

RIGHT TO PROTECT IN INTERNATIONAL LAW: PROTECTION OF HUMAN RIGHTS OR DESTRUCTION OF STATE SOVEREIGNTY?

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ABSTRACT

Responsibility to Protect was introduced at the turn of the millennium as the solution for permanently ending situations of widespread human rights abuses. It attempted to create a uniform set of principles to govern intervention into states for the purpose of preventing mass atrocity crimes and thus address the greatest criticism against its predecessor humanitarian intervention – that it violated state sovereignty. I argue that it fails in this project in three ways. First, it does not effectively address the international regime on ‘use of force’ and so its very legality is suspect. Secondly, it fails to take into account that conflict occurs in complex situations that often involves competing claims of sovereignty by two or more groups and is hence uninformative as a principle of intervention. Thirdly, it does not take into consideration that international decision making, particularly in the context of the Security Council is motivated by a range of interests. I consider the recent events in Syria as an example of how these three problems can result in a complete collapse of the doctrine itself.

I. INTRODUCTION

Responsibility to Protect was introduced at the turn of the millennium as *the* solution for permanently ending mass atrocity crimes. Conceptualised at a time when the international community was reeling from the effects of the large scale humanitarian abuses of the 1990s, it captured a sense of urgency and determination to hold humanity to a heightened standard of responsibility for the protection of human rights. The genocides in Rwanda and Srebrenica had shaken the confidence of the United Nations^{1, 2}. The then Secretary General, Kofi Annan, commissioned Canadian based research group, the International Commission on Intervention and State Sovereignty³ to design a policy that would prevent such conscience shaking

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1 Hereinafter UN.

2 Gareth Evans, Responsibility to Protect: Ending Mass Atrocities Once and For All 27 (2008).

3 Hereinafter ICISS.

incidents from ever happening again. The result was a doctrine that has since been the subject of much debate in international law - 'The Responsibility to Protect'⁴.

R2P proponents stress its comprehensive approach to the issue of mass atrocity crimes.⁵ Expanding beyond mere intervention, R2P is designed to operate at three levels⁶ – the responsibility to prevent,⁷ the responsibility to react⁸ and the responsibility to rebuild.⁹ The doctrine envisages a continuous engagement with volatile societies, right from pre-conflict dissipation of tensions to rebuilding institutional capacity post large scale human rights violations.¹⁰ Packaged in 'humanitarian' rhetoric, military intervention still features prominently in this catalogue of remedies. R2P then has to confront *jus ad bellum* and the guarantee of sovereign equality of states under Article 2(1) of the UN Charter. It identifies six principles that must be fulfilled so as to allow use of force - *right authority, just cause, right intention, last resort, proportional means* and *reasonable prospects*.¹¹ R2P claims that intervention within the four (six) corners of these principles would avoid any problems of sovereignty or unlawful interference in the internal affairs of a state.¹² In this comment I examine whether these principles are a sufficient answer to the question of state sovereignty in R2P.

Part I of the paper looks at sovereignty as a principle and how R2P reconceptualises the entire notion of sovereignty as control to sovereignty as responsibility. In Part II, I argue that this does not address the question of legality of the doctrine and point out how it falls foul of the international regime on Use of Force. In Part III, I look at the 'Right Intention' and 'Proportionality' principles as safeguards for state sovereignty in the context of the intervention in Libya. In Part IV, I use the recent events in Syria to demonstrate how R2P relies on mismatched incentives and can completely fail in its objective to safeguard human rights. And,

4 Hereinafter R2P.

5 Gareth Evans, *supra* note 2, at 81; Ramesh Thakur, United Nations: Peace and Security 247 (2006)

6 Gareth Evans et al., *The Responsibility to Protect*, International Commission for Intervention and State Sovereignty 17 (2001).

