervention. This non-intervention policy changed in mid-June under pressure from Mitterrand because of the wide support of the French public opinion to the '*droit d'ingérence*' and the media coverage stressing the military support given to the Hutu forces. France wanted other states to participate in this rescue mission and the issue was discussed at a meeting of the nine-member Western European Union (WEU). However, there was little enthusiasm among other European states for such a venture. To secure domestic and international support, Prime Minister Balladur indicated five conditions for intervention in a speech to the French Parliament on 21 June as follows: i) the operation must have UN Security Council authorization; ii) all operations should be limited to humanitarian actions; iii) troops should remain near the border with Zaire; iv) they should not enter into the heart of Rwanda or become embroiled in war with RPF and finally, v) the mission should be limited to a maximum of two months before France handed over to UNAMIR II.

Both Wheeler and Jakobsen agreed that the intervention was a combination of a clear case and CNN effect.

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<sup>141</sup> Wheeler N, op cit, page 236 and ff.

<sup>142</sup> Jacobsen P.V., National Interests, Humanitarian or CNN: What triggers Peace Enforcement after the Cold War, Journal of Peace Research vol. 33 n.2 May 1996

Even though the case for an intervention was strong, the support of the US administration was nevertheless weak throughout the crisis. The US media described what was happening in Rwanda as genocide but there was no attempt to demand a military intervention to stop it. Wheeler argued that this was the position taken, among others, by the New York Times, which in its editorials acknowledged that genocide was taking place, but argued in support of the US administration's view that there were no clear political and military objectives that justified risking American soldiers' lives.<sup>143</sup> In an Editorial published on 23 April 1994, for example<sup>144</sup>, it was explicitly recognized that "what looks very much like genocide has been taking place in Rwanda." However, the editorial continued "Somalia provides ample warning against plunging open-endedly into a "humanitarian" mission.... The horrors in Kigali show the need for considering whether a mobile, quick-response force under U.N. aegis is needed to deal with such calamities. Absent such a force, the world has little choice but to stand aside and hope for the best." Again in July 1994 Douglas Jehl reported that the Clinton Administration was determined to avoid becoming "mired again in a mission like that in Somalia... From the beginning, Mr. Clinton ruled out the use of American troops in any combat role in Rwanda, saying that the country had nothing that made its security a vital American interest."<sup>145</sup>

## **2.6 The Yugoslav Wars 1991-1999**

In the meantime the implosion of Yugoslavia was capturing international attention. The conflict started with the secession of Slovenia and Croatia in June 1991 and ended with the war in Kosovo in 1999. The detailed chronology of the events is not reproduced here. We would instead concentrate on the UN Security Council and the role played by the European Union and the Organization of Islamic Conference (OIC).

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<sup>143</sup> Wheeler N., op. cit

<sup>144</sup> "Cold Choices in Rwanda": [Editorial] New York Times 23 Apr 1994

<sup>145</sup> Douglas Jehl, The Rwanda Disaster: New Analysis; Did U.S. Err On Rwanda?, New York Times ,23 July 1994

From its very beginning in 1991 the Yugoslavian crisis was considered a European problem. Two things had contributed to this conviction: the pressure created in Europe by the media and the US refusal to engage in the direct resolution of the crisis in its early stages. When the first signs of unrest became visible, the EU adopted a policy of non intervention in the internal affairs of the former Yugoslavia as other issues were more pressing at that time such as the situation in the Soviet Union, the events in Hungary and Poland as well as uncertainties about how to deal with a reunified Germany. Furthermore there was a widespread conviction that a unitary Yugoslavia was the best possible arrangement. For fear that the dissolution of Yugoslavia could create a precedent and facilitate the breakup of the Soviet Union both the US and the European Union, and in particular France and the UK, supported the Serbian position of maintaining a federal state. Furthermore, some of the EU countries were concerned that the dismemberment of Yugoslavia could encourage separatist movements within their borders; others, like Italy and Greece were alarmed by the possible exodus of refugees and the instability this might cause.<sup>146</sup> When it became obvious that the tensions in Bosnia and Herzegovina would escalate into full-scale war, the EU tried to play the card of negotiations combined with economic sanctions. Those, however, were not integrated in a comprehensive political strategy.

On 15 March 1991 the European Parliament passed a resolution calling for the creation of a constitution, which would "by respecting the rights of all the peoples in Yugoslavia enable the State of Yugoslavia to continue." It also said that the constituent republics and autonomous provinces of Yugoslavia must have the right freely to determine their own future in a peaceful and democratic manner and on the basis of recognized international and internal borders". This statement was severely criticized as creating confusion especially because only a few days after, on 4 April 1991, the Troika (Luxembourg, Italy, Netherlands), representing the presidency of the European Council visited Belgrade to reaffirm the EU's support for the preservation of the federation's unity. The goal of the

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<sup>146</sup> Weiss T.G. ,op. cit

visit included negotiating the withdrawal of Slovenia's declaration of independence and a cease-fire between the warring factions. This resulted in the conclusion of the Brioni Accords on July 8, 1991 that secured a cease-fire in Slovenia and a three month moratorium on the declarations of independence from Slovenia and Croatia, pending negotiations on their future relations. In May 1991 the president of the European Council, Jacques Santer and the president of the European Commission, Jacques Delors, visited Belgrade where they met with the presidents of the republics. Delors offered to Prime Minister Ante Markovic four billion USD for the stabilization of the Yugoslav economy with a condition that Yugoslavia remains a federal state. It was however too late. On 23 June 1991, three days before the declaration of independence of Slovenia and Croatia, the foreign ministers of the EU agreed to withhold recognition of unilateral declarations of independence and to suspend visits of representatives of "secessionist" republics. On this occasion Germany, that from the beginning was in favor of recognizing Croatia and Slovenia, aligned to the common policy position. A few days later, on July 5 the EU decided to impose an embargo on weapons and suspended almost 1 billion USD in economic aid to the federal government of Yugoslavia. A change in attitude toward the recognition of the "secessionist" republics started to appear after the summer. In August 1991 the EU, together with the United Nations, organized the London conference with a working agenda dedicated to Yugoslavia. The result of the discussion was the basis for the work of the International Conference on Former Yugoslavia held in Geneva in September 1992 on which the first version of the Vans-Oven plan was drafted.

In September 1991 the EU organized another conference this time in The Hague under the guidance of Lord Carrington, former NATO Secretary General and British Foreign Secretary. Representatives of all Yugoslav nations and nationalities, including Albanians of Kosovo and Vojvodina's Hungarians participated in the Peace Conference. Carrington sought a constitutional settlement, which would have provided variable degrees of sovereignty to the individual republics but the proposal was not accepted by Serbia. On the same

month began the Croatian War of Independence when Serbs in Croatia, who were opposed to Croatian independence, announced their secession from Croatia. The expiration of the Brioni Agreement and the failure of the Hague Conference contributed to the escalation of violence. The border regions faced direct attacks from forces within Serbia and Montenegro and saw the shelling of Dubrovnik and the destruction of Vukovar, where many civilians died.

The Security Council started discussing the situation in Yugoslavia in September 1991. From the official reports of the discussions at the Security Council one infers that until the summer of 1992 Council members were reluctant to get fully involved and considered the European Union primary responsible to find a solution to the conflict. The Security Council, gathered at the ministerial level, on 25 September 1991 to discuss the matter. The representative of Yugoslavia in New York requested to participate in the gathering. In his speech he stressed that the political crisis in Yugoslavia threatened peace and security on a large scale, and asked the Council to support the efforts invested by the European Union under the auspices of CSCE. He further called on the international community to impose a general and complete embargo on all deliveries of weapons and military equipment to all parties in Yugoslavia and to refrain from taking action which might contribute to increasing tension and impeding or delaying a peaceful and negotiated outcome to the conflict<sup>147</sup>. Following discussion the Security Council unanimously adopted resolution 713 (1991), with which it expressed deep concern at the fighting and called on all States to implement immediately a "general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia. By doing so the Council de facto favored the Serbian government and the Yugoslav People's Army (JNA), which possessed the majority of the weapons available. But it was only in February

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<sup>147</sup> Other requests of assistance by Yugoslavia were submitted in December 1991 by means of two letters, respectively from the Permanent Representative transmitting a statement by the Federal Government of Yugoslavia and as Chairman of the Coordinating Bureau of Non-Aligned Countries in New York, stressing the need to create the conditions for the immediate deployment of a small-scale United Nations peacekeeping operation [http://www.un.org/en/sc/repertoire/89-92/Chapter%208/EUROPE/item%2020\\_Yugoslavia\\_.pdf](http://www.un.org/en/sc/repertoire/89-92/Chapter%208/EUROPE/item%2020_Yugoslavia_.pdf) (last accessed 30/11/12)

1992 that the Security Council established UNPROFOR for an initial period of 12 months (UN SC resolution 743/1992). The mandate of UNPROFOR was then extended to Bosnia-Herzegovina on 8 June 1992 through UN Security Council resolution 758 (1992), in which the Security Council authorized the deployment of military observers and related personnel and equipment to Sarajevo to supervise the withdrawal of anti-aircraft weapons and the concentration of heavy weapons at agreed locations in the city.

In May 1992, when the situation was already out of control and the various mediation efforts by the EU had proved ineffective, the Security Council started to discuss the situation of Yugoslavia in full length. On May 30 the Council adopted by 13 votes in favor, none against and two abstentions (China and Zimbabwe) resolution 757 (1992) under Chapter VII of the Charter, implementing a trade embargo (though only one year later, on 17 April 1993 (UN SC resolution 820/1993), the Security Council approved a mechanism for enforcing the sanctions).

In August 1992 the first media and TV reports started to emerge on the existence of concentration camps and mass detention centers. Ed Vulliamy from The Guardian<sup>148</sup>, Penny Marshall, and Ian Williams (ITN and Channel 4 News) had gained access to Omarska and other detention camps<sup>149</sup> and reported of Bosnian Muslims being expelled from their homes and kept in detention. Their reporting triggered a vast international reaction, whose effects were reflected in the discussion at the Security Council. By letters dated 10 to 13 August 1992 addressed to the President of the Council, the representatives of Turkey, Iran, Malaysia, Kuwait, Pakistan, Egypt, the United Arab Emirates, Bahrain, the Comoros and Qatar supported the request made by Bosnia and Herzegovina for an urgent meeting of the Council to consider the situation and to take appropriate measures under Chapter VII. The representatives of Senegal and Saudi Arabia advanced a similar request - by without reference to Chapter VII- on

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<sup>148</sup> <http://www.guardian.co.uk/world/1992/aug/07/warcrimes.edvulliamy?INTCMP=SRCH> (last accessed 30/11/12)

<sup>149</sup> <http://www.channel4.com/news/ratko-mladic-arrest-life-saving-journalism> (last accessed 30/11/12)

11 August. The response of the Security Council was resolution 770 (1992) adopted by 12 votes in favor, none against and 3 abstentions (China, India, Zimbabwe), in which the Council called on States to take nationally or through regional agencies or arrangements all measures necessary to facilitate, in coordination with the United Nations, the delivery of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina. The fact that the Council had acted under Chapter VII of the United Nations Charter implicitly presupposed the use of force if circumstances should call for it. After the vote the representative of the UK clearly stressed that “The use of force was not desirable, but might be necessary”<sup>150</sup> The representative of France considered that, faced with the serious obstacles to aid distribution, and the mounting suffering of the population, the international community was “duty-bound to take action to allow humanitarian assistance to reach those for whom it was intended in Bosnia and Herzegovina.”<sup>151</sup> By letter dated 5 October 1992 addressed to the President of the Council, the representatives of Egypt, Iran, Pakistan, Saudi Arabia, Senegal and Turkey, as members of the Contact Group of the Organization of the Islamic Conference (OIC), requested an immediate meeting of the Council for it to consider taking the following urgent action: to establish safe corridors and take effective measures to stop anyone from hindering the delivery of humanitarian assistance; to ensure the effective enforcement of the “no-fly zone” over Bosnia and Herzegovina; and to take steps to bring before an international tribunal those responsible for the practice of “ethnic cleansing”, mass killings and other grave breaches of international humanitarian law. A draft resolution submitted by Belgium, France, Hungary, Morocco (representing the OIC) , the United Kingdom, the United States and Venezuela to this end was then put to the vote and adopted unanimously as resolution 780 (1992). Resolution 780 also authorized the Secretary-General to establish a Commission of Experts to examine and analyze the information on

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<sup>150</sup> Repertoire of the Security Council Page 524 [http://www.un.org/en/sc/repertoire/89-92/Chapter%208/EUROPE/item%2020\\_Yugoslavia\\_.pdf](http://www.un.org/en/sc/repertoire/89-92/Chapter%208/EUROPE/item%2020_Yugoslavia_.pdf) (last accessed 30/11/12)

<sup>151</sup> Repertoire of the Security Council Page 525

violations of the Geneva Conventions in the region.<sup>152</sup> On 9 October 1992, the United Nations Security Council passed Resolution 781, prohibiting unauthorized military flights in Bosnian airspace. This resolution led to Operation Sky Monitor, where NATO monitored violations of the no-fly zone but did not take action against violations. By letter dated 19 October 1992 the same member States reiterated their call for an immediate meeting. France and Belgium also sent separate letters to President of the Council to call a meeting of the Council. The UN Secretary-General did not seem however to share the sense of urgency if, on 31 December 1992, during a press conference held in Sarajevo, Boutros Boutros-Ghali could affirm: “ (...) you have a situation which is better than in 10 other places all over the world. I can give you a list of 10 places where you have more problems than in Sarajevo. Here at least you have the world public opinion behind you, you have a peace process, you are backed by certain agreed principles, you have the presence of the United Nations. Many other countries do not have this.” By that time, more than 17,000 had been killed and 110,000 wounded in Sarajevo alone.<sup>153</sup>

The Security Council was seriously divided on how to respond to the increasingly tragic situation in Bosnia, with some delegation reiterating that conflicts should be settled politically/through negotiation (in particularly China, Brazil, Russia) and others (OIC members represented in the Council by Morocco first and later by Pakistan) increasingly in favor of an intervention and self-defense measures<sup>154</sup>.

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<sup>152</sup> The conclusions of the Commission of Experts were delivered to the President of the United Nations Security Council along with a letter from the Secretary-General on 24 May 1994.

<sup>153</sup> <http://sca.lib.liv.ac.uk/collections/owen/boda/sg92k31.pdf> (last accessed 30/11/12) see also Prof. Gordon L. Bowen, Ph.D. Mary Baldwin College, Staunton VA 24401 *The War in Bosnia, 1992-95: a timeline* <http://www.mbc.edu/faculty/gbowen/bosnia.htm> (last accessed 3/12/12)

<sup>154</sup> During discussion at the Council on 20 April 1993 the Permanent Observer of OIC to the United Nations, Mr. Ansary, stated that the Secretary-General of OIC regarded resolutions 819 (1993) and 820 (1993) on Srebrenica and the economic sanctions adopted as inadequate and insufficient and that the fall of Srebrenica constituted an “affront” to the authority of the United Nations and compelled a reassessment of the efficacy of the principle of collective security. *Repertoire of the United Nations Security Council* [http://www.un.org/en/sc/repertoire/93-95/Chapter%208/EUROPE/93-95-8-21-Yugoslavia%20sub%20files/93-95\\_8-21-1-](http://www.un.org/en/sc/repertoire/93-95/Chapter%208/EUROPE/93-95-8-21-Yugoslavia%20sub%20files/93-95_8-21-1-)



On 31 March 1993, in response to 500 documented violations, the Security Council passed Resolution 816 which authorized States to use measures to ensure compliance with the no-fly zone over Bosnia. In response, on 12 April 1993, NATO initiated Operation Deny Flight which was tasked with enforcing the no-fly zone. But Serb forces on the ground continued to attack UN "safe areas" in Bosnia.

During the 1993-94 the Security Council adopted eleven resolutions under Chapter VII of the Charter but no real progress was reported on the ground.<sup>155</sup> On 5 February 1994 Bosnian Serb mortars attacked a Sarajevo market place killing sixty eight civilians and wounding other hundred. The following day Secretary-General Boutros Boutros-Ghali formally requested NATO to confirm that air strikes would be carried out immediately and on 9 February 1994, agreeing to the request of the UN, NATO agreed to authorize air strikes. NATO also declared twenty km total exclusion zone around Sarajevo, required Bosnian Serbs to withdraw heavy weapons from the zone or place them under UN control within ten days and called on the Bosnian Government to place heavy weapons in Sarajevo under UN control.

In March 1994 a peace treaty was signed between Bosnian Muslims and Croats (Washington Agreement) under the aegis of the United States. Other mediation's attempts were made between February and October 1994 by Contact Group (U.S. Russia, France, Britain and Germany) but no agreement was reached. In May 1995 Croatia launched Operation Flash and in two days entered Western Slavonia, UN controlled zone (UNPA), causing the exodus of thirty thousand Serbian refugees. One month later the UN Security Council adopted Resolution

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The%20situation%20in%20the%20Republic%20of%20Bosnia%20and%20Herzegovina.pdf  
(last accessed 30/11/12)

<sup>155</sup> e.g. resolution 816 (31 March 1993) adopted by 14 votes to none, with 1 abstention (China); resolutions 819 (16 April adopted unanimously) and 820 (17 April adopted by 13 in favor and two against, China and Russia); resolution 859 (24 August 1993 adopted unanimously); resolution 913 of 22 April 1994 (unanimously adopted); resolution 942 of 23 September 1994 (14 in favor and 1 abstention, China); resolution 943 of 23 September 1994 (11 in favor, 2 against: Djibouti, Pakistan; 2 abstentions: Nigeria, Rwanda); resolution 941, adopted unanimously on 30 September 1994; resolution 958, adopted unanimously on 19 November 1994

998 authorizing an increase in UNPROFOR personnel by up to 12,500 to reinforce existing forces and Rapid Reaction Force (RRF). China and Russia abstained. In July 1995 the Srebrenica massacre was reported where 8,000 Bosniaks were killed. Following it, NATO decided to launch a series of air strikes on Bosnian Serb artillery and other military targets (30 August 1995). In November 1995 Milosevic (Serb), Tudjman (Croat) and Izetbegovic (Bosnian Muslim) led negotiations in Dayton, Ohio. The Dayton Agreement was signed on 14 December 1995 in Paris, putting an end to the war in Bosnia and Herzegovina.

Evaluating the effectiveness of the international intervention in the former Yugoslavia Thomas Weiss affirmed that the West used the United Nations “to pursue a course of shameless diplomatic compromise mixed with inadequate military responses and well-intentioned but counterproductive humanitarianism.” The international community should have either acted earlier and a more robust NATO military intervention should have taken place, or the warring parties should have been left to settle their disputes among themselves, Weiss maintained. Instead, international inaction produced the worst possible outcome: large expenditures, unspeakable suffering, and diminished NATO and UN credibility.<sup>156</sup> Criticism of the effectiveness of the UN involvement was also expressed by Rosalyn Higgins, former President of the International Court of Justice. In an article published on International Affairs in July 1993 Ms Higgins declared that mandate given to UNPROFOR was totally unrealistic. “We have chosen to respond to major unlawful violence not by stopping that violence, but by trying to provide relief to the suffering. But our choice of policy allows the suffering to continue... The events in the former Yugoslavia in the early 1990s will be seen as a time in history when there was a real opportunity to implement important institutional changes for the promotion of peace. Wittingly or unwittingly, we have failed to seize the moment, and the harm is likely to prove irreparable.”<sup>157</sup>

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<sup>156</sup> “Military-civilian Interactions” page 135

<sup>157</sup> Higgins R., The new United Nations and former Yugoslavia, International Affairs, July 1993 n. 63 Issue 3, pages 465-483

The dynamic within the Security Council changed when the crisis in Kosovo started to emerge. In 1998, fighting broke out in Kosovo between Serbian forces and ethnic Albanians. Milosevic sent in troops. Faced with the indifference of the international community and convinced that the pacifist attitude of President Rugova was not helping the cause of an independent Kosovo; the insurgents (Kosovo Liberation Army KLA) used violence strategically to provoke international attention and intervention. Events in neighboring Albania also contributed to the escalation of violence. The anarchy in Albania was exploited by the KLA to obtain armaments. The US and the UK decided to pay more attention to the situation in Kosovo and at the beginning encouraged the dialogue between the moderate Albanian and the Yugoslav authorities. With UN Security Council Resolution 1160 of 31 March 1998 the Council, acting under Chapter VII of the United Nations Charter, imposed an arms embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro). Speaking after the adoption of resolution the representative of the United States stated that the international community had to avoid the mistakes of the past, when they had waited too long before taking decisive action. Other countries showed a more cautious approach; at the political level it was clear that the hard fought concessions obtained at Dayton in 1995 would not be sacrificed for Kosovo. The representatives of Albania and Croatia, for example, stressed that all political issues in Kosovo, including its future status, had to be resolved between the Belgrade authorities and Kosovo Albanians through a genuinely democratic political process, while the representative of Greece pointed out that any measures against the Federal Republic of Yugoslavia should also take into account the stability of southeastern Europe and should not unduly harm States in the region, which were particularly hit by the negative consequences of the sanctions regime in the years 1992 through 1996. This scenario probably induced Spyros Economides to say that in the case of Kosovo “what topped the Western Agenda was not the protection of the rights of Kosovo’s Albanian population but rather the stability of the region as a whole.”

In the summer of 1998 the international concern for the situation in Kosovo grew even further. The response was to threaten the re-imposition of economic

sanctions on Yugoslavia. Against this background the US and UK played a major role in the adoption of UNSC Resolution 1199 (September 1998). The resolution called for an immediate cease-fire and threatened “to consider further action and additional measures to maintain or restore peace and stability in the region”. Resolution 1199 also stressed the “excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army” which resulted in numerous civilian casualties and condemned “all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo” clearly referring to the KLA. An agreement was then reached in October between the Federal Republic of Yugoslavia and OSCE and NATO. It was decided that OSCE would establish a Kosovo Verification Mission (KVM) to observe compliance on the ground and that NATO would set up an aerial surveillance mission. Following a deterioration of the situation, the NATO Council authorized air strikes but at the last moment, following further diplomatic initiatives including visits to Belgrade by NATO's Secretary General Solana, US Envoys Holbrooke and Hill, the Chairman of NATO's Military Committee, General Naumann, and the Supreme Allied Commander Europe, General Clark, President Milosevic agreed to comply and the air strikes were called off.

The establishment of the missions of OCSE and NATO was endorsed by UN Security Council Resolution 1203 on 24 October 1998, which was adopted by thirteen votes in favor and 2 abstentions (China and Russia). On that occasion the representative of Brazil objected what he called a possible transfer to OSCE and NATO of its “essential role in making the determination on whether or not its resolutions were being complied with” and warned against the risk that “non-universal organisms” might resort to force without an authorization beforehand.<sup>158</sup> On the other hand, the representative of the United States

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<sup>158</sup> Repertoire of the Practice of the UN Security Council 1998 page 851 available at [http://www.un.org/en/sc/repertoire/96-99/Chapter%208/Europe/96\\_99\\_8\\_European\\_27F\\_Kosovo%20and%20Federal%20Republic%20of%20Yugoslavia.pdf](http://www.un.org/en/sc/repertoire/96-99/Chapter%208/Europe/96_99_8_European_27F_Kosovo%20and%20Federal%20Republic%20of%20Yugoslavia.pdf) (last accessed 30/11/12)

insisted that the NATO allies “had the authority, the will and the means to resolve the issue”.

After the massacre of Racák on January 1999, the international community attempted to assert its authority by imposing an ultimatum on the basis of which both Serbia and Kosovo should cease the hostilities and enter into intense negotiations to be held at Rambouillet, near Paris, under the aegis of the six nations Contact Group (6-23 February 1999). A second round of talks followed in March (15-18 March 1999), but the talks broke up without a signature from the Serbian delegation. Immediately thereafter, Serbian troops moved into Kosovo in a clear breach of compliance with the above-mentioned October agreement between the Federal Republic of Yugoslavia and OSCE and NATO. Tens of thousands of people began to flee their homes. On 20 March, the OSCE Kosovo Verification Mission was withdrawn from the region, having faced obstruction from Serbian forces to the extent that they could no longer continue to fulfill their task. US Ambassador Holbrooke then flew to Belgrade, in a final attempt to persuade President Milosevic to stop attacks on the Kosovar Albanians or face imminent NATO air strikes. Milosevic refused to comply and, on 23 March, the order was given to commence air strikes. The NATO’s air strike was conducted from the air over a sustained period of time, targeting military as well as military-related targets in Kosovo and beyond. Extensive collateral damages resulted from the operation.

The intervention aroused controversy about the legality of the action, given that NATO's use of force was neither formally authorized by the Security Council nor an exercise of self-defense. However, seven members of the Security Council either legitimized or acquiesced<sup>159</sup> and even Secretary General Kofi Annan showed support for NATO’s decision to intervene.

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<sup>159</sup> France, the UK, the US, Gambia, Slovenia, Portugal and Sweden

## 2.7 Conclusions

The failures of the international intervention in Sudan, Rwanda, Šrebrenica and the tragedy of Kosovo left an impression; it became clear that new mechanisms should be found to respond to mass violations of human rights, and the involvement of the international community could neither be limited to forceful intervention. Forceful intervention, if any, should be guided by clear agreed principles and located into a much broader scheme that includes ex ante and ex post involvement. In the absence of this understanding the principle of humanitarian intervention was set aside.

Still in Europe the legality of the intervention for pure humanitarian purposes had been widely discussed already in the 19<sup>th</sup>/early 20<sup>th</sup> century and recognized as lawful by a number of European States and their public opinions. As some authors pointed out, Eurocentrism and the sense of European cultural and moral superiority were probably at the basis of these interventions. From a legal point of view humanitarian intervention held an important position in international law doctrine of that period, with many legal scholars supportive of the use of armed force. The League of Nations first and the United Nations Charter later delegitimized any intervention for humanitarian purposes, except in cases of self-defense or at the direction of the UN Security Council. This situation continued during the whole Cold War period, in which humanitarian reasons were not considered sufficient to justify any forms of coercive interference. As a result, until the 1990's - the so-called humanitarian decade - intervention for humanitarian purposes was fashionable only among a minority of idealist international lawyers and activists.

In the 1990's the UN Security Council, faced to the multiple emergencies worldwide, played an active role authorizing the use of force in situations that many states would have previously viewed as internal conflicts. An intense debate among academics took on the legality of the recourse to force also for democracy-restoring intervention. For some scholars the prohibition of the use of force set in the United Nations Charter was an insurmountable obstacle. A

reinterpretation of both customary and conventional sources of international law led others to the conclusion that humanitarian intervention may be legally defensible if certain circumstances take place.

In 1996, Francis Deng, in collaboration with other scholars at Brookings Institution, published a book entitled 'Sovereignty as Responsibility: Conflict management in Africa'. In the book the authors affirmed that sovereignty could no longer be seen as a protection against external interference, but that "national governments are duty bound to ensure minimum standards of security and social welfare for their citizens and be accountable both to the national body politic and the international community". The formulation of Deng became the conceptual base of the responsibility to protect. In 1996 and 1998, Deng together with Roberta Cohen presented to the UN Human Rights Commission a two part study titled, "Compilation and Analysis of the Legal Norms" of Internally Displaced People (IDPs). The report provided an overview of developments in the normative framework with particular reference to the development of the Guiding Principles on Internal Displacement. In the Guiding Principles Deng and Cohen reiterated the argument that sovereignty as responsibility means that if a government is unwilling to provide protection and assistance, it should accept aid from the international community. After the presentation of the Guiding Principles in 1998 and the publication of the book, the UN Secretary-General Kofi Annan started to use a similar language.

The discussion of the four cases in this chapter gave us indication of elements that influenced/were relevant in shaping the R2P. The analysis highlights on one side that forceful interventions cannot be undertaken without full support of the all Security Council members and that the scale and intensity of the intervention should be the least necessary. On the other hand, it also indicated that hesitation or inaction by the Security Council was equally tragic. The cases of the former Yugoslavia clearly indicate that protracted and unsuccessful attempts to find a negotiated solution might ultimately lead to an exacerbation of the ethnic/sectarian divisions and to a radicalization of the conflict. Furthermore, as the case of Somalia shows it is important to understand the local political

framework and culture. Finally, the analysis of the four selected cases also show the importance of the media both when they act to raise awareness and when, on the contrary, they vacillate or align themselves with the government policy as in the case of Rwanda.

After the terrorist attack on the World Trade Centre on September 11 the US attitude changed and unilateral military intervention was considered “justified in the name of fighting terrorism, not just of altruism.”<sup>160</sup> The concept of humanitarian intervention as we have seen it in the 1990s was thus replaced by the fight against terrorism. This shift was captured by Thomas Weiss in an article published in 2004. “As purse strings are often attached to heart strings, the pages of *Ethics & International Affairs* provide a useful illustration of the changing fortunes of humanitarian intervention. The topic was central to only about 10% of articles at the outset of the 1990s, whereas in the middle years it reached almost a third and by the end of the decade comprised nearly half of the journal’s main articles. Then, after 11 September 2001, the moral shifted dramatically from fad to fade. The new focus became rules of the game for pre-emptive war and fighting terrorism.”<sup>161</sup>

The 1990s practice of humanitarian intervention reached an end but the discussion on how to prevent gross human rights violations never disappeared from the international agenda and that is why the emerging norm of R2P came into life.

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<sup>160</sup> Failed States, Fixing a broken world, *The Economist*, 29/01/2009

<sup>161</sup> Weiss T.G., *The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era*, *Security Dialogue*, vol. 35 issue 2 pages 135-155



# FROM SOVEREIGNTY AS RESPONSIBILITY TO RESPONSIBILITY TO PROTECT

## Chapter 3

### Introduction

The interventions in the 1990s left the international community without a clear set of criteria for handling cases such as Somalia or Kosovo. Disagreement continued as to whether there was a legal basis for the intervention, how and when it should be exercised, and under whose authority.

The present chapter focuses on the origin, definition and legal basis of Responsibility to Protect. It seeks to argue that the principle has progressively lost part of its innovative character to accommodate the requirements of political realism. Still, ten years after its formulation, at the heart of the discussion there is the question of under what circumstances the international community is legitimized to overcome state sovereignty to protect the population of another state.

The chapter is divided into seven sections. The first section is dedicated to the origin and development from 2001 to the appointment of Secretary-General Ban Ki-moon. The section is further divided into five sub-sections covering respectively: the work of the International Commission on Intervention and State Sovereignty of 2001; the 2004 report of the High-Level Panel on Threats, Challenges, and Change; the report of the Secretary-General "In Larger Freedom"; the 2005 Outcome Declaration; and the Ezulwini Consensus. Section 2 is devoted to the work of the current UN Secretary-General, Ban Ki-moon, and includes an analysis of the reports of the Secretary-General on implementation (2009), Early Warning (2010), Role of regional and sub-regional arrangements (2011) and Timely and Decisive Response (2012) as well as the discussion of these reports by the UN General Assembly. This last sub-section also includes an analysis of the Security Council Dialogue on protection of

civilians in armed conflicts and the RWP (Responsibility while Protecting), and of most recent developments (until August 2012). Sections 3, 4, and 5 deal with the current definition of R2P and on the question as to whether R2P can be considered a concept or an emerging legal norm. Section 6 is devoted to the role of civil society, while section 7 concludes.

### **3.1 Origin and Development of the R2P**

#### **3.1.1 The International Commission on Intervention and State Sovereignty**

In an attempt to introduce “a people-centred approach to international relations”, promote human security and move the UN “from the sidelines to the forefront of change” the Canadian government proposed in 2000 to establish the International Commission on Intervention and State Sovereignty (ICISS). The main purpose of the ICISS was to approach the whole issue of intervention for humanitarian purposes from a perspective different from that adopted in the 1990s.<sup>162</sup> In his address to the General Conference His Excellency Mr. Lloyd Axworthy, Minister for Foreign Affairs of Canada declared that “...Governments must be ready to assume their responsibility for their citizens.” and that “where States are unable, or unwilling, to protect their citizens, the United Nations, and in particular the Security Council, has a special responsibility to act.”<sup>163</sup> So the whole debate was “turned on its head” as the two co-chairs of the commission, Gareth Evans and Mohamed Sahnoun, explained in an article published in *Foreign Affairs* in 2002: “If the international community is to respond to this challenge... (t)he issue must be reframed not as an argument about the 'right to intervene' but about the 'responsibility to protect'”.<sup>164</sup>

Elaborating on the concept of sovereignty as responsibility the ICISS held that the international community has a responsibility to intervene and protect the citizens of another state where that other state has failed in its obligation to protect its own

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<sup>162</sup> The members of the commission were the following: Gareth Evans Co-Chair; Mohamed Sahnoun, Co-Chair; Gisèle Côté-Harper; Lee Hamilton; Michael Ignatieff; Vladimir Lukin; Klaus Naumann; Cyril Ramaphosa; Fidel Ramos; Cornelio Sommaruga; Eduardo Stein; Ramesh Thakur

<sup>163</sup> UNITED NATIONS General Assembly Doc A/55/PV.15 of 14 September 2000 <http://www.un.org/ga/55/pvlista55.htm> (last accessed 30/11/12)

<sup>164</sup> *Foreign Affairs* November/December vol.81 n.6 2002 (pages 99-110) page 101

citizens. The preparation of the report was preceded by a series of consultations held around the globe. Among the recurring themes of these consultations were how to improve prevention<sup>165</sup> and information sharing as well as how to generate the political will to act on the predictions. The report also highlighted the importance of regional actors.<sup>166</sup> As we will see in the following pages, ten years after the publication of the ICISS report Secretary-General Ban Ki-moon's plan to operationalise the R2P focused on the same issues.

In 2001 the ICISS presented its report to the United Nations. In the report the Commission stressed that the concept of state sovereignty had evolved and that sovereignty now implies responsibility as well as rights. States are the first responsible for the protection of their population; however, when the state fails in that responsibility, a responsibility to protect falls to the international community acting through the United Nations.

The responsibility to protect involves three stages: to prevent, to react and to rebuild, the most important being prevention. The exercise of the responsibility to

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<sup>165</sup> Bellamy A. J., *Responsibility to Protect The Global Effort to End Mass Atrocities*, Polity Press, 2009, page 53

<sup>166</sup> ICISS Report page 22:

"3.15 The Report of the Panel on United Nations Peace Operations is one of many that calls for that clearinghouse role to be played by the UN, noting "the need to have more effective collection and assessment at UN headquarters, including an enhanced conflict early warning system that can detect and recognize the threat or risk of conflict or genocide." That report also makes very detailed proposals for building an early-warning capacity within the UN Secretariat. The Commission fully supports these proposals.

"3.16 Efforts to build a better early-warning system by harnessing pre-existing governmental capacity is an idea worth pursuing, but realism is in order about the extent to which states will be willing to divulge information which may compromise their own intelligence network, as well as the degree to which any such information can be relied upon. In order to enhance the capacity of the Secretary-General to provide more timely and accurate information to the Security Council about conflict prone areas, a special unit should be established that can receive and analyze sensitive information from member states and others, and that would report directly to the Secretary-General. The unit should be staffed by a small number of specialized personnel trained in conflict prevention.

"3.17 Greater involvement by regional actors with intimate local knowledge is also crucial. Although emerging conflicts tend to share a number of characteristics, each is also unique in some ways. Regional actors are usually better placed to understand local dynamics, although they also have shortcomings – not least of which is that they are often not disinterested in the outcomes of deadly conflicts."

both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied. Military Intervention should be considered the *ultima ratio*. If, nevertheless, an intervention is to be envisaged the commission proposed a set of decision-making criteria to be followed. These can be summarized as follows: right authority, just cause, right intention, last resort, proportional means and reasonable prospects.

- Right authority: according to the ICISS the Security Council is the right authority. Only if the Security Council fails to act, the General Assembly may intervene on the basis of the “Uniting for Peace” Resolution<sup>167</sup>. A further possibility would be for collective intervention to be pursued by the relevant regional or sub-regional organization.
- Just Cause. In the Commission’s view, forcible intervention for humanitarian protection purposes is justified to halt or prevent a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or b) large scale “ethnic cleansing,” actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. These conditions also “include overwhelming natural and environmental catastrophes where the states concerned is either unwilling or incapable to cope or call for assistance, and significant loss of life occurs or is threatened”<sup>168</sup>
- Last Resort: every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored.

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<sup>167</sup> Resolution 377 A (V) of 3 November 1950. The adoption of the resolution came in response to the strategy of the then USSR to block any decisions by the Security Council on measures to be taken to protect the Republic of Korea against the aggression launched against it by military forces from North Korea. The most important part of resolution is section A which states that where the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly shall consider the matter immediately and may issue any recommendations it deems necessary to restore international peace and security. Text available at <http://www.un.org/Depts/dhl/landmark/pdf/ares377e.pdf> (last accessed 30/11/12)

<sup>168</sup> ICISS report paragraph 4.20

- Right Intention: the primary purpose of the intervention must be to halt or avert human suffering.
- Proportional means: the scale, duration and intensity of the intervention should be the least necessary;
- There should be reasonable prospects of halting the sufferings without worsening the situation.

The Commission further proposed that the five permanent members of the Security Council, in matters where their vital state interests were not involved, should agree not to apply their veto power to obstruct the approval of resolutions authorizing military intervention for humanitarian purposes, for which there may be majority support. The report also stressed that, should the Security Council fail to discharge its responsibility to protect in conscience-shocking situations, concerned states might consider adopting other means to meet the gravity and urgency of the situation.

The report of the ICISS was received with great interest but was also criticized for not having sufficiently elaborated on the principle of R2P and having left many questions unanswered. As Jennifer Welsh pointed out, for example, the appeal to the international community in the ICISS report is a very general one “leaving us with an unallocated duty to protect”<sup>169</sup>. For Thomas Weiss the report was too cautious as the commissioners set the bar for intervention very high or at least higher than many would have hoped for: “Thus, he concluded, the ICISS report is neither forerunner nor pacesetter. It usefully staked out a helpful middle ground”.<sup>170</sup> Yet the report had the merit of having reframed the debate, provided guidelines for action and anticipated issues presently under discussion, such as, *inter alia*, the role of the Security Council and that of the regional organizations.

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<sup>169</sup> Welsh J. M., Chapter 13 “The Responsibility to Protect and Humanitarian Intervention”, *Responsibility to Protect: From Principle to Practice*, Hoffmann J. and A. Nollkaemper (eds) page 190.

<sup>170</sup> Weiss T.G., *The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era*, *op.cit.* page 139

### 3.1.2 High-Level Panel on Threats, Challenges, and Change

In November 2003 Kofi Annan announced the creation of a High-Level Panel on Threats, Challenges, and Change to assess the principal threats to international peace and security in the 21st century and to recommend changes to improve the effectiveness of international institutions like the United Nations in responding to those threats. The panel consisted of sixteen eminent international figures<sup>171</sup> and released its report in December 2004. The idea was to replicate the success of the Brundtland report on sustainable development, trying to reconcile the need for a people-centered approach with the existing state-centered political system. In the report “A More Secure World: Our Shared Responsibility” the High Level Panel endorsed the emerging norm of responsibility to protect. The report highlighted that such a responsibility is held, first and foremost, by national authorities. When a State fails to protect its civilians, the international community has a responsibility to act, through humanitarian operations, monitoring missions and diplomatic pressure and with force, if necessary, though only as a last resort. “... (H)istory teaches us all too clearly that it cannot be assumed that every State will always be able, or willing, to meet its responsibilities to protect its own people and avoid harming its neighbors. And in those circumstances, the principles of collective security mean that some portion of those responsibilities should be taken up by the international community.”<sup>172</sup>

Recognizing that there may be circumstances in which the recourse to force may be justified under the UN Charter for collective security purposes, the High Level Panel

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<sup>171</sup> Secretary-General Kofi Annan named Anand Panyarachun, former Prime Minister of Thailand, to chair the high-level panel. The other 15 members of the Panel were: Robert Badinter (France), João Baena Soares (Brazil), Gro Harlem Brundtland (Norway), Mary Chinery Hesse (Ghana), Gareth Evans (Australia), David Hannay (United Kingdom of Great Britain and Northern Ireland), Enrique Iglesias (Uruguay), Amre Moussa (Egypt), Satish Nambiar (India), Sadako Ogata (Japan), Yevgeny Primakov (Russian Federation), Qian Qiqian (China), Salim Salim (United Republic of Tanzania), Nafis Sadik (Pakistan) and Brent Scowcroft (United States of America)

<sup>172</sup> “UNITED NATIONS General Assembly Doc A/59/565 A more secure world: our shared responsibility Report of the High-level Panel on Threats, Challenges and Change Paragraphs 29 available at <http://www.un.org/secureworld/report.pdf> (last accessed 30/11/12)

proposed a set of guidelines to be adopted (and used) by the Security Council in considering whether to authorize or endorse the use of military force. The rationale beyond the guidelines was “to maximize the possibility of achieving Security Council consensus around when it is appropriate or not to use coercive action, including armed force; to maximize international support for whatever the Security Council decides; and to minimize the possibility of individual Member States bypassing the Security Council.” Hence, the High Level Panel suggested that the Security Council should always address at least the following five basic criteria of legitimacy:

- (a) Seriousness of threat. Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?
- (b) Proper purpose. Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question?
- (c) Last resort. Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?
- (d) Proportional means. Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?
- (e) Balance of consequences. Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

The Panel further suggested that the above guidelines for authorizing the use of force should be embodied in declaratory resolutions of the Security Council and General Assembly.<sup>173</sup>

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<sup>173</sup> “A more secure world: our shared responsibility” Paragraphs 204-209

### **3.1.3 In Larger Freedom: Towards Development, Security and Human Rights for All**

In preparation for the 60th session of the General Assembly in 2005, the Secretary-General was asked to report on the implementation of the Millennium Declaration. The report “In Larger Freedom: Towards Development, Security and Human Rights for All” was launched on 21 March 2005. Development, security and human rights are the backbone of the report, which includes recommendations on strengthening the architecture of the international system. The Report stresses that in a world of interconnected threats and challenges, it is essential that States cooperate among themselves. Such cooperation is possible if every country's policies take into account not only the needs of its own citizens but also the needs of others (paragraph 18). In the section entitled “Freedom to Live in Dignity”, under the heading “Rule of Law” the Secretary-General recommended that states embrace the emerging norm of the Responsibility to Protect. The document adopted the language of the ICISS and the High Level Panel’s reports. Stressing that the United Nations cannot stand by and let genocide or massive human rights abuses unfold to the end, with disastrous consequences for many thousands of innocent people, the Secretary-General underscored “the need for action to prevent armed conflict, effective measures to protect civilians, judicial steps to fight impunity, early warning through a Special Adviser on the Prevention of Genocide, and swift and decisive action when genocide is happening or about to happen.”<sup>174</sup>

### **3.1.4 The Ezulwini Consensus**

Meanwhile, the African Union, successor to the OAU, had agreed in 2000 upon its new Constitutive Act. Pursuant to Article 4(h) of the Act the Union has a right ..” to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.” Furthermore, at its 7th Extraordinary Session of the Executive Council in March 2005, in Addis Ababa, Ethiopia, the AU adopted a Common African Position on the reform of the United Nations, the so-called “Ezulwini Consensus”, in which it adopted the principle of the responsibility to protect and highlighted the obligation of states to

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<sup>174</sup> In Larger Freedom, Paragraphs 134 and 135 available at <http://www.un.org/largerfreedom/> (last accessed 30/11/12)



protect their own citizens. The Security Council should authorize the use of force in line with the conditions and criteria proposed by the High-Level Panel on Threats, Challenges, and Change. The “Consensus” also affirmed that as the main organs of the UN (General Assembly and the Security Council) are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations, it is essential that regional organizations, in areas of proximity to conflicts, be empowered to take actions subject to approval by the Security Council. In situations requiring urgent action, such approval can be granted ex post. Any recourse to force outside the framework of Article 51 of the UN Charter and Article 4 (h) of the AU Constitutive Act should be prohibited.

### **3.1.5 The 2005 Outcome Document<sup>175</sup>**

In September 2005 World leaders met at the UN Sixtieth Anniversary World Summit. In that occasion they agreed, for the first time, that states have a primary responsibility to protect their own populations and that the international community, through the United Nations, has a responsibility to act when governments fail to protect the most vulnerable. World leaders declared that they were prepared to take collective action through the Security Council, in accordance with the UN Charter, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations. The UN outcome document was unanimously adopted by all member states but is not legally binding. The final text was the result of a political compromise that led to a reinterpretation of some of the elements of the original proposal. For example, in the Outcome document environmental and natural catastrophes included in the ICISS report disappeared as a reason for intervention. Similarly, the P5 “code of conduct”, which was also included in the ICISS report, was eliminated<sup>176</sup>

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<sup>175</sup> United Nations 2005 World Summit Outcome, UNITED NATIONS General Assembly doc. A/RES/60/1, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (last accessed 30/11/12)

<sup>176</sup> ICISS Report paragraph 6.20 Bellamy Responsibility to protect op cit pages 66-97

The negotiations on the final text were somehow difficult. In her book “International Authority and the Responsibility to Protect”, Anne Orford explained why in the 2005 Outcome Document the R2P was defined to include only the four crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. She refers to a speech delivered in October 2008 at the Round-Table-High-Level meeting of experts on the Responsibility to Protect held in Addis Ababa, Ethiopia, by the Chairman of the AU, Jean Ping, in which Ping affirmed that, “after having discussed the issue with the Ambassador of Pakistan, H.E. Akram Mounir, who was one of the Ambassadors most opposed to the concept” an amendment was proposed by the same Ambassador of Pakistan to link the responsibility to protect to specific crimes, namely, genocide, war crimes, ethnic cleansing and crimes against humanity, in order to water down the principle.<sup>177</sup> Hence, Anne Orford said: “like most countries of the South at the level

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<sup>177</sup> Jean Ping October 2008 speech delivered at the Round-Table-High-Level meeting of experts on the Responsibility to Protect in held in Addis Ababa, Ethiopia available at <http://www.responsibilitytoprotect.org/index.php/component/content/article/129-africa/1910-african-unions-commission-on-r2pkeynote-speech-by-chairperson-jean-ping> (last accessed 3/12/12)

On that occasion Jean Ping had affirmed: “Turning back to the process leading to the final adoption of the Concept of Responsibility to protect, I recall that most countries of the South at the level of the Non-aligned Movement were strongly opposed to the proposal of the Secretary General. It would be true to say that they were frightened by the proposal, and with the Iraqi syndrome what happened in Iraq at the back of their minds, they saw it as an instrument that could be used by the powerful countries against the weaker ones. Some talked of their fear of abuse and double standards. In particular, the Permanent Representative of an African Country made acerbic comments on the Report of the Secretary General by suggesting that it was difficult to distinguish responsibility to protect from intervention. Further, he expressed the view that it had not been the object of international negotiations and had no legal basis in the Charter or in International law. Indeed, it was generally believed that the proposal would never sail through and would be defeated or postponed. Faced with these difficulties what I did, as President of the General Assembly, was to request for comments and observations from the Member States, which were then taken on board in the final version of the Declaration. However, the opposition still remained. The main areas of concern were the role of the UN Security Council, the notion of human security, the Human Rights Council. I held meetings with the African Group, the G77 and the Non Aligned Group. With regard to the African Group, I explained to them that this principle was already entrenched in article 4(h) of the AU Constitutive Act and that for this reason they should be at the forefront in supporting the proposal. I also told the Non-aligned Group that we, in Africa, were facing genocide and war crimes and could not wait indefinitely. I then decided to set up a core group or negotiating Committee of thirty-two that was regionally balanced but everyone wanted to be a member of it. Finally, after having discussed the issue with the Ambassador of Pakistan, H.E. Akram Mounir, who was one of the Ambassadors most opposed to the

of the Non-aligned Movement Pakistan was strongly opposed to the concept of Rtop. The introduction to the amendment linking the Rtop to specific crimes was designed to address the fear of those who viewed the principle as an instrument that could be used by the powerful countries against the weaker ones. The articulation of the Rtop concept in the World Summit 2005 is careful to leave little scope for actors or organizations other than the state or the UN to claim the authority to protect.”<sup>178</sup>

The United States did not consider R2P a priority either. Bellamy<sup>179</sup> affirmed that the US approach partially changed following a report prepared by a task force organized by the US Institute for Peace and chaired by George Mitchell and Newt Gingrich (a renowned UN-skeptic) in June 2005. The report stressed that the UN is one of the tools that America and its allies use cooperatively and that an effective United Nations is in the interests of the United States. It also affirmed that the UN’s failure to respond to past genocides was a failure of those states who had ‘blocked or undermined collective action” and recommended that UN members affirm their responsibility to protect their own citizens from genocide, mass killing and massive human rights violations.<sup>180</sup>

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concept, an amendment proposed by him enabled us to reach an agreement. His proposal was to link the responsibility to protect populations to specific crimes, namely, genocide, war crimes, ethnic cleansing and crimes against humanity. This is what was finally adopted in the Outcome document during the plenary meeting of the General Assembly in September 2005.”

<sup>178</sup> Orford A., *International Authority and the Responsibility to Protect*, Cambridge, England; New York: Cambridge University Press, 2011, page 183

<sup>179</sup> Bellamy A.J., *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pages 66-97

<sup>180</sup> The report also affirmed that if a government fails in its primary responsibility to protect the lives of those living within its jurisdiction from those crimes “it forfeits claims to immunity from intervention (based on the principle of nonintervention in a state’s internal affairs) if such intervention is designed to protect the at-risk population. In certain instances, a government’s abnegation of its responsibilities to its own people is so severe that the collective responsibility of nations to take action cannot be denied. The United Nations Security Council can and should act in such cases. In the event the Security Council fails to act, its failure must not be used as an excuse by concerned members to avoid protective measures.” The Report entitled “American Interests and UN Reform” pages 7, 15 and 28 is available at [http://www.usip.org/files/file/usip\\_un\\_report.pdf](http://www.usip.org/files/file/usip_un_report.pdf) (last accessed 30/11/12) see also Bellamy, *Responsibility to Protect*, op cit pages 82 and 83

At the World Summit the negotiations were however the United States were represented by a strong opponent to R2P and the UN in general, the newly appointed Ambassador John Bolton. Under his direction the US delegation proposed numerous changes to the draft document, which had been negotiated for close to one year<sup>181</sup>. In a letter dated August 30, 2005, Ambassador Bolton stated that the United States would "not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law." Consequently, the delegation proposed that the idea of an international responsibility to protect be defined in the form of a "moral responsibility" of the international community to "use appropriate diplomatic, economic, humanitarian and other peaceful means, including under Chapters VI and VIII of the Charter to help protect populations from (...) atrocities." The "responsibility of the other countries in the international community is not of the same character as the responsibility of the host, and we thus want to avoid formulations that suggest that the other countries are inheriting the same responsibility that the host state has." The United States delegation also argued that the Outcome Document should not foreclose the possibility of unauthorized intervention, noting that there "may be cases that involve humanitarian catastrophes but for which there is also a legitimate basis for states to act in self-defense."<sup>182</sup>

The 2005 World Summit Outcome document was unanimously adopted on 16 September 2005 with the caveat indicated above. Some commentators argued that in the document adopted at the 2005 World Summit the R2P was considerably diluted in tone and content respect to the ICISS original proposal. It was said that the

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<sup>181</sup> Strauss E., *A Bird in the Hand is Worth Two in the Bush – On the Assumed Legal Nature of the Responsibility to Protect* Global Responsibility to Protect 1 (2009) 291–323, see also Stahn C., *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?* The American Journal of International Law, Vol. 101, No. 1 (Jan., 2007), pp. 99-120 - Letter from Ambassador Bolton to UN Member States Conveying U.S. Amendments to the Draft Outcome Document Being Prepared for the High Level Event on Responsibility to Protect, at2 (Aug. 30, 2005), available at [http://www.responsibilitytoprotect.org/files/US\\_Boltonletter\\_R2P\\_30Aug05\[1\].pdf](http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05[1].pdf) (last accessed 30/11/12)

<sup>182</sup> Letter from Ambassador Bolton to UN Member States Conveying U.S. Amendments to the Draft Outcome Document Being Prepared for the High Level Event on Responsibility to Protect, at2 (Aug. 30, 2005),

final agreement had reduced the principle into a 'R2P-lite' "without specifying the criteria governing the use of force and insisting upon Security Council approval."<sup>183</sup> Others welcomed the Outcome document. While acknowledging that "the international commitment to 'stand ready' to respond to genocide and mass atrocities was simply an affirmation of already existing Security Council practice"<sup>184</sup>, Bellamy affirmed that what emerged from the World Summit amounted to "an important formal recognition of the responsibility of sovereigns to their own citizens, a reaffirmation of the idea that the Security Council has the authority to intervene if it sees fit to do so. (...) True, this was much less than had been envisaged by the ICISS, but it marked an important milestone in the normative development of international society."<sup>185</sup>

For Edward Luck the 2005 Outcome document "represents the application of human security perspectives to a specific area of public policy that has long vexed publics and policy makers alike."<sup>186</sup> He argued that the reason why the 2005 Declaration was widely greeted as a major step forward in the protection of fundamental human rights is that it gained political force as the product of the largest gathering of heads of state and government.

Similarly, Serrano argued that the 2005 Declaration "was the first milestone after years of advocacy by public figures, moral entrepreneurs, scholars, and civil society" It gave to the R2P a greater specificity and clarity; thereby, marking a genuine "turning point for its crystallization".<sup>187</sup>

Carston Stahn observed that the responsibility to protect was treated differently in the four documents associated with its genesis, namely, the report of the ICISS, the High-Level Panel Report, the Report of the Secretary-General, and the 2005 Outcome

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<sup>183</sup> Weiss T.G., R2P after 9/11 and The World Summit, *Wisconsin International Law Journal*, Vol. 24, No. 3 Fall 2006 page 750

<sup>184</sup> Bellamy A.J., *Responsibility to Protect: The Global Effort to End Mass Atrocities*, page 195

<sup>185</sup> Bellamy A.J. *op. cit* page 91

<sup>186</sup> Luck E.C., 'The United Nations and the Responsibility to Protect', *Stanley Foundation Policy Analysis Brief*, August 2008, p. 5; see also E. Luck, 'Sovereignty, Choice, and the Responsibility to Protect' *Global Responsibility to Protect*, 1 (2009) 10-21.

<sup>187</sup> Serrano M., *The Responsibility to Protect and its Critics: Explaining the Consensus Global Responsibility to Protect 3* (2011) 1–13 pages 3- 4

document. He observed that the ICISS developed the concept of responsibility to protect to solve the legal and policy dilemmas of humanitarian interventions. The debate about the concept of responsibility to protect at the High-Level Panel Report was, on the other side, directly related to institutional reform of the United Nations through the association of the idea of shared responsibility directly to the Security Council. In Stahn's opinion Kofi Annan was conscious of the sensitivities involved in this issue and for this reason in his report R2P was removed from the section on the use of force and placed in the section dealing with freedom to live in dignity. This was done with the intent of separating the R2P from the idea of automatic application of force. Finally, the 2005 Outcome document was a compromise that tried to put together different positions. "States avoided reducing the idea of responsibility to protect to a purely moral concept. However, paragraphs 138 and 139 of the Outcome Document represent a rather curious mixture of political and legal considerations, which reflects the continuing division and confusion about the meaning of the concept." For example the first sentence of Paragraph 139 seems to suggest that the R2P enjoyed at least some acceptance with regard to measures falling short of the use of force. The second sentence of the same paragraph 139 however places this idea under a double qualifier. "First, the heads of state and government merely reaffirmed that they were prepared to take action, indicating a voluntary, rather than a mandatory, engagement. Furthermore, states committed themselves to act only "on a case-by-case basis" through the Council, which again stands in contrast to the assumption of a systematic duty." This dual condition distinguishes the Outcome Document from the approach of the High-level panel. On the other hand, the inclusion of R2P in the Outcome Document not only marked one of the most important results of the 2005 World Summit, but shows the existence of "a broader systemic shift in international law, namely, a growing tendency to recognize that the principle of state sovereignty finds its limits in the protection of "human security."<sup>188</sup>

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<sup>188</sup> Stahn C., Responsibility to Protect: Political Rhetoric or Emerging Legal Norm? The American Journal of International Law, Vol. 101, No. 1 (Jan., 2007), pp. 99-120 page 108 and 101

### 3.2 From 2006 to the appointment of Secretary-General Ban Ki-moon

In 2006, following the World Summit Outcome document, the Security Council adopted two resolutions, namely resolutions 1674 and 1706 that referred specifically to R2P. Bellamy affirmed that it took six months of intense debate for the Security Council to unanimously adopt Resolution 1674 on the Protection of Civilians in Armed Conflict. Initially Russia, China, and three non-permanent Security Council members (Algeria, the Philippines and Brazil) objected arguing it was too early for the Security Council to take up the issue of R2P. Changes in the Council's non-permanent members and a reformulation of the language endorsing R2P helped reaching an agreement. "This experience persuaded some of the Council's RtoP advocates to refrain from pushing the body to make greater use of the principle, for fear of creating opportunities for skeptics to challenge the 2005 agreement"<sup>189</sup>. Two months later, in June 2006, the Council held its first Open Debate on the protection of civilians in armed conflict (PoC). Since then, the Security Council has held open debates on the subject twice yearly and the discussion on R2P has been an important component of these debates, in particular starting from 2009.

With Resolution 1706 of August 2006, the R2P principle was invoked for the first time in case of conflict. It is interesting to note how the terminology with regard to sovereignty had changed. The resolution authorized the UN Mission in Sudan (UNMIS) to use all necessary means to protect civilians "without prejudice to the responsibility of the Government of Sudan, to protect civilians under threat of physical violence"<sup>190</sup>. Several council members expressed concern, and China abstained. Subsequent resolutions on Darfur did not mention R2P.<sup>191</sup>

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<sup>189</sup> Bellamy A.J., *The Responsibility to Protect—Five Years On*, *Ethics & International Affairs*, 24 no. 2 (2010), pp. 143–169.

<sup>190</sup> <http://www.un.org/News/Press/docs/2006/sc8821.doc.htm> (last accessed 30/11/12)  
Paragraph 12 a) first indent

<sup>191</sup> Bellamy noticed, for example, that when the UN Human Rights Council's High-Level Mission to Darfur reported in March 2007 that the government of Sudan was failing in its responsibility to protect people from Darfur, the League of Arab State, the Asia Group, and the Organization of the Islamic Conference questioned the mission's legitimacy and said that the report was seriously flawed.

Following the adoption of resolutions 1674 and 1706, R2P came to a still stand and the discussion on the principle did not advance significantly. During the General Debate of the 61st Session, in September 2006, only 15 Member States, mostly members of the European Union, referred to the responsibility to protect<sup>192</sup>. During the General Debate of the 62<sup>nd</sup> Session, at the end of September 2007, only eight Member States mentioned the responsibility to protect<sup>193</sup>. Member states clearly supporting responsibility to protect belonged almost exclusively to the European Union and its associated states.<sup>194</sup>

Security Council Resolution 1769 on 31 July 2007, with which the Council authorized the deployment of a 26,000-strong joint UN-AU force for Darfur neither referred to R2P nor to the World Summit Outcome. A paragraph indirectly referring to R2P was deleted from a draft text. The resolution mentioned however to “the responsibility of the Government of Sudan” to protect civilians<sup>195</sup>.

Skepticism toward R2P was presumably also in part due to the fact that, immediately before and after the 2005 World Summit, R2P was improperly cited by some scholars and policymakers to justify the 2003 invasion of Iraq (UK foreign Secretary Jack Straw and President Bush),<sup>196</sup> to assert a duty to protect people from terrorist acts, to prevent states and non-state actors from acquiring weapons of mass destruction

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<sup>192</sup> Australia, Canada, Denmark, France, Hungary, Italy, Ireland, Liechtenstein, Luxembourg, Palau, Slovakia, Slovenia, Sweden, Trinidad and Tobago and the UK

<sup>193</sup> Australia, Belgium, Denmark, Liechtenstein, Lithuania, Lesotho, the Netherlands, and UK Source <http://www.responsibilitytoprotect.org/index.php/document-archive/government?view=fjrelated&id=2409> (last accessed 30/11/12) Statements during the General Debate of the 61st Session can be reviewed at <http://www.un.org/webcast/ga/61/index.shtml> (last accessed 30/11/12) General Debate of the 62nd Session can be reviewed at <http://www.un.org/webcast/ga/62/> (last accessed 30/11/12)

<sup>194</sup> See also Strauss E., *A Bird in the Hand is Worth Two in the Bush*, op.cit page 301

<sup>195</sup> UN SC Press release SC/9089 of 31 July 2007 available at <http://www.un.org/News/Press/docs/2007/sc9089.doc.htm> (last accessed 30/11/12)

<sup>196</sup> Straw J., “We are in Iraq to Bring about Democracy” Labour Party Conference Brighton Sept 28 2005 available at <http://www.globalpolicy.org/empire/humanint/2005/0928strawspeech.htm> (last accessed 30/11/12); US President’s Remark to the National Endowment for Democracy, 41 weekly Comp.Pres.Doc 1502 (Oct 6 2005) <http://www.c-spanvideo.org/program/189208-1> (last accessed 30/11/12)



(Anne Marie Slaughter and Lee Feinstein)<sup>197</sup> as well as to promote the rule of law (Buchanan and Keohane).<sup>198</sup> This seems to be confirmed by the intervention of the representative of Mexico during the Open Debate on the protection of civilians in armed conflict on 22 June 2007. He summarized the status of discussions on R2P in the Security Council as follows: “[d]espite the consensus reached in 2005, we cannot deny that an atmosphere of mistrust prevails over that subject. While some States see in the new principle (R2P) the mere continuance of interventionist policies aimed at destabilizing political regimes, others promote its application in a selective manner, limiting its scope to cases significant for their foreign policy interests. For this reason, it is essential that States commit to reaching new agreements that give true content to such an important principle in an objective and impartial manner.”<sup>199</sup>

### **3.2.1 Secretary-General Ban Ki-moon’s R2P**

After his appointment Secretary-General Ban Ki-moon referred to the implementation of R2P as one of his priorities. His first mention of the responsibility to protect was at the opening of the UN exhibition on Rwanda's Genocide on 30 April 2007, few months after his appointment. In that occasion the Secretary-General stressed that the challenge was to give “real meaning to the concept, by taking steps to make it operational.”<sup>200</sup> In November 2007 Ban Ki-moon announced that he would work with Member States and civil society to translate the concept from word to deed - to ensure timely action when populations face genocide, ethnic cleansing or crimes against humanity<sup>201</sup>.

In the same month of November the President of the UN General Assembly, Srgjan Kerim, said in his opening speech: “A new culture of international relations based on

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<sup>197</sup> Feinstein L. and A-M. Slaughter, A Duty to Prevent, Foreign Affairs January 2004

<sup>198</sup> A. Buchanan and R. O. Keohane The Preventive Use of Force: a Cosmopolitan Institutional Proposal” Ethics and International Affairs vol. 18.1 Winter 2004 pages 1-22

<sup>199</sup> S/PV.5703 page 29

<sup>200</sup> <http://www.un.org/sg/statements/?nid=2544> (last accessed 30/11/12)

<sup>201</sup> <http://www.un.org/apps/news/story.asp?NewsID=24741&Cr=civilian&Cr1=conflict> (last accessed 30/11/12)

the principles of full respect for human rights, human security, the responsibility to protect and the promotion of sustainable development is necessary.<sup>202</sup>”

In February 2008 Edward Luck was appointed on a part-time basis to develop the “R2P concept and build consensus”<sup>203</sup>. Edward Luck left his post in June 2012.

In May 2008 a devastating cyclone hit Burma.<sup>204</sup> The country's regime was incapable of providing relief to millions of affected citizens and it refused to let in international aid and aid workers for several days. On this occasion for some the spirit of R2P, if not its letter, was tested<sup>205</sup>. Lloyd Axworthy, former Canadian foreign minister, was in favor of invoking R2P because, in his opinion, "there is no moral difference between an innocent person being killed by machete or AK-47, or starving to death, or dying in cholera pandemic that could be avoided by proper international responses." Axworthy's argument was bolstered by Michael Byers, who recommended that Canada air drop, covertly, humanitarian aid packages into the Irrawaddy Delta, with or without the permission of the government in Rangoon.<sup>206</sup> The High Representative for the Common Foreign and Security Policy, Javier Solana declared to the media that the international community should “use all possible

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<sup>202</sup> <http://www.un.org/apps/news/story.asp?NewsID=24683&Cr=general&Cr1=assembly> (last accessed 30/11/12)

<sup>203</sup> Letter dated 31 August 2007 from the Secretary-General addressed to the President of the Security Council UN Doc S/2007/721

<sup>204</sup> The Security Council had already discussed the situation in Burma in September 2006 with reference to the junta's violation of human rights. In January 2007, the Council proposed a resolution calling for the cessation of grave violations of human rights, including the campaign of systematic rape and other forms of sexual violence. However, China and Russia both used their veto to block the resolution claiming that the internal affairs of a state did not belong in the Security Council and that the situation did not constitute threats to international peace and security.

<sup>205</sup> Bajoria J., *The Dilemma of Humanitarian Intervention*, Council on Foreign relations, March 24, 2011 <http://www.cfr.org/human-rights/dilemma-humanitarian-intervention/p16524> (last accessed 30/11/12) see also Hondai M., *Natural Disaster and Humanitarian Assistance in Asia: The Case of Myanmar*, op cit.

<sup>206</sup> Knight A. and V. Popovski, *Putting People ahead of Protocol* Edmonton Journal 4 June 2008 available at <http://responsibilitytoprotect.org/index.php/component/content/article/1686> (last accessed 30/11/12)

means to get aid through to victims of Myanmar's cyclone"<sup>207</sup>, even though the EU ministers had failed to reach a consensus on the call by France. The French Foreign Minister Bernard Kouchner suggested that the United Nations invoke the R2P as the basis for a resolution to allow the delivery of international aid even without the junta's permission. But the French proposal faced opposition from Security Council members Russia, China, and South Africa. China's UN ambassador, Liu Zhenmin, even argued it was not an issue for the Security Council. Many, including the UN Office for Coordination of Humanitarian Affairs, criticized Kouchner's interpretation of R2P. The United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, John Holmes, said on 7 May 2008, "I'm not sure that invading them would be a very sensible option at this particular moment. I'm not sure it would be helpful to the people we are actually trying to help".<sup>208</sup> Edward Luck argued that "linking the 'responsibility to protect' to the situation in Burma (was) a misapplication of the doctrine."<sup>209</sup> In an article published on The Guardian on 12 May 2008 Gareth Evans acknowledged that "The point about 'the responsibility to protect' as it was originally conceived, and eventually embraced at the world summit ... is that it is not about human security generally, or protecting people from the impact of natural disasters, or the ravages of HIV-Aids or anything of that kind." However, he recognized that "(w)hen a government default is as grave as the course on which the Burmese generals now seem to be set, there is at least a prima facie case to answer for their intransigence being a crime against humanity - of a kind which would attract the responsibility to protect principle."<sup>210</sup>

The Global Coalition for Responsibility to protect (one of two main NGOs focused on R2P, whose co-chairs are Gareth Evans and Mohamed Sahnoun) also opposed the

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<sup>207</sup> Security Council Report Myanmar 14 May 2008 available at <http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTIsG-b-4130257.php?print=true> (last accessed 30/11/12)

<sup>208</sup> <http://www.globalpolicy.org/empire/humanint/2008/0509r2pburma.htm> (last accessed 30/11/12), [http://www.reuters.com/article/homepageCrisis/idUSL07810481.\\_CH\\_.2400](http://www.reuters.com/article/homepageCrisis/idUSL07810481._CH_.2400) (last accessed 30/11/12)

<sup>209</sup> <http://news.bbc.co.uk/2/hi/asia-pacific/7392662.stm> (last accessed 30/11/12)

<sup>210</sup> Evans G., Burma/Myanmar: Facing Up to Our Responsibilities, The Guardian, 12 May 2008, available at: <http://www.guardian.co.uk/commentisfree/2008/may/12/facinguptoourresponsibilities> (last accessed 3/12/12)

application of the doctrine to the Myanmar case in view of the difficulty of establishing that the regime's actions constituted one of the four crimes to which R2P was meant to apply (genocide, war crimes, crimes against humanity and ethnic cleansing). It argued that although reports indicated that the regime in Burma had failed to protect its populations and was actually obstructing aid, the R2P did not provide a justification for the Security Council to act on the basis of neglect and obstruction. Invoking a military intervention was considered against the humanitarian interests of the people directly affected by the cyclone, in other words, counterproductive. The reason for the narrow definition of the R2P concept was again given by Gareth Evans in the Op/ed mentioned above. Evans wrote "If it comes to be thought that "R2P", and in particular the sharp military end of the doctrine, is capable of being invoked in anything other than a context of mass atrocity crimes, then such consensus as there is in favor of the new norm will simply evaporate in the global South".

So in the fear that consensus on R2P would "simply evaporate" the principle lost part of its potential. Ramesh Thakur, one of the members of the ICISS, recognized that "there is no morally significant difference between large numbers of people being killed by soldiers firing into crowds or the government blocking help being delivered to the victims of natural disasters" But in the end he also agreed with Evans that for political reason it would be better to limit the sphere of action of R2P. "In our original report, we had explicitly included overwhelming natural or environmental catastrophes causing significant loss of life as triggering R2P if the state was unable or unwilling to cope, or rebuffed assistance. This was dropped by 2005. But crimes against humanity were included and prima facie would seem to apply to the Burmese generals actions in blocking outside aid. Politically, however, we cannot ignore the significance of the exclusion of natural and environmental disasters in 2005. Clearly, the normative consensus on the new global norm did not extend beyond the acts of commission of atrocity crimes by delinquent governments. To attempt to reintroduce it by the back door today would strengthen suspicion of Western motivations and reinforce cynicism of Western tactics. ... Unlike previous decades, the new unity of the global South, led by Brazil, China, India and South Africa, is

based in a position of strength, not weakness. The West can no longer set or control the agenda of international policy discourse and action”.<sup>211</sup>

On the contrary, Roberta Cohen argued that Burma could have been an R2P case because “the disaster may have begun as a natural disaster but it quickly turned into a human-made disaster in which crimes – that could well constitute crimes against humanity – were committed, with many needless deaths resulting. At the same time, saying that R2P should apply does not necessarily mean that military intervention should have been undertaken but rather that the Security Council should have met to consider what steps to take and should have used the R2P umbrella to galvanize political and humanitarian action.”<sup>212</sup>

On 15 June 2008, the Special Adviser on R2P delivered a speech before the 110th Congress Second Session of the US Senate Committee on Foreign Relations on “International Disaster Assistance: Policy Options.”<sup>213</sup> In his statement Edward Luck affirmed: “As defined by the (2005 World) Summit - and the UN must be guided by the collective decisions of its Member States, not by the pronouncements of independent commissions or commentators or the views of individual Member States - R2P does not encompass other dire threats to populations, such as climate change, HIV/AIDs, or the effects of natural disasters. These need to be and are being, addressed in other ways. To be conceptually coherent, operationally sound, and politically sustainable, the scope of RtoP should remain narrow and closely tied to the four listed crimes and violations unless and until the Member States decide otherwise.”<sup>214</sup> Similarly UN Secretary-General Ban Ki-moon, who one month later,

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<sup>211</sup> Thakur R., Burma and the Responsibility to protect: first, do more good than harm, e-International Relations, 20 June 2008 available at <http://www.e-ir.info/2008/06/20/burma-and-the-responsibility-to-protect-first-do-more-good-than-harm/> (last accessed 3/12/12)

<sup>212</sup> Cohen R., The Burma Cyclone and the Responsibility to Protect, *Global Responsibility to Protect* 1 (2009) 253–257 page 255

<sup>213</sup> Chairman Senator Robert Menendez. Panelists included Edward Luck, Mark L. Schneider, and Stewart Patrick.

