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The Responsibility to Protect and the current Syrian crisis

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Declaration

I, undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used for the thesis have been duly acknowledged.

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Conformation

This thesis is submitted for examination with my approval as an advisor to the candidate.

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Abstract

The Responsibility to Protect (R2P), an international norm established in 2005 by the United Nations, stipulates conditions under which the United Nations should intervene in defense of victims of mass atrocities in a member state. R2P's goal is to define the best attitude to adopt when the world is confronted to grave humanitarian crises. Within R2P, each state carries the primary responsibility to protect its citizens. The international society carries a collective duty to solve a humanitarian crisis when a state has failed to fulfil this responsibility. The concept R2P implies a series of conditions whose purpose is to grant legitimacy and effectiveness to an international intervention aimed at solving a humanitarian crisis.

The Syrian conflict constitutes an evident case where the international society failed to fulfil its responsibility to protect. The people in Syria are suffering from mass atrocities and their consequences are left on their own, because the international society is being unable to respond collectively. These thesis examines how the conditions towards R2P were addressed in the cases of Syria and how those actions should be incorporated in the eyes of international law to stop the violence against the Syrian people.

List of acronyms

CoI- UN Independent International Commission of Inquiry

EMHRN- Euro-Mediterranean Human Rights Network

FSA- Free Syrian Army

ICISS- The International Commission on Intervention and State Sovereignty

ISIL- Islamic State of Iraq and the Levant

ISIS- Jihadist group Islamic State

ICRC-International Committee of the Red Cross

ICC-International Criminal Court

NATO-North Atlantic Treaty Organization

OCHA-the Coordination of Humanitarian Affairs

OPCW-Organization for the Prohibition of Chemical Weapons

R2P- Responsibility to Protect

SNC - Syrian National Council

SOHR-The Syrian Observatory for Human Rights

UN- United Nations

UNSC- United Nations Security Council

UNHCR- UN High Commissioner for Refugees

UNMISS- UN peacekeeping mission in South Sudan

US- United States of America

UK-United Kingdom

UNMISS-UN peacekeeping mission in South Sudan

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Chapter one

Introduction

1.1 Background of the study

“Worse than war is the systematic killing of civilians as the world turns a blind eye.”

-Nicholas D. Kristof, New York Times, 3.3.2011

The crisis in Syria was prompted by protests in March 2011 requesting for the release of political prisoners and stepping down of the governing party. National security forces responded to this widespread, initially peaceful demonstrations with brutal violence. From summer 2011 onwards, Syrian President Bashar al-Assad refused to cease attacks and implement the meaningful reforms demanded by protestors.

Assad consistently denied responsibility for the crimes of torture, and the deployment and use of heavy artillery, arbitrary detention and others, placing blame for the violence on armed groups and terrorists, yet denying humanitarian access to civilians.¹

At the side of the worsening violence, lack of assistance from the UN and non-governmental organizations (NGOs) caused severe shortages of food, water and healthcare in the country. Steer clear of these lack of assistance, intervention of foreign power made the conflict shoddier. Russia, Iran and Iraq have been providing support to the Syrian government since the initial stages of the conflict.² In addition to

¹ British Broadcasting Corporation (BBC), 15 April 2013, <http://www.bbc.co.uk/news/world-middle-east-13097926>.

² Azuolas Bagdonas, “Russia’s interests in the Syrian conflict: Power, prestige and profit,” ; European Journal of Economic and Political Studies, 5, No. 2, 2012

these parties, the upsurge of the jihadist group Islamic State (ISIS) added flame to the fire who have been accused of human right violations against those who refuse to accept their rules.

Chapter 7 of the UN Charter provides a framework within which the Security Council may take enforcement action. The Security Council can “determine the existence of any threat to the peace, breach of the peace, or act of aggression” and take military and non-military action to “restore international peace and security”.³ All the same article 2.7 prohibits intervention in matters which are essentially within the jurisdiction of any State. There has been, as a result, a long-standing argument in the international community between those who insist on a “right to intervene” in man-made catastrophes and those who argue that the Security Council, for all its powers under Chapter VII to “maintain or restore international security”, is prohibited from authorizing any coercive action against sovereign states for whatever happens within their borders.

There has been, accordingly, an ongoing argument among those who advocate the right to intervene in man-made catastrophes and those who contend that the Security Council doesn’t have the power to authorize any coercive activity against sovereign states for whatever occurs inside their outskirts even though it is given the power to maintain or restore international security under Chapter VII.

However, well ordered, the Council and the international community have come to acknowledge that, under Chapter VII and in quest for the rising norm of the responsibility to protect, it can permit military action to change cataclysmic wrongs on the off chance that it is set up to proclaim that the circumstance is a risk to

³ “Libya and the Responsibility to Protect” *The Brookings Institution*. 16 June. 2011.
<http://www.brookings.edu/~media/Files/events/2011/0616_libya_responsibility/20110616_libya_responsibility.pdf>

international peace and security, not particularly troublesome when there are breaches of international law.

The foundation of the responsibility to protect, as a guiding principle for the international community of states lie in the obligations that are inherent in the concept of sovereignty and the responsibility of the Security Council under Article 24 of the UN charter. Furthermore, it shelters under the principle of maintenance of international peace and security, specific legal obligations under human rights and human protection instruments, international humanitarian law and national laws, and lastly on the developing practice of states, regional organizations and the Security Council itself.⁴

The primary responsibility to protect the civilians in Syria lies on the Syrian government but it's a known fact that the government failed in protecting its people which aggravates the problem as days pass. The 2005 global commitment adopted at the United Nations (UN) World Summit, has been central to the international discourse on how to respond to mass atrocity crimes in Syria.⁵ Governments are expected to uphold their responsibility to protect their people by preventing the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. It is enshrined in the primacy of the Security Council in situations where a state was clearly unwilling or unable to uphold its sovereign responsibilities, the Security Council, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should intervene. Beyond the primary responsibility of the Syrian government to stop killing its own people, responsibility rests with the

⁴ Simon Adams, "Libya and the Responsibility to Protect," Global Centre for the Responsibility to Protect, Occasional Paper Series No.3, October 2012

⁵ World Summit Outcome Document, RES/60/1, 24 October 2005

one body entrusted and mandated by the 193 members of the United Nations with the maintenance of international peace and security; the Security Council.

The life of civilians is continuing to be the price for the ignorance of the international community towards the Syrian crisis which needs to be addressed constructively. Therefore this paper will assess the overall right of the Syrian people to be protected from mass atrocity crimes and human rights violations and who bears this responsibility and lays the solutions moving forward.

1.2 Problem Statement

After six deadly years the Syrian conflict shows no sign of abating. As the civil war has dragged on its violence has become more widespread, systematic and extreme. The conflict has also become more intractable, threatening the peace and stability of the entire Middle East. The government, where the primary responsibility to protect the people, keeps on violating major human rights and killing its own people.⁶ The international community on the other hand hasn't made constructive actions and Bashir Al-Assad isn't taking responsibility for his. The lack of assistance on food and healthcare from the UN has been an added headache to the Syrian people ⁷

Nevertheless, the ongoing crimes against humanity, the 4.9 million refugees⁸, and the estimated 400,000 death toll in Syria⁹ makes it clear that the actions taken haven't been sufficient to protect Syrians. Both the Assad regime and many rebel groups in Syria have continued to commit war crimes and crime against humanity in what has become a deadlock civil war. In addition, to the parties involved, many place the

⁶ Syrian network for human rights, <http://sn4hr.org/blog/2016/06/22/research-death-792-individuals-due-syrian-regimes-isiss-siege-civilian-populated-cities/>

⁷ Baker, Aryn "The cost of war Syria three years on", Time, 14 March, 2014, [http://time.com/24741/the Cost Of War Syria Three Years on](http://time.com/24741/the-Cost-Of-War-Syria-Three-Years-on)

⁸ UN news center, Intra-Syrian negotiations, <http://www.un.org/apps/news/infocusRel.asp?infocusID=146>

⁹ UN Special Envoy for Syria Staffan de Mistura, Geneva peace talk, April, 2016

blame for the ongoing stalemate on the Security Council and its inability to send hardly any clear, forceful messages to the parties and maintain international peace and security and uphold its Responsibility to Protect the Syrian people, due to the veto power of the five permanent members and take early preventive action when the conflict was in its nascent stage. Furthermore, because of the failure of the Security Council to hold the Syrian government accountable for its actions, President Bashar al-Assad's forces deployed more extreme armed force. This in turn strengthened the most uncompromising and severe elements within the armed opposition, especially those with external sources of sustenance. The net effect has been to turn Syria into the world's worst case of ongoing mass atrocities, civilian displacement and humanitarian catastrophe. As such, the permanent members of the Security Council bear a special burden of responsibility for their failure to protect the Syrian people.

In the broader sense, it can be concluded that the international community has failed to meet its obligations and live up to its responsibility to protect. This failure further highlights the need for swift, preventive action before a crisis devolves into a state in which consensus by an often-divided international community is needed. Many voices inside and outside of Syria declared that the international community and the Syrian government had both failed in their responsibility to protect Syrians, a failure that, particularly in light of the attacks, reached what some called a tipping point and required an immediate and meaningful response.¹⁰ There was nothing neither inevitable nor accidental about the international community's failure to prevent Syria's conflagration.

¹⁰ Syrian network for human rights, to the UN security council: resolutions are worthless if not implemented, <http://sn4hr.org/blog/2016/01/11/16316/>

Many members of the Security Council have attempted to pass various resolutions to find a solution to the crisis, which have included measures such as reviving a UN peacekeeping mission and passing sanctions against the Syrian regime. However, both Russia and China, who hold veto power on the council have struck down three separate resolutions on Syria and much of the international response to the crisis has accordingly languished. But now the time has come for the world to get serious about resolving this conflict: if not for the sake of the hapless Syrian people, then at least for the sake of global security and stability.

1.3 Study Objectives

General objectives

- Study the right of the Syrian people to be protected from mass atrocities and violation of human rights.

Specific objectives

- Establish whose responsibility it is to protect the Syrian people from mass atrocities and human right violations
- Study the specific elements of the responsibility to protect in relation to the responsible bodies identified
- Assess the human rights violated
- Assess what has been done to stop the crisis
- Identify the factors(obstacles) that is dragging down the international community to solve the problem
- Suggest solutions to overcome the obstacles and put an end to the Syria crisis

1.4 Research questions

- Whose responsibility should be to protect the Syrian people from mass atrocities and human right violations?
- What responsibilities lie in the responsibility to protect the Syrian people?
- What rights are violated in the Syrian crisis?
- What actions has been done to protect the Syrian people?
- Why does the international community not intervene in the humanitarian crisis in Syria?
- What are then the causes that hinder a peaceful resolution of this conflict?
- What can explain why a negotiated settlement has not yet been found in the Syrian civil war case?

1.5 Significance of the study

The Syrian crisis is one of the world's largest and most dire emergencies. More than 400,000 civilians died¹¹ and more than 4.9 million Syrians have fled the country and more than 6 million are internally displaced over the past six years.¹² Each day, more civilians' lives are at risk. Everyone have a stake in what's going on in Syria as a global citizen and should recognize this problem, call for an end to the crisis, and construct durable institutions that will assure stability for the Syrian crisis. The Syrian people deserves a healthy and fulfilling life and needs to exercise their basic rights and freedoms to which all humans are considered entitled to, that's being taken away from them in startling ways. The outcome of this study will identify whose responsibility it is to protect the Syrian people from mass atrocities and human right violation. Identifying these will indirectly distinguish the actors in the crisis and set

¹¹ UN, Supra note 9

¹² UN, Supra note 8

accountability for those who have committed war crimes, crime against humanity giving insight to the route of reaching an inclusive peace and reconciliation process. Protection of human rights is essential to the sustainable achievement of the three prominent priorities: peace, development and democracy. With the aim of achieving these, all nations have a stake in promoting worldwide respect for human rights, where this paper signifies and highlights. If the international community doesn't put an end to the Syrian crisis the above three priorities will be just a theory starting from neighboring countries and eventually in every part of the world.

