

**RESPONSIBILITY TO PROTECT  
AND ITS EFFECT ON HUMANITARIAN INTERVENTION:  
Libya, Côte d'Ivoire and Syria**

by Aleksandar Sekulić

HUMAN RIGHTS MA THESIS  
SUPERVISOR: Charlotte Steinorth, Dr.  
Central European University  
1051 Budapest, Nador utca 9.  
Hungary

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## Executive Summary

The thesis explores the application of the Responsibility to Protect doctrine and how the doctrine has influenced humanitarian intervention since its adoption in 2005. It describes the main points in the history of humanitarian intervention, and focuses on the cases of Libya and Côte d'Ivoire where the interventions were launched, and Syria where this has not happened. The cases are analyzed by using the six criteria for intervention devised by the International Commission for Intervention and State Sovereignty in 2001.

The thesis argues that there are significant deficiencies in the framework of the adopted version of RtP and in its application. This makes protection of people from mass atrocities difficult because of the doctrinal reliance on the prior UN Security Council authorization, and may render the RtP doctrine disused if the interventions are executed without a prior Security Council authorization. The thesis offers recommendations on how to improve the Responsibility to Protect doctrine, make it more likely to protect the population from suffering and avoid being bypassed by the interveners in the future.

# Introduction

The idea that state sovereignty is not sacrosanct, and that regimes that commit mass atrocities against their own population may under certain circumstances face foreign intervention out of humanitarian concerns, has been one of the major topics in international law and relations over the last two decades. The new doctrine called Responsibility to Protect (RtP), developed by a commission of experts in 2001 and adopted by the United Nations in 2005 attempted to shift the focus from the intervening parties to the suffering population. There are many reasons why humanitarian intervention has come to tackle once inviolable principle of state sovereignty, and why this idea has caught the attention of general public. Human rights norms have evolved and expanded over time, and promotion and protection of rights and liberties have advanced. The impact of human rights organizations has increased worldwide. Mass media and internet have made gross violations of human rights more visible - more difficult to hide. As big international armed conflicts subsided, civil wars and crises within the borders of individual states became the context in which most mass atrocities are committed.

But humanitarian intervention is far from being universally cheered as a means to prevent atrocities. It is sometimes seen as an imperialist and colonialist tool, or as an instrument that can be misused or abused for strategic or political reasons. Its application depends on the gravity of committed or planned crimes, but it also depends on the political will of those who are launching the intervention, and on the political power of those who would be targeted and of their allies. If the Responsibility to Protect and humanitarian intervention are employed for means other than stopping or preventing mass scale human rights violations, or if committing mass crimes does not necessarily trigger the application of

the Responsibility to Protect doctrine, then we are facing a very important question. By looking into history of humanitarian intervention, and analyzing three recent crises (Libya, Côte d'Ivoire and Syria), I will try to answer the following question:

How has the Responsibility to Protect doctrine influenced the effectiveness of humanitarian intervention and the possibility that intervention will be launched in the countries where mass atrocities are committed?

This thesis argues that the new doctrine does not constitute a mechanism that guarantees a satisfactory protection of people against mass atrocities perpetrated, planned or condoned by their own government, and that unless it is improved, it might become irrelevant or abandoned. The implementation of the doctrine has been inconsistent, and the doctrinal reliance on the Security Council decisions makes the intervention even more dependent on the agreement of great powers than before, and not dependent enough on the gravity of the committed or imminently expected crimes.

I will structure the thesis around three chapters. In the first chapter I will explain the legal and historical aspects of humanitarian intervention and the Responsibility to Protect doctrine. I will briefly describe the main historical military actions that, at least in part, had a role in protecting the most fundamental human rights of the suffering populations – from the Cold War interventions in East Pakistan and Cambodia, through examples of Iraq and Somalia, to the case of Kosovo that invigorated the debate on relations between sovereignty and intervention. I will present the outcome of this debate – the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS)<sup>1</sup> that devised the Responsibility to Protect doctrine and will describe how the doctrine expanded on the previous concept of humanitarian intervention.

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<sup>1</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Research Development Centre, 2001).

In the second chapter I will turn to the three case studies and will analyze them according to the criteria for intervention proposed in the ICISS Report.<sup>2</sup> I will look into the two relatively successful cases of the Responsibility to Protect application – those of Libya and Côte d'Ivoire from 2011, and into the failure of the international community to adequately react to the conflict in Syria that started in the same year. I will point out the most significant features of the interventions and compare the three cases to one another and to some aspects of prior interventions.

In the third chapter, based on the case studies and on some general observations of the crises, I will offer recommendations as to how Responsibility to Protect doctrine could be improved to provide better protection to the victims of gross human rights violations.

The main methodological tool I will employ is the analysis of the three case studies in accordance with the six ICISS criteria for intervention. I will determine whether there was the just cause for intervention, e.g. whether the crimes that were committed or about to be committed in the three cases were sufficiently grave to trigger the intervention. I will inspect how the right authority for deciding on the intervention, which is primarily the Security Council according to the ICISS report, handled the three crises and whether there were any other incentives for the intervention. The right intention, e.g. the purpose of the Libyan and Ivorian interventions and of the Syrian intervention that never happened is another matter I will analyze. The next issue I will look into is whether the interventions came as the last resort after all else failed or whether some other paths could have been pursued and some more efforts made, and how this criterion applies to the situation in Syria. I will attempt to determine whether the means employed in averting or halting the mass crimes were proportional to the threat, and what could be considered as proportional means in the case of Syria. Finally, I will try to establish whether the interventions were facing reasonable

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<sup>2</sup> Ibid., 32-37, 47-55.

prospects of success, not just in saving people at risk, but also in containing the conflict, i.e. not allowing it to spread.

What I will not include in the scope of this thesis is a systematic overview of the philosophical and moral arguments for the intervention itself.<sup>3</sup> Instead, I will focus attention on legal and historical aspects of humanitarian intervention. This does not mean that I will leave out all moral dilemmas of intervention, nor would that be possible. I will not avoid addressing these, for example, in questions about the authority that decides on intervening, or possibilities that an attempt to save some people risks creating a bigger conflict, or determining risks for those who intervene while ultimately trying to save lives, or using means proportional to the threat etc.

Before I turn to the history of humanitarian intervention, I will offer some terminological clarifications. The term “humanitarian intervention” is much debated and contested.<sup>4</sup> I will define humanitarian intervention as

Military intervention of a state or group of states against another state or its leaders, without its or their consent for the purpose of halting or averting mass atrocity crimes directed by the government against its own people, or allowed to happen by a government unable or unwilling to stop them.

The definition aims to be uncontroversial, but it is difficult to have a definition that contains only elements that all authors would agree on. As humanitarian intervention I will only consider those interventions that are executed with military power, excluding other types of

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<sup>3</sup> For a seminal work on ethics and morality of waging war, and about how certain horrors may justify a military response, including an early look at humanitarian intervention, see Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4<sup>th</sup> ed. (New York: Basic Books, 2006). For an ambitious attempt to reconcile different aspects of humanitarian intervention see Eric A. Heinze, *Waging Humanitarian War: The Ethics, Law and Politics of Humanitarian Intervention* (Albany: State University of New York Press, 2009). For an overview of consequentialism and realism in intervention, see John Janzcekovic, *The Use of Force in Humanitarian Intervention: Morality and Practicalities* (Aldershot, England: Ashgate, 2006).