7 This involves addressing both the root causes of conflict and preventing events that trigger conflict.

8 This involves the creative use of diplomacy, sanctions and finally intervention to prevent mass atrocity crimes.

9 This involves actions taken to consolidate peace so as to prevent a relapse of conflict.

10 Gareth Evans, *supra* note 6.

11 Gareth Evans, *supra* note 6, at 32.

12 Gareth Evans, *supra* note 6, at 32.

Part V concludes by describing the real flaws with the doctrine and suggesting changes.

II. RECONCEPTUALISING STATE SOVEREIGNTY

State sovereignty, the right of a state to complete control over its internal affairs free from external interference, is the bedrock principle of international law.¹³ The principle of non-intervention is codified in Article 2(7) of the Charter and also holds the status of customary international law.¹⁴ A corollary to this rule is the principle of non use of force.¹⁵ Firmly embodied in Article 2(4) of the Charter, the prohibition on the use of force by States in the conduct of their international relations¹⁶ is widely recognised as the corner stone of the Charter¹⁷ and holds the status of a peremptory norm.¹⁸ State sovereignty then, in the classic understanding, is only invoked in the context of external relations of a state.

Responsibility to protect begins with a re-conceptualization of the entire notion of sovereignty by turning it inward.¹⁹ ICISS borrowed from two ideas prevalent at that time to redefine sovereignty so as to place human rights at its heart. The first was a phrase used in internal displacement discourse – ‘*sovereignty as responsibility*’,²⁰ which attaches the responsibility of governments to protect their citizens to sovereignty.²¹ The second is the idea of ‘*individual sovereignty*’

13 Malcolm Shaw, *International Law* 6 (2008).

14 Antonio Cassese, *International Law* 48 (2005).

15 *Ibid.*

16 Charter of the United Nations (adopted on 20 December 1971, entered into force 24 September 1973) 1 UNTS XVI [‘UN Charter’], art 2(4).

17 C M Waldock, *The Regulation of the Use of Force by Individual States in International Law* 81 Rec. des Cours 451, 492 (1952-II) The Charter of the United Nations 66 (Bruno Simma ed., 2nd edn., Vol I, 2002); Nikolas Sturchler, *Threat of Force in International Law* 63 (2007); Oscar Schachter, *Entangled Treaty and Custom*, *International Law at a Time of Perplexity* 717-38, 734 (Yoram Dinstein ed., 1989); Henkin. L., *The Reports of the Death of Article 2(4) are Greatly Exaggerated*, 65 Am. J. Of Int’l L. 544 (1971).

18 Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects*, 10 Eur. J. Int’l Law 5 (1999) *Commentary of the Commission to Article 50 of its draft Articles on the Law of Treaties*, II ILC Yearbook 247 (1966); *Military and Paramilitary Activities in and against Nicaragua (Nicar. vs. U.S.)*, Merits, 1986 ICJ Rep. 14, at ¶ 190; Jimenes de Archaga, E., *El derecho internacional contemporaneo* 108 (1980); *The Charter of the United Nations: A Commentary* 66 (Bruno Simma et al eds., Vol I, 2002).

19 Gareth Evans, *supra* note 6, at 13.

20 Francis Deng, *Sovereignty as Responsibility: Conflict Management in Africa* (1996).

21 Gareth Evans, *supra* note 2, at 36.

articulated by Kofi Annan.²² He proposed that there were two sovereignties, ‘national sovereignty’ and ‘the fundamental freedom of each individual, enshrined in the Charter of the UN and subsequent international treaties’ or ‘individual sovereignty’. R2P combines these two principles to re-characterize sovereignty as *control* to sovereignty as *responsibility*.²³

ICISS describes this as having three repercussions. First, it imposes on governments the responsibility of the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it implies that national governments are internally responsible to their citizens and also externally responsible to the international community through the United Nations. Thirdly, it means that national political authorities can be held accountable for their acts and omissions.²⁴ The next big step that R2P makes is to espouse that when a particular state is clearly either unwilling or unable to fulfil its responsibility to protect or is itself the actual perpetrator of crimes or atrocities, this ‘responsibility deficit’ triggers an international responsibility of the same nature.²⁵ By defining sovereignty in such terms, R2P claims to successfully deflect legal challenges of non interference in the internal affairs of states. But does it really?