<sup>214</sup> 1723-r2p-references-in-the-committee-on-senate-foreign-relations and <http://www.responsibilitytoprotect.org/index.php/edward-luck/1732-statement-from-un-special-advisor-edward-luck-on-r2p> (last accessed 3/12/12)

on 15 July, speaking in Berlin, Germany, reiterated that the R2P concept would apply only to genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>215</sup>

While agreeing with the idea that R2P should be clearly defined, we think that in Burma the regime failed to protect its population by obstructing external aid and causing significant and unjustified loss of life among civilians. Those deaths were not the result of a generic threat caused by climate change or epidemics, but the effect of the regime's unwillingness to call for assistance.

### **3.2.2 2009 Secretary-General's Report on "Implementing the Responsibility to Protect"**

On 12 January 2009 the Secretary-General released a document entitled "Implementing the Responsibility to Protect". According to the report R2P should be understood as constituted by three pillars, which replaced the earlier ICISS typology of prevent, react and rebuild, and focused on four crimes. Pillar one consists of the protection responsibilities of the state; pillar two of international assistance and capacity-building; and pillar three of a timely and decisive response. Its implementation would be 'narrow but deep'. Gareth Evans explains that these two different approaches – that of the ICISS and of the 2009 Secretary-General's report - can be compared with a cake: 'Think of a cake with three layers – labelled respectively, from the bottom up, 'prevention', 'reaction' and 'rebuilding' – which is then sliced vertically into three big wedges, labeled respectively Pillars One, Two and Three'<sup>216</sup>.

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<sup>215</sup> "I would like to address one of the more powerful but less understood ideas of our times -- the responsibility to protect, or RtoP for short. Now that the concept has received the ultimate United Nations accolade, a distinctive acronym, we need a common understanding of what RtoP is and, just as importantly, of what it is not. The RtoP is not a new code for humanitarian intervention. Rather, Our conception of RtoP, then, is narrow but deep. Its scope is narrow, focused solely on the four crimes and violations agreed by the world leaders in 2005. Extending the principle to cover other calamities, such as HIV/AIDS, climate change or response to natural disasters, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility." Available at <http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm> (last accessed 3/12/12)

<sup>216</sup> Ethnopolitical Conflict: When is it Right to Intervene? Keynote Address by Professor the Hon Gareth Evans, Chancellor of Australian National University and President Emeritus of the International Crisis Group, to Centre for Ethno-Political Studies Conference on

The focus of the report is on strengthening the rule of law nationally and internationally, prevention through education, training and assistance and, at international level on dialogue and mediation and public suasion. State to State learning process and peer review mechanisms are also referred to as possible tool for introducing and advancing R2P criteria. Pillar three includes a wide range of non-coercive and non-violent response measures under Chapters VI and VIII of the Charter, which can be undertaken by the Secretary-General or by regional or sub-regional arrangements, without the explicit authorization of the Security Council (as it happened in Kenya in 2008). Targeted sanctions could also be used by the Security Council by, on a case-by-case basis and in cooperation with relevant regional organizations, while the use of force is considered a last resort measure. The report also singles out the particular responsibility of the five permanent members of the Security Council and urges them to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect. Finally, the report calls for a more active role of the General Assembly. “If the General Assembly is to play a leading role in shaping a United Nations response, then all 192 Member States should share the responsibility to make it an effective instrument for advancing the principles relating to the responsibility to protect” particularly so “when military force is used to enforce them”.<sup>217</sup>

Van Dijk observed that since each of the three pillars foreseen in the report has elements of the three responsibilities, states cannot partly agree with the R2P principle but need to agree with it in total and that the logical consequence of the concept as defined by Secretary-General Ban Ki-moon is that it would be more difficult to make recourse to forcible intervention as, for such an intervention to be accepted, individual states and the international community should have previously failed in all three layers. Through the new structure the Secretary-General used the

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Ethnopolitics and Intervention in a Globalized World, University of Exeter, 28 June 2010 available at <http://www.gevans.org/speeches/speech415.html> (last accessed 3/12/12)  
<sup>217</sup> UNITED NATIONS General Assembly Doc A/63/677 of 12 January 2011 available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/63/677](http://www.un.org/ga/search/view_doc.asp?symbol=A/63/677) (last accessed 3/12/12)

R2P principle to strengthen the position of the UN and diminish the individual and collective responsibility of states to protect the victims.<sup>218</sup>

While recognizing that Mr. Ban was the only candidate to refer to R2P during the yearlong campaign to seek Annan's office, Ramesh Thakur said that Ban's task became more complicated both by the fact that "as many countries saw him as Washington's choice" and the selection of Ed Luck, "one with little professional background on the subject as his special adviser. According to Thakur, the report on implementing the responsibility to protect was "effective and clever in repackaging R2P in the language of three pillars" However " (it) goes over the top in elaborating on the metaphor by insisting that the edifice of R2P will tilt, totter and collapse unless all three pillars are of equal height and strength. This is simply not true. The most important element, the weightiest pillar has to be the states own responsibility. And the most critical is the international community's response to fresh outbreaks of mass atrocity crimes. Mercifully, and contrary to what many of us feared, the report does not retreat from the necessity for outside military action in some circumstances. But it does dilute what was the central defining feature of R2P." Furthermore, the report ignored important questions such as, for example, "what to do with the bad guys (..), who use sovereignty as a license to kill with impunity."<sup>219</sup>

Thakur further affirmed that "the report did not retreat from the necessity for outside military action in some circumstances, but it diluted the central defining feature of R2P."<sup>220</sup>

Thomas Weiss went further affirming " I would be harsher: the Secretary-General sought to sidestep considering the third pillar, the sharp end of the R2P stick of using

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<sup>218</sup> van Dijk J., On the Responsibility to Protect, an assault on international order? Master's thesis International Relations/ International Organization , Rijksuniversiteit Groninger available at <http://www.stichtingvredeswetenschappen.nl/Masterscriptie%20Jurjen%20van%20Dijk.doc> (last accessed 3/12/12)

<sup>219</sup> Thakur R., Ban a Champion of U.N's Role to Protect, The Daily Yuimiori, 10 March 2009 <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2187-ramesh-thakurban-a-champion-of-uns-role-to-protect>

<sup>220</sup> Thakur R., The Responsibility To Protect: Norms, Laws and the Use of Force in International Politics, page 150



or threatening to use military force to stop mass atrocities. As James Pattison reminds us, "humanitarian intervention is only one part of the doctrine of the responsibility to protect, but...it is part of the responsibility to protect."<sup>221</sup>

While recognizing that the decision to narrow the scope of R2P was designed to facilitate consensus within the United Nations, Jennifer Welsh observed that the 2009 Secretary-General's report leaves some important questions unanswered and opens up the possibility for institutional overlap. "There is a risk that by placing so much emphasis on so-called Pillars 1 and 2, the Secretary-General's report will enmesh R2P in the already well-established agendas of capacity-building and conflict prevention, and obscure what is truly novel about the concept – namely, generating and exercising the international responsibility to respond to mass atrocities when state authorities fail to protect their populations."<sup>222</sup> More significantly, Welsh argued that since some sections of the report call for greater UN activism in areas traditionally seen as being within the domestic jurisdiction of states, many states may be suspicious. Finally, for Welsh the report's focus on prevention came at the cost of overlooking questions about how resources (both financial and military) will be mobilized to protect vulnerable populations when more peaceful means have failed.

As partial justification for the "narrow", cautious approach of the Secretary-General one should recall that from September 2008 to September 2009 Miguel d'Escoto Brockmann from Nicaragua, an outspoken opponent of the R2P, was the President of the UN General Assembly.<sup>223</sup> Following the release of the report "Implementing the Responsibility to Protect", the General Assembly held interactive dialogue on R2P on

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<sup>221</sup> Weiss T.G. , Whither R2P? e-International Relations August 2011 available at <http://www.responsibilitytoprotect.org/index.php/component/content/article/136-latest-news/3664-e-international-relations-whither-r2p> (last accessed 3/12/12)

<sup>222</sup> Welsh J., Turning Words into Deeds? The Implementation of 'The Responsibility to Protect', *Global Responsibility to Protect 2* (2010) 149–154 pages 151

<sup>223</sup> In his statement on 23 July 2009 Interactive Thematic Dialogue of the United Nations General Assembly on the Responsibility to Protect D'Escoto stated: "The legacy of colonialism gave developing countries strong reasons to fear that laudable motives can end up being misused [...] to justify arbitrary and selective intervention against the weakest states."  
<http://www.un.org/ga/president/63/statements/openingr2p230709.shtml> (last accessed 3/12/12)

23, 24 July and 28 July 2009. The General Assembly debate was preceded by an Informal interactive dialogue in the Trusteeship Council Chamber. Speakers included Edward Luck, Gareth Evans, Noam Chomsky, and Jean Bricmont, a Belgian theoretical physicist, philosopher of science and professor at the Université catholique de Louvain. In his statement Edward Luck specified that R2P “is a political, not a legal concept”, while Gareth Evans reiterated that the problem that the R2P was designed to address was “a very specific and quite narrowly focused one”. Noam Chomsky focused on the danger that R2P could be misused by powerful states seeking to engage in military intervention. Jean Bricmont stated that R2P was an ambiguous doctrine, and the issue did not relate to “its diplomatic or preventive aspects, but (to) the military part of the so-called “timely and decisive response”, and the challenge that it represents for national sovereignty.”<sup>224</sup> Ninety-two Member States (and 2 observers) took the floor. Egypt, speaking on behalf of the NAM, said that mixed feelings on implementing R2P persisted. There were concerns about the possible abuse of R2P by expanding its application to situations that fall beyond the four areas defined in the 2005 World Summit Outcome, and by misusing it to legitimize unilateral coercive measures or intervention in the internal affairs of States.<sup>225</sup> The majority of the Member states<sup>226</sup> supported the narrow definition included in the Secretary-General’s report, either because they opposed to the R2P or, on the contrary, because they wanted to save it. So for a strange twist of fate the two opposed fractions ended up converging. Only France and Ireland made reference to a broader definition. France said that it would “remain vigilant to ensure that natural disasters, when combined with deliberate inaction on the part of a Government that refuses to provide assistance to its population in distress or to ask the international community for aid, do not lead to human tragedies in which the international community can only look on helplessly”<sup>227</sup> While recognizing that the R2P “needs to remain focused exclusively on the four crimes already specified consensually by the

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<sup>224</sup> <http://www.un.org/ga/president/63/interactive/protect/jean.pdf> (last accessed 3/12/12)

<sup>225</sup> <http://responsibilitytoprotect.org/97thPlenary.pdf> page 5 (last accessed 3/12/12) see also <http://www.un.org/ga/president/63/interactive/responsibilitytoprotect.shtml> (last accessed 3/12/12)

<sup>226</sup> Australia, Brazil, Cuba, Guatemala, India, Jordan, Korea, Myanmar, the Netherlands, Norway, the Philippines, Singapore, Slovenia, South Africa, the UK, the US

<sup>227</sup> <http://responsibilitytoprotect.org/97thPlenary.pdf> page 9 (last accessed 3/12/12)

2005 World Summit” Ireland affirmed that broadening the scope of the R2P “ can be very tempting, especially when confronted with the horrendous suffering following natural disasters, HIV/AIDS epidemics and conflict situations where gross human rights violations exist.”<sup>228</sup>

The response to the open debate was a half-page resolution on the R2P (UN Doc. A/RES/63/308) adopted on 14 September 2009 by General Assembly thanks to the support of sixty-seven delegations headed by Guatemala<sup>229</sup> that led a campaign in support to the Secretary-General’s report against a group of hard-liner (Venezuela, Cuba, Syria, Sudan, Iran, Ecuador, and Nicaragua). The resolution affirms that the General Assembly took note of the report of the Secretary-General and of the debate in the General Assembly, and decided to continue its consideration of R2P<sup>230</sup>.

On 23 July 2009, the Economist published an article entitled “Responsibility to protect. An idea whose time has come—and gone? An idealistic effort to establish a new humanitarian principle is coming under attack at the United Nations”<sup>231</sup> containing a lucid political assessment of the situation. The article spoke about the “campaign to sabotage R2P” that was taking place at the General Assembly “in defiance of Ban Ki-moon, the UN secretary-general, who earlier this year drew up a report that presents the concept in the most cautious and reassuring of tones. (...) Such assurances – continued the article - have failed to convince critics of R2P, who are adamant that the whole idea is just a cover to legitimize armed interference by rich Western powers in the affairs of poor countries. One person who takes that view

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<sup>228</sup> <http://responsibilitytoprotect.org/99thPlenary.pdf> page 2 (last accessed 3/12/12)

<sup>229</sup> Sponsors of the Resolution: Andorra, Armenia, Australia, Austria, Belgium, Benin, Bulgaria, Canada, Argentina, Colombia, Congo, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Fiji, Finland, France, Germany, Greece, Guatemala, Guinea, Haiti, Hungary, Iceland, India, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Republic of Korea, Romania, Rwanda, Saint Lucia, Senegal, Singapore, Slovakia, Slovenia, Spain, Swaziland, Sweden, Timor-Leste, Trinidad and Tobago, United Kingdom, United Republic of Tanzania, United States, Ukraine and Uruguay

<sup>230</sup> UNITED NATIONS General Assembly Doc A/RES/63/308 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/513/38/PDF/N0951338.pdf?OpenElement> (last accessed 3/12/12)

<sup>231</sup> <http://www.economist.com/node/14087788> (last accessed 3/12/12)

is Miguel d'Escoto Brockmann, a Nicaraguan diplomat (and Sandinista priest-politician), who is now president of the General Assembly. (...) Quite a number of countries might be persuaded to support a resolution diluting the commitment to R2P that was made by over 150 states at the UN summit in 2005. Possible backers include large and middle-sized powers of various ideological stripes—including India, Pakistan, Cuba, Sudan, Venezuela and Egypt. Some of these may try to induce smaller states in their neighborhood to follow their sceptical line. Supporters of R2P are complaining of a “surprise attack”. The article further says that d'Escoto brought the debate forward by several weeks in a period in which Ban was not in New York and scheduled an eve-of-debate discussion by a four-member panel in which Mr. Evans was the only supporter of R2P. The article also discusses the position of the US toward R2P. “Meanwhile, America, far from dreaming up R2P as a crafty way of justifying imperialist adventures, was initially rather sceptical. Under the Bush administration, both the Pentagon and the State Department were intensely wary of signing up to anything that might bind them to take draconian action in the name of humanity. Indeed, R2P was a part of a much broader 2005 reform of the United Nations that George Bush first sought to weaken, then, only reluctantly accepted. And to this day, there are voices on America’s political right that remain profoundly sceptical about the idea of costly pledges to wage wars in the name of protecting people from inhumanity. Barack Obama’s administration, with its internationalist instincts, is clearly a lot more comfortable with notions like R2P”

### **3.2.3 2010 Secretary General’s report on “Early warning, assessment, and the responsibility to protect”**

One year later, on 17 July 2010, Secretary General Ban Ki-moon launched his second report on R2P entitled “Early warning, assessment, and the responsibility to protect”<sup>232</sup>. The report highlights the gaps and capacities facing the mechanisms of early warning and assessment within the UN system. It underscores that there is insufficient sharing of information and analysis among the existing streams of information and that the early warning mechanisms do not view that information

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<sup>232</sup> UNITED NATIONS General Assembly Doc A/64/864 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/450/20/PDF/N1045020.pdf?OpenElement> (last accessed 3/12/12)

through the lens of the responsibility to protect. The report also signals the Secretary General's intention to address such gaps "including through a joint office" for his two special advisers, Francis Deng and Edward Luck.

On 9 August 2010, the General Assembly held another informal interactive dialogue on the report. Forty-two States<sup>233</sup>, less than half of the States that intervened in 2009, two representatives from regional organizations and two representatives from civil society spoke at the dialogue<sup>234</sup>. According to the report of the meeting, prepared by the Global Centre for Responsibility to protect, regional trends that were apparent in the 2009 interactive dialogue were confirmed in the 2010 dialogue. "The statements delivered by Latin American representatives demonstrated that this region is home to both some of the strongest supporters of R2P and its most outspoken critics. In contrast, the emphasis in most of the statements by African delegations on the existing early warning structures at both the regional and sub-regional levels conveyed the message that the commitment to R2P is already a reality in that continent."<sup>235</sup>

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<sup>233</sup> Argentina, Armenia, Australia, Bangladesh, Benin, Brazil, Bosnia and Herzegovina, Botswana, Canada, Chile, China, Costa Rica, Cuba, Czech Republic, El Salvador, Egypt, European Union, France, Germany, Georgia, Ghana, Guatemala, India, Islamic Republic of Iran, Italy, Lebanon, Mexico, Nepal, Netherlands, Nicaragua, Nigeria, Pakistan, Peru, Republic of Korea, Senegal, Solomon Islands, Sudan, Switzerland, Tanzania, United States, United Kingdom, Uruguay, Venezuela, African Union (observer)

<sup>234</sup> All interveners agreed that effective early warning is a necessary condition both for prevention and early action. The majority of the participants expressed support for the Secretary General's proposals to "institutionalize the collaboration between the two Special Advisers" and for a joint office. Other issues that were raised during the dialogue included information gathering and management as well as how to handle sensitive information. Many member states—Armenia, Germany, India, Lebanon, the Netherlands, and the United Kingdom—pointed to the challenge of turning information into action. Others stressed that early warning cannot be done solely by the UN Secretariat and that changes are required at the national and regional levels. It was noted that some regional and sub-regional organizations have already made adjustments in how they seek to warn of atrocities (EU). Almost all interveners stressed the crucial role of civil society.

<sup>235</sup> Source International Coalition on Responsibility to Protect and Global Centre for Responsibility to Protect  
<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2914-general-assembly-debate-on-early-warning-assessment-and-the-responsibility-to-protect-> (last accessed 3/12/12)  
[http://globalr2p.org/media/pdf/GCR2P\\_Report\\_\\_Informal\\_Interactive\\_Dialogue\\_2010.pdf](http://globalr2p.org/media/pdf/GCR2P_Report__Informal_Interactive_Dialogue_2010.pdf) (last accessed 3/12/12)

### **3.2.4 Libya, Côte d'Ivoire and the 2011 Secretary-General's report on "The role of regional and sub-regional arrangements in implementing the responsibility to protect"**

In the meantime the crisis in Libya developed into a test case for R2P. On 26 February and 17 March, 2011 the Security Council adopted two resolutions, respectively Resolutions 1970 and 1973. With Resolution 1970 the Security Council called upon Libya's "responsibility to protect" by referring the situation to the ICC and imposing initial financial sanctions as well as an arms embargo. With resolution 1973 the Security Council, by a vote of 10 in favor to none against, with 5 abstentions (Brazil, China, Germany, India, Russian Federation), approved a no fly zone.

Furthermore, in response to the escalation of post-election violence in Côte d'Ivoire, the Security Council unanimously adopted Resolution 1975 on 30 March 2011. The Resolution condemned the gross human rights violations against the civilian population considering that these could amount to crimes against humanity, and noted that the ICC might decide on its jurisdiction over the situation. The resolution also mentioned "the primary responsibility of each State to protect civilians," called for the immediate transfer of power to President-elect Ouattara, mandated targeted sanctions against incumbent President Gbagbo and his close supporters, and reaffirmed the mandate of the United Nations Operation in Côte d'Ivoire (UNOCI) to "use all necessary means to protect life and property."

In July 2011, R2P once again appeared in resolution 1996 approving a new peacekeeping mission in South Sudan.<sup>236</sup> In addition, the Human Rights Council referred to R2P for the first time in resolution S-15/1, which led to the General Assembly's resolution 65/60 that suspended Libyan membership in the HR Council.

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<sup>236</sup> The Security Council (...) Acting under Chapter VII of the Charter of the United Nations  
3. Decides that the mandate of UNMISS shall be to consolidate peace and security, and to help establish the conditions for development in the Republic of South Sudan, with a view to strengthening the capacity of the Government of the Republic of South Sudan to govern effectively and democratically and establish good relations with its neighbors, and accordingly authorizes UNMISS to perform the following tasks  
2 (iv) Advising and assisting the Government of the Republic of South Sudan, including military and police at national and local levels as appropriate, in fulfilling its responsibility to protect civilians, in compliance with international humanitarian, human rights, and refugee law;  
[http://www.un.org/en/peacekeeping/missions/unmis/documents/sres1996\\_2011.pdf](http://www.un.org/en/peacekeeping/missions/unmis/documents/sres1996_2011.pdf)

On 27 June 2011, Secretary-General Ban Ki-moon released his third annual report on R2P entitled “The role of regional and sub-regional arrangements in implementing the responsibility to protect”. Taking note of the latest political events and in particular of developments in Libya, the report underscores the importance for the Security Council of neighboring states’ and regional organizations’ views, when determining which course of action to take in particular situations<sup>237</sup>. The report also stresses the central role of NGOs and civil society to foster R2P, and highlights the function of the ICC in preventing mass violations of human rights and ensuring accountability whenever these materialized.

The General Assembly, under the Presidency of H.E. Mr. Joseph Deiss (Switzerland) held an informal interactive dialogue on the report on 12 July 2011 during which forty-three Member States, three representatives from regional organizations and four representatives from civil society took the floor.<sup>238</sup>

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<sup>237</sup> Doc A/65/877-S/2011/393 “States and civil society groups that are closer to the events on the ground may have access to more detailed information, may have a more nuanced understanding of the history and culture, may be more directly affected by the consequences of action taken or not taken.”  
<http://www.un.org/en/ga/president/65/initiatives/Report%20of%20the%20SG%20to%20OMS.pdf> (last accessed 3/12/12)

<sup>238</sup> Two Panels were established. The first panel, on “Regional and sub-regional perspectives and experience”, was moderated by Assembly President Deiss, and featured three panelists: Ambassador Liberata Mulamula, Executive Secretary of the International Conference on the Great Lakes Region (ICGLR); Knut Vollebaek, High Commissioner on National Minorities at the Organization for Security and Cooperation in Europe (OSCE); and Victor Rico Frontaura, Secretary of the Secretariat for Political Affairs at the Organization of American States (OAS). The second panel, on “United Nations perspectives and experience”, was again moderated by President Deiss and featured two panelists: Edward Luck, Special Adviser to the Secretary-General on the Responsibility to Protect; and Francis Deng, Special Adviser to the Secretary-General on the Prevention of Genocide. GA/11112 12 July 2011 available at <http://www.un.org/News/Press/docs/2011/ga11112.doc.htm> (last accessed 3/12/12) <http://www.unmultimedia.org/tv/webcast/2011/07/general-assembly-65th-session-english-2.html> (last accessed 3/12/12) and <http://www.unmultimedia.org/tv/webcast/2011/07/general-assembly-65th-session-english.html> (last accessed 3/12/12)

Representatives of the following countries/organizations took the floor: European Union, Barbados on behalf of CARICOM, Costa Rica on behalf of Costa Rica, Denmark and Ghana; Cuba; Sweden; Israel; Ireland; Hungary; Guinea; Switzerland; Chile; African Union; Germany; Guatemala; Armenia; Jordan; Brazil; Morocco; Lebanon; United States Spain; the Netherlands; United Kingdom; Pakistan; Venezuela; Japan; Slovenia; New Zealand; Belgium; Czech Republic; Kenya; Georgia México; Honduras; Liechtenstein; China; Iran;

A debate organized by the Stanley Foundation on 'The Role of Regional and Sub-regional Arrangements in Strengthening the Responsibility to Protect', which took place ahead of the presentation of the 2011 Report by the Secretary-General, clearly showed how approaches to R2P vary among regions. As regard prevention, it was noted that African institutions have been remarkably proactive, while Asian response has been almost nonexistent. Speaking about the countries of Latin American and the Caribbean, it was stressed that these countries are currently more concerned of the potential impact of the eruption of social violence and of internal political crisis than by the possibility of inter-state conflict or wars. For this reason R2P in Latin America and the Caribbean should concentrate on prevention and, eventually rebuilding.

### **3.2.5 2012 Secretary General's report on "The Responsibility to Protect: Timely and Decisive Response"**

On 15 August 2012 the Secretary-General issued his forth report on R2P entitled "The Responsibility to Protect: Timely and Decisive Response" (A/66/874). The report addresses the measures available at international, regional, national and civil society level under the third pillar of R2P and discusses the various tools on hand - such as mediation, preventive diplomacy, public advocacy, fact-finding missions, commissions of inquiry, monitoring and observer missions, International Criminal Court referrals, targeted sanctions, and the use of military force - highlighting the preference to first address situations with peaceful measures. In fact, the report also discusses a proposal tabled by Brazil in November 2011 on "responsibility while protecting"(see next paragraph)<sup>239</sup>.

On 5 September 2012 an informal interactive dialogue on the report was held at the UN Headquarters in New York. Fifty-six UN member States, the European Union, the International Coalition for the Responsibility to Protect and the Global Centre for the

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Russian Federation; France; Italy; Republic of Korea; Australia; Democratic People's Republic of Korea, Canada and Singapore

<sup>239</sup> UNITED NATIONS General Assembly Doc A/66/874 – S/2012/578 available at [http://www.responsibilitytoprotect.org/UNSG%20Report\\_timely%20and%20decisive%20response\(1\).pdf](http://www.responsibilitytoprotect.org/UNSG%20Report_timely%20and%20decisive%20response(1).pdf) (last accessed 3/12/12)



Responsibility to Protect participated in the dialogue<sup>240</sup>. In presenting the report the Secretary-General stressed the successes in Libya and Côte d'Ivoire, on one side, and the other the tragic failure to protect in Syria that resulted in an immense human cost.

The President of the General Assembly, Nassir Abdulaziz Al-Nasser (Qatar) stressed that some aspects of R2P need to be further refined and mentioned the continuous debate over the choice and timing of response. Several delegates expressed support for the concept paper on "responsibility while protecting" presented by Brazil. The latter stressed that the use of force should be considered the *ultima ratio* as it carries the risk of causing unintended casualties and makes a political solution more difficult to achieve.

Much of the debate related to the discussion of the Syrian crisis. Recalling that rapid and decisive efforts had saved thousands of lives in his country, Libya's representative affirmed that the international community was taking "too long" to provide protection for Syrians and that it could not allow regimes to "slaughter its people". For Belgium the "unacceptable and incomprehensible blocking" of action by some States brought the tragic events in Rwanda and Srebrenica to mind. Singapore said that if the UN member States were prepared to allow the Security Council to justify military action by invoking the responsibility to protect, as in Libya's case, they must then commit to exercising that responsibility without fear or favor. Others member States highlighted that R2P could only exist in a climate of confidence, which presupposed State equality and evolved through consensus. The representative of the Netherlands said some Governments favored a "Westphalian" idea of the concept, making it impossible to devise a collective approach to some situations, including the one in Syria. There was a misconception that coercive, non-

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<sup>240</sup> The following member states' representatives participated in the discussion: Argentina, Australia, Belgium, Brazil, Burundi, Canada, Chile, China, Costa Rica, Cuba, Czech Republic, Denmark, Egypt, Estonia, France, Ghana, Georgia, Germany, Hungary, India, Iran, Ireland, Israel, Italy, Japan, Libya, Liechtenstein, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Portugal, Qatar, Republic of Korea, Rwanda, Singapore, Slovenia, South Africa, Spain, Syria, Sri Lanka, Switzerland, Tunisia, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela and Viet Nam.

military measures would automatically result in military action, which in turn prevented any action at all.

Other member States (e.g. South Africa, Sri Lanka, Cuba and Syria) warned that R2P should not be implemented selectively. They reiterated their concern that intervention might be used as a means for regime change and urged caution in R2P implementation. On the other hand, France stressed that “Demander le départ de Bachar Al Assad aujourd’hui, ce n’est pas prôner un changement de régime, c’est reconnaître que ceux qui perpètrent des crimes de guerre et des crimes contre l’humanité contre des milliers d’individus n’ont plus aucune légitimité.”<sup>241</sup>

China highlighted the importance of sovereignty, territorial integrity and non-intervention in internal affairs. For China the proposal put forward by Brazil on “responsibility while protecting” was worthy of consideration.

From the discussion one can infer that member States continue to hold differing opinions on what to do when prevention fails as well as on the sequencing of actions under each pillar. Particular emphasis was placed on the role of the UN Security Council in operationalizing R2P. There was a general consensus that inaction is no longer acceptable. Singapore recalled a draft resolution (later withdrawn) tabled in May by the “Small 5” (S5) countries<sup>242</sup>, which included a call for five Permanent Members to refrain from exercising veto power in cases of R2P crimes. The potential role of civil society in advancing R2P was also discussed. Some interventions highlighted initiatives at the national and regional levels to enhance timely and decisive response, including the national focal points initiative which calls for the designation of a senior government official for R2P within capital.

The Secretary-General report recognizes that controversy still persists on aspects related to the implementation of R2P and acknowledges that there are times when recourse to coercive measures may be contemplated. The report fails however to provide sufficient responses on how to overcome the present impasse and on what to do if the Security Council is unable to find an agreement. The section devoted in

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<sup>241</sup> [http://responsibilitytoprotect.org/France\(5\).pdf](http://responsibilitytoprotect.org/France(5).pdf) page 2

<sup>242</sup> Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland

the report to measures under Chapter VII is in fact much shorter than the very detailed section devoted to non-coercive measures. But, as Singapore rightly pointed out, no one would either dispute commitments under Pillar one and two or object to non-coercive measures, not least because they are enshrined in existing international obligations; instead, concern would focus on whether and when the Security Council could or should use force.

### **3.2.6 Security Council Dialogue on protection of civilians in armed conflicts and the RwP (Responsibility while Protecting)**

The Security Council's interest in civilian protection can be traced to April 1998, when Kofi Annan used a Council dialogue on armed conflict in Africa to identify the protection of civilians as a 'humanitarian imperative'. At the suggestion of Canada, in February 1999 the Council adopted a Presidential Statement requesting that the Secretary-General submit a report on how the UN might improve the protection of civilians, and committing to periodic Council reviews of the issue.<sup>243</sup> In September 1999, the Council unanimously adopted Resolution 1265, which expressed its 'willingness to respond to situations of armed conflict where civilians are being targeted or where humanitarian assistance to civilians is being deliberately obstructed' and committing it to consider adopting 'appropriate measures'. It also called on states to ratify key human rights treaties and prosecute those responsible for genocide, crimes against humanity and 'serious violations of international humanitarian law'. Finally, the Council expressed its readiness to explore how peacekeeping mandates might be reframed to better protect civilians. In April 2000, the Council adopted Resolution 1296 on operational matters designed to improve the capacity of UN peace operations to protect civilians. After the adoption of the R2P at the 2005 World Summit, the then Secretary-General Kofi Annan released a report recommending inter alia that the Security Council endorse R2P and its commitment to provide protection to civilians in armed conflict. In 2006 the Council

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<sup>243</sup>See The Responsibility to Protect and the Protection of Civilians: Asia-Pacific in the UN Security Council available at [http://responsibilitytoprotect.org/files/PoC\\_Update\\_1%5B1%5D%5B1%5D.pdf](http://responsibilitytoprotect.org/files/PoC_Update_1%5B1%5D%5B1%5D.pdf); [http://responsibilitytoprotect.org/index.php/about-rtop/related-themes/2414--rtop-and-protection-of-civilians-debates-\(last accessed 3/12/12\)](http://responsibilitytoprotect.org/index.php/about-rtop/related-themes/2414--rtop-and-protection-of-civilians-debates-(last%20accessed%203/12/12))

informally agreed to hold two open debates (in June and December) yearly on the protection of civilians. The first debate took place on 28 June 2006. Since then R2P has been an increasingly important component of these debates. Thirteen open debates have been held so far, the last having been held on 25 June 2012.<sup>244</sup> Statements followed the same pattern seen in the discussion of R2P. In a speech delivered to the Security Council in August 2009, the UN High Commissioner for Human Rights, Ms Pillay observed that the Council had discussed the R2P almost exclusively in the context of the protection of civilians. She stressed, however, that, in its current definition, the concept of protection of civilians is both broader and narrower than R2P; it is broader as it includes a wide set of violations of human rights and humanitarian law, while R2P is limited to a specific set of crimes. It is narrower as it limits the attention to violations occurring at least in the broader context of armed conflict, while genocide and crimes against humanity could be committed independent of such situations<sup>245</sup>. In an article published in 2007 Ekkehard Strauss observed that there might be a risk that some members of the Council would explore the link between R2P and protection of civilians to limit the discussions on R2P to the context of the protection of civilians and, in particular, to the responsibilities to prevent and to rebuild, rather than the question of nonconsensual military action<sup>246</sup>.

This seemed to be confirmed in the discussion of the late open debates and in particular during the twelfth Security Council open debate, in November 2011, when Brazil presented a concept note entitled “Responsibility while protecting: elements for the development and promotion of a concept“. The idea was put forward by the President of Brazil, Dilma Rousseff at her first speech to the UN General Assembly, in November 2011. The Brazilian government then followed with a position paper, setting out what “Responsibility while protecting” (RwP) might mean in practice. The concept was provoked by Brazilian discontent at the NATO intervention in Libya; its main message is that the international community must exhaust all peaceful means

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<sup>244</sup>[http://www.responsibilitytoprotect.org/index.php?option=com\\_content&view=article&id=2449](http://www.responsibilitytoprotect.org/index.php?option=com_content&view=article&id=2449) (last accessed on 3/12/12)

<sup>245</sup><http://www.unhcr.ch/hurricane/hurricane.nsf/0/718D0702F6B9BB33C125762400527B07?opendocument> (last accessed 3/12/12)

<sup>246</sup> Strauss E., op. cit

to protect populations before coercive measures are considered, and the Security Council should develop monitoring and assessment mechanisms for the use of force. Brazil had criticized the military actions in Libya and suggested that non-military means to protect civilians had not been exhausted prior to the decision to intervene.

In a recent article K.M. Kenkel explained the attitude of Brazil toward the R2P. After an initial rejection,<sup>247</sup> Brazil changed its position. Kenkel explained this change with the desire of Brazil to enhance its influence internationally: “Brazil has embarked upon a self-conscious and enthusiastic quest for more influence at the global level – in particular, a permanent seat on the UN Security Council – and has chosen peace operations as a primary locus of that striving.... As the country’s stance on R2P has shown, it does not share the interpretation that the use of force need be one of the primary components of international responsibility. Instead it has chosen to echo in its engagement with R2P its overarching predilection for negotiation and economic development, as well as a reliance on areas where it has been successful. These include domestic policies that address the root causes of structural violence, such as poverty reduction and agricultural innovation. As the global balance of power shifts increasingly in favour of the global South, the development focus will need to be taken up if R2P is to make headway.”<sup>248</sup>

In an article published on 7 April 2012, *The Economist* dismissed the Brazilian proposal. "Mr. Obama will surely want to know, too, what exactly Brazil means by its big new foreign-policy idea. That is to complement the UN's justification for intervention in another country's affairs under the rubric “Responsibility to Protect” with “Responsibility while Protecting” after it has gone in. Since Brazil tends not to support going in in the first place, when would it want to see this new responsibility

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<sup>247</sup> In 2004 in the Foreign Minister Celso Amorim, said that R2p was “the droit d’ingérence ... in new clothes” in K.M. Kenkel, Brazil and R2P: Does Taking Responsibility Mean Using Force? *Global Responsibility to Protect* 4 (2012) 5–32 page 15

<sup>248</sup> Kenkel K.M., op. cit. pages 30-32

kick in? Even some experienced and sympathetic diplomatic observers in Brasília say they have no idea what concrete difference this would make on the ground.<sup>249</sup>

In fact, set aside for its political relevance, the RwP does not seem to differ from the ICISS recommendations on the use of force and on the report of the High-level Panel. Furthermore the proposal does not specify if the reference to the need for 'enhanced Security Council procedures to monitor and assess the manner in which resolutions are interpreted and implemented' implies the much needed adoption of a code of conduct for the P5 not to employ or threatening to employ the veto in situations of manifest failure to meet obligations relating to R2P<sup>250</sup>. This is at the core of the discussion and has been suggested repeatedly in the past by the ICISS, the High-level Panel Report, and more recently by the Secretary-General in his 2009 Report on the Implementation of R2P.

In an Article published on The Guardian on 10 April 2012 Conor Foley recognized that the Brazilian position paper "rather fudges of how and when the UN Security Council should authorize the tactical use of force" but stressed that the real significance of the Brazilian paper is in the fact that it represents the shift of balance of power and influence taking place in the world, particularly since the global economic crisis. "China is now Brazil's main trading partner and the country neither wants nor needs western loans. Brazil has more diplomats in Africa than Britain. It is a creditor to the IMF, provides development assistance to 65 countries. It is also promoting forums such as India-Brazil-South Africa (IBSA) and Brazil-Russia-India-China-South Africa (BRICS) as well as the G20. If these bodies were also to adopt the Brazilian position on interventions it could mark a noticeable step forward in the debate"<sup>251</sup>.

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<sup>249</sup> The Economist, Our Friends in the South; Dilma Russeff's visit to America, 7 April 2012, <http://www.economist.com/blogs/democracyinamerica/2012/04/dilma-rousseffs-visit-america> (last accessed 3/12/12)

<sup>250</sup> The discussion on how to improve the working method and enhance transparency also through the monitoring the way resolutions are implemented is gaining momentum at the Security Council See UNITED NATIONS Security Council Doc S/PV 6870 of 26 November 2012 available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/PV.6870](http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6870) - last accessed 5/12/12)

<sup>251</sup> Conor Foley C., Welcome to Brazil's version of 'responsibility to protect', The Guardian, 10 April 2012, <http://www.guardian.co.uk/commentisfree/cifamerica/2012/apr/10/diplomacy-brazilian-style> (last accessed 3/12/12) see also Stuenkel O., BRICS and the 'Responsibility

ICISS	High Panel	Brazil's Proposal RwP
<ul style="list-style-type: none"> <li>• <b>Right authority.</b> <ul style="list-style-type: none"> <li>a) Security Council.</li> <li>b) General Assembly on the basis of resolution 377(V)</li> <li>c) Collective intervention by the relevant regional or sub-regional organization.</li> </ul> </li> <li>• <b>Just Cause.</b> <ul style="list-style-type: none"> <li>a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation;</li> <li>b) large scale “ethnic cleansing,” actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. This includes “overwhelming natural and environmental catastrophes where the states concerned is either unwilling or incapable to cope or call for assistance, and significant loss of life occurs or is threatened”</li> </ul> </li> <li>• <b>Last Resort.</b> Every diplomatic and non-military avenue for the prevention or peaceful resolution must have been explored.</li> <li>• <b>Right Intention.</b> The primary purpose of the intervention must be to halt or avert human suffering.</li> <li>• <b>Proportional means.</b> <ul style="list-style-type: none"> <li>a) The scale, duration and intensity of the intervention should be the least necessary;</li> <li>b) There should be reasonable prospects of halting the sufferings without worsening the situation.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Seriousness of threat.</b> Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify prima facie the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?</li> <li>• <b>Proper purpose.</b> Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question?</li> <li>• <b>Last resort.</b> Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?</li> <li>• <b>Proportional means.</b> Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?</li> <li>• <b>Balance of consequences.</b> Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Exhaustion of all peaceful means</b> available in the protection of civilians under threat of violence.</li> <li>• <b>Use of force.</b> <ul style="list-style-type: none"> <li>a) Authorized by the Security Council, or, by the General Assembly, in line with its resolution 377 (V);</li> <li>b) Authorization limited in its legal, operational and temporal elements</li> <li>c) To be carried out in strict conformity with international law, in particular international humanitarian law and the international law of armed conflict;</li> <li>d) To produce as little violence and instability as possible and under no circumstance can it generate more harm than it was authorized to prevent;</li> <li>e) action must be judicious, proportionate and limited to the objectives established by the Security Council;</li> </ul> </li> <li>• <b>Enhanced Security Council procedures to monitor and assess the manner in which resolutions are interpreted and implemented</b></li> </ul>

while Protecting’ concept, The Hindu 12 March 2012 <http://www.thehindu.com/opinion/op-ed/article2985190.ece> (last accessed 3/12/12)

### 3.2.6 Recent Developments

In an address at the United States Holocaust Memorial Museum in Washington, DC, on 23 April 2012, President Obama announced the creation of the high-level interagency Atrocities Prevention Board (APB) and affirmed that “Preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States”<sup>252</sup>.

Other initiatives on prevention of genocide and other mass atrocities crimes include as follows:

- a) The R2P Focal Points initiative launched in September 2010 by the governments of Denmark and Ghana in collaboration with the Global Centre for the Responsibility to Protect. Subsequently the governments of Australia and Costa Rica also joined the organizing group. The first meeting of national R2P Focal Points was held in May 2011. Since September 2010, seventeen countries, representing the global North and South, have appointed a national R2P Focal Point, namely, Australia, Argentina, Belgium, Botswana, Costa Rica, Czech Republic, Denmark, France, Ghana, Guatemala, Italy, the

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<sup>252</sup> The APB will include “representatives of the Departments of State, Defense, Treasury, Justice, and Homeland Security, the Joint Staff, the U.S. Agency for International Development, the U.S. Mission to the United Nations, the Office of the Director of National Intelligence, the Central Intelligence Agency and the Office of the Vice President”. Samantha Power, Special Assistant to the President and Senior Director for Multilateral Affairs and Human Rights, will chair the APB. The Board’s mandate will include facilitating earlier and coordinated responses to threats, as well as developing and improving the U.S. government’s mass atrocity prevention toolkit, including targeted sanctions, reports on lessons-learned, financial levers, early warning systems and alert channels. The APB is a direct result of the Genocide Prevention Task Force’s recommendation (co-chaired by Madeleine Albright, a former US Secretary of State, and William Cohen) to create ‘a dedicated, high-level interagency committee’ to identify effective strategies to prevent large-scale and systematic attacks on civilians”. The initiative was first announced in August 2011 in a Presidential Study Directive on Mass Atrocities Doc PSD 10 <http://www.cfr.org/international-peace-and-security/presidential-study-directive-mass-atrocities-august-2011/p25615> (last accessed 3/12/12) see also <http://www.whitehouse.gov/photos-and-video/video/2012/04/23/president-obama-speaks-preventing-mass-atrocities> (last accessed 3/12/12) see also <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4137-us-president-obama-launches-atrocity-prevention-board#i> (last accessed 3/12/12)



Netherlands, Sweden, Switzerland, Uruguay, United Kingdom and United States.<sup>253</sup>

- b) The Regional Committee on the Prevention of Genocide and Mass Atrocities of the International Conference on the Great Lakes Region (May 2007) headquartered in Bujumbura, Burundi. Its member states are: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Uganda, Rwanda, Sudan, Tanzania, Zambia. The ICGLR is based on partnership with stakeholders, in particular the Group of Friends and Special Envoys, which provides financial, diplomatic, technical and political support. The Group of Friends and Special Envoys is co-chaired by Canada and the Netherlands. Its member countries and organizations include Austria, Belgium, Canada, China, Denmark, the European Union, Finland, France, Gabon, Germany and Greece. Others are the Holy See, Ireland, Italy, Japan, Kuwait, Luxembourg, the Netherlands, Nigeria, Norway, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the United Kingdom and the United States of America.
- c) The Latin American Network for Genocide and Mass Atrocity Prevention (2012) Participating States include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Uruguay and Venezuela

On 19 June 2012 the Human Rights Council hosted a side-event on R2P organized by the Permanent Missions of Australia, Hungary, Nigeria, Thailand, and Uruguay to the United Nations in Geneva to discuss the HR Council's role in implementing the human rights dimension of the responsibility to protect. The event focused specifically on the Council's capacity to operationalise of the first two pillars of R2P, namely, the protection responsibilities of the state; and the commitment of the international community to provide assistance to states in fulfilling their protection obligations through capacity building and assistance. Participants also touched on

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<sup>253</sup> Source Global Center for Responsibility to Protect  
<http://globalr2p.org/advocacy/FocalPoints.php> (last accessed 3/12/12)

best practices and current initiatives in the prevention of mass atrocities<sup>254</sup>. The International Coalition on R2P that prepared a summary of the event<sup>255</sup> affirmed that the side-event was the first occasion during which members of the Human Rights Council were invited to discuss the Responsibility to Protect in Geneva, and represented an important step in promoting R2P advocacy as well as implementation in the Council.

In June 2012 Edward Luck ended his assignment as Special Adviser to the Secretary-General on R2P. At the time this thesis was finalized, it was unclear whether the position would remain or be consolidated under the Special Adviser on the Prevention of Genocide's office.

On 17 July 2012, the Spokesperson for the United Nations Secretary-General (UNSG) announced that Adama Dieng of Senegal was appointed as Special Adviser to the Secretary-General on the Prevention of Genocide instead of Francis Deng, who ended his five-year term at the end of July 2012.

### **3.3 R2P Definition: What is in and what is out?**

After the broad approach that characterized the initial period under Secretary-General Kofi Annan, R2P saw a progressive narrowing of its area of application. This process started with the 2005 Outcome Document and has been confirmed in all documents/statements of Secretary-General Ban Ki-moon.

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<sup>254</sup> The event included an expert panel. Speakers included General Martin Luther Agwai, Deputy Military Adviser to the UN Secretary-General on Peacekeeping Operations; H.E. Mr. José Luis Cancela, Permanent Representative of Uruguay to the United Nations in New York; Edward Luck, Special Adviser to the Secretary-General on the Responsibility to Protect; H.E. Mr. Sihasak Phuangketkeow, Permanent Secretary, Ministry of Foreign Affairs of Thailand and past-President of the Human Rights Council, and Dr Csaba Törő, Senior research fellow, Hungarian Institute of International Affairs. Gareth Evans, former Australian Foreign Secretary, moderated the panel and UN High Commissioner for Human Rights, Navi Pillay, participated via a video message.

<sup>255</sup> Available at <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4267-human-rights-council-hosts-side-event-on-the-responsibility-to-protect-> (last accessed 3/12/12)

By adopting the principle of Sovereignty as responsibility both Kofi Annan and the ICISS had tried to redefine the concept of sovereignty to put the people at the center of the political debate with the aim of reducing injustice globally. The opposition of a number of UN member states brought in 2005 to a simplified version of R2P. Ban Ki-moon accepted the political compromise that resulted from the 2005 Summit. In 2008 the Secretary-General affirmed that it would be counterproductive, and possibly even destructive, to try to revisit the negotiations that led to the provisions of paragraphs 138 and 139 of the Summit Outcome. “Those provisions represent a remarkable good outcome, which will well serve the ultimate purpose of the responsibility to protect: to save lives by preventing the most egregious mass violations of human rights, while reinforcing the letter and spirit of the Charter and abiding principles of responsible sovereignty.” Secretary-General Ban’s approach to R2P is “politically correct” and responds primarily to a preoccupation for maintaining a consensus but at the cost of incisiveness.

For example, the focus on prevention was previously emphasized by the US Genocide Prevention Task Force led by Albright and Cohen. The Task force released its report to the public on December 8, 2008, shortly before the first report of the UN Secretary-General. The Task Force also suggested that the US President direct his Ambassador to the UN to initiate a dialogue among the P5 on the “special responsibility they have to prevent genocide and mass atrocities”, with the aim of reaching agreement on exercising “informal, voluntary mutual restraint in the use or threat of a veto in cases involving ongoing or imminent mass atrocities”<sup>256</sup>. The interest shown for the Brazilian proposal (RwP) is in our opinion another example of the Secretary-General’s primary attention to generate political support rather than provide clear answers.

Some scholars agreed with the narrow approach of the Secretary-General. Referring to the modifications introduced to the ICISS original concept by the 2005 Outcome Document and the 2009 Secretary-General’s report, Gareth Evans affirmed “there

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<sup>256</sup> Genocide Prevention Task Force, 6 available at [http://www.ushmm.org/genocide/taskforce/html\\_report/chapter6.php](http://www.ushmm.org/genocide/taskforce/html_report/chapter6.php) (last accessed 3/12/12)

definitely has been some evolution in the presentation of the concept that these changes have been wholly for the good in terms of winning wider acceptance of it.” In his opinion the ICISS report wanted to focus on the same set of four crimes, but used a broader and more ambiguous formulation.<sup>257</sup>

In another occasion Gareth Evans affirmed that those who interpret the scope of R2P too narrowly (just in military terms) or too broadly are “unhelpful friends of R2P”. In particular, against the latter Evans said: “To use the R2P concept in any of these ways is to dilute to the point of uselessness its role as a mobiliser of instinctive, universal action in cases of conscience shocking killing, ethnic cleansing and other such crimes against humanity: the whole point of embracing R2P language is that it is capable of generating an effective, consensual response in extreme, conscience shocking cases, in a way that ‘right to intervene’ language was not.”<sup>258</sup>

Similarly Rama Mani and Thomas Weiss affirmed that “It may be emotionally tempting and even morally compelling to say that the international community of states has a responsibility to protect people from HIV/AIDS and small arms, or the Inuit from global warming. However, if R2P means everything, it amounts to nothing”<sup>259</sup>.

In an article published in *International Studies Perspectives* in 2009 before the launch of the 2009 Secretary-General’s report on R2P, Bellamy listed six reasons not to approach the prevention aspects of R2P from a classic human security perspective. Inter alia Bellamy maintained that there is the need “to protect R2P’s conceptual identity against those who would weaken it by applying it to scenarios such as generalized human rights abuse or environmental degradation” Furthermore, he said,

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<sup>257</sup> Evans G., *Ethno political Conflict: When is it Right to Intervene?* Op. cit. See also Thakur R. and Weiss T.G., *R2P: From Idea to Norm—and Action? Global Responsibility to Protect 1* (2009) 22–53

<sup>258</sup> “From Principle to Practice – Implementing The Responsibility To Protect” 26 April 2007 keynote address by Gareth Evans to Egmont (Royal Institute of International Affairs) Conference and Expert Seminar available at: <http://www.gevans.org/speeches/speech225.html> (last accessed 3/12/12)

<sup>259</sup> Mani R. and T. Weiss (eds.) *Responsibility to Protect: cultural perspectives in the global South*, page 4

there was no support in the Global South for such a widening of R2P to include structural prevention.<sup>260</sup>

Others, like Roberta Cohen (co-author with Francis Deng of the Guiding Principles on IDPs, where the concept of 'sovereignty as responsibility' was firstly mentioned) argued that the decision to exclude from the application of R2P natural disasters may be questionable in cases where crimes against humanity are committed in response to disasters and the victims are in need of international protection. "While atrocity crimes can be expected to produce emergency situations and displacement, they are not the only cause... Natural disasters and climate change, for example, can be expected to uproot tens of millions and create severe assistance and protection problems. R2P advocates have ruled out applying the concept to natural disasters, but this decision may be questionable in cases where crimes against humanity are committed in response to disasters and the victims are in need of international protection. The debate over Cyclone Nargis in Burma brought that problem to the fore."<sup>261</sup> Similarly Lloyd Axworthy and Allan Rock argued that "if R2P does not apply to situations where a government is actively working to deprive large numbers of people of lifesaving assistance, then we must ask how far the international community has come in saying that it will never again sit idly by in the face of mass human catastrophe. Indeed, the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) anticipated a situation such as the one in cyclone-ravaged Burma when it included in its threshold criteria '[o]verwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened'".<sup>262</sup> Observing that armed conflicts are more often intra than inter-state conflicts, Susan Harris Rimmer affirmed that the lines between mass atrocities and serious human rights violations, forced displacement and genocidal intent, rest

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<sup>260</sup> Bellamy A. J., 'Realizing the Responsibility to Protect', *International Studies Perspectives*, vol. 10(2): 111-128.

<sup>261</sup> Cohen R., *The responsibility to protect: The Human rights and humanitarian dimensions*, Harvard Human Rights Journal Annual Symposium, February 2009. Available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/VDUX-7PTTLY?OpenDocument>, (last accessed 3/12/12)

<sup>262</sup> Axworthy L. and A. Rock, *R2P: A New and Unfinished Agenda*, *Global Responsibility to Protect 1* (2009) 54–69 page 56

unclear. “What is needed, therefore, is for the prevention pillar of the R2P to be complex, nuanced and substantial in response to these challenges. The ‘narrow but deep’ approach articulated by the Secretary-General in January is not reassuring in this regard.” The need to maintain a high threshold/hierarchy of crimes such as genocide as a trigger for intervention is logical but inconsistent when applied to the prevention pillar. For Rimmer a ‘narrow’ focus that does not consider structural gender inequality, economic injustice or minority rights is unlikely to prevent genocide and mass atrocities, so the prevention pillar of R2P at present faces the real prospect of being ‘narrow but shallow’<sup>263</sup>.

We fully agree with the last positions and dare to dissent from the one put forward by Gareth Evans and Alex Bellamy. The definition provided by the ICISS was a clear enunciation of a series of extreme situations in which the international community should/could not stay silent. It did not “amount to nothing” as Rama Mani and Thomas Weiss affirmed. Ramesh Thakur was right when writing that the core of the issue is political<sup>264</sup>. Louise Arbour, in a debate organized by the Stanley Foundation in January 2012 on the occasion of the tenth anniversary of the R2P, also recognized that by narrowing the target and putting emphasis on the first pillar (prevention) it was easier to ensure consensus on R2P. Had the scope been defined more broadly and intervention added consensus would have been more difficult. It is our opinion that by narrowing its scope of application to the four mass atrocity crimes, i.e. genocide, war crimes, ethnic cleansing and crimes against humanity, R2P lost its innovative potential and simply reiterates existing international legal obligations. The confirmation that the narrow approach is due to pure political convenience is in an article written in August 2008 by Edward Luck. There, the newly appointed Special Adviser on R2P explains the new line of the UN Secretary-General “Those claiming parentage, kinship, or friendship of the concept should be careful not to raise expectations too high, too soon, and certainly not to expand its reach to situations beyond those agreed at the World Summit. The 2005 consensus was real, but based on a strict and narrow conception of what R2P is and is not. The agreed scope must

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<sup>263</sup> Dr Susan Harris Rimmer, Refugees, internally displaced persons and the ‘responsibility to protect’, *New Issues in Refugee Research*, Research Paper No. 185, March 2010

<sup>264</sup> See page 127

be respected if the concept is to gain the political traction required for its implementation.”<sup>265</sup> Luck recalled that not only states from the global South but also from the global North, namely the US, expressed concerns on the potential of R2P and that the Outcome Document took these concerns into account. In Luck’s opinion it is therefore important to stick to what was agreed in 2005 without attributing to R2P what we would like it to be.<sup>266</sup>

Wheeler and Egerton argued, against Luck, that it is not evident that “a settled consensus exists on what R2P ‘is’, and whilst UN practitioners like him might be resigned out of political necessity to working with the 2005 model, others wish to recover what they see as the virtues of the original ICISS model.”<sup>267</sup>

Finally we wish to briefly refer to the work of the ILC on the protection of civilians in the event of disasters. The ILC included into its program of work the “protection of persons in the event of a disaster” in 2006. The Special Rapporteur, Eduardo Valencia-Ospina, affirmed that the matter should be viewed as “located within contemporary reflection on an emerging principle entailing the responsibility to protect, which, although couched primarily in the context of conflict, may also be of relevance to that of disasters.”<sup>268</sup> The reference to the R2P was later dropped following the Secretary-General’s decision to limit the scope of R2P in 2009<sup>269</sup>.

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<sup>265</sup> Luck E. C., *The United Nations and the Responsibility to Protect*, Policy Analysis Brief The Stanley foundation August 2008

<sup>266</sup> Luck E. C., *Sovereignty, Choice, and the Responsibility to Protect* *Global Responsibility to Protect* 1 (2009) 10–21

<sup>267</sup> Wheeler N.J. and F. Egerton, *The Responsibility to Protect: ‘Precious Commitment’ or a Promise Unfulfilled?* *Global Responsibility to Protect* 1 (2009) 114–132 Pages 124-125

<sup>268</sup> International Law Commission Sixtieth Session A/CN.4/598, 5 May 2008  
<http://untreaty.un.org/ilc/sessions/60/60docs.htm> (last accessed 3/12/12)

<sup>269</sup> The writer followed the public discussion on this topic in 2008 when the ILC was still busy discussing the possible incorporation of R2P in the protection of persons in case of disasters. Several members of the Commission and the Special Rapporteur were in favor of incorporating man-made disasters into the scope of work, which also included situation in which a state oppresses its own people or denies food and other basic needs. It was highlighted that the responsibility to protect entails the responsibility to prevent, react and rebuild, corresponding, respectively, to the three phases of a disaster situation. This prompted an interesting discussion on the role of the Commission as several members said that the ILC, exactly because it consists of jurists, should assist and guide in prioritizing the new legal principles and be bold enough to look ahead. Other members of the Commission opposed the extension of the subject matter to man-made disasters

### 3.4 R2P as a concept

In 2004 the UN high-level panel went so far as to speak of an "emerging norm of a collective international responsibility to protect," which encompasses not only "the 'right to intervene' of any State, but also the 'responsibility to protect' of every State when it comes to people suffering from avoidable catastrophe."<sup>270</sup>

Kofi Annan, in his report "In Larger Freedom" also referred to R2P as an "emerging norm".

On the other hand, both the 2005 Outcome Document and the 2009 Report of the Secretary-General have adopted a deliberately more cautious terminology and referred to R2P as a "concept". Since words have meaning, we should deduce that for the new Secretary-General R2P is only an idea that needs to be further developed, not a principle or emerging norm as previously referred to.

Bellamy<sup>271</sup> observed that the use of the word "concept" implies that the R2P is far from having a juridical value. "Originating from the Latin participle *conceptus* meaning "conceived", the term "concept" typically refers to an "abstract idea". When governments describe R2P as a concept, therefore, they mean that it is an "idea" – a thought or suggestion about a possible norm or course of action... If ... R2P is a concept, then it is inappropriate for the Security Council or other UN bodies to make use of it in their formal declaration or resolutions, because it is merely an idea warranting further discussion and elaboration and not an agreed principle in need of operationalisation." Bellamy also observed that Edward Luck, the Special Adviser on R2P also described the R2P as a "concept", arguing that there (was) no consensus on whether the R2P has become a norm".

It is not by mistake that traditional opponents of R2P, such as e.g. Cuba, Iran, Pakistan, Russia, Zimbabwe and Venezuela use the word "concept" or "idea" when

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essentially because they had a 'political' connotation and stressed that it was too early to speak about a right (and consequently an obligation) of protection.

<sup>270</sup> A More Secure World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565, at 56-57, paragraphs. 201 and 2002 (2004), available at <http://www.un.org/secureworld/report.pdf> (last accessed 3/12/12)

<sup>271</sup> Bellamy A. J, Responsibility to Protect Op cit page 5



referring to R2P<sup>272</sup>. Reinold observed that Obama also refrained from calling R2P a ‘norm’ or an ‘emerging norm’, which would have suggested that the notion has already evolved into a collectively shared standard of appropriate behavior.<sup>273</sup>

A shift in attitude of the Secretary-General seemed to have taken place in January 2012. In his briefing to the General Assembly on his vision and priorities for his second term in office, Ban Ki-moon referred to R2P as to a new doctrine, a step forward from the word “concept” used in 2007.<sup>274</sup> Unfortunately, after his re-election the old language was used. On 5 September 2012, in presenting the fourth report on R2P the Secretary-General again referred to R2P as a “concept”<sup>275</sup>.

Notwithstanding the new development we can therefore say that at the time in which this dissertation was finalized in the eyes of the Secretary-General and certain

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<sup>272</sup> Some examples: **Cuba** (concept)

[http://responsibilitytoprotect.org/Cuba%20Statement%20\\_Transcribed\\_.pdf](http://responsibilitytoprotect.org/Cuba%20Statement%20_Transcribed_.pdf) (last accessed 3/12/12)

**Iran** (concept) [http://responsibilitytoprotect.org/Iran\(2\).pdf](http://responsibilitytoprotect.org/Iran(2).pdf) (last accessed 3/12/12)

**Pakistan** (concept) <http://responsibilitytoprotect.org/Pakistan.pdf> (last accessed 3/12/12) **Russia** (concept) Open debate on the Protection of Civilians in Armed Conflict United Nations Security Council 25 June 2012

[http://responsibilitytoprotect.org/Statement%20by%20Russian%20Federation%20POC%20debate\(1\).pdf](http://responsibilitytoprotect.org/Statement%20by%20Russian%20Federation%20POC%20debate(1).pdf) (last accessed 3/12/12);

**Zimbabwe** (concept)

[http://gadebate.un.org/sites/default/files/gastatements/67/ZW\\_en.pdf](http://gadebate.un.org/sites/default/files/gastatements/67/ZW_en.pdf) (last accessed 3/12/12)

**Venezuela** (Spanish) -- Statement to the Security Council, Open Debate on the Protection of Civilians in Armed Conflict 25 June 2012 “noción” (notion, idea)

<http://www.responsibilitytoprotect.org/Venezuela%20--20Statement%20to%20the%20Security%20Council,%20Open%20Debate%20on%20the%20Protection%20of%20Civilians%20in%20Armed%20Conflict.pdf> (last accessed 3/12/12);

<sup>273</sup> Reinold T., The United States and the Responsibility to Protect: Impediment, Bystander, or Norm Leader? *Global Responsibility to Protect* 3 (2011) 61–87 pages 80-81

<sup>274</sup> Briefing by the Secretary-General on his vision and priorities for his second term in office - General Assembly 25 January 2012

<http://www.unmultimedia.org/tv/webcast/2012/01/general-assembly-briefing-by-the-secretary-general-on-his-vision-and-priorities-for-his-second-term-in-office-english.html> (last accessed 3/12/12)

<sup>275</sup> Informal interactive dialogue webcast <http://webtv.un.org/watch/part-i-report-of-the-secretary-general-on-the-responsibility-to-protect:-timely-and-decisive-response-a66874-informal-interactive-dialogue-of-general-assembly/1824721949001> (last accessed 3/12/12)

number of member States<sup>276</sup> R2P still is an idea that needs further discussion and elaboration, rather than an emerging norm.

### **3.5 R2P as an emerging legal norm**

While there is a uniform consensus that under international law states are responsible to protect their own population, and that this obligation extends, in particular circumstances, outside the national territory, doubts persist as to whether the breach of this obligation triggers a duty to protect by the international community and the UN. We will start this section by defining the four crimes associated with the R2P, i.e. genocide, war crimes, crimes against humanity and ethnic cleansing. We will then discuss whether R2P gives rise to a moral or a legal obligation to protect the victims of these crimes when they occur.

#### **a) Genocide**

A definition of genocide can be found in the Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the United Nations General Assembly on 9 December 1948 as General Assembly Resolution 260. The crime is also included in the statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda and the Rome Statute of the International Criminal Court.

Article II of the 1948 Genocide Convention<sup>277</sup> provides the following definition of the crime of genocide:

“genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

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<sup>276</sup> For an assessment of the R2P opponents as of 2011” see Claes J., *Protecting Civilians from Mass Atrocities: Meeting the Challenge of R2P Rejectionism*, *Global Responsibility to Protect* 4 (2012) 67–97 page 71

<sup>277</sup> Text of the Convention available at <http://www2.ohchr.org/english/law/genocide.htm> (last accessed 3/12/12)

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Genocide can be committed only against protected groups that are restricted to 'national, ethnical, religious and racial groups.'<sup>278</sup> The main feature that distinguishes genocide from war crimes and crimes against humanity is the requirement to prove that the perpetrator possessed "the intent to destroy, in whole or in part, a national, ethnical, religious and racial group". In its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide of 28 May 1951<sup>279</sup> the International Court of Justice (ICJ) held that the provisions of the Convention express pre-existing customary international law and obligations *erga omnes*; the norm prohibiting genocide constitutes *jus cogens* and, therefore, it is binding upon all States. In the case of *Bosnia-Herzegovina v. Serbia and Montenegro* the ICJ identified the specific obligations of third-party States to prevent and punish genocide. The Court found that Serbia had violated Article I of the Genocide Convention<sup>280</sup> for failure to prevent genocide not in its own territory, but in the territory of a neighboring State (Bosnia). In the Court's opinion the prevention of genocide is a legal obligation. The Court described the scope of this responsibility as "one of conduct and not one of result." The Court further said that "the obligation of States is rather to employ all means reasonably available to them, so as to prevent genocide as far as possible". Thus, responsibility is incurred "if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide"." If the State has available

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<sup>278</sup> The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) Trial Chambers have held that the determination of the relevant protected group must be made on a case-by-case basis also considering whether the victims believed themselves to be members of that targeted group.

<sup>279</sup> <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=90&case=12&code=ppcg&p3=4> (last accessed 3/12/12)

<sup>280</sup> Article I of the Convention states that "genocide whether committed in time of peace or in time of war is a crime under international law which [States] undertake to prevent and to punish."

to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harboring specific intent, it is under a duty to make use of these means as the circumstances permit".<sup>281</sup>

Hubert and Blätter observed that "(g)iven the popular resonance of the term and the strong linkages to prevention, the crime of genocide will remain closely associated with the doctrine of the Responsibility to Protect. At the same time, specific elements of the crime of genocide are cast too narrowly. First the range of protected groups – national, ethnical, racial or religious – is too limited." On the other hand, the authors noted that the rhetorical weight of the crime of genocide in popular discourse may serve as a barrier to generating effective international responses.<sup>282</sup> In support to this consideration one can mention, for example, the fact that the Clinton administration deliberately suppressed the use of the term 'genocide' during the Rwanda violence in 1994 to avoid the rise of moral pressure to stop the mass killing.<sup>283</sup>

#### **b) War Crimes (International and non-international armed conflicts)**

Huber and Blätter provide the following definition of war crimes. "War crimes are violations for which the perpetrators can be held individually liable under international criminal law. They were first codified in a list of offences annexed to the 1907 Hague Convention IV. The Geneva Conventions of 1949 codified what became known as International Humanitarian Law (IHL) in four separate treaties. The scope of these provisions was subsequently broadened through the two Additional

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<sup>281</sup> 13 International Court of Justice Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (Bosnia and Herzegovina v. Serbia and Montenegro,) General List, No. 91, 26 February 2007, available at <http://www.icj-cij.org/docket/files/91/13685.pdf> Judgment, paragraphs 430- 432 (last accessed 3/12/12)

<sup>282</sup> Hubert D. and A. Blätter, *The Responsibility to Protect as International Crimes Prevention*, *Global Responsibility to Protect* 4 (201 2) 33–66 page 35-36page 44

<sup>283</sup> Jehl D. affirmed that "Trying to avoid the rise of moral pressure to stop the mass killing in Rwanda, the Clinton Administration has instructed its spokesmen not to describe the deaths there as genocide, even though some senior officials believe that is exactly what they represent"; in "Officials Told To Avoid Calling Rwanda Killings "Genocide", *New York Times*, June 10, 1994 available at <http://www.nytimes.com/1994/06/10/world/officials-told-to-avoid-calling-rwanda-killings-genocide.html> (last accessed 3/12/12)

Protocols of 1977. These treaties define a set of 'grave breaches' that parties to the treaty agree to criminalize in their national legislation and prosecute."<sup>284</sup>

The Statute of the International Criminal Court defines war crimes as, *inter alia*, "serious violations of the laws and customs applicable in international armed conflict" and "serious violations of the laws and customs applicable in an armed conflict not of an international character". War crimes include willful killing, torture or inhuman treatment, rape, forced prostitution or forced pregnancy, subjecting detainees to mutilation, or medical or scientific experiments and enlisting and using child soldiers. Other war crimes refer exclusively to violations of the conduct of war or the proportionality of means employed for military purposes, such as launching attacks which cause excessive loss of life or injury in relation to the anticipated military advantage, employing weapons, projectiles and material and methods of warfare which are of a nature to cause unnecessary injury or suffering.<sup>285</sup>

International humanitarian law also imposes upon states and armed groups legal obligations during armed conflicts to reduce unnecessary suffering and to protect civilians and other non-combatants.<sup>286</sup>

The Statutes of the International Criminal Court,<sup>287</sup> the Tribunals for the former Yugoslavia<sup>288</sup> and for Rwanda and of the Special Court for Sierra Leone<sup>289</sup> and UNTAET Regulation No. 2000/15 for East Timor<sup>290</sup> all have jurisdiction over war crimes.

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<sup>284</sup> Hubert D. and A. Blätter, *op cit* page 54 see also Strauss E. *op. cit* page 314

<sup>285</sup> Strauss E. *op. cit* page 314

<sup>286</sup> Article 8 of the Statute of the ICC available at <http://untreaty.un.org/cod/icc/statute/romefra.htm> (last accessed 3/12/12)

<sup>287</sup> <http://untreaty.un.org/cod/icc/statute/romefra.htm> (last accessed 3/12/12)

<sup>288</sup> [http://www.icls.de/dokumente/icty\\_statut.pdf](http://www.icls.de/dokumente/icty_statut.pdf) (last accessed 3/12/12)

<sup>289</sup> <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJJeW%3d&tabid=176> (last accessed 3/12/12)

<sup>290</sup> Available at <http://www.unmit.org/legal/UNTAET-Law/Regulations%20English/Reg2000-15.pdf> (last accessed 3/12/12)

### c) Crimes against humanity

Unlike genocide and war crimes, crimes against humanity are not codified in an international treaty. There is however a substantial case law from the various international courts and tribunals. They are considered part of international *jus cogens*. Crimes against humanity were first conceptualized in 1915 during the mass killings of Armenians in the Ottoman Empire when the French, British and Russian Governments issued a joint declaration in view of what they deemed ‘the new crimes of Turkey against humanity and civilization.’ The first formal definition of crimes against humanity was included in Article (6) of the Nuremberg Charter in 1945.<sup>291</sup> The link to armed conflict, as foreseen in the Nuremberg Charter, was included in the Statute of the ICTY but was dropped from the statute of the ICTR and omitted in the Rome Statute establishing the ICC. Crimes against humanity can therefore be committed both in times of war and in times of peace. A series of legal instruments such as the 1973 Convention on the Suppression and Punishment of Crime of Apartheid (Article I); the 1992 Declaration on the Protection of all Persons From Enforced Disappearance (GA Res. 47/133), the 1994 Inter-American Convention on the Forced Disappearances of Persons expanded the meaning to include apartheid, enforced disappearance, torture, rape and imprisonment. The Statute of the ICTY (1993) includes torture, rape and imprisonment to the list of acts constituting crimes against humanity (Article 5).