<sup>4</sup> “Saying ‘humanitarian intervention’ in a room full of philosophers, legal scholars, and political scientists is a little bit like crying ‘fire’ in a crowded theatre: it can create a clear and present danger to everyone within earshot.” Robert O. Keohane, Introduction to *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* by J.L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2008), 1.

coercion.<sup>5</sup> I will consider humanitarian interventions performed by regional organizations as understood by Chapter VII of the Charter of the United Nations,<sup>6</sup> but also by ad hoc coalitions of the willing, i.e. groups of states agreeing to launch an intervention to stop atrocities, or even by individual states. The intervention is not supported by the government of the target state - it is either performed against its will (Yugoslavia in 1999) or in the absence of any government (Somalia in 1992), i.e. in the “absence of effective consent.”<sup>7</sup> The terms “mass atrocity crimes” or “mass atrocities” are used by Gareth Evans and refer to war crimes, crimes against humanity, ethnic cleansing and genocide.<sup>8</sup> Today they are all defined in the Rome Statute of the International Criminal Court,<sup>9</sup> except for ethnic cleansing which is not a legal term, and which could be described as “systematic and violent removal of undesired ethnic groups from a given territory”.<sup>10</sup> Humanitarian intervention is launched against states or regimes that are attacking their own population, i.e. the primary purpose of an intervention is not rescuing the citizens of intervening states who are targeted abroad.<sup>11</sup> The definition is also comprehensive enough to provide for cases in which it is not the government that is committing the crimes, but rather a militia sponsored, controlled or tolerated by the government (Darfur).

The debate about this term is not only about what it encompasses, but also how it is coined. Some would argue that to use the word “humanitarian” in the context of a military

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<sup>5</sup> E.g. for more on economic measures employed see Evan J. Criddle, “Humanitarian Financial Intervention,” *The European Journal of International Law* 24, no. 2 (2013).

<sup>6</sup> UN Charter arts. 52-54.

<sup>7</sup> Thomas G. Weiss, *Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect*, 2<sup>nd</sup> ed. (Lanham, MD: Rowman & Littlefield, 2005), 34. Here Weiss includes the ambiguous consent in the case of intervention in East Timor in 1999 because the Indonesian government illegally occupied East Timor and was virtually coerced into accepting the outside intervention (ibid.).

<sup>8</sup> Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, DC: Brookings, 2008), 11-12. Evans notices that it would be pointless to refer to mass atrocities as “crimes” if they were committed before such behavior was criminalized (ibid., 12).

<sup>9</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3.

<sup>10</sup> Gregor Thum, “Ethnic Cleansing in Eastern Europe after 1945,” *Contemporary European History* 19, no.1 (February 2010): 75.

<sup>11</sup> For example, under this definition, and most others, rescue operation performed in 1976 by Israelis at the Ugandan airport of Entebbe is not a humanitarian intervention, because the rescued persons were mostly Israelis. See Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International, 1999), 111.



intervention is misleading and that it may have a bad effect on humanitarian organizations who would not want their work to be associated with military action.<sup>12</sup> But this term does not attempt to convey that using armed force is itself humanitarian - it conveys that the *goal* of intervention is preventing human suffering. Using the term “military intervention” instead of “humanitarian intervention” does not solve the alleged problem. Under my proposed definition, all humanitarian interventions are indeed military, but not all military interventions are humanitarian, e.g. not all of them have halting human suffering as their objective, or at least as their primary objective, or even as their effect. Calling an intervention “humanitarian military intervention”<sup>13</sup> is redundant under my definition as humanitarian intervention already implies the military context. As for the term “intervention for human protection purposes,”<sup>14</sup> it strives for precision, but it attempts to obscure the fact that this still remains an intervention in which weapons are used, and it overlooks the notion that “for human protection purposes” can still well be adjectivized as “humanitarian”.<sup>15</sup> Therefore, I think that the common term – “humanitarian intervention” is linguistically not controversial and should not be avoided. I will often refer to it as “intervention” for the sake of brevity, not because I am resorting to euphemisms.

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<sup>12</sup> Evans, *Responsibility to Protect*, 40-41.

<sup>13</sup> Taylor B. Seybolt, *Humanitarian Military Intervention: Conditions for Success and Failure* (Oxford: Oxford University Press, 2008).

<sup>14</sup> Evans, *Responsibility to Protect*, 41.

<sup>15</sup> A similar issue is sometimes raised regarding international humanitarian law and the idea that calling this body of law humanitarian rather than law of war is just attempting to make it sound nicer. Kalshoven is right when he states that the word “humanitarian” accentuates the element of protection of victims and its omission that of warfare.” Frits Kalshoven and Lisbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, 4<sup>th</sup> ed. (Cambridge: Cambridge University Press, 2011), 1.

# Chapter 1: History of Humanitarian Intervention

In this chapter I will explain how the principle of state sovereignty was affected by interventions that took place since the Organization of the United Nations was created. I will briefly describe only the most significant interventions in which humanitarian concerns were the stated reason, or one of the stated reasons for action, or which had “resulted in clearly beneficial impacts on humanitarian conditions in the target state”.<sup>16</sup> I will also point out the cases in which there was no timely intervention despite the (imminent) tragic loss of life. The conflicts in Libya, Côte d’Ivoire and Syria will be analyzed in more detail in the next chapter.

I will provide an insight into the conception and the process of adoption of the new doctrine – the Responsibility to Protect and will describe its main features. The differences between the ICISS proposal from 2001 and the version adopted in 2005 will also be clearly pointed out. I will also consider some issues regarding status of humanitarian intervention in customary law.

## 1.1 United Nations and the Cold War Interventions

Although some authors find predecessors to the humanitarian intervention in the 19<sup>th</sup> century wars fought against the Ottoman empire in order to save Christian populations from terror,<sup>17</sup> the true history of humanitarian intervention begins only in the decades after the adoption of the Charter of the United Nations. From the reading of the Charter, it is clear that the world in 1945 did not look benevolently upon any ideas of breaching other nations’ territorial integrity. It is one of the principles of the United Nations that “[a]ll Members shall

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<sup>16</sup> International Commission for Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Research, Bibliography, Background* (Ottawa: International Research Development Centre, 2001), 47.

<sup>17</sup> Aidan Hehir, *Humanitarian Intervention: An Introduction* (Houndmills, England: Palgrave Macmillan, 2010), 169.

refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>18</sup> State sovereignty is put on the highest pedestal with only two exceptions provided.

One exception is “the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken the measures necessary to maintain international peace and security.”<sup>19</sup> The other exception are the Chapter VII powers by which the UNSC “may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”<sup>20</sup> What the UNSC protects here is international peace and security, which originally means that, according to the UN Charter, breach of peace within the borders of a UN member state should be of no concern of the Security Council, because matters of peace and security inside an individual state lie within the sovereignty of that state.

However, in the text of the UN Charter there are two purposes of the UN that according to Adam Roberts leave the door ajar for humanitarian intervention as they point out importance of human rights.<sup>21</sup> One purpose is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.<sup>22</sup> Another is “[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.<sup>23</sup>

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<sup>18</sup> UN Charter art. 2, para. 4.

<sup>19</sup> Ibid., art. 51.

<sup>20</sup> Ibid., art. 42.

<sup>21</sup> Adam Roberts, “The United Nations and Humanitarian Intervention” in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford: Oxford University Press, 2006), 73.