III. R2P v. STATE SOVEREIGNTY: THE LEGAL STATUS OR THE ‘RIGHT AUTHORITY’ QUESTION

R2P formally asserts legality, but its normative framework does not support such a claim.²⁶ It has only two routes for legality under the Charter. The first is the collective security mechanism outlined in Chapter VII of the UN Charter. Article 39 allows the Security Council²⁷ to determine a threat to ‘the’ peace.²⁸ But, can large scale human rights violations constitute a threat to the peace? Theorists like Lori

22 Kofi Annan, *Two Concepts of Sovereignty*, *The Economist*, September 18, 1999, at 49–50.

23 Gareth Evans, *supra* note 6, at 13.

24 Gareth Evans, *supra* note 6, at 13.

25 Hugh Breakey, *The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis* 8 available at http://www.griffith.edu.au/_data/assets/pdf_file/0007/333844/Responsibility-to-Protect-and-the-Protection-of-Civilians-in-Armed-Conflict-Review-and-Analysis.pdf.

26 Some would argue that the normative claim of R2P is indisputable, in that it seeks to address mass atrocity situations. The normative framework that I refer to here is not the moral claim of the doctrine, but the legal principles on which it is based.

27 Hereinafter SC.

28 UN Charter, Article 39.

Damrosch and Bruno Simma do not think so.²⁹ However, the UN's interventions in Somalia (1992), Rwanda (1994), and Haiti (1994) seem to indicate that the Security Council believes itself to have such a power under Chapter VII.³⁰ ICISS cites this fact and "sources that exist independent" of the UN Charter to justify R2P. On the first point, the General Assembly, in locating R2P under paragraphs 138 and 139 of the chapter on Human Rights as opposed to the chapter on Collective Security of the World Summit Outcomes document, explicitly acknowledged that R2P is distinct from the collective security mechanism of the UN.³¹ On the second point, there is neither consistent state practice nor *opinion juris* to indicate that humanitarian intervention is a part of customary international law.³²

Though publicists have argued for a right of humanitarian intervention, this claim is heavily contested on the ground that there neither sufficient status practise, nor a belief in formal right of intervention.³³ The isolated instances where the unilateral right of humanitarian intervention has been claimed do not constitute sufficient state practice so as to create a new rule of customary law as each of these was severely contested by the international community. Moreover, the UN GA has repeatedly rejected the existence of such a right in, for example, the UNGA, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Sovereignty, GA Res 2131, GAOR 20th Session and others³⁴. Even when situations of humanitarian distress have been recognised, states

29 The Charter of the United Nations: A Commentary, *supra* note 18, at 729; Lori Fisler Damrosch, *Commentary on Collective Military Intervention to Enforce Human Right in Law and Force: In the New International Order* 219 (Damrosch et al eds., 1991).

30 J Holzgrefe, *The Humanitarian Intervention Debate* in Humanitarian Intervention 41 (Holzgrefe ed., 2003).

31 United Nations General Assembly, *Integrated And Coordinated Implementation Of And Follow-Up To The Outcomes Of The Major United Nations Conferences And Summits In The Economic, Social And Related Fields* GA Res 60/1, 60th sess., UN Doc. A/RES/60/1.

32 Ralph Zacklin; *Beyond Kosovo: The United Nations and humanitarian intervention* in Contemporary Issues in International Law: A Collection of Josephine Onoh Memorial Lectures 221 (David Freestone et al, eds., 2002); Christine Gray, *International Law And The Use Of Force* 17 (3rd ed. 2008); Jonathan I Charney, *Anticipatory Humanitarian Intervention in Kosovo* 93 Am. J. Int'l L. 834,841(1999).