Pursuant to Article 7 of the Rome Statute crimes against humanity are any of a series of acts “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. In the ICTR’s Akayesu judgment,

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<sup>291</sup> The Article defines crimes against humanity as ‘murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the Jurisdiction of the Tribunal, whether or not in violation of the law of the country where perpetrated  
[http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_5.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_5.pdf) (last accessed 3/12/12)

systematic was defined as ‘thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources.’<sup>292</sup>

Subparagraphs 1(a) to (k) of the same Article 7 enumerate the acts that are considered crimes against humanity. These include (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; (i) enforced disappearance of persons; (j) the crime of apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. Unlike for the crime of genocide, no special or discriminatory intent is required. The acts giving rise to the crime should be either ‘widespread or systematic.’<sup>293</sup>

As in the case of genocide and war crimes, states must ensure that their organs and officials do not commit crimes against humanity nor shall they instruct, direct nor exercise overall control over groups or individuals to commit crimes against humanity. In addition, states must not aid or assist other states to commit crimes against humanity, for example, by supplying weapons in the knowledge that they are being used for this purpose.<sup>294</sup>

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<sup>292</sup> The Prosecutor v. Jean-Paul Akayesu (Trial Judgement), ICTR-96-4-T paragraph 580 available at <http://www.unhcr.org/refworld/publisher,ICTR,,,40278fbb4,0.html> (last accessed 3/12/12)

<sup>293</sup> In the ICTR’s Akayesu judgment, widespread systematic were defined as follows: ‘widespread’ massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims “systematic” thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources. ICTR-96-4-T, 2 Sept. 1998, paragraph 580 available at <http://www.unhcr.org/refworld/publisher,ICTR,,,40278fbb4,0.html> (last accessed 3/12/12)

<sup>294</sup> Strauss E., op. cit page 315

#### **d) Ethnic cleansing**

Ethnic cleansing is not as such a legal term of art. However, different practices constituting the act of ethnic cleansing can be qualified as grave breaches of the Geneva Conventions, war crimes, crimes against humanity and, in certain circumstances, even genocide.

We have seen so far that all of the (three) crimes listed in the 2005 Outcome document and in the 2009 Secretary-General's report, are already covered by treaty law or customary international law. Of those crimes only genocide establishes a clear legal obligation on third parties to protect and prevent. Neither can a legal obligation to protect upon the international community and the UN be found in the Outcome document itself. The 2005 Outcome Document was adopted as a General Assembly resolution, and resolutions of the UN General Assembly are considered recommendatory rather than binding. Hence, many international lawyers have concluded that the R2P enshrined in the World Summit Outcome does not impose new legal obligations upon states acting either unilaterally or collectively and that R2P can only be considered a political commitment or a moral obligation.<sup>295</sup> For other scholars R2P reiterates existing legal obligations without introducing any new one.

For Condorelli and Boisson de Chazournes the R2P has no innovative character: “ Il n’y a, en somme, pas d’innovation véritable, sauf pour ce qui est de la terminologie... le Document final du Sommet mondial ne fait rien de plus, pour ce qui est de la “responsabilité de protéger”, qu’assembler une série d’acquis juridiques dans un cadre unitaire, au moyen duquel, d’une part, on rappelle a chaque Etat, par rapport a sa propre sphère de juridiction, les obligation contre des crimes de génocide, des crimes de guerre, des pratiques de nettoyage ethnique et des crimes contre l’humanité; et, d’autre part, on souligne que tous les autres Etats, le Conseil des sécurité voire les diverses organisations internationales compétentes son appelés à

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<sup>295</sup> Strauss E., op. cit pages. 293; Stahn C., op.cit page 101-2



agir conformément à la Charte des Nations Unies et au droit international pour faire cesser ces violations, en faisant usage de toute la panoplie de moyens disponibles”<sup>296</sup>.

Stahn argues that R2P should be understood partly as a political catchword that gained quick acceptance because it could be interpreted by different actors in different ways, and partly as "old wine in new bottles", as some of the propositions are not novel, "but grounded in established concepts of international law". Furthermore, the uncertainty surrounding the consequences of noncompliance sheds doubt on the notion that responsibility to protect was meant to be an emerging hard norm of international law at all, instead of "soft law" or a political principle.<sup>297</sup>

Of the same opinion is Ekkard Strauss, who argued that the negotiation history of the Summit Outcome Document reveals that 'responsibility' was meant not to include a particular legal obligation.<sup>298</sup> Gierycz equally observed that the obligation to provide protection from genocide, war crimes, ethnic cleansing, and crimes against humanity contained in the Outcome Document stem from well established rules and principles of customary and treaty international human rights law and international humanitarian law that are universally binding. Thus, "the provisions in the outcome document constitute their reflection, not the source of the obligations."<sup>299</sup> For Clapham the R2P is a political concept.<sup>300</sup> While affirming that the R2P should rather be understood as a political commitment, Bellamy and Reike recognized the emergence of nascent legal thinking which suggests that a wider set of legal duties might emerge in the future "...whilst nothing in the RtoP principle widens the scope for coercive interference in the domestic affairs of states, it is important to recognise

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<sup>296</sup> Boisson de Chazournes L., L. Condorelli, De la "Responsabilité de protéger", ou d'une nouvelle parure pour une notion déjà bien établie. *Revue générale de droit international public*, 2006, no. 1, p. 11-18

<sup>297</sup> Stahn C., *op cit* page 102 and 118

<sup>298</sup> Strauss E. *op. cit* pages 291–323

<sup>299</sup> Gierycz D., *The Responsibility to Protect: A Legal and Rights-based Perspective*, *Global Responsibility to Protect 2* (2010) 250–266 page 252

<sup>300</sup> Clapham A., "Responsibility to Protect – Some Sort of Commitment" *Responsibility to Protect – "Some Sort of Commitment"*, in V. Chetail (ed) *Conflicts, sécurité et coopération/ Conflicts, security and cooperation: Liber Amicorum Victor-Yves Ghebali*, Brussels: Bruylant, 2007, pp. 169-192.

that emerging trends spearheaded by the ILC and ICJ may see the evolution of a legal duty to respond decisively to genocide and mass atrocities that inheres on Member States generally, the Security Council in particular, and the UN system as a whole – though we remain a long way from reaching consensus on this point.<sup>301</sup>

Glanville argued that the extent to which the international community bears a legal responsibility to protect is likely to remain at best highly contested at least in the short term. Significant questions remain open, including how to determine who in particular bears the legal responsibility in a given situation and what remedies are available in instances where actors fail to discharge their obligations.<sup>302</sup>

For Welsh and Banda the intrinsic ambiguities in R2P articulation limit its capacity to establish new obligations for states to protect strangers. According to the authors, R2P is not a rule of hard law, but it is a soft law norm. As such R2P can nonetheless exert significant influence on how states interpret their legal obligations<sup>303</sup>.

Brunnée and Toope observed that R2P has not yet become a binding norm of international law, as for an international norm to develop, it is important that the ‘norm building process’ has widely shared understanding, and this understanding should be cultivated over time. The 2005 Outcome agreement was not seen as the culmination of the norm building process, but rather as a platform for further normative interaction and deliberation. The authors concluded that R2P is increasingly supported, but it ‘falls short on several legal criteria (...) notably on generality, clarity, consistency and constancy over time’.<sup>304</sup>

For some other scholars the Summit Outcome Document created an additional obligation for the international community to protect civilian populations from the listed crimes; for other R2P is an emerging legal norm. For Louise Arbour R2P is a

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<sup>301</sup> Bellamy A.J. and R. Reike, *The Responsibility to Protect and International Law*, *Global Responsibility to Protect 2* (2010) 267–286 page 286

<sup>302</sup> Glanville L., *The International Community’s Responsibility to Protect Global Responsibility to Protect 2* (2010) 287–306 page 302

<sup>303</sup> Welsh J. M. and M. Banda, *International Law and the Responsibility to Protect: Clarifying or Expanding States’ Responsibilities?*, *Global Responsibility to Protect 2* (2010) 213–231

<sup>304</sup> Brunnée J. and S. J Toope, *‘The Responsibility to Protect and the Use of Force: Building Legality? Global Responsibility to Protect, (2)* (2010), pp 191-212. Page 206

new international norm that rests upon the international law obligation of prevention and punishment of genocide, but that is separated from existing legal obligations. She saw in the ICJ ruling *Bosnia v. Serbia* mentioned above the evidence of an emerging legal duty of the international community and the United Nations to prevent genocide. “Might the judgment, however, also carry responsibilities not only for Serbia and its surrogates in Bosnia Herzegovina, but also to other States parties to the Convention, and indeed to the wider international community? Certainly, the logic of the judgment would suggest such an assumption. In concrete terms, it might be suggested that all such tools as are at a State's disposal—in all areas of State authority, be it economic, political, diplomatic, or other—must be reasonably utilized, consistently with international law, in ways which might reasonably contribute to preventing genocide or deterring perpetrators? The Serbia example demonstrates that at least these tools of authority must be employed by neighboring or regional States which are well positioned to exert influence and are likely to possess information about the reality of the relevant risks.” Arbour then maintained that if R2P “were primarily designed to assert the responsibility of States vis-à-vis their own people, then it would be too narrowly framed and essentially do no more than replicate existing international law.” Louise Arbour also maintained that members of the Security Council, particularly the Permanent Five Members (P5) hold an even heavier responsibility than other States to ensure the protection of civilians everywhere. “If their responsibility were to be measured in accordance with the International Court of Justice’s analysis, it would seem logical to assume that a failure to act could carry legal consequences and even more so when the exercise or threat of a veto would block action that is deemed necessary by other members to avert genocide, or crimes against humanity”<sup>305</sup>

Though skeptical, Bellamy and Reike observed that in the *Bosnia v Serbia* ruling the Court ‘goes some way towards establishing a legal duty to intervene on the part of the UN Security Council. ...In the future, states that are victims of genocide might test this proposition by bringing the permanent members of the Security Council to the

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<sup>305</sup> Arbour L., *The Responsibility to Protect as a Duty of Care in International Law and Practice*, Trinity College Dublin, November 23, 2007

ICJ charged with failing to take reasonably available measures to prevent genocide”<sup>306</sup>

For Burke-White R2P is an emerging legal norm, which, even without legal obligation, is already having concrete impact by shifting understandings of state sovereignty and increasing the political and moral costs of inaction in face of atrocity. Its power lies in the ability to generate political pressure. Burke-White maintained that the fourth sentence of the 2005 Outcome Document - “(t)he international community should, as appropriate, encourage and help States to exercise this responsibility..” - marks an important departure from existing international law transforming the direct legal obligation of the territorial state to prevent and punish atrocity into an affirmative duty on behalf of all states to assist the former in its efforts.<sup>307</sup>

For Sandra Szurek R2P is a new concept that finds its legal basis in the existing international law « il convient donc de souligner que si la R2P est un concept nouveau, celui-ci s’inscrit dans la logique des évolutions les plus marquantes du droit international de ces dernières décennies. Loin d’être une innovation juridique, une création ex nihilo, la R2P trouve dans le droit international son fondement juridique... Sans être encore une norme de droit international général, la R2P s’affirme comme un principe de comportement universel pour tous les États et la communauté internationale, que leurs différentes organisations représentatives sont appelés à intégrer dans leur action »<sup>308</sup>

Anne Peters maintained that although the idea of R2P is partly based on existing international law, it is not “legally superfluous” as it groups pre-existing norms together and places them in a novel framework. “The whole is more than the sum of

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<sup>306</sup> Bellamy A. J. and R Reike, ‘The Responsibility to Protect and International Law’, *Global Responsibility to Protect*, (2) (2010) 267-286. page 283 and 285

<sup>307</sup> Burke-White W. W., *Adoption of the Responsibility to Protect in Genser Jared, Irwin Cotler, The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time*, Oxford University Press, 2011, 16-36 page 25

<sup>308</sup> Szurek S., *La responsabilité de protéger: Mauvaises querelles et vraies questions ACIDI*, Bogotá, Vol. 4, pp. 47-69, 2011 page 54 and 98 see also Szurek ‘La responsabilité de protéger, nature de l’obligation et responsabilité internationale’ in *Société française pour le droit international* (ed), *Colloque de Nanterre, La responsabilité de protéger* (Pedone, Paris 2008), 91-134, page 93

the parts. R2P therefore has some added legal value, notably a conceptual one, independent of whether it is qualified as a binding legal norm as such". Instead of speaking in terms of a substantive legal obligation of all states and the UN, whose non-fulfillment would trigger legal liability, Peters' suggestion is to focus on the procedural aspect and in particular on the obligation of the Security Council's members to justify their decisions. "The obligation to give reasons leaves the exercise of the veto within the realm of discretion of the permanent member, but still forces the member to rationalize its decision. This allows other states and the public to criticize these reasons."<sup>309</sup>

Anne Orford contests the widespread opinion that the concept of R2P has been left deliberately vague "suggesting that states have no intention of taking on new obligations to protect suffering people in foreign lands" and rejects the argument implicit in this opinion that if the R2P does not impose any new binding obligation upon states or international organizations, then it has no normative effect and amounts to political rhetoric. Basing her argument on A. Hart's distinction between laws that confer powers and those that impose duties<sup>310</sup>, Orford affirmed that the R2P should be understood as normative in the former sense as providing legal authorization for certain kinds of activities. "The RtoP concept is not a form of law that imposes duties on subjects. Rather it can be understood as a form of law that confers "powers" of a public or official nature and allocate jurisdiction."<sup>311</sup> Orford argued that R2P should thus be understood as part of the international legal tradition: it is not primarily concerned with the distribution of jurisdiction and authority between states but rather between states and international actors. Consequently, while states are responsible for their citizens, the UN is responsible for the international community as a whole. The R2P can be understood as an attempt to answer increasingly pressing questions about the legitimacy of international authority. It offers a normative foundation for the practices of international

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<sup>309</sup> Peters A., *Between sovereignty and humanity: The constitutionalisation of international law* Page 4-6 available at [http://www.ourcommonfuture.de/fileadmin/user\\_upload/dateien/Reden/Peters\\_paper.pdf](http://www.ourcommonfuture.de/fileadmin/user_upload/dateien/Reden/Peters_paper.pdf) (last accessed 3/12/12)

<sup>310</sup> Hart A., *In the concept of law*, in Orford op.cit. page 25

<sup>311</sup> Orford A. op cit page 25

executive actions that have been undertaken in the decolonized world since late 50s. These practices were introduced by Dag Hammarskjöld with his preventive diplomacy and have since expanded to create a long-term policy and managerial role for the UN.<sup>312</sup>

A reference to collective responsibility can be found in the work of the ILC on state responsibility. The ILC endorsed the idea that certain breaches of international law may be so grave to generate not only a right, but also a certain obligation of states to foster compliance with the law. The Commission limits this principle to the particular category of violations, namely "a gross or systematic failure by the responsible State" of "a peremptory norm of general international law" and specifies that such breaches would entail two sets of consequences: (1) a positive obligation upon the other states "to cooperate to bring [the serious breach] to an end through lawful means" (Article 41 (1)); and (2) a negative obligation not to recognize as lawful a situation created by the serious breach as well as not to provide aid or assistance in maintaining that situation (Article 41(2)). The duty of cooperation under Article 41(1) presents similarities with the idea of collective responsibility under the R2P. The Commission makes clear that the obligation to cooperate applies to states whether or not they are individually affected by the serious breach. It associates this duty, in particular, with two forms of action, which are also relevant to the responsibility to protect: "a joint and coordinated effort by all states to counteract the effects of [serious] breaches" of peremptory norms of general international law and international cooperation, which would be "organized in the framework of a competent international organization, in particular the United Nations." On the other hand, the Commission acknowledges that it is open to question whether general international law at present prescribes a positive duty of cooperation and conceded that in that respect Article 41(1) "may reflect the progressive development of international law."<sup>313</sup>

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<sup>312</sup> Orford A. op cit page 189

<sup>313</sup> Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001  
[http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) (last accessed 3/12/12)

Contarino and Lucent argued that an enhanced role for the International Criminal Court in determining when a government has failed in its Responsibility to Protect could help develop a faster, more effective and impartial R2P enforcement mechanism. Enforcement of the responsibility to protect entails two components: the assessment that a government has failed or is failing to protect a population, and the determination of appropriate actions to stop the abuses. At present the Security Council is responsible for both. However, its political nature and the veto power have made the action of the Security Council ineffective. A juridical, rather than a political process, would accelerate the process and produce a body of R2P jurisprudence that would clarify the bases for legal international interventions. This would however require a revision of the ICC Statute<sup>314</sup>. The reforms suggested by the authors would empower the ICC to consider possible R2P violation, and to issue a formal ruling declaring whether or not a violation has occurred. Such a ruling would only determine the existence of the violation, and would not prescribe any specific response or remedy. It would supplement, but not replace, the Security Council.

Hubert and Blätter maintained that while much controversy surrounds the exact meaning of R2P in the discussion by the General Assembly as well as its institutional and operational implications for the United Nations and member states, the circumstance under which the R2P should be invoked is an area in which exists genuine clarity. In fact it refers to crimes relatively well known and whose state responsibility and individual criminal liability have been widely accepted. “Yet surprisingly little attention has been given to how legal standards and jurisprudence might further advance this agenda. (...) While international criminal justice mechanisms, particularly the ad hoc tribunals, have been criticized as ‘extremely costly bureaucratic machines’ ... they are also the source of the most systematic and detailed analyses of the crimes that the Responsibility exists to prevent and to halt.”<sup>315</sup>

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<sup>314</sup> Contarino M. and S. Lucent, *Stopping the Killing: The International Criminal Court and Juridical Determination of the Responsibility to Protect* Global Responsibility to Protect 1 (2009) 560–583 The article was written in 2009 one year before Rome treaty revision conference which was held in 2010.

<sup>315</sup> Hubert D. and A. Blätter, *The Responsibility to Protect as International Crimes Prevention*, *Global Responsibility to Protect* 4 (2012) 33–66 page 35-36

Gentian Zyberi highlighted the relevance of both the advisory and settlement of dispute functions of the ICJ (International Court of Justice) to interpreting, developing and enforcing R2P for States and International organizations, including the UN. For Zyberi “(t)he implementation of the obligations arising under R2P and the lack of sufficient clarity regarding the incumbent duties upon the different actors involved in carrying out these duties raise a number of complex issues. The ICJ along with other main international courts and tribunals can provide the necessary legal guidance and oversight in the process of the institutionalization and implementation of R2P.”<sup>316</sup>

### **3.6 The Role of civil society**

In her intervention to the side-event to the Human Rights Council of 19 June 2012 (cited above) the UN High Commissioner for Human Rights, Navi Pillay, said that the crimes and violations covered by the R2P never happen without warning. “They occur because warning signs such as the persecution of minorities, hate speech, patterns of sexual violence, child soldier recruitment or a rapid deterioration of the social and economic situation are not perceived or understood or they are deliberately ignored.”<sup>317</sup> Civil society and non-governmental organizations play an important and complementary role in the implementation of R2P. This includes enhancing understanding of the principle amongst the public, lobbying for firmer action, promoting respect for cultural diversities and raise awareness of the actual need of those in R2P situations.<sup>318</sup> Edward Luck argued that the involvement of civil society is particularly important as the operational issues are coming to the forefront, and national policymakers and parliamentarians will need to confront the costs, risks,

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<sup>316</sup> Zyberi G., *The Responsibility to Protect through the International Court of Justice*, Chapter 20 *Responsibility to Protect: from Principle to Practice*, Hoffmann Julia and André Nollkaemper (eds), Pallas Publications, Amsterdam University Press, Amsterdam 2012 pp 305-317 quotation page 314.

<sup>317</sup> <http://una.org.uk/sites/default/files/Navi%20Pillay%20Message%20to%20Human%20Rights%20Council%20R2P%20event%2019-06-12.pdf> (last accessed 3/12/12)

<sup>318</sup> This was also stressed by Secretary-General Ban Ki-moon in his 2011 report on the role of regional and sub-regional arrangements in implementing the responsibility to protect Doc A/65/877-S/2011/393 available at <http://www.responsibilitytoprotect.org/RtoP%20Info%20Note%20and%20Programme%20-%20SG%20Report%20-%2006%20July%202011.pdf>



and policy trade-offs that will inevitably arise in the implementation of R2P strategies.<sup>319</sup>

For Rama Mani and Thomas Weiss a deeper understanding of culture as well as the incorporation of cultural perspectives in framing responses to mass atrocities is necessary. According to the authors civil society can help reinforcing the emergent emphasis on prevention and early action as well as re-knitting the cultural and political fabric of war-torn societies<sup>320</sup>. Mohamed Sahnoun reminded that solidarity with the vulnerable – that is at the basis of all cultures - constitutes the very foundation of R2P. “It is indeed by working with civil society and grass roots populations and respecting the complexities of each culture that the United Nations can build credibility and trust. In fact, they alone would enable the world organization to justify coercive R2P action when required.”<sup>321</sup>

In January 2008 the International Coalition for the Responsibility to Protect (ICRtoP) was launched by representatives of eight regional and international non-governmental organizations,<sup>322</sup> including the International Refugees Rights Initiative, CRIES, OXFAM International, the Initiatives for International Dialogue, the West Africa Civil Society Institute and Human Rights Watch. To date forty-five non-governmental organizations are member of the Coalition, of which four from Asia, one from the Middle East, thirteen from Africa, fourteen from North America, four from South and Central America and nine from Europe<sup>323</sup>. In addition, thirty-seven

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<sup>319</sup> Luck E.C., *The Responsibility to Protect: The First Decade/ Global Responsibility to Protect* 3 (2011) 387–399 page 398

<sup>320</sup> Mani R., T. G. Weiss (eds), *Responsibility to protect: cultural perspectives in the global South*, Routledge, 2011

<sup>321</sup> Mani R., T. G. Weiss op cit pages xx - xxii

<sup>322</sup> <http://www.responsibilitytoprotect.org/index.php/about-coalition>,  
[http://www.un.org/News/briefings/docs/2009/090128\\_Civil\\_Society.doc.htm](http://www.un.org/News/briefings/docs/2009/090128_Civil_Society.doc.htm)

<sup>323</sup> African Club, University of Melbourne (Melbourne, Australia), An Association for Awareness (New Delhi, India), Athencottasan Muthamizh Kazhagam (AMK) (Kanyakumari, India); L'Association Nationale Pour la Promotion de l'Education et la Culture (ANPEC) (Tagnat, Mauritania); Barcelona Radical (Barcelona, Spain); Bashiran Munshi Foundation (Multan, Pakistan); Center for Victims of Torture (Minneapolis/St. Paul, USA); Center for War/Peace Studies (New York, USA); DanChurchAid (Copenhagen, Denmark); Desert Research & Development Society (Jodhpur, India); Digvijay Yagya (New Delhi, India); Diplomatic Society of Saint Gabriel (Geneva, Switzerland; Manila, Philippines; New York and Seattle, USA); E.O.NE.P.E. Research Group for New Political Science (Athens, Greece);

NGOS are indicated as supporters (updated July 2012)<sup>324</sup>. The aims of the Coalition are, inter alia, to regroup NGOs from all regions of the world to strengthen normative

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Female Development Organization (Faisalabad District, Pakistan); Fondation Archeveque Dr. Emmanuel St. Louis (FADRESL) (Haiti); Human Resource Development Foundation (HRDF) (New Delhi, India); Human Rights Center, University of California, Berkeley (Berkeley, USA); Human Rights First Society (Saudi Arabia); International Center for Policy and Conflict (Nairobi, Kenya); International Human Rights Organization (Islamabad, Pakistan); Independent Responsibility 2 Protect Group (Leiden, Netherlands); Kaicombey Foundation for Sustainable Development (Winnipeg, Canada and Kenema Town, Sierra Leone); Muslims for Human Rights (MUHURI) (Mombasa, Kenya); National Youth Action, Inc. (NAYA) (Montserrado County, Liberia); Natural Life Development Organization (Khurrianwala, Punjab, Pakistan); Orissa State Volunteers and Social Workers Association (Bhubaneswar, India), People's Association for Rural Development (PARD) (Madurai, India), Permanent Peace Movement (Beirut, Lebanon); Public Committee Against Torture in Israel (PCATI) (Jerusalem, Israel and OPT); Redemption Research for Health and Educational Development Society (Andhra Pradesh, India); Responsibility to Protect Student Coalition, University of Queensland (R2P-SC) (Brisbane, Australia); Servi Tu Ciudad (Montevideo, Uruguay); Student Scientific Association for Human Rights 'Humanitas' (Poznan, Poland); Social Action for Integrated Development (SAID) (Mahabubnagar, India); Social Education and Environmental Development (SEED) (Salem, India); UN Watch (Geneva, Switzerland); World Citizens Association (Sydney, Australia)<sup>324</sup> Act for Peace (Sydney, Australia); Aegis Trust (London, UK); Asia-Pacific Centre for the Responsibility to Protect (Brisbane, Australia); Auschwitz Institute for Peace and Reconciliation (New York City, USA and Poland); Canadian Centre for the Responsibility to Protect (CCR2P) (Toronto, Canada); Canadian Lawyers for International Human Rights (CLAHR) (Toronto, Canada); Centre for Media Studies & Peace Building (CEMESP) (Monrovia, Liberia); Centre for Peace and Conflict Studies (Sydney, Australia); Centro de Investigacion y Educacion Popular (CINEP) (Bogota, Colombia); Citizens for Global Solutions (Washington, DC); Coalition for Justice and Accountability (COJA) (Freetown, Sierra Leone); Coordinadora Regional de Investigaciones Económicas y Sociales (CRIES) (Buenos Aires, Argentina); Droits Humains Sans Frontieres (Kinshasa, Democratic Republic of the Congo); East Africa Law Society (Arusha, Tanzania); Fundacion para la Paz y la Democracia (FUNPADEM) (San Jose, Costa Rica); Genocide Alert (Köln, Germany); Global Action to Prevent War (New York, USA); Human Rights Watch (New York, USA); Human Rights Network Uganda - HURINET (Kampala, Uganda); Initiatives for International Dialogue (Davao city, Philippines); International Crisis Group (Brussels, Belgium); International Refugee Rights Initiative (New York and Uganda); Kenyan Section of the International Commission of Jurists (Nairobi, Kenya); Kofi Annan International Peacekeeping Training Centre (Accra, Ghana); Minority Rights Group International (London, United Kingdom); NATO Watch (Ross-shire, United Kingdom); Oxfam International; Pan Africa Lawyer's Union (Addis-Ababa, Ethiopia); Permanent Peace Movement (Beirut, Lebanon); Réseau de Développement et de Communications de la Femme Africaine (FEMNET) (Bamako, Mali); Semillas para la Democracia (Asuncion, Paraguay); The Sentinel Project for Genocide Prevention (Toronto, Canada); STAND Canada (Toronto, Canada); The Stanley Foundation (Muscatine, USA); United Nations Association of the Democratic Republic of the Congo (Kishasa, DRC); United Nations Association of Denmark (Copenhagen, Denmark); United Nations Association of Spain (Barcelona, Spain); United Nations Association of Sweden (Stockholm, Sweden); West Africa Civil Society Forum (Abuja, Nigeria); West Africa Civil Society Institute (Accra,

consensus for R2P, further the understanding of the norm, push for strengthened capacities to prevent and halt mass atrocity crimes. Coalition Members and NGO Supporters agreed on the following:

- 1) To promote these R2P principles among NGOs, governments, policy-makers and the public;
- 2) To ensure that R2P is restricted to genocide, war crimes, ethnic cleansing and crimes against humanity, as articulated in the 2005 World Summit Outcome Document;
- 3) To defend against R2P being interpreted as a new version of military humanitarian intervention, and
- 4) To guard against the abuse of the norm by governments, regional organizations or international organizations.

### 3.7 Conclusions

Borrowing the words of Louise Arbour we can say that after the end of humanitarian decade “the need for response in case of massive and systematic violations of human rights did not dissipate simply because of the inability of the international community to take a stand or because the debate had remained inconclusive”<sup>325</sup>. The challenge to reconcile the principle of non-interference with the need of the international community to respond to massive violation of human rights was taken by the government of Canada, which established the International Commission on Intervention and State Sovereignty (ICISS). In 2001 the Commission presented its report in which the whole concept of intervention for humanitarian purposes was totally reformulated. The 2005 Outcome agreement reinterpreted politically the ICISS recommendations. One of the results was the narrowing of the scope. Some

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Ghana); West Africa Network for Peacebuilding (WANEP) (Accra, Ghana); Women's Refugee Commission (New York); World Federalist Movement-Canada (Ottawa, Canada); World Federalist Movement-Institute for Global Policy (New York and The Hague); World Federation of United Nations Associations (New York and Geneva)

<sup>325</sup> Arbour L. op cit

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=3203&LangID=E> (last accessed 3/12/12)

commentators criticized the final text of the agreement as a watered down version of the ICISS report while others welcomed the Outcome document as an important recognition of the responsibility of sovereigns toward their citizens and the international community.

Following the 2005 Outcome Document, with the exception of UN Security Council Resolutions 1674 and 1706 (respectively on the protection of civilians in armed conflict and on Darfur) R2P did not advance much further. The first operational references to the “responsibility to protect” came against Libya in 2011.

After his appointment to Secretary-General, Ban Ki Moon tried to revitalize the principle. The merit of Ban Ki-moon is definitely to have reopened the debate and rekindled the interest for R2P. In 2009 the Secretary-General presented his report on the implementation of R2P. Three more reports followed, respectively on early warning and on the role of regional and sub-regional organizations and timely and decisive action.

In the implementation of the principle, Secretary-General Ban Ki-moon and his Special Adviser Edward Luck accepted the political compromise that resulted from the 2005 Summit. In the Secretary-General’s opinion it would be counterproductive, and possibly even destructive, to try to revisit the negotiations that led to the 2005 agreement. Furthermore, to reduce controversy over the use of military force, the Secretariat’s emphasis focused on the protection responsibilities of individual states and on international assistance and capacity building.

Controversy, however, still surrounds the meaning of R2P and its implementation, while the debate seems to have moved to the Security Council as part of the discussion of the protection of civilians in armed conflict. Set aside the interactive discussion on the report of the Secretary-General, in 2011 R2P was mentioned by UN Member States 57 times, of which 37 on the occasion of the two open debates on the protection of civilians in armed conflict and 20 during the 66<sup>th</sup> UN General Assembly. In 2010 13 Member States intervened on R2P at the 65<sup>th</sup> UN General Assembly and 40 during the open debate on the protection of civilians held in July

2010.<sup>326</sup> However, as the UN High Commissioner for Human Rights, Navanethem Pillay, observed, in its current definition, the concept of protection of civilians is both broader and narrower than R2P; it is broader as it includes a wider set of violations of human rights and humanitarian law, and narrower as it limits the attention to violations occurring at least in the broader context of armed conflict, while genocide and crimes against humanity could be committed independent of such situations.

The narrow approach of the Secretary-General has not succeeded so far in clarifying whether R2P should be considered “a political response to a political need”<sup>327</sup> as affirmed by Gareth Evans; an idea requiring further elaboration; or an emerging legal norm. Approaching the issue from a legal point of view, we tried to understand whose the responsibility to protect is. The result is that, at present, with the exception of the crime of genocide, the responsibility to protect lies exclusively with the relevant state, while the collective responsibility remains a moral imperative.

But the common moral refuses to accept that world citizens can still suffer or indeed die of mass atrocity crimes. R2P should be more than just an appeal to morality; it needs to translate the moral revulsion into concrete action to protect civilians in case of “deliberate state action, or state neglect or inability to act, or a failed state situation” to use the ICISS definition. The misuse of the term R2P during the 2003 invasion of Iraq reinforced rather than dissipated the doubts of those States who believed that despite the consensus reached in 2005, the new principle was “the mere continuance of interventionist policies aimed at destabilizing political regimes”<sup>328</sup> On the other hand, we should not be hypocritical and demonize the use of force because, as Ramesh Thakur rightly pointed out, “to be meaningful, the R2P spectrum of action must include military force as the sharp-edge option of last

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<sup>326</sup> Source the International Coalition for the Responsibility to Protect  
<http://www.responsibilitytoprotect.org/index.php/document-archive/government?view=fjrelated&id=2409> (last accessed 3/12/12)

<sup>327</sup> R2P The Next Decade <http://www.stanleyfoundation.org/r2p.cfm> (last accessed 3/12/12)

<sup>328</sup> As the Mexican Representative stressed during the Open Debate on the protection of civilians in armed conflict on 22 June 2007 see note

resort.”<sup>329</sup> In any case we should keep our options open; more civil society-oriented perspective might shed new light on what protection really means to those in need and the result may be surprising.

All that said, the real problem lies in the failure of the UN Security Council to deal with certainty and rapidity with R2P situations. This has impeded the emergence of an international regime capable of detecting when R2P violations exist, and ensuring that abuses are ended. The adoption of a “code of conduct’ for the P5 in the context of cases for which the responsibility to protect is invoked – as proposed by in the ICISS report in 2001, by the High Panel in 2004 and more recently by the Secretary-General and the Brazilian’s proposal on RwP - would serve the purpose.

Finally, the R2P could not succeed without the active involvement of the Human Rights Council, which has played an important role in developing and implementing R2P; and, as Contarino and Lucent and Zyberi suggested, a more direct involvement of international justice mechanisms such as the ICC and the ICJ. R2P is not simply a political principle. As rightly pointed out by Julia Hoffmann and André Nollkaemper “the equation of the scope of RtoP with (the four crimes of genocide, crimes against humanity, war crimes and ethnic cleansing) has indisputably brought it within a legal regime.”<sup>330</sup>

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<sup>329</sup> Thakur R., R2P, Libya and International Politics as the Struggle for Competing Normative Architectures e-International Relations September 2011 available at <http://www.e-ir.info/wp-content/uploads/R2P.pdf> (last accessed 3/12/12)

<sup>330</sup> Hoffmann J. and A. Nollkaemper , Concluding Observations, Responsibility to Protect: from Principle to Practice, Hoffmann Julia and André Nollkaemper (eds), Pallas Publications, Amsterdam University Press, Amsterdam 2012, pp 355-371 quotation page 359

# LIBYA

## Chapter 4

### Introduction

The crisis in Libya soon developed into a test case for R2P. Few days after the beginning of the unrest, in February 2011, the UN Security Council, the Human Rights Council, and the UN Secretary General Ban as well as Arab League called on Libya to respect its R2P, human rights and international humanitarian law obligations. When these early appeals were ignored, the Security Council imposed arms, financial and travel sanctions on Libya and referred Gaddafi to the International Criminal Court (Security Council Resolution 1970 of 26 February 2011) to investigate crimes against humanity committed from 15 February 2011 onwards. On 17 March 2011 UN Security Council adopted Resolution 1973 authorizing every military action necessary for the protection of the civilian population. The decision by the Security Council was rapid and the preconditions for intervention rather unique as the Libyan representative to the UN Security Council also had supported the international action and the League of Arab States and the African Union had spoken in condemnation of the situation in Libya. The Russian Federation and China accepted, de facto, the R2P doctrine by abstaining in the voting of the Resolution.

The military intervention, though authorized by the Security Council, provoked however ex post an extensive debate. Two issues were in particular under discussion, i.e. whether resolutions n. 1970 and n. 1973 created a precedent able to advance the doctrine of R2P to the degree of international norm and eventually be used in other countries of the Middle Eastern region (Syria), and whether all peaceful means had been exhausted and the scale, duration and intensity of the intervention had been the least necessary.

Opinions of course differed. Some commentators welcomed the decision of the Security Council as a success for the R2P doctrine while others showed a higher degree of skepticism. For Ramesh Thakur what happened in Libya showed that R2P is coming closer to being solidified as an actionable norm, a turning point in the response to mass atrocities: "Libya today is the place and time to redeem or renege on R2P's solemn pledge. The people's uprising against Gaddafi is tailor-made for R2P"<sup>331</sup>. For Fred Kaplan the intervention in Libya was "the most straightforward case for "R2P" action that's come along in years, maybe decades."<sup>332</sup>

Other doubted that the endorsement of the doctrine by the Security Council would give any guarantee that R2P will be applied also in future cases. It was argued that R2P remains grounded in a case-by-case assessment by the Security Council and its referral depends upon many factors such as urgency, prospects of success, military costs, possible benefits, risks of escalation etc.<sup>333</sup> Others, like Rony Brauman that oppose the use of force tout court, expressed doubts that the intervention was at all humanitarian arguing that the decision to the use force was rather justified by the desire to induce a regime change.<sup>334</sup> Others argued that the real purpose behind the intervention was the protection of vital national interests at stake in the conflict, i.e. oil. Another explanation for the intervention was the possibility that Libya could return to being a state sponsor of terrorism. Part of this reasoning is linked to the fact that the international community reacted differently in Libya in comparison with other "Arab Spring" movements. Why not Yemen and Bahrain? "Bahrain is an ally for the West and

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<sup>331</sup> "The World's Responsibility to Protect Libyans The international community ignores its blueprint for halting atrocities in Libya" Ramesh Thakur Yale Global, 14 March 2011

<sup>332</sup> "It's Not What We Ought To Do, But What We Can Do", Fred Kaplan. 19 Aug. 19 2011 [http://www.slate.com/articles/news\\_and\\_politics/war\\_stories/2011/08/its\\_not\\_what\\_we\\_ought\\_to\\_do\\_but\\_what\\_we\\_can\\_do.2.html](http://www.slate.com/articles/news_and_politics/war_stories/2011/08/its_not_what_we_ought_to_do_but_what_we_can_do.2.html) (last accessed 3/12/12)

<sup>333</sup> Focarelli C., Libya: a Turning Point for the Responsibility to Protect Doctrine? Available at <http://www.e-ir.info/?p=8091>, 6 April 2011 (last accessed 3/12/12)

• <sup>334</sup> L'opération libyenne était-elle une "guerre juste" ou juste une guerre? Le Monde, 24.11.2011 [http://www.lemonde.fr/idees/article/2011/11/24/l-operation-libyenne-etait-elle-une-guerre-juste-ou-juste-une-guerre\\_1608874\\_3232.html](http://www.lemonde.fr/idees/article/2011/11/24/l-operation-libyenne-etait-elle-une-guerre-juste-ou-juste-une-guerre_1608874_3232.html) (last accessed 4/12/12) see also <http://bigbrowser.blog.lemonde.fr/2011/03/22/rony-brauman-lintervention-en-libye-un-engrenage-epouvantable/> (last accessed 4/12/12);



action against the regime there would result in the strengthening of the Shiite majority and shift power in the region toward Iran”<sup>335</sup>. The underlying argument is that alliances, built on realist concepts, stopped possible intervening powers from acting.

As Steward Patrick pointed out, “Libya has demonstrated the viability of a well-implemented R2P intervention, but one should not assume that the United States and its allies will now apply it universally.” Gaddafi had managed to alienate nearly all UN member states, including his Arab and African allies; China and Russia had no special relationship with, or interests in, Libya. So, they had no reason to veto a collective action. Furthermore, Libya is a small country, with a population of only 6.4 million, which is concentrated along a fairly narrow strip of land by the Mediterranean. “Thus – to use the word of Steward Patrick - the logistics of military intervention promised to be less daunting there than it would have in Sudan, for example, which is fifty percent larger, almost seven times as populous, and has hundreds of thousands soldiers under arms. And since Libya is situated on Europe's doorstep, NATO and the EU were more motivated to provide aerial power and political support for the mission, since regional instability and a wave of refugees would affect them if the revolution failed.”<sup>336</sup>

The case of Libya provided however important elements for the definition of the conditions under which force might be used under R2P (a decision of a UN Security Council; absence of ground forces; authorized military intervention’s length down to the bare minimum). The referral to international justice added a further yet fundamental component of the process and reiterated what we have seen to be part of the Secretary-General Ban’s approach, i.e. the central role of the ICC in advancing the R2P and preventing mass violations of human rights. It is not by mistake that in the most recent “R2P cases”, Cote d’Ivoire and Libya, the

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<sup>335</sup> Hillstrom D., *The Libyan No Fly Zone: Responsibility to protect and International Law*, *Foreign Policy Journal*, 21 March, 2011

<sup>336</sup> Patrick S. , *Libya and the Future of Humanitarian Intervention How Qaddafi's Fall Vindicated Obama and RtoP*, *Foreign Affairs*, August 26, 2011 <http://www.foreignaffairs.com/articles/68233/stewart-patrick/libya-and-the-future-of-humanitarian-intervention?page=show> (last accessed 3/12/12)

Security Council referred both to the responsibility to protect civilians' lives and to the need to bring to justice those responsible for the human rights violations.

The chapter is structured as follows: section 4.1 discusses the reaction of the international community; section 4.2 deals with the initiatives of civil society while section 4.3 concludes. A detailed timeline of events between February and August 2011 is included in Annex 1 to this Chapter. Annex II contains an analysis of six indicator indexes. We considered the six indicators with the aim at finding political, legal and socio/economic conditions that may have provided advance signals of state failure/gross violation of human rights in Libya to justify the adoption of preventive measures. The indicator Indexes used were the Bertelsmann Transformation Index, the Carleton's Country Indicators for Foreign Policy, the Failed State index, the State Fragility Index, the Freedom in the World survey and the Transparency International - Corruption Perceptions Index from 2005 to 2011 where possible

#### **4.1 The International community**

The reaction of the International community to the crisis in Libya was very quick, almost immediate. Libya monopolized the international political debate from the beginning of the revolt in February until at least the end of June.

What makes the case of Libya peculiar is that the request for an international intervention came first from the countries in the region. On 22 February 2011, i.e. one week after the unrest, the League of Arab States decided to suspend the participation of the Libyan delegations from all Arab League sessions. Three weeks later, on 12 March 2011, the League convened an extraordinary session in which it called on the Security Council to bear its responsibilities and to take the necessary measures to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas to allow the protection of the Libyan population and foreign nationals residing in Libya, "while respecting the sovereignty and territorial integrity of neighboring States". The Arab League also indicated that it would cooperate with the Transitional National Council of Libya and coordinate with the United Nations, the African Union, the Organization of

the Islamic Conference (OIC) and the European Union (EU) and called on all States, international organization and international civil society to provide urgent humanitarian assistance to the people of Libya.

Reinforcing the position of the Arab League, on 7 March the members of the Gulf Cooperation Council issued a statement in which they requested that the “UN Security Council take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya.” The GCC statement also condemned the “crimes committed against civilians, the use of heavy arms and the recruitment of mercenaries” by the Libyan regime. United Arab Emirates Foreign Minister Sheikh Abdullah bin Zayed al-Nahayan said the Gulf monarchies had reached their decision after Libyan authorities “totally refused to allow aid” to reach civilians.

However, it was probably the behavior of the Libyan Permanent Representative to the United Nations in New York, Ambassador Dabbashi, that convinced even the more reluctant to embrace the cause of the rebels and pushed for a resolution at the Security Council.

A week into the protests, one of Colonel Qaddafi’s sons, Seif al-Islam el-Qaddafi, gave a bellicose televised address, declaring that Libya would not be like Egypt or Tunisia because his father had the power of loyalty: “The armed forces are with him. Tens of thousands are heading here to be with him. We will fight until the last man, the last woman, the last bullet.”

The following day, 21 February 2011, Ambassador Dabbashi spoke to reporters in the lobby of the Libyan Permanent Mission in New York. He called Colonel Gaddafi a genocidal criminal – “We are sure that what is going on now in Libya is crimes against humanity and crimes of war,” – he said, and affirmed that that the remarks of Col. Gaddafi’s son were “a declaration of war against the Libyan people.”<sup>337</sup> On 22 February, after a meeting of the Security Council in closed

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<sup>337</sup> <http://www.nytimes.com/2011/02/22/world/africa/22nations.html> (last accessed 3/12/12); <http://www.nytimes.com/2011/10/21/nyregion/speaking-for-qaddafi-then-denouncing-him.html?ref=muammarelqaddafi> (last accessed 3/12/12)

session on Libya, Ambassador Dabbashi appealed for international intervention, starting with a no-fly zone over the country, to help stop "a real genocide".

On 26 February, the Security Council unanimously adopted Resolution 1970 under Chapter VII. Resolution 1970 imposed an embargo and financial sanctions, stressed Libya's "responsibility to protect" and referred the situation to the International Criminal Court for investigation into reports of crimes against humanity. In their explanations of vote, Council members welcomed the unanimity of the action. Brazil, Colombia, France, Germany and Bosnia and Herzegovina said that the resolution was a positive step in affirming the responsibility of States to protect their people as well as the legitimate role of the Council to step in when states failed to meet that responsibility. India, which is not party to the Rome Statute together with US, Russia China, affirmed that it would have preferred a "calibrated approach" but that it voted in favor of the resolution as it was convinced that the referral would help to bring about the end of violence. The Chinese representative stressed that he had supported the resolution taking into account the special circumstances in Libya.

In the meantime also the African Union took action. The AU Peace and Security Council discussed the first time the situation in Libya on 23 February 2011. In the communiqué issued on that occasion, the Council expressed deep concern at the developments in the country and strongly condemned the indiscriminate and excessive use of force, in violation of human rights and International Humanitarian Law. On 10 March 2011, the Union denounced that the violence perpetrated by Gaddafi's loyalists posed "a serious threat to peace and security in that country and in the region as a whole". The AU tried to mediate and rejected the use of force; however, beyond its efforts to find a political solution, it was criticized for a slow and weak response<sup>338</sup>. In an attempt to find a mediation the AU Commission chairperson, Jean Ping, met with United Kingdom Foreign Secretary (4 April); with Mr. Herman Van Rompuy, Ms Catherine Ashton,

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<sup>338</sup> <http://www.sudantribune.com/AU-s-opposition-to-military,38332> (last accessed 3/12/12); <http://currentanalyst.com/index.php/opeds/154-the-use-of-force-in-libya-the-au-caught-off-guard> (last accessed 3/12/12)

with Mr. Anders Fogh Rasmussen, the NATO Secretary-General, and the Council of NATO Ambassadors (4 and 5 April) as well as with the Italian Minister of Foreign Affairs, Mr. Franco Frattini (5 April 2011). An AU Ad Hoc Committee<sup>339</sup> undertook a visit to Libya on 10 April, where met with Colonel Gaddafi in Tripoli to discuss the Roadmap. The latter confirmed his acceptance of the Roadmap which, however, was rejected by the members of the NTC.

On 14 April 2011, the AU participated in a meeting convened at the initiative of the Secretary-General of the United Nations, in Cairo and attended by the Secretary-General of the Arab League, Mr. Amr Moussa, the Secretary-General of the OIC, Mr. Ekmeleddin Ihsanoglu, and the EU High Representative, Ms. Catherine Ashton. The meeting was aimed at enhancing coordination of the efforts towards the political resolution of the crisis in Libya. The situation in Libya as well as the ways of achieving an early resolution of the crisis were also at the center of the discussions at the Second Annual US – AU High Level Meeting held in Washington, on 20 and 21 April 2011, where the AU delegation held consultations with several senior American officials, including the Secretary of State, Ms. Rodham Clinton. During the consultations, the US stressed that any ceasefire would require an immediate end to all attacks on civilians and the withdrawal of the Libyan Government forces from all cities they have forcibly entered into, occupied or besieged. Such a ceasefire, in the US view, should also include Col. Gaddafi's departure from power<sup>340</sup>.

It is worth noting that on 31 March the African Court on Human and People's Rights issued its first ruling against a state and announced that it had declared that "massive human rights violations" had been carried out by the Gaddafi

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<sup>339</sup> In March the AU established an Ad Hoc Committee, whose composition included the Heads of State of Mauritania, Republic of Congo, Mali, South Africa and Uganda. On 25 March 2011 the Committee met with a delegation of the Libyan government and adopted a Roadmap for a political solution, including the "adoption and implementation of political reforms necessary to meet the aspirations of the Libyan people." A second meeting was held on 9 April 2011.

<sup>340</sup> AFRICAN UNION, Joint Statement on the Second Annual U.S.-AU High Level Meeting, <http://allafrica.com/stories/201104251049.html> (last accessed 3/12/12)

regime. The African Commission on Human and Peoples' Rights (ACHPR) decided to institute proceeding against Libya before the African Court on March 3, 2011.

At the United Nations in New York during the entire period from February to the end of September 2011 the Security Council met eighteen times to discuss the situation in Libya and was briefed on a regular basis (almost daily in February and March) either by the Secretary-General himself, the Under-Secretary-General B. Lynn Pascoe or by Ian Martin, his Special Representative in Libya.

The Human Rights Council addressed the issue in its 16<sup>th</sup> (28 February- 25 March 2011), 17<sup>th</sup> (30 May – 17 June 2011) and 18<sup>th</sup> (12-30 September 2011) sessions as well as in its 15<sup>th</sup> Special Session (25 February 2011). During its Special Session on “the situation of human rights in the Libyan Arab Jamahiriya” the Human Rights Council adopted Resolution S-15/2, which called upon the Libyan government to cease all human rights violations; established an international commission of inquiry; and recommended that the General Assembly suspend Libya from the Council. In response to HRC Resolution S-15/2, the General Assembly unanimously suspended Libya's membership to the Council on March 1, 2011. The HRC named a high-level panel on March 11, with the responsibility of gathering evidence and testimonies for a full report to be submitted to the Council in June 2011. A second report was submitted in March 2012<sup>341</sup>.

The General Assembly discussed the situation in Libya during its 65<sup>th</sup> session (1 March 2011) and 66<sup>th</sup> session (16 and 20 September 2011). During the meeting of the United Nations General Assembly on 1 March in which Libya's membership in the Human Rights Council was suspended, many delegations expressed their support for the decision. It was the first time that a sitting member was removed from the body. Costa Rica's representative said the Assembly's “historical decision” was in full compliance with international law and responsibility of all United Nations Members to protect lives and promote fundamental rights. Some delegations stressed that the suspension was an

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<sup>341</sup> In March 2012 the International Commission of Inquiry on Libya established by the Human Rights Council in February 2011 submitted its second report.

extreme measure required by an extraordinary situation. The representative of Lebanon, introducing the draft resolution, underlined that the measure was both “exceptional and temporary”, and that Libya’s status would be restored “in due time”. Hungary, speaking on behalf of the European Union, said that each State has an obligation to protect the rights to life, liberty and security of its citizens. The international community, through the United Nations, has the responsibility to act should national authorities fail to fulfill their duty. Mexico, whose delegation had co-sponsored the resolution, affirmed that respect for human rights is an obligation that must be ensured, and the Libyan Government was obligated to protect its population. Maldives said that as it was clear that as “the Libyan dictatorship” had no intention of upholding its responsibility to protect, it was the “clear and unambiguous responsibility” of the international community to protect innocents in Libya and to remove the leadership from power. For Guatemala the Government of Libya was not complying with its most basic responsibilities, and therefore had no right take part in a representative forum such as the Human Rights Council. Costa Rica called the country’s suspension from the Human Rights Council as a historical decision in full compliance with international law and the United Nations memberships’ responsibility to protect lives and fundamental rights. Indonesia, New Zealand and Australia also referred in their statements to R2P. Others expressed concern that the resolution might be misused. Bolivia stressed that it was critical that the consensus would not be used to promote “unjustified interventions” against sovereign States, and warned against the selective application of any resolutions against States with a “different orientation” from the major Powers. The Venezuela’s representative said that a decision like the one adopted by the Assembly could only take place following a credible investigation. China and Russia stressed that the resolution “did not create a precedent.”

On 17 March the Security Council met again and voted on Resolution 1973, calling for a no-fly zone as well as a ceasefire. Resolution 1973 was approved by a vote of 10 in favor to none against, with 5 abstentions, namely China, Russia, Germany, India and Brazil. The resolution authorized Member States, acting

nationally or through regional organizations or arrangements, in cooperation with the Secretary-General, to take all necessary measures to protect civilians and civilian populated areas under threat of attack while excluding a foreign occupation force of any form on any part of Libyan territory. The resolution also included provisions for a more robust arms embargo and called for travel bans and asset freezes on additional Libyan individuals, companies, banks and other entities. Speaking after the vote, representatives who had voted in favor acknowledged that the strong action was made necessary because the Gaddafi regime had not heeded the first actions of the Council and was on the edge of even greater violence against civilians. The representatives of China said that it had not blocked the action with a negative vote in consideration of the wishes of the Arab League and of the African Union. The decision of Germany to abstain was highly criticized and considered 'a serious mistake of historic dimensions'<sup>342</sup> caused by the inexperience of Guido Westerwelle, the German Minister of Foreign Affairs.

On 16 September 2011, the General Assembly held two separate recorded votes to allow representatives of Libya's National Transitional Council to represent Libya in the General Assembly — speaking and voting on its behalf — for the coming year. Resolution 66/1, contained in the report of the Credentials Committee, was adopted by a recorded vote of 114 in favor to 17 against, with 15 abstentions, after first defeating a motion to defer action on the draft by vote of 107 against to 22 in favor, with 12 abstentions. The new Libyan government was also recognized by the Arab League, the International Monetary Fund, and the World Bank. Several member states, including the representatives of Venezuela and Cuba, backed the motion, voicing strong opposition to recognizing the transitional authorities. Those delegations denounced what they saw as attempts to transform Libya into a protectorate of the North Atlantic Treaty Organization (NATO) or the Security Council. Bolivia's delegate said the National Transitional Council was not a unified body and there was "still a big question

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<sup>342</sup> Spiegel 28/03/2011  
<http://www.spiegel.de/international/germany/0,1518,753498,00.html> (last accessed 3/12/12)



mark” concerning its make-up. Within Libya were deep divisions over those who supported the former regime and those who supported the opposition, he said. Yet, the representative of Egypt called for the motion to be rejected, saying that, as Libya’s immediate neighbor, Egypt had been the best witness of the “most horrifying times” experienced by the Libyan people as a result of a repressive regime that had ruled that country for 40 years.<sup>343</sup>

On the same day (16 September 2011) the Security Council also created the United Nations Support Mission in Libya (UNSML) by Resolution 2009 (2011). The Mission, authorized for an initial period of three months, was aimed at assisting Libyan national efforts to restore public security, promote the rule of law, foster inclusive political dialogue and national reconciliation, and embark on constitution-making and electoral processes. In support of those objectives, the Council also partly lifted the arms embargo imposed on Libya and the asset

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<sup>343</sup> Vote on Acceptance of Credentials of Representatives of Member States

In favour: Afghanistan, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Belize, Benin, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Canada, Cape Verde, Chad, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Malta, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Lucia, San Marino, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Sudan, Spain, Sri Lanka, Sudan, Switzerland, Sweden, Syria, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Vanuatu, Viet Nam, Yemen.

Against: Angola, Bolivia, Cuba, Democratic Republic of the Congo, Ecuador, Equatorial Guinea, Kenya, Lesotho, Malawi, Namibia, Nicaragua, South Africa, Swaziland, United Republic of Tanzania, Venezuela, Zambia, Zimbabwe.

Abstain: Algeria, Antigua and Barbuda, Cameroon, Dominican Republic, El Salvador, Indonesia, Mali, Mauritania, Nepal, Saint Vincent and the Grenadines, Saudi Arabia, Suriname, Trinidad and Tobago, Uganda and Uruguay.

Absent: Albania, Bahamas, Barbados, Belarus, Bhutan, Burundi, Cambodia, Central African Republic, Comoros, Congo, Democratic People’s Republic of Korea, Dominica, Eritrea, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Kiribati, Kyrgyzstan, Lao People’s Democratic Republic, Liberia, Libya, Marshall Islands, Micronesia (Federated States of), Mozambique, Myanmar, Nauru, Niger, Nigeria, Pakistan, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Tajikistan, Tonga, Turkmenistan, Tuvalu, Uzbekistan

freeze targeting entities connected to the previous regime, under resolution 1970 (2011). The Council emphasized its intention to keep the no-fly zone imposed by resolution 1973 (2011) under review. The resolution was adopted unanimously. During discussion South Africa and Russia called for early lifting of the no-fly zone. The President of the Council in September 2011, Ambassador Nawaf Salam of Lebanon, speaking in his national capacity, said that “the Council was again responding to the legitimate needs of the Libyan people, as set out by their representative, and the role of the United Nations in supporting them was pivotal”. The representative of Libya, Brahim Dabbashi, paid tribute to all those who had supported the “responsibility to protect” in Libya, thereby helping to save the lives of thousands, as well as the country’s sovereignty and territorial integrity, through resolutions 1970 (2011) and 1973 (2011).

On 20 September the Secretary General convened a high-level meeting of the international community, including the representatives of over 60 governments and of the African Union, the Gulf Cooperation Council, the European Union, the League of Arab States, NATO, the Organization of Islamic Conference and the World Bank. The U.S. President Barack Obama declared the international action against Col. Gaddafi a quick and clear success in foreign affairs. "Libya is a lesson in what the international community can achieve when we stand together as one," Mr. Obama said. "This time, we, through the United Nations, found the courage and the collective will to act."<sup>344</sup>

On 26 September 2011, Mr. Pascoe reported that essential personnel were already deployed in Tripoli under the United Nations Support Mission in Libya. Mr. Pascoe also said recent reported uncovering of mass graves indicated the extent of the human rights crimes perpetrated by the former regime. Evidence had to be gathered reliably for future accountability mechanisms, and all countries must cooperate with the International Criminal Court in apprehending indictees. In October media reported that Russia drafted a United Nations

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<http://iipdigital.usembassy.gov/st/english/article/2011/09/20110920123535nehpets0.5447504.html#axzz28bhSkhhE> (last accessed 3/12/12)

resolution to draw attention to a dangerous consequence of the conflict -- weapons smuggled out of the country for possible sale to terrorists. According to U.S. officials there were evidence that some shoulder-fired anti-aircraft missiles have made their way across the border to Mali, where al-Qaeda is active. Sudan's ambassador to the United Nations, Daffa-Alla Elhag Ali Osman, also said that weapons have been smuggled from Libya to Sudan, where insurgents in the western Darfur region have been fighting since 2003.

In October the U.N. Security Council unanimously canceled its authorization for the NATO military operation in Libya. The authorization was cancelled despite a request from Libya's interim government for the Security Council to wait before terminating the mandate affirming that the government needed time to assess the security situation in the country and its ability to monitor the borders. U.S. Ambassador to the U.N., Susan Rice, welcomed the decision of the Council, which became sharply divided over NATO intervention after the death of Col Gaddafi. In a press conference Ms Rice said "(The decision) closes what I think history will judge to be a proud chapter in the Security Council's history and experience, where it acted promptly and effectively to prevent mass slaughter in Benghazi and other parts of the east to effectively protect civilians". Russian Ambassador Vitaly Churkin, who had repeatedly accused NATO of overstepping its mandate to protect civilians, also welcomed the move to end foreign military intervention in Libya. Moscow co-sponsored the resolution.

After the NATO intervention China, Russia and the BRICs, and in particular Brazil, criticized the way in which Security Council Resolution 1973 was implemented. The main reason for the opposition was that in their view NATO had exceeded its mandate by pursuing regime change and by supporting the rebels' side when it was only authorized to protect civilians. In November 2011 Brazil presented a concept note entitled "Responsibility while protecting: elements for the development and promotion of a concept" (see the Chapter 3) in which it argued that the international community must exhaust all peaceful means to protect populations before coercive measures are considered and that the Security

Council should develop monitoring and assessment mechanisms for the use of force.

In March 2012 the International Commission of Inquiry on Libya established by the Human Rights Council in February 2011 submitted its second report setting out its findings. In the report the Commission concluded that acts of murder, enforced disappearance, and torture were perpetrated within the context of a widespread or systematic attack against a civilian population both by the forces loyal to Gaddafi and by the *thumar* (anti-Gaddafi forces). The Commission also concluded that NATO conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. On limited occasions, the Commission confirmed civilian casualties and found targets that showed no evidence of military utility<sup>345</sup>.

## 4.2 Civil Society

Civil society and the media swiftly denounced the abuse of force by the Gaddafi regime.

According to the International Coalition for the Responsibility to Protect's website<sup>346</sup> the following organizations called for action.

- 22 representatives from NGOs signed an urgent call to stop atrocities in Libya and reminded world leaders of their Responsibility to Protect on 20 February 2011
- Human Rights Watch (HRW) and the International Crisis Group (ICG) and Amnesty International released a number of articles and reports<sup>347</sup>

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<sup>345</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/LibyaReport.aspx> (last accessed 3/12/12)

<sup>346</sup> <http://www.responsibilitytoprotect.org/> (last accessed 3/12/12)

<sup>347</sup> HRW Libya <http://www.hrw.org/by-issue/news-filter/232?page=9> (last accessed 3/12/12); ICG <http://www.crisisgroup.org/en/publication-type/crisiswatch/crisiswatch-database.aspx?CountryIDs=%7b28685262-BE79-473E-B18E-ED22761A0F17%7d#results> (last accessed 3/12/12); Amnesty International [http://www.amnesty.org/en/news/all?page=3&term\\_node\\_tid\\_depth=2029&tid=All&date\\_filter\[value\]\[date\]=&date\\_filter\\_1\[value\]\[date\]=](http://www.amnesty.org/en/news/all?page=3&term_node_tid_depth=2029&tid=All&date_filter[value][date]=&date_filter_1[value][date]=) (last accessed 3/12/12)

- the Global Centre for the Responsibility to Protect released an Open Statement on the Situation in Libya on 22 February 2011 and wrote a Letter to the Security Council on 4 March 2011<sup>348</sup>
- Genocide Alert issued a press release requesting the German government to advocate for sanctions as well as a no-fly zone within the Security Council and European Union on 24 February 2011<sup>349</sup>
- Human Rights Network - Uganda (HURINET) wrote an open letter calling for up scaling the Responsibility to Protect Mechanism in Libya on 28 March 2011<sup>350</sup>

After the intervention and the fall of Gaddafi's regime, several think tanks organized panels and seminars on R2P and Libya.<sup>351</sup> While some speakers were

<sup>348</sup> [http://globalr2p.org/media/pdf/Open\\_Statement\\_on\\_the\\_Situation\\_in\\_Libya.pdf](http://globalr2p.org/media/pdf/Open_Statement_on_the_Situation_in_Libya.pdf) 22 February 2011 (last accessed 3/12/12);  
[http://globalr2p.org/media/pdf/Open\\_Letter\\_to\\_the\\_Security\\_Council\\_on\\_the\\_Situation\\_in\\_Libya.pdf](http://globalr2p.org/media/pdf/Open_Letter_to_the_Security_Council_on_the_Situation_in_Libya.pdf) 4 March 2011 (last accessed 3/12/12)

<sup>349</sup> <http://www.responsibilitytoprotect.org/index.php/crises/190-crisis-in-libya/3241-genocide-alert-calls-for-german-government-to-support-action-against-gaddafi> (last accessed 3/12/12)

<sup>350</sup> [http://responsibilitytoprotect.org/Hurinet%20Uganda%20LIBYA\\_%20Statement.pdf](http://responsibilitytoprotect.org/Hurinet%20Uganda%20LIBYA_%20Statement.pdf) (last accessed 3/12/12)

<sup>351</sup> E.g. The African Institute for Security Studies (ISS) <http://www.issafrica.org/eventitem.php?EID=702> (last accessed 3/12/12)

The writer followed either in person or via video stream in some of the events organized on R2P in the context of the Libyan case. Below the link to some of the debates that the writer followed either in person or in video:

- Débat-Vidéo Octobre 7, 2011: «Libye: une guerre humanitaire?» <http://cicr.blog.lemonde.fr/2011/10/07/debat-video-libye-une-guerre-humanitaire/> (last accessed 3/12/12);
- GCSP 17 October 2011 Public Discussion and Book Launch on "Citizens, Culture & State Sovereignty - The Future of the Responsibility to Protect" <http://www.gcsp.ch/New-Issues-in-Security/Events/Public-Discussion-and-Book-Launch-on-Citizens-Culture-State-Sovereignty-The-Future-of-the-Responsibility-to-Protect> (last accessed 3/12/12);
- GCSP 29 November 2011 Public Discussion: "Armed Conflict in Libya: a NATO Perspective" <http://www.gcsp.ch/Sidebar/Events/Past/Public-Discussion-Armed-Conflict-in-Libya-a-NATO-Perspective> (last accessed 3/12/12)
- Stanley Foundation January 18, 2012, [http://fora.tv/2012/01/18/The\\_Responsibility\\_to\\_Protect\\_R2P\\_From\\_ICISS\\_to\\_Today](http://fora.tv/2012/01/18/The_Responsibility_to_Protect_R2P_From_ICISS_to_Today) (last accessed 3/12/12)
- Stanley Foundation January 17 2012, "Atrocity Reporting and the Responsibility to Protect" Gareth Evans on the evolution of the Responsibility to Protect [http://www.youtube.com/watch?v=SjepYRGoJIY&list=UU5\\_CEtCo2UYFLyS-4NBFpw&index=7&feature=plcp](http://www.youtube.com/watch?v=SjepYRGoJIY&list=UU5_CEtCo2UYFLyS-4NBFpw&index=7&feature=plcp) (last accessed 3/12/12)

supportive of the intervention and declared that the Responsibility to protect was effectively implemented through Security Council Resolution 1973, others expressed sharp critics especially on the military intervention. It is interesting to note that strong support to the intervention came from the region and Libya itself.<sup>352</sup>

Those that expressed doubts said that R2P links sovereignty and human rights and its most powerful tools are persuasion and prevention. Only when all other means of prevention are exhausted could coercion, with military intervention being the last resort, be acceptable. Hence, resolution 1973 cannot really be considered as a landmark for R2P for two main reasons. First, preventive measures, both in short and long term, were not exhausted. Second, the protection component has been concentrated more on the combatants than on the civilian population.<sup>353</sup> Some argued that the intervention supported a regime change, which is not in line with the principle of R2P; that NATO exceeded the mandate that it was given by Security Council Resolution 1973<sup>354</sup>. Others said

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<sup>352</sup> Ian Martin, Special Representative of the Secretary-General for Libya in a briefing at the UN Office at Geneva on 3 March 2012 said that the Libyan people were grateful to the UN and in particular the Security Council for the intervention. The transcript of the presentation is unfortunately not available. [http://www.unog.ch/80256EE600583A0B/\(httpActivities\)/002B419E85E8D37CC12579B50056C61F?OpenDocument](http://www.unog.ch/80256EE600583A0B/(httpActivities)/002B419E85E8D37CC12579B50056C61F?OpenDocument). (last accessed 3/12/12)  
See also the intervention by Abdel-Elah Al-Khatib, UN Special Envoy for Libya, Stanley Foundation Panel discussion January 18, 2012, Panel 2 R2P in Practice — Policy Approaches Since 2005 [http://fora.tv/2012/01/18/The\\_Responsibility\\_to\\_Protect\\_R2P\\_\\_From\\_ICISS\\_to\\_TodayPanel\\_2](http://fora.tv/2012/01/18/The_Responsibility_to_Protect_R2P__From_ICISS_to_TodayPanel_2) (last accessed 3/12/12): Mr. Al-Khatib said that when he visited Tobruk on 21 March 2011 both the representative of LNC and ‘normal people’ expressed ‘a real sense of appreciation’ towards the UN.

<sup>353</sup> See the interventions of Dr Cornelio Sommaruga Former President of the International Committee of the Red Cross, and Member of the ICISS Commission that formulated the R2P concept; Ambassador Mohamed Sahnoun, Co-Chair of the Global Centre for the Responsibility to Protect, Co-chair of the ICISS Commission; <http://www.gcsp.ch/New-Issues-in-Security/Events/Public-Discussion-and-Book-Launch-on-Citizens-Culture-State-Sovereignty-The-Future-of-the-Responsibility-to-Protect> (last accessed 3/12/12). See also Francis Deng, Special Adviser to the Secretary-General on the Prevention of Genocide, Stanley Foundation Panel discussion January 18, 2012, [http://fora.tv/2012/01/18/The\\_Responsibility\\_to\\_Protect\\_R2P\\_\\_From\\_ICISS\\_to\\_Today](http://fora.tv/2012/01/18/The_Responsibility_to_Protect_R2P__From_ICISS_to_Today) (last accessed 3/12/12)

<sup>354</sup> See Gareth Evans’ Remarks: Responding to Mass Atrocity Crimes: The “Responsibility to Protect” After Libya Chatham House 6 October 2011 <http://www.isn.ethz.ch/isn/Digital>

that the R2P principle was hijacked by economic and political interests, especially when comparing the international community's response to the events in other countries of the region (Bahrain, Yemen, and Syria)

A similar dichotomy also appears in the debate organized on January 18, 2012, by the Stanley Foundation, in partnership with the Carnegie Corporation of New York and the MacArthur Foundation. The "Libyan case" served as a basis for a reflection and lessons learned. Among the others Francis Deng, Gareth Evans, Cornelio Sommaruga, Ramesh Thakur took part in the discussion. It was said that the consensus that inspired SCR resolution 1973 was damaged by gaps in expectations, communication, and accountability between those who mandated the operation and those who implemented it. These gaps were reinforced inter alia by disregard of particular elements of the resolution, including its arms embargo and cease-fire call; withholding consideration of regime change and a general lack of reporting to the council on NATO means and methods. For some of the participants the Libyan case generated distrust among some member states over future applications of R2P-inspired mandates—a distrust that negatively influenced the debate over Security Council action in Syria. It was stressed that the ultimate objective of R2P should be to ensure effective prevention at the national level. Thus a core focus must be to support the development of capacities that enable national authorities to act as the primary agents of prevention and public safety. Greater attention should therefore be devoted in determining the specific institutional capacities that most effectively can provide a defense against atrocity risk, as well as concrete ways in which the international community can best support them. With regards to the role of regional and sub-regional organizations, whose active engagement was noted as critical, it was said that regional engagement moderates tendencies for selective attention, and offers potential mechanisms for longer-term focus in the aftermath of crisis. However regional attention to R2P issues remains highly uneven, as does regional capacity to prevent and respond to atrocity threats. Furthermore it was said that it is necessary to evaluate the best-suited tools to

particular contexts and how they can best be applied. Those may include the preventive engagement of the ICC in potential and ongoing crises, particularly through Security Council referrals, balancing between coercive and non-coercive measures and protection through force (protection by air versus ground troops and how to minimize collateral damages)<sup>355</sup> In a keynote speech delivered at Chatham House on 6 October 2011 Gareth Evans said that there was some substance in the criticism that NATO had overstretched its mandate to the absolute limit. He went on discussing the opportunity of having the Security Council endorse a series of guidelines for the authorization of force along the lines of those suggested by the High Level Panel in its 2004 report, i.e. seriousness of risk, proper purpose, last resort, proportional means and balance of consequences.<sup>356</sup> This is urgently needed.