<sup>22</sup> UN Charter art. 1, para. 2.

<sup>23</sup> UN Charter art. 1, para. 3.

Before the 1990s several interventions were conducted in which humanitarian concerns were cited (not necessarily by the interveners), or which had clear humanitarian benefits. However, in some interventions humanitarian concerns were merely a pretext for advancing political and strategic interests. Even in those interventions in which humanitarian concerns were real and after which benefits were felt – the Cold War reality heavily informed the manner in which the international community responded to these interventions.

The three most often discussed interventions of this period are those by India in East Pakistan (1971), Vietnam in Cambodia (1978) and Tanzania in Uganda (1979).

In the case of East Pakistan, a civil war broke out in April 1971 as the President of the then unified Pakistan refused to accept the landslide electoral victory of Awami League, the party that advocated emancipation of the ethnically and linguistically specific eastern portion of the state.<sup>24</sup> Members of the Pakistani army from the west committed numerous crimes, hundreds of thousands were killed, including many members of the sizeable Hindu minority, and ten million refugees fled to eastern India.<sup>25</sup> As a response to Indian support of the Mukti Bahini movement operating against the army in East Pakistan, and after the border incidents started escalating, Pakistan bombed Indian airfields.<sup>26</sup> India reacted swiftly by entering East Pakistan, recognized it as an independent state and during two weeks in December 1971 forced the Pakistani army into surrender.<sup>27</sup> In the UNSC that convened immediately after the Indian attack, Indian representative did make mention of the scale of the crimes committed by the Pakistani army and how India intended to save the population of East Pakistan, and of the huge burden that the influx of refugees created in the state, but ultimately cited self-defense as the argument in favor of its incursion into East Pakistan.<sup>28</sup> Only countries of the

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<sup>24</sup> Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2003), 55-136.

<sup>25</sup> ICISS Supplementary Volume, 55.

<sup>26</sup> Wheeler, *Saving Strangers*, 59.

<sup>27</sup> ICISS Supplementary Volume, 55.

<sup>28</sup> *Ibid.*, 55-56.

communist block supported the Indian position on self-defense, and not a single one suggested that humanitarian concerns could justify the incursion India made into Pakistan.<sup>29</sup> General Assembly, acting under Uniting for Peace procedure (since the Security Council was blocked) called “for the withdrawal of their [of India and Pakistan] armed forces from each other's territory”<sup>30</sup>. This was considered a diplomatic defeat for India because this essentially meant that India should withdraw its forces, since it was primarily its forces that were abroad.<sup>31</sup> Importantly still, India did have a strategic interest in a weak Pakistan and even regarding those legitimate humanitarian concerns – a big reason for the intervention was the fact that many victims were Hindus.

In Cambodia since 1975 until the Vietnamese intervention in 1978, the brutal regime of the Khmer Rouge killed or starved to death up to 2 million people.<sup>32</sup> After the Khmer Rouge had submitted their own population, they turned against their eastern neighbor. After a long series of border incidents and Vietnamese considerations about what to do, Vietnam eventually responded by sending more than 100,000 soldiers into Cambodia on Christmas Day, 1978, rapidly defeating the vicious regime of Pol Pot.<sup>33</sup> In the Security Council Vietnam claimed it was defending itself in the border war, and completely ignored the fact that its troops went deep into the Cambodian territory ridding it of its regime.<sup>34</sup> Vietnam did not even attempt to invoke the humanitarian argument, even though the killings were rigorously documented by the Khmer Rouge.<sup>35</sup> Many other delegations did speak of massive human rights violations, but at no point suggested the idea that this could void the principle of nonintervention.<sup>36</sup> The Soviet Union vetoed the draft resolution calling for withdrawal of

<sup>29</sup> Wheeler, *Saving Strangers*, 68.

<sup>30</sup> GA Res. 2793 (XXVI), para. 1, UN Doc. A/RES/2793 (XXVI) (December 7, 1971).

<sup>31</sup> ICISS Supplementary Volume, 56.

<sup>32</sup> *Ibid.*, 57.

<sup>33</sup> Wheeler, *Saving Strangers*, 84.

<sup>34</sup> ICISS Supplementary Volume, 58.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 58-59.

Vietnamese forces from Cambodia.<sup>37</sup> The issue was raised again at the next session of the General Assembly and a number of representatives spoke of grave crimes committed by the Khmer Rouge, but in the end the General Assembly adopted the resolution calling for withdrawal of foreign troops from Cambodia.<sup>38</sup> The Khmer Rouge although forced to the border with Thailand retained recognition in the United Nations until 1993.

Ugandan dictatorial regime of Idi Amin killed several hundred thousand people since he seized power in a coup in 1971.<sup>39</sup> Main target of his attacks were members of Acholi and Lange ethnic communities, although in a spiral of violence no one was perfectly safe.<sup>40</sup> During the winter of 1978/79 his forces invaded Tanzania three times, first while chasing the soldiers that had mutinied, and later in order to annex the border region of Kagera.<sup>41</sup> After repelling the attacks twice, and after years of warning Africa about the dangers that Idi Amin presented, Tanzanian president Nyerere eventually sent the troops to topple Idi Amin as he perceived Tanzania would not be safe with Amin in Kampala.<sup>42</sup> In April 1979 Idi Amin fled the country and Tanzanian forces soon went back to Tanzania. Nyerere was prepared to claim three things: that it acted in self-defense, that it retaliated after the previous brutal killings after the first invasion and that it was assisting Ugandan exile forces.<sup>43</sup> Neither Security Council nor the General Assembly debated the issue as everyone was glad that Idi Amin was eventually gone, and because Tanzania and its president enjoyed much better reputation in the international community than the vicious regime of Amin.<sup>44</sup> Even though the effects of Tanzanian intervention were very beneficial for the population of Uganda, Nyerere never attempted to justify his actions on humanitarian ground.

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<sup>37</sup> Ibid., 60.

<sup>38</sup> Ibid., 61.

<sup>39</sup> Wheeler, *Saving Strangers*, 111.

<sup>40</sup> ICISS Supplementary Volume, 61.

<sup>41</sup> Ibid., 61-62.

<sup>42</sup> Ibid. 62.

<sup>43</sup> Wheeler, *Saving Strangers*, 121.

<sup>44</sup> ICISS Supplementary Volume, 62.

Several conclusions can be made concerning the interventions launched during the Cold War. Human rights and the terror that the population of the countries targeted by intervention were rarely invoked in the United Nations, and even when they were, they were not seen as something that could justify interventions. In one form or another the interveners were condemned, and the Tanzanian intervention was almost ignored in the United Nations.<sup>45</sup> The states that openly supported the interventions supported them as their allies' acts of self-defense, and they were the states to raise the humanitarian issues, although they were not basing their argument on the humanitarian issue (and ironically, they).<sup>46</sup>

## **2.2. Interventions after the Cold War**

After the Cold War ended, it was much easier to find the common language in the Security Council and this brought about change in many aspects of international politics and law, including the concept of humanitarian intervention.