33 *Ibid.*

34 Other such examples are UN Doc A/RES/20/2131 (1965); UNGA, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, GA Res 2625, GAOR 25th Session, UN Doc A/8082 (1970); UNGA, Declaration on Strengthening of the Co-ordination of Humanitarian Emergency Assistance of the UN GA Res 61/134, GAOR 61st Session, UN Doc. A/RES/61/134 UNGA, Declaration on the Enhancement

have strived to maintain a distinction between humanitarian aid and intervention and considered the later as unlawful. Further, the absence of *opinio juris* is indicated by the fact that States have rarely ever invoked humanitarian intervention as a legal justification for intervention, instead choosing to invoke exceptions contained within the rule of illegality of use of force which thereby strengthens it.³⁵

Moreover, R2P clearly distinguishes itself from the ‘right of humanitarian intervention.’³⁶ Being a new doctrine, it cannot source its legality in an independent claim to customary international law status.³⁷

Some R2P theorists have drawn on the Security Council’s power to authorize intervention from Article 24 directly.³⁸ However, Article 24 only refers to ‘international peace and security’. Read with the collective security mandate of Article 1(1) and the prohibition of use of force in Article 2(4), it is still unclear whether the SC does in fact have the power to propound a doctrine like R2P. The second route is the inherent right of self defence, something that R2P makes no mention of.³⁹

Even if the claim that protection of human rights is within the ambit of Chapter VII action can be legally sustained, R2P discounts an important fact. Situations of mass atrocities against civilians that require intervention arise in complex conflict scenarios. These often involve competing claims of sovereignty by various groups over a particular. This can be within the recognised paradigm of self determination for an ethnic group as was the case in East Timor (1999),⁴⁰ Kosovo

of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, GA Res 42/22, UN Document A/RES/42/22; UNGA, Declaration on the Definition of Aggression, GA Res 3314, GAOR 29th Session and UN Doc. A/RES/29/3314.

35 *Supra* note 32.

36 Gareth Evans, *supra* note 2, at 56.

37 Custom requires the dual criteria of 1) State practice that is settled, widespread and consistent [North Sea Continental Shelf (Federal Republic of Germany v Denmark) (Merits) [1969] ICJ Rep 3 77] and 2) *Opinio juris* the subjective requirement that state practice is accepted as law. Neither of these principles is demonstrable for R2P. Despite its prima facie endorsement at the World Summit 2005, the principle has attracted great opposition to inter alia, the Security Council’s authorising and determinative power in instances involving use of force.

38 Ramesh Thakur, *supra* note 5, at 255.

39 Gareth Evans, *supra* note 4.

40 Ryan Liss, *Responsibility Determined: Assessing the Relationship between the Doctrine of the Responsibility to Protect and the Right of Self-Determination* 57 (2011) available at <http://ssrn.com/abstract=2028782>.

(1999)⁴¹ and Bosnia and Herzegovina (1995).⁴² The more controversial kind of conflict is a secessionist movement by a minority group. More relevant in today's political climate is a third scenario – rebel movements seeking regime change. 'Humanitarian interventions' in the Cold War era and just after were enmeshed with coups, civil war and regime change. Intervention in Cambodia was in a civil war against the Khymer Rouge (1978)⁴³; in Sierra Leone (1998) and Liberia (1990) against other dictators;⁴⁴ in Haiti (1994),⁴⁵ Panama (1989)⁴⁶ and Grenada (1983) to restore democracy;⁴⁷ in East Pakistan (1971) a secessionist movement from President Yakhya Khan in West Pakistan.⁴⁸ Thus, history proves that intervention to protect human rights is embroiled in larger political conflict the interference in which is a clear violation of state sovereignty. The perfect incident to demonstrate this fact is Libya (2011) – the United Nation's sole intervention under R2P.