### 4.3 Conclusions

In the debate on the Libyan intervention, three different issues came under discussion, i.e. whether the UN authorization of force in Libya was appropriate, if it created a precedent and whether the international community should do the same in other countries of the Middle Eastern region (Syria, Yemen and Bahrain).

In the numerous debates held on the crisis in Libya, the question as to whether the intervention was genuinely aimed at the protection of the civil population or prompted by political/economic reasons was recurrent. Opinions differ; still, the support to the intervention under the principle of the R2P arrived mostly from governments of the region itself. Civil society did not play a leading role, while international diplomacy acted promptly to find a solution to the crisis.

We have seen how the support of the Libyan Resident Representative in New York, the Arab League and the GCC were essential for the NATO's intervention. The African Union did not object to the intervention but later opposed the NATO

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<sup>355</sup> <http://www.stanleyfoundation.org/r2p.cfm> (last accessed 3/12/12); video [http://fora.tv/2012/01/18/The\\_Responsibility\\_to\\_Protect\\_R2P\\_\\_From\\_ICISS\\_to\\_Today](http://fora.tv/2012/01/18/The_Responsibility_to_Protect_R2P__From_ICISS_to_Today) (last accessed 3/12/12)

<sup>356</sup> Evans G., R2P After Libya available at <http://www.youtube.com/watch?v=IF0t5uv9AHY> (last accessed 3/12/12)



airstrikes and advocated a negotiated end to the conflict. The US was internally divided with Pres. Obama more cautious and Ms. Rodham Clinton eventually prevailing in imposing support to the NATO airstrikes. In Europe, France and UK were the leading forces while Germany had an erratic behavior that was strongly criticized internally. Italy supported the case of Col Gaddafi at the beginning and then changed its mind. China and Russia declared that they did not oppose the resolutions of the Security Council because this was what the region wanted.

So Libya clearly shows that there must be at least four preconditions for the use of force under the R2P doctrine:

- A strong support by neighboring countries and regional (or sub-regional) organizations is important for the success of the international action<sup>357</sup>.
- A decision of a UN Security Council; the use of force without the approval of the Council is confirmed unlawful.
- Absence of ground forces
- Authorized military intervention's length down to the bare minimum.

The difference between what happened in Libya and the use of force in the Balkans in 1999 and in Iraq in 2003 was that in Libya a broad coalition was in favor of the intervention; there was a mandate of the Security Council which even the strongest opponents of R2P accepted and the support of regional organizations. The debate among Member States was in fact how to best protect the Libyan population from mass crimes which reflects a step toward the acceptance of the R2P principles agreed upon at the 2005 World Summit.

At this stage it is still too early to say whether Libya would constitute a precedent. What is of vital importance to strengthen the role of R2P is however to promote consistency and eliminate double standards. This does however not mean that

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<sup>357</sup> Simonovic I. , UN Assistant Secretary-General for human rights, argued that the regional consensus in the case of Libya was fragile <http://www.stanleyfoundation.org/r2p.cfm> (last accessed 3/12/12)

the use of force is appropriate in all cases. Each crisis is unique; the analysis of the positions of the various States clearly shows it.

## **Annex I: Timeline of events February – August 2011**

The description of the events that took place in Libya stops at the end of August 2011 when the revolt pushed Col. Muammar Gaddafi from power after a six-month struggle. Gaddafi was killed on at approx. 12 o'clock on 20 October 2011 after being captured in his birthplace of Sirte. Reactions to the announcement of Gaddafi death were immediate. UN Secretary General Ban called it a "historic" moment. China affirmed that the death of Col Gaddafi marked the turning of a page in Libya's history and called for an inclusive political transition in Libya to protect the unity of the country and restore social stability. Russia's President Medvedev said he hoped Libya could achieve a peaceful transition to a modern democratic state.

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
In February 2011	<p>Mass demonstrations began in Libya, in which participants called for democratic reform and the collapse of the Gaddafi regime. Such uprisings had probably been partly inspired by similar popular uprisings in neighboring countries culminating in Tunisia with the resignation of President Ben Ali, and in Egypt with the resignation of President Hosni Mubarak. According to protestors and witnesses, these demonstrations were peaceful. The Government of Libya responded to the demonstrations with the use of force, which then caused an escalation of violence by late February.</p>			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
15 February	Mr. Fathi Terbil, a well-known lawyer and human rights advocate was arrested by the Libyan internal security forces; this event gave cause to a mass protest in Benghazi. On 16 February, protests spread to Al-Bayda, Al-Quba, Darnah and Tobruk.			
17 February	Protests intensified on 17 February, dubbed the “Day of Rage” - the anniversary of 2006 clashes in Benghazi when security forces killed protesters attacking the consulate of Italy. The largest protest took place in Benghazi where thousands gathered in front of the courthouse. Other protests were also held in Al-Bayda, Tobruk, Tajurah, Tripoli, Misrata and Darnah. Security forces opened fire with live ammunition in several locations.			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
18-19 February	As news of these events spread, protests escalated. Cases of protestors being injured by government forces were reported in Benghazi on 18 February and Misrata on 19 February amongst other locations.			
20 February	Large-scale protests took place in Tripoli on 20 February and in the following days. Media reported that security forces used fighter jets and live ammunition against protestors in the capital.			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
21 February	Libyan Justice Minister Mustafa Mohamed Abud al-Jeleil resigned over the "excessive use of violence" against protesters..	Ibrahim Dabbashi, the deputy permanent representative at the Libyan mission to the UN, held a press conference publically breaking from the Gaddafi's regime and reporting the regime's use of mercenaries to suppress peaceful demonstrations. Dabbashi called on the Security Council to take up the issue and institute a no-fly zone and refer the situation to the ICC to investigate war crimes being committed by Gaddafi's regime		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
22 February	Gaddafi gave a televised speech saying he had no intention of stepping down and that "any use of force against the authority of the state will be sentenced to death."	UN Secretary General Ban Ki-moon spoke to Col Gaddafi .The U.N. Security Council held emergency consultations on the Libyan crisis. The talks led to a decision by the council to hold a formal meeting on the crisis later in the day. The Council issued a statement (SC/10180) in which it condemned the use of force against civilians, expressed deep regret at the deaths of hundreds of civilians, called on Libya to meet its responsibility to protect civilians and respect international humanitarian law, called for humanitarian access, stressed the importance of accountability, expressed concern for the safety of foreign nationals and the Council's intention to follow the situation closely	Statement by US Secretary of State Hillary Clinton: "The world is watching the situation in Libya with alarm. We join the international community in strongly condemning the violence in Libya. The government of Libya has a responsibility to respect the universal rights of the people, including the right to free expression and assembly. Now is the time to stop this unacceptable bloodshed. We are working urgently with friends and partners around the world to convey this message to the Libyan government."	The Arab League suspended Libya from its sessions in light of a violent crackdown on anti-government protests. The decision came at an emergency meeting held by the Arab League in Cairo to discuss the situation in Libya. Libya's representative to the League Abdel-Moneim al-Honi resigned from his post on 20 February in protest against the crackdowns, which left hundreds of people dead.



Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
22 February (continued)		<p>Ibrahim Dabbashi, the Libyan Resident Representative to the UN called for Gaddafi to stand down and demanded the special meeting of the Security Council. He said the council must take action "to protect the Libyan people."</p> <p>UN Human Rights Commissioner, Navi Pillay, called for immediate cessation of the grave human rights violations committed by Libyan authorities and urged an independent international investigation into the violent suppression of protests in the country.</p> <p>"The international community must unite in condemnation of such acts and make unequivocal commitments to ensure justice is rendered to the thousands of victims of this repression." she said</p>		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
23 February				AU issued a statement condemning the use of force against civilians, urging the regime, in particular, to desist from making statements that could escalate the situation and decided to send a mission to Libya to assess the situation.
24 February	<p>Media reports indicated that protestors were in control of Tobruk, Benghazi, Misrata and Zuwarah</p> <p>By late February, an armed conflict had developed between armed opposition forces and Government forces. Not all areas of the country were touched by direct fighting as battles focused on specific cities.</p>			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
25 February.	Anti-government demonstration in Tripoli. Around 1,000 protesters were thought to have been killed by troops attempting to repress the insurrection.	UN Secretary General Ban urged the body's Security Council to take "decisive action" over the Libya crisis. The Human Rights Council held a Special Session. Jordan, Qatar and the Maldives were among the 16 signatories needed to call an emergency session The decision to convene an urgent meeting on Libya came after the UN's top human rights official called on 22 February for an international probe into the violent crackdown by Libyan security forces against peaceful protesters. Britain led the move to hold a special session of the council, gaining support from a broad range of countries including the United States, Brazil and the European Union.	The US announced sanctions against the Libyan government.  NATO called an emergency meeting on Libya Rasmussen made no specific mention of a no-fly zone	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
26 February		The United Nations Security Council passed Resolution 1970, imposing sanctions on the Gaddafi regime and referring the situation in Libya to the International Criminal Court. The Security Council decided unanimously to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the ICC Prosecutor.		
28 February -			EU governments approved a package of sanctions against Gaddafi and his closest advisers, including an arms embargo and bans on travel to Europe.	
Early March,	Al-Brega and Adjabiya were the particular focus of battles, with reports of aerial bombing and Libyan forces sought to regain control of territory with fighting also continuing in Misrata.			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
1 March.		The UN General Assembly suspended Libya from the Human Rights Council with a unanimous vote. Libya's suspension followed the 25 February adoption of a Human Rights Council resolution on Libya which had made that recommendation.		
2 March	Air strikes were reported against rebels in the eastern towns of Brega and Adjabiya			
3 March		The ICC Prosecutor announced his decision to open an investigation in the situation in Libya, which is assigned by the Presidency to Pre-Trial Chamber I.		
4 March			NATO Secretary General Anders Fogh Rasmussen said NATO had "no plans to intervene" in the crisis	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
5 March	<p data-bbox="362 379 759 568">Deadly clashes were reported in Ras Lanouf, to the east of Tripoli. Libyan security forces used tear gas to disperse hundreds of protesters after Friday prayers in Gaddafi's stronghold of Tripoli.</p> <p data-bbox="362 608 759 699">Pro-government forces and rebels both claimed control of the oil town of Zawiya (west of Tripoli )</p> <p data-bbox="362 738 759 821">The National Transition Council met in Benghazi and declared itself sole representative for Libya.</p>			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
6 March	The fighting between forces loyal to Muammar Gaddafi and rebels continued, with reports of battles centering mainly on the coastal strip between the rebel-held oil town of Ras Lanuf and Sirte to the west.	The former Jordanian Foreign Minister Abdelilah Al-Khatib was appointed UN special envoy to Libya. Statements of concern on various aspects of human rights and humanitarian law violations had been issued by a number of United Nations senior officials and mandate holders <sup>358</sup> .		
7 March		The Libyan mission to the UN in New York wrote to member states urging their capitals to recognize the NCT.		The GCC issued a statement supporting a no-fly zone and calling for accountability

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<sup>358</sup> The Secretary-General; the High Commissioner for Human Rights; the Chair of the Working Group on the Use of Mercenaries; the Secretary-General's Special Representative for Children and Armed Conflict; the Working Group on Enforced or Involuntary Disappearances; the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families; the Committee on the Elimination of all Forms of Racial Discrimination; and the Secretary-General's Special Representative on Sexual Violence in Conflict

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
8 March	Libyan rebel fighters called for a no-fly zone to stop Gaddafi's forces launching air strikes.	Security Council members discussed possible further measures against Libya, including the option of a no-fly zone, in informal consultations following a briefing on the situation in Libya by the Department of Political Affairs head, B. Lynn Pascoe. But no action was taken.	NATO began 24-hour aerial surveillance over Libya as the alliance's military planners met in Brussels to discuss options for establishing a no-fly zone. The plans were presented to defense ministers from the alliance's 28 member states, but western officials insisted that NATO should not act without the backing of the UN Security Council. Britain and France drafted a resolution that provided a mandate for a no-fly zone.	The Organization of the Islamic Conference released a statement supporting a no-fly zone over Libya but excluded foreign military operations on the ground



Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
8 March (continued)			<p>The US ambassador to NATO, Ivo Daalder, played down the need for a no-fly zone. He told journalists: "When you really look at what's going on, we have actually seen a decrease in both fighter and overall air activity over the weekend". The Obama administration was split over the issue. Some leading figures, including Robert Gates, the defense secretary, were opposed to US military involvement in another Arab country. The president himself is said to be more concerned that the homegrown nature of the Arab revolt would be permanently compromised by armed western intervention.</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
10 March			<p>France recognized the Libyan National Council as the legitimate representative of Libya's people. In retaliation Libya suspended diplomatic relations with France the following day.</p> <p>NATO agreed to move additional ships to the Mediterranean to support humanitarian assistance efforts and its own surveillance and monitoring capability. Head of NATO Anders Fogh Rasmussen said, provided a further UN Security Council resolution, NATO would also be able to undertake measures to enforce the arms embargo. He also said planning for a no-fly zone would continue in case NATO was to receive a clear Security Council mandate.</p>	<p>The AU Peace and Security Council (PSC) met at the heads of state level on Libya and issued a communiqué which condemned the indiscriminate use of force by Libya but rejected foreign military intervention. The AU decided to establish a high-level committee to facilitate dialogue among Libyan parties and engage with the Arab League, OIC, EU and UN.</p> <p>On the same day the foreign ministers of the GCC said the Gaddafi regime had lost its legitimacy. The GCC also encouraged the Arab League to initiate contact with the NCT in Benghazi and call on the UN Security Council to establish a no-fly zone to protect civilians.</p>

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
11 March		<p>UN Special Envoy Al-Khatib was set to leave New York for Tripoli to assess the situation on the ground accompanied by UN humanitarian officials and staff from the Department of Political Affairs and the Office of the High Commissioner for Human Rights</p>	<p>The EU held an Emergency Summit in Brussels. The Summit indicated that the EU Member States would examine all necessary options to protect the civilian population, provided that there was a demonstrable need, a clear legal basis and support from the region.</p> <p>EU met at the heads of state level on Libya and issued a declaration calling the use of force against civilians unacceptable and that member states would explore all necessary options to protect civilians. The summit declaration called on Gaddafi to relinquish power immediately and recognized the Benghazi Interim Council as a political interlocutor. The EU also called for a summit between itself, the AU and the Arab League</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
12 March	The Libyan city of Misrata under almost constant attack from Col Gaddafi's forces for more than a month, with many civilians caught up in the violence.			On 12 March the Arab League met at ministerial-level in Cairo on the situation in Libya. It requested the Security Council to impose a no-fly zone after Gaddafi was reported to have used warplanes, warships, tanks and artillery to seize back cities taken over.
13 March	Gaddafi's forces swept rebel fighters out of Brega, a key oil town, and into the desert.			
15 March			Press reports indicated that US Secretary of State Hilary Clinton will present plans to NATO on Tuesday for a no-fly zone	
16 March	Gaddafi's son Saif al-Islam told TV channel Euronews: 'Everything will be over in 48 hours.'  Gaddafi's forces regained control of Ajdabiya.	The Secretary General Ban spoke with Libya's Foreign Minister Moussa Koussa by phone and, through him, urged the authorities to immediately halt the violence against civilians.	David Cameron informed the Parliament that after consultation with France, the US and Lebanon and others. UK tabled a new draft SC Resolution that included inter alia a no-fly zone in Libya.	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
17 March		The United Nations Security Council adopted Resolution 1973, authorizing a no-fly zone over Libya and the taking of "all necessary measures" to protect civilians against government forces.	Germany said it would not back a no-flight zone in support of Libyan rebels. This decision was strongly internally criticized.	
18 March	The Libyan regime in Tripoli said it would comply with the ceasefire called for in resolution 1973			
19 March	The first air strikes stopped the advance of Gaddafi's forces on Benghazi and target Libya's air defences. The regime in Tripoli wrote to the Security Council requesting a meeting and claiming that the adoption of resolutions 1970 and 1973 had "paved the way for military aggression against Libyan territory" and that the enforcement action taken under the resolutions violated international norms		The military campaign to enforce the no-fly zone started immediately after the "Paris Summit for the Support of the Libyan People", held in Paris. <sup>359</sup>  Airstrikes began under initial leadership of the United Kingdom, France and the United States.	The AU Ad-Hoc High Level Committee on Libya met in Mauritania

<sup>359</sup> At the invitation of President of the French Republic, M. Nicolas Sarkozy, Mr. Ban Ki Moon, Secretary-General of the United Nations ; Mr. José Luis Zapatero, President of the Government of the Kingdom of Spain, Mrs. Angela Merkel, Federal Chancellor of Germany ; Mr. Steven Harper, Prime Minister of Canada; Sheikh Hamad Bin Jassem, Prime Minister and Minister of Foreign Affairs of the State of Qatar ; Mr. Donald Tusk, President of the Council of Ministers of the Republic of Poland ; Mr. Lars Loekke Rasmussen, Prime Minister of the Kingdom of Denmark ; Mr. Silvio Berlusconi,

<b>Date</b>	<b>In Libya</b>	<b>In the UN System</b>	<b>In Europe/NATO</b>	<b>In regional Organizations (AU, Arab League, GCC, OIC)</b>
21 March	The Libyan government's SA-2, SA-3, and SA-5 air defense systems were completely neutralized	Security Council members met in informal consultations		
24 March		The Secretary-General briefed Security Council members on measures taken by member states under resolution 1973 and informal consultations followed.		The efforts to recruit Arab countries to avoid an all-Western military presence received a boost on when the United Arab Emirates agreed to send 12 planes to help enforce the no-fly zone.

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President of the Council of Ministers of the Italian Republic ; Mr. George Papandreou, Prime Minister of the Hellenic Republic ; Mr. Jens Stoltenberg, Prime Minister of the Kingdom of Norway ; Mr. Yves Leterme, Prime Minister of the Kingdom of Belgium ; Mr. David Cameron, Prime Minister of the United Kingdom of Great Britain and Northern Ireland ; Mr. Mark Rutte, Prime Minister of the Kingdom of the Netherlands ; Mr. Amr Moussa, Secretary-General of the League of Arab States ; Mr. Herman Van Rompuy, President of the European Council ; Mrs. Catherine Ashton, European Union High Representative for Foreign affairs and Security policy ; Mr. Hoshyar Mahmoud Zebari, Foreign minister of the Republic of Irak ; Sheikh Abdullah Bin Zayed Al Nahyan, Foreign minister of the United Arab Emirates ; Mrs. Hillary Clinton, Secretary of State of the United States of America ; Mr. Nasser Joudeh, Foreign minister of the Kingdom of Jordan ; Mr. Taïeb Fassi-Fihri, Foreign minister of the Kingdom of Morocco attended the summit.

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
25 March		<p>UN Special Envoy Al-Khatib attended consultations at AU headquarters in Addis Ababa. Representatives of the AU Peace and Security Council, a majority of UN Security Council members (including the P5), the Arab League, the EU, the OIC, Libya’s neighboring countries and other parties attended. A delegation from Tripoli also attended the meeting. Benghazi was invited but unable to attend.</p> <p>Qatar flew its first raid as part of NATO operation .</p> <p>The African Court of Human and People’s Rights called on the Libyan Government to refrain from actions that would result in deaths or injuries and requested the Government to report within 15 days on its compliance</p>		
27 March			<p>A NATO meeting in Brussels agreed that NATO would take over from the US the command and control of all military operations to enforce resolution 1973.</p>	
28 March				<p>Qatar became the first Arab country to recognize Libya's rebels as the people's legitimate representative.</p>
29 March		<p>A conference of forty governments and organizations met in London. Participants — including representatives of the United Nations, Organization of the Islamic Conference, League of Arab States and North Atlantic Treaty Organization (NATO) — agreed to establish an International Contact Group on Libya to provide leadership and overall political direction to the international effort. As of 29 March, the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR) had provided evacuation assistance for more than 88,000 persons.</p>		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
30 March	Libyan Foreign Minister Moussa Koussa defected and flew to the United Kingdom.			The African Union met to discuss solutions to the crisis and modalities for a ceasefire. The meeting was attended by representatives of the European Union, the League of Arab States, the Organization of the Islamic Conference and the United Nations.
31 March	The Secretary-General's Special Envoy, Al-Khatib, met with officials of the Libyan Government, including the Prime Minister, Al Baghdadi Ali Al-Mahmoudi, and senior members of the Foreign Relations Committee of the People's Congress.		NATO took full control of the military operations. US Secretary of State Hillary Clinton welcomed NATO's decision. The handover to NATO became bogged down when Turkey made clear its view that action should focus directly on enforcing the no-fly zone and arms embargo, rather than allowing continuing strikes against ground forces. The US initially agreed to lead enforcement of the UN resolution, but made clear it wanted only a limited role and would hand over responsibility as soon as possible.	



Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
1 April	Abdelilah Al-Khatib met with members of the interim Transitional National Council. Informed by Mr. Al-Khatib of the Libyan authorities' willingness to accept a ceasefire under the supervision of impartial observers if the Transitional National Council agreed to do the same, that Council's Chairman stated it was ready to implement a ceasefire provided that the agreement was mutual and included an end to the siege of all western cities, as well as the withdrawal of military forces. "Furthermore, they indicated that the aim of the people's uprising is to see the departure of Colonel Gaddafi and that a ceasefire alone was not sufficient to end the conflict." However, media reports quote Government statements indicating a rejection to a ceasefire- Mr. Al-Khatib said.		EU authorized "EUFOR-Libya"—a military operation to support delivery of humanitarian assistance if requested by the UN.	
3 April		ICC Prosecutor said that he was investigating alleged crimes against humanity committed by Libya, including by Colonel Gaddafi and his inner circle.		
4 April		Special Envoy Al-Khatib briefed the Security Council on his visit to Libya where he met with both Tripoli and opposition officials		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
10 April				After leading a delegation of four African leaders at talks in Tripoli, South African President Jacob Zuma announced that Gaddafi had accepted a roadmap for ending the conflict. Rebels rejected the plan the following day. The African Union proposal had no immediate impact on NATO, which said air raids to protect civilians would continue.
12 April			Alain Juppe, French foreign minister, said NATO was not doing enough to protect civilians in Libya. Speaking to France Info radio Mr. Juppe said: "It (NATO) must play its role today which means preventing Gaddafi from using heavy weapons to shell [civilian] populations." When asked if NATO was doing enough, Juppe responded: "It's not enough." His sentiments were echoed by William Hague, British foreign minister.	Aljazeera reported that Moussa Koussa, Libya's former foreign minister arrived in Qatar to share his insights on the workings of Gaddafi's inner circle. Koussa allegedly held meetings on the fringes of the Libya Contact Group conference. Britain's Foreign Office confirmed the trip in a statement on 12 April, saying that Koussa was "travelling today to Doha to meet with the Qatari government and a range of other Libyan representatives" and to discuss the rejected African Union initiative <sup>360</sup> .

<sup>360</sup> <http://english.aljazeera.net/news/africa/2011/04/2011412184330248584.html>

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
12 April (continued)			<p>In Washington, Secretary of State Hillary Rodham Clinton reiterated the Obama administration's call for Colonel Gaddafi to leave power and exit the country. She said the United States would welcome a cease-fire, but she insisted on clear conditions. "We want to see a resumption of water, electricity and other services to cities that have been brutalized by the Gaddafi forces," she said. "We want to see humanitarian assistance reach the people of Libya. These terms are nonnegotiable." Finland's foreign minister, Alexander Stubb, who appeared with Mrs. Clinton at the State Department, said the European Union was already preparing for assistance to Libya under a new government</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
13 April		<p>Libya Contact Group met in Doha and:</p> <p>concluded as long as the Tripoli regime continued to attack civilians the robust implementation of resolution 1973 would continue;</p> <p>called for the Tripoli regime to withdraw its forces from all captured cities and a return to barracks;</p> <p>welcomed the UN Special Envoy and the AU's efforts for a political solution while signaling their belief that Gaddafi's continued presence would threaten any such resolution;</p> <p>said that Qaddafi had lost legitimacy and that the Transitional National Council was the legitimate interlocutor for the Libyan people and agreed that material and financial support should be sought for Benghazi; and</p> <p>confirmed the need for a UN role in early recovery and peace building in Libya.</p>		
14 April	<p>Fighting intensified in the Libyan port of Misrata as government forces attempted to retake the rebel-held city after a two-month siege.</p>	<p>UN Secretary-General convened a meeting in Cairo of the UN, the Arab League, the AU, the EU and the Organization of the Islamic Conference to coordinate the international response to the crisis in Libya. He said the UN had started post-conflict contingency planning for Libya and that it was essential for the international community to remain engaged. UN Secretary-General Ban called for a "political" solution and immediate ceasefire in the conflict in Libya. The European Union foreign policy Chief Catherine Ashton, who also attended the Cairo conference, appealed to Gaddafi to resign with immediate effect.</p> <p>In a summit in Beijing, BRICS leaders said that resolution 1973 was being interpreted arbitrarily. (BRICS nations are Brazil, Russia, India, China and South Africa—all Security Council members.)</p>		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
17 April	<p>Military forces loyal to Gaddafi surrounded Misurata and fired into residential neighborhoods with heavy weapons, including cluster bombs and ground-to-ground rockets.</p> <p>Rebels suffered a setback.</p> <p>Large number fled the city of Ajdabiya</p>		<p>The UK Prime Minister, David Cameron, said the terms of the UN resolution on Libya were a "restriction" on the coalition powers who have been trying to protect civilians and enforce a no-fly zone. Earlier Mr. Cameron told Dermot Murnaghan on Sky News: "We're not occupying, we're not invading, (and) that's not what we're about. And that is obviously a restriction on us, but I think it is the right restriction... But we're very clear we must stick to the terms of the UN Security Council resolution - and we must keep the support of the Arab world."<sup>361</sup></p>	

<sup>361</sup> <http://www.bbc.co.uk/news/uk-politics-13107834>

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
18 April		The 27 EU governments that had decided at on 1 April to prepare a mission called Eufor Libya, signed a 61-page document on the concept of operations. Diplomats and officials stressed that the document would not be finalized unless a request for an EU military mission came from a UN body - the Office for the Co-ordination of Humanitarian Affairs (OCHA). Valerie Amos, the head of OCHA, had privately told EU leaders she was reluctant to make the request and wanted to explore all civilian options for the aid operation before seeking military help. Diplomats said that Ms. Ashton was pushing for UN consent under strong pressure from the French. Officials in New York made clear that the EU would only be asked to help "as a last resort". NATO repeated that it would not get directly involved in supplying aid.		
19 April	NATO officials expressed increase confidence that Gaddafi's military position was weakening and that airstrikes had prevented his forces from making sustained attacks on rebel forces and had driven him into hiding.		France and the UK sent military advisors and the US announced a \$25 in non-lethal aid	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
20 April	Gaddafi's foreign minister criticized the deployment of military advisors to Benghazi and called for a ceasefire followed by elections within six months.	OCHA head Valerie Amos announced the establishment of a UN humanitarian presence in Tripoli following her visit there as part of a high-level UN delegation that also included the Special Envoy for Libya, Abdel-Elah Al-Khatib	Italy said it was sending military advisors to Benghazi	
21 April	Rebels took control of a border crossing into Tunisia			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
23 April			Susan Rice, the U.S. ambassador to the United Nations, said that the Obama administration was pursuing other measures to remove the Libyan leader from power, including further enforcing an arms embargo on the Gaddafi regime and giving the rebels political and economic support. Ms Rice also said that the U.S. supported European efforts even as it chose a different approach. Rice insisted that the NATO mission was to protect civilians. “The president has been very clear that we are not doing regime change by military means”. “We are protecting civilians. That’s what NATO’s doing.”	



Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
23 April (continued)			<p>(continued)</p> <p>She denied that there is an inconsistency in U.S. policy toward Middle Eastern leaders facing unrest. “The U.S. supports the democratic aspirations of people in all those countries, but has not specifically called for regime change,” Rice said. “We’ve been very consistent that the United States stands behind the universal rights of individuals to express themselves, to protest, to organize, to chart their own futures”. “And we have condemned from Bahrain to Syria to Egypt to Tunisia any use of violence against peaceful protesters,” Rice said.</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
25 April	<p>NATO airplanes struck Gaddafi's compound and bombed a state television facility.</p> <p>Rebels controlled most of eastern Libya.</p>			<p>Al-Khatib, attended the meeting of the African Union Ad Hoc High-Level Committee, which he said stood by its position that Libyan parties should come to the negotiating table as part of a political process to discuss issues of concern, including a ceasefire.</p>
26 April			<p>NATO announced it was targeting Gaddafi's command and control structures to weaken the regime's ability to attack civilians. NATO also said it had received reports that Libyan government troops were not reporting for duty. Media reports indicated that this was to encourage Gaddafi to go into exile.</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
27 April		<p>A UN team arrived in Tripoli to investigate allegations of human rights violations in Libya since the start of the conflict in February. The team was appointed by the UN Human Rights Council. The government said it was ready to cooperate with the inquiry. The three investigators' mandate was to look at all alleged abuses, including those the government says have been committed by rebels or NATO forces. The UN human rights commissioner, Navi Pillay, said in late February that what was happening in Libya "may amount to crimes against humanity".</p>		
28 April		<p>Al-Khatib met with the Foreign Minister of Turkey on implementation of a ceasefire and the way to bring about a solution in Libya. He had also met with the Foreign Minister of Italy, where he had stressed the urgency of protecting civilians and assisting the Libyan people to meet their legitimate demands, while emphasizing the need to continue facilitating a coordinated international approach to provide humanitarian assistance.</p>		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
30 April	A NATO missile attack on a house in Tripoli kills Gaddafi's youngest son and three grandchildren			
3 May		Al-Khatib briefed the Council and said that both Benghazi and Tripoli wanted a ceasefire but there remained fundamental differences regarding any political process which the TNC has linked to Qaddafi's departure		<p>Turkey called on Gaddafi to step down.</p> <p>Turkey played a mediating role and a member of the Contact Group and NATO. There were no formal coordination with AU mediation efforts but Turkey said it had presented its roadmap to the international community and was willing to contribute to any peace initiative.</p>
4 May		ICC Prosecutor briefed the Security Council		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
5 May			<p>The second Contact Group Meeting on Libya, after Doha meeting, gathered in Rome. The meeting was co-chaired by Minister Franco Frattini and the Prime Minister and Minister for Foreign Affairs of Qatar, Sheik Hamad Bin Jassim Bin Jabr Al-Thani. 22 countries and six international organizations – EU, UN, Nato, the Arab League, the Organization of the Islamic Conference (OIC) and the Gulf Cooperation Council -took part in the meeting.</p> <p>The Group:</p> <ul style="list-style-type: none"> <li>-confirmed that Qaddafi, his family and his regime have lost legitimacy;</li> <li>-reasserted the central role of UN envoy Khatib in reaching a political solution;</li> <li>-endorsed a temporary financial mechanism to channel funds to Benghazi;</li> <li>-agreed that the TNC is a legitimate interlocutor, and in that context;</li> <li>-urged the Libya Sanctions Committee to unfreeze Libyan assets to address humanitarian needs; and</li> <li>-considered the advisability of establishing humanitarian corridors and maritime corridors</li> </ul>	
10 May	Libya rebels 'capture Misrata airport'			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
13 May	NATO airstrikes hit Gaddafi's compound in Tripoli.		US did not recognize the NTC as the true government of Libya. In a statement, the White House said Mr. Donilon had told Mr. Jibril that the US viewed the council as "a legitimate and credible interlocutor of the Libyan people".	
15 May	Al-Khatib visited Tripoli where he met with several high-level officials, but not with Gaddafi as expected.			
16 May	Intelligence agency buildings and a base of Col Gaddafi's "executive protection force" attacked by UK forces.	ICC asked the Court's pre-trial chamber to issue arrest warrants for Gaddafi, his son Saif al-Islam Gaddafi and intelligence chief Abdullah al-Sanousi for their roles in conducting widespread and systematic attacks against the civilian population, arbitrary arrest and torture, and recruitment of mercenaries.	Russia called on Libya to stop using force against civilians and fully comply with UN resolutions.  Russian Foreign Minister Sergei Lavrov met two envoys of Gaddafi in Moscow	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
17 May	Reports indicate that Tripoli's oil minister Shokri Ghanem was in Tunisia and may have defected from Gaddafi's regime.			
19 May			US President Barack Obama in his Middle East speech characterized the TNC as credible and legitimate and said that Libya's transition will come when Gaddafi leaves or is forced from power	
21 May				AU Peace and Security Council met in Addis Ababa with UN Security Council members. The communiqué expressed concern over the deteriorating humanitarian situation, stressed the need for an immediate and verifiable ceasefire and the need for a political solution to the conflict. It also welcomed the efforts of UN envoy Al-Khatib and the AU High Level Ad Hoc Committee and agreed to continue with efforts to find a solution to the crisis
22 May			The EU opened an office in Benghazi pledging long-term support to the TNC.	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
23 May	<p>TNC head Mustafa Jalil met with the Turkish prime minister, president and foreign minister. Turkey reiterated its 3 May call for Gaddafi to step down and said the TNC was a legal and credible representative of the Libyan people.</p>			
24 May	<p>A high-level delegation visited Benghazi and invited the TNC to open an office in Washington DC. The US closed its embassy in Tripoli</p> <p>Nato planes launched a series of air attacks on Tripoli. BBC correspondents said they appear the largest so far of the campaign.</p>		<p>US asked representatives of Gaddafi to leave Washington DC.</p>	



Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
25-26 May				<p>AU held an extraordinary summit on Libya attended by UN Secretary-General Ban Ki-moon. The importance of the AU's High Level Committee and the AU Roadmap which calls for a verifiable ceasefire and political dialogue was stressed. It appeared that the issue of Gaddafi leaving power as part of a negotiated solution was mentioned for the first time in the context of the AU.</p>
27 May			<p>The G8 said that Gaddafi must leave power</p>	
30 May	<p>In his first appearance in a month, Gaddafi renewed a ceasefire call in talks with visiting South African President Zuma but gave no sign to step down.</p>			
End of May			<p>At the end of May the coalition included the following countries: Belgium, Bulgaria, Canada, Denmark, France, Greece, Italy, Jordan, Netherlands, Norway, Qatar, Romania, Spain, Sweden, Turkey, UAE, UK and USA.</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
1 June	Libya's top oil official Shokri Ghanem appeared in Rome, saying he defected due to the persistent bloodshed.			
6 June				President Mohamed Ould Abdel Aziz of Mauritania said, "Gaddafi can no longer lead...his departure has become necessary."
8 June			Western and Arab nations met rebels in Abu Dhabi to discuss what US officials called the 'end-game' for Gaddafi.	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
9 June	<p>Al-Khatib briefed Security Council members via video-conference in informal consultations and said that for the first time both sides signaled a willingness to discuss political transition. However, he said, seemingly irreconcilable differences remained as to what that “political transition” means in Benghazi and Tripoli</p> <p>A renewed barrage of shelling by Libyan troops around Misrata left at least 22 people dead and 60 wounded.</p>	<p>The International inquiry Commission established in February presented its first report, which reached the conclusion that crimes against humanity and war crimes had been committed by Tripoli and provided estimates that between 10,000 and 15,000 had been killed during the conflict. The Commission’s mandate was extended with a request for an oral update in September 2011 and a final written report in March 2012.</p>	<p>The Libya Contact Group met in Abu Dhabi. It: reasserted that Gaddafi had to leave power and endorsed the TNC’s road map for political transition; encouraged those in Gaddafi’s regime who don’t want to be associated with human rights violations to defect; reasserted the UN’s lead in facilitating dialogue and any political process and Khatib’s role in that regard; welcomed UN post-conflict planning; established a temporary financial mechanism to channel funds to the TNC (media reports indicate \$1.3 billion in pledges against Benghazi’s stated need of \$3 billion); agreed to find a mechanism to unfreeze Libyan assets or use such assets as security for financing TNC obligations (the EU has endorsed such measures and the US was in the process of introducing legislation to allow such measures domestically); encouraged finding ways the TNC would be able to export oil (there have been limited shipments via Qatar and one confirmed sale to the US); and acknowledged AU efforts and looked forward to working with African states to reinforce the message that Gaddafi must go</p> <p>It is reported that the AU attended the Abu Dhabi meeting as an observer but left its chair empty at the adoption of the statement.</p>	
10 June				<p>Media reports indicated that Turkey had suggested to the Tripoli regime that time was running out for an honorable exit to be negotiated for Gaddafi</p>

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
12 June	Britain and other countries continue to bombard Gaddafi's positions, but the campaign appears to have reached a stalemate and the Libyan leader remains in charge			
13 June	<p>Rebels call for Nato to step up campaign in Misrata</p> <p>In the city of Misrata they said fighters and civilians were still being killed by Gaddafi's forces.</p>		<p>Germany recognized the TNC after a visit by its foreign minister to Benghazi.</p> <p>Canada recognizes Libya rebels as 'legitimate'</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
15 June -	Libya approved a \$31.4bn budget for the rest of 2011, to show it was functioning as normal.			Hamady Ould Hamady, Minister for Foreign the foreign minister of Mauritania, in his capacity as chair of the AU High Level Ad-Hoc Committee on Libya, briefed the Security Council on its mediation efforts. Following the public briefing, the AU Committee members and Security Council members discussed the Libyan situation. “We cannot simply be spectators to calamities that befall us,” Hamady Ould Hamady said. For that reason, the extraordinary Summit of the African Union held on 25 May had expressed “surprise and disappointment” at attempts to marginalize the continent in the management of the conflict.
16 June	Rebel forces overrun Colonel Gaddafi's Bab al-Aziziya compound in central Tripoli. The compound was attacked by Nato aircraft as part of their operation to weaken Gaddafi's military.			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
17 June		The Human Rights Council urgently repeated its call to the Libyan authorities to cease all violations of human rights immediately and to cooperate fully with the Inquiry Commission		
18 June	Officials in Libya said a residential area of the capital, Tripoli, was hit by a NATO air strike.	The UN, AU, Arab League, EU and the Organization of the Islamic Conference met in Cairo to underscore the UN's leading role in cooperation with these organizations for a Libyan transition.		
26 June.	Rebel forces in Libya clashed with troops loyal to Col Muammar Gaddafi about 80km (50 miles) south-west of the capital, Tripoli.			The African Union High-Level Ad Hoc Committee on Libya (that took place in Pretoria) expressed concern about the continuing fighting, as well as the NATO-led air strikes. It also demanded an immediate end to the NATO-led bombing so that humanitarian aid could be delivered to those desperately in need. The African Union had also accepted Colonel Gaddafi's decision not to be a part of the ongoing negotiations.

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
27 June	Rebels in Libya said they captured a major complex of underground weapons bunkers in the west of the country near Zintan.	The ICC issued arrest warrants for Gaddafi, his son Saif al-Islam and intelligence chief Abdullah al-Senussi, charged with crimes against humanity..		South Africa’s Ambassador, Baso Sangqu, in remarks to the press, said the situation in Libya has deteriorated with loss of civilian life and that South Africa’s intent when it voted for resolution 1973 was to ensure protection of civilians and humanitarian access and that a political, rather than a military, solution is the only way
30 June		France informed the UN Secretary-General that it had “taken an additional measure in accordance with paragraph 4 of resolution 1973: airdrops of self-defence weapons for the civilian populations that have been victims of attacks by Libyan armed forces, in the absence of any other operational means of protecting these populations under threat.” Media reports indicate the weapons were dropped in the Nafusa Mountain area, southwest of Tripoli, and included ammunition, rifles, machine guns, anti-tank missiles, and RPGs.		At the 17th AU Summit in Malabo in Equatorial Guinea the AU decided its member states should not cooperate with the execution of the arrest warrants issued by the ICC on 27 June for Qaddafi, his son and his intelligence chief saying that the warrants complicate reaching a negotiated political solution to the Libyan crisis. The summit also requested the Security Council to defer the ICC process under article 16 of the Rome Statute.

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
1 July	<p>British Apache helicopters targeted a military base being used by Libyan leader Muammar Gaddafi's forces.</p> <p>The raid targeted the al Mayah military camp, near Az Zawiyah, west of the Libyan capital Tripoli.</p> <p>It came as Col Gaddafi threatened to carry out attacks against civilians in Europe unless Nato halts airstrikes.</p>			<p>AU High-Level Ad-Hoc Committee on Libya presented Tripoli and Benghazi representatives with a proposal endorsed at the 17th AU Summit in Malabo. The new proposal differed from a previous AU plan in that it called for negotiations which would exclude Qaddafi.</p>
3 July				<p>Turkish Foreign Minister Ahmet Davutoglu said it was time for the Libyan leader Muammar Gaddafi to go.</p> <p>Turkey pledged a 0m in aid for the rebels in addition to \$100m announced in June.</p>



Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
5 July	Media reports indicated that Russian mediators had said Gaddafi was willing to step down in exchange for security guarantees. Benghazi rejected internal exile for Gaddafi.			
9 July	Al-Khatib visited to Tripoli as part of his mediation efforts.  Libyan rebels made progress towards the strategically important town of Zlitan on the road to Tripoli, following weeks of stalemate.			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
11 July		<p>Al-Khatib briefed Council members in informal consultations after his visit to Tripoli. He suggested a key element of any political solution linked to a ceasefire could be an interim “institutional mechanism” comprised of representatives of both Benghazi and Tripoli. However, he said disagreements remained between Benghazi, which wanted talks only after Gaddafi left power, and Tripoli, which wanted talks only after a ceasefire. He also expressed concern about the humanitarian situation across Libya and about the intensity of the NATO campaign during Ramadan (which started on 1 August)</p>		
13 July	<p>Colonel Gaddafi's forces began a counter attack in western Libya, against rebels who have been fighting to advance towards the capital of Tripoli.</p>			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
15 July			<p>The Contact Group on Libya held its fourth meeting in Istanbul, Turkey, where the participants recognized the National Transitional Council as the “legitimate governing authority in Libya” until the establishment of an interim authority.</p> <p>Libya Contact Group:</p> <p>reaffirmed that Gaddafi must leave power;</p> <p>agreed all [Contact Group] participants would deal with the National Transitional Council (NTC) as the legitimate governing authority until an interim government is formed which could include some members of the Tripoli regime;</p> <p>reaffirmed the sovereignty and territorial integrity of Libya;</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
15 July (continued)			<p>stressed the need for a genuine ceasefire, an immediate political transition and humanitarian access;</p> <p>reaffirmed the leading role of the UN and Special Envoy Abdel-Elah Al-Khatib's role in that regard and included language encouraging the AU's mediation role;</p> <p>adopted explicit language on the functioning of the Temporary Financial Mechanism to fund the NTC and welcomed the NTC's commitment to honour Qaddafi-era contracts; and</p> <p>indicated the post-conflict stage should be Libyan-led with the UN leading the support efforts of the international community.</p> <p>US recognizes Libyan rebel TNC as legitimate authority</p>	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
On 16 July	Media reports indicated that a meeting between US diplomats and Gaddafi envoys took place 'to deliver a clear and firm message that the only way to move forward, is for Gaddafi to step down'.			
18 July				The African Union Ad-Hoc High-Level Committee on Libya convened a technical interactive meeting in Addis Ababa to which the Libyan Government, the National Transitional Council and the United Nations were invited.
20 July			French Foreign Minister Alain Juppé suggested Gaddafi could stay in Libya if he relinquished power	
26 July		Al-Khatib said after talks with Libya's prime minister, the government and the rebels remained far apart in efforts to end the crisis.	British Foreign Minister William Hague said that the UK preferred that Gaddafi leave the country but “what happens to Gaddafi is ultimately a question for the Libyans.”	

<b>Date</b>	<b>In Libya</b>	<b>In the UN System</b>	<b>In Europe/NATO</b>	<b>In regional Organizations (AU, Arab League, GCC, OIC)</b>
27 July	Libya rebels 'capture key supply route town of Ghazaya'		NCT won diplomatic recognition from Britain which also expelled the remaining Gaddafi diplomats from London.	
9 August	Gaddafi's government accuses NATO of killing 85 civilians, in an air strike near Zlitan, west of Misrata.			AU High-Level Ad-Hoc Committee met with a delegation of the TNC to discuss the proposals endorsed by the July Malabo AU Summit
11 August	Rebels said they had captured part of the oil town of Brega. Gaddafi's forces held western parts of the town where the oil facilities are located.			
14 August	Libyan rebels took the centre of Zawiyah, near Tripoli, cutting the coastal highway to Tunisia which keeps the capital supplied with food and fuel. Gaddafi troops still held its oil refinery. Gaddafi forces fired a scud missile from near Sirte. There were no casualties.			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
15 August	Gaddafi called on his followers to liberate Libya from rebels and NATO. 'Get ready for the fight. The blood of martyrs is fuel for the battlefield,' he said. Rebels announced that they had captured Garyan, which controls the highway leading south from Tripoli and linking it to Sabha, a Gaddafi stronghold deep in the desert.			
16 August -	Libya's rebels said they had completed moves to cut off roads to the capital after rapid advances in the west.			
19 August.	Rebels fought battles in two coastal cities near Tripoli in a drive to topple Gaddafi, but met stiff resistance.			

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
21 August	Despite a call by Gaddafi for citizens to take up arms Rebel fighters enter Tripoli with little sign of resistance. Rebels claim to capture two of Gaddafi's sons. Overnight, Gaddafi's son Seif al-Islam reappears after being reportedly arrested by rebels and defiantly said that Tripoli was 'under control' of the regime. His brother Mohammed escaped after having been arrested by rebels.			
22 August		UN Secretary-General met with the president and P5 members of the Council to discuss the rapidly unfolding developments in Libya and signaling the possible post-conflict roles for the UN.		
23 August	Rebel fighters captured Gaddafi's compound		NATO declares that Gaddafi was not a target.	The UN Special Envoy, Al-Khatib, Ian Martin and the Transitional National Council (TNC) met in Doha



Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
24 August	Gaddafi broadcast an address from a Tripoli local radio station in which he said the withdrawal from Bab al-Azizia had been a "tactical" move.			The Contact Group met at the request of the TNC in Doha. The TNC was seeking the urgent release of funds to support its political apparatus as well as to provide humanitarian assistance to the Libyan people.
25 August				The Contact Group met at the level of political directors in Istanbul. Representatives from 28 countries as well as the UN, the EU, NATO, the LAS, the OIC, the GCC and the AU agreed to interact with the TNC as the legitimate governing authority in Libya. The participants agreed the UN should take the lead role in post-conflict Libya but stressed this process should be led by the Libyan people.
26 August		The Secretary-General held a video conference with the heads of the AU, the EU, the OIC and the LAS urging them to assist the TNC with a smooth political transition		

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
27 August				TNC attended its first League of Arab States meeting but suffered a setback when the Peace and Security Council of the AU insisted on only recognizing an “all-inclusive transitional government”.
30 August	Acting Prime Minister Mahmoud Jibril said that Libya would hold free elections in eight months and Gaddafi will be put on trial in the country.	The UN Secretary-General briefed the Security Council saying that the UN’s potential role in post-conflict Libya had been discussed with the NTC.	President Nicolas Sarkozy and Barack Obama said they intended to continue military action against Gaddafi until “he lays down his weapons”. Russian President Dmitry Medvedev announced that Russia would be prepared to open full diplomatic ties with the rebels if they were able to unite the country.	

Date	In Libya	In the UN System	In Europe/NATO	In regional Organizations (AU, Arab League, GCC, OIC)
31 August	<p>Saif al-Islam Gaddafi said in an audio message</p> <p>"The resistance continues and victory is near."</p> <p>Evidence suggests that several mass killings were carried out as rebel forces swept into the capital Tripoli earlier in August.</p>		<p>Speaking to French Ambassadors at their annual gathering in Paris, President Nicolas Sarkozy said that Libya proved "a strong contrast" to the problems of Europe over Bosnia and justified his decision to integrate France fully into NATO's military command and that the Europeans must assume more of their responsibilities: a responsibility that also the US are now ready to assume"<sup>362</sup>.</p>	
20 October	<p>Gaddafi was killed at approx. 12 o'clock on 20 October 2011 after being captured in his birthplace of Sirte. Acting Prime Minister Mahmoud Jibril said he had been shot in the head in an exchange between Gaddafi loyalists and National Transitional Council fighters.</p>		<p>NATO informed that it had carried out an air strike earlier on the same day. French Defense Minister Gerard Longuet declared that French jets had fired warning shots to halt a convoy carrying Col. Gaddafi as it tried to flee Sirte. He said Libyan fighters had then descended and taken Col. Gaddafi, who was captured alive.</p>	

<sup>362</sup> "Sarkozy praises Europe's role in Libyan Revolt", International Herald Tribune 1/9/ 2011

## **Annex II: Indicator Indexes**

We considered six indicator indexes with the aim at finding political, legal and socio/economic conditions that may have provided advance signals of state failure/gross violation of human rights in Libya to justify the adoption of preventive measures.

The indicator Indexes used were the Bertelsmann Transformation Index, the Carleton's Country Indicators for Foreign Policy, the Failed State index, the State Fragility Index, the Freedom in the World survey and the Transparency International - Corruption Perceptions Index from 2005 to 2011 where possible.

### **Bertelsmann Stiftung's Transformation Index (BTI)**

The Bertelsmann Stiftung's Transformation Index (BTI) analyzes and evaluates the quality of democracy, a market economy and political management in 128 developing and transition countries. The scores range from 10 (higher) to 1 (lowest)<sup>363</sup>.

Three reports are available on Libya respectively dated 2008, 2010 and 2012

In 2008 Libya received a score of 4.24 and ranked 97<sup>th</sup> out of 125 countries; in 2010 4.49 and ranked 96<sup>th</sup> out of 128 countries and in 2012 it was scored 4.48 (96<sup>th</sup> out of 129 countries) ranking Libya a country at medium /low risk.<sup>364</sup>

### **Carleton's Country Indicators for Foreign Policy**

The Carleton's Country Indicators for Foreign Policy project focuses on nine issue areas as follows: authority, legitimacy, capacity, governance, economics, security and crime, human development, demography, environment and gender.

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<sup>363</sup> The analysis is based on the following sources are Sources: UNDP, Human Development Report 2006 | The World Bank, World Development Indicators 2007 | OECD Development Assistance Committee 2006 | African Development Bank, Latest Selected Statistics on African Countries. Methodology <http://www.bti-project.org/index/methodology/> (last accessed 3/12/12)

<sup>364</sup> Status index <http://www.bti-project.org/index/methodology/> see also [http://www.bti-project.org/uploads/tx\\_jpddownloads/BTI2012\\_Scores.xls](http://www.bti-project.org/uploads/tx_jpddownloads/BTI2012_Scores.xls) (last accessed 3/12/12)

We found only two years in which Libya was mentioned, respectively in 2007 and 2011.

The Carleton's Country Indicators for Foreign Policy 2007 attributed to Libya a score of 4.99 in the Failed or Fragile state 2007 Index (country performing at or around the media) after Kazakhstan and before Armenia, with the only high score indicators (country performing poorly relative to others) in the areas of legitimacy and governance<sup>365</sup>

The 2011 Rankings for overall fragility of MENA region<sup>366</sup> attributed to Libya a score of 5.3 (country performing at or around the media) after Kuwait and before Jordan with the only high score in legitimacy (7.15)

### **Failed State Index**

The 2005 Failed State index 2005 Libya was placed at 63<sup>rd</sup> place of the failed State Index out of 76 countries after Brazil and before Togo with a total score of 80.7 (maximum score 120) classifying Libya among the light warning/stable countries.<sup>367</sup> In 2006 Libya was place at the 95<sup>th</sup> place out of 144 after Albania and before Botswana with a total score of 68.5. In 2007 Libya was ranked 115<sup>th</sup> out of 177 countries after Belize and before Trinidad and Tobago. In the subsequent years the situation improved. In 2008 an, 2011 and 2012 Libya was ranked 111<sup>th</sup> out of 177 countries. In 2009 it was ranked 112<sup>nd</sup>.<sup>368</sup> Only in 2012,

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<sup>365</sup> [http://www4.carleton.ca/cifp/app/gdp\\_ranking.php](http://www4.carleton.ca/cifp/app/gdp_ranking.php) (last accessed 3/12/12) A high score - 6.5 or higher - indicates that a country is performing poorly relative to other states. A low score - in the range of 1 to 3.5 - indicates that a country is performing well relative to others, or that a country's structural conditions present little cause for concern. Values in the moderate 3.5 to 6.5 range indicate performance approaching the global mean

<sup>366</sup> <http://www4.carleton.ca/cifp/app/serve.php/1344.pdf> (last accessed 3/12/12)

<sup>367</sup> With following indicators: 1) Mounting Demographic Pressures: 7.0; 2) Massive of Refugees/IDPs: 8.0; 3) Group Grievance: 6.7; ,4) Human Flight: 7.1; 5) Uneven Development: 9; 6) Economic Decline: 3.1; 7) Delegitimation of the State: 8.7; 8) Public Services: 3.0; 9) Human Rights: 8.7; 10) Security Apparatus: 8.0; 11) Factionalized Elites: 8.4; 12) External Intervention: 3.0 Total 80.7 (Max. 120)

<sup>368</sup> In 2006 the total score was 68.5 (6.0; 2.1; 5.5; 4.0; 7.3; 5.1; 7.5; 4.5; 8.1; 5.5; 7.9; 5.0). In 2007 the total score was 69.3 (6.2; 2.6; 5.6; 4.0; 7.3; 5.3; 7.4; 4.5; 8.1; 5.3; 8.0; 5.0) In 2008 Libya was 111st out of 177 countries after Belize and before Albania with a total score of 70.0 (6.2; 4.0; 5.6; 4.0; 7.3; 5.37.4; 4.5; 8.1; 5.6; 7.0; 5.0)

after the uprising, Libya was ranked 50th out of 177 (warning) with a total score of 84.9.

### **State Fragility Index**

The State Fragility Index and Matrix<sup>369</sup> lists all independent countries in the world in which the total country population is greater than 500,000 in each given year (in 2010 164 countries). The Fragility Matrix scores each country on both Effectiveness and Legitimacy in four performance dimensions: Security, Political, Economic, and Social. Each of the Matrix indicators is rated on a four-point fragility scale: 0: “no fragility,” 1: “low fragility,” 2: “medium fragility,” and 3 “high fragility” with the exception of the Economic Effectiveness indicator, which is rated on a five-point fragility scale (including 4 “extreme fragility”). The State Fragility Index, then, combines scores on the eight indicators and ranges from 0 “no fragility” to 25 “extreme fragility.”<sup>370</sup> A country’s fragility is closely associated with its state capacity to manage conflict; make and implement public policy; and deliver essential services and its systemic resilience in maintaining system coherence, cohesion, and quality of life; responding effectively to challenges and crises, and continuing progressive development.

The data published by the State Fragility Index from 2005 to 2007 ranged Libya 8 out of 25 (“medium fragility”) and 7 out of 25 in the years 2008 to 2011 (“low fragility”)<sup>371</sup>

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In 2009 112 out of 177 countries after Belize and before Brazil (total score 69.4) (5.9; 4.2; 5.8; 4.0; 7.1; 5.5; 7.1; 4.2; 8.1; 5.4; 7.1; 5.0)

In 2010 111st place with a total score of 69.1 after Malaysia and before Belize

In 2011 111st with a score of 68.7 (lower than the previous year)

<sup>369</sup> <http://www.systemicpeace.org/inscr/inscr.htm> (last accessed 3/12/12)

<sup>370</sup> State Fragility Index = Effectiveness Score + Legitimacy Score (25 points possible)

Effectiveness Score = Security Effectiveness + Political Effectiveness + Economic Effectiveness + Social Effectiveness (13 points possible)

Legitimacy Score = Security Legitimacy + Political Legitimacy + Economic Legitimacy + Social Legitimacy (12 points possible)

<sup>371</sup> Excell 1995 2011 <http://www.systemicpeace.org/inscr/SFlv2010a.xls> (last accessed 3/12/12) see also [http://www.relooney.info/SI\\_Governance/Governance-Economic-Growth\\_38.pdf](http://www.relooney.info/SI_Governance/Governance-Economic-Growth_38.pdf) (last accessed 3/12/12)

## Freedom House

The survey assigns to each country or territory under consideration two numerical ratings, one for political rights and one for civil liberties. These two ratings are then averaged to determine an overall status of "Free," "Partly Free," or "Not Free." The survey rates political rights and civil liberties separately on a scale of 1 to 7, with 1 representing the most free and 7 the least free. From 2005 to 2011 Libya received a score of 7.0 (Not Free country). In 2012 the freedom rating lowered to 6.5 (Civil liberty 6; Political Rights 7) indicating a light improvement.<sup>372</sup>

## Corruption Perceptions Index

Since 1995, Transparency International (TI) publishes the Corruption Perceptions Index (CPI) annually ranking countries by their perceived levels of corruption. As of 2010, the CPI ranks 178 countries "on a scale from 10 (very clean) to 0 (highly corrupt)." In 2005 Libya had a score of 2.5 (together with Afghanistan, Bolivia, Ecuador, Guatemala, Guyana, Nepal, the Philippines and Uganda); in 2006 ranked 105<sup>th</sup> with a score of 2.7 (together with Bolivia, Iran, Macedonia and Malawi and Uganda), In 2007 ranked 131<sup>st</sup> with a score of 2.5 (together with Burundi, Honduras, Iran, Nepal, the Philippines and Yemen), in 2008 it ranked 126<sup>th</sup> with a score of 2.6 (together with Eritrea, Ethiopia, Guyana, Honduras, Indonesia, Mozambique and Uganda), in 2009 it ranked 130<sup>th</sup> with a score of 2.5 (together with Honduras, Lebanon, Maldives, Mauritania, Nigeria and Uganda), in 2010 it ranked 146<sup>th</sup> with a score of 2.2 while in 2011 it ranked 168<sup>th</sup> with a score of 2.<sup>373</sup>

The indexes presented above show that during the period under consideration (2005-2012) Libya had a democracy and legitimacy deficit and a high level of corruption. It was however not considered a failing or fragile state. This seems to

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<sup>372</sup> <http://www.freedomhouse.org/report/freedom-world/freedom-world-2012> (last accessed 3/12/12)

<sup>373</sup> [http://www.icgg.org/corruption.cpi\\_2005.html](http://www.icgg.org/corruption.cpi_2005.html) (last accessed 3/12/12) and <http://cpi.transparency.org/cpi2011/results/> (last accessed 3/12/12)

be confirmed by data elaborated by the United Nations Development Programme (UNDP) and published in the 2009 UNDP Arab Human Development Report. The Report shows that Libya had the lowest percentage in almost all indicators: undernourished population (data available for 1990-2004); maternal mortality ratio (2005 data); unemployment among Arab youths (2005-2006 data); projected population growth aged 15-25 through 2050 as well as lower than average urban population growth (2000-2005 data).

Libya does not figure in the list of EU-financed projects recipients in the years before the uprising. The EU is currently running a €30 million program in Libya aimed at providing support in the fields of reconciliation, elections and respect for human rights; public administrative capacity; media and civil society and promoting the involvement of women in public life; migration and health and education.



# CÔTE D'IVOIRE

## Chapter 5

### Introduction

The case of Côte d'Ivoire allows for a number of interesting reflections on the role of regional and sub-regional organizations and the use of the various measures available to the Security Council, i.e. sanctions and use of force.

We have seen how in the case of Libya, the Council moved swiftly to Chapter VII action also due to the strong position of the Arab League, which unanimously requested the Council to do so, reflecting a feeling that there were no realistic opportunities for political negotiations with Gaddafi. In the case of Côte d'Ivoire the reaction of the Council was more cautious. The Council received mixed signals from the region on how to address the crisis and until February 2011 Council members were mainly in a wait-and-see mode.

In 2011 both Nigeria and South Africa were non-permanent members of the Security Council. The two countries had differing opinions on how to deal with the situation. Within the African Union (AU) South Africa pushed for a political solution based on mediation. On the other hand, ECOWAS, of which the leading country is Nigeria, argued for the imposition of sanctions and the authorization of outside military intervention as the sole mean to solve the crisis.

Following the Council's decision to authorize the use of force to protect civilians in resolution 1973 on Libya (17 March 2011), there was mounting pressure on the Council to act more decisively also on Côte d'Ivoire. In particular, the Nigerian foreign Minister criticized the international community for its "contradictions". Three days after, on 24 March 2011, ECOWAS formally requested the Security Council to strengthen the mandate of UNOCI. The military operation began on 4

April 2011. On 11 April Ouattara's forces stormed Gbagbo's residence and arrested him.

While there was no doubt that the military action was aimed at halting further violence, different opinions were expressed concerning its suitability and impartiality. We believe that ex post analysis is often vitiated by a partial knowledge of the reality on the ground. How could UNOCI maintain equidistance in the situation of protracted civil war and mounting civilian deaths it was witnessing? How important would have been the death toll, had the UN waited for the mediation of the AU? Wouldn't it have been accused of inaction and incompetence as in the 1990s?

Coherently with the position of his country throughout the crisis, Russian foreign minister, Sergei Lavrov, questioned the legality of the air strikes, suggesting that UN peacekeepers may have overstepped their mandate<sup>374</sup>. The chairman of the African Union, Teodoro Obiang Nguema, also declared that foreign military intervention was unjustified and that Africa "must be allowed to manage its own affairs"<sup>375</sup>. Former South African President, Thabo Mbeki, affirmed that the UN had overstepped its authority, did not act impartially and that undue influence was exerted by France.<sup>376</sup>

Phyllis Bennis, of the Washington-based think tank International Policy Studies, also affirmed that the timing of the operation "strengthens the argument that the air strikes are more of a political than a humanitarian intervention," aimed at helping to "re-establish the French presence in Francophone Africa."<sup>377</sup>

For Bellamy and Williams the use of force by UN peacekeepers "blurred the lines between human protection and regime change and raised questions (...) about the

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<sup>374</sup> <http://www.unhcr.org/refworld/country,,RFERL,,CIV,,4e20435623,0.html> (last accessed 3/12/12)

<sup>375</sup> [http://www.expatica.com/ch/news/swiss-news/au-chief-condemns-foreign-intervention-in-ivory-coast-libya\\_140482.html](http://www.expatica.com/ch/news/swiss-news/au-chief-condemns-foreign-intervention-in-ivory-coast-libya_140482.html) (last accessed 3/12/12)

<sup>376</sup> Mbeki T., What the World Got Wrong in Côte D'Ivoire, 29 April 2011, Foreign Policy available at [http://www.foreignpolicy.com/articles/2011/04/29/what\\_the\\_world\\_got\\_wrong\\_in\\_cote\\_d\\_ivoire](http://www.foreignpolicy.com/articles/2011/04/29/what_the_world_got_wrong_in_cote_d_ivoire) (last accessed 3/12/12) see note 4

<sup>377</sup> Plett B., 'Did UN forces take sides in Ivory Coast?', BBC News, 7 April 2011 <http://www.bbc.co.uk/news/world-africa-13004462> (last accessed 3/12/12)

proper interpretation of Resolution 1975, and about the place of neutrality and impartiality in UN peacekeeping.” The two authors acknowledged that the recourse to force helped to stabilize the situation and minimize casualties, but reflected on the fact that things might have turned out differently had UNOCI not intervened in support of Ouattara’s forces.<sup>378</sup>

On the other hand the military action received the full support of the UN Secretary-General and of the majority of Council members, who agreed that the actions taken by UNOCI had not gone beyond resolution 1975<sup>379</sup>.

This Chapter is structured as follows: section 5.1 provides some background information on the internal conflict. Section 5.2 describes the response of the United Nations system with particular reference to the Security Council and the Human Rights Council; section 5.3 deals with the response of the regional and sub-regional organizations (the African Union and ECOWAS), section 5.4 describes the reaction of the civil society and section 6.5 concludes. Annex I contains a timeline of the main events from October 2000 until the arrest of Laurent Gbagbo in April 2011.

## 5.1 Background

The origin of the conflict can be set in 2000 when Alassane Ouattara was barred from contesting presidential and legislative elections on the basis of constitutional clauses limiting eligibility to Ivorians of Ivorian parentage who have never held another nationality (Ouattara’s opposers claimed that he was from Burkina Faso). His disqualification led the Rassemblement des Republicains (RDR) party to boycott the elections. In October 2000 General Robert Gueï – who one year earlier had put himself in power with a military coup - proclaimed himself president after

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<sup>378</sup> Bellamy A. J. and P. Williams, “The new politics of protection? Côte d’Ivoire, Libya and the responsibility to protect”, *International Affairs* 87: 4, 2011 pages 825-850 page page 835 available at [www.chathamhouse.org/sites/default/files/87\\_4BellamyWilliams.pdf](http://www.chathamhouse.org/sites/default/files/87_4BellamyWilliams.pdf) (last accessed 3/12/12)  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Cote%20d'Ivoire%20S%20PV%206513.pdf> (last accessed 4/12/12)  
<http://www.un.org/News/Press/docs//2011/sgsm13503.doc.htm> (last accessed 3/12/12)

announcing he had won presidential elections, but was forced to flee in the wake of a popular uprising. Laurent Gbagbo became president.

Opposition leader Alassane Ouattara, excluded from running in the poll, called for a fresh election. Fighting erupted between Gbagbo's mainly southern Christian supporters and followers of Ouattara, who are mostly Muslims from the north. In November 2001, Alassane Ouattara returned to the Cote d'Ivoire from exile in France and Gabon. The following year a section of the army attempted a coup d'Etat. The coup failed but the insurgent soldiers took control of the northern part of the country. The crisis resulted in the de facto division of the country into two zones: the north, controlled by the Forces nouvelles led by former student leader Guillaume Soro, and the south controlled by President Gbagbo.

The Economic Community of West African States (ECOWAS) took swift steps to find a solution to the crisis. On 29 September 2002, ECOWAS convened an emergency summit meeting in Accra, to promote dialogue between the rebels and the Government of Côte d'Ivoire. The summit was followed by a meeting of the ECOWAS Defense and Security Commission, which recommended that immediate arrangements be put in place to deploy ECOWAS troops to the Côte d'Ivoire. A ceasefire was signed on 17 October 2002. France played a central role in mediating the agreements between the opposing fractions. ECOWAS deployed a 1,400-strong force known as ECOMICI to police the ceasefire. The ceasefire paved the way to a political agreement between the Government and the opponents. Peace talks between the two sides began in Lomé on 24 October 2002 but, notwithstanding the mediation of ECOWAS, the parties did not reach an agreement. From 15 to 26 January 2003, the various parties met again at Linas-Marcoussis in France. The Linas-Marcoussis Agreement called on ECOWAS, the government of France and the United Nations, to provide forces to help in establishing secure areas and a "buffer zone" between northern based rebel groups, and government forces in the south of the country. Consequently, in February 2003, France dispatched 4,000 troops (Force Licorne) and ECOWAS provided a force of 6,000. On 13 May 2003, the Security Council adopted Resolution 1479 establishing the United Nations Mission in Côte

d'Ivoire, which was replaced one year later (February 2004) by the United Nations Operation in Côte d'Ivoire (UNOCI) (SC Resolution 1528).

The “Linah-Marcoussis” ceasefire was challenged several times. After several unsuccessful peace attempts, on 4 March 2007 the conflicting parties signed the Ouagadougou Political Agreement.

The presidential election that was supposed to happen in 2008 finally took place in 2010 (on 31 October for the first round and 28 November for the second round). The political climate was tense. In May 2010 the International Crisis Group reported that the political debate was exacerbated by the intransigence of the leading actors, by personal insults exchanged between them and, especially, by the return of xenophobic Ivorian nationalism.<sup>380</sup>

The first round of the election took place without major incidents but no candidate obtained an absolute majority. The second round that opposed outgoing president Laurent Gbagbo of La Majorité Présidentielle (LMP) and Alassane Ouattara, supported by the Rassemblement des Houphouëtistes pour la Démocratie et la Paix (RHDP), was marked by further radicalization of political statements.<sup>381</sup> Support for the two candidates was split along ethnic, regional and religious grounds. Gbagbo loyalists were concentrated within the southwestern Bété ethnic group; votes for Ouattara were primarily from Muslims living in the north. Security was inconsistent. The Integrated Command Centre (CCI) responsible for this crucial task lacked communications equipment and resources and was unable of coordinating

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<sup>380</sup> “This language of exclusion reinforces fear between communities and is a powerful driver of violence. Unless senior politicians definitively refrain from its use, they may be preparing the ground for chaos, either before the elections, during the vote itself, or, as in 2000, in the immediate aftermath.”

<http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/158-cote-d-ivoire-securing-the-electoral-process.aspx> (last accessed 3/12/12)

<sup>381</sup> In its report of 25 November 2010 the International Crisis Group denounced that clashes between the supporters of the two opposing groups on 19 and 22 November 2010 left several injured. “These incidents are symptomatic of the deterioration in Côte d’Ivoire’s political climate since the first round results were announced. Together with the brutality of some of the campaign discourse, they raise the specter of a disastrous election.

<http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/B077-cote-divoire-finally-escaping-the-crisis.aspx> (last accessed 3/12/12)

deployment with UNOCI and the French force, Licorne. This was a serious problem because UNOCI could only intervene at the specific request of the CCI.

The Independent Electoral Commission (IEC) released the results of the vote on December 2, 2010 and declared Ouattara the new president of Côte d'Ivoire with 54.1% of the vote. On 3 December 2010 the Secretary-General's Special Representative for Côte d'Ivoire, Choi Young-jin, certified the results of the elections announced by the IEC, which recognized Alassane Ouattara as the winner. The certification of the result was grounded in resolution 1765 of 2007 in which the Council had asked the Special Representative "to certify that all stages of the electoral process provide all the necessary guarantees for the holding of open, free, fair and transparent presidential and legislative elections in accordance with international standards". Election results were declared invalid by the President of the Constitutional Council, Paul Yao N'dre, a Gbagbo ally. Gbagbo and Ouattara both claimed victory and established governments in the city of Abidjan. On 4 December both Ouattara and Gbagbo separately took oaths of office. Alassane Ouattara established his seat of government at the Hotel du Golf in Abidjan, which was then surrounded by military forces loyal to Gbagbo. This unleashed a wave of violence in the country. In January 2011, the number of civilians killed in violent incidents was estimated to be in the hundreds and by 15 March 2011 over 1,000 people had been killed in clashes. The UN High Commissioner for Refugees reported that up to 350,000 Ivoirians had been internally displaced, and 26,000 had fled to neighboring Liberia<sup>382</sup>.