Liberian case introduced something new. In August 1990 regional organization Economic Community of West African States (ECOWAS) decided to send 2,000 troops under the name of ECOWAS Cease-fire Monitoring Group (ECOMOG) in order to establish ceasefire in the war-torn state in Western Africa.<sup>47</sup> The organization did not receive any prior authorization by the UNSC. In November 1992, however, the UNSC stated that "deterioration of the situation in Liberia constitutes a threat to international peace and security"<sup>48</sup> and it authorized ECOWAS to enforce the arms embargo.<sup>49</sup> This was the first time

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<sup>45</sup> The fact that Tanzania and Uganda were not Cold War hotspots substantially important to either of the key world powers also played a significant role in this. Wheeler, *Saving Strangers*, 123.

<sup>46</sup> ICISS Supplementary Volume, 67.

<sup>47</sup> Ibid. 71.

<sup>48</sup> SC Res. 788, 1, UN Doc. S/RES/788 (November 19, 1990).

<sup>49</sup> Ibid., paras. 8-9.

that an authorization for an intervention came after the intervention was carried out.<sup>50</sup> The resolution 866 established UN Observer Mission in Liberia (UNOMIL) that would work alongside ECOMOG,<sup>51</sup> and this was another confirmation that the Security Council did not object to the prior deployment of the ECOWAS mission. The war claimed more than 200,000 lives in a country of 2.5 million, and around 800,000 people were forced to leave their homes.<sup>52</sup> In 1997 ECOWAS was again granted an authorization for their actions after they intervened in a civil war, this time in Sierra Leone.<sup>53</sup>

Days before ECOWAS would dispatch first troops to Liberia, in the Middle East, to the global outrage, Iraq occupied and annexed Kuwait. The UNSC immediately adopted Resolution 660 condemning the invasion,<sup>54</sup> and four days later voted to impose embargo.<sup>55</sup> The US and USSR eventually agreed to adopt a UNSC resolution that would legitimize using “all means necessary” in order to establish international peace and security in the region,<sup>56</sup> and the Resolution 678 was adopted on November 29.<sup>57</sup> The coalition led by the USA launched Operation Desert Storm and in two months defeated the forces of Saddam Hussein, and liberated Kuwait. But in the north of Iraq, Hussein launched another offensive. Three years after using chemical weapons to kill ethnic Kurds,<sup>58</sup> Hussein attacked them again and around 2 million people were forced to flee their homes, and several tens of thousands died in horrible conditions.<sup>59</sup> UNSC adopted Resolution 688 demanding from Iraqi authorities to end the repression and allow humanitarian organizations to deliver aid to all in need.<sup>60</sup> Although Resolution 688 was not adopted under the Chapter VII powers, humanitarian aid was dropped

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<sup>50</sup> ICISS Supplementary Volume, 83.

<sup>51</sup> SC Res. 866, 1, UN Doc. S/RES/866 (September 22, 1993).

<sup>52</sup> ICISS Supplementary Volume, 84.

<sup>53</sup> SC Res. 1132, para. 3, UN Doc. S/RES/1132 (October 8, 1997).

<sup>54</sup> SC Res. 660, UN Doc. S/RES/660 (August 2, 1990).

<sup>55</sup> SC Res. 661, UN Doc. S/RES/661 (August 6, 1990).

<sup>56</sup> ICISS Supplementary Volume, 86.

<sup>57</sup> SC Res. 678, para. 2, UN Doc. S/RES/678 (November 29, 1990).

<sup>58</sup> Wheeler, *Saving Strangers*, 139-140.

<sup>59</sup> ICISS Supplementary Volume, 87.

<sup>60</sup> SC Res. 688, paras. 2-3, UN Doc. S/RES/688 (April 5, 1991).



by aircrafts and allied forces under the American command established presence in the north of the country.<sup>61</sup> Iraqi airplanes were not allowed to enter the newly established air exclusion zone in the north and safe havens, another novelty, were formed for the Kurds.<sup>62</sup> Although the intervention in northern Iraq was not established on a perfectly clear basis in the UNSC resolutions, it did provide some relief to the troubled population.<sup>63</sup>

Somalia was engulfed in a bloody clan war in January 2001 after the ousting of president Siad Barre. This marked the beginning of the state failure in Somalia which is to this day one of the most insecure countries to live in. In early 1992 the UNSC adopted Resolution 746 citing that the situation in Somalia constituted a threat to international peace and security,<sup>64</sup> although the Resolution was not adopted under the Chapter VII powers. A mission named UN Operation in Somalia (UNOSOM I) was deployed with the consent of the warring factions, but this effort was insufficient. In December 1992 the Security Council acting under Chapter VII adopted Resolution 794 stating that "magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security."<sup>65</sup> It further called for using any means necessary in order to enable humanitarian relief operations.<sup>66</sup> The significant American contribution to the relief efforts ended in October 1993 after 3 American helicopters were downed in Mogadishu and the video footage of the killed Americans being dragged on the city streets was broadcast on television.<sup>67</sup> Resolution 794 was the first time that the UNSC explicitly acting under Chapter VII authorized an intervention whose objective was strictly humanitarian. When the significant expansion of the UN mission mandate (UNOSOM II) provoked hostility of the warring

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<sup>61</sup> ICISS Supplementary Volume, 87.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid., 89.

<sup>64</sup> SC Res. 746, 1, UN Doc. S/RES/746 (March 17, 1992).

<sup>65</sup> SC Res. 794, 1, UN Doc. S/RES/794 (December 3, 1992).

<sup>66</sup> Ibid., para. 10.

<sup>67</sup> Wheeler, *Saving Strangers*, 198.

factions the UN faced failure in Somalia.<sup>68</sup> The UN completely withdrew its troops in 1995. But the humanitarian catastrophe would have been much worse, and according to estimates, over million people more would have died had the UNSC decided to leave Somalia to its internal problems and to its own destiny.<sup>69</sup>

If the United Nations had only limited success in Somalia, they completely failed in Rwanda in 1994 and in Bosnia in 1995. The assassination of the Rwandan president Juvenal Habyarimana on April 6, 1994 marked the beginning of the genocide over the Tutsi ethnic minority. After the scenes from the streets of Mogadishu, and after the killing of Belgian peacekeepers on April 7,<sup>70</sup> international community was reluctant to send more troops to already existing UN mission and to expand their mandate to provide for a more effective protection of the population. Instead of this, the UNSC decided to reduce the presence of the peacekeepers from 2,500 to only 270.<sup>71</sup> At the end of the killings, up to 800,000 people perished and UN did too little to stop it. Similarly, the UN Protection Force (UNPROFOR) mandate in Bosnia was not adequate to stop the killings and prevent genocide. In July 1995 the Bosnian Serb forces entered the safe area of Srebrenica and over the next 4 days killed more than 8,000 Muslim boys and men.<sup>72</sup> UNPROFOR was authorized to use force in defense of civilians in the safe areas but only after going through a complicated and time-consuming procedure.<sup>73</sup>

Under the 1974 constitution of the Socialist Federal Republic of Yugoslavia, Kosovo enjoyed substantial autonomy inside Serbia, but not the status of a federal republic that they

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<sup>68</sup> SC Res. 814, UN Doc. S/RES/814 (March 26, 1993).

<sup>69</sup> ICISS Supplementary Volume, 97.

<sup>70</sup> Ibid., 98.

<sup>71</sup> Ibid..