IV. R2P IN PRACTISE: RIGHT INTENTION AND PROPORTIONALITY IN THE LIBYAN EXPERIENCE

The Arab Spring, beginning in late 2010, saw the mass uprising of people in countries all across the Middle East against tyrannical governments.⁴⁹ Protests erupted on the streets with people coming out in large numbers to demand a more participative political process. These protests were soon organised into fully fledged rebel groups that launched armed rebellion against the state. The despots didn't sit back. They responded by unleashing their militaries against their own citizens.

41 *Ibid.*

42 Gareth Evans, *supra* note 2, at 27.

43 Thomas Franck, *Interpretation and change in the law of humanitarian intervention* in Humanitarian Intervention 218 (Holzgrefe ed., 2003).

44 James Mayall, *Humanitarian Intervention and International Society: Lessons from Africa* in Humanitarian Intervention and International Relations 131 (Jennifer Welsh ed., 2004).

45 J Holzgrefe, *The Humanitarian Intervention Debate* in Humanitarian Intervention 42 (Holzgrefe ed., 2003).

46 Anthony D'Amato, *The Invasion of Panama was a Lawful Response to Tyranny*, 84 Am. J. Int'l Law, 520 (1990).

47 Karin Von Hippel, *Democracy by Force US Military Intervention in the Post-Cold War World* 27 (2004).

48 Gareth Evans, *supra* note 2, at 23.

49 Columm McCainn, *Arab Spring*, The New York Times (December 23, 2011) available at <http://www.nytimes.com/2011/12/25/opinion/sunday/arab-spring.html>.

While the situations in Tunisia⁵⁰ and Egypt⁵¹ resolved rather quickly and successfully, in early February, 2011, Libya was fast growing into a situation that amounted to the perpetration of crimes against humanity by the state.

The Libya case followed the R2P rule book to the core. On 17th February, 2011 the Libyan rebels declared a ‘Day of Rage’ – with ordinary people from all over the country taking to the streets to protest Muammar Gaddafi’s rule.⁵² The Libyan security forces came down heavily on the protestors, using snipers, helicopters and contract killers and even attacking hospitals and funeral processions.⁵³ The protests escalated with the rebels taking up arms. They seized control over the cities of Misrata and Benghazi from the Gaddafi rule.⁵⁴ The state responded with detentions and killings of citizens believed to be a part of the opposition. This drew vocal condemnation from various international organisations. The UN High Commissioner for Human Rights and the Office of the Secretary General’s Special Advisors on the Prevention of Genocide and the Responsibility to Protect called for protection of all civilians, cautioning that ‘widespread and systematic attacks against the civilian population may amount to crimes against humanity’, and that national authorities would be held accountable.⁵⁵

The Arab League, Organisation for Islamic Cooperation and the African Union all condemned the attacks.⁵⁶ On 25th February, 2011, the SC adopted *Resolution S-15/1* calling on Libya to meet its responsibility to protect its

50 Ian Black, *Zine Al-Abidine Ben Ali Forced To Flee Tunisia As Protesters Claim Victory*, The Guardian (January 15, 2011) available at <http://www.guardian.co.uk/world/2011/jan/14/tunisian-president-flees-country-protests>.

51 Jack Shenker, *Hosni Mubarak Resigns*, The Guardian (February 11, 2011) available at <http://www.guardian.co.uk/world/2011/feb/11/hosni-mubarak-resigns-egypt-cairo>;

47 *Deadly Day of Rage in Libya*, Aljazeera (February 18, 2011) available at <http://www.aljazeera.com/news/africa/2011/02/201121716917273192.html>.

53 *Ibid.*

54 Alexander Dziadosz, *Benghazi, Cradle Of Revolt, Condemns Gaddafi*, Reuters (February 23, 2011) available at http://thestar.com.my/news/story.asp?file=/2011/2/24/worldupdates/2011-02-23T222628Z_01_NOOTR_RTRMDNC_0_-550982-4&sec=Worldupdates.