1.6 Literature review

War advocates believe that letting war run its natural course is the most decisive solution for bringing about a form of peace.¹³ Negotiated settlement theorists suggest just the opposite. In fact, one source suggests that not intervening may lead to at least a 70 percent chance of a protracted conflict.¹⁴

The specific timing and effectiveness of an intervention in an ongoing conflict will also determine the onset or severity of the conflict. There are three main points of view: giving war a chance, negotiating a settlement, and arming opposition forces.¹⁵ Another argument suggests that neither of these factors brings about lasting peace, but improving security sector reform during the negotiation process may be far more beneficial than a simple cease fire. The same argument holds that promises of intervention that do not materialize is far worse than actual intervention itself because they create credibility issues internationally.¹⁶

¹³ Idean Salehyan and Kristian Skrede Gleditsch, "Refugees and the Spread of Civil War," Vol. 60, No. 2, April 2006, pp. 335–366

¹⁴ Kyle Beardsley, "Peacekeeping and the Contagion of Armed Conflict," The Journal of Politics, Vol. 73, No. 4, October 2011

¹⁵ Monica Duffy Toft, "Ending Civil Wars: A Case for Rebel Victory?" Vol. 34, 2010. pp. 7–36. See also Edward N. Luttwak, "Give War a Chance," Vol. 78, 1999, pp. 36–44.

¹⁶Ibid pp. 52

Another significant point was enclosed by Michael G. Findley, who stipulated that the capability and willingness of the host government to conduct operations may bring about a quick defeat of the opposition or may further prolong the conflict as in the Syria case. In addition, the leader of the country in question may feel compelled to act to deter any further uprisings which adds fuel to the flame. He further states, the capability of rebels or opposition groups to supply, base, and carry out operations is crucial in assessing the likelihood of conflict. Research has shown that third-party or outside intervention becomes more likely when opposition or rebel groups are ethnically different from that of the aggressor, which is often the government.¹⁷

In 1999, during the annual session of the United Nations General Assembly, the former Secretary General of the United Nations, Kofi Annan, gave his thoughts on how the international community should act in times of humanitarian crisis referring to the tragedies in Rwanda and Kosovo in the years of 1994 and 1999 consecutively. Annan stresses out the need for change in the international attitude towards humanitarian crises. He uttered the international community should intervene in time “when death and suffering are being inflicted on large numbers of people, and when the state nominally in charge is unable or unwilling to stop it.” With this in mind, the International Commission on Intervention and State Sovereignty (ICISS) came up with a report called ‘The Responsibility to Protect’ in December 2001. This report provides a framework which deals with the controversial aspect of humanitarian intervention, and use the concept of the ‘responsibility to protect’ instead of the ‘right to intervene (ICISS, 2001: 17). Amitav Acharya ,Thomas Weiss and Alex Bellamy are three of many scholars who argue that the main contribution to the debate of humanitarian intervention lies in the fact that R2P redefines the concept in

¹⁷ Michael G. Findley, “Rethinking Third-Party Interventions into Civil Wars: An ActorCentric Approach,” *Journal of Politics*, Vol. 68, No. 4, November 2006.

this manner. Also the concept of ‘protection’ extends to a broader meaning than intervention. Now the debate about humanitarian intervention is not any longer about ‘whether’ to react, but it is more about ‘how’ to react.

Another important aspect in responsibility to protect is the concept of sovereignty. Gareth Evans and Mohamed Sahnoun, who were the Co-Chairs of the ICISS, discuss the concept of sovereignty in their article ‘The Responsibility to Protect’ and emphasize on the fact that sovereignty implies a dual responsibility. One of the responsibility is towards another state where a state has to respect the sovereignty of another state, but on the other hand, internally a state has to respect the basic rights and dignity of all the people within the state.

The question of legitimacy is certainly important concerning emerging norms and its development. Since the ICISS report mentions inaction from the Security Council as one of the contributing factors for losing legitimacy, the Security Council cannot be inactive during a humanitarian crisis like the one in Syria. It would lose its credibility as a main enforcer of global security. Therefore, legitimacy is vital to understand the emerging norm of responsibility to protect and its implementation in conflicts when the Security Council is unavailable to take action.

An account of just cause was clearly endorsed by states at the 2005 UN World Summit. Intervention is permissible only when states are manifestly failing to protect their populations from the four responsibility to protect crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. In terms of legitimate authority, almost all accounts of the responsibility to protect require that any military intervention be authorized by the UN Security Council. The 2005 world summit made the conditions on using force as a last resort clear, force may be used only “should peaceful means be inadequate” and highlights the need for the search of non-forcible options, including prevention.

The principle of proportionality in the resort of force is a central principle of international law and applies to intervention under responsibility to protect. It requires the policy adopted to be proportionate to the original provocation and/or the intervention must be expected to do more good than harm.

Thereupon, it seems that there are already conditions governing intervention under responsibility to protect. These principles have a quasi-legal status. Some are legally binding, particularly the principles of legitimate authority, dependability to the principles of *jus in bello*, and proportionality. Others have a more moot legal status like the 2005 World Summit. Regardless, all seem to be norms: they dictate generally expected standards of behavior and are widely endorsed.

It might be questioned that such rules are lawfully insignificant in light of the fact that the UN Security Council is a definitive expert on matters of global peace and security. In that capacity, decisions cannot be subject to external legal constraints. This appears to be mixed up. In the first place, the essential subject of the rules is what they approve the intervener and this is unmistakably subject to external legal constraints.

The Security Council is not the body that will undertake the intervention, but instead the one to approve intervention under responsibility to protect. Second, despite the fact that the Security Council can decide matters of peace and security, it is as yet subject to different external constraints like the UN Charter. Without a doubt, despite the fact that the essential subject of the guidelines is the intervener, they may likewise apply to the Security Council, in that the Security Council ought to approve interventions that meet these conditions.

1.7 Methodology

In search for answers, this paper will make use of a qualitative research methodology. This type of research has a focus on meanings, perspectives and understandings. This research methodology will offer an insight into the reason for which it is so difficult to achieve a negotiated settlement in the Syrian civil war case and will better help provide an answer to the core question. Also, on the basis of the much entangled nature of the conflict under examination, the research will be addressed from different perspectives bearing in mind the different standpoints that surround the topic in discussion. Quantitative data will not be used in the paper. Only a qualitative approach can provide detailed insights into the thoughts and ideas collected by the empirical data. As the data is the result of human being thoughts it is impossible therefore to acquire objective measurable data. Furthermore, focus groups or interviews will also not be employed as it will not present any insight into the Syrian civil war actual case.

The application of a document analysis as a qualitative research method will be employed in the project. A very rough selection of the materials has been realized in order to assure a good quality of the essay. Scholarly literature as books, academic articles or journalistic sources, reports, government policies, speeches and electronic materials will constitute the base of the analysis. The reason behind this choice subsists in the fact that these types of data lay the basis for a proper examination of the topic, description, assessment and interpretation of the facts offering a thorough understanding of varied opinions while allowing the possibility for independent observations and conclusions. Internet sources will also be used as they reveal the actual status of the conflict that may not have been covered yet by books or high academic journals.

This research is a desk study reviewing how the norm of the responsibility to protect has emerged and developed over time. Which will then apply the findings on the case of the Syrian conflict and explain why this emerging norm has been insignificant to protect the civilian population of Syria. Secondary sources will be used in the research, which will mainly be academic articles and newspaper articles. Since the research will be interpreting existing literature it will use constructivism as an analytical framework because it provides the best understanding of global issues such as R2P and foreign intervention policies. Furthermore, constructivism is preferred because it focuses on the perspective of the beholder. Identities and values are shaped by the individual, which is a substantial difference compared to realism which focuses on the state.

1.8 Limitations to the study

Since the Syrian crisis is a relatively current and ongoing issue a lack of data (a reliable data) will be a limitation while doing these paper.

1.9 Overview of chapters

Introduction of the study will cover the first chapter. Second chapter will provides an introduction to the conflict, offering the historical background and the main actors of the conflict which is vital for the further analysis, as it lays down the basis for the “why” question.

Third chapter will assess the Human Rights violated in the Syrian crisis which helps to reach on the analysis of why and how these rights are violated, and what can be done to prevent abuses or respond to them and will give a justification for the responsibility to protect and international humanitarian intervention at the end. Chapter four will emphasis on the principle of the responsibility to protect. A short overview of the historical background of the responsibility to protect will be covered

followed by the foundation of the responsibility to protect and its legal grounds. It will then provide a better understating of the specific responsibilities found within the principle of responsibility to protect. The responsibility to protect in the case of Syria will be assessed in chapter five, which will gauge the scope of the responsibility of the Syrian government to protect its people denoting the legal grounds. It will further dig into what the government has done and doing towards this responsibility. The responsibility of the UN, the Security Council in particular and other actors will also be covered together with what has been done and what should have been done by these bodies. It will also present the conflict from a different perspective that discloses additional reasons that contribute to the failure of protecting the Syrian people. Finally, the last chapter will include a brief conclusion and recommendation as to the responsibility to protect the Syrian people.

Chapter 2

Introduction of the conflict

2.1 How did the Assad family come into power?

Syria has gone through various periods of political precariousness since its freedom from France in 1946.¹⁸ Arab nationalism caused military overthrows until the Syrian Corrective Revolution in 1970 brought the Arab Socialist Ba'ath Party and Hafez Al-Assad to power.¹⁹ After the Hafez Al-Assad got control of the administration, he directly controlled the military which was in check of the public administration, the Council of Ministers, the Parliament, the judiciary, the media, and the economy which made it easy for him to repress oppositions.²⁰

After the death of Hafez Al-Assad, his son Bashar Al-Assad took power, and initially looked to be a better leader than his father. He proved it wrong in later years by suppressing protests in 2011.²¹ In addition to that, new economic reforms which were planned to strengthen the private sector and promote economic stabilization resulted in unemployment and income concentration among the few. To make it worse corruption, lack of adequate infrastructure, and the perception that the Baath regime has been privileging the minority Allawite community, resulted the minor protests on January 2011. As a result of the protest many were arrested, tortured, and murdered which drove many crowd to join the protest seeking revenge.²²

¹⁸ Sorenson, D., 'an Introduction to the Modern Middle East', Colorado, Westview Press, p.p-286-291

¹⁹ Ibid

²⁰ Federal Research Division Library of Congress, 'Syria; a country study', Edited by Thomas Collelo, April 1987, p.p-41

²¹ William R. Polk, Understanding Syria: from pre-civil war to post-Assad, The Atlantic, Dec, 2013

²² Janis Berzins, Civil War in Syria: Origins, Dynamics, and Possible Solutions, National Defense Academy of Latvia Center for Security and Strategic Research, Strategic Review no 07, April 2013, p.p-1-2

2.2 Parties in the conflict and their involvement

National security forces reacted to initially peaceful demonstrations with merciless brutality. As indicated by witnesses, these security forces use deadly force against protestors even when they are not debilitated by the protestors.²³ The Syrian people were also imperiled by the Shabiha, an armed state-supported militia fighting together with security forces²⁴. Bashar al-Assad refused to stop the assaults and actualize the meaningful reforms requested by protestors since 2011.²⁵ It was on July 2011 that witnesses, casualties, the media, and civil societies started speaking up on the government's actions on subjecting civilians to arbitrary detention, torture, and the deployment and use of heavy artillery. Assad constantly denied responsibility regarding these violations, which put fault on terrorists and armed groups for the brutality, while denying humanitarian access to civilians'.²⁶

As the catastrophe kept on rising, rivals of the Assad administration started to get more organized and Syria began to slither into a civil war zone. Several opposition organizations were formed such as the Syrian National Council (SNC), an umbrella organization of exiled Syrians, and the Free Syrian Army (FSA), a militarized element largely composed of Syrian military defectors and armed rebels.²⁷ Although ideological divisions have portrayed the fragmented opposition, many groups lost patience with the lack of improvement on reforms and began to call the regime's resignation. As a result, in August 2011, the FSA began attacking Syrian soldiers with force. This marked the first time that the opposition resorted to violence to

²³ Human rights watch, we live as in war, crackdown on protestors in the governorate of homs, 2011.