In April 2011 the security situation in Abidjan further deteriorated. Forces loyal to Gbagbo had intensified their use of heavy weapons against civilians and attacked UNOCI patrols dispatched to protect them. This prompted Secretary-General Ban Ki-moon to write to French President Nicolas Sarkozy on 3 April 2011 to request the support of French troops. Sarkozy agreed to the request. The following day the UN

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<sup>382</sup> [http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4d8a00ef9&query=ivory coast](http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4d8a00ef9&query=ivory%20coast) (last accessed 3/12/12)

Secretary-General instructed UNOCI to “take the necessary measures to prevent the use of heavy weapons against the civilian population.”

A military operation began on 4 April 2011. On 11 April Ouattara's forces stormed Gbagbo's residence and arrested him. The final assault was assisted by French forces using helicopters and armored vehicles. The UN Secretary General Ban Ki-moon defended the intervention stressing that the UN only acted in self-defense or to protect civilians<sup>383</sup>. On 5 May 2011 the Ivorian Constitutional Council declared Ouattara Côte d'Ivoire's new president.

## 5.2 The International Community<sup>384</sup>

The Security Council was initially divided on how to respond to the elections results. The majority of Council members, including the African members, the US, the UK and France, were in favor of a clear statement in support for the head of UNOCI's certification of the election result, believing this might limit the risk of violence. Russia and China were hesitant and argued that the issue was an internal matter for Côte d'Ivoire as sovereign state. On 7 December ECOWAS recognized Ouattara as the legitimate winner of the polls, suspended Côte d'Ivoire from the organization and asked Gbagbo to step down. The following day, the Security Council agreed on a press statement welcoming the decision of ECOWAS, expressing support for the Special Representative and UNOCI and calling on all Ivorian stakeholders to respect the outcome of the elections. It also expressed support for AU and ECOWAS mediation initiatives. But it was a rather weak response to the crisis.

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<sup>383</sup> Ban Ki-moon, 'Address to the Sofia platform', 6 May 2011, <http://www.un.org/News/Press/docs/2011/sgsm13548.doc.htm> (last accessed 3/12/12) see also the Twenty-eighth report of the Secretary-General on the United Nations Operation in Côte d'IvoireS/2011/38724 June 2011 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/380/62/PDF/N1138062.pdf?OpenElement> (last accessed 4/12/12)

<sup>384</sup> Main source of information Security Council Report Cross-cutting Report 2011 n. 2 20 July 2011 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf> (last accessed 3/12/12)

Tensions continued to rise between supporters of Gbagbo and Ouattara and violence against civilians began to occur. On 16 December forces loyal to Gbagbo were responsible for an incident in which more than 50 people were killed and 200 wounded. An article published by IRIN reported that the UN was demonized by Gbagbo and his supporters who accused UNOCI of bias in the handling of elections.

In response to the crisis some UN member States took individual measures: the US imposed a travel ban and an assets freeze on Gbagbo and some members of his inner circle; the EU imposed travel bans on Gbagbo and eighteen of his associate; France and the UK stated that they no longer recognized ambassadors appointed by Gbagbo and that they would only accredit new envoys named by Ouattara. On 26 December 2010 French and Swiss authorities grounded Gbagbo's official airplane at Basel-Mulhouse airport in Switzerland.

On 20 December 2010 the UN Security Council passed Resolution 1962. Resolution 1962 extended the mandate of UNOCI until June 30, 2011 and provided additional troops and personnel support to the mission<sup>385</sup>. The Resolution also condemned the ongoing human rights and humanitarian law violations against civilians. On the same day the Security Council also issued a press statement expressing concern about continued reports of acts of violence in Côte d'Ivoire.<sup>386</sup>

Three days later, on December 23, 2010, the Human Rights Council held a special session on the situation in Côte d'Ivoire in which resolution S-14/1 was adopted condemning the on-going human rights violations.<sup>387</sup> The special session was convened upon request of Nigeria, on behalf of the African States, and the US. Thirty-one member States of the Council, of which twelve from Africa, supported the

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<sup>385</sup> <https://www.un.org/News/Press/docs/2010/sc10132.doc.htm> (last accessed 4/12/12)

<sup>386</sup> Security Council Report Cross-cutting Report 2011 n. 2 20 July 2011  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf> (last accessed 3/12/12)

<sup>387</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/101/53/PDF/G1110153.pdf?OpenElement> (last accessed 4/12/12)



request.<sup>388</sup> During discussions the representative of Nigeria, on behalf of the African Group, said that the African Union was deeply concerned about the human rights situation in Côte d'Ivoire and that it had become imperative for the Human Rights Council to pronounce itself on the situation. The representative of Russia stated that it was not a responsibility of the United Nations or Human Rights Council to enforce the results of the elections. On a similar tone the representative of China, who demanded respect of Côte d'Ivoire's sovereignty and called upon all parties to resolve their internal disputes through dialogue. On the other hand, the majority of the African States reaffirmed their support to the efforts of African institutions<sup>389</sup>.

On the same day in New York the UN General Assembly accepted, by consensus, Ouattara's choice of diplomats to the UN as the only official representatives of Côte d'Ivoire to the organization.<sup>390</sup> The new Ambassador to the UN, Mr. Youssoufou Bamba warned the international community in New York that his country was on the verge of genocide and asked for support.

At the beginning of January, the Secretary-General wrote a letter to the Security Council expressing concern about the deterioration in the security situation and requesting the Council to authorize reinforcements of UNOCI. Ban Ki-moon emphasized that "the precarious security situation could quickly degenerate into widespread conflict".

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<sup>388</sup> Angola, Argentina, Belgium, Brazil, Burkina Faso, Cameroon, Djibouti, France, Gabon, Ghana, Hungary, Japan, the Libyan Arab Jamahiriya, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Poland, the Republic of Korea, the Republic of Moldova, Senegal, Slovakia, Spain, Switzerland, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zambia. In addition to the above-mentioned Member States, the request was also signed by the following observers of the Council: Austria, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia and Sweden. Doc A/HRC/S-14/1 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/103/45/PDF/G1110345.pdf?OpenElement> (last accessed 4/12/12)

<sup>389</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/103/45/PDF/G1110345.pdf?OpenElement> (last accessed 4/12/12)

<sup>390</sup> <http://www.aljazeera.com/news/africa/2010/12/20101223234713942681.html> (last accessed 3/12/12)

On 10 January the Security Council issued another press statement supporting the AU and ECOWAS efforts to find a peaceful resolution to the crisis in Côte d'Ivoire and also expressing concern about continued violence and human rights violations while condemning attacks against peacekeepers and civilians<sup>391</sup>. On 19 January 2011, in response to the Secretary-General's 7 January request, the Security Council unanimously adopted Resolution 1967, which authorized the deployment of an additional 2,000 military personnel to UNOCI. The resolution also reiterated its authorization and full support given to the Special Representative to use all necessary means to carry out UNOCI's mandate<sup>392</sup>. On the same day the Secretary-General's Special Advisers on the prevention of genocide, Francis Deng, and the responsibility to protect, Edward Luck, expressed concern about "the possibility of genocide, crimes against humanity, war crimes and ethnic cleansing in Côte d'Ivoire" and affirmed that urgent steps, in line with the responsibility to protect should be taken<sup>393</sup>.

Security Council members discussed the hypothesis of a military operation by ECOWAS states. Despite the Nigerian foreign Minister's indication that it was becoming imperative for the Council to authorize formally the use of force to oust Gbagbo as threatened by ECOWAS, Russia and China reiterated their reservations.<sup>394</sup> Some members of the Council were reluctant to take a stand because of concerns on the possible impact on civilians and refugee flows. On 4 February the Secretary-General's Special Representative Choi briefed the Council in informal consultations. There was no agreement on a press statement.

Security Council members were mainly in a wait-and-see mode awaiting the outcome of the work of the AU panel for the settlement of the crisis established on

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<sup>391</sup> <http://www.un.org/News/Press/docs/2011/sc10149.doc.htm> (last accessed 3/12/12)

<sup>392</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/210/85/PDF/N1121085.pdf?OpenElement> (last accessed 4/12/12)

<sup>393</sup> [http://www.un.org/News/briefings/docs/2011/110119\\_Guest.doc.htm](http://www.un.org/News/briefings/docs/2011/110119_Guest.doc.htm) (last accessed 3/12/12)

<sup>394</sup> Security Council Report February 2011 available at [http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.6524783/k.AFF0/February\\_2011brC244te\\_dIvoire.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.6524783/k.AFF0/February_2011brC244te_dIvoire.htm) (last accessed 3/12/12)

28 January 2011. Differences of opinion emerged, however, among Council members on how to respond to the AU initiative. Russia and China were in favor of explicitly welcoming the AU's decision to form the panel. Others such as France, Germany, the UK and the US were reluctant to do so.<sup>395</sup>

Meanwhile, the security situation in the country continued to deteriorate. The UN estimated that approximately 450 people had been killed and, according to the Office of the UN High Commissioner for Refugees (UNHCR), up to a million persons had been displaced since the November elections. On 3 March 2011, the Council issued a press statement in which it condemned the threats and acts of violence by Gbagbo's forces against UN personnel and violence by all parties against civilians and urged UNOCI "to use all necessary means to carry out its mandate, in particular to protect the civilians"<sup>396</sup>. Two weeks after the statement mortars were fired by forces loyal to Gbagbo into a market area in the Abobo district of Abidjan, resulting in the killing of more than 25 civilians with more than 40 wounded. The Secretary-General condemned the attack and urged the Council "to take further measures with regard to the Ivorian individuals who are instigating, orchestrating and committing the violence."<sup>397</sup>

Following the Council's decision to authorize the use of force to protect civilians in Libya (Security Council resolution 1973), the Nigerian foreign Minister openly criticized the international community for its "contradictions" in imposing a no-fly zone to protect the population in Libya, while just "watching seemingly helplessly" as innocent civilians were being slaughtered in Côte d'Ivoire<sup>398</sup>. On 24 March, ECOWAS formally requested the Security Council to strengthen the mandate of UNOCI, to enable the "mission to use all necessary means to protect life and property, and to

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<sup>395</sup> [http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.6579245/k.E481/March\\_2011brC244te\\_d8217Ivoire.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.6579245/k.E481/March_2011brC244te_d8217Ivoire.htm) (last accessed 3/12/12)

<sup>396</sup> <http://www.un.org/News/Press/docs/2011/sc10191.doc.htm> (last accessed 3/12/12)

<sup>397</sup> <http://www.un.org/News/Press/docs/2011/sgsm13458.doc.htm> (last accessed 3/12/12)

<sup>398</sup> Security Council Report Cross-cutting Report 2011 n. 2 20 July 2011  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf> page 23 (last accessed 3/12/12)

facilitate the immediate transfer of power to Ouattara”, as well as to “adopt more stringent international targeted sanctions” against Gbagbo and his associates.

On 25 March, during its 16<sup>th</sup> regular session 2011, the Human Rights Council adopted resolution A/HRC/16/25, in which the Council decided to dispatch an independent international commission of inquiry to investigate the allegations of human rights violations<sup>399</sup>. Nigeria, speaking on behalf of the African Group, said the African Group was compelled to speak out on the human rights situation after the elections and it was necessary for it to take the lead in following up on the human rights situation in Côte d’Ivoire. The African Group presented a draft text (resolution L.33) reaffirming that the post electoral crisis in Côte d’Ivoire required immediate attention to put an end to the violence, strengthen the rule of law and improve the human rights situation in the country. The draft text also called for the immediate establishment of an international commission of inquiry to investigate all human rights violations following the presidential elections.<sup>400</sup>

The team of independent experts was then nominated on April 12, 2011 under the leadership of Vitit Muntabhorn, the former special rapporteur for human rights in North Korea.<sup>401</sup> The commission arrived in Côte d’Ivoire on 4 May 2011 and presented its findings in June 2011 during the 17th regular session of the Human Rights Council that took place in Geneva<sup>402</sup>. The Human Rights Council discussed the

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<sup>399</sup> Available at <http://www2.ohchr.org/english/bodies/hrcouncil/16session/resolutions.htm> (last accessed 4/12/12)

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<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10893&LangID=E> (last accessed 3/12/12)

<sup>401</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire Doc A/HRC/16/79 25 February 2011 available at <http://www2.ohchr.org/english/bodies/hrcouncil/16session/reports.htm> (last accessed 4/12/12)

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[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.48\\_Extract.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.48_Extract.pdf) In November 2011 the HR Council also appointed an independent human rights expert for a period of one year. The Independent Expert, Doudou Diène, visited Cote d’Ivoire from 7 to 13 December 2011 to raise the profile of human rights in the December elections. The Independent Expert presented his report to the 19th regular session of the Human Rights Council in March 2012

situation of Côte d'Ivoire during three regular sessions (16<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup>) and one special session (14<sup>th</sup> special session).

On Monday, 28 March 2011 Security Council members had their first discussion at expert level on a draft resolution circulated by Nigeria and France that was later adopted as SC resolution 1975.<sup>403</sup> Council members negotiated the text of the resolution for almost a month and amendments were made to accommodate Russia's views. Areas of disagreement included the reference to the ICC (India, Russia and China). Other countries like Gabon, Germany, the UK and the US strongly supported the French draft resolution. During the discussion the African members were firm about the need for the Council to give unequivocal support for African Union and ECOWAS initiatives. Gabon and Nigeria were supportive of the ECOWAS position, which called for sanctions. South Africa was more cautious but at the end, it changed position when the AU High Level Panel recommended recognition of Ouattara as the winner of the presidential elections.<sup>404</sup> On 30 March 2011, the Security Council met again to discuss the draft text and unanimously adopted it as Resolution 1975. Resolution 1975 condemned the gross human rights violations committed by supporters of both Gbagbo and President Ouattara stating that "the attacks currently taking place in Côte d'Ivoire against the civilian population could amount to crimes against humanity and that perpetrators of such crimes must be held accountable under international law", condemned the use of Radiodiffusion Télévision Ivoirienne (RTI) and other media to incite discrimination, hostility, hatred and violence, including against UNOCI, and calls for "the lifting of all restrictions placed on the exercise of the right of freedom of expression" in the country. The resolution further stressed "the primary responsibility of each State to protect

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<http://www.unmultimedia.org/tv/webcast/2012/03/independent-expert-on-the-human-rights-49th-meeting-19th-session.html> (last accessed 3/12/12)

<sup>403</sup> <http://whatsinblue.org/2011/03/insights-on-cote-divoire-8.php> (last accessed 3/12/12)

<sup>404</sup> Security Council Report Cross-cutting Report 2011 n. 2 20 July 2011

[http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf)

[CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf) (last accessed 3/12/12)page 23

<http://whatsinblue.org/2011/03/insights-on-cote-divoire-8.php> (last accessed 3/12/12),

<http://whatsinblue.org/2011/03/insights-on-cote-divoire-9.php> (last accessed 3/12/12),

[http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.6676135/k.ED57/April\\_2011brC244te\\_d8217Ivoire.htm](http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.6676135/k.ED57/April_2011brC244te_d8217Ivoire.htm) (last accessed 3/12/12)

civilians”); called for the immediate transfer of power to Ouattara and mandated targeted sanctions against Gbagbo and his close supporters. Finally, the resolution reaffirmed the mandate of the United Nations Operation in Côte d’Ivoire (UNOCI) to “use all necessary means to protect life and property.”<sup>405</sup>

On 5 April 2011 UNOCI announced that it had launched operation “Protect the Civilian Population.” UN attack helicopters were used on several occasions to destroy heavy weapons. On 10 April the Secretary-General issued a statement saying that he was particularly concerned about the humanitarian situation across the country and about human rights abuses. “Civilians are bearing the brunt of the violence — the fighting must stop”<sup>406</sup>

After the arrest of Gbagbo on 11 April, Alain Le Roy, the Under- Secretary-General for Peacekeeping Operations, responded to various objections raised on the modalities of the operation stressing that the UN operations had focused strictly on the protection of civilians. Le Roy denied that UNOCI had taken sides in the Ivorian crisis or entertained any goal of “regime change”.<sup>407</sup> The Secretary-General also underscored that the UN had acted strictly within the mandate of resolution 1975. During informal consultation the majority of Council members agreed that the actions taken by UNOCI did not go beyond resolution 1975. Reserves were expressed by Russia and South Africa about the modality of the arrest and the UN and French aerial bombardment. France had separately indicated to the press that its military participated in the raids at the UN Secretary-General’s request and firmly denied reports that its special forces had captured Gbagbo and handed him over to Ouattara's forces<sup>408</sup>.

Following a briefing on the situation in Côte d’Ivoire on 13 April by Choi, the Secretary-General’s Special Representative, the Under- Secretary-General for

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<sup>405</sup> <http://www.un.org/en/sc/documents/resolutions/2011.shtml> (last accessed 4/12/12)

<sup>406</sup> <http://www.un.org/News/Press/docs/2011/sgsm13503.doc.htm> (last accessed 3/12/12)

<sup>407</sup> [http://www.un.org/News/briefings/docs//2011/110415\\_Guest.doc.htm](http://www.un.org/News/briefings/docs//2011/110415_Guest.doc.htm) (last accessed 3/12/12)

<sup>408</sup> <http://www.france24.com/en/20110412-france-military-abidjan-arrest-gbagbo-ouattara-paris-ivory-coast> (last accessed 3/12/12)

Humanitarian Affairs Valerie Amos, the High Commissioner for Human Rights Navi Pillay and the Permanent Representative of Côte d'Ivoire Youssoufou Bamba, the Council issued a press statement, with which it welcomed that Ouattara was "now in position to assume all his responsibilities as Head of State" and urged all Ivoirians to abstain from any reprisals, revenge and provocation and to work together to achieve national reconciliation. It also called on UNOCI and the French forces to continue to protect civilians and expressed appreciation for the roles played by the UN, AU and ECOWAS.<sup>409</sup>

After the arrest of Gbagbo the Security Council adopted Resolution 1980 of 28 April 2011 by which it renewed until 20 April 2012 an arms embargo, a ban on the diamond trade that was helping fuel the conflict and sanctions on travel by selected individuals deemed to be threats to "peace and national reconciliation". The sanctions were further extended until 30 April 2013 by resolution 2045 of 26 April 2012<sup>410</sup>.

The discussion of the Security Council in May 2011 and in the following months showed a broad consensus among Security Council's members that the Council's attention should then be focused on assisting the country through the process of reconciliation and accountability for past crimes. All Council members supported the action taken by the ICC in transferring Gbagbo to The Hague to face trial. Côte d'Ivoire was no longer a contentious situation for the Council.<sup>411</sup>

### **5.3 The African Regional and sub-regional Response**

Both the African Union (AU) and the Economic Community of West African States (ECOWAS) tried to resolve the crisis through mediation and diplomatic pressure. Furthermore, several multilateral financial institutions took steps to halt the flow of

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<sup>409</sup> <http://www.un.org/News/Press/docs/2011/sc10224.doc.htm> (last accessed 3/12/12)

<sup>410</sup> With resolution 2045 the Council called on all States to prevent the direct or indirect supply, sale or transfer to Côte d'Ivoire, from their territories, by their nationals, or using their flag vessels or aircraft, of arms and any related materiel  
<http://www.un.org/News/Press/docs//2012/sc10627.doc.htm> (last accessed 3/12/12)

<sup>411</sup> [http://www.securitycouncilreport.org/site/c.glKWLeMTisG/b.7497349/k.ECDE/June\\_2011\\_brC244te\\_d8217Ivoire.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTisG/b.7497349/k.ECDE/June_2011_brC244te_d8217Ivoire.htm)

credit and official assistance to the Gbagbo regime. On 5 December 2010, the African Development Bank (AfDB) and the World Bank jointly made a statement in support of the efforts made by the African Union and the international partners to bring the crisis to a quick and peaceful resolution.”<sup>412</sup> On 22 December the World Bank reported that it had “currently stopped lending and disbursing funds to the Ivory Coast” and closed its office in Côte d’Ivoire<sup>413</sup>. On December 23 2010, the West African Economic and Monetary Union (UEMOA), the supervisory body of the Central Bank of West African States (BCEAO), a regional central bank, recognized Ouattara as the legitimately-elected president of Côte d’Ivoire, and gave him authority over UEMOA-related activities and BCEAO transactions.

### **African Union**

At the beginning of the crisis the African Union warned that there could be incalculable consequences if Côte d’Ivoire did not follow the Independent Electoral Commission and UN assessment. On 9 December 2010, the AU Peace and Security Council suspended Côte d’Ivoire from all of the organization’s activities and endorsed the ECOWAS decision of 7 December to recognize Ouattara as the winner of the presidential election<sup>414</sup>.

In an attempt to mediate, AU requested the former South African president, Thabo Mbeki, to travel to Côte d’Ivoire on an African Union mediation mission. Mbeki arrived on 5 December 2010 and met with key leaders in the Ivorian electoral process, including Gbagbo, Ouattara, the head of the electoral Commission, the head of the Constitutional Council and the head of UNOCI. But Mbeki’s mediation did not bring any tangible result.<sup>415</sup>

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<sup>412</sup> <http://www.afdb.org/en/news-and-events/article/joint-world-bank-african-development-bank-statement-on-the-situation-in-cote-divoire-7558/> (last accessed 4/12/12)

<sup>413</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22795867~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html> (last accessed 3/12/12)

<sup>414</sup> <http://www.africa-union.org/root/au/Conferences/2010/december/Communiqu%C3%A9%20of%20the%20252nd.pdf> (last accessed 3/12/12)

<sup>415</sup> <http://www.aljazeera.com/news/africa/2010/12/2010121971745317811.html> (last accessed 3/12/12)



Another attempt to mediate took place at the end of December, when the AU appointed Kenyan Prime Minister Raila Odinga as its special envoy. Odinga, visited Abidjan on 17-18 January 2011 and held talks with Alassane Ouattara, and Laurent Gbagbo. His mediation did not succeed in resolving the impasse.

On 25 January AU chairperson Bingu wa Mutharika travelled to Côte d'Ivoire to hold talks with Ouattara and Gbagbo, in view of a AU Summit scheduled for 30 to 31 January.

Meeting prior to the summit, on 28 January 2011, the AU Peace and Security Council (PSC) reiterated the AU's view that Ouattara was the elected president, deplored continuing human rights violations and the obstruction of the UN's activities. Furthermore the Council adopted a decision by which it established, under the auspices of the African Union, a high-level group for the settlement of the crisis in conditions respecting peace and democracy. The PSC announced that the panel would be composed of the heads of state of Burkina Faso, Chad, Mauritania, South Africa and Tanzania, as well as the chairperson of the AU Commission and the president of the ECOWAS Commission. UN Secretary-General Ban Ki-moon welcomed the decision<sup>416</sup>.

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<sup>416</sup> According to IRIN reports, of the five-member panel nominated by the AU Peace and Security Council on 28 January 2011, Jacob Zuma of South Africa avoided taking a high profile on Côte d'Ivoire and was more equivocal than some of his peers, observing that: "we need to do something to help the situation and don't demand that one leader should go." Idriss Déby from Chad had already met Gbagbo in June 2006. On that occasion the two leaders pledged to establish embassies and set up a joint commission looking at arms trafficking, air links and economic and technical cooperation. Gbagbo strongly backed Déby in his efforts to prevent a rebel threat. According to IRIN Déby's critical attitude towards both the UN Mission in the Central African Republic and Chad (MINURCAT) and the long-standing French military presence on Chadian territory suggested considerable common ground with Gbagbo.

The choice of Blaise Compaoré of Burkina Faso for the panel was objected by Gbagbo supporters and was the reason of a mass demonstration in Abidjan on 5 February 2011. The Jeunes Patriotes and other Gbagbo loyalists regarded Compaoré as having been complicit of the original insurgency by the Forces Nouvelles in September 2002. Gbagbo loyalists considered Compaoré a strong ally of Ouattara and accused him of working through ECOWAS to prepare the ground for military action. Compaoré, who helped negotiate the Ouagadougou Peace Accord between the Forces Nouvelles and the Gbagbo government in March 2007, visited both Paris and London in January, meeting French President Nicholas

On 21 February, members of the AU high-level panel, with the exception of Burkinabe leader Blaise Compaore, who had been accused of being in favor of Ouattara, met with Gbagbo in Abidjan. The panel subsequently met with Ouattara on 22 February. At the beginning of March the Peace and Security Council endorsed the recommendations of its high-level panel for the resolution of the Ivorian crisis. The PSC confirmed that Ouattara was the sole legitimate president of the country and suggested the establishment of a unity government. The PSC also requested the Chair of the AU Commission to appoint a High Representative for the implementation of the overall political solution proposed by the panel. But Gbagbo's camp rejected the decision. On 1 April 2011, AU Chairperson, Jean Ping, urged Gbagbo to "immediately hand over power" to Ouattara, "in order to shorten the suffering of the Ivoirians."

The AU tried to mediate but its selection of the mediators was unfortunate. The first to be nominated was the former South African President Thabo Mbeki. Mbeki stepped out before the end of December following an unsuccessful attempt to secure a meeting between Gbagbo and Ouattara, leaving Côte d'Ivoire after making a generic call for peace and democracy, but without issuing a major statement. The Kenyan Prime Minister Raila Odinga was then designated on 27 December as AU special envoy. Odinga visited Abidjan twice, once accompanying the ECOWAS delegation, then on an individual mission. Having spoken out clearly in favor of a rapid, military solution prior to being named mediator, Odinga's neutrality was quickly brought into question by Gbagbo's supporters. His second mission ended on 19 January with an admission of failure. Odinga was declared *persona non grata* by Gbagbo's "foreign minister", Alcide Djédjé, who accused the AU mediator of "having failed in his mission" and showing a 'superficial' understanding of the reality in Côte d'Ivoire.

The withdrawal of Odinga opened the way to Teodoro Obiang Nguema of Equatorial Guinea, who was supported by the outgoing AU President Bingu wa Mutharika of

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Sarkozy and British Deputy Prime Minister Nick Clegg  
<http://www.irinnews.org/Report/91930/COTE-D-IVOIRE-Briefing-on-AU-and-ECOWAS> (last accessed 4/12/12)

Malawi. But Nguema had long been targeted by human rights organizations for his government's record of abuses.<sup>417</sup>

## **ECOWAS**

ECOWAS reacted quickly to the post-electoral crisis and stood firmly in support of Ouattara's election. On 7 December ECOWAS recognized Ouattara as the legitimate winner of the polls, suspended Côte d'Ivoire from the organization and asked Gbagbo to step down. On 24 December following an emergency summit meeting in Abuja, ECOWAS said again that Gbagbo should stand down or face "legitimate force." ECOWAS indicated that it would convene a meeting of its defense ministers to discuss possible military intervention in Côte d'Ivoire if Gbagbo remained recalcitrant. ECOWAS showed unity in supporting Ouattara, but it remained divided on the possible use of force. The result of two meetings of ECOWAS chiefs of defense, respectively in Abuja on 28-29 December 2010 and Bamako on 18-20 January 2011, suggested that no real regional consensus on military strategy existed. IRIN reported that the Bamako meeting produced misleading reports that intervention plans had already been green lighted. But statements from senior ECOWAS military personnel, including the chairman of the ECOWAS Chiefs of Defense Staff, Nigerian Air Chief Marshal Oluseyi Petinrin, were cautious. The use of force was rejected by Ghana and Liberia afraid that the conflict could spill over into their borders. President Yahyah Jammeh of Gambia did not attend either of the summits. In a statement issued by his spokesman, Jammeh warned that ECOWAS had ignored the constitutional legality of Gbagbo's victory "because of pressure from some Western powers whose vested interests in the natural resources of Côte d'Ivoire is an open secret". Furthermore, former Ghanaian President Jerry Rawlings had warned against an ECOWAS military intervention, arguing that "attempts to marshal support for a military intervention lack any justification and rather will expose the UN, ECOWAS and AU as being hypocritical".<sup>418</sup>

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<sup>417</sup> <http://www.irinnews.org/Report/91930/COTE-D-IVOIRE-Briefing-on-AU-and-ECOWAS> (last accessed 4/12/12)

<sup>418</sup> IRIN <http://www.irinnews.org/Report/91566/COTE-D-IVOIRE-ECOWAS-searching-for-a-regional-solution-Briefing>, (last accessed 3/12/12)

Three days later three West African Presidents (Benin's Boni Yayi, Cape Verde's Pedro Pires and Sierra Leone's Ernest Bai Koroma) arrived in Abidjan to convey ECOWAS's demand that Gbagbo cede power or face military intervention. They left with no result. On 29 and 30 December ECOWAS military chiefs (from Benin, Burkina Faso, Ghana, Liberia, Mali, Senegal, Togo, Niger and Nigeria) met in Abuja, Nigeria to consider options of forcefully removing Gbagbo if political persuasion failed.

ECOWAS then set up a high-level delegation to attempt mediation and nominated three heads of state from the region: Pedro Pires of Cape Verde, Ernest Koroma of Sierra Leone, and Yayi Boni of Benin. The president of the ECOWAS Commission, Victor Gbeho, has also been part of the mediation initiative. The ECOWAS delegation visited Abidjan twice in the space of a week in December-January. On the second mission on 3 January 2011 the mediators, accompanied by AU mediator Odinga, undertook a second visit to Abidjan to try to secure Gbagbo's exit. The ECOWAS mediators subsequently indicated that Gbagbo had promised to lift the blockade of the temporary headquarters of Ouattara at the Golf Hotel in Abidjan. Odinga told the BBC that Gbagbo had indicated that he was "ready to negotiate without any conditions. And stepping aside is the main option that we gave him."<sup>419</sup> An ECOWAS communiqué issued from Abuja on 4 January hinted at a possible dialogue between Ouattara and Gbagbo and raised unrealistic expectations about the prospects for peace<sup>420</sup>.

On 10 January the former Nigerian president Olusegun Obasanjo met with both Gbagbo and Ouattara in what he described as a "process of exploration," as part of ECOWAS's mediation effort. He maintained that while a negotiated solution to the crisis was possible, military intervention remained an option<sup>421</sup>. At the end of January Nigerian Foreign Minister Odein Ajumogobia wrote an editorial in his country's local press stating that "ECOWAS requires unequivocal international

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<sup>419</sup> <http://www.bbc.co.uk/news/mobile/world-africa-12120149> (last accessed 3/12/12)

<sup>420</sup> <http://www.france24.com/en/20110104-ivory-coast-gbagbo-street-general-charles-ble-goude-ecowas-africa-ouattara> (last accessed 3/12/12)

<sup>421</sup> Security Council Update Report No. 3 Côte d'Ivoire 14 January 2011  
<http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTISG-b-6496461.php> (last accessed 4/12/12)

support through an appropriate United Nations Security Council resolution to sanction the use of force...to legitimise the use of external force to effectively contain the increasingly volatile internal situation and ensure an enduring peace in Côte d'Ivoire and the West African subregion.”<sup>422</sup>

In March 2011 ECOWAS, in a statement following its meeting of Heads of State and Government in Abuja, requested the Council to “strengthen the mandate of the UN Operation in Côte d’Ivoire (UNOCI), enabling the mission to use all necessary means to protect life and property, and to facilitate the immediate transfer of power to Alassane Outtara”. It also requested the Council to adopt more stringent international targeted sanctions against Laurent Gbagbo and his associates. In a Communiqué issued the following day (25 March 2011) ECOWAS stated that the crisis had become a “regional humanitarian emergency” that required “the President of the ECOWAS Commission to explore all avenues of providing the Government of Mr. Ouattara all the necessary legal and diplomatic means to exercise its authority.”<sup>423</sup> ECOWAS issued another press release on 5 April in response to the attacks on civilians in Duékoué - where about 800 people were killed in an inter-ethnic violence. Furthermore, the statement denounced reports that civilians have been targeted for use as human shields, and reiterated “that those who incite unarmed civilians to risk their lives needlessly will be held accountable for their action.”<sup>424</sup>

## 5.4 Civil Society

Organizations including Human Rights Watch, International Crisis Group, and the International Federation for Human Rights, the International Committee of the Red Cross, Amnesty International, the Global Centre for the Responsibility to Protect denounced from the beginning the violence carried out by forces loyal to Gbagbo and Ouattara and accused both sides of gross human rights violations targeting

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<sup>422</sup><http://www.securitycouncilreport.org/update-report/lookup-c-gIKWLeMTIsG-b-6496461.php> (last accessed 4/12/12)

<sup>423</sup> <http://www.afrika.no/Detailed/20392.html> (last accessed 3/12/12)

<sup>424</sup> <http://news.ecowas.int/> (last accessed 3/12/12)

unarmed civilians<sup>425</sup>. Their action went even beyond the denunciation asking the UN, and in particular the Security Council, to take action to stop the violence.

On 6 December 2010 Amnesty International called on the security forces in Côte d'Ivoire to protect civilians, as the number of people shot dead in violent incidents following the country's presidential elections was rising.<sup>426</sup>

In an Open Statement on the Situation in Côte d'Ivoire released on 17 December 2010, the Global Centre for the Responsibility to Protect called on national governments, the AU, ECOWAS and the UN inter alia to establish contingency plans to identify what preventive and protective measures to use and who could best implement the efforts. The Open Statement identified the crucial role of the Security Council in averting and halting mass atrocities through actions such as the expansion of sanctions, enforcement of an arms embargo, and the support of UNOCI's mandate to protect civilians<sup>427</sup>.

On 20 December 2010 Louise Arbour for the International Crisis Group (ICG) wrote an open letter to the Security Council stating that: "Mr. Laurent Gbagbo's refusal to accept the elections results and cede Authority should be declared a coup d'état by the Security Council and recognized as a threat to the ongoing peace process and unity of the country."<sup>428</sup> Few days after Human Rights Watch issued a report saying that that security forces associated with Laurent Gbagbo were abducting and

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<sup>425</sup> <http://www.responsibilitytoprotect.org/index.php/document-archive/civil-society?view=fjrelated&id=2411> (last accessed 3/12/12) see also [http://www.oxfam.org/en/search/apachesolr\\_search/ivory%20coast?page=1](http://www.oxfam.org/en/search/apachesolr_search/ivory%20coast?page=1) (last accessed 3/12/12)

The International Committee of the Red Cross (ICRC) reported that at least 800 civilians were killed in inter-communal violence in the Ivorian town of Duékoué on 29 March 2011 condemning the attack on civilians as "particularly shocking in its size and brutality" <http://www.icrc.org/eng/resources/documents/news-release/2011/cote-d-ivoire-news-2011-01-04.htm> (last accessed 3/12/12)

<sup>426</sup> <http://www.amnesty.org/en/for-media/press-releases/c%C3%B4te-d%E2%80%99ivoire-security-forces-urged-protect-civilians-tensions-rise-2010-12> (last accessed 3/12/12)

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[http://globalr2p.org/media/pdf/Open\\_Statement\\_on\\_the\\_Situation\\_in\\_Côte\\_d'Ivoire.pdf](http://globalr2p.org/media/pdf/Open_Statement_on_the_Situation_in_Côte_d'Ivoire.pdf)

<sup>428</sup> <http://www.crisisgroup.org/en/publication-type/media-releases/2010/open-letter-to-the-unsc-cote-divoire.aspx> (last accessed 3/12/12)

"disappearing" his rival's supporters and that the killings might fall under the jurisdiction of the ICC.<sup>429</sup>

## 5.5 Conclusions

Even if relatively little has been said in the literature on the R2P intervention in Côte d'Ivoire - probably due to the concomitant crisis in Libya – the case of Côte d'Ivoire shows some interesting features, in particular on the relevance of the regional support and the use of force.

Security Council members strongly relied on the action of the regional/sub-regional organizations before taking action, which, in turn, sent mixed signals on how to address the crisis.

According to Abemola Abass the reason for the different behaviors between the African Union and ECOWAS lies in the fact that the AU Constitutive Act contains a legal ambiguity regarding the use of force, which does not exist in ECOWAS. While ECOWAS adopted in 1999 a protocol which entitled it to take enforcement actions in any of its Member States without their consent, in Article 4(h) of its Constitutive Act, which encapsulates the principle of non-indifference, the African Union assumes an obligation to intervene but not necessarily to use force in its Member States' conflicts. "If it could be said that the AU possesses such powers courtesy of a literal and textual interpretation of that provision, as indeed a simplistic reading of that provision instructs, there are various counterpoints, drawn from the *travaux préparatoires* of the AU Act and several policy instruments that make such an interpretation at best naïve. The view that Article 4(h) confers the AU with a right of humanitarian intervention undoubtedly has doctrinal solidity; nonetheless, it underscores an acute lack of awareness of both the history of the negotiations of the Union and its practice in the ten years of its existence" Abass observed that: "when it

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<sup>429</sup> <http://www.hrw.org/en/news/2010/12/23/c-te-d-ivoire-pro-gbagbo-forces-abducting-opponents> (last accessed 3/12/12)

comes to residual responsibility to implement RtoP forcefully, ECOWAS has shown more courage than any other organizations in Africa including AU”.<sup>430</sup>

Notwithstanding the lack of unity and the differing opinion on the use of force, both the AU and ECOWAS –in particular Nigeria - played a relevant role in gathering the consensus necessary to initiate the process, and by March 2011 also Brazil, Russia, China and India supported resolution 1975.

It is interesting to note that when the Security Council authorized the use of force it *de facto* followed the criteria identified inter alia by the High Level Panel in 2004. These are:

- The threatened harm to human security is of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force;
- The primary purpose of the proposed military action is to halt or avert the threat in question;
- Non-military option for meeting the threat in question have been explored, and
- The scale, duration and intensity of the proposed military action are kept at the minimum necessary to meet the threat in question.

a) Threatened harm to human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force

At the end of December 2010 173 people had been reported to have died in post-election violence, and about 140,000 people to have fled to neighboring Liberia for fear that the situation will deteriorate further.<sup>431</sup>

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<sup>430</sup> Abbas A., “Africa”, in Jared GENSER and Irvin COTLER (eds) *The Responsibility to Protect: The Promise of Stopping Mass Atrocity in Our Time*, New York, Oxford University Press, 2011 pages 128-29

<sup>431</sup> France24, “UN condemns killing of 173 people in Ivorian 'atrocities'”, 23 December 2010. <http://www.france24.com/en/20101223-ivory-coast-173-killed-ivorian-post-electoral-violence-united-nations> (last accessed 3/12/12)  
France24, ‘Gbagbo rejects West African ultimatum as thousands flee’ 26 December 2010. <http://www.france24.com/en/20101226-thousands-flee-ivory-coast-gbagbo-rejects-west-african-ECOWAS-threat-force> (last accessed 3/12/12)



Concerns about the potential for mass atrocities were confirmed by the Special Advisers to the Secretary General on the Prevention of Genocide and R2P, who, on 29 December 2010 and 19 January 2011, expressed ‘grave concern’ at the situation in Côte d’Ivoire, and reminded all the parties of their responsibility to protect. In the 19 January statement the Special Advisers specifically identified a series of clashes which ‘if not checked, could culminate in mass atrocities’.

Human Rights Watch reported in October 2011 that between December 2010 and April 2011, pro-Gbagbo militiamen stopped hundreds at checkpoints based on the person’s dress or name on an identity card; they often proceeded to beat the victim savagely and in some cases burned the person alive. In the far west of the country, Gbagbo militiamen and Liberian mercenaries killed hundreds identified predominantly by ethnicity. In March Gbagbo militiamen recaptured part of the town of Bloléquin from the advancing Republican Forces. On that occasion Gbagbo’s forces demanded that the inhabitants speak Guéré, the language of an ethnic group in the far west that largely supported Gbagbo. Those who could not speak it as a mother tongue were gunned down. Three days earlier, the same group of mercenaries and militiamen killed at least 37 people, mostly West African immigrants, in nearby Bédi-Goazon village. As the Republican Forces began their offensive in early March, they likewise engaged in collective punishment of real and perceived Gbagbo supporters. The Republican Forces held women and raped them in towns where military bases were located. By the end of March/beginning of April 2011 residents reported that wells in the west were stuffed with human remains. Several Abidjan neighborhoods were marked with communal graves dug in haste. Other bodies littered the streets for days, particularly where pro-Gbagbo militias operated checkpoints. The stench became so horrible, according to residents that they themselves took to burning corpses.<sup>432</sup>

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<sup>432</sup> Human Rights Watch October 2011 “They Killed Them Like It Was Nothing” The Need for Justice for Côte d’Ivoire’s Post-Election Crimes  
<http://www.hrw.org/sites/default/files/reports/cdi1011WebUpload.pdf> (last accessed 4/12/12) pages 5-6

Media were used as propaganda tools. State broadcaster RTI incited against election winner Ouattara. The Ouattara camp set up a rival broadcasting operation. Pro-Ouattara forces ransacked and occupied for five months media outlets loyal to the former president, including the “Notre Voie” newspaper<sup>433</sup>. After the election run-off, the Gbagbo government-controlled the state television station, Radiodiffusion Télévision Ivoirienne (RTI), incited violence against the pro-Ouattara groups, routinely referring to them as “rebels” and unwanted outsiders that threatened the nation. As the post-election tension escalated Ouattara supporters were compared to “rats” and “culled birds”; followers were exhorted to set up roadblocks and “denounce foreigners”.<sup>434</sup> IRIN reported that while a few Ivoirian newspapers strove to occupy the middle ground, the bulk of the written press was firmly divided into two camps, with allegiances for the most part clearly color-coded: the pro-Gbagbo papers used blue mastheads, while those backing Ouattara green. The language used was indicated as “vitriolic”. A 19 January headline in the pro-Gbagbo Notre Voie declared that “Ouattara opts for terrorism”, above a story that alleged that Ouattara supporters had issued death threats to those suspected of supporting Gbagbo. The same edition reported that people in Ouattara’s pay had cut the throat of a forest warden in the Abobo district of Abidjan. The following day’s edition of the same paper accused UNOCI of escorting “young ladies” to members of Ouattara’s camp currently confined, under UN protection, in Abidjan’s Golf Hotel, the operational and living headquarters of Ouattara and his supporters. Notre Voie and other pro-Gbagbo papers pursued a rigidly anti-French line, often implicating France in the initial insurgency of 2002 and denouncing a perceived alliance between Paris and Ouattara. The 20 January edition accused France of rearming the Forces Nouvelles, the former rebels who control much of the north of the country. “On the other hand the pro-Ouattara “Le Patriote” referred to Gbagbo as a “dictator” and an “assassin of

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<sup>433</sup> <http://www.bbc.co.uk/news/world-africa-13287219> (last accessed 3/12/12)

<sup>434</sup> Human Rights Watch October 2011 “They Killed Them Like It Was Nothing” The Need for Justice for Côte d’Ivoire’s Post-Election Crimes page 6

democracy” who “kills his own countrymen with the support of Liberian and Angolan militia”<sup>435</sup>.

- b) The primary purpose of the proposed military action is to halt or avert the threat in question

Notwithstanding the different opinions expressed on the suitability of the use of force, there are no doubts that the military action was aimed at halting the further spread of the violence and saving human lives.

- c) Non-military option for meeting the threat in question been explored

Diplomatic avenues had been explored both by the African Union and the ECOWAS during the months of December 2010 and January 2011. Thabo Mbeki traveled to Côte d’Ivoire on an African Union mediation mission on 5 December 2010. Odinga visited Abidjan on 17-18 January 2011. On 25 January Bingu wa Mutharika, President of Malawi and AU chairperson, travelled to Côte d’Ivoire to hold talks with Ouattara and Gbagbo, then hosted separate visits from representatives of the two rival parties. On 28 January 2011, the AU Peace and Security Council adopted a decision by which it established a high-level group for the settlement of the crisis in conditions respecting peace and democracy. The members of the panel met with Gbagbo in Abidjan on 21 February 2011 and with Ouattara on 22 February. ECOWAS set up a high-level delegation to attempt mediation. The delegation visited Abidjan twice in the space of a week in December-January. On 10 January the former Nigerian president Olusegun Obasanjo met with both Gbagbo and Ouattara in what he described as a “process of exploration,” as part of ECOWAS’s mediation effort.

- d) The use of force was limited in scale, duration, intensity

The use of force lasted in total seven days, from 4 to 11 April 2011 when Gbagbo was arrested. On 4 April 2011 France authorized its troops to participate in joint operations with UNOCI to neutralize heavy weapons in response to the UN Secretary-General's request. UN and French helicopters fired on Akouedo camp in

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<sup>435</sup> IRIN Domestic media raise the stakes 20 January 2011  
<http://www.irinnews.org/Report/91690/COTE-D-IVOIRE-Domestic-media-raise-the-stakes> (last accessed 3/12/12)

Abidjan, occupied by pro-Gbagbo forces, explaining that it was a preventive strike against heavy weapons stationed there, in line with resolution 1975. On 9 April UNOCI accused pro-Gbagbo forces of attacking and firing heavy weapons at the Golf Hotel. Gbagbo's camp denied the accusation. On 10 April UN and French troops launched aerial attacks targeting heavy weapons stationed at Gbagbos' residence. Gbagbo, his wife and some associates were captured by Ouattara's forces on 11 April and were subsequently detained at the Golf Hotel in Abidjan under UN protection.

The Security Council reflected on the implications of use of force might have for future Council protection mandates if the conflict would become protracted and the UN perceived by some as a partisan player. The July report of the Security Council however stated: "... in light of the quick solution of the issue, it seems doubtful that this will indeed be the case. To the contrary, the experience gained in Côte d'Ivoire may instead become a model case for the UN and regional organizations carefully working in tandem to exhaust all peaceful possibilities (...)"<sup>436</sup>.

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<sup>436</sup> Cross-cutting Report 2011 n. 2 20 July 2011)  
<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20POC%202011.pdf> page 25 (last accessed 3/12/12)

## Annex I Timeline of events

Date	In Cote d'Ivoire	In the UN System	In the Region
2 December 2010	The Ivorian Independent Electoral Commission announced that former prime minister and veteran opposition leader Ouattara had won the presidential run-off with 54.1 percent of the vote and incumbent president Laurent Gbagbo received 45.9 percent.	On 2 December the Council was briefed by the head of the UN Operation in Côte d'Ivoire (UNOCI) Choi Young-jin, on the electoral process in the country. The Council subsequently issued a press statement welcoming the holding of the election and taking note of the assessment of the Special Representative.	
3 December 2010	The Constitutional Council disputed the outcome saying Gbagbo had won the presidential run-off. The Council also argued that the electoral commission's results were null and void because the legal limit of three days for the Commission to pronounce itself on the provisional results had been exceeded by the electoral commission.	The Head of the UN Operation in Côte d'Ivoire (UNOCI) Choi Young-jin, acting pursuant to his Security Council mandate in resolution 1765, certified the results of the elections recognizing Alassane Ouattara as the winner, based on his independent assessment	
4 December 2010	Both Ouattara and Gbagbo separately took oaths of office. Ouattara appointed Guillaume Soro as prime minister, who had a few hours earlier resigned as prime minister in Gbagbo's government.		The AU warned that there could be incalculable consequences if Côte d'Ivoire did not follow the Independent Electoral Commission and UN assessment.

Date	In Cote d'Ivoire	In the UN System	In the Region
5 December 2010			<p>The African Development Bank and the World Bank jointly made a statement saying that they supported the efforts of the African Union and the international partners to bring the crisis to a quick and peaceful resolution.</p> <p>Former South African president, Thabo Mbeki, arrived in Côte d'Ivoire on an AU mediation mission. He subsequently met with key leaders in the Ivorian electoral process, including Gbagbo, Ouattara, the head of the electoral Commission, the head of the Constitutional Council and Choi Young-jin.</p>
6 December 2010		<p>UNHCR indicated that it had registered about 22,000 Ivorian refugees who had entered Liberia in the wake of the conflict.</p>	
7 December 2010			<p>ECOWAS recognised Ouattara as the legitimate winner of the polls, suspended Côte d'Ivoire from the organisation and asked Gbagbo to step down.</p>
8 December 2010		<p>The Security Council issued a press statement reiterating its support for the role of Choi Young-jin and UNOCI. It called on all Ivorian stakeholders to respect the outcome of the election "<i>in view of ECOWAS' recognition of Alassane Dramane Ouattara as president-elect of Côte d'Ivoire and representative of the freely expressed voice of the Ivorian people as proclaimed by the Independent Electoral Commission.</i>"</p>	<p>Liberian President Ellen Johnson-Sirleaf, urged Liberians not to cross into Côte d'Ivoire as mercenaries, following reports of such movements.</p>

Date	In Cote d'Ivoire	In the UN System	In the Region
9 December 2010			The AU Peace and Security Council suspended Côte d'Ivoire from all of the organization's activities and endorsed the ECOWAS decision of 7 December to recognize Ouattara as the winner of the 28 November 2010 presidential run-off election.
15 December 2010		The UN Secretary-General Ban Ki-moon reiterated his call on Ivorian stakeholders to refrain from any actions that could provoke violence, stressing that in the charged political environment such actions could have unpredictable consequences, including reigniting civil war. Ban reminded those who incited or perpetrated violence that they would be held accountable for their actions.	
16 December 2010	Supporters of Ouattara unsuccessfully attempted to gain control of key state institutions. About thirty people died.	The Security Council issued a press statement expressing concern about violence, especially against civilians.  On the same day International Criminal Court prosecutor Luis Moreno-Ocampo cautioned that the Court would pursue the perpetrators of any deadly violence in Côte d'Ivoire.	
18 December 2010	Gbagbo demanded that all foreign peacekeepers leave Côte d'Ivoire immediately, accusing UN and French peacekeepers of colluding with former rebels.	Ban Ki-moon rejected call for troop pullout.	

Date	In Cote d'Ivoire	In the UN System	In the Region
20 December 2010		The Security Council renewed the mandate of UNOCI until 30 June 2011. It authorized the Secretary-General to extend until 31 March the temporary deployment of up to 500 additional personnel, as well as the temporary redeployment to UNOCI for up to four weeks of troops and an aviation unit from UNMIL. The Council subsequently issued a press statement expressing concern about continued reports of acts of violence in Côte d'Ivoire. It condemned acts of violence against UNOCI and warned all stakeholders that attacks against civilians and peacekeepers will be brought to justice in accordance with international law and international humanitarian law.	
22 December 2010		The World Bank reported that it had "currently stopped lending and disbursing funds to the Ivory Coast" and closed its office in Côte d'Ivoire.	
23 December 2010		<p>The General Assembly accepted, by consensus, Ouattara's choice of diplomats to the UN as the only official representatives of Côte d'Ivoire to the organization</p> <p>On the same day the UN Human Rights Council, during a special session, condemned rights violations in Côte d'Ivoire, and urged all parties, particularly defense and security forces, to refrain from violence and to respect all human rights and fundamental freedoms.</p>	The Central Bank of West African States (French: Banque Centrale des États de l'Afrique de l'Ouest or BCEAO), which serves eight West African countries including Côte d'Ivoire, cut off access by Gbagbo to Côte d'Ivoire's funds, recognising Ouattara as the legitimate president. Gbagbo declared that the decision taken by BCEAO was illegal.
24 December 2010			Following an emergency summit meeting in Abuja, ECOWAS announced that Gbagbo should stand down or face "legitimate force." ECOWAS indicated that it would convene a meeting of its defense ministers to discuss possible military intervention in Côte d'Ivoire if Gbagbo remained recalcitrant.
27 December 2010		UN Under-Secretary General for Peacekeeping Alain Le Roy arrived in Abidjan and discussed with Ouattara and the UNOCI head, Choi Young-jin, regarding the situation on the ground.	The AU appointed Kenyan Prime Minister Raila Odinga as its special envoy to pursue a peaceful outcome to the situation in Côte d'Ivoire.



Date	In Cote d'Ivoire	In the UN System	In the Region
28 December 2010			West African Presidents (Benin's Boni Yayi, Cape Verde's Pedro Pires and Sierra Leone's Ernest Bai Koroma) arrived in Abidjan to convey ECOWAS's demand that Gbagbo cede power or face military intervention. They left with no result.
29 December 2010		The new Ivorian Ambassador to the UN, Youssoufou Bamba, cautioned that his country was on the verge of genocide. UN Under-Secretary General for Peacekeeping Le Roy expressed concern on Ivorian state television about attempts being made through the local media to incite the local population to turn against UNOCI.	ECOWAS military chiefs (from Benin, Burkina Faso, Ghana, Liberia, Mali, Senegal, Togo, Niger and Nigeria) met in Abuja, Nigeria from 29 to 30 December to consider options of forcefully removing Gbagbo if political persuasion failed.
3 January 2011			ECOWAS mediators in the persons of the presidents of Benin, Cape Verde and Sierra Leone undertook a second visit to Abidjan to try to secure Gbagbo's exit. Kenyan Prime Minister Raila Odinga, representing the AU, also joined in the negotiations. The ECOWAS mediators subsequently indicated that Gbagbo had promised to lift the blockade of the temporary headquarters of Ouattara at the Golf Hotel in Abidjan. Odinga told the BBC that Gbagbo had indicated that he was "ready to negotiate without any conditions. And stepping aside is the main option that we gave him."
4 January 2011			ECOWAS and the AU indicated that Gbagbo had agreed to negotiate a peaceful end to the crisis without any preconditions.

Date	In Cote d'Ivoire	In the UN System	In the Region
5 January 2011	Gbagbo's foreign minister, Alcide Djedje, told the press that the blockade of Ouattara's temporary headquarters would not be lifted until New Forces soldiers loyal to Ouattara left the hotel	On 5 January UN Under-Secretary General for Peacekeeping, Le Roy, briefed the Security Council on the political and security situation in Côte d'Ivoire.	.
7 January 2011		The Secretary-General recommended that the Council authorize reinforcements to UNOCI (S/2011/5).	Ghana's president, John Atta Mills, indicated that Ghana will not contribute troops to an ECOWAS regional force to oust Gbagbo
10 January 2011		The Security Council issued a press statement indicating that its members had expressed support for AU and ECOWAS efforts to find a peaceful resolution to the crisis in Côte d'Ivoire. It expressed concern about continued violence and human rights violations and condemned attacks against peacekeepers and civilians.	The former Nigerian president Olusegun Obasanjo met with both Gbagbo and Ouattara in what he described as a "process of exploration," as part of ECOWAS's mediation effort. He maintained that while a negotiated solution to the crisis was possible, military intervention remained an option.
11 January 2011	On 11 and 12 January violent clashes occurred between rival political factions, resulting in the death of four supporters of Ouattara on 11 January	UNHCR indicated that about 25,000 Ivorian refugees had entered Liberia in the wake of the dispute, with an estimated 600 new arrivals every day. There were more than 16,000 internally displaced persons in western Côte d'Ivoire.	
12 January 2011	Five policemen linked to Gbagbo's camp died	France circulated a draft resolution to authorize additional troop levels for UNOCI and also to extend its authorization for the temporary troops to augment the capacity of UNOCI.	

Date	In Cote d'Ivoire	In the UN System	In the Region
13 January 2011	Forces loyal to Gbagbo attacked and burned UN vehicles in six different incidents, in Abidjan		
17 and 18 January 2011.			The AU mediator, Kenyan Prime Minister Raila Odinga, visited Abidjan and held talks with Alassane Ouattara, and Laurent Gbagbo. His mediation did not succeed in resolving the impasse.
19 January 2011		The Security Council adopted resolution 1967, authorizing an increase in military personnel and logistics for the UN Operation in Côte d'Ivoire (UNOCI) and extended the temporary deployment of troops from the UN Mission in Liberia (UNMIL). The Secretary-General's Special Advisers on the prevention of genocide, Francis Deng, and the responsibility to protect, Edward Luck, expressed concern about "the possibility of genocide, crimes against humanity, war crimes and ethnic cleansing in Côte d'Ivoire." Switzerland froze all assets held in that country by Gbagbo	
21 January 2011		Un spokesperson Martin Nesirky said that proposals by the Ivorian defence and security forces loyal to Laurent Gbagbo to stop and search UN vehicles "are a serious violation of the Status of Forces Agreement and Security Council resolution 1962 and therefore unacceptable."	

Date	In Cote d'Ivoire	In the UN System	In the Region
22 January 2011	Gbagbo's administration announced that it had cancelled the accreditation of France's ambassador to Côte d'Ivoire, following an earlier notification from Paris indicating that France had accredited Ali Coulibaly, Ouattara's choice as Côte d'Ivoire's envoy to France		The heads of state of the Central Bank of West African States (BCEAO) members forced the resignation of the head of the bank, who was seen to be a key ally of Gbagbo and had ensured the latter's cash supply, despite a previous decision by the bank to cut off access by Gbagbo to Côte d'Ivoire's funds and recognise Ouattara as the legitimate president. The leaders subsequently requested that Ouattara name a new governor of the bank
23 January 2011	Ouattara called for a month-long international ban on cocoa exports from Côte d'Ivoire, as a further measure to increase pressure on Gbagbo. (Côte d'Ivoire is the world's leading producer of cocoa, which is its number one source of revenue.)		
24 January 2011		On 24 January the US said it supported Ouattara's call for a ban on Ivorian cocoa exports.	Nigerian Foreign Minister Odein Ajumogobia wrote an editorial in his country's local press stating that " <i>ECOWAS requires unequivocal international support through an appropriate United Nations Security Council resolution to sanction the use of force...to legitimise the use of external force to effectively contain the increasingly volatile internal situation and ensure an enduring peace in Côte d'Ivoire and the West African subregion.</i> "
25 January 2011			AU chairperson Bingu wa Mutharika travelled to the Côte d'Ivoire to hold talks with Ouattara and Gbagbo, in the lead up to the AU Summit scheduled for 30 to 31 January.

Date	In Cote d'Ivoire	In the UN System	In the Region
26 January 2011	Gbagbo ordered the seizure of all local branches of BCEAO. Ouattara condemned the move stating that "this illegitimate and illegal decision to requisition is null and void" and indicated that anyone who participated in its implementation "will be subject to sanctions and criminal prosecution."		A delegation of West African leaders met with US officials in Washington DC to discuss the Ivorian crisis
28 January 2011			The AU Peace and Security Council (PSC) decided to set up a high-level panel for the resolution of the crisis in Côte d'Ivoire "in conditions that preserve democracy and peace" and requested the panel to submit its findings within a month.
29 January 2011		UN Secretary-General Ban Ki-moon welcomed the decision by the PSC to set up the panel. Ban expressed concern about the deteriorating human rights and humanitarian situation, as well as misrepresentations about the work of the UN in the country. The Secretary-General's Special Advisers on the prevention of genocide, Francis Deng, and the responsibility to protect, Edward Luck, issued a second joint statement	

Date	In Cote d'Ivoire	In the UN System	In the Region
31 January 2011			The PSC announced that the panel would be composed of the heads of state of Burkina Faso, Chad, Mauritania, South Africa and Tanzania, as well as the chairperson of the AU Commission and the president of the ECOWAS Commission
8 February 2011			The president of the ECOWAS Commission, James Victor Gbeho, criticised South Africa for sending a warship to the subregion, stating that the presence of the vessel could "only complicate the matter further." However, a South African defense ministry spokesperson said the warship was not providing military support for Gbagbo or Ouattara but was in international waters off the coast of West Africa for routine training.
10 February 2011	The Gbagbo government announced on state television that frequencies assigned to UN Radio broadcasts had been withdrawn. Gbagbo retained control of the Ivorian state television— Ivorian Radio Television or RTI—while Ouattara set up a TV station called TV Côte d'Ivoire, which could be received in Abidjan.		

Date	In Cote d'Ivoire	In the UN System	In the Region
16 February 2011		The Security Council extended for up to three months the temporary redeployment from the UN Mission in Liberia (UNMIL) to UNOCI of three infantry companies and one aviation unit, composed of two military utility helicopters and three armed helicopters with crews.	
17 February 2011	Gbagbo's government announced that it had taken control of foreign banks that had suspended operations in the country. A number of banks in Côte d'Ivoire, including Citibank and Standard Chartered, had suspended their local operations because of a growing financial crisis due to uncertainty brought about by the political stalemate and consequent sanctions.		
21-22 February 2011			Members of the AU high-level panel, with the exception of Burkinabe leader Blaise Compaore who has been accused by the Gbagbo camp of being supportive of Ouattara, met with the Gbagbo in Abidjan. It subsequently met with Ouattara on 22 February

Date	In Cote d'Ivoire	In the UN System	In the Region
24-25 February 2011	A position of the former rebel Forces Nouvelles along the buffer zone between the southern and northern parts of the country was attacked by government forces in western Côte d'Ivoire, violating the six-year ceasefire between the two forces. On 25 February the Forces Nouvelles responded and took control of the northern town of Zouan-Hounien, with press reports of the unrest spreading to the capital Yamoussokro.		
3 March 2011	Pro-Gbagbo security forces shot and killed seven women during a demonstration in the Abobo district of Abidjan by hundreds of women protesting against Gbagbo's continued stay in office.	The Security Council issued a press statement in which it condemned the threats, obstructions and acts of violence by Gbagbo's forces against UN personnel and violence by all parties against civilians and urged UNOCI "to use all necessary means to carry out its mandate, in particular to protect the civilians"	
10 March 2011			The AU's Peace and Security Council (PSC) endorsed the recommendations of its high-level panel for the resolution of the Ivorian crisis. The PSC confirmed that Ouattara was the sole legitimate president of the country. It decided that he should lead a unity government, including pro-Gbagbo elements. The PSC also requested the Chair of the AU commission to appoint a High Representative for the implementation of the overall political solution proposed by the panel. Gbagbo's camp rejected the decision.



Date	In Cote d'Ivoire	In the UN System	In the Region
11 March 2011		The Security Council issued a press statement welcoming the AU PSC decision and anticipated the appointment of the High Representative for the implementation of the AU's overall political solution to the situation in Côte d'Ivoire.	
17 March 2011	Mortars were fired by forces loyal to Gbagbo into a market area in the Abobo district of Abidjan, resulting in the killing of more than 25 civilians with more than 40 wounded.	The Secretary-General condemned the attack and urged the Council "to take further measures with regard to the Ivorian individuals who are instigating, orchestrating and committing the violence."	
18 March 2011	Gbagbo's camp appealed for an inter-Ivorian dialogue and called for an end to the violence. However, Gbagbo's minister for youth, Charles Blé Goudé subsequently called on young Ivorians to enlist in the army en masse "to free Côte d'Ivoire from bandits."		
21 March 2011		<p>The Security Council conveyed to the press its "indignation" over the 17 March attacks on the market in Abobo. The Council reiterated its "determination to impose measures, including targeted sanctions, against those who impede the peaceful resolution of the crisis, obstruct the work of UNOCI and other international actors in Côte d'Ivoire or commit violations of human rights and international humanitarian law."</p> <p>On the same day the chief prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, told the BBC that the court was gathering information on possible war crimes being committed in Côte d'Ivoire.</p>	The AU Peace and Security Council welcomed Ouattara's assumption of "State power" and decided to lift its suspension of Côte d'Ivoire from the organisation.

Date	In Cote d'Ivoire	In the UN System	In the Region
24 March 2011			ECOWAS requested the Security Council to strengthen the mandate of UNOCI, to enable the "Mission to use all necessary means to protect life and property, and to facilitate the immediate transfer of power to Ouattara", as well as to "adopt more stringent international targeted sanctions" against Gbagbo and his associates. ECOWAS seemed to be indicating that it had lost confidence in AU leadership on the issue.
25 March 2011		The Human Rights Council decided to send an independent commission of inquiry to investigate allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the 28 November 2010 elections.	
26 March 2011	Ouattara rejected the AU's choice of Foreign Minister Jose Brito of Cape Verde as its High Representative for the implementation of the political solution recommended by the AU high level panel. Ouattara indicated that Brito's close personal and political relationship with Gbagbo made him unsuitable for a mediatory role.		
29 March 2011	The Gbagbo camp called for a ceasefire as the pro-Ouattara Republican Forces of Côte d'Ivoire (former Forces nouvelles) headed towards Abidjan, after taking control of a number of towns/cities including the administrative capital Yamoussoukro and the key port of San Pedro		

<b>Date</b>	<b>In Cote d'Ivoire</b>	<b>In the UN System</b>	<b>In the Region</b>
30 March 2011	The army chief of the Gbagbo camp, General Phillippe Mangou, sought refuge at the residence of South Africa's Ambassador.	The Security Council adopted resolution 1975 imposing targeted sanctions against Gbagbo and four of his associates, including his wife.	
31 March 2011	Ouattara appealed in a televised address for Gbagbo's soldiers to join him to prevent further bloodshed. Many high-level defections from the Gbagbo camp were reported.		
1 April 2011			The AU Chairperson, Jean Ping, urged Gbagbo to "immediately hand over power" to Ouattara, "in order to shorten the suffering of the Ivorians."
2 April 2011		Four UN peacekeepers were seriously injured by Pro-Gbagbo forces while on a humanitarian mission in Abidjan.	

Date	In Cote d'Ivoire	In the UN System	In the Region
3 April 2011	General Mangou, who had defected as army chief of the Gbagbo camp, met with Gbagbo after leaving the residence of the South African Ambassador where he had sought refuge together with his family on 30 March.	<p>UN and French peacekeepers secured the international airport in Abidjan, to facilitate the evacuation of foreign nationals caught up in the conflict. France increased its troop levels by about 450 extra personnel.</p> <p>The International Committee of the Red Cross indicated that about 800 people had been killed in apparent inter-ethnic violence in the southwestern town of Duekoue, which had been captured by Ouattara's Republican Forces of Côte d'Ivoire.</p> <p>The UN Secretary-General, concerned about the continuing use of heavy weapons by Gbagbo's forces against civilian areas, wrote to French President Nicolas Sarkozy requesting for the support of French troops (who operate in Côte d'Ivoire under UN mandate) for military operations to be conducted by UNOCI to neutralise heavy weapons used against civilians and UN personnel, in line with resolution 1975. Sarkozy agreed to this request.</p>	
4 April 2011	During the week of 4 April pro-Ouattara forces engaged in heavy military clashes with pro-Gbagbo forces. A series of aerial assaults by UN Operation in Côte d'Ivoire (UNOCI) and French forces took place on 4 and 5 April	<p>The Secretary-General announced that he had instructed UNOCI, in accordance with the provisions of resolution 1975, "to take the necessary measures to prevent the use of heavy weapons against the civilian population, with the support of the French forces".</p> <p>The Secretary-General informed the Council in a separate letter that the security situation in Abidjan had deteriorated dramatically and that forces loyal to Gbagbo had intensified their use of heavy weapons against civilians and had also attacked UNOCI patrols dispatched to protect civilians</p>	
5 April	UN and French troops launched further aerial attacks targeting heavy weapons	UNOCI announced that it had launched operation "Protect the Civilian Population."	
9 April 2011	UNOCI reported that pro-Gbagbo forces were attacking and firing heavy weapons on UN facilities and at the Golf Hotel. Gbagbo's camp denied the accusation		

Date	In Cote d'Ivoire	In the UN System	In the Region
10 April 2011	UN and French troops launched further aerial attacks targeting heavy weapons stationed at Gbagbo's residence.		
11 April 2011	Gbagbo, his wife and some associates were captured by Ouattara's forces and were subsequently detained at the Golf Hotel in Abidjan under UN protection.	The head of UN peacekeeping, Le Roy, briefed the Security Council on the developments in Côte d'Ivoire. He said that the UN operations had focused strictly on the protection of civilians. The Secretary-General stressed that the UN had acted strictly within the mandate of resolution 1975.	
12 April 2011	Gbagbo was moved from the Golf Hotel to a location in northern Côte d'Ivoire under the protection of UN troops	The UN High Commissioner for Human Rights indicated that 530 people had been killed in western Côte d'Ivoire since the end of March 2011, in the towns of Duekoue, Guiglo, Bolequin and Bangolo.  The President of the HRC appointed three high-level experts - Vitit Muntabhorn (Thailand), Suliman Baldo (Sudan) and Reine Alapini Gansou (Benin)- as members of a UN Commission of Inquiry to investigate" the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of 28 November 2010, in order to identify those responsible for such acts and bring them to justice".	
13 April 2011	The army chief of Gbagbo's camp, pledged allegiance to Ouattara's administration in a televised statement, while indicating that Ouattara had given instructions for the national security agencies to secure the city of Abidjan and the interior the country. It was, however, unclear whether militias would comply with calls to lay down their weapons.	The Security Council was briefed on the situation in Côte d'Ivoire by Head of UNOCI Choi Young-Jin, Under-Secretary-General for Humanitarian Affairs Valerie Amos, High Commissioner for Human Rights (OHCHR) Navi Pillay and Permanent Representative of Côte d'Ivoire Youssoufou Bamba. (Members of OHCHR) went to Côte d'Ivoire in early April to investigate the reports of killings and other human rights violations.	

## **Annex II The International Criminal Court**

Côte d'Ivoire is not party to the Rome Statute but accepted the jurisdiction of the ICC in 2003. On 16 December 2010 International Criminal Court (ICC) prosecutor Luis Moreno-Ocampo warned that the Court would pursue the perpetrators of any deadly violence in Côte d'Ivoire. On 18 December 2010, the Court received a declaration signed by President Ouattara, which confirmed the previous declaration submitted in October 2003 by the Government of Côte d'Ivoire pursuant to article 12, paragraph 3, of the Statute, accepting the jurisdiction of the Court for crimes committed on the country's territory since 19 September 2002.<sup>437</sup>

On 3 May 2011 President Ouattara asked the ICC Prosecutor to investigate into serious crimes committed in the country since 28 November 2010<sup>438</sup>. Two weeks after, on 19 May 2011, Luis Moreno-Ocampo announced that he intended to open an investigation into crimes committed in Côte d'Ivoire.<sup>439</sup> On 23 June 2011, the Prosecutor requested the authorization to open investigations which was granted in October by Pre-Trial Chamber III. On 23 November 2011, Pre-Trial Chamber III issued a warrant of arrest under seal in the case *The Prosecutor v. Laurent Gbagbo* for four counts of crimes against humanity. Gbagbo had been detained in the north of the country since April 2011 and was charged by a national court on 18 August with "economic crimes" that included his alleged looting of half a billion dollars from the state treasury. President Ouattara's government insisted that the prosecution for economic crimes be kept separate from other charges that may be brought against Gbagbo, either by national courts or the ICC.

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<sup>437</sup><http://www.iccnw.org/documents/OTPreportonPreliminaryExaminations13December2011.pdf> (last accessed 3/12/12)

<sup>438</sup><http://www.securitycouncilreport.org/chronology/cote-divoire.php> (last accessed 4/12/12)

<sup>439</sup><http://www.securitycouncilreport.org/chronology/cote-divoire.php> (last accessed 4/12/12)

On 22 February 2012, Pre-Trial Chamber III decided to expand its authorization for the investigation in Côte d'Ivoire to include crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010<sup>440</sup>.