55 Spencer Zifcak, *The Responsibility to Protect After Libya and Syria* 13 Mel. Journ. Int’l Law 3 (2012).

56 Organisation of Islamic Cooperation, *OIC General Secretariat Condemns Strongly the Excessive Use of Force against Civilians in the Libyan Jamahiriya* (Press Release, 22 February 2011); African Union Peace and Security Council, *Communiqué*, 261st mtg, AU Doc PSC/PR/COMM(CCLXI) (23 February 2011).

population and to immediately put an end to all human rights violations.⁵⁷ On the 26th of February, the SC adopted *Resolution 1970* where it recalled the Libyan authorities' responsibility to protect its population, demanded an immediate end to hostilities and free passage for humanitarian aid and medical supplies. It further imposed sanctions in the form of an arms embargo, a freeze of assets and a travel ban on key figures in the Libyan administration.⁵⁸ The Libyan government denied all charges while attacks on civilians intensified.⁵⁹ On 17th March, 2011 the SC adopted *Resolution 1973* which stated that 'all necessary measures' could be taken to protect civilians and civilian populated areas under threat of attack. It further resolved that a no-fly zone be established over Libya and authorised NATO to take 'all necessary measures' to enforce the same.⁶⁰ On 19th March, NATO's intervention began.⁶¹ Libya's air defence system was taken down. Tanks and other security forces leading the attack were targeted.

R2P seemed to be working perfectly. The 'right intention' criteria might have been suspect, but 'proportionality' was adhered to. However, things soon changed when NATO began targeting government officials. Air strikes directed at Gaddafi's residence resulted in the death of his son and two grandchildren.⁶² It began arming the rebels who then demanded its support to take down Gaddafi.⁶³ The NATO intervention soon adopted the goal of regime change.⁶⁴ By August, 2011, Gaddafi was killed and his regime overthrown.⁶⁵ The National Transitional Council (NTC) was placed in power.⁶⁶ Was this allowed in international law?

57 Security Council, *Resolution S-15/1*, UN SCOR, 66th session, UN Doc A/HRC/RES/S-15/1 (25 February 2011) ¶2.

58 Security Council, *Resolution 1970*, UN SCOR, 66th session, UN Doc S/RES/1970 (26 February 2011)

59 Paul D Williams, *Briefing: The Road to Humanitarian War in Libya* 3 Global Responsibility to Protect 248, 251 (2011).

60 Security Council, *Resolution 1973*, UN SCOR, 66th sess, UN Doc S/RES/1973 (17 March 2011) at ¶12.

61 Spencer Zifcak, *supra* note 55, at 7.

62 Robert Vercaik, *Bomb Hits Gaddafi's Home*, The Daily Mail (May 1, 2011) available at <http://www.dailymail.co.uk/news/article-1382341/Libya-Nato-strikes-kill-Gaddafis-son-grandchildren.html>.

63 United Nations General Assembly, *supra* note 31, at 13.

64 Eric Schmitt & David E Sanger, *As Goal Shifts in Libya, Time Constrains NATO*, The New York Times (May 26, 2011) available at http://www.nytimes.com/2011/05/27/world/africa/27policy.html?pagewanted=all&_r=0.

65 Barry Malone, *Gaddafi Dies In Hometown, Libya Eyes The Future*, Reuters (October 20, 2011) available at <http://www.reuters.com/article/2011/10/20/us-libya-idUSTRE79F1FK20111020>.

66 *Libya's Rebels to Govern from Tripoli*, Al Jazeera (August 26, 2011) available at <http://www.aljazeera.com/news/africa/2011/08/201182623316261938.html>.

Spencer Zifcak quotes the Ambassador to India, Brazil and South African Dialogue Forum (IBSA) to summarise what was problematic about NATO's actions.