²⁴ Louis Charbonneau, "Watchdog offers more proof Syria government used chemical arms: U.S.," Reuters, 6 January 2015, <http://www.reuters.com/article/2015/01/06/us-syria-crisischemicalweapons/idUSKBN0KF22N20150106>.

²⁵ "Death toll in Syria estimated at 191,000," New York Times, August 22, 2014, available at: http://www.nytimes.com/2014/08/23/world/middleeast/un-raises-estimate-of-dead-in-syrian-conflict-to-191000.html?_r=0.

²⁶ Neil MacFarquhar, "Syria denies attack on civilians, in crisis seen as civil war," New York Times, July 15, 2012.

²⁷ BBC News Online, 15 April 2013, available at: <http://www.bbc.co.uk/news/world-middle-east-13097926>

overthrow the regime and end the government's widespread attacks on civilians.²⁸ With the introduction of these new militant tactics came reports that opposition forces had also committed human rights violations against Syrian civilians.

In December, 2012, a United Nations report stated that the conflict had "become overtly sectarian in nature,"²⁹ between mostly Alawite government forces, militias and other Shia groups fighting primarily against Sunni-dominated rebel groups; however both opposition and government forces denied that. The fighting reached the capital Damascus and Aleppo by that year.³⁰

In addition to the local players, outside forces have progressively impacted the conflict. Dating back to the time of Hafez al-Assad, Russia has been the primary wellspring of technology, defense equipment and finance. In exchange the Russian navy has the privilege of using the Tartus port which isn't open to many countries.³¹ Russia, Iran and Iraq provided technical, financial, military and political support to the Syrian government since the initial stages of the current conflict.³² In September 2015, these three countries worked with the Syrian government to set up a joint operation center in Baghdad to coordinate their activity in Syria.³³ Iran-backed Hezbollah joined the war in support of the Syrian Army in 2013.³⁴ Hezbollah has directly engaged in fighting against Syrian rebels on both sides of the Syria-Lebanon border. In the meanwhile, Iran continues to provide economic, military and political support to the government of Syria.³⁵

²⁸ *ibid*

²⁹ 'UN independent panel finds more breaches of human rights law by parties to Syrian conflict', UN news center, available at: <http://www.un.org/apps/news/story.asp?NewsID=43820#.WP-Dg4iGO00>

³⁰ UN Human Rights Council, UN Independent International Commission of Inquiry report, 20 December 2012, available at: http://www.un.org/apps/news/story.asp?NewsID=43820#.VrxAAk_fQ4M

³¹ Christopher Harmer, Russian Naval Base Tartus, Institute for the study of war, July 2012, p.p-1

³² *Supra* note 2, p.p- 13

³³ *Id*, p.p-14

³⁴ Marisa Sullivan, middle east security report 19-'Hezbollah in Syria', Institute for the study of war, April 2014, p.p-1

³⁵ *Id*,p.p-8

In September 2015, Russia initiated major airstrikes in Syria claiming it would target the Islamic State of Iraq and ISIS, an extremist armed group operating on both sides of the Syria-Iraq border.³⁶ Despite these statements, most airstrikes have been on non-ISIS positions held by resistance forces, including civilian-populated territories. The Syrian Observatory for Human Rights (SOHR) claimed 83,500 civilian deaths to the government and its supporters, including Russia; 7,000 to Syrian rebels and allied forces; 3,700 to ISIS; 920 to the U.S.-led coalition; and 500 to Turkey.³⁷ In March 2017, the SOHR reported on that the airstrikes by Russia have killed 5013 civilians including more than 1900 children and women.³⁸ In its 2017 report, Amnesty International also alleged that Russian air strikes killed and injured thousands of civilians where some of the airstrikes were deliberately directed towards civilians.³⁹

The Syrian government continues to conduct airstrikes in residential areas, contravening UN Security Council Resolution 2139 that came into force on February 22, 2014, which demanded all parties to cease attacks on civilians and the use of indiscriminate weapons.⁴⁰ They used high explosive barrel bombs and repeatedly bombed civilian areas.⁴¹ The attacks caused numerous civilian deaths and injuries, including children.⁴²

³⁶ Supra note 2; see also: Thomas Grove and Erika Solomon, "Russia boosts arms sales to Syria despite world pressure," Reuters, February 21, 2012

³⁷ Reuters, 'Syrian war monitor says 465,000 killed in six years of fighting', March 13, 2017. See also, Jack Moore, Syria War Death Toll Hits 321,000 With Further 145,000 Missing: Monitor, Newsweek, March 13, 2017.

³⁸ Syrian observatory for human rights, 'About 5013 civilian Syrian casualties including more than 1900 children and women in 18 months of Russian airstrikes and massacres', March 30, 2017, available at <http://www.syriahr.com/en/?p=63767>

³⁹ Amnesty international, Amnesty international report 2016/17, 'The state of the world's human rights', 2017, p.p-349

⁴⁰ Christopher Harmer, Jonathan Dupree and Liam Durfee, "Syrian Air Force and Air Defense Capabilities," Institute for the Study of War, May 2013

⁴¹ Supra note, 37,p.p- 350

⁴² Ibid

The battle is now a combat beyond those for and against Assad. The rise of the jihadist group Islamic State (ISIS) has added a further facet into the conflict. ISIS has been accused by the UN of instigating a campaign of terror.⁴³ It publicly executed and punished many people who refused to accept its rules.⁴⁴ Its members have also killed rival armed groups, security forces of the Syrian government and, religious minorities.⁴⁵ ISIS poses a direct threat to civilians as its fighters have carried out mass executions especially in areas under their control.⁴⁶ According to Amnesty international, ISIS fighters made direct and in discriminated bomb attacks, chemical weapons attacks and series of executions on civilians which some of the attacks they claimed responsibility for.⁴⁷

The United Nation estimated the number of people who died in Syria around 400,000⁴⁸ where the number of refugees reached 4.9 million⁴⁹ since the beginning of the conflict. In a 2016 report, the Office for the Coordination of Humanitarian Affairs (OCHA) estimated that 13.5 million people were in need of humanitarian assistance, including food, health care and shelter 4.6 million of them were exposed to grave protection threats since they are located in areas that are hard to access such as besieged zones.⁵⁰ All parties to the conflict have impeded humanitarian access to vulnerable civilians, with 4.5 million Syrians in inaccessible areas, an estimated 393,000 of whom are living under siege.⁵¹

⁴³ Student news daily, 'Syria: the story of the conflict', February 23, 2016, available at: <https://www.studentnewsdaily.com/backgrounder/syria-the-story-of-the-conflict/>

⁴⁴ Supra note 22,p.p-9

⁴⁵ Supra note 41

⁴⁶ BBC News Online, available at: <http://www.bbc.co.uk/news/world-middle-east>

⁴⁷ Supra note 37,p.p- 351

⁴⁸ Supra note 9

⁴⁹ Supra note 8

⁵⁰ Office for the Coordination of Humanitarian Affairs, 'Global humanitarian review', Partnerships and Resource Mobilization Branch, 2016,p.p-5

⁵¹ MeryCorps,<https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis>

Chapter 3

Human Rights violated in the conflict

3.1 Human rights violations

Syria is a party to most of the core international human rights treaties. Four of the International instruments ratified by the State which are relevant to the purpose of these study are: the International Covenant on Civil and Political Human Rights; the International Covenant of Economic, Social and Cultural Human Rights; the Convention on the Rights of the Child; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵² These treaties outline guarantees for fundamental rights, many of which correspond to the rights to which combatants and civilians are entitled under international humanitarian law.

On the subject international humanitarian law, Syria is a signatory of the 1949 Geneva Convention which establishes the general rules for the treatment of civilians in wars, specifying that non-combatants not be subject to murder, torture, rape, or other cruel treatment. At this point, there is no question on the jurisdiction and applicability of International humanitarian law on Syria as a sustained violence has been reached and that the civil unrest has spiraled into civil war. In early 2012 the International Committee of the Red Cross (ICRC) qualified the violence in Syria as a non-international armed conflict, thus determining the applicability of international humanitarian law norms.⁵³ Since then, however, the conflict has intensified which makes the applicability more legitimate.

⁵² Forced migration review, 'Who has signed what?', available at:

<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/signatories.pdf>

⁵³ International committee of the red cross, 'Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting', June 17, 2012, available at:

<https://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>

ICRC clearly sets the conditions where an armed conflict will be considered as a non-international armed conflict to establish the applicability of the common Article 3 of the Geneva Convention.⁵⁴ Three conditions are laid down: the fighting must be particularly intense, it must be of significant duration and the opposition fighters battling government forces must be reasonably well-organized. In the Syrian case, the fighting is almost on its sixth year which makes the element of the duration of the conflict indisputable. The fact that at least 400,000⁵⁵ people died and 4.9 million⁵⁶ people are displaced will settle the intensity of the fighting. The opposition groups fighting the government are indeed well organized and in control of many territories in Syria⁵⁷. The Syrian National Council, a coalition of opposition forces, has been recognized by three permanent members of the UN Security Council: France, the United Kingdom and the US.⁵⁸

As a result the Syrian conflict is regulated by Common Article 3 to the Geneva Conventions of 1949, which sets forth minimum standards for the proper treatment of civilians and wounded and captured combatants, and customary laws of war, concerning the methods and means of warfare. It specifically sets out “Persons taking no active part in the hostilities... shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria”⁵⁹ and goes on to list the following acts as accordingly prohibited “violence to life and person, in particular murder... and torture”⁶⁰, “taking of hostages”⁶¹, “outrages upon personal dignity, in particular

⁵⁴ Jelena Pejic, International review of the red cross; The protective scope of Common Article 3: more than meets the eye, volume 93, March 2011, p.p- 3-5

⁵⁵ Supra note 9

⁵⁶ Supra note 8

⁵⁷ Wikipedia, ‘Syrian opposition’, April 2016, available at: https://en.wikipedia.org/wiki/Syrian_opposition

⁵⁸ Andrew Rettman, ‘France recognizes Syrian council, proposes military intervention’, November 2011, available at <https://euobserver.com/foreign/114380>

⁵⁹ The Geneva Convention, August 12, 1949, Article 3(1).

⁶⁰ Id, Article 3(1) (a).

⁶¹ Supra note 59, Article 3(1) (b).

humiliating and degrading treatment”⁶², and “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”⁶³. Thus it is clear that the acts of murder, torture, extrajudicial executions, rape, hostage taking and mistreatment of prisoners are all prohibited.

In addition, common Article 3 states that “impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict”⁶⁴ however the parties to the conflict haven’t been respecting it; the ICRC reported that on October 13, 2013 six of their staff members and one volunteer from the Syrian Arab Red Crescent had been abducted by unknown assailants while travelling in clearly marked vehicles.⁶⁵

Syria also signed the Rome Statute of the International Criminal Court on November 29, 2000. But, because Syria never ratified the document, the International Criminal Court has no independent authority to investigate or prosecute crimes that take place within Syrian territory. Therefore, in the absence of the Syrian government ratifying the statute, or accepting the jurisdiction of the court through a declaration, the ICC could only obtain jurisdiction over crimes in Syria if the Security Council refers the situation there to the court. In fact, in its power to refer jurisdiction to the court the UN Security Council drafted a resolution referring the situation in Syria to the ICC. But it was vetoed by Russia and China on May 22, 2014. Despite non-ratification, the Syria is still obliged to refrain from acts that would defeat the objects and purpose

⁶² Supra note 59, Article 3(1) (c).