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<sup>440</sup>In May 2012 Gbagbo's lawyers challenged the ICC's competence to put Mr Gbagbo on trial for alleged crimes committed after Ivory Coast's disputed polls in November 2010 and asked the court to rule that a declaration signed by Côte d'Ivoire in April 2003 recognizing the court's jurisdiction, would "not be relevant to the period covered by the allegations against Mr Gbagbo". The hearing on the confirmation of charges in the case *The Prosecutor v. Laurent Gbagbo*, the only case currently heard before the Court in this situation, was scheduled to start on 13 August 2012. . On August 15, 2012 the ICC Pre-Trial Chamber I rejected Gbagbo's defense challenge to the Court's jurisdiction saying that the court has the jurisdiction over alleged crimes including those committed since 28 November 2010. On 16 August News24 reported that the ICC's judges found that the April 2003 declaration, signed by Gbagbo's then foreign minister Bamba Mamadou, recognized the tribunal's jurisdiction for an indefinite period thereby accepting the jurisdiction of the court over events from 19 September 2002 onwards.

# SRI LANKA

## Chapter 6

### Introduction

The case of Sri Lanka was selected because, notwithstanding the systematic and deliberate violations of international human rights and humanitarian law, in 2009 the international community failed to take action on the basis of the responsibility to protect. To understand the reason for the inaction we looked at the dynamic within the Security Council and the Human Rights Council, the reaction of the Sri Lanka government and, more substantially, the behavior of the regional leading countries.

Unlike Libya and Cote d'Ivoire, in the case of Sri Lanka there was no regional support for a R2P case. The Asian members of the Security Council were all reluctant to take a stand. China and Russia blocked any action, while China and India actively and financially supported the government of Sri Lanka.

In Asia habits of regional cooperation are only slowly developing. Asian regional organizations, such as South Asia Association for Regional Cooperation (SAARC)<sup>441</sup> and Association of Southeast Asian Nations ASEAN<sup>442</sup> are usually reluctant to get involved in R2P and conflict prevention as their statutory documents are firmly rooted in the principle of non-intervention. Carment and Fisher affirmed that a strict reading of SAARC's 1985 Charter even precludes the organization from becoming involved in conflict prevention as it provides that bilateral and contentious issues shall be excluded from the deliberation of the Association. ASEAN has equally been unwilling to play any role in preventing or managing identity-based conflicts.

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<sup>441</sup> SAARC was established in 1985. Its members are Sri Lanka, Bhutan, India, Maldives, Nepal, Pakistan, Bangladesh, and Afghanistan.

<sup>442</sup> ASEAN was established on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Since then, membership has expanded to include Brunei, Myanmar, Cambodia, Laos, and Vietnam.



Another aspect that prevented a more robust action by the International community was that the LTTE was considered a terrorist organization; the world had no sympathy with the terrorist insurgents the government of Sri Lanka was seeking to eliminate. Finally, as Nicole Deller observed, in those circumstances where the international community has long been engaged in addressing a chronic conflict or human rights situation there is caution about invoking R2P even if mass atrocities have been committed , such as in the case of Sri Lanka or Gaza.<sup>443</sup>

Already in 2007 Gareth Evans had warned that Sri Lanka could change into a R2P situation. “It may not be one where large-scale atrocity crimes – Cambodia-style, Rwanda-style, Srebrenica–style, Kosovo-style – are occurring right now, or immediately about to occur, but it is certainly a situation which is capable of deteriorating to that extent. So it is an R2P situation which demands preventive action, by the Sri Lankan government itself, but with the help and support of the wider international community, to ensure that further deterioration does not occur.”<sup>444</sup> No preventive action was taken.

Until recently very little has been said on Sri Lanka as a R2P case. James Traub in the Washington Post described Sri Lanka as “the kind of cataclysm that states vowed to prevent when they adopted the responsibility to protect.”<sup>445</sup> Jan Egeland, former UN Humanitarian Coordinator, denounced that the heads of state have failed to deliver on R2P<sup>446</sup>. On the other hand, Ramesh Thakur, only a month after having signed one of the open letters to the Security Council affirmed that “it was hypocritical and wrong – morally, politically and military – of Westerners to fault Sri Lanka for its conduct”<sup>447</sup>. Ellen O’Connell dismissed R2P saying that talk of R2P could be a

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<sup>443</sup> Deller N., Challenges and Controversies in The Responsibility to Protect: The Promise of Stopping Mass Atrocity in Our Time op cit pages 62-84 page 77

<sup>444</sup> Evans G., The Limits of State Sovereignty: The Responsibility to Protect in the 21st Century, International Crisis Group, 29 Jul 2007 available at

<sup>445</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/21/AR2009042102970.html> (last accessed 5/12/12)

<sup>446</sup> <http://www.innerecitypress.com/untrip5may6srilanka062409.html> (last accessed 3/12/12)

<sup>447</sup> Thakur R., West shouldn't fault Sri Lankan govt tactics, The Daily Yomiuri , 12 June 2009, <http://www.yomiuri.co.jp/dy/columns/commentary/20090612dy01.htm> “The notion of a responsibility to protect places the responsibility first and foremost on the state itself.

distraction “from what should be a clear and unified demand to both sides: cease fire.”<sup>448</sup>

However, the initial failure to act in 2009 did not put the case to rest. Thanks, *inter alia*, to the pressure exercised by the Human Right Council and by civil society in March 2012 a resolution was adopted by the UN Human Rights Council calling on the Government of Sri Lanka to take action to ensure justice, and to present a comprehensive action plan detailing the steps to this end.

The consideration that the UN might also have failed in its mandate to protect civilians in the last months of Sri Lanka's bloody civil war was recently the object of an internal UN scrutiny. The findings were published in November 2012. The report was produced by an Internal Review Panel, following recommendations by another body, the Secretary-General's Panel of Experts, which was established in June 2010 to advise the Secretary-General on measures to advance accountability following the end of the conflict. The report of the Internal Panel concluded that the UN responded inadequately to early warnings and to the evolving situation during the final stages of the conflict and its aftermath “in contradiction with the principles and responsibilities of the UN.”<sup>449</sup>

This Chapter is structured as follows: section 6.1 presents some background information on the internal conflict; section 6.2 describes the response of the United Nations system, section while section 6.3 deals with the reaction of civil society and the written press. Section 6.4 concludes. Annex 1 contains a timeline of the main events that took place in Sri Lanka and at the United Nations from December 2008 until March 2012.

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Given the Tigers' nature and record, it was not unreasonable for the government to acquire the capacity and demonstrate the determination to defeat the Tigers as part of its responsibility to protect. Proponents of the responsibility to protect cannot advocate the international use of force against government troops engaged in atrocities against civilians, but not permit governments to use military force to protect their people from atrocities being perpetrated by terrorists. “

<sup>448</sup> O'Connell M. E., Sri Lanka Needs Peace, Not R2P April 28, 2009 e-International Relations <http://www.e-ir.info/2009/04/28/sri-lanka-needs-peace-not-r2p/> (last accessed 3/12/12)

<sup>449</sup> [http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf) (last accessed 5/12/12) page 28

## 6.1 Background

The Tamil Tigers started fighting in the 1970s for a separate state, Eelam, for Tamils in the northern and eastern part of Sri Lanka.<sup>450</sup> The rebels, Liberation Tigers of Tamil Ealam (LTTE) were among the most disciplined and organized guerrilla groups in the world; they had their own "capital", ground forces, navy and even a rudimentary air force. For some time in the 1970s Tamil militants received training and support in India. India's interest in the Tamil groups was due partly to the ethnic link to Indian Tamil community but also as a counter measure against the government of Sri Lanka for having allowed Pakistani ships to refuel during the Indo-Pakistani war in 1971. Following the assassination of Indian Prime Minister Rajiv Gandhi by a Tamil suicide bomber in 1991, India and of the Indian Tamil community ended their support to the Sri Lanka Tamil cause.

Talks in Geneva on February 2006 raised again some hopes that an agreement between the two parties might be reached, but fighting resumed shortly after in the northeast part of the country.

In January 2008 the Sri Lanka government launched a massive offensive against LTTE. The military offensive escalated in October 2008 as the Sri Lankan military attacked the Vanni heartland of the Tamil Tigers. After successive defeats the Tamil Tigers were forced to retreat to the northeast coast in Mullaitivu District, a 30 square kilometer area of coastline in the northern Vanni region.<sup>451</sup> As the Sri Lankan military advanced further, international concern grew for the fate of the 350,000 civilians still living in the area. Both the military and the Tigers were accused of gross abuses of

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<sup>450</sup> The majority group is the Sinhalese, comprising an estimated 74% of the population, who are overwhelmingly Theravada Buddhist. The largest minority group is the Tamils, comprising an estimated 13% of the population, who are predominantly Hindu. The other significant minority group is the Sri Lankan Muslims, who make up an estimated 7% of the population. Other minority groups make up 1% of the population. These include the Burghers – descendants of Portuguese and Dutch settlers who married into the local population – Malays, Chinese and Vedda.

<sup>451</sup> War and peace in Sri Lanka, RESEARCH PAPER 09/51 5 June 2009, House of Common page 3 available at <http://www.parliament.uk/documents/commons/lib/research/rp2009/rp09-051.pdf> (last accessed 3/12/12)

human rights. LTTE refused to allow civilians to flee the fighting and repeatedly fired on those trying to reach government-held territory. On the other hand, the government of Sri Lanka used heavy artillery in densely populated areas, including in protected zones, and targeted civilian infrastructure, resulting in indiscriminate attacks on civilians. Humanitarian agencies and aid workers were denied access to trapped civilians.

On 4 February 2009 the International Committee of the Red Cross (ICRC) reported that around 300 patients, accompanied by eighteen ICRC staff, had fled Puthukkudiyiruppu Hospital, in the northern Vanni region, after it was shelled repeatedly<sup>452</sup>. The military attack to the Puthukkudiyiruppu Hospital was only one of a series of attacks against civilian infrastructures. In a report published in February 2009 Human Rights Watch reported that twenty attacks against hospitals were launched alone in the period from December 15, 2008 to February 10, 2009<sup>453</sup>. Information on the situation in the Vanni region was extremely limited. The Sri Lankan government denied access to information for independent observers, including representatives of human rights organizations and journalists and only a handful of international agencies were allowed access to the internally displaced persons (IDP) camps in Vavuniya and the hospital where wounded civilians had been brought.<sup>454</sup> Screening for suspected LTTE took place without any transparency or external scrutiny, some people were summarily executed, other tortured or disappeared. All IDPs were detained in closed camps where massive overcrowding led to conditions that caused the unnecessary death of many.<sup>455</sup>

Concerned by the deterioration of the situation on 4 February 2009 the US Secretary of State Hillary Clinton and the UK Foreign Secretary David Miliband called for a

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<sup>452</sup> <http://www.icrc.org/eng/resources/documents/feature/2009/sri-lanka-feature-090209.htm> (last accessed 3/12/12)

<sup>453</sup> Human Rights Watch, "War on the displaced: Sri Lankan army and LTTE abuses against civilians in the Vanni", February 2009

<sup>454</sup> Human Rights Watch, "War on the displaced: Sri Lankan army and LTTE abuses against civilians in the Vanni", February 2009

<sup>455</sup> The Report of the Secretary-General's Panel of Expert on Accountability in Sri Lanka available at [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) (last accessed 3/12/12)

temporary “no-fire” period, during which the injured could be evacuated and relief supplies delivered to those civilians trapped in the conflict zone. The EU, Norway and Japan took the same position.<sup>456</sup> On 3 April Secretary-General Ban Ki-moon issued a statement reiterating the need to protect civilians trapped in the area of conflict between the government and Tamil rebels in northern Sri Lanka, voicing concern at reports of heavy casualties, restrictions on movement and forced recruitment, especially of children. He also reminded the Government of Sri Lanka of its responsibility to protect civilians.<sup>457</sup>

The Sri Lankan Government rejected all international calls for greater action to protect civilians or for a ceasefire but introduced a brief unilateral pause in the fighting on 12-13 April to allow civilians to flee the conflict zone. This was criticized by UN Under Secretary-General for Humanitarian Affairs, John Holmes, who stressed that the two-day humanitarian pause was inadequate to ease the suffering of civilians caught in the conflict. Holmes also warned that “a bloodbath on the beaches of northern Sri Lanka seems an increasingly real possibility”<sup>458</sup>. Reports also indicate that civilians were prevented from leaving by the LTTE during the two-day ceasefire.

On 20 April the International Crisis Group reported that the Sri Lankan armed forces had successfully breached the LTTE’s defensive fortifications. An estimated 100,000 civilians fled the conflict zone, while other 150,000 civilians were believed still within that zone<sup>459</sup>. On 29 April 2009 an EU diplomatic mission comprising UK Foreign

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<sup>456</sup> BBC 3 February 2009 Sri Lanka Tigers urged to end war available at [http://news.bbc.co.uk/2/hi/south\\_asia/7867743.stm](http://news.bbc.co.uk/2/hi/south_asia/7867743.stm) (last accessed 3/12/12); IRINNEWS 4 February 2009 Civilian death toll rises as fighting continues available at and <http://www.irinnews.org/printreport.aspx?reportid=82737> (last accessed 3/12/12)

<sup>457</sup> <http://www.un.org/apps/news/story.asp?NewsID=30388&Cr=sri+lanka&Cr1=> (last accessed 3/12/12)

<sup>458</sup> John Holmes Let them decide The Guardian 8 April 2009 available at <http://www.guardian.co.uk/commentisfree/2009/apr/08/tamil-protests-sri-lanka-john-holmes> (last accessed 3/12/12)

<sup>459</sup> International Crisis Group, “Crisis in Sri Lanka”, press release, 20 April 2009 available at <http://www.crisisgroup.org/en/publication-type/media-releases/2009/crisis-in-sri-lanka.aspx> (last accessed 3/12/12); The Independent, 23 April 2009 Tamil rebels surrender – but hunt for their leader goes on <http://www.independent.co.uk/news/world/asia/tamil-rebels-surrender-ndash-but-hunt-for-their-leader-goes-on-1672717.html> (last accessed 3/12/12)

Secretary David Miliband, Carl Bildt and Bernard Kouchner travelled to Sri Lanka but Carl Bildt, despite EU protests, was refused entry. Following Miliband and Kouchner's visit, President Rajapakse ruled out a ceasefire, saying that he did not "need lectures from Western representatives."<sup>460</sup> Less than one month later, on May 19 2009, the Sri Lanka government declared victory over the Tamil Tigers.

On 29 May 2009 The Times wrote "Some civilians were probably killed by the Tigers, whose brutality and ruthlessness over the past 28 years has fully justified their depiction as terrorists. Finding out what happened, however, is impossible: the army has barred entry to all outsiders. Food is short, sanitation appalling; wounded and traumatised civilians are in desperate need of help. That much is clear from those who have been able to escape. More sinister reports are now circulating of systematic "disappearances", of families separated and young men taken away. But until the Government allows in aid workers, the presumption must be that it wants nothing to be heard or seen of what is going on. This tactic was used in the final push to beat the Tigers. The army wanted neither witness to the onslaught, nor journalists to alert the world to human rights violations, no photographers to record the suffering. Sri Lanka, now basking in its victory, may set the pattern for other nations battling against insurgencies. For them, victory is all that matters. Most of Sri Lanka may rejoice at the end of a bloody civil war. But the UN has no right to collude in suppressing the appalling evidence of the cost. The truth must be told."<sup>461</sup>

## 6.2 The International community

The first to voice concern on the situation of the civilians was the UN High Commissioner for Human Rights, Navi Pillay, who on January 29 2009 said to the

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<sup>460</sup> BBC 30 April 2009 Sri Lanka rejects West 'lectures'

<http://news.bbc.co.uk/2/hi/8026639.stm> (last accessed 3/12/12)

<sup>461</sup> The Times, 29 May 2009, Slaughter in Sri Lanka Evidence gathered by The Times revealed that at least 20,000 Tamils were killed in the last attacks against the insurgents. The UN estimated spoke of 7,000 persons. On 1 June 2009 Ban vehemently rejected the notion that the UN had been involved in a cover-up. "I categorically reject -- repeat, categorically -- any suggestion that the United Nations has deliberately underestimated any figures," he said in a speech to the General Assembly. "Let me also say, whatever the total, the casualties in the conflict were unacceptably high." (Reuters, Ban denies UN covered up death toll in Sri Lanka, 01 Jun 2009 )

Human Rights Council that she was deeply concerned by reports of the rapidly deteriorating conditions facing a quarter of a million civilians trapped in the conflict zone, of alleged human rights abuses and a significant number of civilian casualties, as well as of the huge displacement. Ms Pillay also expressed concern at the highly restricted access to the Vanni region for aid agencies and impartial outside observers, including journalists and human rights monitors. She cited reports of forced recruitment, including of children, as well as the use of civilians as human shields by the LTTE and condemned the fact that safe zones promised by the Government had subsequently been subjected to bombardment leading to civilian casualties<sup>462</sup>.

On 6 February the Secretary-General spoke to Sri Lankan President Mahinda Rajapaksa about the worsening humanitarian situation in the conflict zone and conveyed his strong concern about the heavy casualties, including children. He also reiterated the responsibility of the LTTE to let civilians move to safe areas and that the government was obliged to conduct its military operations with “due regard to the need to safeguard civilian lives”. By the end of February the Secretary-General called for a suspension of fighting to allow safe passage to civilians trying to flee the conflict.

On 13 March 2009, the High Commissioner for Human Rights again expressed her growing alarm at the increasing number of civilians reported killed and injured in the conflict in northern Sri Lanka, and at the apparent ruthless disregard being shown for their safety.<sup>463</sup> On 8 May Mr. Philip Alston, Mr. Anand Grover, Mr. Olivier De Schutter and Ms. Catarina de Albuquerque, the UN Human Rights Council experts dealing with summary executions, right to health, right to food and water and

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<sup>462</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8854&LangID=EUN> officials (last accessed 3/12/12)

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9499&LangID=E> (last accessed 3/12/12)

sanitation, released a statement calling upon the UN Human Rights Council to establish an international commission of inquiry into the situation in Sri Lanka.<sup>464</sup>

Few days after the end of the conflict, on 23 May 2009, Secretary-General Ban Ki-moon went Sri Lanka together with John Holmes and the Under Secretary-General for Political Affairs, B. Lynn Pascoe. The Secretary-General visited two of the four IDPs camps within Manik Farm located in Vavuniya in northern Sri Lanka. The camps, run by the Sri Lankan military, housed a total of approximately 220,000 Internally Displaced Persons. Barbed wire fences and armed soldiers made it impossible for the civilians to leave the camps. The Secretary-General also made a fly-over of the former "no-fire zone", near Mullaitivu, where the Secretary-General and accompanying journalists were the first independent observers to see the widespread devastation of the area where civilians had been trapped for several months. On the afternoon of 23 May, the Secretary-General met Sri Lankan President Rajapaksa and Foreign Minister Rohitha Bogollagama in Kandy. Following the meeting the Secretary-General and Bogollagama held a joint press conference during which the Secretary-General said he had reiterated the need for immediate and unimpeded access to the camps and for rehabilitation, reconstruction, reintegration and resettlement. On 26 May 2009 Sri Lankan President Rajapaksa and Ban Ki-moon issued a joint statement, in which President Rajapaksa agreed to take measure to ensure accountability for violations of international humanitarian and human rights law perpetrated during the conflict.

On the same day, in Geneva, the Human Rights Council held a special session on Sri Lanka (26-27 May 2009, 11<sup>th</sup> Special Session). The special session was convened following the request submitted by Germany on behalf of the seventeen other members of the Human Rights Council<sup>465</sup>. A European-backed resolution was put forward, pushing for free access to detained civilians and an internal investigation of

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8700&LangID=E> (last accessed 3/12/12)

<sup>465</sup> Namely Argentina, Bosnia and Herzegovina, Canada, Chile, France, Germany, Italy, Mexico, Mauritius, the Netherlands, the Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, the United Kingdom and Uruguay



alleged war crimes by both sides. But, instead, a resolution proposed by Sri Lanka won the votes of the majority. The resolution tabled by Sri Lanka was supported by China, Russia, Indonesia, Saudi Arabia, Pakistan, Malaysia, Bahrain, Philippines, Cuba, Egypt, Nicaragua, Bolivia and India<sup>466</sup>. According to Human Rights Watch Brazil, Cuba, India, and Pakistan led efforts to prevent the passage of a stronger resolution<sup>467</sup>. The adopted resolution inter alia commended the measures taken by the Government of Sri Lanka to address the needs of the internally displaced persons, welcomed the government's commitment to promote and protect human rights as well as its announcement that it would resettle the bulk of IDPs in six months and urged the international community to cooperate with the Government of Sri Lanka in the reconstruction efforts, including by increasing the provision of financial assistance. The final resolution did not contain any mention of an international investigation nor did it express concern for the IDPs or the alleged violations of human rights. Human rights groups expressed their disappointment that the resolution did not address allegations of human rights and humanitarian law violations by government forces and only focused on abuses by the LTTE. An intense debate took place at the Human Rights Council especially on the second day of the meeting, on 27 May. Germany on behalf of the proponents of the European-backed resolution proposed amendments to the draft resolution tabled by Sri Lanka to the extent that investigations into the violations of international humanitarian and international human rights law would be conducted and all perpetrators of these violations brought to justice. This was strongly opposed by Cuba, who affirmed that the amendments proposed were aimed at reopening the debate and driven by arrogance. Cuba strongly reaffirmed the principle of non-intervention. Mexico, in an explanation of the vote before the vote, stressed that extreme positions continued to dominate in the debate and the decision making process of the Council. The draft resolution presented by Sri Lanka

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<sup>466</sup> Twelve member States voted against the draft resolution, namely Bosnia and Herzegovina, Canada, Chile, France, Germany, Italy, Mexico, Netherlands, Slovakia, Slovenia, Switzerland, and United Kingdom and six abstained: Argentina, Gabon, Japan, Mauritius, Republic of Korea, and Ukraine.

<sup>467</sup> Human Rights Watch May 27, 2009 Sri Lanka: UN Rights Council Fails Victims Member States Ignore Need for Inquiry Into Wartime Violations <http://www.hrw.org/news/2009/05/27/sri-lanka-un-rights-council-fails-victims> (last accessed 3/12/12)

did not include elements for a balanced treatment. Human rights protection was not only the responsibility of Sri Lanka, but of the whole international community and thus it was the role of the Human Rights Council to express its opinion. The Representative of Sri Lanka denied the need for such an extraordinary meeting of the Human Rights Council saying that since there were no longer civilians trapped in the crossfire in a conflict zone there was no reason for holding a Special Session.<sup>468</sup> The newspaper “The Guardian” reported that the Sri Lanka Ambassador in Geneva said that European nations had failed with their “punitive and mean-spirited agenda” against his country. “This was a lesson that a handful of countries which depict themselves as the international community do not really constitute the majority,” Dayan Jayatilleka told the journalists<sup>469</sup>. For The Times the outcome of the Special Session raised doubt on the *raison d’être* of the Human Rights Council. “The vote on Sri Lanka, however, will reinforce the council’s critics in the West. It was not simply that the usual suspects — China, Russia, India and Pakistan — who supported the Sri Lankan resolution, on the grounds that the conflict there was an internal matter and that the council should not intervene on the conduct of the war. A clutch of Asian and Muslim countries, also wary of outside inspection of their record, also voted not to launch an inquiry into the events in Sri Lanka. This fails the most elementary test of what the council is supposed to do. (...) Sri Lanka will set a precedent for the future workings of the council. Essentially, it declares that victory in civil war is paramount, and that any incidental abuses are no one else’s business. This is disastrous.”<sup>470</sup>

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<sup>468</sup> What then was the rationale for the holding of the Special Session? It did not take much decoding with high officials making statements above the fray on the guilt of Sri Lanka (...) to the cries of countries shouting “War crimes! war crimes!” just one week after the war. (...) These were people from whom Sri Lanka would not buy a used car.” UN Press release 27 May 2009 available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/B298103AA4EC07DDC12575C4002AA5EC?opendocument> (last accessed 3/12/12)

<sup>469</sup> The Guardian, May 28, 2009, UN rejects calls for Sri Lanka war crimes inquiry Human rights council condemns Tamil Tigers for using civilians as human shields <http://www.guardian.co.uk/world/2009/may/28/sri-lanka-un-war-crimes-investigation> (last accessed 3/12/12)

<sup>470</sup> In Tamil Times <http://www.tamilguardian.com/article.asp?articleid=2323> (last accessed 3/12/12)

Sri Lanka was not formally on the Security Council's agenda. From the very beginning, in February 2009, Council members were divided as to whether the issue of human rights violations in Sri Lanka should at all be brought before the Council. Mexico and Japan were in favor and pushed for a Council discussion on the issue, while Russia and China opposed it. An agreement was then reached according to which members heard briefings on the situation and held 'informal interactive dialogue' sessions but did not agree to a formal agenda item, which would open the way to substantive action. The interactive dialogues were not reflected on the Council's program of work, posted on the UN website.<sup>471</sup> The Council met however on Sri Lanka four times in the period between the end of February until mid-May 2009. Three meetings were held during informal consultations under "Other Matters". Two interactive dialogues were held in a room other than the Council chamber. In April Security Council's members discussed whether the Council should issue a statement on the humanitarian crisis in Sri Lanka. The Asian members of the Council (China, Japan and Viet Nam) were reluctant to have any sort of statement. In particular China supported Sri Lankan government's position that it wanted to avoid any Council action that could lead to the LTTE being able to regroup. On the other hand, the European members, particularly France and the UK, were keen to have an outcome from the informal discussions. The US was also supportive of some sort of agreed outcome and of a Council's focus on the issue. Mexico played an active role from the start while the non-Asian elected members, including Russia, maintained a low profile on the issue.<sup>472</sup> At the end, on May 13, 2009 the Council issued a press statement (SC/9659) expressing concern over the humanitarian crisis in northeast Sri Lanka and called for urgent action by all parties to ensure the safety of civilians. The press statement also condemned the LTTE for terrorism and use of civilians as human shields, and demanded that it lay down its arms to allow civilians to leave the conflict zone. Deep concern was expressed for continued use of heavy caliber

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<sup>471</sup>[http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5003025/k.CB5B/Sri\\_Lanka\\_br\\_26\\_February\\_2009.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5003025/k.CB5B/Sri_Lanka_br_26_February_2009.htm) (last accessed 4/12/12)

<sup>472</sup>[http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5113231/k.1322/Update\\_Report\\_No\\_5BRsri\\_LankaBR21\\_April\\_2009.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5113231/k.1322/Update_Report_No_5BRsri_LankaBR21_April_2009.htm) (last accessed 4/12/12)

weapons in areas with high concentrations of civilians.<sup>473</sup> On May 28 the UK, France, Austria and Mexico requested a briefing on the Secretary-General's trip to Sri Lanka. Russia was not enthusiastic about having the briefing during its presidency in May so it was agreed that the issue would be taken up by Turkey during its June presidency. In addition to the European members, the US, Japan, Croatia, Costa Rica and Uganda were also in favor of a briefing. China continued to maintain that the situation in Sri Lanka was purely a domestic issue and not one that the Council should be involved in. Some Council's members, though in favor of having a stronger action from the Council *inter alia* on the basis of responsibility to protect, admitted that after the outcome of the 11<sup>th</sup> Special Session of the Human Rights Council in Geneva it was more difficult to make the case for formal Council involvement and were reluctant to take any strong stand. The discussions at Human Rights Council had also created the feeling that pushing for a formal outcome could boomerang, as any proposal for the Council to vote on a formal document would be divisive.

Highly criticized for its lack of incisiveness and even indirect support to the Sri Lankan government<sup>474</sup> on 22 June 2010 Secretary General Ban Ki-moon announced

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<sup>473</sup> <http://www.un.org/News/Press/docs//2009/sc9659.doc.htm> (last accessed 3/12/12)

<sup>474</sup> Norway's former Deputy U.N. Ambassador Mona Juul described Ban Ki-moon as a "powerless observer". Reuters, 6 January 2011, U.N. chief Ban Ki-moon is no stranger to criticism <http://www.reuters.com/article/2011/06/06/us-un-election-ban-idUSTRE7556E020110606> (last accessed 3/12/12) Human Rights Watch, Kenneth Roth, said that Ban Ki-moon has been "notably reluctant to put pressure on abusive governments." "Ban's disinclination to speak out about serious human rights violators means he is often choosing to fight with one hand tied behind his back," Roth said, adding that China, Sudan, Myanmar and Sri Lanka were examples of countries where Ban had failed to condemn repressive actions. Reuters 24 January 2011, U.N. defends Ban Ki-moon against rights criticism <http://www.reuters.com/article/2011/01/24/us-rights-un-idUSTRE70N6EN20110124> (last accessed 3/12/12), Human Rights Watch 27 August 2009 "The Secretary-General Ban Ki-moon had regrettably undercut efforts to produce a strong resolution with his recent comments in Sri Lanka. Ban publicly praised the government for "doing its utmost" and for its "tremendous efforts," while accepting government assurances, repeatedly broken in the past, that it would ensure humanitarian access to civilians in need. Ban also distanced himself from strong language used in April by the UN under-secretary-general for humanitarian affairs, John Holmes, who warned that the fighting in Sri Lanka could result in a "bloodbath." Unlike Pillay, Ban also failed to press for an international inquiry. "Secretary-General Ban shares the blame for the Human Rights Council's poor showing on Sri Lanka," Juliette de Rivero, Geneva advocacy director said. "This adds to a crisis in confidence in UN bodies to speak out

the appointment of a Panel of Experts to advise him on the implementation of the joint commitment included in the joint statement issued at the conclusion of his visit to Sri Lanka on 23 March 2009. The Secretary-General appointed as members of the Panel Marzuk Darusman (Indonesia) Chair, Steven Ratner (United States) and Yasmin Sooka (South Africa). The panel formally commenced its work on 16 September 2010. Following the establishment of Panel Sri Lankan Foreign Minister G.L. Peiris said that the experts would not be allowed into the country and that there was no need for the UN to conduct an investigation because the government would conduct its own inquiry<sup>475</sup>. In May 2010, Sri Lankan President Rajapaksa had also established the Lessons Learnt and Reconciliation Commission (LLRC), which started operating in August 2010.

UN High Commissioner for Human Rights, Navi Pillay, in a statement released on 31 May 2010 had also called on the Sri Lanka government to allow an international inquiry into the government's offensive against the Tamil Tigers. Similarly Western governments, including the United States, had put pressure on President Rajapaksa to launch an impartial investigation into allegations of war crimes perpetrated by state security forces and the LTTE. On 28 May 2010, ahead of a meeting with Foreign Minister G.L. Peiris in Washington, US Secretary of State, Ms Rodham Clinton, urged the Sri Lankan government to ensure that the Commission on Lessons Learned and Reconciliation be given sufficient powers to investigate<sup>476</sup>. On 17 May 2010, the International Crisis Group released a report entitled "War Crimes in Sri Lanka" containing credible evidence that war crimes and violations of international human rights law had been committed both by the security forces of Sri Lanka and the LTTE. This included the intentional shelling of civilians, hospitals, and humanitarian operations, the execution of unarmed LTTE soldiers, and the obstruction of food and medical supplies to civilians. The report called for a concerted effort by the international community, led by the United Nations, to further investigate alleged

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clearly on pressing human rights issues." <http://www.hrw.org/news/2009/05/27/sri-lanka-un-rights-council-fails-victims> (last accessed 4/12/12)

<sup>475</sup> BBC 24 June 2010 Sri Lanka says UN panel 'will not be allowed' to enter <http://www.bbc.co.uk/news/10405996> (last accessed 3/12/12)

<sup>476</sup> <http://www.state.gov/secretary/rm/2010/05/142354.htm> (last accessed 3/12/12)

war crimes by Sri Lanka security forces and the LTTE and prosecute those responsible. “Much of the international community turned a blind eye to the violations when they were happening. Many countries welcomed the LTTE’s defeat regardless of the cost of immense civilian suffering and an acute challenge to the laws of war. The United Nations too readily complied with the government’s demands to withdraw from conflict areas. The international community has a responsibility to uphold the rule of law, the reputation of international agencies and respect for international humanitarian law, most importantly the protection of civilians lives”.

The UN Panel of Experts reported to the Secretary General on 12 April 2011. The findings were shared with the Sri Lankan Government before official release. On 14 April the Economist reported “On April 12th a panel of experts delivered a report to the UN Secretary-General, Ban Ki-moon, assessing whether war crimes were committed when the nation's army bloodily won a long-running civil war against Tamil Tiger rebels early in 2009. The report has not yet been made public, but the government is furious that an independent inquiry took place at all. The report, it says, is “fundamentally flawed” and biased. In recent weeks Sri Lanka's rulers have vented their anger, most obviously by cracking down at home, intimidating those they blame for spurring the launch of the UN inquiry in the first place. At the sharp end are Western-funded education and advocacy groups, notably those keen on post-war reconciliation or those that point out flaws in the government of President Mahinda Rajapaksa. Facing the most intense scrutiny are groups which have complained about repression, a muzzled press and a lack of civil liberties.”<sup>477</sup> Protests were organized by ruling party’s supporters against Ban Ki-moon, who commissioned the report.

The report of the UN Panel of Experts was finally released on 25 April 2011. The report found “credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed both by the Government of Sri Lanka and the LTTE, some of

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<sup>477</sup> The Economist, 14 April 2011, Keep quiet and carry on: A crackdown precedes a new report on the end of the civil war available at <http://www.economist.com/node/18561107> (last accessed 3/12/12)

which would amount to war crimes and crimes against humanity”<sup>478</sup>. This included allegations of the Government’s indiscriminate shelling, attacks on hospitals, denial of humanitarian assistance, extrajudicial executions, and enforced disappearances; and the use by the LTTE of human shields, forced recruitment and forced labor, and exposing civilians to unnecessary harm. The Panel estimated the number of civilians’ deaths as many as 40,000, and the number of displaced persons at 290,000. The Panel also concluded that the Sri Lankan Lessons Learnt and Reconciliation Commission (LLRC) failed to meet the international standards required for the conduct of an independent and effective investigation. The UN Panel recommended that the Secretary General should establish an independent international mechanism, whose mandate should include, inter alia, monitoring and assessing the extent to which the Government of Sri Lanka was carrying out effective domestic investigations as well as conducting independent investigations into the alleged violations. The Panel’s report also included a recommendation that the Human Rights Council reconsider the outcome of its May 2009 Special Session on Sri Lanka and that the Secretary-General conduct a comprehensive review of actions by the UN system during the war in Sri Lanka and aftermath regarding the implementation of its humanitarian and protection mandates.<sup>479</sup> Considering the fact that such a mechanism should be established by a political organ of the United Nations and with host country consent, in September 2011 Ban Ki-moon referred the Panel’s recommendations to the President of the Human Rights Council. On 1 August 2011, Agence France Press reported that Sri Lanka admitted for the first time that civilians might have been killed during its military push against Tamil Tigers rebels in 2009. A defense ministry report entitled "Humanitarian operation factual analysis" said that the government followed a "zero civilian casualty policy" but in the face of a formidable enemy it was impossible to fully implement it.”

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<sup>478</sup> Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka Page ii [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) (last accessed 3/12/12)

<sup>479</sup> Alex Conte (International Commission of Jurists), Breaking the Cycle of Continued Impunity for War-time Abuses in Sri Lanka, 20 February 2012 [http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/0212comment\\_contente.pdf](http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/0212comment_contente.pdf) (last accessed 4/12/12)

In December 2011, the Sri Lankan Lessons Learnt and Reconciliation Commission (LLRC) released its report<sup>480</sup>. The report acknowledged that civilians were attacked during the last days of the war but largely exonerates the actions of government forces. Doubts were expressed about the gender and ethnic imbalance in the Commission's membership, as well as the apparent conflicts of interest of the six members of the Commission who were Government officials. In particular, the report failed to adequately address allegations of violations of international humanitarian and human rights law, including those considered credible by the UN Panel of Experts.<sup>481</sup>

On March 22, 2012 the United Nations Human Rights Council passed an American-backed resolution pressing the Sri Lankan government to investigate the deaths of tens of thousands of civilians in the final stages of the civil war with the Tamil Tigers. The resolution on promoting reconciliation and accountability in Sri Lanka (A/HRC/19/L.2/Rev1) was adopted by a vote of 24 in favor, 15 against and 8 abstentions<sup>482</sup>. The Council stressed that the report of the Lessons Learnt and Reconciliation Commission of Sri Lanka did not adequately address serious allegations of violations of international law and called on the Government to take all necessary steps to fulfill its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans. The Council further requested the Government to present a comprehensive action plan detailing the steps implementing the recommendations made in the Commission's report and to address alleged

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<sup>480</sup> Available at <http://slembassyusa.org/downloads/LLRC-REPORT.pdf> (last accessed 3/12/12)

<sup>481</sup> LLRC Report available at <http://groundviews.org/2011/12/16/the-official-report-of-the-llrc/> (last accessed 4/12/12) BBC News 16 December 2011 .Sri Lanka MPs receive controversial civil war report, <http://www.bbc.co.uk/news/world-asia-16214783> (last accessed 3/12/12); Channel 4 16 December 2011, Sri Lankan civilians not target <http://www.channel4.com/news/sri-lankan-civilians-werent-targeted-says-report>

<sup>482</sup> The result of the vote was as follows: In favor (24): Austria, Belgium, Benin, Cameroon, Chile, Costa Rica, Czech Republic, Guatemala, Hungary, India, Italy, Libya, Mauritius, Mexico, Nigeria, Norway, Peru, Poland, Republic of Moldova, Romania, Spain, Switzerland, United States and Uruguay.

Against (15): Bangladesh, China, Congo, Cuba, Ecuador, Indonesia, Kuwait, Maldives, Mauritania, Philippines, Qatar, Russian Federation, Saudi Arabia, Thailand and Uganda.

Abstentions (8): Angola, Botswana, Burkina Faso, Djibouti, Jordan, Kyrgyzstan, Malaysia and Senegal.



violations of international law and encouraged the Office of the United Nations High Commissioner for Human Rights and relevant special procedures mandate holders to provide, in consultation with and with the concurrence of the Government of Sri Lanka, advice and technical assistance on implementing the above-mentioned steps<sup>483</sup>. Sri Lanka rejected the resolution, saying it unduly interfered in the country's domestic affairs and could hinder its reconciliation process<sup>484</sup>. Russia and China also opposed the resolution saying that it interfered in Sri Lanka's internal affairs. On the contrary, India went against its tradition of abstaining from country-specific resolutions and voted in support of the motion. Chatham House expert Charu Lata Hogg explained the shifts in India's position by a combination of external and domestic factors such as a return of Tamil's importance and influence in Indian politics and the country's desire to play a bigger role in the international arena.<sup>485</sup>

### 6.3 Civil Society<sup>486</sup>

Civil society organizations such as Amnesty International, Human Rights Watch, the International Crisis group, the Global Center for responsibility to protect and the International Coalition for Responsibility to protect issued calls for accountability into crimes committed in Sri Lanka. Also the press – in particularly The Times and the Guardian – helped raising awareness by informing extensively on the humanitarian situation in the conflict zone.

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12001&LangID=E> (last accessed 3/12/12)

<sup>484</sup> The New York Times reported that Sri Lanka's special envoy on human rights, Mahinda Samarasinghe, condemned the resolution in a statement as "misconceived, unwarranted and ill-timed," and potentially harmful. New York Times, U.N. Council Presses Sri Lanka on Civilian Deaths, Nick Cumming-Bruce, 22 March 2012  
<http://www.nytimes.com/2012/03/23/world/asia/rights-body-passes-measure-on-sri-lanka.html> (last accessed 3/12/12)

<sup>485</sup> Charu Lata Hogg, Sri Lanka: The Noose Tightens, 18 April 2012  
<http://www.chathamhouse.org/media/comment/view/183021> (last accessed 4/12/12)  
See also <http://www.ndtv.com/article/world/india-votes-against-sri-lanka-un-human-rights-council-resolution-adopted-188871> (last accessed 3/12/12)

<sup>486</sup> Main source of information  
<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka> (last accessed 3/12/12)

In an open letter to the Security Council, sent by the Global Center for the Responsibility to Protect on 11 April 2009, Jan Egeland, Gareth Evans, Juan Méndez, Mohamed Sahnoun, Monica Serrano, Ramesh Thakur and Thomas G. Weiss, invoked the Responsibility to Protect and called on the Security Council to “authorize ‘timely and decisive measures’ to prevent or halt mass atrocities.” “We are writing to you as members of the Security Council because we believe that the very grave risk of mass atrocities compels the international community, and the Security Council specifically, to take measures to protect civilians, as states pledged to do when they adopted the “responsibility to protect” at the UN World Summit in 2005. At the core of this norm is the obligation to act preventively to protect peoples from genocide, war crimes, crimes against humanity and ethnic cleansing, rather than waiting until atrocities have already occurred, as states have too often done in the past. There can be little doubt about either the magnitude, or the imminence, of the peril civilians now face in Sri Lanka.”<sup>487</sup>

On 22 April 2009, James Traub, the director of the Global Center for the Responsibility to Protect, wrote a op-ed for the Washington Post <sup>488</sup> in which he said that “the fighting threatens to produce exactly the kind of cataclysm that states vowed to prevent when they adopted “the responsibility to protect” at the 2005 U.N. World Summit,” and urged the United Nations to act.

That same day, a joint letter by NGOs including Global Action to Prevent War, Global Centre for the Responsibility to Protect, International Crisis Group, MEDACT, Minority Rights Group, Operation USA, Tearfund and World Federalist Movement – Institute for Global Policy, urged UN action to “protect civilians and prevent mass atrocities”.

On 8 May 2009, The People’s Union for Civil Liberties, one of India’s largest human rights organizations, in a letter addressed to the United Nations, invoked the

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<sup>487</sup> Open letter to the Security Council on the situation in Sri Lanka, 15 April 2009  
<http://globalr2p.org/media/pdf/OpenLetterSriLanka.pdf>

<sup>488</sup> Traub J., Washington Post, April 22, 2009, Trapped by Sri Lanka’s war Available  
<http://www.washingtonpost.com/wp-dyn/content/article/2009/04/21/AR2009042102970.html> (last accessed 3/12/12)

“Responsibility to Protect” and asked the Security Council to launch a military intervention for human protection in Sri Lanka. They also urged for a referral by the UN Security Council for the International Criminal Court to investigate Sri Lanka’s alleged war crimes<sup>489</sup>.

On 11 May 2009, the International Crisis Group, Amnesty International, Human Rights Watch, and the Global Centre for the Responsibility to Protect signed a letter that was sent to Japanese Prime Minister Taro Aso. The letter also encouraged Japan to use its leverage as Sri Lanka’s largest donor and a current UN Security Council member to play a more active role in alleviating the humanitarian crisis in Sri Lanka.<sup>490</sup>

Again on 11 May 2009 Nicola Reindorp, Director of Advocacy of the Global Center for Responsibility to Protect wrote another open letter to the Security Council. “One month ago, when John Holmes warned of an impending bloodbath in Sri Lanka, the Security Council failed to act—despite the grave risk of crimes against humanity. Instead, the Council held informal briefings, with no official outcome, save for remarks by the Council’s Presidency which lack the force of formal Council statements and resolutions. A number of Council members seem to remain convinced that the Council has no business taking up the plight of Sri Lanka’s civilians. And yet Holmes’ fears have become increasingly prescient (...) The Security Council must accept its responsibility to protect threatened civilians in Sri Lanka by immediately placing the matter on its formal agenda.”<sup>491</sup>

In addition, Amnesty International, in a letter addressed to the Security Council on 12 May 2009, reminded the Council that it had “repeatedly emphasized the need to protect civilians and confirmed the international community’s responsibility to protect,” as such; it could “no longer remain silent about the humanitarian and human crisis in Sri Lanka.” It urged the Council to convene to discuss the latest

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<sup>489</sup> [http://www.pucl.org/Topics/International/2009/lanka\\_crisis.html](http://www.pucl.org/Topics/International/2009/lanka_crisis.html) (last accessed 3/12/12)

<sup>490</sup> <http://www.responsibilitytoprotect.org/index.php/component/content/article/2350> (last accessed 3/12/12)

<sup>491</sup> [http://globalr2p.org/media/pdf/Sri\\_Lanka\\_SC\\_Letter\\_May\\_11\\_2009.pdf](http://globalr2p.org/media/pdf/Sri_Lanka_SC_Letter_May_11_2009.pdf) (last accessed 3/12/12)

developments, gain access to carry out humanitarian work, ensure the protection of civilians in armed conflict, establish an inquiry commission on alleged human rights and international humanitarian law violations as well as to seek the Sri Lankan government's cooperation to allow a UN humanitarian assessment mission to the conflict area<sup>492</sup>.

On 16 April 2009, the International Crisis Group published a report urging Japan, the World Bank, Asian Development Bank, United Nations, U.S., EU and other bilateral donors to condition the financial assistance to an agreement by the Sri Lanka government to provide the basic level of human security necessary to successful development in the conflict zone, ending impunity for human rights violations and placing its counter-insurgency campaign under strict legal accountability<sup>493</sup>.

Asian NGOs also denounced the violation of human rights in Sri Lanka. On 19 May 2009, a joint statement by 165 NGOs all over the world, the majority from Malaysia, called for the protection of displaced peoples, civilians and human rights in Sri Lanka<sup>494</sup>. On 23 May 2009, International Movement Against All Forms of Discrimination and Racism (IMADR), a Japanese-based NGO, called inter alia to facilitate investigations of allegations of war crime and violations of humanitarian law by both parties of the conflict and to guarantee the rights of minorities, including Tamils and Muslims. "As a Japan-based NGO, we are particularly disappointed with the Japanese government's noncommittal attitude and its failure to convince the Sri Lankan government to give second thoughts to pursuing military solutions, despite the strong connection with Sri Lanka as its top donor."<sup>495</sup>

Civil society continued reporting on the situation in Sri Lanka after the end of the unrest and repeatedly called for an independent international inquiry. From January

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<sup>492</sup> <http://www.amnesty.org/en/library/asset/ASA37/009/2009/en/c2f01bbd-f383-4aad-ab54-bc6b82ab4e87/asa370092009en.pdf> (last accessed 3/12/12)

<sup>493</sup> <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/165-development-assistance-and-conflict-in-sri-lanka-lessons-from-the-eastern-province.aspx> (last accessed 3/12/12)

<sup>494</sup> <http://www.refugeecouncil.org.au/r/s&l/090519-JS-SriLanka.pdf> (last accessed 3/12/12)

<sup>495</sup> <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka> (last accessed 4/12/12)

2009 to March 2012 the International Crisis Group published ten reports on Sri Lanka. In the same period Amnesty International released sixty news articles while numerous news and reports were also published by Human Rights Watch.<sup>496</sup>

## 6.4 Conclusions

During the last months of the fighting between the Sri Lanka Army and the LTTE both parties systematically and deliberately acted in violation of humanitarian law and committed war crimes. Civilians paid the highest price also due to the incapacity of the International community to act. As Daniel Kingsbury said "(the) question, then, appears to be not whether there were grounds for invoking the principles of a Responsibility to Protect (RtoP) but, if they have meaning beyond words on paper, why such principles were not invoked."<sup>497</sup> As Kingsbury himself rightly pointed out, the reason why the international community was unable to transform the Sri Lanka case in a case for R2P seems to be that China and Russia blocked any action at the Security Council and, on the ground, China and India actively and financially supported the government of Sri Lanka. China probably remains cautious about R2P and strictly adhered to the respect of sovereignty and the principle of non-intervention also in view of its problems in Tibet and Xinjiang (East Turkistan).

Unlike Libya and Cote d'Ivoire, in the case of Sri Lanka there was no regional support for a R2P case. In 2009 the Asian members of the Security Council were all reluctant to take a stand. The importance of the regional support seems to be proved by recent developments also facilitated by a shift in India's position.

What we can say is that, after the recent developments and, in particular, the report of UN Panel of Experts and the Human Right Council resolution of March 2012,

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<sup>496</sup> Amnesty International  
[http://www.amnesty.org/en/news/all?term\\_node\\_tid\\_depth=1923&tid=All&date\\_filter%5Bvalue%5D%5Bdate%5D=2009-01-01&date\\_filter\\_1%5Bvalue%5D%5Bdate%5D=2012-08-21](http://www.amnesty.org/en/news/all?term_node_tid_depth=1923&tid=All&date_filter%5Bvalue%5D%5Bdate%5D=2009-01-01&date_filter_1%5Bvalue%5D%5Bdate%5D=2012-08-21) (last accessed 4/12/12); Human Rights Watch  
[http://www.hrw.org/search/apachesolr\\_search/sri%20lanka](http://www.hrw.org/search/apachesolr_search/sri%20lanka) (last accessed 4/12/12)

<sup>497</sup> Kingsbury D., Sri Lanka in The Responsibility to Protect: The Promise of Stopping Mass Atrocity in Our Time, Jared Genser and Irvin Cotler (eds), Oxford University Press, 2011 pages 298- 315 page 299

things indeed may change, even if at slow pace. Killing or exposing civilians to unnecessary harm are no longer an internal matter of each individual state. Governments are under increased pressure to justify their decisions and abide by global norms of accountability.

To conclude we can said that the failure to apply R2P in Sri Lanka is not a denial of our hypothesis. On the contrary, it proves that the lack of regional support may in fact prevent the implementation of R2P and that pressure from the media and civil society may reverse a situation and compel the international community to take stand.

## Annex 1 Timeline of events

Date	In Sri Lanka	In the UN System	In the Region
December 2008	Sri Lankan troops and Tamil rebels claim to have inflicted heavy casualties on each other in fierce fighting in the north.		
January 2009	Government troops capture the northern town of Kilinochchi, held for ten years by the Tamil Tigers as their administrative headquarters. President Mahinda Rajapakse calls it an unparalleled victory and urges the rebels to surrender.	On 29 January the UN High Commissioner for Human Rights Navi Pillay said she was deeply concerned by reports of the rapidly deteriorating conditions facing a quarter of a million civilians trapped in the conflict zone in northern Sri Lanka, and of alleged human rights abuses and a significant number of civilian casualties, as well as the huge displacement.	
4 February 2009	Shelling of Puthukkudiyiruppu Hospital	US Secretary of State Hillary Clinton and the UK Foreign Secretary David Miliband called for a temporary “no-fire” period. The EU, Norway and Japan took the same position.	
6 February 2009		The Secretary-General spoke to Sri Lankan President Mahinda Rajapaksa about the worsening humanitarian situation in the conflict zone.	
20 February 2009	Tamil Tiger planes conduct suicide raids against Colombo. The planes were shot down. Forty-five people were killed including the two pilots.		

Date	In Sri Lanka	In the UN System	In the Region
19-21 February 2009	Under Secretary-General for Humanitarian Affairs visited Vavuniya, Holmes announced that the UN has targeted \$10 million from the UN Central Emergency Response Fund to help civilians caught in the conflict.		
24 February 2009		On 24 February the Secretary-General called for a suspension of fighting to allow safe passage to civilians trying to flee the conflict.	
25 February 2009			India says that it is willing to facilitate the evacuation of civilians and provide humanitarian relief materials, medicine and medical care.
27 February 2009	The government, which says it is on the verge of destroying the Tamil Tigers, rejects calls for a temporary cease-fire made by the international community. It offers an amnesty to rebels if they surrender.	Under Secretary-General for Humanitarian Affairs, John Holmes briefed the Council on the humanitarian situation in Sri Lanka under "Other Matters".	
13 March 2009		On 13 March 2009, the High Commissioner for Human Rights again expressed her growing alarm at the increasing number of civilians reported killed and injured in the conflict	
26 March 2009	Former rebel leader Karuna is sworn in as minister of national integration and reconciliation.  The government rejects conditions attached to an IMF emergency loan worth \$1.9 billion.		



<b>Date</b>	<b>In Sri Lanka</b>	<b>In the UN System</b>	<b>In the Region</b>
10-12 April 2009	The Sri Lankan Government introduces a brief unilateral pause in the fighting to allow civilians to flee the conflict zone	Under Secretary-General for Humanitarian Affairs John Holmes says that the two day humanitarian pause is inadequate to ease the suffering of civilians caught in the conflict He also warns that "a bloodbath on the beaches of northern Sri Lanka seems an increasingly real possibility".	
17 April 2009	The Secretary-General's Chief of Staff, Vijay Nambiar visits Sri Lanka for a two-day official visit. He meets with President Mahinda Rajapaksa, Secretary of Defence Gotabhaya Rajapaksa and other officials. Among the key issues discussed is how the UN could assist civilians leaving the safe zone and help internally displaced persons (IDPs).		
20 April 2009	The Sri Lankan government gives a "final warning" to the Liberation Tigers of Tamil Eeem (LTTE) to surrender within 24 hours or face tough reactions from government forces. The deadline passes on the morning of 21 April without any LTTE surrender.	The Office for the Coordination of Humanitarian Affairs (OCHA) reports that since January 2009 some 64,000 civilians escaped from the last remaining territory still being held by the LTTE	
24 April 2009		Members of the Security Council held an informal interactive dialogue on Sri Lanka	
29 April 2009	An EU diplomatic mission comprising UK Foreign Secretary David Miliband and Bernard Kouchner travelled to Sri Lanka		
30 April 2009		Another informal interactive dialogue was held with Holmes and the Sri Lanka Permanent Representative participating.	
11 May 2009		The foreign ministers of UK, France and Austria met with humanitarian organizations and concerned UN members, including eight Council members.	

<b>Date</b>	<b>In Sri Lanka</b>	<b>In the UN System</b>	<b>In the Region</b>
13 May 2009		The Security Council, after holding closed consultations, issued a press statement expressing grave concern over the humanitarian crisis in northeast Sri Lanka and called for urgent action by all parties to ensure the safety of civilians.	
18 May 2009	The Sri Lankan government declares victory in its civil war with the LTTE and rebel leader Velupillai Prabhakaran reported killed.		
13 May 2009		The Security Council, after holding closed consultations, issues a press statement expressing grave concern over the humanitarian crisis in northeast Sri Lanka and called for urgent action by all parties to ensure the safety of civilians.	
19 May 2009	Government declares victory over Tamil Tigers. Military says rebel leader Velupillai Prabhakaran was killed in the fighting. Tamil Tiger statement says the group will lay down its arms.		
23 May 2009	The Secretary-General visits Sri Lanka		
26 May 2009		The Human Rights Council (HRC) called for a special session to discuss the human rights violations in Sri Lanka	
31 May 2009		Navi Pillay calls on the Sri Lanka government to allow an international inquiry into the government's offensive against the Tamil Tigers.	
5 June 2009		The Secretary-General held an informal interactive dialogue with the Council and Sri Lankan representatives on his visit to Sri Lanka.	

<b>Date</b>	<b>In Sri Lanka</b>	<b>In the UN System</b>	<b>In the Region</b>
October 2009	Government announces early presidential and parliamentary elections.		
26 January 2010	Incumbent Mahinda Rajapaksa wins presidential election by a big margin but the outcome is rejected by his main rival Gen Sarath Fonseka.		
8 February 2010	Former army chief and opposition politician General Sarath Fonseka is arrested.	European Union suspends Sri Lanka's preferential trade status because of concerns over its human rights record.	
9 February 2010	The Sri Lankan government dissolved parliament.		
4 March 2010	President Rajapaksa's ruling coalition wins landslide victory in parliamentary elections.	The Secretary-General announced that he intends to move forward with setting up a panel of experts to advise him on setting the broad parameters and standards on the way ahead on establishing accountability concerning Sri Lanka.	
25 April 2011		Secretary General Ban Ki-moon releases the report of the Panel of Experts on accountability in Sri Lanka	
December 2011	The Sri Lankan Lessons Learnt and Reconciliation Commission (LLRC) releases its report	Secretary General Ban Ki-moon releases the report of the Panel of Experts on accountability in Sri Lanka	
22 March 2012		UN Human Rights Council adopts resolution pressing the Sri Lankan government to investigate the deaths of tens of thousands of civilians.	

# SYRIA

## Chapter 7

### Introduction

Protests erupted in Syria in March 2011 and grew steadily in the following months with tens of thousands citizens calling for extensive reforms. At the beginning of the uprising the government vacillated between crackdown and suggestions to compromise. Subsequently, it adopted a harsher strategy. Most foreign journalists were barred from the country and information reached the outside world thanks to human rights groups and networks of activists inside Syria. But already in May 2011 many of these groups complained that there were almost entirely unable to speak with people in some of the towns and cities that most opposed the Assad government.

In September 2012, when this thesis was finalized, the situation had sensibly worsened with the risk of civil war become a reality and activists, human rights organizations and the United Nations reporting of summary executions, torture and mass graves and hundreds thousand refugees. According to the United Nations by the end of August 2012 more than 18,000 people had died and some 200,000 people fled the country as a result of the fighting. Up to 2.5 million people needed aid. Notwithstanding the worsening of the situation options for intervening remained limited. The strong opposition of China and Russia at the Security Council, hesitancy within the region, divisions in the opposition in exile and an unfavorable cost/benefit balance prevented any direct involvement of the international community.

The military intervention in Libya seems to have strongly influenced the dynamics within the Security Council. In the case of Syria the Security Council found itself unable even to issue any unified message of condemnation of the violence, not to speak about more robust measures like targeted sanctions or the referral to the International Criminal Court (ICC), as the High Commissioner of Human Rights and some of the most relevant Human rights organizations asked repeatedly from the beginning of the crackdown. In addition to Russia and China, other states were similarly hesitant to condemn Assad, including India, Brazil, and

South Africa. Various attempts to circumvent the impasse at the Security Council, such as resolutions of the United Nations General Assembly, did not bring any tangible result.

Regional organizations, and in particular the Arab League, reacted to the crackdown relatively late showing no unanimity on the adoption of tough measures. The League's desire to offer an "Arab" response to the crisis ultimately made more difficult for the United Nations to act. In an op-ed published on the New York Times on 18 November 2011 Itamar Rabinovich<sup>498</sup> observed that at the beginning of the crisis the main players in the region, Turkey and Saudi Arabia, like other neighboring countries remained passive for several months; they were unhappy with Assad, but preferred to subscribe to a policy of "the devil we know." Only towards the end of 2011 Saudi Arabia and other Arab states came to the conclusion that defeating Iran on the Syrian stage was an urgent matter. This shift in political strategy explained the change in the Arab League's position and the steps it took against the Assad regime. Also the United States played a modest role in Syria in 2011 in comparison to what it had done in the case of Libya. It is true that both the US and the EU countries reacted quickly, imposing sanctions and putting additional political and economic pressure on the Assad's regime. Still, despite growing calls for the US to help stop the bloodshed, Washington ruled out the possibility of a military intervention saying that it would be a protracted operation requiring at least weeks of exclusively American air strikes with the potential for thousands of civilian casualties. Other risks relate to Syria's abundant and sophisticated Russian-made air defenses, which are located close to major population centers, and the potential for opening up a direct confrontation with Iran or Russia. Hesitations also derived in large measure from the disunity of the opposition and the lack of a clear connection between the Syrian National Council and the fighters. This opinion was shared with a number of the commentators<sup>499</sup> that expressed themselves against a military intervention stressing that a mediated political solution should instead be adopted.

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<sup>498</sup> Rabinovich I., *The Devil We Knew*, New York Times November 18, 2011 <http://www.nytimes.com/2011/11/19/opinion/the-devil-we-knew.html?pagewanted=all> (last accessed 3/12/12)

<sup>499</sup> Rabinovich I., op cit, Perthes V. op-ed International Herald Tribune, 20 June 2012, Asseburg Muriel and Heiko Wimmen, *The violent power struggle in Syria*, Stiftung Wissenschaft und Politik Comments 9, March 2012, Evans G. *R2P and RWP After Libya and Syria* Keynote Address to GCR2P/FGV/Stanley Foundation Workshop, *Responsibility While Protecting: What's Next?*, Rio de Janeiro, 23 August 2012 Lynch Marc No military option in Syria Foreign Policy 17 January 2012

On the other hand, the negative impact of the Syrian internal conflict on regional security was increasingly evident with spillover effects, including pockets of violence in northern Lebanon; the military build-up by Turkey on the border, increasing tension with the Kurdistan Workers' Party (PKK), the risk for insecurity on the border with the Israeli-occupied Golan Heights and the menace of resorting to chemical weapons.

The chapter is organized as follows: section 1 is devoted to the response of the International Community to the crisis and, in particular, to the dynamic within the Security Council and to the Human Rights Council; section 2 focuses on the activities of regional organizations; section 3 deals with civil society, while section 4 concludes. In Annex I one finds a detailed timeline of the events.

## **7.1 The International Community<sup>500</sup>**

### **United Nations Security Council and General Assembly**

When the Syrian crisis first erupted, the Security Council did not react promptly primarily because it was intensely involved in discussion concerning intervention in Libya. It was only towards the end of April 2011 that Council members first considered a draft press statement on Syria proposed by the European members of the Council but were unable to reach agreement. The main objections to the press statement came from Russia and Lebanon. Russia argued that Council action on Syria would constitute interference in a domestic matter, while Lebanon was reluctant to associate itself with any statement because of its close links with Syria. Two days after, on 27 April, the Security Council held a public debate on the Middle East. Syria was not in the agenda of the Council, but the debate enabled some members of the Council, namely the US and the European members, to put on record their concern about ongoing violence by Syrian security forces. Brazil and South Africa were cautious, while China and Russia supported the Assad's government.<sup>501</sup>

In May, the escalation of the Syrian government's repression led to increased international pressure against Syria, including from a number of Council members. The UK and France wanted to pursue the matter within the Council, but divisions among members made it

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<sup>500</sup> Main source of information Security Council reports Syria  
<http://www.securitycouncilreport.org/syria/index.php?page=4> (last accessed 3/12/12), BBC news, Reuters, Global R2P website, International Coalition on R2P website

<sup>501</sup> UN Security Council 27 April 2011 S/PV.6524  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/PV.6524](http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6524) (last accessed 3/12/12)

difficult to progress. The need for action was raised by France, Germany, Portugal and the UK on several other occasions.<sup>502</sup> The involvement of the Security Council into the Syrian crisis was however mild. When cross border incidents in both Lebanon and Israel started to take place, the international implications of the Syrian situation for peace and security became clearer and the arguments against intervention were more based on the need to avoid creating additional causes of regional insecurity. The US was hesitant to engage in any military action. Possible pressures from Israel calling for caution might also have influenced the US position. Furthermore, many Council members were unenthusiastic about taking stronger actions as they found the silence and disunity from the Syrian opposition side, in contrast to Libya, quite problematic<sup>503</sup>.

On 25 May France, Germany, Portugal and the UK circulated to Security Council a draft resolution condemning the government crackdown in Syria. The draft Security Council resolution recalled the Syrian government's responsibility to protect its citizens, stressed the need for accountability, and condemned the systematic abuse of human rights including killings, arbitrary detention, disappearances and torture. In addition, the draft resolution called upon member states to prevent the supply or sale of arms and related material to Syria and asked the Secretary-General to report back to the Council. The draft text was discussed by the Council on 8 June 2011 after a briefing on Syria by Assistant Secretary General Oscar Fernandez Taranco in closed consultations. Council members at expert level continued the discussion on the draft resolution during the entire months of June and July 2011. Modifications were introduced to the original draft text presumably to include language that the crisis should be solved through a Syria-led political process. This was in particular voiced by Brazil, South Africa, India, China and Russia that did not want the Council to dictate how a country should engage in political reform<sup>504</sup>.

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<sup>502</sup> As, for example, by the UK on 4 May 2011 during the briefing of the ICC prosecutor on Libya and by Canada, the US and a number of European states (Croatia, the EU itself, France, Germany, Italy, Norway, Portugal, Switzerland and the UK) during the open debate on Protection of Civilians that took place on 10 May UN Security Council. See 4 May 2011 S/PV.6528 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/PV.6528](http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6528) (last accessed 3/12/12) [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/PV.6531](http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6531) and UN Security Council 10 May 2011 S/PV.6531 and S/PV.6531 (Resumption 1) [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/PV.6531\(Resumption1\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6531(Resumption1)) (last accessed 3/12/12)

<sup>503</sup> [http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.7494091/k.53A1/Update\\_Report\\_No\\_2brSyriabr26\\_May\\_2011.htm](http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.7494091/k.53A1/Update_Report_No_2brSyriabr26_May_2011.htm) (last accessed 3/12/12)

<sup>504</sup> <http://whatsinblue.org/2011/06/presidential-statement-on-syria.php> (last accessed 3/12/12)

India, Brazil and South Africa through the India-Brazil-South Africa Dialogue Forum (IBSA)<sup>505</sup> made an attempt to open a line of dialogue with Damascus and wanted the Council to refrain from any action until the initiative could be undertaken. On 10 August the Council heard about the IBSA initiative, which had resulted in a visit by the IBSA Deputy Foreign Ministers to Damascus on 9 August. The IBSA delegation expressed grave concern at the situation, condemned the violence and called for an immediate end to all violence. However, no other significant actions followed and IBSA was accused to have failed to provide an alternative to the Arab League plan.

In late August the US and the European members of the Council continued to pursue the idea of a resolution calling for Council sanctions against President Assad and other top officials as well as several Syrian firms. The proposed draft resolution also included an arms embargo as well as the set up a new sanctions committee. The draft resolution was circulated by the UK on 23 August at both expert and permanent representatives' level but did not receive the support of Russia that preferred pursuing a dialogue between the opposing parties. This view was shared by China. South Africa and India had also similar concerns. A day earlier, on 22 August, China and Russia had voted against a Human Rights Council resolution calling for a commission of inquiry into the violence by the Syrian government, while India had abstained.

After intense consultation at the end of September 2011 the mention of sanctions had disappeared from the SC draft resolution replaced by the intention to adopt such measures if Syria did not comply with the resolution within a specified time frame. An early reference to accountability, including referral to the ICC, and to human rights were also deleted in response to requests, in particular by Brazil, to strengthen language on resolving the crisis peacefully and through an inclusive Syrian-led political process. Notwithstanding the mediation efforts Russia and China vetoed the draft resolution on 4 October. Brazil, India, Lebanon and South Africa abstained.

On 22 November 2011 the Third Committee (Social, Humanitarian and Cultural Affairs) of the General Assembly passed a resolution backed the UK, France, and Germany calling upon the Syrian government to end all human rights abuses and urging Assad to immediately implement the Arab League's November peace plan. 122 states voted in favor of the

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<sup>505</sup> IBSA is a coordinating mechanism established in June 2003



resolution, with 13 against and 41 abstentions. Bahrain, Jordan, Kuwait, Morocco, Qatar and Saudi Arabia – all co-sponsors of the Resolution – voted in favor, while Russia and China India and South Africa abstained from voting<sup>506</sup>. The resolution carried no legal weight.

In November 2011 Security Council members followed closely the initiatives of the Arab League. The discussion on a possible resolution on Syria resumed in December when Council members started considering a draft text circulated by Russia on 15 December. The Russian draft asked for the cessation of violence by all parties, ruled out military intervention, called for the prevention of arms supplies reaching the opposition and urged implementation of the Arab League initiative, in particular deploying a mission of observers to Syria. However, it did not contain other elements that a number of Council members considered crucial, such as a clear condemnation of the violence and the full implementation of all aspects of the Arab League initiative including the withdrawal of the military from the streets; the release of political prisoners; an accelerated political reform within a specific timeline; serious dialogue with opposition representatives and a reference to accountability and cooperation with the Human Rights Council's Commission of Inquiry.

In December India, Brazil and South Africa seemed to have slightly changed their positions in comparison to the previous months due to the strong position against the Syrian government expressed by other countries of the Middle East and were supportive of the Arab League initiative. China also seemed to be supportive of the Arab League initiative.

On 19 December the United Nations General Assembly in plenary session passed a resolution on Syria (A/RES/66/176)<sup>507</sup>. The Resolution, which passed with 133 votes in favor, 11 against and 43 abstentions<sup>508</sup>, called on Syria to immediately put an end to all human

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<sup>506</sup> UNITED NATIONS General Assembly GA/SHC/4033 22 November 2011 <http://www.un.org/News/Press/docs/2011/gashc4033.doc.htm> (last accessed 3/12/12)

<sup>507</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/469/38/PDF/N1146938.pdf?OpenElement> (last accessed 3/12/12)

<sup>508</sup> In favor: Afghanistan, Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Central African Republic, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Latvia, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Morocco, Nauru, Netherlands, New Zealand, Nigeria, Norway,

rights violations, to protect their population and to fully comply with their obligations under international human rights law, to cooperate with the independent international commission of inquiry established by the Human Rights Council and to implement the Plan of Action of the Arab League. It should be noted that Brazil voted in favor, while India and South Africa abstained.

On 23 December 2011 and 6 January 2012 the Council unanimously condemned the terrorist attacks in Damascus in press statements. Still, there was neither clarity nor unity as to whether the Council should remain silent or send a strong signal to the Syrian government. Some members appeared to want to wait for the result of the Arab League observer mission that was expected to report by mid-January.

On 1 January 2012, five new elected members replaced the five rotating off the Council. Guatemala replaced Brazil for the Latin American/Caribbean seat; Morocco and Togo replaced Gabon and Nigeria for the African seats, Pakistan replaced Lebanon for the Asian seat and Azerbaijan replaced Bosnia-Herzegovina for the Eastern European seat. This represented a considerable change in the balance of the Council not only because Morocco now represented the region but also because Guatemala, a much stronger supporter of R2P than Brazil, replaced the latter. Furthermore, four of the newly elected five Council members (Azerbaijan, Guatemala, Morocco and Togo) had voted in favor of the 19 December General Assembly resolution condemning the violence in Syria and supporting the Arab League initiative (Pakistan had abstained).

In late January, the Secretary General of the League of Arab States Nabil El Arabi and the Qatari Prime Minister and Minister of Foreign Affairs Sheikh Hamad bin Jassim al-Thani

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Oman, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Sudan, Spain, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vanuatu.

Against: Belarus, Cuba, Democratic People's Republic of Korea, Ecuador, Iran, Myanmar, Nicaragua, Syria, Uzbekistan, Venezuela, Zimbabwe.

Abstain: Algeria, Angola, Armenia, Bangladesh, Bhutan, Bolivia, Brunei Darussalam, Cameroon, Chad, China, Djibouti, Dominica, Fiji, Gambia, Ghana, India, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Malaysia, Mali, Mauritania, Mozambique, Nepal, Niger, Pakistan, Philippines, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Singapore, Somalia, South Africa, Sri Lanka, Swaziland, Tajikistan, Turkmenistan, Uganda, United Republic of Tanzania, Viet Nam, Yemen, Zambia

traveled to New York seeking support for an Arab League plan adopted on 22 January, which called for Assad to step out of power and for the formation of a unity government. France, the UK and the US held meetings with several Arab countries to discuss the new draft resolution, as Arab support was considered crucial.