*The resolution was always concerned with the protection of civilians. It did not mean that NATO could decimate one side, arm rebels, worsen tribal animosities, declare victory and look the other way from extrajudicial killings.*⁶⁷

South Africa, India, Brazil, China and Russia expressed intense displeasure at the outcome of the intervention.⁶⁸ South Africa avowed that the intention was 'never regime change; nor was it the targeting of individuals'.⁶⁹ International law clearly prohibits the support of rebels engaged in a civil war as the unlawful use of force that violates the non intervention guarantee of the UN Charter.⁷⁰ The R2P authors idealistically set the outer line:

*Over throw of a regime is not, as such, a legitimate objective, although disabling a regime's capacity to harm its own people may be essential to discharging the mandate of protection and what is necessary to achieve that will vary from case to case.*⁷¹

Libya shows us that in reality, even a perfectly followed R2P mission cannot maintain that fine line. In effect, R2P authorised the toppling of a government and the institution of another. It prevented the mass slaughter of thousands of people. But achieving that meant that the international community had to choose the government in Libya – or at least that is what the interveners claimed. This is a clear violation of the non intervention principle in international law and state sovereignty.

67 Spencer Zifcak, *supra* note 55, at 11.

68 Spencer Zifcak, *supra* note 55, at 11.

69 Spencer Zifcak, *supra* note 55, at 11.

70 Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), (Jurisdiction) 1984 ICJ Rep. 392 at 95.

71 Gareth Evans, *supra* note 2, at 143.

V. THE 'SOLUTION' UNRAVELS: TAKING THE 'SIX PRINCIPLES' TO THE OTHER EXTREME IN SYRIA

Libya is considered a success for proponents of R2P as it proved that the doctrine could protect civilians from mass atrocities.⁷² However, an analysis of the situation thus far in Syria tells a different story.

Peaceful protests in Syria against President Bashar Al-Assad began in late February 2011. Security forces opened fire on people protesting the torture and killing of certain children.⁷³ The protestors then took up arms. By April, they were facing the full brunt of the Syrian military.⁷⁴ On 25th April, 2011, the SC met to discuss Syria but could not pass any resolution on the same.⁷⁵ Russia refused to intervene in a matter that was essentially internal. India stressed that the Council should be taking measures to bring peace between the two factions. On 25th May, the United States attempted to pass a resolution condemning the vicious attacks on civilians and recalling Syria's responsibility to protect its population.⁷⁶ Though Russia and China no longer claimed that the conflict was merely an internal matter, they cited the Libyan example to express reservations about authorising an intervention for the protection of civilians. On 5th October, a revised draft⁷⁷ of the resolution that incorporated the call for an inclusive Syrian-led political process and placed responsibility on the Arab League for cessation of the humanitarian crisis was vetoed by Russia and China.⁷⁸ The day after the Syrian authorities began launching rockets into cities,⁷⁹ another resolution calling for free movement of humanitarian aid, an inclusive Syrian led political process and allowing the Arab League to take control of certain cities was again vetoed by Russia and China.⁸⁰

72 Spencer Zifcak, *supra* note 55, at 13.

73 *Syrian Police Seal Off City Of Daraa After Security Forces Kill Five Protesters*, The Guardian (March 19, 2011) available at <http://www.guardian.co.uk/world/2011/mar/19/syria-police-seal-off-daraa-after-five-protesters-killed>.

74 Spencer Zifcak, *supra* note 55, at 15.

75 UN Security Council, SCOR, 66th session, UN Doc S/PV.6524 (27 April 2011) at ¶ 2.

76 UN Security Council, SCOR 67th session, UN DOC S/PV.6711 (4 February 2012).

77 *France, Germany, Portugal and United Kingdom of Great Britain and Northern Ireland: Draft Resolution*, UN SCOR, 66th session, UN Doc S/2011/612 (4 October 2011).