⁶³ Supra note 59, Article 3(1) (d).

⁶⁴ Supra note 59, Article 3(2).

⁶⁵ ICRC, Syria: ICRC and Syrian Arab Red Crescent team abducted in Idlib, October, 2013, available at: <http://www.icrc.org/eng/resources/documents/news-release/2013/10-13-syria-team-abductedidlib.htm>

of the treaty according to the Vienna Convention on the Law of Treaties (art. 18), to which the State acceded in 1970.

Years has passed since the crisis in Syria began and yet serious violations of international humanitarian law and grave abuses of human rights by the parties in the conflict continue to occur and the civilian population is bearing the brunt of the violence.

The human rights violations during the Syrian crisis have been numerous. Navi Pillay, the UN High Commissioner for Human Rights has said that both the anti-government groups and the government committed war crimes, however she claimed that the government's abuses are the greatest in both gravity and scale.⁶⁶ In its 2017 report, Amnesty international mentioned that the parties involved in the Syrian conflict committed serious violations of international humanitarian law and gross human rights abuses.⁶⁷

The United Nations Human Rights Council established an independent International Commission of Inquiry in September 2011 to investigate the alleged human rights violations.⁶⁸ The Commission has since produced more than ten reports and concluded that the parties involved in the conflict committed crimes against humanity and war crimes.⁶⁹

The Commission has outlined the human rights violated in the conflict since September 2011. It summarized the violations conducted mainly, but not

⁶⁶ UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, February 22, 2012, A/HRC/19/69. See also; CBC news, 'Syria regime atrocities 'far outweigh' rebels' crimes, UN says', April 08, 2014

⁶⁷ Supra note 39, p.p-349; see also: UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, February 5, 2013, A/HRC/22/59, p.p-1

⁶⁸ The Independent International Commission of Inquiry on the Syrian Arab Republic was established on August 22, 2011 by the Human Rights Council through resolution S-17/1 adopted at its 17th special session with a mandate to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic.

⁶⁹ UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, February 12, 2014, A/HRC/25/65

completely, by the government as “the deliberate targeting of hospitals, medical personnel and transport, the denial of access to medical care, and ill-treatment of sick and wounded”.⁷⁰ The Commission has reported that pro-government forces have conducted "widespread attacks on the civilian population, committing murder, torture, rape and enforced disappearances as crimes against humanity"⁷¹ violating Article 2, 4 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and common article 3 of the Geneva Convention, specifically Article 3(1)(a)(c). The same goes to ISIS who have been accused of torture of civilians, execution and perpetuating violence against civilians.⁷²

The parties to the conflict undertook indiscriminate attacks on civilians and military objects without distinction in contradiction of the core objective of common article 3. In May 2014, the UN Secretary-General reported that: “Indiscriminate aerial strikes and shelling by Government forces resulted in deaths, injuries and large-scale displacement of civilians, while armed opposition groups also continued indiscriminate shelling and the use of car bombs in populated civilian areas”.⁷³ The commission of inquiry also reported the government and the Russian forces’ airstrikes including the ones which involved chlorine bombs and directed on hospitals, schools, residential areas and markets killed hundreds of people.⁷⁴

⁷⁰ UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, February 2, 2017, A/HRC/34/64, p.p-1

⁷¹ UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, August 16, 2012, A/HRC/21/50, p.p-1

⁷² UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: ‘Rule of Terror: Living under ISIS in Syria’, November 14, 2014, p.p-6-8

⁷³ Report of the Secretary-General on the Implementation of Security Council Resolution 2139, May 22, 2014, UN Doc. S/2014/365, p.p-1

⁷⁴ Supra note 70

Both the Syrian government and rebel forces frequently interrupted access to humanitarian aid, particularly basic medical equipment.⁷⁵ A report by the UN Secretary-General states that: “Medical supplies including life-saving medicines and vaccines, and equipment for the wounded and the sick are commodities privileged through the Geneva Conventions. The report further stipulates, denying these is arbitrary and unjustified, and a clear violation of international humanitarian law. Yet, medicines are routinely denied to those who need them, including tens of thousands of women, children and elderly. It concludes, the Security Council must take action to deal with these flagrant violations of the basic principles of international law.”⁷⁶ These acts clearly violates international humanitarian law with respect to the duty to care for the sick and wounded.

The Security Council passed resolution 2139⁷⁷ on February 22, 2014 demanding safe and unhindered humanitarian access: including across conflict lines and across borders; that all parties cease “indiscriminate employment of weapons in populated areas, including shelling and aerial bombardment, such as the use of barrel bombs;” and an end to the practices of arbitrary detention, disappearance, and abductions, and the release of everyone who has been arbitrarily detained. However, the Syrian government refuses to authorize cross-border deliveries of aid through border crossing points that it does not control.

⁷⁵ The International Independent Commission of Inquiry on Syria cites removal of essential medical and surgical supplies from aid convoys, resulting in scarcity of the most basic medical necessities such as syringes, bandages and gloves. Oral Update, A/HRC/27/CRP.1, September 16, 2014, p.p-7-8; see also UN Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, August 11, 2016, A/HRC/33/55, p.p-10

⁷⁶ Report of the Secretary-General on the Implementation of Security Council Resolution 2139, April 23 2014

⁷⁷ The Council called on all parties, in particular the Syrian authorities, to promptly allow unhindered humanitarian access for United Nations agencies and its partners, including across conflict lines, and to ensure that aid reached people through the most direct routes.

The UN Security Council adopted two additional resolutions: 2165 and 2191⁷⁸ on July and December 2014, which, among other things, authorized UN aid operations into Syria from neighboring countries without requiring the consent of the Syrian government. However, have been ignored or undermined by the parties to the conflict.⁷⁹ The UN Secretary-General portrayed on January 2016, the use of starvation as a weapon of "war crime".⁸⁰ The Secretary-General said all sides are using starvation as a weapon and other "atrocious acts" prohibited under international humanitarian law.⁸¹

B. Lynn Pascoe, the UN under-Secretary-General for Political Affairs, notified the UN Security Council that sources in Syria had reported “the use of artillery fire against unarmed civilians; door-to-door arrest campaigns; the shooting of medical personnel who attempt to aid the wounded; raids against hospitals, clinics and mosques and the purposeful destruction of medical supplies and arrest of medical personnel”⁸² in violation of common article 3 of the Geneva Convention.

Amnesty international researched violations committed by the Syrian government and non-state armed groups in Aleppo city and its closest outskirts which started on January 2014 and ended on early 2015. 78 current and former residents of Aleppo and 29 professionals working in Aleppo were interviewed which were crosschecked with extensive photo and video materials and witness accounts.⁸³ The outcome of the research showed that violations committed by the Syrian government and opposition groups in Aleppo not only violate UN Security Council Resolution 2139,

⁷⁸ The UNSC adopted resolution 2165 and 2191 after assessing the continued, arbitrary and unjustified withholding of consent to relief operations and the persistence of conditions that impede the delivery of humanitarian supplies to destinations within Syria.

⁷⁹ Supra note 71, p.p- 10

⁸⁰ UNSC, ‘The situation in the middle east’(S/pv/7605), Security Council’s 7605 meeting, January 15, 2016,p.p-2

⁸¹ Ibid

⁸² Kenneth Roth, “Syria: What chance to stop the slaughter?,” New York Review of Books, November 21, 2013.

⁸³ Amnesty international, “death everywhere”, war crimes and human rights abuses in Aleppo, Syria, 2015, p-6

but are also war crimes. There were also cases where the government committed crimes against humanity.⁸⁴ Government forces committed and continued to commit “torture and other forms of cruel, inhuman or degrading treatment or punishment as part of a widespread attack directed against a civilian population⁸⁵ as opposed to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and common Article 3.

Some armed oppositions were also accused of committing war crimes by the Commission of Inquiry, including “murder, execution without due process, torture, hostage,” as well as widespread violations of international humanitarian law.⁸⁶ These armed opposition groups committed war crimes, including deadly reprisals against minorities, extrajudicial execution of captured government soldiers and destruction of religious sites.⁸⁷ Among those is the FSA, which reportedly failed to comply with international human rights and humanitarian law, according to evidence from civil society groups including Human Rights Watch, which reported in March 2012 that FSA forces had committed human rights abuses against civilians including extra judicial killing, capture and torture.⁸⁸

3.2 The Use of chemical weapons

Despite the Syrian government’s agreement to get rid of its chemical weapon stock, Organization for the Prohibition of Chemical Weapons (OPCW) fact-finding

⁸⁴ *ibid*

⁸⁵ *Supra* note 71, p.p-1

⁸⁶ *Supra* note 71, p.p-2.

⁸⁷ Human Rights Watch, “Syria: Armed opposition groups committing abuses,” March 20, 2012, available at: <http://www.hrw.org/news/2012/03/20/syria-armed-opposition-groups-committing-abuses>; Kareem Fahim

⁸⁸ *Supra* note 4

Mission created in April 2014 has presented three reports establishing that chlorine⁸⁹ continues to be used as a chemical weapon in Syria.⁹⁰

In August 2013, a series of videos, photographs and reports from the ground in Syria indicated that a new chemical weapons attack had killed a high number of civilians in rebel-held areas outside of Damascus.⁹¹ The footage showed a large number of children among the victims of the attacks in Ghouta. Casualty estimates vary from 500 to over 1400.⁹² The international community called for an immediate investigation of the use of chemical weapons after the attack on civilians.⁹³ The team of United Nations inspectors probing the possible use of chemical weapons returned from Syria after two weeks of investigation⁹⁴ and reported that there was clear and convincing evidence that Sarin gas had been used in Ghouta which constitutes a war crime.⁹⁵ Despite the overwhelming evidences showing the use of chemical weapons and barrel bombs by the government and pro-government President Assad continues to deny these allegations.⁹⁶

⁸⁹ Chlorine attacks usually come in the form of a barrel bomb, often through an oil drum, gas cylinder or other improvised container filled with chlorine. It result a fluid on the lungs which can cause choking and breathing problems. It is prohibited in the Chemicals Weapons Convention to use this poisonous gas which Syria is a member to.