<sup>72</sup> see Human Rights Watch, "The Fall of Srebrenica and the Failure of UN Peacekeeping", October 1995, <http://www.hrw.org/sites/default/files/reports/bosnia1095web.pdf>

<sup>73</sup> ICISS Supplementary Volume, 93.

aspired to.<sup>74</sup> However, one of the first things that the Serbian authoritarian leader Slobodan Milošević did when he came to power in 1989 was to strip Kosovo off of any effective autonomy and put it under direct rule from Belgrade,<sup>75</sup> to which Albanians responded by forming their own parallel system that was kept functional throughout the decade.<sup>76</sup> As the wars in Croatia and Bosnia ended, the conflict in Kosovo was about to begin.

Although ethnic Albanians under the banner of Kosovo Liberation Army (KLA) had already carried out some actions aimed against the Serbian authorities in 1996, the real conflict broke out in early 1998. The Security Council condemned both terrorist attacks by KLA and the disproportional response by the Serbian forces.<sup>77</sup> After the failed negotiations between Milošević and the Kosovar leader Ibrahim Rugova, the situation deteriorated further and Security Council adopted another Resolution, this time under acting under Chapter VII calling the situation “a threat to peace and security in the region,”<sup>78</sup> but did not explicitly authorize military intervention. Rather, it stated it would yet “consider further action and additional measures.”<sup>79</sup> As the situation further worsened, and as it became obvious that China and Russia would lodge veto to any attempt of Security Council authorization of intervention, NATO officials suggested that Security Council had already authorized action against Yugoslavia by adopting Resolutions under Chapter VII powers, but this was not widely supported.<sup>80</sup>

After the delegation of Yugoslavia declined to accept proposed agreement in the renewed negotiations, because the agreement would allow the population of Kosovo a referendum on independence in three years, NATO intervention against Yugoslavia was

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<sup>74</sup> Marie-Janine Calic, “Kosovo in the Twentieth Century: A Historical Account,” in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action and International Citizenship*, eds. Albrecht Schnabel and Ramesh Thakur (Tokyo: United Nations University Press, 2000), 21.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> SC Res. 1160, UN Doc. S/RES/1160 (March 31, 1998).

<sup>78</sup> SC Res. 1199, UN Doc. S/RES/1199 (September 23, 1998).

<sup>79</sup> Ibid.

<sup>80</sup> ICISS Supplementary Volume, 110.

imminent. The air strikes campaign against targets in Kosovo and Serbia Proper started on March 24th and lasted for 78 days. During this period ethnic Albanians in Kosovo were facing brutal retaliation of the regime of Slobodan Milošević, and more than 800,000 were forced to leave Kosovo.<sup>81</sup>

By accepting the Kumanovo Agreement on June 10<sup>th</sup> Yugoslavia agreed to pull out its troops from Kosovo, and Security Council adopted Resolution 1244 establishing interim UN administration in Kosovo,<sup>82</sup> and Albanians were finally able to return to their homes.<sup>83</sup> As the retaliatory attacks against the Serbs started, as many as 200,000 Serbs fled to northern Kosovo or to Serbia Proper.

Despite some remarks stating that the intervention against Yugoslavia had already been authorized by Resolution 1199, the findings of the Independent International Commission on Kosovo (IICK) have been widely accepted that the intervention had been “illegal but legitimate.”<sup>84</sup> According to the Commission, “the intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule.”<sup>85</sup>

### **1.3. The Responsibility to Protect**

Having a solution to the humanitarian crisis that was illegal but legitimate was not adequate enough. Oft-cited words of the former Secretary General of the United Nations,

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<sup>81</sup> Ibid., 113.

<sup>82</sup> SC Res. 1244, UN Doc. S/RES/1244 (June 10, 1999).

<sup>83</sup> For the most detailed report on the crimes committed in Kosovo until 2001, see Human Rights Watch, “Under Orders: War Crimes in Kosovo,” 2001, [http://www.hrw.org/sites/default/files/reports/Under\\_Orders\\_En\\_Combined.pdf](http://www.hrw.org/sites/default/files/reports/Under_Orders_En_Combined.pdf).

<sup>84</sup> Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), 4.

<sup>85</sup> Ibid.

speaking to the Millennium General Assembly in 2001 Kofi Annan underscored the need to find an uncontroversial approach to humanitarian intervention: “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 offend every precept of our common humanity?”<sup>86</sup>

The task of defining a new and efficient approach to humanitarian intervention was taken up by the Government of Canada which announced in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS). The twelve-member Commission co-chaired by Gareth Evans and Mohamed Sahnoun, held five full meetings by September 2011 when the ICISS published the Report of the International Commission on Intervention and State Sovereignty and its Supplementary Volume that provided, among others, bibliography and extensive research.

One rather big issue for the Commissioners was the change in language – from “humanitarian intervention” to “responsibility to protect.” The Commissioners thought that the language of “intervention” and “right to intervene” was not helpful as it shifted the focus from the potential victims to the interveners, because it did not respect the importance of prevention of crimes and subsequent assistance, and because it made anyone who disagreed sound “anti-humanitarian.”<sup>87</sup> Thus, the Commissioners suggested the concept of “responsibility to protect” that acknowledged the needs of the suffering population, that respected the idea that the responsibility to protect lay within the state itself unless the state is unwilling or unable to protect the population, and that was broad enough to encompass both preventive and post-intervention efforts.<sup>88</sup>

In this sense, the Responsibility to Protect report foresees three phases of action. The intervention is only one phase, more precisely called Responsibility to React. But it is

<sup>86</sup> quoted in Evans, *Responsibility to Protect*, 31.

<sup>87</sup> ICISS Report, 16.

<sup>88</sup> Ibid., 17.

preceded by the Responsibility to Prevent, or to take all measures possible before engaging in intervention.<sup>89</sup> The third phase is the Responsibility to Rebuild, meaning the responsibility to ensure lasting peace, and to promote good governance and sustainable development.<sup>90</sup>

The Report also states the criteria that have to be met for the intervention to take place: the just cause threshold, right authority, right intention, last resort, proportional means and reasonable prospects of success, with additional operational principles.<sup>91</sup>

The report may have been adopted unanimously by the Commission, but it took another four years for its main findings to be adopted by “the largest gathering of the world’s heads of state and government ever convened.”<sup>92</sup> In the 2005 World Summit Outcome Document the Responsibility to Protect doctrine was adopted in the UN General Assembly in the following manner:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner,

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<sup>89</sup> Ibid., 19.

<sup>90</sup> Ibid., 39.

<sup>91</sup> For details on these criteria, see Chapter 2.1..

<sup>92</sup> Gareth Evans, Ramesh Thakur, Robert A. Pape, “Correspondence: Humanitarian Intervention and the Responsibility to Protect,” *International Security* 37, no. 4 (Spring 2013), 199.

through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.<sup>93</sup>

The part of the World Summit Outcome Document that referred to the Responsibility to Protect was soon afterwards adopted by the Security Council.<sup>94</sup>

There are significant differences between the 2001 Report and the 2005 version that was adopted by the UN and Pattison notices five main differences.<sup>95</sup> First, according to the 2001 proposal, the responsibility to protect falls upon the international community once the state becomes unable or unwilling to protect the population, and in the 2005 the responsibility transfers only when the state is manifestly failing in this protection. Second, in the 2005 version, only ethnic cleansing, crimes of genocide, crimes against humanity and war crimes warrant an intervention, while the earlier version foresaw “serious and irreparable harm occurring to human beings or imminently likely to occur.” Third, in the 2001 ICISS Report it is the responsibility of the international community to act if the state involved will not, but in 2005 version, the states only act on case-by-case basis. Fourth, while the 2001 version saw

<sup>93</sup> 2005 World Summit Outcome, GA Res. 60/1, UN Doc. A/RES/60/1 (September 16, 2005).