An Arab and Western-backed draft resolution was presented to the Council by Morocco on 27 January 2012. The resolution included four key aspects: an end to all acts of violence; the release of detainees; the withdrawal of armed forces from civilian areas; and freedom of access for the UN, NGOs and human rights monitors. On 31 January during a high-level debate on the situation in Syria al-Thani and El Arabi briefed Council members on the draft resolution. The Syrian ambassador was also present. The foreign Ministers of France, US, UK, Guatemala, Portugal, Morocco and Germany supported the text. French Foreign Minister Alain Juppé recalled every state's "responsibility to protect its civilian population"<sup>509</sup>. The Permanent Representatives of Syria, Russia and China opposed the text while South Africa and India urged all sides to work with the Arab League in a Syrian-led process.

The main reason for disagreement within the Council was the political transition process as defined by the Arab League. The Arab League plan called for power to be delegated to the Syrian vice president, who would oversee the political transition process, including the formation of a national unity government that would work towards elections within a specified timeframe. Some members of the Council were concerned that this could be interpreted as a call for regime change. Other issues related to the call to halt the flow of arms into Syria. Moscow's long ties to Damascus generate billions of dollars in weapons sales and give Russia the entrée it needs to the table for Middle East peace talks. On the other hand, there seemed to be an agreement among all Council members that a military intervention should be avoided. This was also made clear by both El-Arabi and al-Thani. There was general concern that the implosion of Syria could drag other neighbors like Israel, Iraq and Lebanon into a wider conflagration. To reach a consensus the draft resolution contained language emphasizing the need to resolve the crisis peacefully. During discussion on 27 January some Council members wanted to make it clear that the draft resolution would come under Chapter VI (which covers pacific settlement of disputes) and not Chapter

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<sup>509</sup> UNITED NATIONS Security Council Doc 27 January 2012 S/PV.6710 page 15

VII (which could evoke the use of force)<sup>510</sup>. In his statement El-Arabi made an explicit mention to Article 52 of the UN Charter (Chapter VIII - regional organizations).<sup>511</sup> While the majority of Council members expressed support for the Arab League plan, China, India, Pakistan, South Africa and Russia reserved their position. Russia made clear that while condemning the violence in Syria it would not support a solution that might lead to regime change. China opposed the use of force to resolve the Syrian situation including “forcibly pushing” for regime change<sup>512</sup>. India said that the solution to the Syrian crisis should not come from the outside. The co-sponsors for the resolution tabled by the Arab League included Colombia, France, Germany, Morocco, Portugal, UK, US and the following key regional countries: Bahrain, Jordan, Kuwait, Libya, Oman, Saudi Arabia, Turkey and the UAE. The resolution was voted on 4 February but did not pass, despite support from 13 Security Council Members, including India and South Africa who had abstained on 4 October 2011. Russia and China exercised their veto power for a second time.

In reaction to the Security Council vote of 4 February, two weeks later, on 16 February, the United Nations General Assembly passed another resolution on Syria, Resolution A/RES/66/253, presented by Saudi Arabia, with 137 votes in favor, 12 against and 17 abstentions<sup>513</sup>. The language of the resolution closely mirrored that of the text vetoed by

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<sup>510</sup> Mr. Hague (United Kingdom): United Nations Security Council doc 27 January 2012 n. S/PV.6710 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/PV.6710](http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6710) page 16 (last accessed 3/12/12)

<sup>511</sup> Doc S/PV.6710 page 6 see also Mr. Hardeep Singh Puri (India) page 27

<sup>512</sup> Doc S/PV.6710 page 25

<sup>513</sup> UNITED NATIONS General Assembly 21 February 2012 A/RES/66/253

<http://www.un.org/News/Press/docs//2012/ga11207.doc.htm> (last accessed 3/12/12)

In favor: Afghanistan, Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Latvia, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Morocco, Mozambique, Nauru, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Sudan, Spain, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Zambia.

China and the Russia on 4 February. The resolution expressed support for the League of Arab States' peace plan and stressed the importance of ensuring accountability, the need to end impunity and "hold to account those responsible for human rights violations, including those violations that may amount to crimes against humanity". The resolution further requested Secretary-General Ban Ki-moon and all relevant United Nations bodies to support the Arab League's ongoing efforts to resolve the crisis peacefully, including through good offices and the appointment of a Special Envoy.

Kofi Annan was appointed as the UN-Arab League Joint Special Envoy for Syria on 23 February, shortly after the 16 February General Assembly request for such an appointment.

At the beginning of March 2012, the P5 and Morocco, as the representative of the Arab Group at the Council, started working on a new draft resolution. Notwithstanding the worsening of the situation on the ground had coalesced the Council on the necessity to protect the civilian population, with China and Russia trying bilaterally to dialogue with Damascus to find ways to stop the violence, divisions within the Security Council still persisted. These referred to the degree of responsibility of the Assad regime compared to that of the opposition and the sequencing of the withdrawal. To ensure wide support the new text contained explicit language ruling out the use of force and avoided any reference to the 22 January decision by the Arab League calling on President Assad to transfer power to his Vice-President.

On 21 March 2012, the UN Security Council adopted a presidential statement expressing "its gravest concern" regarding the situation in Syria.<sup>514</sup> The statement expressed full support to Kofi Annan, and called on the Syrian government and opposition to work with the Envoy towards a peaceful settlement of the Syrian crisis and the implementation of his initial six-

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Against: Belarus, Bolivia, China, Cuba, Democratic People's Republic of Korea, Ecuador, Iran, Nicaragua, Russian Federation, Syria, Venezuela, Zimbabwe.

Abstain: Algeria, Angola, Armenia, Cameroon, Comoros, Fiji, Lebanon, Myanmar, Namibia, Nepal, Saint Vincent and the Grenadines, Sri Lanka, Suriname, Tuvalu, Uganda, United Republic of Tanzania, Viet-Nam.

Absent: Burundi, Cambodia, Cape Verde, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea-Bissau, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Mali, Palau, Philippines, Sao Tome and Principe, Sierra Leone, Swaziland, Tajikistan, Tonga, Turkmenistan, Uzbekistan, Vanuatu, Yemen.

<sup>514</sup> UNITED NATIONS Security Council 221 March 2012 SC/10583  
<http://www.un.org/News/Press/docs/2012/sc10583.doc.htm> (last accessed 3/12/12)

point proposal. UN Secretary-General Ban Ki-moon said he was encouraged by the unified voice of the Council, and expressed hope that this would mark a turning point in the international community's response to the crisis<sup>515</sup>. France, the UK and the US had begun discussing the content for a presidential statement following Annan's briefing to Council. On that occasion Mr. Annan had urged the Council to overcome its deadlock and send a unified message in support of his mediation efforts. As a result, France, the UK and the US chose to leave aside the draft resolution which, together with Morocco, they had been negotiating with Russia and China to focus instead on a presidential statement.

On 2 April 2012 the Council was again briefed by M. Annan by videoconference and expressed its unanimous support. Following the briefing the US circulated a draft presidential statement believing that it was crucial to move quickly towards political negotiations to avoid a prolonged stalemate on the ground. The presidential statement was adopted on 5 April 2012.<sup>516</sup> This called on the Syrian government to implement its commitment to withdraw its military from population centers by 10 April, and on all parties subsequently to cease armed violence, and signaled the Council's readiness to authorize a monitoring mission— or to “consider further steps” if the commitments were not met. On 11 April, notwithstanding the broad support for Annan's mediation efforts, many Council members expressed skepticism over the Syrian government's sincerity in adhering to its commitments. On the following day, the Council started immediately working on a new resolution authorizing the deployment of an advance team of unarmed military observers to Syria in response to a request of Mr. Annan to this end. In the afternoon of 13 April the Secretariat was asked to distribute two draft resolutions for a decision by the Council within the following 24 hours. The first draft was the one circulated by the US delegation and co-sponsored by Colombia, France, Germany, Morocco, Portugal, the UK and the US. The second draft was prepared by Russia. The Security Council report of that day indicated that both draft resolutions called for the authorization of an advance team of military observers. However, there were several differences particularly related to references to Annan's mandate and plan, the Syrian government's commitments, the humanitarian access and

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<sup>515</sup> New York, 21 March 2012 - Statement Attributable to the Spokesperson for the Secretary-General on Syria <http://www.un.org/sg/statements/?nid=5934> (last accessed 3/12/12)

<sup>516</sup> UNITED NATIONS Security Council SC/10601 5 April 2012 available at <http://www.un.org/News/Press/docs/2012/sc10601.doc.htm> (last accessed 3/12/12)

human rights (the Russian draft did not include condemnation of human rights abuses by Syrian authorities) as well as the conditions required for the advance team.

On 14 April, the Council unanimously adopted resolution 2042.<sup>517</sup> The resolution authorized a team of up to 30 unarmed military observers “to liaise with the parties and to begin to report on the implementation of a full cessation of armed violence in all its forms by all parties”, stressed the primary responsibility of the Syrian Government in that regard and called on the parties to ensure the safety and free movement of the advance team to allow it to carry out its mandate. The resolution also underlined the importance of pulling back military forces as well as urgently implementing in full the six-point plan proposed by Kofi Annan. It reiterated the Council’s call for the authorities to allow immediate and unimpeded access of humanitarian personnel to all populations in need of assistance.

One week later the Security Council unanimously adopted resolution 2043 authorizing the deployment of up to 300 unarmed military observers and an appropriate civilian component for a period of 90 days, subject to the Secretary-General’s assessment that the situation on the ground was sufficiently safe. Mr. Annan had said the adoption of resolution 2043 was a pivotal moment for Syria’s stabilization and called on all forces to cease violence and cooperate with the UN monitors and in particular on the government of President Assad to stop the use of heavy weapons and withdraw from population centers.

During the debate after the vote the Permanent Representative of Russia, Ambassador Churkin, affirmed “Resolution 2043(2012) is of fundamental importance in pushing forward the process for a peaceful settlement in Syria and enshrines the Council’s consensus on supporting the six-point proposal of Joint Special Envoy Annan. We now believe the main aim to be the unwavering and clear respect by all parties for the provisions of the resolution. Any deviation whether from the resolution’s provisions or in their interpretation, will be unacceptable. The Libyan model should remain forever in the past. (...) The resolution sends an important international legal signal, namely, that only the Security Council has the prerogative to take a decision regarding the settlement of a regional crisis, including the Syrian crisis. Any other forum, such as a group of friends or a coalition of mutual interests, should clearly uphold the resolutions of the Security Council and not undermine its activity.

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<sup>517</sup> <http://www.un.org/News/Press/docs/2012/sc10609.doc.htm> (last accessed 3/12/12)  
Maria Rita Mazzanti - “From State Responsibility to Responsibility to Protect” - Thèse IEP de  
Paris – Année 2012/2013

The Russian Federation will closely follow those developments.”<sup>518</sup> A number of Council members appeared to be inclined towards the idea of coercive measures but they thought that the right time to assess the situation and consider such action would be the end of July when the UNSMIS mandate expired.

At the end of April the Arab League decided to request that Morocco (as the Arab voice on the Council) propose that the Council should respond more effectively to the need to protect civilians in Syria if the government did not implement its commitments to cease violence. The same day, the Arab League sent a letter to the Secretary-General underlining the need for rapid deployment of monitors.

Morocco, under pressure from the Arab League insisted to discuss the issue. The Arab League, while aware that mediation conducted by Kofi Annan needed time, wanted to see tangible progress and lives saved quickly. Some members of the Council were also concerned that responsibility for the crisis had shifted away from the Syrian government towards the opposition, while blame for not stopping the violence was increasingly put on the UN. One additional frustration was the lack of unified political opposition to engage with the Syrian government if a political dialogue was to be brokered by Annan. Contrary to what had happened in the case of Libya, the Syrian opposition remained deeply divided along ideological, ethnic and sectarian lines. These divisions kept Western and Arab governments from recognizing the opposition abroad as a kind of government-in-exile and limited their opportunity to mediate.

After the killings at Houla France and the UK circulated a draft press statement. The press statement was released on 27 May condemning the shelling by the Government of Syria as a violation of its commitments under resolutions 2042 and 2043 to cease violence in all form.<sup>519</sup> On the same day both Secretary-General Ban Ki-moon and Mr. Annan jointly condemned the “indiscriminate and disproportionate use of force” as a violation of international law in a joint statement issued on the same day<sup>520</sup>. On 28 May Mr. Annan began two days of negotiations in Damascus. Foreign Ministers of Russia and the UK agreed on the need to fully implement the peace plan. While there seemed to be broad agreement

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<sup>518</sup> UNITED NATIONS Security Council S/PV.6756 21 April 2012 page 2

<sup>519</sup> Security Council Press Release 27 May 2012 SC/10658  
<http://www.un.org/News/Press/docs/2012/sc10658.doc.htm> (last accessed 3/12/12)

<sup>520</sup> Joint Statement by Secretary-General, Joint Special Envoy for Syria 27 May 2012 Security Council SG/2183 <http://www.un.org/News/Press/docs/2012/sg2183.doc.htm> (last accessed 3/12/12)



that the Houla incident demonstrated how precarious the situation on the ground was, it was unclear whether Council members were ready to take a more proactive approach.

In June Annan's frustration over the lack of progress increased. It was felt that a more concerted approach by both the Council and the international community to the Syrian situation was necessary to avoid a full-scale civil war and allow Kofi Annan's efforts to succeed. However, the tension among the P5 on how to speed up the implementation of the six-point plan was evident. On 7 June, Council members were briefed by Mr. Annan and Secretary-General Ban Ki-moon. Among the key messages conveyed were that the violence was worse than before the cessation of violence deadline of 12 April, the Government of Syria was primarily responsible for not implementing the six-point plan, UNSMIS had been deliberately targeted and there needed to be consequences for non-compliance with the six-point plan. As a result of the situation, few days later, on 16 June, UNSMIS head Major General Robert Mood announced that UNSMIS was suspending its activities.

Following Mr. Annan's briefing to the Council on 7 June, Russia suggested a conference to complement Annan's idea of establishing a Contact Group on Syria. Council members' expectations for this conference increased after no agreement was reached during the 18 June meeting between US President Barack Obama and Russian President Vladimir Putin on the sidelines of the G20. On 30 June 2012, the Secretaries-General of the United Nations and the League of Arab States, the Ministers for Foreign Affairs of China, France, the Russian Federation, the United Kingdom, the United States, Turkey, Iraq (Chair of the Summit of the League of Arab States), Kuwait (Chair of the Council of Foreign Ministers of the League of Arab States) and Qatar (Chair of the Arab Follow-up Committee on Syria of the League of Arab States) and the High Representative of the European Union for Foreign Affairs and Security Policy met at the United Nations Office at Geneva as the Action Group for Syria, chaired by Mr. Annan. The Action Group communiqué called for all parties to recommit to the six-point plan and mapped out steps for a "Syrian-led political process leading to a transition that meets the legitimate aspirations of the Syrian people"<sup>521</sup>

During the discussion in Geneva disagreement appeared on how to interpret a political transition and what this meant for Assad's future. Russia's position was that a negotiated

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<sup>521</sup> The Final communiqué of the Action Group for Syria (30 June 2012) is available at [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/18F70DBC923963B1C1257A2D0060696B?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/18F70DBC923963B1C1257A2D0060696B?OpenDocument) (last accessed 3/12/12)

transition could not be contingent upon Assad's removal from power. On the other hand, the conclusions from the 6 July Friends of Syria meeting in Paris emphasized that Assad should resign. On 9 July Mr. Annan met with Syrian President Assad. Press reports indicate that Annan characterized the talks as "constructive" and said agreement had been reached on an approach to end the violence<sup>522</sup>. This positive message came as a surprise to some Council members, especially after reports of violence in northern Lebanon and an interview Kofi Annan had given to *Le Monde* on 7 July in which he expressed frustration over the lack of progress on the ground.<sup>523</sup>

In mid-July Council members continued the discussion of a draft resolution on Syria tabled by the UK. The draft text asked for the renewal of UNSMIS for 45 days and threatened sanctions if the Syrian government did not cease the use of heavy weapons and withdraw from population centers within 10 days. Another draft resolution on the UNSMIS had been circulated by Russia on 10 July. Both the UK and Russian drafts supported Annan and his six-point plan, endorsed the Action Group communiqué and contained a provision for the renewal of UNSMIS. The Russian draft called for a three-month renewal with no explicit reporting requirements. There were several rounds of negotiations on the two drafts and all Council members at both expert and permanent representative level on 12 and 13 July. On 12 July there were reports of an escalation of violence in Tremseh near Hama resulting in significant casualties. In a 13 July Mr. Annan sent a letter to the Security Council in which he said that UNSMIS had reported the use of artillery, tanks and helicopters in Tremseh in violation of the government's commitments under resolutions 2042 and 2043. Annan affirmed: "Tragically, we now have another grim reminder that the Council's resolutions continue to be flouted. On Wednesday I recommended that the Council should insist on implementation of its decisions, and send a message to all that there will be consequences for non-compliance. This is imperative and could not be more urgent in light of unfolding

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<sup>522</sup> The Guardian, 9 July 2012 available at <http://www.guardian.co.uk/world/2012/jul/09/annan-assad-talks-syria?intcmp=239> (last accessed 3/12/12); The Telegraph video <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9386708/Kofi-Annan-President-Assad-has-agreed-new-approach-to-Syria-peace.html> (last accessed 3/12/12).

<sup>523</sup> Kofi Annan "Sur la Syrie, à l'évidence, nous n'avons pas réussi" *Le Monde* 7 July 2012 [http://www.lemonde.fr/proche-orient/article/2012/07/07/kofi-annan-sur-la-syrie-a-l-evidence-nous-n-avons-pas-reussi\\_1730658\\_3218.html](http://www.lemonde.fr/proche-orient/article/2012/07/07/kofi-annan-sur-la-syrie-a-l-evidence-nous-n-avons-pas-reussi_1730658_3218.html) (last accessed 3/12/12)

events.”<sup>524</sup> On the same day, Colombia, as Council President in July, circulated a press statement condemning this escalation of violence. The statement issued on 13 July condemned the mass killings in Treimseh, and called upon all Member States to take “collective and decisive action to immediately and fully stop the tragedy unfolding in Syria.” The Syrian government denied the use of heavy weapons.

In the meantime, negotiations on the UNSMIS draft resolutions continued with little progress. Russia remained firm that it would not accept a Chapter VII resolution with the threat of sanctions. China felt the UK draft should be more balanced and reflect the increased sophistication of armed opposition groups. The UK draft resolution (S/2012/538<sup>525</sup>), co-sponsored by France, Germany, Portugal, and the US, was voted on 19 July but was vetoed by China and Russia. The text received 11 votes in favor to 2 against (China, Russian Federation) with 2 abstentions (Pakistan and South Africa). Kofi Annan had anticipated his visit to Moscow on 16 -17 July to meet Russian President Vladimir Putin in an attempt to convince Russia of the need for a Chapter VII resolution. The Secretary-General had also spoken to Russian Foreign Minister Sergei Lavrov. After the veto, France, Germany, the UK and the US said they would continue to find ways to pressure the Syrian government outside of the Council.

On 20 July, the Council unanimously adopted resolution 2059 based on the Russian proposal<sup>526</sup>. The resolution renewed the UNSMIS mandate for a final period of 30 days and took into consideration the Secretary-General’s recommendations to reconfigure the mission in light of the deteriorating security situation in Syria. The resolution also conditioned any further renewal of UNSMIS on the cessation of the use of heavy weapons by the government and a reduction in violence by all sides. However the veto on the previous UK draft resolution de facto determined the end of Kofi Annan’s mission. Mr. Annan resigned on 2 August 2012.

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<sup>524</sup> UNITED NATIONS Security Council 13 July 2012 S/2012/542  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20S2012%20542.pdf> (last accessed 3/12/12)

<sup>525</sup> UNITED NATIONS Security Council press release 19 July 2012 available at  
<http://www.un.org/News/Press/docs//2012/sc10714.doc.htm> (last accessed 3/12/12)

<sup>526</sup> UNITED NATIONS Security Council 20 July 2012 S/RES/2059 (2012)  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20SRES%202059.pdf> (last accessed 3/12/12)

During the 25 July open debate on the Middle East, Qatar and Saudi Arabia, on behalf of the Arab Group, announced a forthcoming General Assembly draft resolution on Syria. The representative of Qatar affirmed that the Syrian situation had become a threat to the security of the region and to the entire international community and that the latter should take urgent steps to adequately confront those regional and international threats. “(...) Member States have been obliged to adopt various measures in order to actively address the crisis in accordance with international laws and codes of conduct. Along those lines, the Group of Arab States will request the General Assembly in New York to deal with the serious threat of the Syrian crisis.”<sup>527</sup> During the open debate the representative of France, Ambassador Araud, affirmed “The impotence to which the Council has been reduced by the Russian and Chinese vetoes does not leave it without recourse. We will maintain our support for the Syrian people and a democratic transition. We have adopted a new series of sanctions against Syria in the context of the European Union. We will pursue our work to support the opposition, including on the ground, and to help them to coalesce around a political project and a transitional Government for Syria. We will also continue to build a case against the Syrian regime to establish its criminal responsibility for the crimes against humanity of which it is guilty. We will continue to respond to the appeals of peoples in danger and to pursue our resolute efforts, including within the European Union, for increased humanitarian aid to the Syrian people.”<sup>528</sup>

On 3 August, the General Assembly adopted a resolution (A/RES/66/253 B<sup>529</sup>) in which it deplored the Security Council’s failure to act on Syria and called for a political transition. 133 member states voted in favor, with 12 against and 31 abstentions. Brazil and South Africa voted in favor; India abstained.

On 17 August, the Secretary-Generals of the UN and the Arab League announced the appointment of Lakhdar Brahimi (Algeria) as the Joint Special Representative for Syria.

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<sup>527</sup> UNITED NATIONS Security Council 25 July 2012 S/PV.6816 (Resumption 1)  
<http://unispal.un.org/UNISPAL.NSF/0/C875FED771683F9D85257A4B00711BAB> (last accessed 3/12/12)

<sup>528</sup> UNITED NATIONS Security Council S/PV.6816 25 July 2012 page 15  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20S%20PV%206816.pdf> (last accessed 3/12/13) page 15

<sup>529</sup> UNITED NATIONS General Assembly A/RES/66/253 B 7 August 2012  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/PV.124](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/PV.124) (last accessed 3/12/12)

## Human Rights Council and Office of the High Commissioner for Human Rights

The Human Rights Council and the Office of the High Commissioner were the first to react to the worsening situation in Syria. In response to growing international concern at the deteriorating human rights situation and the increasingly violent attacks on peaceful protests by security forces, on 29 April the Human Rights Council held a Special Session (16<sup>th</sup> Special Session) on Syria. The Special Session was requested by the United States on behalf of 16 Member States<sup>530</sup>. During the Session the Council adopted resolution A/HRC/RES/S-16/1 in which the Council condemned the attacks and called for the High Commissioner to urgently dispatch a fact-finding mission to investigate into human rights violations and “to establish the facts and circumstances of such violations and of the crimes perpetrated, with a view to avoiding impunity and ensuring full accountability”<sup>531</sup>. The fact-finding Mission was launched on 15 March 2011 headed by the Deputy High Commissioner for Human Rights, Ms. Kyung-wha Kang. In May 2011, the High Commissioner formally requested that the government of Syria cooperate with the mission, in particular by ensuring full access to the country. Having received no response the High Commissioner reiterated her request for access to the country on 20 May 2011 and on 7 June 2011.<sup>532</sup> Awaiting a response by the Syrian government the fact-finding mission began its work on 23 May, analyzing information on the human rights situation from a range of sources both inside and outside Syria. The report of the Mission was released in August 2011 and the results were discussed on the occasion of the 17<sup>th</sup> Session of the Human Rights Council. The report found “a pattern of human rights violations that constitutes widespread or systematic attacks against the civilian population, which may amount to crimes against humanity,” The violations include murder, enforced disappearances, torture, deprivation of liberty, and persecution.<sup>533</sup>

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<sup>530</sup> Those included Belgium, France, Hungary, Japan, Mexico, Norway, Poland, the Republic of Korea, the Republic of Moldova, Senegal, Slovakia, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland and Zambia

<sup>531</sup> UNITED NATIONS General Assembly A/HRC/RES/S-16/1 4 May 2011 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/130/54/PDF/G1113054.pdf?OpenElement> (last accessed 3/12/12)

<sup>532</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.CRP.1\\_Englishonly.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.CRP.1_Englishonly.pdf) (last accessed 3/12/12)

<sup>533</sup> A/HRC/17/CRP.1

On 18 August 2011 Ms. Navi Pillay presented the findings to the UN Security Council and urged the Council to consider referring the Syrian authorities to the International Criminal Court.<sup>534</sup>

From 22-23 August 2011, the Human Rights Council convened a second Special Session on Syria (17<sup>th</sup> Special Session) to investigate the ongoing human rights violations. The Human Rights Council adopted Resolution S-17/1 mandating an independent Commission of Inquiry to investigate human rights violations in Syria. The resolution was adopted with 33 votes in favor, four against and nine abstentions<sup>535</sup>. During the discussion the representative of Russia, Ambassador Loshchinin, said that the text of the resolution was one-sided and politicized and that it was aimed at removing a legitimate government of Syria, while fully ignoring the principles of democracy. The resolution was also unacceptable because instead of establishing a dialogue it could be used to further destabilize Syria. China expressed concern with the text and said that a solution to the crisis should be sought through the promotion of dialogue and cooperation. Strong support to the Human Rights Council was expressed by Kuwait, Qatar and Saudi Arabia that also called for an immediate stop to the violence.<sup>536</sup>

The Syrian Ambassador Faysal Khabbas Hamoui, spoke of an “unprecedented campaign directed at influencing Syria’s domestic politics, causing sectarian strife and portraying the massacres perpetrated by armed gangs as a movement of peaceful demonstrations...”<sup>537</sup> From the beginning of the conflict the Syrian government maintained that the country was not going through a civil war, but that it was fighting terrorism and accused Western

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<sup>534</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/Syriainturmoil.aspx> (last accessed 3/12/12)

<sup>535</sup> Votes in Favor (33): Austria, Belgium, Benin, Botswana, Burkina Faso, Chile, Congo, Costa Rica, Czech Republic, Guatemala, Hungary, Indonesia, Italy, Jordan, Kuwait, Kyrgyzstan, Maldives, Mauritius, Mexico, Nigeria, Norway, Peru, Poland, Qatar, Republic of Moldova, Romania, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, United States of America, and Uruguay.

Votes

Against (4): China, Cuba, Ecuador, and Russian Federation.

Abstentions (9): Angola, Bangladesh, Cameroon, Djibouti, India, Malaysia, Mauritania, Philippines, and Uganda

<sup>536</sup> <http://www.unmultimedia.org/tv/webcast/2011/08/kuwait-17th-special-session-human-rights-council.html> (last accessed 3/12/12) <http://www.unmultimedia.org/tv/webcast/2011/08/qatar-17th-special-session-human-rights-council.html> (last accessed 3/12/12) <http://www.unmultimedia.org/tv/webcast/2011/08/saudi-arabia-17th-special-session-human-rights-council.html> (last accessed 3/12/12)

<sup>537</sup> <http://www.unmultimedia.org/tv/webcast/2011/08/syrian-arab-republic-concerned-country-17th-special-session-human-rights-council.html> (last accessed 4/12/12)

countries of supporting it. An argument that had proved effective in gaining international support/limiting international pressure, as we have seen in the case of Sri Lanka.

The Commission of Inquiry's Report established pursuant to HR Resolution S-17/1 was released on 28 November, detailing extensive human rights violations occurring in Syria and expressing concern that crimes against humanity had been committed. The Commission of Inquiry concluded that the substantial body of evidence gathered by the Commission indicated that gross violations of human rights had been committed by Syrian military and security forces since the beginning of the protests in March 2011. It called upon the Government of the Syria to put an immediate end to the ongoing gross human rights violations, to initiate independent and impartial investigations of these violations and to bring perpetrators to justice.<sup>538</sup>

On 2 December 2011 the Human Rights Council held a third Special Session (18<sup>th</sup> Special Session) on Syria. The request for the Special Session was made by the European Union and signed by 28 Member States of the Council and 40 observer States<sup>539</sup>. During the Special Session the Human Rights Council adopted a resolution (Resolution S-18/1), in which it established a mandate of a Special Rapporteur on the situation of human rights in the Syrian Arab Republic. The resolution was adopted by 37 votes in favor, 4 votes against and 6 abstentions.<sup>540</sup> Russia affirmed that the resolution went beyond the Council's mandate and that certain measures in the resolution would allow for military actions, including military intervention. Cuba accused the Human Rights Council of having drafted a text resolution

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<sup>538</sup> UNITED NATIONS General Assembly A/HRC/S-17/2/Add.1 23 November 2011 <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/17/docs/A-HRC-S-17-2-Add1.pdf> (last accessed 3/12/12)

<sup>539</sup> The Member States are Austria, Belgium, Botswana, Chile, Costa Rica, Czech Republic, Djibouti, Guatemala, Hungary, Italy, Jordan, Kuwait, Kyrgyzstan, Libya, Maldives, Mexico, Nigeria, Norway, Peru, Poland, Qatar, Spain, Republic of Moldova, Romania, Saudi Arabia, Switzerland, United States and Uruguay. The observer States are Albania, Australia, Bahrain, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Côte d'Ivoire, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Honduras, Iceland, Ireland, Israel, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Morocco, Netherlands, New Zealand, Portugal, Republic of Korea, Serbia, Slovakia, Slovenia, Sweden, United Kingdom and Turkey.

<sup>540</sup> In favor: Austria, Belgium, Benin, Botswana, Burkina Faso, Chile, Congo, Costa Rica, Czech Republic, Djibouti, Guatemala, Hungary, Indonesia, Italy, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Poland, Qatar, Republic of Moldova, Romania, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, United States of America, Uruguay

Against: China, Cuba, Ecuador, Russian Federation

Abstaining: Angola, Bangladesh, Cameroon, India, Philippines, Uganda

that was politically motivated and selective. China stressed that United Nations Member States should not use force or the threat to use force to solve differences or undermine the territorial integrity of a country. Contrary to the above mentioned position and in answer to States who had referred to events in Libya, the Libyan delegate said that it was thanks to the help of the international community and the Human Rights Council that the people of Libya were now living in freedom and democracy and enjoyed human rights and equality. “Representing people who had suffered what the people of Syria suffered today, Libya called on the Council to adopt the resolution by consensus” he said.<sup>541</sup>

The situation of Syria was again discussed during the 19<sup>th</sup> General Session of the Human Rights Council on 28 February 2012. Nassir Abdulaziz Al-Nasser, President of the United Nations General Assembly, said the Syrian Government had manifestly failed in its duty to protect its people. Its forces had committed gross human rights violations. He supported the appointment of Kofi Annan as a Special Envoy to Syria and commended his efforts to engage with those involved. Navi Pillay called for an immediate humanitarian ceasefire to end the fighting and bombardments and called upon the Syrian authorities to cooperate fully with international mechanisms, including Mr. Kofi Annan and to allow an Office of the High Commissioner for Human Rights field presence in Syria. The Syrian representative affirmed the Council was not an appropriate forum for such matters. The world had recently seen serious distorting of humanitarian intervention and civilian protection; some countries used those concepts to change regimes and destroy the infrastructure of targeted States. The call for the holding of this meeting was part of a pre-established plan to attack Syria under the pretext of addressing humanitarian needs. Norway, Portugal and Costa Rica made specific reference to the Syrian government responsibility to protect its population.<sup>542</sup>

On 1 March the Council concluded its debate on the human rights and humanitarian situation in Syria and adopted a resolution (A/HRC/19/L.1/Rev.1) that was proposed by Turkey. The resolution was adopted by a vote of 37 in favor, 3 against and 3 abstentions<sup>543</sup>.

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<sup>541</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11680&LangID=E> (last accessed 3/12/12) see also UN Webcast <http://www.unmultimedia.org/tv/webcast/c/18th-special-session-2011.html> (last accessed 3/12/12)

<sup>542</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11881&LangID=E> (last accessed 3/12/12)

<sup>543</sup> In favor (37):Austria, Bangladesh, Belgium, Benin, Botswana, Cameroon, Chile, Congo, Costa Rica, Czech Republic, Djibouti, Guatemala, Hungary, Indonesia, Italy, Jordan, Kuwait, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Poland, Qatar, Republic of  
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The dynamic of the discussion followed the usual confrontation between those that accused the Council of politicization, selectivity and double standards (Cuba, Syria, Iran, Democratic Republic of Korea, Russia, China) and that still believed that the situation should be resolved without external intervention and those that urged for action and wanted to put an end to impunity<sup>544</sup>.

On 23 March the Human Rights Council extended the mandate of the Commission of Inquiry on Syria and requested continued reporting on gross human rights violations in Syria (resolution A/HRC/19/L.38/Rev.1)<sup>545</sup>. The resolution also requested the commission to provide an oral update to the Council at an interactive dialogue at its twentieth session (28 June -6 July 2012) and to conduct regular update to be published periodically. Furthermore, the resolution called on the Syrian authorities to cooperate fully with the commission of inquiry, including by granting it unhindered access to the country; to meet its responsibility to protect and recommended that the main bodies of the United Nations urgently consider the reports of the Commission of Inquiry and take appropriate action to address human rights violations, as well as crimes against humanity that may have been committed. Russia proposed amendments to the draft resolution backed by the European Union to the extent that opposition groups in Syria had carried out acts of violence against the Government but the amendments were rejected by a vote of four in favor (China, Cuba, Ecuador and Russia), thirty-three against, and nine.<sup>546</sup>

On 24 May the Independent Commission on Inquiry issued an update reporting<sup>547</sup> that most of the human rights violations were committed by the Syrian army and security services during military operations conducted in areas regarded as supportive of anti-government armed groups. Shortly before the Commission issued its update report, on 16 May 2012, the

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Moldova, Romania, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, United States of America, and Uruguay.

Against (3): China, Cuba, and Russian Federation.

Abstentions (3): Ecuador, India, and Philippines.

<sup>544</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11885&LangID=E> (last accessed 3/12/12)

<sup>545</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/19/L.38/Rev.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/19/L.38/Rev.1) (last accessed 3/12/12)

<sup>546</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12009&LangID=E> (last accessed 3/12/12)

<sup>547</sup> <http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/CISyria/PeriodicUpdateCISyria.pdf> (last accessed 3/12/12)

UN Committee against Torture reported widespread killings, torture in hospitals and detention centers, torture of children and sexual torture.<sup>548</sup>

After the events in Houla, on 1 June 2012 the Human Rights Council decided to hold a fourth Special Session on Syria. This time the request for the Special Session was submitted by the Ambassadors of Qatar, Turkey, United States, Saudi Arabia, Kuwait, Denmark and the European Union. The request was signed by 21 Member States of the Council and 30 observer States.<sup>549</sup> During the Special Session the Council adopted a resolution circulated by Qatar condemning the violence and human rights violations in Syria; requesting the Commission of Inquiry to hold a special inquiry into the events in Houla and inviting Mr. Kofi Annan to brief the Council at its twentieth session in June/July 2012. The resolution S-19/1<sup>550</sup> obtained the support of forty-one members of the Council.

On 27 June during the 19th General Session Paulo Pinheiro, Chairman of the Commission of Inquiry on Syria reported on the finding of the Commission. He said that gross violations of human rights were occurring regularly in the context of increasingly militarized fighting, characteristic of a non-international armed conflict (civil war)<sup>551</sup>. The Syrian authorities had allowed the Commission of Inquiry to visit Damascus from 23 to 25 June.

On 6 July the Human Rights Council in its 20<sup>th</sup> General Session adopted a resolution (A/HRC/RES/20/22<sup>552</sup>) condemning the gross human rights violations and indiscriminate targeting of civilians in Syria by government authorities and the Government-controlled militia Shabbiha. The resolution also expressed concern about the reports it received from its

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<sup>548</sup> [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/09ABF4B6CEC822A6C1257A00003D2B22?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/09ABF4B6CEC822A6C1257A00003D2B22?OpenDocument) (last accessed 3/12/12)

<sup>549</sup> The request was signed by the following members of the Council: Austria, Belgium, Chile, Czech Republic, Guatemala, Hungary, Italy, Kuwait, Maldives, Mexico, Norway, Peru, Poland, Qatar, Republic of Moldova, Romania, Saudi Arabia, Spain, Switzerland, United States and Uruguay. It was also supported by the following observer States: Australia, Bahrain, Bulgaria, Canada, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Japan, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Portugal, Republic of Korea, Slovakia, Slovenia, Sweden, Tunisia, Turkey, United Arab Emirates, and the United Kingdom.

<sup>550</sup> UNITED NATIONS General Assembly A/HRC/RES/19/1 4 June 2012  
[http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/Session19/A-HRC-RES-S-19-1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/Session19/A-HRC-RES-S-19-1_en.pdf) (last accessed 3/12/12)

<sup>551</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12297&LangID=E> (last accessed 3/12/12)

<sup>552</sup> [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-2_en.pdf) page 55 (last accessed 3/12/12)

Commission of Inquiry about human rights violations by both government and opposition forces.

On 15 August Commission of Inquiry issued its second report on Syria. The report was in the agenda of the 21<sup>st</sup> General Session of the Human Rights Council on 17 September 2012. The Commission reported that the situation of human rights in Syria had deteriorated significantly since 15 February 2012 and that armed violence had increased in intensity and spread to new areas. Furthermore, the Commission found reasonable grounds to believe that Government forces and the Shabbiha had committed the crimes against humanity of murder and of torture, war crimes and gross violations of international human rights law and international humanitarian law, including unlawful killing, torture, arbitrary arrest and detention, sexual violence, indiscriminate attack, pillaging and destruction of property. The commission also found that Government forces and Shabbiha members were responsible for the killings in Houla. While opposition forces had committed war crimes, including murder and torture, the report found that these violations were not of the same gravity, frequency and scale as those committed by government forces and the Shabbiha.<sup>553</sup>

## 7.2 Regional Organizations

### **The League of Arab States**<sup>554</sup>

The League of Arab States issued the first condemnation of Syrian government repression of nationwide uprisings on 7 August 2011, calling for an immediate end to the violence. On 27 August Arab foreign ministers held a special meeting on Syria. They asked the League chief El-Arabi to discuss a 13-point document outlining proposals to end the crackdown, including that Assad should hold elections in three years, move towards a pluralistic government and free political prisoners. El-Arabi met Assad in Damascus in September to discuss the proposal and reported to have “reached an agreement” with Assad regarding steps for reform<sup>555</sup>. On 16 October 2011, at its extraordinary session in Cairo, the League adopted a resolution calling for an immediate and complete end to the violence and killing, the elimination of

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<sup>553</sup> [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf) (last accessed 3/12/12)

<sup>554</sup> Main sources of information BBC news, Security Council reports, League of Arab States website International Coalition on R2P website

<sup>555</sup> <http://english.alarabiya.net/articles/2011/09/07/165702.html> (last accessed 3/12/12)  
<http://www.aljazeera.com/news/middleeast/2011/09/2011910124344348452.html> (last accessed 3/12/12)

armed elements, and the rejection of a security-based solution in an attempt to avoid further casualties. Furthermore, the resolution called on the Council of Ministers of the League of Arab States to establish an Arab Ministerial Committee — under the chairmanship of Sheikh Hamad bin Jassim bin Jabr Al-Thani, Prime Minister and Minister for Foreign Affairs of Qatar, with the Foreign Ministers of Algeria, Egypt, the Sudan and Oman and the head of the Arab League as members — mandated to liaise with the Syrian leadership. The resolution also called for the establishment of necessary contacts both with the Syrian Government and opposition to prepare for a conference of national dialogue at the headquarters of the League of Arab States and under its auspices. The Ministerial Committee requested the Sudan and Egypt to persuade the Syrian leadership to withdraw all military presences and launch a dialogue between the Syrian people and opposition to facilitate the implementation of political reforms.

On 26 October 2011, the Ministerial Committee held discussions in Damascus with President Assad. Few days later in a meeting with representatives of the Syrian government held in Doha the Committee agreed on a plan of action, which was endorsed at the ministerial level at the League's headquarters on 2 November 2011. The plan confirmed the official Syrian approval to end all acts of violence committed by all sources; to free detainees held as a result of the unrest; to withdraw all military elements from the cities and residential neighborhoods; and finally, to provide the relevant agencies of the League of Arab States and Arab and international media free access throughout Syria to report on developments and monitor the situation. Furthermore, the plan called on the Ministerial Committee also to establish necessary contacts and conduct consultations with the Government and various factions of the Syrian opposition with a view to convening a national dialogue conference within two weeks of the date of the adoption of the resolution.

The Syrian Government did not fully or immediately meet its commitments to the League's initiative of 2 November 2011 and on 7 November the Prime Minister of Qatar, Sheik Hamad bin Jassim al-Thani, called for a meeting to weigh Syria's failure to put into effect the deal struck with the Arab League. On 12 November 2011 the Ministerial Council of the League decided quasi unanimously – Lebanon, Yemen and Syria opposed the decision –to suspend Syria's membership. It also called upon all opposition factions to meet in Cairo for three days to agree on a conference on a transitional phase for Syria. After the idea of dispatching an Arab observer mission to Syria took shape, at a meeting held in Rabat on 16 November 2011,

the Ministerial Council approved a draft protocol on the legal status of the mission, whose mandate was to verify the implementation of the Arab plan to solve the crisis and protect civilians. Should the Syrian Government fail to sign the protocol or violate any of its provisions — including those calling for an end to the violence and killing and the release of detainees — the resolution called for convening the Economic and Social Council of the League of Arab States to consider imposing economic sanctions on Syria. The resolution was communicated to the Secretary-General of the United Nations and requested him to take necessary action in accordance with the Charter of the United Nations to support the League's efforts.

On 27 November 2011, the Ministerial Council adopted a package of sanctions, including halting flights to Syria, designed not to directly affect the Syrian people. At a meeting held in Doha on 3 December 2011, the Ministerial Committee agreed on the details of the sanctions and relevant action. The Arab Ministerial Committee met again in Doha on 17 December 2011 and in Cairo on 8 January 2012 to discuss the Syrian crisis. On 19 December Syria signed a peace deal, agreeing to an Arab observer mission for an initial period of one month while explicitly ruling out intervention. The Arab Ministerial Committee met again in Cairo on 22 January, to undertake a comprehensive review of the tasks accomplished by the observer mission based on its findings. At that meeting the Committee adopted unanimously a resolution that included a plan for a peaceful settlement of the Syrian crisis that would be acceptable to and implemented by all parties. That resolution was circulated among the members of the Security Council. The plan constituted a road map that, according to the Arab League, was consistent with the Charter of the United Nations and aimed at a democratic, political solution to the crisis and a peaceful transition of power. It provided for the formation of a national unity Government within two months, to be chaired by a mutually agreed figure and that would include members of the opposition. One of the tasks of the national unity Government would have been to prepare for free and pluralistic parliamentary and presidential elections under Arab and international supervision. In addition, the resolution extended the Arab observer mission mandate by one month despite the fact that the Secretary-General of the League of Arab States had announced on 28 January the suspension of the activities of the observer mission, pending review of the matter by the League's Council of Ministers, given the serious deterioration of the security situation and the escalation of violence. On 23 and 24 January 2012, Saudi Arabia and the

Gulf States had withdrawn their support to the monitoring mission, citing Syria's failure to implement the peace plan.

At the end of January 2012, when the League asked the support of the United Nations in its peace efforts, Sheikh Hamad bin Jassim bin Jabr Al-Thani recognized that the Arab League had lost several months in attempts to solve the Syrian crisis to no purpose. "We have come before the Council today after five additional months of effort to push the Syrian Government to find a solution to the crisis with its own people, based on the resolutions of the League. (...) Our efforts and initiatives, however, have been completely in vain, for the Syrian Government has regrettably failed to make any sincere effort to cooperate with us."

During the meeting the Secretary-General of the Arab League, Mr El-Arabi made a statement in which he called the Security Council to adopt a resolution demanding for an immediate cessation of all acts of violence, for the endorsement of the Arab plan for peaceful political settlement of the crisis, and the support of the Arab draft resolution submitted by the delegation of Morocco. In his speech Mr El-Arabi stressed that the Arab States wanted to solve the Syrian crisis "in an Arab context" "We are attempting to avoid any foreign intervention, particularly military intervention. (...) Our objective is therefore for the Security Council to support our initiative, not to take its place. The Arab plan is the fundamental mechanism for a peaceful settlement of the Syrian crisis, with international support and agreement from the Security Council."<sup>556</sup>

On 12 February 2012 the Council of the League of Arab States at the level of Foreign Ministers adopted Resolution n.7446<sup>557</sup> concerning the "Follow-up to developments in the critical situation in Syria", in which it expressed its condemnation of continuing acts of violence and killing in Syria. The Council also decided to open contact with Syrian opposition and ask the UN to form a joint peacekeeping force to halt the violence in Syria. Finally, the Council welcomed the invitation by Tunisia to host the Friends of Syria conference of 24 February 2012, and to confirm the economic embargo.

In May 2012 in a letter to the President of the UNSC, the Secretary General of the Arab League, El-Arabi, called on the Security Council to "shoulder its responsibility" to halt the

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<sup>556</sup> UNITED NATIONS Security Council S/PV.6710 of 31 January 2012  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/PV.6710](http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6710) (last accessed 3/12/12)

<sup>557</sup>[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/142](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/142) (last accessed 4/12/12)

violence by taking measure to protect Syrian civilians, including by increasing the number of UNSMIS observers and granting them the authority to end crimes being committed.<sup>558</sup> On 2 June 2012 the Arab League adopted a resolution urging the Security Council to take the necessary measures to ensure the protection of civilians and to take action to ensure the implementation of Annan's six-point plan within a specific time frame through the use of sanctions.

One month later, on 2 July 2012, the Arab League hosted a Syrian opposition conference with some 250 participants in Cairo, during which general agreement was reached on support for the Free Syrian Army and the exclusion of Assad from any transition process. However, there was no agreement on forming a body to represent a unified opposition. The Arab League ministerial committee on Syria (chaired by Qatar and including Algeria, Egypt, Iraq, Kuwait, Oman, Saudi Arabia and Sudan) met in Doha on 22 July, calling on Assad to "renounce power" for "a safe exit." The statement also called on the Free Syrian Army rebels and the opposition to form a transitional government. On 24 July, Arab League Secretary-General El-Arabi said the emphasis must be on a peaceful transfer of power in Syria. Syria rejected the demand for Assad to renounce power.

### **The Gulf Cooperation Council (GCC)**

On 6 August 2011, in a statement, the GCC - Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates – appealed for an immediate end to the violence and bloodshed at the hands of the Syrian government. In January 2012 Arab observers from the organization, amounting to about 50 individuals left the mission, saying they were "certain the bloodshed and killing of innocents would continue."

On 7 February 2012 the GCC decided to expel the Syrian ambassadors and on 16 March four of the GCC states (the United Arab Emirates, Qatar, Oman and Kuwait) announced the closure of their embassies in Syria.

Qatar was the first Arab state to recall its ambassador in Syria on 21 July 2011, with Saudi Arabia, Kuwait and Bahrain following suit on 8 August. On 15 January, a US news agency quoted Qatari leader Sheikh Hamad bin Khalifa Al Thani who suggested that Arab troops be

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<sup>558</sup> UNITED NATIONS Security Council S/2012/385 31 May 2012  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/385](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/385) (last accessed 3/12/12)

sent to Syria to end the conflict. Syria immediately condemned Qatar's remark, warning it would jeopardize Syrian-Arab relations. After Arab leaders affirmed on 23 January that they were not in favor of a military intervention, Qatar maintained its leadership role, briefing the Security Council alongside the Secretary-General of the Arab League on 27 January. On 30 May 2012, after the killings in Houla, together with Turkey, the US, Saudi Arabia, Kuwait, Denmark and the EU, Qatar requested the Human Rights Council to hold a Special Session on June 1 on the deteriorating human rights situation in Syria.

### 7.3 Civil Society

Civil society called from the very beginning of the crisis for a rapid and unified response by international and regional bodies to protect civilians, provide necessary aid and ensure accountability. Most importantly, it was the meager network of Syrian human rights activist and the new generation of aid workers - through personal contacts and online networks - that managed to provide aid and send information outside the country. Since the beginning of the uprising both foreign journalists and humanitarian organizations were in fact barred from the country. The Syrian Arab Red Crescent Society and the International Committee of the Red Cross were the only aid agencies with access to Syria but they have had limited capacity and even their access was inconsistent.<sup>559</sup> The shift from humanitarian agencies to civil society and the private sector to deliver medical and food aid to communities in need inside Syria and the use of social network to inform are probably the most interesting developments in the practice of humanitarian assistance and prompted a reflection on consolidated practice.

International NGOs also contributed raising awareness. Already on 27 April 2011 Human Rights Watch exhorted Arab countries to join international efforts to establish an independent international inquiry into the Syrian government's use of force against peaceful protesters. In particular HRW called on Egypt and Tunisia to take the lead in advocating sanctions against those leaders responsible for the bloodshed, widespread arbitrary

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<sup>559</sup> Access was among the main points of discussion at a meeting, hosted by the Arab League, the Organisation of Islamic Cooperation (OIC) and The Humanitarian Forum, on 4 March 2012 in Cairo. IRINNEWS AID POLICY: A "new humanitarianism" at play in Syrian crisis 30 March 2012 <http://www.irinnews.org/Report/95209/AID-POLICY-A-new-humanitarianism-at-play-in-Syrian-crisis> (last accessed 3/12/12); IRINNEWS 5 March 2012 SYRIA: Towards better coordination of aid response <http://www.irinnews.org/Report/95011/SYRIA-Towards-better-coordination-of-aid-response> (last accessed 3/12/12)



detention, and torture in Syria.<sup>560</sup> In addition, HRW reported almost daily on the development on the ground and issued six reports on the violations of human rights in Syria since the beginning of the uprising.<sup>561</sup>

Already in August 2011 (31 August, 2011) Amnesty International released a report (“Deadly Detentions”) detailing the high number of suspicious deaths occurring in Syrian custody and accusing the Syrian government of carrying out “crimes against humanity.” Other reports and statements followed on a monthly basis the last being issued on 1 August 2012.<sup>562</sup>

The International Coalition for R2P published on its website a long list of op-eds, analyses, and calls to action from civil society actors, which related the responsibility to protect to the crisis in Syria<sup>563</sup>.

The Global Responsibility to Protect issued bimonthly bulletins reporting inter alia on the development in Syria as well as ad hoc country reports.<sup>564</sup>

The International Crisis Group published on its website monthly reports on the crisis<sup>565</sup>.

The Syrian observatory for human rights is a UK-based NGO that provides information on the situation in Syria mainly via Facebook<sup>566</sup>.

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<sup>560</sup> <http://www.hrw.org/news/2011/04/27/syria-arab-states-should-push-end-killings> (last accessed 3/12/12)

<sup>561</sup> Those are: “We’ve Never Seen Such Horror” on crimes against humanity by Syrian Security Forces in Dara’a governorate, released on 1 June, 2011; “We Live as in War” Crackdown on Protesters in the Governorate of Homs, released on 11 November, 2011; “By All Means Necessary!” on Individual and Command Responsibility for crimes against humanity, based on more than 60 interviews with defectors from the Syrian military and intelligence agencies, released on 15 December, 2011; “In Cold Blood” on summary executions by Syrian Security Forces and Pro-Government Militias, released on 10 April, 2012; “They Burned My Heart” on War Crimes in Northern Idlib during Peace Plan Negotiations, released on 3 May, 2012 and “Torture Archipelago” on arbitrary Arrests, Torture, and Enforced Disappearances in Syria’s Underground Prisons since March 2011, released on 3 July, 2012 <http://www.hrw.org/by-issue/publications/238> (last accessed 3/12/12)

<sup>562</sup> <http://www.amnesty.org/en/region/syria> (last accessed 3/12/12)

<sup>563</sup> <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria> (last accessed 3/12/12)

<sup>564</sup> <http://www.globalr2p.org/>(last accessed 3/12/12)

<sup>565</sup> <http://www.crisisgroup.org/en/publication-type/crisiswatch/crisiswatch-database.aspx?CountryIDs=%7b1341CC4D-F195-4B82-A9B9-0411818FDB03%7d#results> (last accessed 3/12/12)

<sup>566</sup> <http://www.facebook.com/syriaohr> (last accessed 3/12/12)

The Arab Social Media Report

(<http://www.arabsocialmediareport.com/Facebook/LineChart.aspx?&PriMenuID=18&CatID=24&>

Maria Rita Mazzanti - “From State Responsibility to Responsibility to Protect” - Thèse IEP de

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The use of the social media during the Arab Spring was widely reported. In the Syrian case social media allowed spreading the information faster and farther and permitted expanding access to evidence of human rights abuses. This made a big difference with the past. Sarah Joseph observed that in 1982, when Syrian army allegedly massacred tens of thousands of residents of the town of Hama in approximately one month, the international community learned of the killings only much later, and even then the information that emerged was incomplete and difficult to verify. On the other hand, in the present situation, through the work of cyber activists, the Syrian government came under immediate pressure to refrain from cracking down violently on dissident protests.<sup>567</sup>

## 7.4 Conclusions

The military intervention in Libya seems to have strongly influenced the dynamics within the Security Council. In the case of Syria the Security Council found itself unable even to issue

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mnu=Cat) (last accessed 3/12/12) provides an updated overview of Facebook users in the Arab World. The latest report provides as follows:

“The total number of Facebook users in the Arab world stands at 45,194,452 (as of end June, 2012), up from 37,390,837 at the beginning of the year (January 3, 2012), having increased by about 50% since the same time last year (29,845,871 in end June 2011). · By the end of June 2012, the country average for Facebook user penetration in the Arab region was just over 12%, up from 10% at the beginning of the year, and up from 8% in June 2011. The number of Facebook users in the Arab world has approximately tripled in the last 2 years (June 2010 – June 2012), increasing from 16 million users to 45 million users. Figures (5, 6 & 7) illustrate the growth in all 22 Arab countries in the past 2 years. · The percentage of female users remains almost static, having fluctuated slightly between 33.5% and 34% in the past year (33.7% as of June 2012). This is still significantly lower than the global trend, where women constitute roughly half of Facebook users. ·

“Youth (between the ages of 15 and 29) continue to make up around 70% of Facebook users in the Arab region, a number that has been holding steady since April 2011. ·

“GCC countries dominate the top five Arab Facebook users as percentage of population. The UAE remains at the top of the Arab region, followed by Kuwait, while Qatar has found its way back into the top five. Lebanon and Jordan take up the remaining spots. ·

“Egypt still constitutes about a quarter of total Facebook users in the Arab region, and has added more users in the past year than any Arab country, at over 1.6 million new Facebook users between January and June 2012.”

<sup>567</sup> Joseph S., *Social Media, Political Change, and Human Rights*, Boston College International and Comparative Law Review Volume 35 | Issue 1 1/1/2012 pages 145-188

[http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1667&context=iclr&sei-redir=1&referer=http%3A%2F%2Fwww.google.ch%2Fsearch%3Fhl%3Den-CH%26source%3Dhp%26q%3Dhuman%2Brights%2Borganizations%2Barab%2Bspring%2Bsocial%2Bmedia%26bv%3D2%26oq%3Dhuman%2Brights%2Borganizations%2Barab%2Bspring%2Bsocial%2Bmedia%26gs\\_l%3Dheirloom-hp.3...5016.23953.0.24282.73.47.10.14.18.0.219.5439.14j28j3.45.0...0.0...1c.t08MJclvLs#search=%22human%20rights%20organizations%20arab%20spring%20social%20media%22](http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1667&context=iclr&sei-redir=1&referer=http%3A%2F%2Fwww.google.ch%2Fsearch%3Fhl%3Den-CH%26source%3Dhp%26q%3Dhuman%2Brights%2Borganizations%2Barab%2Bspring%2Bsocial%2Bmedia%26bv%3D2%26oq%3Dhuman%2Brights%2Borganizations%2Barab%2Bspring%2Bsocial%2Bmedia%26gs_l%3Dheirloom-hp.3...5016.23953.0.24282.73.47.10.14.18.0.219.5439.14j28j3.45.0...0.0...1c.t08MJclvLs#search=%22human%20rights%20organizations%20arab%20spring%20social%20media%22) (last accessed 3/12/12)

any unified message of condemnation of the violence. In addition to Russia and China, other states were similarly hesitant to condemn Assad, including India, Brazil, and South Africa and contributed to reopen the debate on the third pillar of R2P. The Brazilian proposal of RWP, Responsibility while Protecting, should be seen in this context.

At the time of finalizing this thesis (September 2012) it had become clear that Syria was in a state of civil war and that the conflict had become militarized to such a degree that the political space to negotiate a peaceful solution has further shrunk. On the other hand, the negative impact on regional security were increasingly evident with spillover effects, including pockets of violence in northern Lebanon; the military build-up by Turkey on the border, increasing tension with the Kurdistan Workers' Party (PKK), the risk for insecurity on the border with the Israeli-occupied Golan Heights and the menace of resorting to the use of chemical weapons.

On 3 August the UN Secretary-General, Ban Ki-moon, described the conflict as a “proxy war, with regional and international players arming one side or the other.”<sup>568</sup>

In the September 2012 issue of its “R2P Monitor” the Global Center for Responsibility to protect reported that several members of the group of over 80 states participating in the “Friends of the Syrian People” (see Annex 1) were providing financial support to the opposition, while Saudi Arabia and Qatar supplied arms to the rebels. Furthermore, Russia last supplied Syria with arms in May 2012, while Venezuela affirmed that it would continue to ship fuel to help circumvent the effects of sanctions. Iran provided funds and weapons to the government in clear violation of UN Security Council (UNSC) Resolution 1747, banning Iranian arms exports.<sup>569</sup>

Civilians remain the primary victims of a conflict. By September 2012, it was estimated that the death toll exceeded 20,000 people. The UN Security Council should find unity, impose an arms embargo and authorize targeted sanctions. Those responsible for mass atrocity crimes should immediately be referred to the ICC for investigation.

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<sup>568</sup> UN Press release SG/SM/14442 GA/11267

<http://www.un.org/News/Press/docs/2012/sgsm14442.doc.htm> (last accessed 4/12/12)

<sup>569</sup> <http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723baf59dbe6.pdf> (last accessed 3/12/12)

Notwithstanding the impasse of the Security Council, R2P could nevertheless find a space in the international judicial system. The declaration by the International Committee of the Red Cross on 15 July 2012 that the Syrian conflict now constitutes a civil war modified the situation in legal terms. Direct attacks against civilians may now be considered war crimes. The perpetrators of those crimes could be prosecuted as war criminals under the jurisdiction of the International Criminal Court - should the Security Council decide to refer them to the ICC. In addition, other states may initiate legal proceedings on the basis of universal jurisdiction. Universal jurisdiction refers to a state's ability to undertake criminal proceedings against a foreign national, for any alleged crime committed outside the country. Under international law, States can enact national laws which allow their national courts to investigate, and if there exists sufficient admissible evidence, to prosecute any person who enters their territory and is suspected of certain crimes, regardless of where the crime was committed or the nationality of the accused and the victim. Over 125 countries have enacted universal jurisdiction laws. The Geneva Conventions place a legally binding obligation on states that have ratified them to exercise universal jurisdiction over persons accused of grave breaches of the Geneva Conventions, or to extradite them.

## Annex 1 Timeline of events<sup>570</sup>

Date	In Syria	In the UN System	In Europe/US	In the Region
16 March 2011	Syrian security forces arrest at least 25 of the 150 people gathered in Damascus for the “Day of Dignity” protest, demanding the release of imprisoned relatives held as political prisoners.			
20 March 2011	Protesting the 48-year long state of emergency law, crowds set fire to the headquarters of the ruling Baath Party in Dera’a.			
23 March 2011	Syrian forces kill six people in an attack on protesters in the Omari mosque complex in Dera’a then later open fire on hundreds of youths marching in solidarity.			
24 March 2011	Syrian President Assad orders the formation of a committee to raise living standards and study lifting the emergency law.			
17 April 2011	14 protesters are killed in Homs			

<sup>570</sup> Main sources BBC, IRINNEWS, International Herald Tribune/New York Times, Reuters, Christian Science Monitor, , UN website, <http://www.un.org/apps/news/infocusRel.asp?infocusID=146&Body=Syria&Body1=> (last accessed 3/12/12) , <http://www.securitycouncilreport.org/syria/> (last accessed 3/12/12) Global Responsibility to protect website [http://www.globalr2p.org/media/pdf/Timeline\\_of\\_International\\_Response\\_to\\_Syria.pdf](http://www.globalr2p.org/media/pdf/Timeline_of_International_Response_to_Syria.pdf) (last accessed 3/12/12), OHCHR website <http://www.ohchr.org/EN/countries/MENARRegion/Pages/SYIndex.aspx> (last accessed 3/12/12), France at the United Nations website <http://www.franceonu.org/france-at-the-united-nations/geographic-files/middle-east/syria/article/syria-5509> (last accessed 3/12/12)

21 April 2011	Syrian emergency laws, in place since 1963, were lifted			
<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
22 April 2011	Security forces fired tear gas and live ammunition to disperse thousands of demonstrators who took to the street of Damascus and 14 other towns and cities after noon prayers. 110 people were killed		Human Rights Watch calls on the UN to set up an international inquiry into the deaths and urged the US and Europe to impose sanctions	
25 April 2011	Security forces kill at least 25 people in Dara'a		The White House says it is considering 'targeted sanctions'.	NATO airplanes struck Gaddafi's compound and bombed a state television facility. Rebels controlled most of eastern Libya.
27 April 2011		The Security Council holds a public debate on Syria and is briefed by the Under-Secretary-General for Political Affairs B. Lynn Pascoe.	British foreign secretary, William Hague says moves are under way at the UN Security Council, the EU and among some Arab countries to send a strong signal to Damascus. Similar statements were made by Sarkozy.	
29 April 2011	Security forces fire at protesters in Dara'a killing at least other 16 people	The Human Rights Council convenes its 16 <sup>th</sup> Special Session on Syria and adopts a resolution requesting an investigative mission to Syria, with preliminary findings expected in June and a follow-up report in September.	Germany, France and Britain press for a strong message against the violence	
6 May 2011			European Union decides to impose a travel ban and asset freeze on 14 Syrian officials but not President Assad	
9 May 2011		The Secretary-General calls for an end to the violence and mass arrests, for an independent inquiry into the killings and for a UN team to enter Syria to assess the humanitarian situation.		

<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
10 May 2011			The EU imposes sanctions that include an arms embargo, a ban on sales of equipment which can be used in internal repression, and a travel ban on thirteen members of Bashar al-Assad's inner circle for their part in the crackdown.	
13 May 2011				NATO airstrikes hit Gaddafi's compound in Tripoli.
15 May 2011				Israeli forces kill civilians on the border between Syria and the Israeli-occupied Golan Heights and on the blue line between Israel and Lebanon when crowds of Palestinian refugees, living in Syria and Lebanon respectively, breached the border in al-Nakba protests
19 May 2011			US President Barack Obama says during his Middle East speech that Assad should lead his country to democracy or step aside.	
22 May 2011				The Organization of the Islamic Conference expresses concern over the escalating violence
25 May 2011				Hezbollah leader Hassan Nasrallah makes his first public pronouncement on the situation in Syria calling on "Syrians to preserve their country as well as the ruling regime"
2 June 2011		The Advisers on Prevention of Genocide and on R2P remind the Syrian government of its responsibility to protect the civilian population, and call for an investigation into alleged violations of international human rights law.		

Date	In Syria	In the UN System	In Europe/US	In the Region
3 June 2011	A revolt in Hama meets bloody repression leaving 73 people dead.			
8 June 2011		Assistant Secretary General Oscar Fernandez Taranco briefs the Council in closed consultations		
9 June 2011		The High Commissioner for Human Rights, Navi Pillay, publicly condemns the human rights situation in Syria		
13 June 2011	Syrian military bombards for two days the city of Jisr al-Shouhour			
20 June 2011	President Assad offers a national dialogue			
1 July 2011	Tens of thousands of protesters gather in the central Syrian city of Hama			British Apache helicopters targeted a military base being used by Libyan leader Muammar Gaddafi's forces.
8 July 2011	Hundreds of thousands rally in Hama calling for end to Assad regime.			
10 July 2011	Opposition groups boycott "national dialogue conference" with Syrian government.			
12 July 2011		The Council issues a press statement condemning the 11 July attacks on the French and US Embassies in Damascus		
21 July 2011		The Advisers on Prevention of Genocide and on R2P issue another statement on Syria		
31 July 2011		UN Security Council condemns the use of force against civilians		



<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
3 August 2011		The Council holds a debate on the situation in the Middle East and adopted a presidential statement expressing concern over the deteriorating situation in Syria		
6 August 2011				In a statement, GCC appealed for an immediate end to the violence
7 August 2011				The Arab League releases its first statement strongly condemning the violence in Syria. Saudi Arabia's King Abdullah recalls his ambassador from Syria in protest against Assad's deadly crackdown, calling the violence "unacceptable." Hours later, Kuwait and Bahrain follow suit, recalling their envoys.
9 August 2011	Turkish Foreign Minister Ahmet Davutoglu meets with Assad to discuss "concrete steps" to end violence			
10 August 2011		Council members are briefed by Assistant Secretary-General for Political Affairs, Oscar Fernández Taranco.		
13 August 2011	Syrian governmental forces attack the port city of Latakia			
18 August 2011		Council members receives a briefing from Under-Secretary General for Humanitarian Affairs, Valerie Amos, and High Commissioner for Human Rights. The Human Rights Office Fact-finding mission on Syria publishes its report	President Obama joined the leaders of Germany, France and Canada calling on Syria's President to step aside after months of popular protest and deadly reprisal.	
19 August 2011	13 demonstrators are killed in the city of Dara'a			

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22 August 2011		The Human Rights Council convenes a Special session (17th Special Session) on Syria and adopts resolution S-17/1. Navi Pillay, the latter urging them to consider referring Syria to the International Criminal Court		
27 August 2011				Arab foreign ministers tell Syria to halt its violent repression "before it's too late."
1 September 2011	The first senior Syrian official, Mr. Bakkour resigns			
2 September 2011			The EU imposes a Syrian oil embargo and travel ban.	
8 September 2011				Iranian President Mahmoud Ahmadinejad calls for Syria to dialogue rather than use force against its population.
10 September 2011				Arab League chief Nabil al-Arabi meets with Assad to present his 13-point document and reports to have "reached an agreement" with Assad regarding steps for reform.

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12 September 2011		UN General Assembly President Deiss asks the UN to act more decisively in response to “[outrages] of human dignity and the suffering of peoples” in the future, suggesting that in unstable situations in the Middle East, like that in Syria, the UN has no right to remain indifferent. The Human Rights Council appoints three high-level experts to an independent Commission of Inquiry to investigate alleged violations of international human rights law in Syria. In an opening statement to the 18th Session of the Human Rights Council Navi Pillay marks the death toll in Syria at 2,600.	Switzerland widens sanctions against Assad’s regime, including 19 individuals & institutions. Russia rejects Western calls for wider sanctions	
13 September 2011				Arab foreign ministers call for Syrian leadership to take urgent steps to halt violence
15 September 2011				Syrian opposition activists meeting in Istanbul announce the members of a Syrian National Council (SNC) which will aim to coordinate the opposition's policies against the Syrian leadership; members are drawn from Syria's various political, religious and ethnic groups.
19 September 2011		The Human Rights Council holds an interactive dialogue on the Situation of Human Rights in Syria and Sudan		

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23 September 2011		In a Briefing Note, Spokesperson for the Office of the High Commissioner for Human Rights (OHCHR) expresses concern over the “increasingly brutal crackdown,” urges the Syrian authorities to end the violence, and reiterates the need for the UNSC to refer the situation to the ICC.	The EU adopts additional sanctions against Syria, including “an investment ban in the Syrian oil sector,” while forecasting the “prohibition on the delivery of banknotes to the Syrian Central Bank” and more individuals added to the travel ban and asset freeze list. Switzerland announces the adoption of an embargo on the import, sales and transport of Syrian oil and oil products.	
26 September 2011			US Secretary of State Hillary Clinton discusses increasing pressure on Syrian regime with Chinese Foreign Minister Yang Jiechi, with Clinton urging China to support a UNSC resolution.	
4 October 2011		China and Russia veto a draft resolution, sponsored by France, Germany, Portugal and the UK, which condemned the Syrian crackdown on protestors (S/2011/612). Brazil, India, Lebanon and South Africa abstain (S/PV.6627).		
7 October 2011		The Human Rights Council discusses the situation in Syria, while a coalition of activists and rights groups send a draft resolution to all UN member states calling for the creation of a special UN monitor of human rights in Syria.		
10 October 2011				A group of Syrians opposed to Assad created the Syrian Alliance for Democracy, a collection of about 60 technocrats who hope to assist the opposition in terms of expertise

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11 October 2011			China's Foreign Ministry spokesman urges Syria to speed the reform process	
12 October 2011				The leader of the Syrian National Council says Western nations have not been "aggressive" enough in pressuring Russia to support UNSC action on Syria and calls for a conference that brings together the main stakeholders in the conflict
15 October 2011	Assad forms a 29-member committee to draft a new constitution within four months.			
16 October 2011				Arab Foreign Ministers hold an emergency meeting in Cairo to discuss Syria's suspension from the Arab League, creating a committee to oversee the situation and giving Syria 15 days to enact a cease-fire. The Arab League offers to host talks between the opposition and the Damascus leadership, but both sides resist.
17 October 2011		The UN Secretary-General urges Assad to accept the Human Rights Council Commission or inquiry and end the violence.		

Date	In Syria	In the UN System	In Europe/US	In the Region
19 October 2011		In a UN General Assembly meeting on human rights in the context of protest movements in the Middle East, delegates said: ° UK: the Government of Syria must immediately end all human rights violations ° US: expressed profound concern over reports from the fact finding mission ° Syria: suggested the country's readiness to receive investigators from the HRC		
20 October 2011		The UN calls on Syria to end its raids into Lebanon in search of opposition members and army deserters seeking refuge.		Gaddafi is killed after being captured in his birthplace of Sirte.
24 October 2011				King Abdullah of Jordan expresses his "great concern," given that that no one within or outside of the region "knows how to tackle the Syria issue," and that his attempts to initiate dialogue with Assad have been met with disinterest.
25 October 2011			China announces it is sending an envoy to Syria from October 26 – 30, hoping to convince Syria to deliver on its reform pledges and respond to the people's appeals	
26 October 2011	A delegation from the Arab League headed by Qatar meets with Syrian officials in Damascus to encourage Assad to end the bloodshed and implement reforms.			
29 October 2011		The UN Secretary-General condemns the "unacceptable" violence in Syria and calls for its immediate cessation.		