⁹⁰ OPCW, third report of the OPCW fact-finding mission in Syria, December 18, 2014,p.p-3; see also: supra note 70, p.p-12

⁹¹ BBC, 'Syria chemical attack: what we know, September 24, 2013, available at: <http://www.bbc.com/news/world-middle-east-23927399>

⁹² ibid

⁹³ CNN, 'U.N., U.S. call for urgent probe of Syria chemical attack claim', August 22, 2013, available at: <http://security.blogs.cnn.com/2013/08/22/questions-over-the-red-line-in-syria/>

⁹⁴ René Pita * and Juan Domingo, 'The Use of Chemical Weapons in the Syrian Conflict', Hoyo de Manzanares, Spain, July 30, 2014,p.p-394

⁹⁵ United Nations Mission to investigate allegations of the use of chemical weapons in the Syrian Arab Republic. Report on allegations of the use of chemical weapons in the Ghouta area of Damascus on August 21, 2013, September 2013. Available online: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_553.pdf

⁹⁶ Syrian Arab News Agency (SANA), "President al-Assad to BBC news: We are defending civilians, and making dialogue", <http://www.sana.sy/en/?p=28047>

Chapter four

Principles of the Responsibility to Protect

4.1 The emergence of Responsibility to Protect

As a guiding principle for the international community of states, the foundation of the responsibility to protect (R2P) lies in six components: in the concept of sovereignty, in the responsibility of the security council for the maintenance of international peace and security⁹⁷, in the specific legal obligations found under human right instruments, in the international humanitarian law and national laws And lastly on the developing practice of states, regional organizations and the security council itself.⁹⁸

The expression "responsibility to protect" was first presented in the report of the International Commission on Intervention and State Sovereignty (ICISS), set up by the Canadian Government in December 2001 as a response to Kofi Annan's question of "...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?".⁹⁹ The report widened the scope of sovereignty by not only giving states the right to "control" their affairs, but also laying the primary "responsibility" for protecting the people within their borders on the state.¹⁰⁰ It further stipulated when a State fails to protect its people either through lack of ability or a lack of willingness

⁹⁷ Charter of the United Nations, October 24, 1945, Article 24

⁹⁸ Simon Adams, "Libya and the Responsibility to Protect," Global Centre for the Responsibility to Protect, Occasional Paper Series No.3, October 2012

⁹⁹ Evans, Gareth J, and Mohamed Sahnoun, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', International Development Research Centre, December, 2001, VII para 4 & 5

¹⁰⁰ Id, VIII para 1

the responsibility shifts to the broader international community.¹⁰¹ These means, R2P operates at two levels. First, the State itself is primarily responsible for protecting its own people. Second, if the State is unwilling or unable to protect its people, then the international community is responsible for doing so.

The UN General Assembly also acknowledged the above mentioned principle in 2005 through Resolution 60/1, which stated that that “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.¹⁰² UN member States also declared that “we are prepared to take collective action, in a timely and decisive manner through the Security Council 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.”¹⁰³

Secretary-General Kofi Annan set up the High-level Panel on Threats, Challenges and Change¹⁰⁴ in 2004 and recognized the emerging norm of a responsibility to protect stating that there is a collective international responsibility, "exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing and serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent."¹⁰⁵ The panel proposed basic principles that would legitimize the authorization of the use of force by the UN Security Council, including the

¹⁰¹ *ibid*

¹⁰² UN General Assembly, 2005 World Summit Outcomes, Resolution 60/1, p.p-30

¹⁰³ *Id*, para 139

¹⁰⁴ United Nations General Assembly, ‘Follow-up to the outcome of the Millennium Summit’, A/59/565, December 2, 2004.

¹⁰⁵ *Supra* note 98, p.p-57

seriousness of the threat, the fact that it must be a last resort, and the proportionality of the response.¹⁰⁶

All UN member States formally accepted the responsibility of each State to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity at the United Nations World Summit held at September 2005¹⁰⁷. At the Summit, world leaders also agreed that the international community is responsible to protect people threatened with such crimes, when any State fails to meet that responsibility.¹⁰⁸ Should peaceful means including diplomatic, humanitarian and others be inadequate and national authorities "manifestly fail" to protect their populations, the international community should act collectively in a "timely and decisive manner" through the UN Security Council and in accordance with the UN Charter on a case by case basis and in cooperation with regional organizations as appropriate.¹⁰⁹

It was on April 2006 through resolution 1674¹¹⁰ that the Security Council made official reference to the responsibility to protect by reaffirming the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The responsibility to protect was also mentioned in resolution 1970¹¹¹ adopted in February 2011 following the widespread and systematic attacks against the Libyan civilian population. Explicit reference was

¹⁰⁶ Supra note 98, p.57-58

¹⁰⁷ UN General Assembly, 2005 World Summit Outcome, A/RES/60/1, October 24 2005, p.p-30 para 138

¹⁰⁸ Id, p.p-30 para 139

¹⁰⁹ Ibid

¹¹⁰ United Nations Security Council Resolution 1674, 28 April, 2006, para 4; the UNSC unanimously adopted resolution 1674 (2006) and condemned all sexual and other forms of violence committed against civilians in armed conflict, particularly women and children, and undertook to ensure that all peace support operations employed all feasible measures to prevent such violence and to address its impact where it took place.

¹¹¹ UN Security Council, Resolution 1970, S/RES/1970 (2011), February 26 2011

made to the responsibility to protect.¹¹² The Security Council demanded an end to the gross and systematic violation of human rights in Libya, "recalling the Libyan authorities' responsibility to protect its population," and imposed a series of international sanctions.¹¹³ The Council also decided to refer the situation to the International Criminal Court.¹¹⁴ In another resolution on Libya; resolution 1973¹¹⁵, the Council authorized Member States to take "all necessary measures" to protect civilians under threat of attack in the country, while excluding a foreign occupation force of any form on any part of Libyan territory.¹¹⁶

The Security Council also incorporated the primary responsibility of the state of South Sudan in resolution 1996¹¹⁷ and established a UN peacekeeping mission in South Sudan (UNMISS)¹¹⁸, among other things, to advise and assist the government in fulfilling its responsibility to protect civilians.¹¹⁹ Afterwards, the Security Council authorized the deployment of UN peacekeeping troops to Darfur, through resolution 1706¹²⁰. Moreover, in February 2014, on behalf of the international community to protect civilians in South Sudan the Security Council conducted human rights monitoring and investigations, and facilitated assistance to populations in need.¹²¹ In a more recent case on October 2013, in resolution 2121¹²², the Security Council highlighted "the primary responsibility of the Central African authorities to protect the population, as well as to ensure the security and unity in its territory", and

¹¹² Ibid, p.p-2

¹¹³ Ibid, para 1-2

¹¹⁴ Ibid, para 4

¹¹⁵ UN Security Council Resolution 1973, S/RES/1973, March 17, 2011

¹¹⁶ Id, para 4

¹¹⁷ UN s Security Council Resolution 1996, S/RES/1996, July 8, 2011

¹¹⁸ Id, para 1

¹¹⁹ Id, para 3

¹²⁰ UN Security Council Resolution 1706, August 31, 2006

¹²¹ UN, 'Outreach program on the Rwanda Genocide and the United Nations'. Available at: <http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>

¹²² UN Security Council Resolution 2121, S/RES/2121 11 July 2013

emphasized “their obligation to ensure respect for international humanitarian law, human rights law and refugee law.”¹²³

The responsibility to protect embraces 3 specific responsibilities within it; the responsibility to prevent, the responsibility to react and the responsibility to rebuild because an effective response to mass atrocities requires not only reaction, but further, lasting engagement to prevent conflict and rebuild the society after the event.

4.1 The responsibility to prevent

Armed conflicts or any other catastrophes doesn’t develop overnight. They are processes and no single events, the progression can take years or decades. The process will feature many steps that will facilitate the perpetration of crimes or steps that will prevent the commission of crimes. The later could have a great impact on regional and/or international peace and security.

The responsibility to prevent requires addressing both the root causes and direct causes of the conflict of internal conflict and other crises putting populations at risk.¹²⁴ Prevention of deadly conflict and other forms of catastrophe is the responsibility of sovereign states, the institutions and societies within them.¹²⁵ “A firm national commitment to ensuring fair treatment and fair opportunities for all citizens provides a solid basis for conflict prevention”.¹²⁶ A strong support from the international community is needed, and in many cases may be indispensable. Such support may take many forms. It may come in the form of development assistance and other efforts to help address the root cause of potential conflict; or efforts to provide support for local initiatives to advance good governance, human rights, or

¹²³ Id, para 6

¹²⁴ International commission on intervention and state sovereignty(ICISS), ‘the responsibility to protect’: Report of the International Commission on Intervention and State Sovereignty, December 2001, p.p-19

¹²⁵ Ibid

¹²⁶ Ibid

the rule of law; or good offices missions, mediation efforts and other efforts to promote dialogue or reconciliation.¹²⁷

A distinction was thus drawn between ‘root cause prevention efforts’ and ‘direct prevention efforts’, and this distinction was based on ‘the time available in which to make a difference’.¹²⁸ ‘Direct’ measures deal with the immediate triggers of a conflict to avoid resort to more coercive measures; ‘root cause’ measures aim at addressing the underlying causes of deadly conflict.¹²⁹ Poverty, political repression and uneven distribution of resources were listed as examples of such ‘root causes’, and it was argued that ignoring these underlying factors would mean that only the symptoms of deadly conflict would be addressed.¹³⁰ ‘Root cause’ prevention would, according to the ICISS, consist of ‘support for local initiatives to advance good governance, human rights, or the rule of law’, ‘democratic institution and capacity building’ as well as ‘development assistance’.¹³¹

Human rights institutions always play an important role in atrocity prevention by promoting and monitoring the implementation of international human rights standards and domestic law. Furthermore, national and international civil society organizations have a range of tools at their disposal to prevent or respond to crimes and violations relating to responsibility to protect. The public commitment of states to this doctrine provides civil society organizations with a strong basis to hold national governments and the international community to account when they are manifestly failing to protect populations.

¹²⁷ Ibid

¹²⁸ Id, p.p-23

¹²⁹ Id, p.p-19-27

¹³⁰ Id, p.p-19-23

¹³¹ Ibid

In his report on the prevention of Armed Conflict¹³², UN Secretary-General Kofi Annan's called on the international community to move 'from a culture of reaction to a culture of prevention' a call that was echoed by the ICISS.¹³³ Annan argued that that both short-term and long-term political, diplomatic, humanitarian, human rights, developmental and institutional measures should be employed in a comprehensive preventive strategy.¹³⁴ His report expounded on how the UN system could offer assistance to states in this respect, and it was pointed out that: Preventive action should be initiated at the earliest possible stage of a conflict cycle in order to be most effective. One of the principal aims of preventive action should be to address the deep-rooted socio-economic, cultural, environmental, institutional and other structural causes that often underlie the immediate political symptoms of conflicts.¹³⁵

But UN and other resources devoted to prevention in all its forms remain dwarfed by the resources devoted by intergovernmental organizations, and the states themselves, to preparation for war, to war fighting, to coercive intervention, to humanitarian assistance to the victims of conflict and catastrophe, to post-intervention reconstruction, and to peacekeeping.¹³⁶ Very often, those with the means to act prefer to remain and see if the situation will somehow resolve itself, or that it will stew without reaching a bubble, or that the resulting conflict will prove less dire than predicted, or that conflict if it does break out can be quickly contained.

Three basic conditions must be met for the effective prevention of conflict. First, as an early warning, the delicacy of the situation and its risks should be assessed and known. Second, policy measures available that are capable of making a difference

¹³² Kofi Annan, Prevention of Armed Conflict, A/55/985-S/2001/574, 7 June 2001.

¹³³ Supra note 124, p.p-27

¹³⁴ Supra note 132, p.p-2-3, p.p- 7

¹³⁵ Id, p.p-2

¹³⁶ Shelby Voelka, Global Centre for the Responsibility to Protect: R2P in Focus: R2P in United Nations Resolutions, September 13, 2016

should be clearly understood. And third, as there need to be a political will, the willingness to apply those measures should be certain.¹³⁷

4.2 The Responsibility to React

The Responsibility to Protect represented a significant modification of the traditional dilemma between (1) individual rights and (2) state sovereignty. It shifts the emphasis from a focus on the rights of nations to intervene towards the implications of ‘responsibility’ for sovereignty and prevention. Intervention is a substitution for government. But government maintains the first line of obligation. The language in some ways supports sovereignty – responsibility to protect rather than right to intervene.