<sup>94</sup> SC Res. 1674, UN Doc. S/RES/1674 (April 28, 2006).

<sup>95</sup> James Pattison, *Humanitarian Intervention & the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010), 14.

the Security Council as the main authority to decide on the intervention, but not the only one, in 2005 World Summit Outcome Document the UNSC is the single authority. Fifth, the 2001 proposal names the precautionary principles that have to be respected when making a decision on intervention (right intention, last resort, proportional means, and reasonable prospects), but the 2005 version does not mention them.<sup>96</sup> Evans downplays the differences and endorses the additions made in the Outcome Document (particularly those regarding prevention and assistance) while he acknowledges that the lack of criteria to guide the UNSC when authorizing use of force is a weakness of the 2005 version.<sup>97</sup>

Evans, however, goes too far in the endorsement of the changes made in 2005. He argues that the recommendations made in 2001 are consistent with the 2005 “insistence on the central role of the UN (...) and the necessary role of the Security Council when it comes to military enforcement measures”.<sup>98</sup> The role of the United Nations is not problematic - it is after all the key international forum in the contemporary world, but the role of the Security Council is not merely necessary. The Security Council is *the only* authority that can decide on the authorization of the intervention, and the authorization must precede military action. This is in stark contrast with the case of Kosovo, in which the UNSC only authorized intervention *ex post facto*. Had the 2005 version of the RtP been employed in the Kosovo case, the intervention would not have been allowed for lack of prior UNSC authorization.

The international community initially viewed interventions as a violation of state sovereignty. Later, international peace and security came to mean peace and security within individual states as well, and state sovereignty was no longer seen as always superior over fundamental human rights of the population. In the case of Kosovo, humanitarian intervention even received an *ex post facto* authorization by the Security Council as the UNSC could not agree on the intervention before NATO eventually executed it. The

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<sup>96</sup> Ibid.

<sup>97</sup> Evans, *Responsibility to Protect*, 48-49.

<sup>98</sup> Ibid., 48.



unanimous adoption of the World Summit Outcome Document in the UNGA expanded support for the intervention under certain conditions. However, this is far from meaning that every state now supports interventions, and that no state will consider them violation of state sovereignty. For humanitarian intervention to become a rule of international customary law, state practice and *opinio juris* would have to consolidate. There have not been many instances of humanitarian interventions, and those that did take place were very different one from another. Furthermore, the opposition to intervention is still very strong, most importantly among some world powers.

I will elaborate on the questions of opposition to the intervention in the next chapter. I will discuss the right authority and other criteria for intervention and apply them to the cases of Libya, Côte d'Ivoire and Syria.

## Chapter 2: The Case Studies

In the second chapter I will first elaborate on the six criteria of the 2001 ICISS Report and then use them to analyze the three armed conflicts and the very different responses that the conflicts warranted in Libya, Côte d'Ivoire and Syria. For each case study I will first present the general context and the unraveling of the conflict, and will afterwards apply the criteria. In describing the context, I will provide the relevant information for the periods leading to and during the conflicts, but in the cases of Libya and Côte d'Ivoire I will also describe the major events after the intervention ended. It is important to notice that the post-intervention period is not explained in order to evaluate the decision to intervene with perfect hindsight. The decision to intervene is based on the available information and evidence of the atrocities that are happening at the moment or that are imminent. Evaluating the decision to intervene itself based on the events that took place years after the intervention is not acceptable. However, offering an up-to-date overview of Libya and Côte d'Ivoire may be relevant to understand the totality of those conflicts, and to improve the planning of future interventions based on lessons learned.

I will consecutively apply all the principles for intervention for one case at a time and in the process I will raise points of comparison with other case studies and relevant prior interventions. The alternative approach would have been to apply one principle to all three cases and then proceed to the next one, but I believe that this would make the totality of each conflict more difficult to perceive. I will use the 2001 principles not because they are binding on the Security Council; I have already stated that they were either not included in the 2005 Outcome Document, or they were included in a different form. They are, however, very

convenient and comprehensive when analyzing any crisis that may trigger international intervention.<sup>99</sup>

Before turning to the first case study, I will elaborate on the scope of each of the criteria and explain theoretical and practical problems and implications surrounding them.

## **2.1. The Criteria of Intervention**

### **2.1.1. Just Cause**

Under the just cause criterion, ICISS covered “serious and irreparable harm occurring to human beings, or imminently likely to occur.”<sup>100</sup> One meaning of this is: “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.”<sup>101</sup> Another is: “large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”<sup>102</sup> ICISS further clarified what this covers and what is excluded from the just cause criterion. Large scale loss of life and ethnic cleansing that need to be stopped or averted encompass genocide, war crimes, different forms of crimes against humanity, but also situations of state failure that may result in large scale loss of life, and even natural or environmental catastrophes after which state is unable or unwilling to save the affected population.<sup>103</sup> What the just cause criterion does not cover are the situations of systematic racial discrimination or systematic repression and imprisonment on political basis, and the situations of military takeovers after the people have expressed the

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<sup>99</sup> For a similar set of criteria, leaving out the right authority, see Evans, Thakur and Pape, “Correspondence,” 205.

<sup>100</sup> ICISS Report, 32.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid., 33.

will to live in a democracy,<sup>104</sup> even though it is stated in the Report that a military takeover might warrant an intervention for the sake of protection of international peace and security, or on the basis of self-defense of the deposited yet legitimate government.<sup>105</sup>

The World Summit Outcome Document envisioned a different list of situations that could be considered a just cause for intervention (the wording “just cause” is omitted) and that list consists of genocide, war crimes, ethnic cleansing and crimes against humanity, including their incitement. The list of criminal acts that fall in these categories is still wide,<sup>106</sup> but the list of criminal behavior is not as wide and comprehensive as the one compiled in 2001. Notably, the 2005 Document does not foresee intervention in cases of natural disasters after which the state is manifesting neglect for the affected population, and unwillingness or inability to react. When cyclone Nargis struck Myanmar in 2008, killed around 140,000 people and displaced 1.5 million, the military junta barely reacted to help the endangered population.<sup>107</sup> France raised the issue and initially claimed there was an international responsibility to save the population, but was alone in the call for humanitarian intervention.<sup>108</sup> Evans is aware of the fact that expanding the RtP beyond the scope that was agreed in 2005 could tear the RtP consensus apart, but still argues that gross negligence after such catastrophes could possibly be interpreted as a crime against humanity.<sup>109</sup> It is possible that the reference to Responsibility to Protect was an incentive for the government of Myanmar to eventually allow the aid to reach the people.<sup>110</sup>

In summary, the matter of a just cause is a matter of nature of crimes, their scope and gravity, and if it is not the government that is committing them, then it is about the response

<sup>104</sup> Ibid., 34. This exception is, obviously, inspired by the situation in Myanmar at the time of ICISS.

<sup>105</sup> Ibid.

<sup>106</sup> Rome Statute, paras. 5-9.

<sup>107</sup> Alex J. Bellamy, “The Responsibility to Protect – Five Years On,” *Ethics & International Affairs* 24, no. 2 (2010): 151-152.