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2 November 2011	Syria accepts a peace agreement proposed by the Arab League promising to end a military crackdown			
7 November 2011	Syrian forces kill 12 persons.			Prime Ministers of Qatar, Sheik Hamad bin Jassim al-Thani, call for a meeting of the Arab league to weigh Syria's failure to put into effect the deal struck with the organization.
On 8 November 2011	Syria governmental forces launch an attack to retake Homs	The UN reports the death toll in Syria to be over 3,500 despite the Government's alleged full acceptance of the Arab League plan.	UK Foreign Secretary William Hague calls for greater pressure on the Assad regime	The Syrian National Council declares Homs a "humanitarian disaster area," asking for the OIC and the Arab League to act "to stop the massacre."
9 November 2011		During the UN Security Council's open debate on civilian protection, Navi Pillay says there is a serious risk of the situation in Syria descending into an armed struggle; the US urges Syrian citizens not to surrender weapons to the government in response to Syria's call to do so in exchange for amnesty; several countries express condemnation of the Assad regime; the US, Japan and France suggest the UNSC failed to protect civilians in not adopting a resolution condemning the violence.		
12 November 2011				The Arab league almost unanimously decides to suspend Syria (Lebanon, Yemen and Syria oppose the decision)
13 November 2011	Syria calls for an urgent Arab summit meeting			

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14 November 2011				King Abdullah of Jordan calls on Assad to step down for good, but expresses concern over the political conditions of post-Assad Syria.
15 November 2011				Turkey threatens to cut off electricity to Syria if Assad “[stays] on this course [of violence].”
16 November 2011				Morocco withdraws its ambassador from Syria after its embassy is attacked by Syrian demonstrators. The Arab League gives Damascus three days to implement the plan, threatening economic sanctions should Syria fail to comply.
22 November 2011		The UN General Assembly 3rd Committee approves by a vote of 122-13 a nonbinding resolution condemning the regime’s violence and calling on Syrian authorities to implement the Arab League’s peace plan “without further delay.”		
27 November 2011				The Arab League approves tough economic sanctions against Syria
28 November 2011		The HRC releases the report of the Commission of Inquiry detailing the regime’s excessive use of force against the civilian population, including summary executions, enforced disappearances, arbitrary arrests and sexual violence.		



Date	In Syria	In the UN System	In Europe/US	In the Region
30 November 2011				The OIC holds an emergency meeting as a “last chance” to resolve the crisis “within the broader Islamic family.” Turkey says that Assad’s government has come to “the end of the road” and announces economic sanctions that include the suspension of all financial dealings with Syria and the freezing of Assad’s assets.
2 December 2011		The Human Rights Council covers a third Special Session on Syria and adopts resolution S-18/1. Navi Pillay urges the international community to take “urgent and effective measures to protect the Syrian people” and refer the regime’s “crimes against humanity” to the ICC.		
3 December 2011				The Arab League orders a freeze on the assets of 19 Syrian officials, a ban on their travel and a reduction in flights to Syria if the government refuses to admit international monitors, release political prisoners and end its crackdown on protests.
5 December 2011	Syria agrees to allow an Arab mission of military and civilian observers providing the Arab League revokes economic sanctions and Syria’s suspension from the League.			
9 Decembr 2011				Turkey warns it will intervene if crisis escalates

<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
12 December 2011	Syrians vote in municipal elections for the country's 14 provinces	High Commissioner for Human Rights, Navi Pillay, briefs Security Council members in informal consultations on the situation in Syria, indicating that crimes against humanity had likely been committed by government forces.		
15 December 2011		Russia calls for emergency informal consultations under the "Middle East" agenda item to discuss a proposed Russian draft resolution on Syria.		
16 December 2011				The Syrian National Council holds its first congress in Tunisia to discuss its policy and how to protect civilians and prepare a transition plan for post-Assad Syria.
17 December 2011				Arab Ministerial Committee meets in Doha
19 December 2011	Syria agrees to allow an observer mission into the country to monitor compliance with the Arab League peace agreement	UN General Assembly passes resolution A/RES/66/176 condemning the violence in Syria and supporting the Arab League plan		
20 December 2011	Over 100 persons are killed by governmental forces in Idlib			
23 December 2011	Two powerful bombs explode outside government offices in Damascus.	The UN Secretary-General reiterates his grave concern at the escalating violence, welcomes the deployment of the observer team, and urges the Syrian Government to "fully and speedily" implement the Arab League peace plan.		
26 December 2011	Arab League observers arrive in Syria			

Date	In Syria	In the UN System	In Europe/US	In the Region
3 January 2012				Arab League calls for an emergency meeting in Cairo to discuss whether the monitors should leave
4 January 2012				The Arab League announces it will add 50 monitors in Syria.
6 January 2012	A car bomb kills 26 people	The Security Council condemns a terrorist attack in Damascus in a press statement (SC/10513). The UN Secretary-General issues a statement expressing his grave concern, and demanding the cessation of violence.		
8 January 2012				Arab Ministerial Committee meets in Cairo
10 January 2012	President Assad in a public address attacks the Arab League for isolating his country. 22 observers are injured in the port of Latakia	Under-Secretary-General for Political Affairs B. Lynn Pascoe briefs Security Council members on the Syrian situation in informal consultations		
11 January 2012				The Secretary General of the Arab League, Nabil El-Arabi expresses his growing doubts on the monitoring mission's effectiveness and says that the Syrian government is not complying.
13 January 2012			France orders a probe into the death of a French journalist in Syria, implicating the Syrian government.	
15 January 2012				The Emir of Qatar, Sheikh Hamad Bin Khalifa Al Thani, proposes Arab military intervention in Syria.
17 January 2012				The chief of the FSA, Col. Riad al-Assad, asks for UNSC involvement and for international intervention to replace the "failing" Arab observer mission.

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18 January 2012			President Obama condemns the “unacceptable violence” and urges to scale up the international pressure on the Assad regime.	
22 January 2012				The Arab League decides to facilitate political transition in Syria
23 January 2012			The EU tightens sanctions, adding 22 individuals and 8 entities to the asset freeze and travel ban list	
24 January 2012				Saudi Arabia, Kuwait, Qatar, Oman, Bahrain and UAE decide to pull out their monitors Qatari Prime Minister announces Qatar’s intention to take the Arab position on the Syrian crisis to the UNSC.
27 January 2012			Ambassador Rice urges the UNSC to support the Arab League’s plan to mediate a political transition in Syria.	
28 January 2012				The Arab League decides to suspend its monitoring mission in Syria
31 January 2012		A new draft resolution (coordinated by EU members of the Security Council, the US, and several Arab states) supporting the Arab League's approach to Syria is introduced to the Security Council by Morocco.		
2 February 2012				Jordan announces the withdrawal of its monitors from the currently suspended Arab League monitoring mission.
4 February 2012	Syrian governmental forces begin intense artillery bombardment of Homs	The Security Council votes on a draft resolution condemning the violence in but Russia and China veto the draft resolution		

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7 February 2012			Germany, Spain, Belgium, France and Britain also recalled their ambassadors; Arab Gulf countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates expelled the Syrian Ambassadors. Ms Clinton calls for the formation of "Friends of democratic Syria"	Turley supports US-led initiative of "Friends of democratic Syria"
8 February 2012		The UN Secretary-General says the "appalling brutality [...] is a grim harbinger of worse to come" in Syria and that the Arab League intends to revive the monitoring mission.	The EU announces preparation for a new round of sanction	
9 February 2012			The US State Department announces that its top Middle East envoy has been dispatched to Morocco, France and Bahrain to begin organizing the "Friends of Syria" meeting set for February 24.	
10 February 2012		UN Special Advisers on Genocide and R2P urge immediate action to suspend violence in Syria		
12 February 2012				The Arab League adopts a resolution asking the Security Council to authorize a joint Arab-UN force
13 February 2012		At the UN General Assembly on Syria, Navi Pillay says that the failure of the UNSC to agree on collective action has emboldened the regime, which has committed crimes against humanity since March 2011.		
14 February 2012	Senior Chinese envoy, Zhai Jun, visits Damascus	The UNGA adopts a nonbinding resolution condemning the regime's violence and demanding that the government implement all provisions of the Arab League plan.	France sets up a humanitarian fund for aid agencies to help the Syrian people	

<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
15 February 2012	Syria announces that February 26 will be the date for a referendum on the new constitution.			
16 February 2012		The UN General Assembly votes in favor of a resolution backing an Arab League plan calling for the Syrian president Assad to step down		
19 February 2012				Egypt announces that its ambassador to Syria has been recalled in a move to further isolate the Assad regime.
22 February 2012	Syrian governmental forces shell Baba Amr, a neighbourhood of Homs. 80 people are reported killed including 2 western journalists			
23 February 2012		Kofi Annan is appointed Joint U.N.-Arab League special envoy to Syria. The UN Independent International Commission of Inquiry released its second report on the situation in Syria		
24 February 2012				The Friends of Syria group meets in Tunisia to raise pressure on the Assad regime and meet with opposition groups.
26 February 2012				20 members of the Syrian National Council (SNC) form the Syrian Patriotic Group
27 February 2012			The EU imposes new sanctions, freezing the assets of 7 Syrian government officials and the Syrian central bank, and banning cargo flights from the EU, as well as the purchase of gold, precious metals, and diamonds.	

Date	In Syria	In the UN System	In Europe/US	In the Region
28 February 2012		Under-Secretary-General for Political Affairs, B. Lynn Pascoe, briefs on the deteriorating situation in Syria saying there is credible reports of in excess of 7,500 dead (S/PV.6725). The 19th Session of the Human Rights Council takes place in Geneva		
29 February 2012		Valerie Amos, UN Under-Secretary-General for Humanitarian Affairs, says that regime has denied her request to enter the country. The Human Rights Council adopts a resolution strongly condemning the widespread and systematic violations of human rights by the Syrian authorities.		Tunisia says it will offer political asylum to Assad if such a proposal would stop the bloodshed.
1 March 2012	Rebels in Baba Amr neighborhood of the city of Homs announced a tactical withdrawal after a 27-day siege under intense bombardment	The Council issues a press statement (SC/10564) deploring the deteriorating humanitarian situation in Syria and calling upon Damascus to grant access to Valerie Amos, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. Human Rights Council adopts resolution A/RES/19/L.1/Rev 1	The Elders release a statement calling for an immediate halt to the violence in Syria and urging a “humanitarian pause” to permit access to those in need. The UK announces the suspension of operations of its embassy in Syria and the withdrawal of all diplomats.	
		In an interview with Al-Jazeera, Navi Pillay cautions against arming the Syrian opposition for fear of escalating the violence		
4 March 2012				The Arab League, OIC and The Humanitarian Forum hold the 2nd Humanitarian Conference on Syria, with 110 participants from over 70 NGOs and UN agencies discussing the humanitarian situation in Syria and its impact on neighboring countries.

<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
6 March 2012		Under-Secretary-General for Political Affairs, B. Lynn Pascoe, briefs Security Council members reporting that both Amos and Kofi Annan, the UN-Arab League Special Envoy for Syria, would soon be visiting Damascus. P5+Morocco negotiations take place on a draft resolution condemning the violence in Syria. However, as no agreement is possible. The UN Special Rapporteur on Torture says that torture of inmates in detention centers in Syria is “increasing in gravity,” and the UNSC “has a responsibility to protect the Syria people from these very serious crimes.”	The US Department of State issues a travel warning to US citizens against traveling to Syria and recommending that any US citizens in Syria depart immediately “while it is still possible.”	
7-9 March 2012	Valerie Amos, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, visits Syria. A Chinese envoy arrives in Syria to meet with Syrian officials and press for a halt to violence, proposing a six-point peace plan. The ICRC and SARC enter Baba Amr, Homs to provide humanitarian aid			
8 March 2012	Syria’s Deputy Oil Minister announces his defection from the government, “joining the dignified people’s revolution,” and speaks out against the regime’s brutality.			
<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
10 March 2012	Kofi Annan, the UN-Arab League Special Envoy for Syria, visits Syria			



11 March 2012	Heavy shelling in the northern province of Idlib President Assad meets with Kofi Annan			
12 March 2012		Syria is a prominent issue at a high-level debate on challenges and opportunities in the Middle East (S/PV.6734). UK ambassador William Hague says that the UNSC has “failed in its responsibilities towards the Syrian people,” and must now show unity and leadership by fully supporting the efforts of the Arab League.		
13 March 2012		Valerie Amos, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, briefs the Security Council on her visit to Syria. UNHCR says that at least 30,000 Syrians had fled to neighboring countries and that at least 200,000 more are internally displaced		The Muslim Brotherhood and its political arm, the Islamic Action Front, release a joint statement, saying that genocide is being committed in Syria, international hesitation has allowed Assad to continue committing crimes.
15 March 2012		The UN Secretary-General releases a statement marking the one-year anniversary of the Syrian uprising, calling for unified international support to halt the bloodshed.	The US Department of State says it is “pursuing every avenue to get humanitarian relief into Syria and pledging \$12 million in assistance	Saudi Arabia, Bahrain, and the Netherlands announce the closure of their embassies and withdrawal of diplomats from Damascus.
16 March 2012		Kofi Annan briefs the Security Council on his visit to Syria. His six-point peace plan is submitted to the United Nations		Four of the GCC states (the United Arab Emirates, Qatar, Oman and Kuwait) announce the closure of their embassies in Syria. Turkey says consular services at its Damascus embassy will stop on March 22 and urged its citizens to leave Syria.
<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
19 March 2012			The President of the ICRC meets with Russia’s Foreign Minister, Sergey Lavrov, in Moscow to push Russia to support daily breaks in fighting for humanitarian access,	

20 March 2012		The UN Secretary-General stresses the need for the international community to “speak with one voice”		
21 March 2012		The Security Council agrees on a presidential statement (S/PRST/2012/6) supporting Annan and his six-point plan for mediation (S/PV.6736).		
22 March 2012		Informal meeting of the Security Council with the Human Rights Council’s Commission of Inquiry on Syria.	The EU allocates €7 million in humanitarian aid to Syria “to finance life-saving assistance to those who have been wounded or forced to flee the ongoing violence.”	
23 March 2012		The Human Rights Council extends the mandate of the Commission of Inquiry on Syria and requests continued reporting on gross human rights violations in Syria (A/HRC/RES/19/22).	EU strengthens sanctions against Syria	
24 March 2012	A top defector from the Syrian military announces the unification of all military councils and battalions inside Syria under the leadership of the FSA, commanded by Col. Riad al-Asaad			
25 March 2012	The Syrian Government commits to the six-point plan proposed by United Nations/League of Arab States Joint Special Envoy Kofi Annan			
<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
1 April 2012				The Friends of Syria meet in Turkey and collectively pledge over \$100 million dollars for non-lethal material support to the opposition

2 April 2012			The US announces that it will work with international partners to establish an Accountability Clearinghouse that will support Syrian and international efforts to promote accountability. The President of the ICRC heads to Damascus for talks aimed at expanding aid operations and gaining access to all detainees,	
5 April 2012		UN Security Council Presidential Statement S/PRST/2012/10		
7 April 2012				Turkey's Foreign Minister reports increased Syrian military attacks near the border The OIC says it is preparing humanitarian aid worth up to \$70 million to help roughly 1 million Syrians affected by the violence.
9 April 2012				Turkey accuses Assad's forces of shooting refugees inside Turkey and (11 April) raises the possibility of calling on NATO to protect Turkey's border against incursions by Syrian forces.
14 April 2012		The Council unanimously adopts resolution 2042 authorizing the deployment of 30 unarmed military observers to Syria		
<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
15 April 2012	A preliminary team of 6 UN ceasefire monitors arrives in Syria for discussions with Syrian officials over the details of the full monitoring mission.			

18 April 2012		UN Secretary-General Ban Ki-moon asks the European Union to provide helicopters for the mission.		
19 April 2012			The Friends of Syria meet in Paris, backing the Annan plan and UN monitoring mission as the “last hope” to resolve the Syrian crisis.	
20 April 2012		The UN office in Geneva hosts a Syria Humanitarian Forum, attended by directors of humanitarian aid departments of various countries, to provide a platform for entities involved in humanitarian response to the Syria crisis to share information, mobilize funding, and support effective and timely dispersal of aid.		
21 April 2012	Syria informs Kofi Annan that it had withdrawn its military concentrations from population centers.	The Council adopts Resolution 2043 unanimously establishing UNSMIS for a period of 90 days and comprised of up to 300 unarmed military observers and an appropriate civilian component to be deployed throughout the country.		
<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
22 April 2012	First UN monitoring team arrives in Douma		The EU imposes another round of sanctions on Syria which bans the sale of luxury goods to Syria and restricts the export to Syria any equipment, goods and technology “that can be used for internal repression or for making and maintaining such products.”	
23 April 2012		UN Under-Secretary-General Pascoe says that the Syrian government has failed to fully carry out the six-point plan.		

24 April 2012		Kofi Annan briefs Security Council members urging quick deployment of UNSMIS to consolidate the cessation of violence and create conditions for political transition.		
26 April 2012	.	In a statement, the UN Secretary-General expresses his alarm over reports of continued violence in Syria and condemns the continued repression of civilians and violence, calling the situation “unacceptable.”		The Arab League decides to request that Morocco (as the Arab voice on the Council) propose that the Council should respond more effectively to the need to protect civilians in Syria. The Arab League sends a letter to the Secretary-General underlining the need for rapid deployment of monitors
27 April 2012		Major General Robert Mood (Norway) is appointed as head of UNSMIS.		
28 April 2012				The Lebanese navy seizes weapons from a ship, allegedly bound for rebel groups in Syria.

Date	In Syria	In the UN System	In Europe/US	In the Region
1 May 2012		The Under-Secretary for Peacekeeping Operations, Herve Ladsous, gives a press conference in which he describes the level of violence in Syria as “appalling” and stresses the importance of “the role of countries and voices with influence, including in the region.”	President Obama signs Executive Order 13608, prohibiting certain transactions with and suspending entry into the US of foreign sanctions evaders with respect to Iran and Syria.	
2 May 2012				The Syrian National Council (SNC) urges the UNSC, UNSMIS observers, and international humanitarian agencies “to investigate the numerous cases of arbitrary detention and death-under-torture that regularly occur in Syria”
7 May 2012	Syria holds its first parliamentary elections under the new constitution. The Syrian National Council (SNC) calls the elections an “insult to democracy,”			
8 May 2012	.	Council members are briefed by Kofi Annan and DPKO head Hervé Ladsous. Annan expresses concern over the spate of deadly bombings.		
10 May 2012	At least 55 people are killed and about 350 injured by two powerful car bombs that exploded outside a key intelligence compound in Damascus	The Council issues a press statement condemning a terrorist attack in Damascus.		

Date	In Syria	In the UN System	In Europe/US	In the Region
15 May 2012	An explosion damages three UN vehicles in Khan Cheikhoun near Hama during clashes between protestors and government forces			Burhan Ghalioun is reelected as head of the Syrian National Council (SNC).
16 May 2012	.	The UN Committee against Torture considers the situation in Syria, in particular widespread killings, and torture		
17 May 2012				After backlash following his reelection, Burhan Ghalioun announces his resignation as head of the SNC.
18-22 May 2012	DPKO head Hervé Ladsous visits Syria with Jean-Marie Guéhenno, Kofi Annan's deputy		Canada imposes an eighth round of sanctions	
20 May 2012	There is an explosion in Douma near Damascus, very close to UN observers being led by UNSMIS head Robert Mood and Ladsous.			
23 May 2012				Burhan Ghalioun resigns from the position of head of the Syrian National Council, which calls for new elections on 9 June.
24 May 2012	UNSMIS observers meet with members of the Syrian opposition to assist with mediation efforts	The Commission of Inquiry on Syria issues an updated report on the situation in Syria		
25 May 2012	Syrian military attacks at Houla, near Homs	The Council receives its first UNSMIS report	France, the UK, Germany, Italy, Spain, Canada and Australia expel senior Syrian diplomats in protest.	
27 May 2012		UNSC releases a press statement condemning the killings at Houla and demands the cessation of violence in all its forms		

Date	In Syria	In the UN System	In Europe/US	In the Region
28 May 2012	Kofi Annan begins two days of negotiations in Damascus	The Special Representative for Children and Armed Conflict also condemns the Houla attack.		
28-29 May 2012	Kofi Annan visits Damascus and meets with Syrian President Assad urging the cessation of all military operations by the army and allied militia (Shabbiyah). Annan also meets with UNSMIS, opposition figures and civil society.			
29 May 2012		The High Commissioner for Human Rights speaks about the 108 civilians killed in the Houla attack, estimating that under 20 deaths were caused by shelling and tank fire with the most of the remaining deaths due to summary executions	In response to the massacre in Houla, 11 countries – Australia, Canada, Britain, the US, Bulgaria, France, Germany, Italy, Switzerland, the Netherlands, and Spain – expel Syrian diplomats from their capitals.	In a letter to the President of the UNSC, head of the Arab League, Nabil ElArabi, calls on the UNSC to “shoulder its responsibility” to halt the violence by taking measure to protect Syrian civilians, including by increasing the number of UNSMIS observers and granting them the authority to end crimes being committed.
30 May 2012	UNSMIS reports the discovery of 13 bodies in the area of Assukar in Deir EL-Zour, with their hands tied behind their backs.	Guéhenno (deputy to Kofi Annan) and Ladsous (UN Under-Secretary General for Peacekeeping) brief Security Council members regarding ongoing mediation efforts and UNSMIS activities.  At the request of Qatar, Turkey, the UNS, Saudi Arabia, Kuwait, Denmark and the EU, the Human Rights Council announces it will hold a Special Session on June 1 on Syria		



Date	In Syria	In the UN System	In Europe/US	In the Region
1 June 2012		Speaking at the 20th Regular Session of the Human Rights Council, Navi Pillay, calls for an immediate and international investigation. The Human Rights Council passes a resolution condemning the government's use of force against the civilian population		
2 June 2012				Arab League adopts resolution urging the UN Security Council to take the necessary measures to protect the Syrian population
5 June 2012	The Syrian government bans 17 diplomats from Belgium, Britain, Bulgaria, France, Italy, Canada, Germany, the US, Spain, Switzerland, and Turkey.			
6 June 2012	UN monitors are blocked by governmental forces at a military check point around Qubeir while trying to reach the site of a newly reported mass killing	President of the UNGA, Nasir Abdulaziz Al-Nasser expresses his disappointment in the Syrian government for failing to comply with the six-point plan.		
7 June 2012		Mr. Annan addressing the UN General Assembly says that his peace plan is not working	The Friends of Syria meet for the second time and call on all members of the international community to implement and enforce sanctions to increase pressure on the Assad regime to comply with its obligations under the six-point plan.	
8 June 2012			A top official from the US State Department visits Moscow The EU adopts a special measure amounting to €23 million to enable a rapid response to the crisis situation in Syria and to areas affected by the influx of refugees.	

Date	In Syria	In the UN System	In Europe/US	In the Region
10 June 2012	Syrian government forces attack areas in the central province of Homs.			
11 June 2012		Kofi Annan and UNSC expresses his grave concern over the escalation of violence, including Syrian forces' shelling of Homs		
14 June 2012		Special Advisers of the Secretary-General on the Prevention of Genocide and the Responsibility to Protect express alarm at the escalation of targeted attacks against civilians which "underscore the Syrian Government's manifest failure to protect its population."		
15 June 2012			The EU imposes new sanctions on Syria, banning the export of luxury goods and dual use goods that can be used for internal repression to Syria.	
16 June 2012		The United Nations suspends its observer mission because of escalating violence.		
18 June 2012		In her speech at the opening of the Human Rights Council's 20th Special Session, Navi Pillay says that the Syrian government is committing crimes against humanity and possibly war crimes.		
20 June 2012			The ICRC requests a temporary pause in fighting between the Syrian army and opposition groups in several neighborhoods of Homs in order to evacuate and assist hundreds of people stranded and in need of medical attention.	

Date	In Syria	In the UN System	In Europe/US	In the Region
22 June 2012	More than 25 men are found shot to death near the northern city of Aleppo	At a joint press conference, Kofi Annan and Gen. Mood say that UNSMIS is prepared to resume its monitoring activities when the situation on the ground allows. Annan calls on “countries of influence” to raise pressure on parties to the Syrian conflict		Turkey announces that the Syrian forces has shot down a Turkish war plane
24 June 2012				The OIC holds an emergency meeting to discuss the situation in Syria and the OIC’s Secretary General warns of the regional impact of the possible civil war. Foreign minister of Turkey announced that Turkey would convene emergency talks with NATO over the downing by Syria of one of its jet fighters
25 June 2012			Australia expands its sanctions against Syria to include a ban on all commercial transactions between the two countries of petroleum, petroleum products, financial services, telecommunications, and precious metals. The EU strongly condemns the “brutal violence and massacres of civilians” in Houla and Qubeir and imposes additional sanctions against the Syrian International Islamic Bank and Syria’s national oil transport company.	The OIC’s executive committee recommends suspending Syria’s membership and urges the UNSC “to assume its full responsibilities” to put an end to the violence.
26 June 2012			NATO meets at the request of Turkey and says it is not considering military action but will remain seized of future developments.	
27 June 2012		The Human Rights Council holds an Interactive Dialogue to discuss the situation in Syria.		

Date	In Syria	In the UN System	In Europe/US	In the Region
30 June 2012		Annan hosts Foreign Ministers of the P5, Iraq, Kuwait, and Qatar; the Secretaries-General of the UN and Arab League; and the EU High Representative for Foreign Affairs to "Syria Action Group" meeting in Geneva to discuss "steps and measures to secure full implementation of the six-point plan," an immediate cessation of violence, and agree on guidelines for a Syrian-led political transition.		
2 July 2012		Navi Pillay brief the UN Security Council		Arab League hosts a Syrian opposition conference
6 July 2012		The Human Rights Council condemns the situation in Syria. The UNSG releases his report to the UNSC on the implementation of resolution 2043 and UNSMIS end of mandate.	The Friends of Syria meet in Paris, calling for broader sanctions against Syria and regime officials.	
9 July 2012	Kofi Annan meets with President Assad, with Annan reporting that the Syrian government remains committed to the six-point plan.			
11 July 2012				The Syrian Ambassador to Iraq is reported to have defected.
12 July 2012	Escalation of violence in Tremseh near Hama resulting in significant casualties			
13 July 2012		The UN Secretary-General releases a statement on the mass killings in Treimseh, condemning the violence and calling upon all Member States to take "collective and decisive action to immediately and fully stop the tragedy unfolding in Syria."	US officials express concern about Syria's stockpile of chemical weapons	

Date	In Syria	In the UN System	In Europe/US	In the Region
15 July 2012			Red Cross declares that the Syrian conflict constitutes a civil war.	
16 July 2012	Syria declares Morocco's Ambassador persona non grata		The Fourth Syrian Humanitarian Forum takes place in Geneva to mobilize resources to provide assistance to Syrians affected by the conflict. Valerie Amos says the fighting is having a devastating impact on Syrians and calls on all parties to "take all feasible precautions to avoid civilian injury and loss of life."	Morocco declares Syria's Ambassador persona non grata
18 July 2012	In a bomb attack in Damascus several members of President Assad's inner circle are killed	The UNSG meets with Chinese President Hu Jintao to urge UNSC action, telling reporters the situation is "very serious".	The US Treasury announces additional sanctions against 29 officials and 5 companies linked to the Syrian government agency responsible for developing and producing non-conventional weapons.	
20 July 2012		The UNSC adopts resolution 2059, renewing the mandate of UNSMIS for a "final period of 30 days," indicating that any further renewal would require a significant reduction in violence on the ground.		
23 July 2012	Syrian Foreign Ministry warns that Syria could use chemical weapons in response to any external aggression		EU foreign ministers meeting in Brussels decide to freeze the assets of, and ban visas for, 26 people and to prevent European companies from doing business with three more entities in Syria	
27 July 2012		Navi Pillay expresses deep concern over the escalating violence and threat to civilians and reminds the Syrian government of its Responsibility to Protect.		

Date	In Syria	In the UN System	In Europe/US	In the Region
31 July 2012		The UNHCR reports that 200,000 people fled the violence in Aleppo over the last several days, and that the total number of refugees stands at over 129,240.		
2 August 2012		Kofi Annan resigns as special envoy to Syria.	President Obama approves an additional \$12 million in emergency relief aid to Syria.	
3 August 2012		UN General Assembly overwhelmingly approved an Arab-backed resolution denouncing the Syrian government		
6 August 2012	Syria's former Prime Minister, Riyad Fard Hijab, is reported having fled to Jordan.	France (President of the Security Council in August) announces it will organize a meeting of the Security Council to discuss the humanitarian situation in Syria		
9 August 2012				Iran hosts a meeting of 30 countries to discuss Syria.
11 August 2012				Secretary Clinton and Turkey's Foreign Minister Davutoglu meet to discuss joint efforts to end the violence and respond to the humanitarian crisis in Syria.
14 August 2012	United Nations emergency relief coordinator Valerie Amos arrives in Syria			
15 August 2012		Lakhdar Brahimi emerges as successor to Mr. Annan.  The UN Independent International Commission of Inquiry on Syria released its latest report		The OIC adopts a resolution suspending Syria's membership
16 August 2012		The Security Council decides to end the U.N. military observer mission that was sent to monitor the cease-fire		

<b>Date</b>	<b>In Syria</b>	<b>In the UN System</b>	<b>In Europe/US</b>	<b>In the Region</b>
17 August 2012		UN confirms Lakhdar Brahimi as the new Joint UN/Arab League Mediator  The UNHCR reports the number of registered refugees in neighboring countries at over 170,000, with 1.2 million internally displaced		
25 August 2012	Hundreds of civilians reported killed in Daraya			
26 August 2012				Egyptian President Mohamed Morsi says he is ready to cooperate with Iran, Turkey and Saudi Arabia in an effort to end the spiraling violence in Syria
28 August 2012				Turkey asks the Security Council to create a safe haven for Syrian refugees inside Syria
29 August 2011	In an interview with pro-government al-Dunya TV, Preside Assad dismisses as "unrealistic" the idea of creating humanitarian buffer zones within Syria			
30 August 2012		The Security Council meets to discuss the situation in the Middle East		Egypt's president Mohamed Morsi affirmed that the Syrian uprising is a "revolution against an oppressive regime" and that the NAM has an "ethical duty

## CONCLUSION

Our research was aimed at understanding by which developments in the political and legal thinking the R2P finally reached its actual shape. To this end, we followed two parallel yet converging paths; on one side the evolution of the concept of absolute sovereignty and the shift towards an increased involvement of the international community in the internal affairs of the individual states; and, on the other side, the modifications incurred in the concept of intervention for humanitarian purposes and the lessons learned out of the experiences of the 1990s. We have argued that what R2P is, or is not, should be understood in the light of this long development. Having then established what now R2P is about - a principle of its own, which is an offspring yet independent from what preceded - we wanted to measure to which extent R2P was able, in the ten years of its existence, to influence the behavior of the international community, and in particular of the United Nations Security Council. Hence, we selected four cases – Libya, Côte d’Ivoire, Sri Lanka and Syria– where R2P was invoked or should have been invoked, with the aim of finding regularities useful for guiding future action.

In Chapter one we saw how a series of issues and activities that were traditionally considered within the domestic sphere of a state became the object of international examination and how governments, once solely responsible for the common good, now share their responsibility with other institutions operating within and across state frontiers.

We firstly analyzed the changing nature of sovereignty from Westphalia to the establishment of the United Nations. We briefly looked at how the concept adapted to the various political and historical circumstances that took place in Europe and in the Western juridical/political thinking. The analysis did not pretend to be fully exhaustive, as the investigation of the evolution of the concept of state sovereignty was exclusively aimed at defining a pattern that could help understanding present day developments. In the discussion, we saw how the seeds of the idea that



sovereignty entails responsibility could already be found in Hugo Grotius (1583 – 1645) and in representatives of the Social Pact. It was however only between the first and second World Wars, that doctrines emerged seeking to establish the supremacy of the international community over the individual states. We saw how the new principle of “relative sovereignty” took form, in which the freedom of each state is limited by the freedom of other states and the independence of a state is subjected to international law.

The establishment of the League of Nations first and then the United Nations sanctioned the departure from absolute sovereignty. In fact, the simple act of joining an international organization is by its nature a voluntary limitation of the state’s sovereignty. Through this act, states voluntarily transfer certain of their prerogatives to the international entity. Once set the principle that sovereignty is no longer absolute, further limitations followed suit.

Many of the challenges to sovereignty that states have experienced in the last decades were either originated from “within”, “bottom up” or “top-down” (Nico Schrijver). The growing international recognition of the rights to self-determination and of minorities falls in the category of bottom up challenges. Regional integration, e.g. the European Union, and the Peace and Security Resolutions of the UN Council can be placed in the top-down category. International agreements on certain natural resources/eco systems and a number of trends such as the growth of global capital markets and the increasing role of multinational enterprises are also to be included in this category. The challenges to national sovereignty “from within” are for example those often imposed in the form of the conditionality dictated by the Bretton Woods institutions.

In addition, the development of a body of instruments for the protection of human rights and the establishment of the International criminal courts has further contributed to the modification of the concept of sovereignty. Although international human rights are mostly contained in treaties, some of these human rights have already attained the status of customary international law and even *ius cogens*, in other words, principles from which derogation either by legislation or by

treaty is prohibited. Human rights principles can, therefore, be binding on states without specific consent on their part. The establishment of the International Criminal Court in 2002 after 50 years of political hesitations marked another milestone in the evolution of sovereignty. Antonio Cassese argued that the emergence of a system of international justice has brought about a “revolutionary innovation (...) a seismic shift in thinking about sovereignty” as, with the establishment of international criminal tribunals, for the first time international bodies “penetrated that powerful and historically impervious fortress — state sovereignty — to reach out to all those who live within the fortress”.

Other scholars (Thomas Frank, Bruce Broomhall) argued that fundamental rules, such as those underlining international criminal law, are conditions of the membership in the international community; the establishment of direct international responsibility for individuals is justified by the fundamental interest of the international community in international peace and security and relies on such global norms as "the collective conscience of mankind."

In line with the above-mentioned developments we are witnessing a process of so-called “humanization” of international law (Tesón, Tomuschat, Peter), i.e. of a progressive shift from a state-centered to an individual-centered international law system. According to this theory even if they are subject to state actions, individuals have progressively emancipated themselves and have become active legal subjects. According to Anne Peters this “humanization” of sovereignty has two main corollaries: external state sovereignty requires a justification – just as internal sovereignty – and sovereignty implies responsibility.

R2P is probably more easily defined negatively, i.e. by saying what it is not. In particular, R2P is not synonymous of humanitarian intervention. This consideration brought us to investigate what happened in the 1990s, and why that experience prompted a review of the ways in which the international community intervenes for humanitarian purposes. Chapter two is devoted to this investigation. To this end we examined some of the interventions that took place in the 1990s and in particular those in Iraq to protect the rights of the Kurds in northern Iraq (1991) Somalia

(1992-1993), Rwanda (1993-1994) and the Yugoslav Wars/Kosovo (1991-1999). We also briefly looked at cases of interventions for humanitarian purposes that occurred in the late 19<sup>th</sup> early 20<sup>th</sup> century, again moved by the intellectual desire to understand where from the origin of the interference in other states' affairs to save strangers from massacre, atrocity, or extermination could be traced. Also in this case we stayed in the narrow path of the Western tradition, our cultural background not allowing us to stretch further.

There, we found that at the beginning of the 20<sup>th</sup> century a doctrine, although not a universally accepted one, existed, according to which humanitarian intervention could be legally justifiable. The examples we briefly saw were those of Great Britain, France and Russia in 1827 at the request of the Greek people to protect their rights of self-determination; the French intervention in Syria in 1860 to stop the massacres of the Christian Maronites; the 1866-68 intervention by Austria, France, Italy, Prussia and Russia in Crete in favor of its Christian population; the collective European powers' and Russia's Intervention of 1877-1878 in favor of the Christian insurrection in Bosnia, Herzegovina and Bulgaria; and the intervention of 1903-8 in favor of the Christian Macedonian population. Of course, as some scholars pointed out (Davide Rodogno) these interventions were strongly influenced by religious affiliation - the European powers intervened only against the Ottoman Empire to protect Ottoman Christians.

The first restrictions on recourse to war were developed in the Kellogg-Briand Pact in 1928, which reflected a new attitude toward the use of force in international relations. Then, with the partial prohibition to wage war established by the Covenant of the League of Nations, the idea of *bellum iustum* was superseded by the norm of non-interference in the internal affairs of another state. This was later incorporated in the United Nations Charter under article 2(4). Lauterpacht was probably one of the last scholars to defend the legal basis of humanitarian intervention linking it to the Grotian tradition of international law. In an article published in the British Yearbook of International Law in 1946 he argued that intervention was legally permissible when a state was guilty of cruelties against its

nationals in such a way that denied their fundamental human rights and shocked the conscience of mankind.

Following World War II, the UN Charter's prohibition on the use of force, except in cases of self-defense or at the direction of the Security Council, delegitimized any military intervention, and the legal debate on intervention for strictly humanitarian purposes was largely forgotten until the end of the Cold War. Interventions that took place in the 1970s such as that of India in East Pakistan (1971), Viet Nam in Cambodia (1978) and Tanzania in Uganda (1979) as well as the French Government's support for the coup against Jean-Bédél Bokassa in Central Africa (1979) were not authorized by the Security Council and considered illegal. Furthermore, it is interesting to note that "interveners" justified their action on the basis of the right of self-defense under Article 51 of the UN Charter and did not refer to the humanitarian aspect of the intervention. As Thomas Weiss rightly pointed out, at that time the notion of humanitarian intervention was "too far from the mainstream to be used successfully as a justification for state actions."

After the collapse of the Soviet Union humanitarianism saw a revival also thanks to the role played by the Security Council in legitimizing the threat or use of force in defense of humanitarian values. In this context the idea began to (re)emerge that an intervention into the domestic affairs of another state might be sometimes justified on moral grounds to protect civilians, and that humanitarian aid should be delivered without regard to national frontiers. An intense debate among academics took place already in the 1970s but more substantially throughout the 1980s and the 1990s on the legality of the recourse to force also for democracy-restoring intervention. Humanitarian intervention held an important position in international law doctrine. For some scholars the prohibition of the use of force set in the United Nations Charter was an insurmountable obstacle (e.g. Ian Brownlie, Oscar Schachter, Vladimir Kartashkin and Lori Fishler Damrosch) or pretext to pursue geopolitical goals (Noam Chomsky). A reinterpretation of both customary and conventional sources of international law led others to the conclusion that humanitarian intervention may be legally defensible if certain circumstances were present (e.g. Richard B. Lillich,

Myres McDougal, David J Scheffer and Fernand Tesón), and thus criteria to differentiate permissible and impermissible humanitarian intervention should be developed.

At the political level consensus on multilateral use of force started to coalesce in the 1990s. This new trend within the United Nations was also recognizable in the statements of then Secretary-Generals. Toward the end of his mandate Perez de Cuellar called specifically for a reinterpretation of the Charter's principles of sovereignty and noninterference in domestic affairs to allow for intervention on humanitarian grounds, as well as identification of the objective conditions under which this intervention should be carried out. Presenting "An Agenda for Peace" in 1992 Boutros-Ghali also urged governments "to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world."

The 1990s saw a dramatic increase in "complex emergencies" that often involved ethnic and civil conflicts. Military interventions were justified on human rights grounds to varying degrees in defense of the Kurds in northern Iraq in 1991, Somalia in 1991-1993, East Timor and Sierra Leone in 1999, and the former Yugoslavia throughout the 1990s. In Chapter two we focused on the cases of Iraq, Somalia, Rwanda and the Yugoslav War. The reason for this selection is that the interventions in northern Iraq and in Kosovo were not authorized by the Security Council; while Somalia and Rwanda show the cost of late/inadequate intervention.

The crisis in Somalia was the result of the civil war and subsequent disintegration of the state that followed the fall of Siad Barre in January 1991. It was estimated that between November 1991 and March 1992 approximately 30,000 to 50,000 people had already died when the Security Council intervened in April 1992 (Resolution 751) to deploy 50 UN observers to monitor the ceasefire in Mogadishu - a step that proved grossly inadequate. The Somalia case also stresses the vital importance of paying close attention to the local political culture.

Rwanda is another case in which the United Nations failed to take prompt action. When, in the summer of 1993, the urgency of establishing a mission to guarantee security throughout the country was stressed, it became evident that within the Security Council there was limited support to the deployment of a larger mission. Only in June 1994 the Council took the decision to authorize a 5,500-men strong U.N. force. But faced by the failure of member states to provide the resources necessary for the implementation of the mandate, a French-commanded multinational operation under Chapter VII of the UN Charter was instead authorized.

Of the two not authorized interventions, the intervention in northern Iraq was strictly aimed at improving the humanitarian situation and not to support the claim of Kurdish self-determination. Even if some casualties were reported following airdrops of food and supplies, this could not be compared with the 23,000 bombs that NATO dropped on Serbia and Kosovo during the 11-week Kosovo war and the 500 estimated deaths among civilians. Kosovo was the last and most controversial military intervention. Security Council members were divided while the moral justification for NATO's action was weakened by accusations that the intervention had caused more killings than it wanted to avoid. It became clear that new mechanisms should be found to respond to mass violations of human rights.

In 1996, Francis Deng, in collaboration with other scholars at Brookings Institution, published a book entitled 'Sovereignty as Responsibility: Conflict management in Africa'. In the book the authors affirmed that sovereignty could no longer be seen as a protection against external interference, but that "national governments are duty bound to ensure minimum standards of security and social welfare for their citizens and be accountable both to the national body politic and the international community". This formulation became the conceptual base of the Responsibility to Protect (R2P).

All of these examples confirm that many of the elements of the concept of responsibility to protect are not novel, but rooted in a broader philosophical or legal tradition, or are a reaction to acts or omissions that took place in the past, and it

appears to be this link that allowed the concept to gain acceptance in recent practice.

Chapter three focused on the origin, definition and legal basis of Responsibility to Protect. R2P differs from humanitarian intervention primarily because the latter was about military intervention. On the contrary, R2P is conceived as a continuum of actions that include prevention, reaction and rebuild. The idea of intervention as a continuum did not come out of the blue. It was already envisaged in Secretary-General Boutros Boutros-Ghali's Agenda for Peace of 1992, which distinguished peacemaking as preventive diplomacy and "post-conflict peace building." The challenge to reconcile the principle of non-interference with the need of the international community to respond to massive violation of human rights was taken by the government of Canada, which, upon suggestion by the then Secretary-General Kofi Annan, established the International Commission on Intervention and State Sovereignty (ICISS). In 2001 the Commission presented its report, where the whole concept of intervention for humanitarian purposes was totally reformulated focusing on the victims of conflict rather on those exercising power. The report stressed that states are primarily responsible to protect their population and only if they are unwilling or unable to do so the responsibility falls on the international community. This responsibility to protect involves three stages: to prevent, to react and to rebuild; forcible intervention should be considered the *ultima ratio*.

After its formulation by the ICISS, R2P was included in a plan for UN reform. The report of the High-level Panel on Threats, Challenge and Change of 2004, and the Secretary-General's report entitled "In Larger Freedom" (2005), included recommendations that governments endorse R2P. The UN reform negotiations led to the 2005 UN Summit Outcome Document, which endorsed some key elements of R2P. However, the 2005 Outcome Document reinterpreted politically the ICISS recommendations. The scope of R2P was narrowed, and the idea of guidelines for the authorization or endorsement of the use of force by the Security Council was dropped entirely, while the Document did not rule out the possibility of unilateral action. In 2006 the Security Council adopted two resolutions –1674/2006 on the

Protection of Civilians in Armed Conflict and 1706/2006 on Sudan. Following the adoption of resolutions 1674 and 1706, R2P came to a standstill and the discussion did not advance significantly.

Further advancements in the discussion of R2P came after the election of Mr. Ban Ki-moon to the post of Secretary-General of the United Nation in 2007, and even more so after the appointment of Edward Luck to Special Adviser to the Secretary-General on R2P in 2008. Since then the Secretary-General issued four reports on R2P, the last been released on 15 August 2012. The first report, issued in 2009, on implementing the responsibility to protect set out the three pillars of the concept drawn from the 2005 Summit Outcome: 1) the primary responsibility of states to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity; 2) the task of the international community to assist States to protect their populations from these crimes, and 3) the agreement to “take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter of the United Nations, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

The second report on early warning (2010) signaled the insufficient sharing of information and analysis among the existing streams of information within the UN system. The third report on the role of regional and sub-regional arrangements in implementing R2P (2011) highlighted the importance for the Security Council of neighboring states’ and regional organizations’ views, when determining which course of action to take in particular situations. Finally, the fourth report on timely and decisive action (2012) noted the many R2P tools available under the UN Charter, including non-coercive measures such as mediation and preventive diplomacy (Chapters VI and VIII) and coercive tools (Chapter VII) and highlights the preference to first address situations with peaceful measures.



In framing the debate on R2P Secretary-General Ban Ki-moon accepted the political compromise that resulted from the 2005 Outcome Document. He affirmed that it would be counterproductive to try to revisit the result of the negotiations. It is the opinion of this writer that R2P so narrowly defined has lost part of its innovative character and mostly reiterates existing obligations. The obligation to provide protection from genocide, war crimes, ethnic cleansing, and crimes against humanity, for example, stems from well established rules and principles of customary and treaty international human rights law and international humanitarian law that are universally binding. Notwithstanding the fact that R2P had been subject to a new reading under Secretary-General Ban Ki-moon, the question on whether and when to recur to force is still on the table and relevant questions such as which criteria/guiding principles should be applied to all Security Council's decision on enforcement measures under Chapter VII; what in case the Security Council is unable to take action or, as Ramesh Thakur said, "what to do with the bad guys (...), who use sovereignty as a license to kill with impunity" still remain unanswered. Diane Amn us rightly pointed out the legitimacy and legality of the different forms of military force under the R2P were not sufficiently examined in the 2009 Secretary-General's report. "The report does not set up clear lines between the legal and illegal forms under R2P. One of the reasons may be that R2P has not been viewed as a legal norm but primarily regarded as a broader emerging political, social and/or moral norm."<sup>571</sup>

The last report of the Secretary-General on timely and decisive response<sup>572</sup> recognizes that controversy still persists on aspects of implementation, and in particular on the use of coercive measures. It also acknowledges that there are times when recourse to such measures may be contemplated, but it does not elaborate further.

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<sup>571</sup> Amn us D., Responsibility to Protect: Emerging Rules on Humanitarian Intervention?, Global Society vol. 26 n.2 April 2012 pages 241-276

<sup>572</sup> UNITED NATIONS General Assembly Security Council A/66/874-S/2012/578 (last accessed 3/12/12)

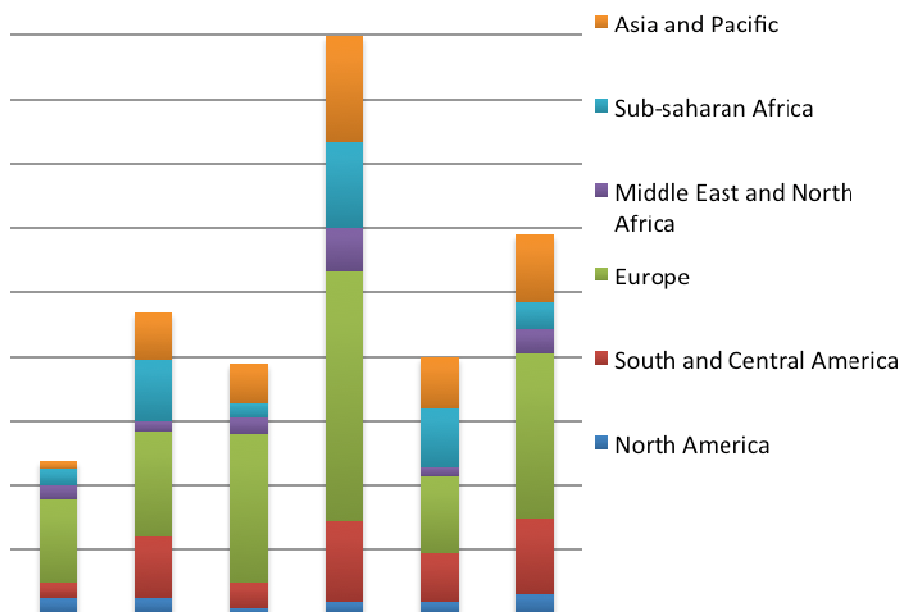
Yet, difficulties in defining criteria for the use of force might also be due to different philosophical theories about war elaborated throughout the centuries by the various cultures. We do not want to enter in the discussion of these theories as it would be presumptuous and off our topic, we just want to highlight that the principle of just war and its related criteria - the same that we have seen used by the ICISS and the High Level Panel - are the product of the Western/Christian philosophical tradition. Firstly codified by St Augustine, further elaborated by Thomas Aquinas, the theory was then revisited by Hugo Grotius. But this approach is not necessarily shared by other cultures. For example, probably due to the mystical nature of the Orthodox Church, no systematic thinking on the subject exists in Russia. And if, as the philosopher Nikolai Berdyaev said "In the evil condition of our world", one has to select war as the lesser of two evils (...), the lesser of the two evils is never good, "and war is never just."<sup>573</sup>

The merit of Secretary-General Ban Ki-moon is definitely to have reopened the debate and rekindled the interest for R2P. The graph below shows how often R2P was mentioned in statements delivered by governments in various United Nations bodies from 2006 to 2011. It clearly indicates an increase in parallel with the publication of the first report of the Secretary-General on the implementation of R2P.

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<sup>573</sup> Berdyaev N., *The Divine and the Human* (1947) cited in Robinson Paul, *Just war in comparative perspective*, Ashgate Publishing Company Burlington, USA, 2003 page 64

### Frequency of governmental statements on R2P at various UN bodies, by region and year



Source: International Coalition for the Responsibility to Protect

The discussion on the developments that contributed to the present definition of R2P served as background for the analysis of four specific case studies: Libya, Côte d’Ivoire, Sri Lanka, and Syria.

Consideration of these four cases allowed us to discuss which circumstances facilitated or hindered the adoption of R2P, with particular reference to Pillar three (response). To this end, the study focused on a set of “independent variables”, allowing for comparisons across cases. Proper statistical analysis was not possible because of the limited number of cases. In addition, all the relevant variables are qualitative by nature. However, in depth analysis of the four case studies yields some interesting generalizations and tentative conclusions.

Our research hypothesis was that R2P is influenced by five main independent variables, namely: the dynamic within the Security Council (active involvement of some specific countries/country representatives); reasonable perspective of success/attractive cost-benefit profile; the role of the relevant regional/sub-regional

organizations; the activity of the Human Rights Council; and the action of civil society.

### **1. Security Council's Dynamic.**

Our hypothesis was that the dynamic within the Security Council might be influenced by the role played by other countries of the region and by the attitude of the Permanent Representative of the relevant state. This was clearly confirmed by all case. In the case of Libya the Council moved swiftly to robust action because the Arab League unanimously requested the Council to act under Chapter VII, reflecting a widespread feeling that there were no realistic opportunities for political negotiations with Gaddafi to ensure protection of civilians. Finally, the leadership of the then Libyan UN ambassador (who defected with other Libyan diplomats) played a key role.

In the case of Côte d'Ivoire the Council was initially divided on how to respond to the elections results. The majority of Council members, including the African members, the US, the UK and France, were in favor of a clear statement in support for the recognition of Ouattara as new President of the country. Russia and China were hesitant and argued that the issue was an internal matter for Côte d'Ivoire as sovereign state. Mixed signals from the region - due to the different approaches adopted by the AU and ECOWAS - on how to address the crisis caused the Council to be more cautious in comparison with Libya. The fact that Nigeria was member of the Council in 2010 and 2011, while South Africa was elected in January 2011 played a considerable role. Finally, relevant for the decision of the Council was also the new Ivorian Ambassador to the UN, appointed by Ouattara in late December 2010, who requested the support of the Council saying that his country was on the verge of genocide.

Sri Lanka was not formally on the Security Council's agenda. From the very beginning, in February 2009, Council members were divided as to whether the issue of human rights violations in Sri Lanka should at all be brought before the Council. The Asian members—China, Japan and Viet Nam— were reluctant to have the

Council make any statement. In particular, China supported Sri Lanka government's position that the Council should avoid any action that could lead to the LTTE being able to regroup. Furthermore, the representatives of Sri Lanka both at the UN Headquarters and in Geneva showed a compact front against accusation of human rights abuse and managed to have the support of a certain number of countries.

The military intervention in Libya seems to have strongly influenced the discussion of the Syrian case within Security Council. Our analysis stops in September 2012. Until that date the Security Council found itself unable even to issue a unified message of condemnation of the violence, not to speak about more robust measures like targeted sanctions or the referral to the International Criminal Court (ICC). In addition to Russia and China, other states were similarly hesitant to condemn the Syrian government. Those included India, Brazil, and South Africa. On the other hand, attempts by India-Brazil-South Africa Dialogue Forum (IBSA) to open a line of dialogue with Damascus were unsuccessful; IBSA failed to provide an alternative to the Arab League plan.

Various attempts to circumvent the impasse at the Security Council, such as resolutions of the United Nations General Assembly, did not bring any tangible results. A change in the dynamic within the Council could however be found after January 2012, when five new elected members replaced another five rotating off the Council. In particular, Guatemala replaced Brazil for the Latin American/Caribbean seat and Morocco was elected in representation of the African region while Pakistan replaced Lebanon for the Asian seat. The presence of Morocco facilitated representation of the position of the Arab League. Finally, as in the case of Sri Lanka the Syrian Permanent Representatives in New York and Geneva remained loyal to the Syrian government.

## **2. Cost-benefit profile.**

The second independent variable is the cost-benefit profile. Costs may refer to the direct financial, material and human costs of the action envisaged as well as to possible political costs, be it international or domestic. Benefits may refer to the

perceived likelihood that the action envisaged might in fact deliver the intended outcome.

Libya has the 4th lowest population density in Africa. The CIA World Fact Book describes the expansive Libyan territory as “mostly barren”, with “flat to undulating plains, plateaus, and depressions”. These topographical features represent the best possible conditions for calculated airstrikes. Since major air bases were geographically removed from large city centers, preemptively bombing these targets proved to be relatively easy for coalition partners.

Politically, Gaddafi had managed to alienate almost all other countries both in the African Union and in the Arab World: no one was ready to stand up in his defense. The rebellion led to the establishment of an alternative leadership and gained control of a substantial part of the country. Finally, the status of Libya as a major oil-producing country certainly influenced the cost/benefit calculation of the OECD countries.

In the case of Côte d’Ivoire UN troops were already in the country and in possession of an authorization to use all necessary means to carry out the mandate to protect civilians and seize heavy weapons used against the civilian population. On 4 April 2011 France authorized its troops to participate in joint operations with UNOCI to neutralize heavy weapons in response to the UN Secretary-General's request. The entire military operation lasted in total seven days, from 4 to 11 April 2011 when Gbagbo was arrested. The legitimacy of Ouattara’s election was not questioned internationally (with the possible exception of South Africa).

A military intervention was never considered in the case of Sri Lanka but it would presumably have been ruled out due to the situation on the ground. The fact that the Sri Lanka government had succeeded in having LTTE included in the list of international terrorist organizations contributed to the unwillingness to support the intervention.

Due to its peculiar geopolitical situation the possibility of a military intervention in Syria was unanimously ruled out from the very beginning. It was argued that it

would be a protracted operation with the potential for thousands of civilian casualties. Other risks related to Syria's abundant and sophisticated Russian-made air defenses, which are located close to major population centers, and the potential for opening up a direct confrontation with Iran or Russia. Hesitations also derived in large measure from the disunity of the opposition and the lack of a clear connection between the Syrian National Council and the fighters.

### **3. Role of regional and sub-regional organizations.**

The analysis of the four cases shows that that the support of the regional/sub-regional organizations is essential.

In the case of Libya one week after the unrest, the League of Arab States decided to suspend the participation of the Libyan delegations from all Arab League sessions. The Arab League, the OIC and the GCC all called upon the Security Council to impose of a no-fly zone on Libyan military aviation, and to take all necessary measures to protect civilians. The African Union also took action even if it tried to find a negotiated solution to the crisis. Furthermore, the African Commission on Human and Peoples' Rights (ACHPR) decided to institute proceedings against Libya before the African Court in March 2011.

In the case of Côte d'Ivoire both the African Union (AU) and the Economic Community of West African States (ECOWAS) tried to resolve the crisis through mediation and diplomatic pressure. Furthermore, several multilateral financial institutions took steps to halt the flow of credit and official assistance to the Gbagbo regime. Even if the approach of the AU and ECOWAS differed - the AU was in favor of a political solution based on mediation; ECOWAS, in contrast, argued for the imposition of sanctions and authorization of outside military intervention as the sole mean to solve the crisis - they succeeded in mobilizing international support.

The Sri Lanka case clearly shows that the lack of regional support *de facto* prevents the implementation of R2P.

In the case of Syria the regional organizations, and in particular the Arab League, reacted to the crackdown relatively late, showing no unanimity on the adoption of tough measures. The League's desire to offer an "Arab" response to the crisis ultimately made more difficult for the United Nations to act.

#### **4. Role of the Human Rights Council.**

In all four cases the Human Rights Council and the Office of the High Commissioner for Human Rights, through Special Sessions and commissions of inquiry, succeeded in advancing the case and increasing pressure on other UN bodies (Security Council or Secretary-General) to act.

The Human Rights Council met three days after the outbreak of the Libyan crisis and opened a Special Session on "the situation of human rights in the Libyan Arab Jamahiriya." The Council adopted Resolution S-15/2, which called for the Libyan government to cease all human rights violations as well as to establish an international commission of inquiry. It further recommended that the General Assembly suspend Libya from the Human Rights Council. Libya's membership in the Human Rights Council was unanimously suspended on March 1, 2011.

In December 2010, the Human Rights Council held a special session on the situation in Côte d'Ivoire in which resolution S-14/1 was adopted condemning the on-going human rights violations<sup>574</sup>. The special session was convened upon request of Nigeria and the US. Throughout the crisis Nigeria, on behalf of the African Group, asked the support of the Human Rights Council and showed a proactive approach.

The case of Sri Lanka could be reopened thanks to the pressure exercised by the Human Rights Council/ High Commissioner for Human Rights and civil society and the media. The High Commissioner for Human repeatedly expressed her growing alarm at the increasing number of civilians reported killed and injured in the conflict. Eventually, on March 22, 2012 the Human Rights Council passed a resolution

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<sup>574</sup> <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/14/index.htm> (last accessed 4/12/12)



pressing the Sri Lankan government to investigate the deaths of tens of thousands of civilians in the final stages of the civil war with the Tamil Tigers.

The Human Rights Council convened four Special Sessions on Syria and discussed the issue in as many general sessions. A fact-finding mission and a Commission of Inquiry were established, which released two reports and subsequent updates. On numerous occasions the High Commissioner for Human Rights urged the Security Council to consider referring the Syrian authorities to the International Criminal Court.

## **5. Role of Civil society and non-governmental organizations**

The importance of civil society and of the media is undisputed. However its impact seems to be in reverse proportion to the activism of the international community: it becomes especially important when the latter is blocked by dissension.

The reaction of civil society and the media in denouncing the abuse of force by the Gaddafi regime was prompt. However, we cannot say that it was vital in advancing the case.

Organizations including Human Rights Watch, International Crisis Group, and the International Federation for Human Rights, the International Committee of the Red Cross, denounced from the beginning the violence carried out by forces loyal to Gbagbo and Ouattara and accused both sides of gross human rights violations targeting unarmed civilians<sup>575</sup>. In an Open Statement on the Situation in Côte d'Ivoire released on 17 December 2010, the Global Centre for the Responsibility to Protect called on national governments, the AU, ECOWAS and the UN inter alia to establish contingency plans to identify what preventive and protective measures to use and who could best implement the efforts.

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<sup>575</sup> <http://www.responsibilitytoprotect.org/index.php/document-archive/civil-society?view=fjrelated&id=2411> (last accessed 3/12/12) see also [http://www.oxfam.org/en/search/apachesolr\\_search/ivory%20coast?page=1](http://www.oxfam.org/en/search/apachesolr_search/ivory%20coast?page=1) (last accessed 3/12/12)

The case of Sri Lanka shows the relevance of the media and civil society in raising awareness and putting pressure to the United Nations and the National Government to protect civilians. Asian NGOs also denounced the violation of human rights in Sri Lanka. It is also thanks to pressure from civil society that Secretary-General Ban Ki-moon appointed a Panel of Experts to investigate.

In the case of Syria it was the network of Syrian human rights activist and the new generation of aid workers - through personal contacts and online networks - that managed to provide aid and send information outside the country. The shift from humanitarian agencies to civil society and the private sector for delivering medical and food aid to communities in need inside Syria, and the use of social network to inform are probably the most interesting recent developments in the field.

We may represent our key findings in tabular form according to the scheme below:

<b>Independent variables</b>	<b>Libya</b>	<b>Syria</b>	<b>Côte d'Ivoire</b>	<b>Sri Lanka</b>
<b>Security Council dynamics</b>	+	-	+	-
<b>Cost-benefit profile</b>	+	-	+	=
<b>Regional and Sub-regional organizations</b>	+	+/=	+	-
<b>Human Rights Council</b>	+	+	+	+
<b>Civil Society and NGOs</b>	+/=	+	+	+

Each variable may take a favorable (+), uncertain (=) or negative (-) value, and in the end only cases in which all five variables are either favorable or at least uncertain have led to official implementation of R2P.

To conclude we can say that the endorsement of R2P under Pillar three “timely and decisive response” by the Security Council in the case of Libya and Côte d’Ivoire did not give any guarantee that a similar patter of behavior would be replicated in other

cases. Due to lack of clear parameters the doctrine remains grounded in a case-by-case assessment by the Security Council and its referral depends upon many factors such as prospects of success, military costs, risks of escalation etc.

Regional organizations' support was critical in advancing the case at the Security Council in all four situations taken into consideration. When the members of the Council have perceived that there was regional support or a direct request by representatives of the state in question it has always found a mean to overcome internal divisions. The composition of the Security Council with reference to the rotating members is also of relevance. The membership of Nigeria (that represented the ECOWAS position) in the case of Cote d'Ivoire and Morocco in the case of Syria are a confirmation thereof.

The Human Rights Council plays an important role in developing and implementing R2P. It offers a representative international forum where alleged human rights violations can be discussed as a matter of urgency through its special sessions and urgent debates mechanism. In the case of Sri Lanka the Council and the Office of the High Commissioner proved to be essential in reversing the situation and reopening the case.

National and international civil society organizations have a range of tools at their disposal to prevent or respond to crimes and violations relating to R2P that the UN do not possess. The case of Syria is indicative of how new technologies and alternative channels of distribution of aid may prove more effective than the traditional ones. In the case of Sri Lanka the media and the International NGOs were essential in challenging the official position of the Sri Lankan government and in raising international awareness.

All four cases show the central role of the Security Council. This makes even more urgent the development of adoption of a "code of conduct" for the P5. If we expand the analysis to the cases we considered in Chapter two, it can be affirmed – and the Syrian case seems to confirm it – that indecision as to the course to follow

or inaction by the Security Council always determines the worsening of the situation and a radicalization of the crisis.

Notwithstanding difficulties in obtaining reliable data, figures clearly show that the death toll increased exponentially when the international community was unable to take a stand. According to Cherif Bassiouni, who led a U.N. Human Rights Council mission to Tripoli, approximately 10,000 people lost their lives on both sides in four months of fighting in Libya;<sup>576</sup> 50/70 deaths were caused by NATO bombing. In May 2011, UNOCI reported that over 1,000 people were killed in Côte d'Ivoire in political clashes and communal fighting during the five-month crisis that followed a disputed presidential election.<sup>577</sup>

Citing media reports in June 2009 Secretary-General Ban Ki-moon said that some 20,000 civilians may have been killed during the last phase of the conflict in Sri Lanka. After almost two years of conflict, it is estimated that over 20,000 civilians lost their lives in Syria, and the number is rising. Furthermore, according to the Office of the UN High Commissioner for Refugees fighting displaced 2.5 million Syrians internally, while the number of Syrians registered or awaiting registration as refugees in Jordan, Lebanon, Turkey and Iraq surpassed 300,000 in September (UNHCR).<sup>578</sup>

One mechanism to solve the impasse might be to oblige Security Council's members to justify their decisions. "The obligation to give reasons leaves the exercise of the veto within the realm of discretion of the permanent member, but still forces the member to rationalize its decision. This allows other states and the public to criticize these reasons"<sup>579</sup> as Anne Peters affirmed.

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<sup>576</sup> Reuters <http://www.reuters.com/article/2011/06/09/us-libya-un-deaths-idUSTRE7584UY20110609> (last accessed 4/12/12)

<sup>577</sup> <http://www.un.org/en/peacekeeping/missions/unoci/elections.shtml> (last accessed 4/12/12)

<sup>578</sup> <http://data.unhcr.org/syrianrefugees/regional.php> (last accessed 4/12/12)

<sup>579</sup> Peters A., *Between sovereignty and humanity: The constitutionalisation of international law*, pages 4-6 available at [http://www.ourcommonfuture.de/fileadmin/user\\_upload/dateien/Reden/Peters\\_paper.pdf](http://www.ourcommonfuture.de/fileadmin/user_upload/dateien/Reden/Peters_paper.pdf) (last accessed 3/12/12)

The discussion of the “Rule of Law” at the United Nations could also provide a forum to advance on this issue. The Council held its first thematic debate on “Justice and the Rule of Law: The United Nations Role” in September 2003<sup>580</sup>. In 2004, the Secretary-General provided what was considered the first comprehensive UN definition of the rule of law in which it is stressed that “The rule of law is a concept at the very heart of the Organization’s mission. It refers to a principle of governance in which *all persons, institutions and entities*, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, *legal certainty, avoidance of arbitrariness and procedural and legal transparency* (emphasis added).”<sup>581</sup> On 24 September 2012, at the High-level Meeting on the Rule of Law at the National and International Levels, member states issued a declaration in which they recognize that “the rule of law applies to all States equally, and to international organizations, including the United Nations and its principal organs and that respect for and *promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions.*”<sup>582</sup>

Another possibility may be to enhance the role of the International Criminal Court in determining when a government has failed in its Responsibility to Protect (Contarino

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<sup>580</sup> UNITED NATIONS Security Council, S/PV.4833, 24 September 2003, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SPV4833.pdf> (last accessed 3/12/12)

<sup>581</sup> “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” report of the Secretary-General UNITED NATIONS Security Council S/2004/616, 23 August 2004 paragraph 6 available at <http://www.unrol.org/files/2004%20report.pdf> (last accessed 3/12/12)

see also Security Council Cross-cutting Report n.3 (October 2011) available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20Rule%20of%20Law%202011.docx> (last accessed 3/12/12)

<sup>582</sup> UNITED NATIONS General Assembly A/67/L.1\* 19 September 2012 available at <http://www.unrol.org/files/Official%20Draft%20Resolution.pdf> (last accessed 3/12/12)

and Lucent). This could help develop a faster, more effective and impartial R2P enforcement mechanism and produce a body of jurisprudence that would clarify the basis for interventions. The final political decision would in any case be left to the Security Council.<sup>583</sup>

Finally, much has been said about the importance of prevention. Looking at the four cases we reached the conclusion that this is only partially true. In the case of Libya we considered six indicator indexes with the aim of finding political, legal and socio/economic conditions that may have provided advance signals of gross violation of human rights. The indicator Indexes we used were the Bertelsmann Transformation Index, the Carleton's Country Indicators for Foreign Policy, the Failed State index, the State Fragility Index, the Freedom in the World survey and the Transparency International - Corruption Perceptions Index from 2005 to 2011 where possible. No indication could be found that the Gaddafi government in Libya was on the verge of collapse.

Repeated attempts by the European Union over more than a decade to induce democratic change in Syria did not succeed (just as in Tunisia, Egypt, etc.). The priorities of EU co-operation with Syria were defined in the Country Strategy Paper and National Indicative Programme<sup>584</sup>. The program's strategic priority was to support political and administrative reform including strengthening the rule of law and increasing respect for human rights. In the case of Côte d'Ivoire, UN Peacekeeping troops were already present in country. Furthermore, as Welsh rightly pointed out, states may not necessarily be willing to accept the UN assistance in this field as many areas where prevention applies are traditionally seen as being within their domestic jurisdiction.

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<sup>583</sup> Contarino M. and S. Lucent, *Stopping the Killing: The International Criminal Court and Juridical Determination of the Responsibility to Protect* Global Responsibility to Protect 1 (2009) 560-583

<sup>584</sup> European Neighbourhood and Partnership Instrument Syrian Arab Republic National Indicative Programme 2011-2013 Available at [http://www.eeas.europa.eu/syria/csp/2011\\_enpi\\_nip\\_syria\\_en.pdf](http://www.eeas.europa.eu/syria/csp/2011_enpi_nip_syria_en.pdf) (last accessed 3/12/12)

Controversy still surrounds the meaning of R2P and its implementation. The narrow approach of the Secretary-General has not succeeded so far in clarifying whether R2P should be considered “a political response to a political need”<sup>585</sup> as affirmed by Gareth Evans; an idea requiring further elaboration; or an emerging legal norm. Approaching the issue from a legal point of view, we tried to understand whose the responsibility to protect is. The result is that, at present, with the exception of the crime of genocide, the responsibility to protect lies exclusively with the relevant state, while, with the exception of genocide, the collective responsibility remains a moral imperative.

But R2P should be more than just an appeal to morality; it needs to translate the moral revulsion into concrete action to protect. The misuse of the term during the 2003 invasion of Iraq reinforced rather than dissipated the doubts of those States who opposed R2P. On the other hand, the fact that controversy still persists on the use of coercive measures does not mean that the whole structure should be reassessed. We should not demonize the use of force if used as *ultima ratio*. As Ramesh Thakur rightly pointed out, “to be meaningful, the R2P spectrum of action must include military force as the sharp-edge option of last resort.”<sup>586</sup>

All that said the real problem lies in the failure of the UN Security Council to deal with certainty and rapidity with R2P situations. This has impeded the emergence of an international regime capable of recognizing when R2P violations exist, and ensuring that abuses are ended. The adoption of a “code of conduct” for the P5 in the context of cases for which the responsibility to protect is invoked – as proposed by in the ICISS report in 2001 - would serve the purpose.

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<sup>585</sup> R2P The Next Decade <http://www.stanleyfoundation.org/r2p.cfm> (last accessed 3/12/12)

<sup>586</sup> Thakur R., R2P, Libya and International Politics as the Struggle for Competing Normative Architectures e-International Relations September 2011 available at <http://www.e-ir.info/wp-content/uploads/R2P.pdf> (last accessed 3/12/12)

Finally, the R2P could not succeed without the active involvement of the Human Rights Council, which has played an important role in developing and implementing R2P; and a more direct involvement of the existing international justice mechanisms (e.g. ICC and ICJ).



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