As conceptualized in the 2001 ICISS Report, the responsibility to react is a set of operative norms under the R2P framework. The responsibility to react is nestled on a continuum between the responsibility to prevent and the responsibility to rebuild, the full scope of this continuum is important in placing coercive measure in a context of responsible global engagement in a crisis. The framers of R2P understood that coercive measures cannot be legitimate in isolation, but are rather an outcome of a collective failure to prevent¹³⁸ and a precursor to a responsibly to help conflict-affected people recover, reconstruct, and reconcile.¹³⁹

If states fail to prevent a conflict, the R2P framework charges that foreign states have a responsibility to react to the conflict through coercive measures. The framework is characterized by a hierarchy starting from non-military interventions and progressing through armed military interventions. R2P argues that interveners must first attempt to resolve the conflict through coercive measures short of military

¹³⁷ UN General Assembly, Report of the Secretary-General, A/67/929, July 9, 2013, p.p-3-14

¹³⁸ Supra note 124, p.p- 19-23

¹³⁹ Supra note 124, p.p-39-44

action. These non-military actions fall into three categories: those in the military area, those in the economic area, and those in the political and diplomatic area. Military interventions include: arms embargos and the ending of military cooperation programs.¹⁴⁰ Economic interventions include: financial sanctions that target specific assets, broader financial sanctions restricting income-generating activities, and aviation bans.¹⁴¹ Political and diplomatic interventions include: restrictions on diplomatic relations, restrictions on travel, and suspension or expulsion from international bodies.¹⁴²

The responsibility to act within the Responsibility to Protect framework acknowledges that there are extreme cases where such non-military measures are not enough to protect human security; as mentioned below, these measures should only be invoked in s of last resort.¹⁴³ The architects of the R2P military intervention framework emphasize the foundational norms of sovereignty and non-interference: “the starting point, here as elsewhere, should be the principle of non-intervention. This is the norm from which any departure has to be justified. All members of the United Nations have an interest in maintaining an order of sovereign, self-reliant, responsible, yet interdependent states.”¹⁴⁴

The Peace of Westphalia (1648) is the legal basis for the modern interpretation of sovereignty and the primacy of state security. And the strongest claims for state security came out of a nationalist tradition that merged citizen with nation and nation with state. Associated with this was the norm of sovereignty, non-intervention and self-determination; to intervene is to trespass – to go where one has no right to go.

¹⁴⁰ Supra note 124, p.p-30

¹⁴¹ Id, para-4.8

¹⁴² Supra note 124, p.p-30-31

¹⁴³ Supra note 124, p.p-36

¹⁴⁴ Supra note 124, p.p-31

Therefore, the guiding principles of international society were the principles of reciprocity between states and non-intervention. Humanitarian interventions are seen as an exception to the non-intervention principle. The UN Charter permits a state to defend itself from attack, but forbids the use of armed force against the territorial integrity or political independence of states. However, sovereignty and state security could be contravened by ideas of natural law or common morality. Just war theory emphasizes that a just cause is required for resorting to war. The responsibility to act doctrine is therefore a domestication of these centuries of norms governing external wars.

Evolving out of these norms is a recognition that the international community must intervene in “exceptional circumstances in which the very interest that all states have in maintaining a stable international order requires them to react when all order within a state has broken down or when civil conflict and repression are so violent that civilians are threatened with massacre, genocide or ethnic cleansing on a large scale.”¹⁴⁵ This shift to apply the inter-state normative framework to intra-state conflicts reflects a globalizing world marked by the increased interconnectedness of humankind. This was reflected by the states consulted by the Commission, which noted a broad international consensus that states have a right to intervene on two grounds: when there was a “clear and present danger to international security” or when the violence “shock(s) the conscience of mankind.”¹⁴⁶

In recognition that new norms were necessary to govern a new type of intervention, the Commission outlined six criteria or thresholds for military intervention: right authority, just cause, right intention, last resort, proportional means and reasonable prospects.

¹⁴⁵ *ibid*

¹⁴⁶ *ibid*

Just cause is the predominant threshold that must be met for the international community to intervene in an internal conflict. Again, this builds upon a long legal and normative history governing conflict that dates back through the UN Charter to Thomas Aquinas. The Commission details two circumstances that would satisfy the criteria for “just cause”:

- 1) The “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;”¹⁴⁷ or
- 2) The “large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”¹⁴⁸

As the Commission clearly articulates, these circumstances are well-grounded in international law. The 1948 Genocide Convention governs the definition of genocidal intent, while The Geneva Convention and Associated Protocols govern ethnic cleansing, and other large-scale killings. As mentioned above, this shifts the legal rights framework from states to individuals. As the Commission notes, “it makes no basic moral difference whether it is state or non-state actors who are putting people at risk” what matters is that the security of individuals is imperiled.¹⁴⁹ This is reinforced by the principle of right intention which states that the purpose of the intervention must be to “alleviate human suffering.”¹⁵⁰

The final two principles: “proportional means” and “reasonable prospects” govern the size and scope of military interventions under R2P. Proportional means are

¹⁴⁷ Supra note 124, p.p-32

¹⁴⁸ Ibid

¹⁴⁹ Supra note 124, p.p-33

¹⁵⁰ Supra note 124, p.p-35

defined as the “minimum necessary to secure the humanitarian objective in question,”¹⁵¹ which includes a mandate to observe international humanitarian law when intervening.¹⁵² “Reasonable prospects” refers to responsibly of the international community to only intervene when there is a reasonable chance of “halting or averting the atrocities or suffering that triggered the intervention in the first place.”¹⁵³

4.3 The Responsibility to Build

The responsibility to rebuild means that if military intervention action is taken – there should be a genuine commitment of helping to (re)build a durable peace, and promoting good governance and sustainable development.¹⁵⁴ One of the fundamental tasks of an intervention force is to provide basic security and protection for all members of a population, regardless of ethnic origin, religion or relation to the previous source of power in the territory.¹⁵⁵ “In post-conflict situations, revenge killings and even reverse ethnic cleansing frequently occur as groups who were victimized attack groups associated with their former oppressors”.¹⁵⁶

Moreover, another important factor in the rebuilding process is to investigate and prosecute perpetrators of genocide, war crimes and crimes against humanity under international customary pertaining the achievement of justice and reconciliation between parties. Ensuring accountability for these crimes contributes not only to their prevention but also builds the credibility of institutions. And international legal instruments provides the legal framework of such accountability.¹⁵⁷

¹⁵¹ Supra note 124, p.p-26

¹⁵² Ibid

¹⁵³ Supra note 124, p.p-37

¹⁵⁴ Supra note 124, p.p-39

¹⁵⁵ Id,40

¹⁵⁶ Ibid

¹⁵⁷ Supra note 137, p.p- 9

Another peace-building element under the responsibility to rebuild is to encourage economic growth and sustainable development. It is stipulated that intervening parties end any coercive economic measures they may have applied to the country before or during the intervention, and not prolong punitive sanctions.¹⁵⁸ Encouraging economic growth and sustainable development mainly involves ensuring sustainable reconstruction and rehabilitation including the commitment of sufficient funds and resources and close cooperation with local people, and may mean staying of the intervening party in the country for some period of time after the initial purposes of the intervention have been accomplished.

When former armed adversaries join hands in rebuilding their community or creating reasonable living and job conditions at new settlements true reconciliation can be reached. Moreover, efforts at repairing infrastructure, at rebuilding housing, at planting and harvesting, and cooperating in other productive activities will lead to the road of reconciliation. External support for reconciliation efforts must be conscious of the need to encourage this cooperation, and dynamically linked to joint development efforts between former adversaries.

¹⁵⁸ Supra note 124, p.p-42-43

Chapter five

The responsibility to protect in the case of Syria

5.1 The Responsibility to prevent in the case of Syria

It was soon after Security Council's actions on R2P in Libya and Côte d'Ivoire in March 2011 that the world started hearing about the unrest in Syria. Right after that, the Security Council first discussed the situation during a meeting on Israel-Palestine negotiations on April 21, 2011¹⁵⁹ where the United States, United Kingdom, and France expressed their concern about the dreadful human rights situation in Syria¹⁶⁰ and Russia on the other hand stated that it did not wish to interfere in the internal affairs of any sovereign state.¹⁶¹

The Security Council held its first session on Syria on April 27, 2011, in which most delegates including the United States and the United Kingdom strongly condemned gross human rights violations in Syria.¹⁶² The delegates further emphasized the need to help Syria in order to prevent further violence and civilian suffering.¹⁶³ UK pointed out the Syrian government's responsibility to protect peaceful protesters and stop violent repression of such protesters. But once again, Russia stated that the current situation in Syria did not present a threat to international peace and security.¹⁶⁴ Subsequently, the Security Council attempted to release a press

¹⁵⁹ UN Security Council, The situation in the Middle East, including the Palestinian question, S/PV.6520 (Resumption 1), Apr 21, 2011.

¹⁶⁰ Id, p.p-8, 15, 21.

¹⁶¹ Id, p.p-26

¹⁶² UN Security Council, The situation in the Middle East, S/PV.6524, 27 April 2011

¹⁶³ Id, p.p-8

¹⁶⁴ Id, p.p-7-8

conference on Syrian government's responsibility to prevent violence against its own people. Unfortunately, it wasn't successful because Russia and Lebanon objected, stating that such a press statement would be undue interference into the internal affairs of Syria.¹⁶⁵

It was on April 29, 2011 the first resolution on Syria was adopted¹⁶⁶ calling the UN High Commissioner for Human Rights to urgently dispatch a fact-finding mission to investigate alleged human rights violations in Syria. The resolution condemned the Syrian government's attacks against the civilian population and expressed grave concerns about alleged deliberate killings, arrests, and instances of torture of peaceful protesters by Syrian authorities. Even though China, Russia, Pakistan, and Malaysia voted against the resolution it was adopted by a majority vote.¹⁶⁷ Although the resolution noted that the widespread and systematic attacks by the Syrian authorities against its people may amount to crimes against humanity under international law, it did not refer to R2P or the responsibility to prevent such atrocities.

The High Commissioner for Human Rights made a lot of requests to the Syrian government to cooperate with the fact finding mission it established. But the government refused to cooperate with the mission¹⁶⁸. In the following months, many members of the Security Council including the UK, the US, France and Germany, made efforts to pass a resolution condemning the Syrian government's atrocities but failed because of the resistance from Russia, China, Brazil, South Africa, and India

¹⁶⁵ Neil MacFarquhar, 'Push in U.N. for Criticism of Syria is rejected', New York Times, Apr 27, 2011. Available at: http://www.nytimes.com/2011/04/28/world/middleeast/28nations.html?_r=0.

¹⁶⁶ Human Rights Council, 'The current human rights situation in the Syrian Arab Republic in the context of recent events', S-16/1, Apr 29, 2011.

¹⁶⁷ Id, p.p-3

¹⁶⁸ UN High Commissioner For Human rights, OHCHR Fact-Finding Mission to Syria Terms of Reference, May 24, 2011, p.p-1-2

claiming the Security Council should not order any reform program towards the Syrian government articulating the crisis was an internal matter.¹⁶⁹ Once again, in August 2011, the Security Council expressed its grave concern about the deteriorating humanitarian situation in Syria calling for unimpeded access for humanitarian workers.¹⁷⁰ However it didn't make any specific reference to R2P or the responsibility to prevent. It was the same for the other resolution¹⁷¹ adopted by the Human right Council which was voted against by Russia and China.

The first resolution towards Syria that mentioned R2P¹⁷² was drafted five months after the conflict started. The preamble emphasized the Syrian government's primary responsibility to protect its population. Though, the resolution wasn't adopted because Russia and China vetoed it. Russia stated it could not agree with accusations against the Syrian regime and that the threat of an ultimatum and sanctions against the Syrian authorities was unacceptable.¹⁷³ It also added They asserted that "a significant number of Syrians do not agree with the demand for regime change and would rather see gradual changes, believing that they have to be implemented while maintaining civil peace and harmony in the country."¹⁷⁴ Following that many states, mentioned their disappointment towards the Security Council. US stipulated "the Security Council utterly failed to address an urgent moral challenge and a growing threat to regional peace and security" and in failing to adopt the draft resolution, "the Council squandered an opportunity to shoulder its responsibilities to the Syrian

¹⁶⁹ Supra note 165

¹⁷⁰ UN Security Council , 66th Session, S/PV.6598 , Aug 3, 2011, p.p-2.