<sup>108</sup> Ibid., 152.

<sup>109</sup> Evans, *Responsibility to Protect*, 66-67.

<sup>110</sup> Ibid., 68.

of the government. If crimes have already been committed, evidence of crimes should be credible for the intervention to take place. If the crimes are imminent, then the international community must be quick enough to prevent them.

### **2.1.2. Right Authority**

The question of right authority that is deciding on the intervention is the second major criterion for the intervention. The ICISS report argued that the Security Council is the primary authority that should decide on the intervention.<sup>111</sup> The intervening party must seek authorization for the intervention, and the Security Council is to decide on it having in mind urgency of the matter.<sup>112</sup> Security Council can raise the issue on its own initiative, or the Secretary-General can do it under the Article 99 of the UN Charter.<sup>113</sup>

If the Security Council cannot reach the decision, there are two possibilities according to the ICISS. One is that the General Assembly considers the issue under the “Uniting for Peace” procedure and the other one is for a regional organization to take action and to seek authorization from the Security Council afterwards.<sup>114</sup> While the Uniting for Peace procedure can only put additional pressure on the Security Council, as the General Assembly cannot decide on starting an intervention, the subsequent authorization was already granted, in one way or another, in the cases of Liberia, Sierra Leone and Kosovo.

The Outcome Document does not provide for any route for an intervention other than through prior authorization of the Security Council. There is no promise that the Security Council will authorize a humanitarian intervention. There is no promise that an individual permanent member will abstain from voting against a resolution that would authorize an intervention.

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<sup>111</sup> ICISS Report, 48.

<sup>112</sup> Ibid., 50.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid., 53-54.

Even though just cause should be the major principle when deciding on humanitarian intervention, it is sometimes the right authority that will be in the focus of a debate. This is an enormous concern that can jeopardize chances that mass atrocities be averted.

### **2.1.3. Right Intention**

When humanitarian intervention is applied, the only right intention is halting and averting suffering of the people.<sup>115</sup> Humanitarian intervention is not executed for political, strategic or economic reasons, but because of the necessity to save people's lives. Even when the interveners have particular interests other than humanitarian (for example, having a safe and stable country in the neighborhood), these interests are not the primary concern.<sup>116</sup> Occupation, changing borders or toppling a regime must not be the reasons for performing an intervention even if occupation for a period of time is needed, or if overthrowing a dictator is potentially required to stop or avert the bloodshed.

The members of the ICISS suggested that the right intention is best proven if the intervention is collective, e.g. that more states are participating in it, and if the intervention is supported by the suffering population, and by other states in the region.<sup>117</sup>

### **2.1.4. Last Resort**

A military intervention should only come after all diplomatic efforts have failed to produce results.<sup>118</sup> An often cited successful story of Responsibility to Prevent was the Kenyan electoral violence in 2010.<sup>119</sup> However, honoring diplomatic efforts does not mean that futile diplomacy should go on forever while mass atrocities are being committed by the government. Efforts in good faith should be honored, but sitting at the table with diplomats

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<sup>115</sup> Ibid., 35.

<sup>116</sup> Ibid., 36.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Bellamy, "RtP Five Years On," 154.

who are trying to buy time while the agents of their state are performing large scale crimes is far from an acceptable option.<sup>120</sup>

### **2.1.5. Proportional Means**

Response of humanitarian intervention should be scale, duration and intensity to the threat or provocation coming from the party that is committing or is preparing to commit atrocities.<sup>121</sup> If the right intention criterion meant that overthrowing a regime did not count as the right intention, this criterion suggests that overthrowing a regime is not considered proportional either, unless this is needed to stop the atrocities.

An issue of whether the intervention should be halted if there is genuine will for a political settlement on the part of the government is implied here. Still, we must bear in mind that foreign intervention is often only one aspect of the conflict, and that whether the calls for political settlement coming from the government should be accepted depends also on the attitude of those who are fighting the regime that is being targeted by the interveners.

Compliance with the international humanitarian law on part of the interveners also falls under this criterion.<sup>122</sup> Proportionality is one of the principles of humanitarian law, and additionally, weapons that are prohibited by humanitarian law are often prohibited because of excessive suffering they cause.

### **2.1.6. Reasonable Prospects**

The last of the precautionary criteria are reasonable prospects of success of intervention. ICISS points out two issues here. One is that an intervention is not justified if it would start a bigger conflict which essentially means that a military intervention is not likely to be executed against any permanent member of the Security Council or against any other

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<sup>120</sup> ICISS Report., 37.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

powerful state, even if all other principles are met.<sup>123</sup> This does not mean that nothing should be done if the population of one of the most powerful states is threatened with slaughter, but it does notice that this would not be done under the auspices of humanitarian intervention.

However, even if the intervention does not start a bigger conflict, can it stop the violence in the target country? It depends on a number of factors, such as, strength, capabilities, preparedness of the interveners, of their potential allies in the target state (e.g. rebels and militias fighting against the government), and of their enemy, but also on the attitude of civilians in the state in which the intervention is taking place. Additionally, it also depends on the geography of the theater as this affects the tactics and strategy of the interveners. It depends on the weapons and means used, on the budget and countless other factors, more or less visible or predictable.

### **2.1.7. Operational Principles**

In addition to all these principles, a set of operational principles is important to the intervention. Some of these principles relate to effective chain of command, clear mandate, rules of engagement, coordination with humanitarian organizations etc.<sup>124</sup> I will not cover operational principles systematically in the case studies for three reasons. Firstly, they are not consistently considered within the same classification as the other six criteria. Secondly, complete analysis of these principles would require access to operational documents of the intervening parties which is not available. Finally, some of the operational principles partially overlap with the substance of other criteria, such as compliance with humanitarian law, rules of engagement or resources available, and I will discuss them in the subchapters on right intention, proportional means and reasonable prospects.

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid., XIII.



## 2.2 Libya

Since coming to power in a coup in 1969, Libya was ruled by bizarre Colonel Muammar Gaddafi for 42 years. Although he never claimed he had any official function in Libya, he was its supreme autocratic ruler who did not tolerate dissent. While the Human Development Report pointed that Libya was the most developed African country after the Seychelles,<sup>125</sup> the human rights record was dismal.<sup>126</sup> In early 2011, a series of protests seeking more rights and better economic conditions swept the Arab world following the self-immolation of a young Tunisian street vendor Mohammad Bouazizi.<sup>127</sup> The wave of protests reached Libya in February.

On February 16 protests against the regime erupted in Benghazi, the second biggest city in Libya, and quickly spread to other major cities in the country.<sup>128</sup> Following the depositions of Ben Ali of Tunisia and Hosni Mubarak of Egypt, Gaddafi tried to calm the protests with promise of liberation of political prisoners and some reforms, but the protests never abated and the crackdown on protesters was brutal.<sup>129</sup> By the end of the month, hundreds were feared killed, including in alleged air strikes on protesters and in attacks by foreign mercenaries, and UNHCR reported around 100,000 refugees.<sup>130</sup>

Opposition National Transitional Council was formed on February 26 to act as government from the eastern third of the country, where Gaddafi lost control.<sup>131</sup> A number of high-profile government and military officials defected from the regime.<sup>132</sup> The Security Council unanimously adopted Resolution 1970, imposing sanctions on Libya and referring it

<sup>125</sup> UNDP, *Human Development Report 2011*, [http://hdr.undp.org/en/media/HDR\\_2011\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2011_EN_Complete.pdf), 128.