78 UN Security Council, UN SCOR, 66th session, UN Doc S/2011/612 (4 October 2011).

79 Niel Millard & Ben Cusack, *200 Dead On Bloodiest Day In Syria*, The Sun (February 5, 2012) available at <http://www.thesun.co.uk/sol/homepage/news/4109078/At-least-200-dead-as-regime-launches-rocket-attacks-on-opposition-in-Homs-Syria.html>.

80 UN Security Council, UN SCOR, 67th session, UN DOC S/PV.6711 (4 February 2012).

The Syria case is certainly not as straightforward as Libya. The rebels are fractioned, Russia has military and trade interests in Syria, there is the Sunni-Shia divide and there is the fact that Assad has threatened to use chemical weapons in case of foreign intervention. However, the SC has still not been able to take any action whether military or not under the R2P doctrine despite the death toll crossing 70,000 people.⁸¹ R2P continues to fail to ensure the protection of civilians who are the subject of crimes against humanity in Syria. Thus in the Syria case, private incentives of some permanent security council members, such as trade and diplomatic ties along with concerns of state sovereignty completely paralyzed the functioning of the doctrine, even when it was watered down to its least interfering tactics. This demonstrates that the R2P project is incomplete. Even the claim that it protects human rights is open to question.

VI. CONCLUSION

R2P is an ambitious project. It recognises a very serious problem for humanity - that states can kill their own people. It attempts to comprehensively outline a set of responsibilities that would prevent such a thing from happening, stop it when it erupts and rebuild after. The six principles for intervention aim at ensuring that intervention happens only in the narrowest of circumstances. However, the application of the doctrine has pointed out certain essential flaws. First, it does not give us guidelines for assessing and analyzing conflict. It fails to realise that conflict occurs in complex situations, and accordingly determine clear rules for the context of civil war and regime change. It fails to analyse and predict the role of the Security Council in an intervention or realise that as a non-democratic body, there are inherent shortcomings of the council. It fails to account for the real incentives that motivate decision making in the Security Council, particularly amongst the P5. These gaps mean that it is possible for R2P to neither protect state sovereignty nor human rights.

No one wants another Rwanda. However, what Rwanda and the numerous cases where intervention was not resorted to⁸² tell us (other than for the fact that

81 Michelle Nichols, *Syria Death Toll Likely Near 70,000, Says U.N. Rights Chief*, Reuters (February 12, 2013) available at <http://www.reuters.com/article/2013/02/12/us-syria-crisis-un-idUSBRE91B19C20130212>.

82 The killing and forced starvation of almost half a million Ibos in Nigeria (1966–70); the slaughter and forced starvation of well over a million black Christians by the Sudanese government (since the late

non-intervention can be as bad) is that intervention is essentially a political act. A lot of factors go into the decision to be involved in the affairs of another country and another people. One of these is the extent to which such an involvement will violate the sovereignty of that state. Hence, great care needs to be taken to introduce more details to the doctrine so that it reflects a realistic understanding of today's conflict scenarios. As a policy that authorises intervention, it needs to reflect participative and accountable processes, democratic choice making and neutrality. Whether this means that such decisions need to be removed from the control of the P5 or that the UN needs a separate neutral force is a question to be examined. Despite its intention to 'do good', without underlying support structures, R2P remains another abstract principle with no guarantee of reaching its objective but yet creating opportunities for exploitation by powerful states. Now what it needed is a policy that is less idealistic and more reflective of the unbalanced power structures and corresponding incentives that direct international decision making.

1960s); the killing of tens of thousands of Tutsis in Rwanda (early 1970s); the murder of tens of thousands of Hutus in Burundi (1972); the slaying of 100,000 East Timorese by the Indonesian government (1975–99); the forced starvation of up to 1million Ethiopians by their government (mid-1980s); the murder of 100,000 Kurds in Iraq (1988–89); and the killing of tens of thousands of Hutus in Burundi (since 1993).