¹⁷¹ Human Rights Council, Report of the seventeenth special session, A/HRC/S-17/2, Aug 22, 2011.

¹⁷² UN Security Council, draft resolution, S/2011/612, October 4, 2011.

¹⁷³ UN Security Council, 66th Session, S/PV.6627, Oct. 4, 2011.

¹⁷⁴ Id, p.p-4

people,” and “the crisis in Syria would stay before the Security Council, and the United States would not rest until the Council rose to meet its responsibilities.”¹⁷⁵

It wasn't until August 2011, that the League of Arab States addressed the issue in Syria. Even though it didn't make any reference to R2P, the league called on the Syrian government to immediately end the violence.¹⁷⁶ It then adopted a resolution “calling for a complete and immediate cessation of the acts of violence and killing, and for an end to armed actions” to deal with the crisis with a view to prevent more casualties in Syria.¹⁷⁷ However, the Syrian government didn't comply with this resolution immediately. Given the pressure from regional and international actors, Syria signed a peace deal presented by the league in which Syria agreed to an Arab observer mission for an initial period of one month.¹⁷⁸ The peace deal also served to initiate talks between the opposition and the government regarding the cessation of violence, release of political and opposition prisoners, and the withdrawal of Syrian troops from cities.¹⁷⁹ But the deal was seen as a new time wasting tactic by Assad's regime in the eyes of the Syrian opposition parties and they called for foreign military intervention instead.¹⁸⁰ Without much success the mission was then pulled out of Syria.

A number of resolutions were adopted by different organizations highlighting Syria's primary responsibility to protect its population and prevent mass atrocities and human right violations reported by different organs including the Commission

¹⁷⁵ Id, p.p-8-9

¹⁷⁶Yasmine Saleh and Isabel Coles, Arab League Expresses Growing Concern About Syria, Reuters, Aug 7, 2011, available at: <http://www.reuters.com/article/2011/08/07/us-syria-league-idUSTRE7761H720110807>.

¹⁷⁷ League of Arab States, resolution 7435, Oct 16, 2011, p.p-1

¹⁷⁸ BBC, 'Syria Signs Arab League Deal to Allow in Monitors', Dec 19, 2011, available at: <http://www.bbc.co.uk/news/world-middle-east-16246689>

¹⁷⁹International Coalition for Responsibility to Protect, 'The Crisis in Syria', available at: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria>

¹⁸⁰Hamza Hendawi, Syrian Opposition Criticizes Arab League Observer, Associated Press, Dec 29, 2011.

of Inquiry. And during the negotiations of these resolution, Russia and China “continued to oppose any action hinting at regime change, coercive measures, or other foreign interference in Syria, with the Russian representative warning that such an intervention could spark catastrophic civil war and destabilize the region.”¹⁸¹ Russia and China made it clear that they wouldn’t support a solution that might lead to regime change.¹⁸²

On February 23, 2012 Kofi Annan was appointed as the UN-League of Arab states joint Special Envoy for Syria after his success in the Kenyan negotiation. “The Special Envoy was to provide good offices aimed at bringing an end to all violence and human rights violations, and promoting a peaceful solution to the Syrian crisis.”¹⁸³ In the execution of his duties, Annan consulted Member States and “engaged with relevant parties within and outside Syria in order to end the mass atrocities and the humanitarian crisis” in Syria.¹⁸⁴

The Security Council unanimously adopted Resolution 2043 in April 21, 2012 and established the 300 person UN Supervision Mission in Syria (UNSMIS) to monitor the cessation of violence and implementation of the Special Envoy’s plan.¹⁸⁵ Importantly, the Russian delegation indicated that the Syrian regime would cooperate with observers.¹⁸⁶

The lack of unity in the Security Council as one of the reason Annan resigned as UN-Arab League mediator in Syria on August 2, 2012, the other reasons being the

¹⁸¹ UN Security Council, ‘Security Council Members Diverge over Path Towards Implementation of Draft Resolution Backing Arab League Proposal on Resolving Crisis in Syria’, UN Press Release SC/10534, Jan 31, 2012.

¹⁸² Ibid

¹⁸³ UN, ‘Secretary General Kofi Annan Appointed Joint Special Envoy of UN-League of Arab States on Syrian Crisis, U.N. Press Release SG/SM/14124, Feb 23, 2012.

¹⁸⁴ Ibid

¹⁸⁵ UN Security Council, Resolution 2043, S/RES/2043, Apr 21, 2012, p.p-5-6

¹⁸⁶ Security Council, ‘Security Council Establishes UN Supervision Mission in Syria, with 300 Observers to Monitor Cessation of Violence, Implementation of Special Envoy’s Plan’, U.N. Press Release SC/10618, Apr 21, 2012.

Syrian government's refusal to cooperate in reaching a peaceful resolution to the conflict and the escalating military campaign of the Syrian oppositions.¹⁸⁷

A resolution (resolution 2118)¹⁸⁸ addressing the issue of chemical weapon use in Syria was unanimously adopted on September 27, 2013 which was the first hopeful action since the beginning of the conflict. It demanded the verification and destruction of the chemical weapons stockpiles in Syria stating the use of chemical weapons anywhere “constitute a threat to international peace and security.”¹⁸⁹ Moreover, it prohibited Syria from “using, developing, producing, otherwise acquiring, stockpiling, or retaining chemical weapons, or transferring them] . . . to other States or non-State actors,”¹⁹⁰ and also stressed “that no party in Syria should use, develop, produce, acquire, stockpile, retain, or transfer such weapons.”¹⁹¹ The resolution also endorsed “the establishment of a transitional governing body in Syria exercising full executive powers.”¹⁹² The resolution also summoned for the full implementation of the decision by the Organization for the Prohibition of Chemical Weapons (OPCW) passed on September 27, 2013, which “contained special procedures for the expeditious and verifiable destruction of Syria's chemical weapons program.”¹⁹³ Notably, even though it didn't automatically authorize the use of force, it referred to the option of imposing measures under Chapter VII of the UN Charter in the event Syria failed to implement the chemical weapons destruction plan.¹⁹⁴ Even though the use of force wasn't authorized by the reference, it shifted

¹⁸⁷ UN news center, Kofi Annan: Joint Special Envoy for Syria, Opening Remarks, Aug. 2, 2012, <http://www.un.org/apps/news/infocus/Syria/press.asp?siD=41>. See also; UN Press Release, Secretary-General Announces Appointment of Lakhdar Brahimi as Joint Arab League United Nations Special Representative for Syria, SG/SM/14471, Aug 17, 2012.

¹⁸⁸ UN Security Council, resolution 2118, S/RES/2118, September 27, 2013

¹⁸⁹ Id, p.p-2

¹⁹⁰ Id, p.p-4

¹⁹¹ Id, p.p-5

¹⁹² Id, p.p-16

¹⁹³ Id, p.p-3

¹⁹⁴ Id, p.p-21

the debate on the use of force against Syria to collective security action, which is in line with the R2P principle.

5.2 The Responsibility to react in the case of Syria

The main principle and part of the motivation of the shift towards R2P is to protect civilians when a state has manifestly failed to protect its population. But it's no secret that the government failed in protecting its people and in its responsibility to prevent which aggravates the problem as days pass. The Syrian government has not only manifestly failed to uphold its Responsibility to Protect, it bears primary responsibility for the ongoing commission of mass atrocity crimes. And evidently diplomatic measures taken by the international community including the peace talks haven't been successful mainly due to the actions by Russia and China exercising their veto power against UN resolutions on Syria. Russia tirelessly upheld that the situation in Syria must be resolved by the Syrians themselves without outside interference opposing any unilateral sanctions and use of force against Syria. China holds the same stand on the issue which undermined the effective implementation of responsibility to react as part of protecting civilian population in Syria from mass atrocities.¹⁹⁵

The US and UK have been threatening Syria with possible unilateral force but neither of them justified their claims on R2P.¹⁹⁶ They rather justified it on the basis of the use of chemical weapons by Syria. Thus, the threat to use unilateral military force was mainly about enforcing the prohibition on use of chemical weapons rather than fulfilling R2P. The legal position on the claimed military action by UK against

¹⁹⁵ Jim Craven, A Chinese Position on the Syria Issue), July 21, 2012, p.p-13

¹⁹⁶ UK Prime Minister's Office, Chemical Weapon Use by Syrian Regime: UK Government Legal Position, Aug 29, 2013, available at: <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legalposition/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>

Syria is set out under the doctrine of humanitarian intervention stating, it would be lawful for UK to use force against another state without a Security Council resolution authorizing the use of force, if the Security Council cannot agree to authorize the use force.¹⁹⁷ UK tried to argue that R2P and forceful humanitarian intervention complement each other.¹⁹⁸

The same issue was raised by the British Foreign and Commonwealth Office in an official response given on January 14, 2014, to questions raised by the House of Commons Foreign Affairs Committee on the legality of humanitarian intervention without Security Council authorization.¹⁹⁹ The response highlighted that R2P and the 2005 World Outcome Document involve political commitments aimed at the Security Council taking action on the issue. It further noted that the 2005 World Summit Outcome Document does not address the question of unilateral State action in the face of an overwhelming humanitarian catastrophe. Therefore, a unilateral humanitarian intervention will be a lawful option when the Security Council fails to take action to stop an overwhelming humanitarian catastrophe.²⁰⁰ US on the other hand didn't use humanitarian intervention or R2P as its justification for intended military action against Syria. Instead, the United States cited the Syrian government's use of chemical weapons as a justification for its use of force.²⁰¹ These issue has been the center for a while when the use of chemical weapons should not have been the deciding factor. Whether or not Security Council authorization was required to intervene and protect the civilian population in Syria, the international

¹⁹⁷ Ibid

¹⁹⁸ Ibid

¹⁹⁹ Hugh Robertson, Further Supplementary Written Evidence from the Rt. Hon. Robertson MP, Minister of State, Foreign and Commonwealth Office: Humanitarian Intervention and the Responsibility to Protect, Jan. 14, 2014

²⁰⁰ Id; see also: Ryan Goodman, UK Government Issues Major Statement on Legality of Humanitarian Intervention, Jan 30, 2014.

²⁰¹ Julian Pace, U.S. readies possible solo action against Syria, Huffington Post, Oct 29, 2013.

community's main focus on chemical weapons has undermined responding to the other serious crimes that have continued in Syria.

The Security Council is laid upon the responsibility to act in cases where acts are a threat to international peace and security under Articles 2(4) and 24(1) of the UN Charter. However, the charter does not make that an exclusive responsibility of the Security Council. Under this view, the Charter does not answer the question whether a group of states with humanitarian motives can act collectively with military force to protect civilian populations in cases where the Security Council fails to take an effective action in protecting civilian populations from mass atrocities.

The US, UK, and France kept open the option of the use of force for humanitarian purposes without the Security Council approval. The US, UK, and France openly declared their readiness to take military action against the Assad regime, even without a Security Council resolution given the Security Council's failure to take action to protect the civilian population in Syria.²⁰²

Kosovo sets a precedent for humanitarian intervention without the Security Council's approval. The Independent International Commission on Kosovo said NATO's the actions were legitimate because the intervention was justified, all diplomatic avenues were exhausted, and the intervention liberated Kosovo from oppressive Serbian rule.²⁰³ After to solve the crisis in Kosovo repeatedly, In March 1999 NATO began bombing targets in the Republic of Serbia in the Federal Republic of Yugoslavia to force a peace agreement and a Serb military withdrawal from Kosovo, provoking a major crisis within the UN because the Security Council did not authorize the use of force to protect Kosovo's Albanians.

²⁰² Tim Ross & Ben Farmer, Navy Ready to Launch First Strike on Syria, Telegraph, Aug 25, 2013.

²⁰³ Ibid

There were two significant barriers to UN authorized intervention in the case of Kosovo. First, significant contestation between permanent members over the causal story of the conflict stymied Security Council action including the use of military force for the protection of Kosovo's Albanians. Second, the issue at stake in Kosovo was state responsibility toward its citizens. Serbia was accused of systematically violating the human rights of its ethnic Albanian population but its sovereignty over the territory of Kosovo was not contested.

Even though the disunity among Council members prevented Security Council action in Kosovo, it did not prevent humanitarian intervention. Instead, three permanent members of the Security Council who favored the use of force to stop human rights violations in Kosovo, sought legitimacy for their actions outside of the Council.

NATO's decision to launch a humanitarian intervention on behalf of ethnic Albanians in absence of Security Council authorization also defined the conditions under which the use of force became possible for NATO members, including France, the United Kingdom and the United States. The most prominent of these factors include: the increasing prominence of human rights norms and unity around an intentional causal story that identifies both perpetrators and victims. The case of Kosovo marked an important advance for the idea that states no longer had the right to terrorize its own population and sparked an international movement to reconcile the emerging norm of humanitarian intervention with state sovereignty. NATO justified its military action according to the following principles: the protection of human rights norms; the duty to stop Yugoslav forces from killing the Kosovo Albanian population; the failure of the Federal Republic of Yugoslavia to live up to

its commitments and legal responsibilities; and Security Council inaction.²⁰⁴ US stated that the UN Charter does not sanction armed assaults upon ethnic groups, or imply that the international community should turn a blind eye to a growing humanitarian disaster.²⁰⁵

NATO members on the Security Council also noted that there was simply no other choice and the inability of the Security Council to undertake humanitarian intervention made NATO intervention a necessity.²⁰⁶ The advocates of humanitarian intervention in Kosovo justified the use of force in defense of international principles of humanitarian and human rights law, and in particular, the failure of the Federal Republic of Yugoslavia to uphold them that leads to international obligations of other actors especially regional organizations.

In his annual report to the General Assembly on September 1999, Secretary-General, Kofi Annan confirmed the existence of a developing international norm of military intervention to protect civilians from slaughter. He argued that state sovereignty was being redefined by the forces of globalization and international cooperation to include a state responsibility for the welfare of its people. Annan argued that the core challenge for the Security Council and to the United Nations as a whole in the 21st century is “to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand”.²⁰⁷ He illustrated the dilemma by comparing the cases of Rwanda and Kosovo. He asked member States to consider what horrors might have been prevented in Rwanda

²⁰⁴ UN Security Council, 3988th Meeting, S/PV.3988, March 24, 1999

²⁰⁵ UN Security Council, S/1999/328, March 26, 1999, p.p-5

²⁰⁶ Ibid

²⁰⁷ Kofi Annan, “The Secretary-General presents his Annual Report to the General Assembly,” Sep 20, 1999: available at: <http://www.un.org/News/press/docs/1999/sgsm5826.sgsm.htm>

should a regional organization have intervened to stop the genocide in absence of Security Council action.

He also argued that the spirit of the Charter of the United Nations affirms fundamental human rights and the difficulty for member States was applying Charter principles to a new era – “an era when strictly traditional notions of sovereignty can no longer do justice to the freedoms and aspirations of peoples everywhere to attain their fundamental freedoms”.²⁰⁸

A relevant Article on unauthorized humanitarian intervention is Article 2(3) of the Charter, which states: “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”²⁰⁹ The requirement that disputes be settled so that “justice” is not endangered leaves room for unauthorized humanitarian intervention under Article 2(3). At the very least, however, force could not be the first resort; there would have to be a genuine attempt to achieve a peaceful resolution in order to comply with Article 2(3).

In addition to the charter, the legal status of humanitarian intervention is affected by customary international law. Article 38 of the Statute of the International Court of Justice lists several sources of international law. The first-listed source is “international conventions”. The second-listed source is “international custom, as evidence of a general practice accepted as law.”²¹⁰ The practices of humanitarian intervention without the authorization of the Security Council could be a ground to establish a right to humanitarian intervention or even a general permission to use force in international relations. It was practically seen in the cases of Kosovo that

²⁰⁸ Ibid

²⁰⁹ UN Charter, art. 2, para 3

²¹⁰ ICJ Statute art. 38, para 1

Article 2(4)'s prohibition on the use of force has already been abrogated through the processes of customary international law.

5.3 Responsibility to rebuild in the case of Syria

Certainly, trying to predict rebuilding efforts in Syria at this point may be imprudent. In fact, the international community has so far failed to protect the Syrian civilian population from the atrocities of the Assad regime. The Syrian crisis has resulted in a tragic impact on development performance in Syria through destroying economic, social, and human capital, with unbearable losses for the Syrian population. As a result of continued fighting, Syria's economy has taken a devastating blow. About seventy-five percent of the manufacturing facilities in Aleppo are no longer operating.²¹¹ Public and private investments were adversely affected by the crisis.

Although the Syrian crisis has been ongoing for years, the UN has not discussed any post-conflict rebuilding strategies in Syria. In fact, no Member States have raised that issue in any serious way. If Assad prevails and remains in power, UN-backed rebuilding efforts would confront a number of obstacles, including lack of support from important member states. In such a case, contributions from traditional donors, such as the US, the UK, and the EU, would be highly unlikely. However, since the conflict is not over, and in light of how the conflict has unfolded, serious doubts have been raised about the likelihood of effective rebuilding efforts that will eventually take place in Syria.

²¹¹ Matthew J. Harker, Economic Rebuilding Essential to R2P in Syria, Global risk insight, Sept 20, 2013, available at: <http://globalriskinsights.com/2013/09/20/economic-rebuilding-essential-to-r2p-in-syria/>.

Chapter six

Conclusion and Recommendation

6.1 Conclusion

Syria's conflict has devolved from peaceful protests against the government in 2011 to a violent insurgency that has drawn in numerous other countries. It's partly a civil war of government against people; partly a religious war pitting Assad's minority Alawite sect, aligned with Shiite fighters from Iran and Hezbollah in Lebanon, against Sunni rebel groups; ISIS's fight with those who doesn't accept it's rule; and increasingly a proxy war featuring Russia and Iran against the United States, United Kingdom and their allies.

The civil war has dragged on its violence and became more widespread, systematic and extreme. The conflict has also become more intractable, threatening the peace and stability of the entire Middle East. The government, where the primary responsibility to protect the people, keeps on violating major human rights and killing its own people. The government manifestly failed on its responsibility to protect its people. The international community on the other hand hasn't made constructive actions to uphold its responsibility to protect civilians in Syria. Specifically, the Security Council haven't made any successful actions to stop the violence. As an organ who stands to maintain peace and security of the world, it hasn't been doing much to protect the Syrian People except coming up with unsuccessful resolutions and see get them vetoed out by Russia and china or either implement the drafted ones.

Russia and China continue to block resolutions by the Security Council using their veto power. Moreover, Russia initiated major airstrikes in Syria claiming it would target the ISIS even though most airstrikes have been on non-ISIS positions held by resistance forces, including civilian-populated territories.

The crisis resulted in the 4.9 million refugees, and the estimated 400,000 death toll in Syria making it clear that the actions taken haven't been sufficient to protect Syrians. Both the Assad regime, its allies and opposition groups have continued to commit war crimes and crime against humanity in what has become a deadlock civil war.

Because of the failure of the Security Council to hold the Syrian government accountable for its actions, Bashar al-Assad's forces deployed more extreme armed force overtime. This in turn strengthened the most uncompromising and severe elements within the armed opposition, especially those with external sources of sustenance. The net effect has been to turn Syria into the world's worst case of ongoing mass atrocities, civilian displacement and humanitarian catastrophe.

The foundation of the responsibility to protect, as a guiding principle for the international community of states lie in the obligations inherent in the concept of sovereignty, the responsibility of the security council under Article 24 of the UN charter, for the maintenance of international peace and security, specific legal obligations under human rights and human protection instruments, international humanitarian law and national laws And lastly on the developing practice of states, regional organizations and the security council itself.

The responsibility to protect embraces 3 specific responsibilities within it. The first is the responsibility to prevent which needs to address both the root causes and direct causes of the conflict. Secondly, the responsibility to react, which means responding

to situations of compelling human need with appropriate measures, includes coercive measures like sanctions and international prosecutions and in extreme cases military interventions. The final element is the responsibility to rebuild, providing full assistance with recovery, reconstruction and reconciliation, particularly after military interventions.

The ongoing humanitarian crisis in Syria poses major challenges to the R2P principle. It failed to uphold its responsibility to prevent and react crisis in a way that could actually stop the violence. One of the main reasons for the continuation of mass atrocities in Syria is inaction by the Security Council. Apart from the R2P principle's own uncertainties regarding its scope, the lack of real consensus between the member states has further hindered decisive action under R2P to halt ongoing atrocities in Syria. The international community, thus, confronted the very familiar controversies about sovereignty and non-intervention and the need to protect civilian populations from human rights violations.

Kosovo sets a precedent for these issue where humanitarian intervention can be made without the Security Council's approval on cases where it fails to uphold its responsibility to maintain peace and security and protect civilians. In the crisis in Kosovo, NATO decided to launch a humanitarian intervention on behalf of ethnic Albanians in absence of Security Council authorization.

Article 2(3) of the Charter, which states: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." The requirement that disputes be settled so that "justice" is not endangered leaves room for unauthorized humanitarian intervention under Article 2(3). At the very least, however, force could not be the first resort; there would have to be a genuine attempt to achieve a peaceful resolution in order to comply with Article 2(3).

In addition to the charter, the legal status of humanitarian intervention is affected by customary international law. Article 38 of the Statute of the International Court of Justice lists several sources of international law. The first-listed source is “international conventions”. The second-listed source is “international custom, as evidence of a general practice accepted as law.” The practices of humanitarian intervention without the authorization of the Security Council could be a ground to establish a right to humanitarian intervention or even a general permission to use force in international relations. It was practically seen in the cases of Kosovo and Libya that Article 2(4)’s prohibition on the use of force has already been abrogated through the processes of customary international law.

The Syrian people have been paying the price for the failure of their government and the international community on their responsibility to protect. More lives shouldn’t be lost waiting around for someone to take action. The world should learn from previous mistakes made on crisis like Syria. Responsibility to protect doesn’t only lie on the Syrian government and the Security Council, it also lies on the international community. Acquiring on what has been done in Kosovo, members of the Security Council and regional organizations like the Arab league should make an intervention in the Syrian crisis.

6.2 Recommendation

- Members of the Security Council and regional organizations like the Arab league should make military intervention in the Syrian crisis even without the authorization of the Security Council.
- The international community should put urgent emphasis on putting real pressure on all parties to the conflict to abide by international humanitarian law.
- The parties to the conflict should abide by international humanitarian law and immediately cease attacks on schools, hospitals, and other critical civilian infrastructure.
- The parties to the conflict should facilitate the safe, unfettered and effective access of impartial aid agencies to all parts of Syria, in order to respond to the humanitarian needs of all civilians affected by the conflict.
- Russia and China should avoid fuelling the conflict and serious violations of international humanitarian law by halting the supply of arms, ammunition and military personnel to parties which have been responsible for violations.
- UN implementing agencies should step up monitoring and reporting of protection concerns inside Syria. Significantly scale up protection programming inside the country, including across borders from neighboring countries. Priority should be given to building the capacity of local Syrian aid actors to undertake effective protection programming.
- The Security Council should refer the perpetrators of the crimes in Syria to ICC and serve justice.

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