<sup>126</sup> Human Rights Watch, "Truth and Justice Can't Wait: Human Rights Developments in Libya Amid Institutional Obstacles," December 2009, <http://www.hrw.org/sites/default/files/reports/libya1209web.pdf>.

<sup>127</sup> Ian Black, "Where the Arab spring will end is anyone's guess," *Guardian*, June 17, 2011, <http://www.theguardian.com/world/2011/jun/17/arab-spring-end-anyone-guess>.

<sup>128</sup> *The Economist*, "Time to Leave," February 22, 2011, [http://www.economist.com/blogs/newsbook/2011/02/libyas\\_uprising](http://www.economist.com/blogs/newsbook/2011/02/libyas_uprising).

<sup>129</sup> International Crisis Group, "CrisisWatch 91," March 1, 2011, 11.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> Peter Beaumont, "The Key Libyans Who Have Defected – and Those Who Still Support Gaddafi," *Guardian*, March 31, 2011, <http://www.theguardian.com/world/2011/mar/31/libya-gaddafi-defectors-supporters>.

to the International Criminal Court.<sup>133</sup> In the government counteroffensive, military took over a number of cities on the coastline and was quickly approaching Benghazi. On March 17 the UNSC further adopted Resolution 1973, under Chapter VII, imposing a no-fly zone over Libya and allowing for all necessary measures to be taken reaffirming the responsibility to protect the Libyan population.<sup>134</sup>

On March 19 the coalition led by the UK, USA and France commenced air strikes against Libyan military that had already reached the outskirts of Benghazi.<sup>135</sup> What ensued were months of battles along the coastal highway with rebel forces advancing, and then being pushed back. The city of Misrata in the middle of the coastal region was placed under siege that lasted for months.<sup>136</sup> In the western mountains, rebel forces were making modest gains at first, but were at one point the only rebels who were making progress and could hold consolidated ground outside the eastern part of the country.<sup>137</sup> The war dragged on despite NATO claimed early in the war to have destroyed 30-40% of Libyan ground forces.<sup>138</sup>

Breakthrough came in August when rebels reached Tripoli and alongside civilians and militias inside the city took over with relative ease.<sup>139</sup> From then the fighting mainly continued in and around the central cities of Sabha, Bani Walid and Gaddafi's home town of Sirte. Sirte was conquered by the rebels after long and heavy fight only on October 20.

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<sup>133</sup> SC Res. 1970, UN Doc. S/RES/1970 (February 26, 2011).

<sup>134</sup> SC Res. 1973, paras. 4, 6-12, UN Doc. S/RES/1973 (March 17, 2011).

<sup>135</sup> *BBC*, "Libya: US, UK and France Attack Gaddafi Forces," March 20, 2011, <http://www.bbc.co.uk/news/world-africa-12796972>.

<sup>136</sup> Andrew Harding, "Libya: Misrata Breathes as Gaddafi Siege Lifted," *BBC*, May 17, 2011, [www.bbc.co.uk/news/world-africa-13421646](http://www.bbc.co.uk/news/world-africa-13421646).

<sup>137</sup> William Booth, "Libya Rebels Making Steady Progress in Western Mountains," *Washington Post*, July 31, 2011, [http://articles.washingtonpost.com/2011-07-31/world/35236922\\_1\\_nafusa-mountains-mahmoud-shammam-libya-rebels](http://articles.washingtonpost.com/2011-07-31/world/35236922_1_nafusa-mountains-mahmoud-shammam-libya-rebels).

<sup>138</sup> International Crisis Group, "CrisisWatch 93," May 1, 2011, 12.

<sup>139</sup> *Al Jazeera*, "Libyan rebels in Tripoli's central square," August 22, 2011, <http://www.aljazeera.com/news/africa/2011/08/201182122425905430.html>.

Muammar Gaddafi was found hiding in the city and was killed in a manner that was quite possibly a war crime.<sup>140</sup>

Libya was declared liberated by the National Transitional Council in October,<sup>141</sup> although heavy fighting would occasionally break out in Bani Walid and Sirte for the months to come. NATO ended their operation after the Resolution 2016 ended its authorization for intervention,<sup>142</sup> despite the calls of the new Libyan government to stay alert until the end of the year.

Today Libya is far from a stable and safe country. Infighting between dozens and hundreds of militias over the spoils of war is taking lives even now. Attacks on politicians, military officers, and diplomatic representations are frequent, with the killing of the US ambassador in 2012 being the most prominent.<sup>143</sup> Bani Walid and Sirte are still restive, and the scope of revenge that Misratans wreaked on the people of neighboring Tawergha that laid the siege during the war is a topic of a special HRW report.<sup>144</sup> However, Libyans did manage to hold elections for the multi-party congress that is currently working through the obstacles on the way to the new constitution. According to the latest Freedom in the World report, Libya's ranking improved dramatically and Libya is today ranked partly free country.<sup>145</sup>

### 2.2.1. Just Cause

Libyan protests were met with a violent response from the beginning. Human Rights Watch reported of at least 233 victims killed in the first four days of protest, as security

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<sup>140</sup> Human Rights Watch, "Libya: Investigate Deaths of Gaddafi and Son," October 22, 2011, <http://www.hrw.org/news/2011/10/22/libya-investigate-deaths-gaddafi-and-son>.

<sup>141</sup> International Crisis Group, "CrisisWatch 99," November 1, 2011, 11.

<sup>142</sup> SC Res. 2016, UN Doc. S/RES/2016 (October 27, 2011).

<sup>143</sup> BBC, "US Confirms Its Libya Ambassador Killed in Benghazi," September 21, 2012, <http://www.bbc.co.uk/news/world-africa-19570254>.

<sup>144</sup> Human Rights Watch, "Satellite-Based Damage Assessment: Tawergha, Libya," 2013, <http://www.hrw.org/revenge-crimes-against-tawerghans-libya>.

<sup>145</sup> Freedom House, "Country Status and Ratings, 1973-2013," 2013, [http://www.freedomhouse.org/sites/default/files/Country%20Status%20and%20Ratings%2C%201973-2013%20%28FINAL%29\\_0.xls](http://www.freedomhouse.org/sites/default/files/Country%20Status%20and%20Ratings%2C%201973-2013%20%28FINAL%29_0.xls).

officers fired live rounds indiscriminately at the crowds.<sup>146</sup> Reports of air strikes and other disproportionate reactions that the authorities executed on the population were spread in the media. After the intervention had begun, ICRC reported of mass graves with executed rebels.<sup>147</sup> All this testifies to the brutality of the regime's response to protests and afterwards to rebellion. ICC charges against Muammar Gaddafi, his son Saif Al-Islam and intelligence chief Abdullah Senussi also testify that the crimes were committed by the regime forces.

The rhetoric of the Gaddafis was unmistakeable. Saif Al-Islam, in a televised address spoke of drunkards and thugs leading the protesters in Benghazi, he said that Libyans would fight to the last man and woman and bullet and warned that if Libya would spiral into civil war hundreds and thousands would die.<sup>148</sup> Muammar Gaddafi delivered a long speech in which he called rebels rats and drug addicts and threatened them with death penalty. He added he would not step down and that he would die a martyr.<sup>149</sup> Gaddafi's regime was already known for cruelty. An uprising in Abu Salim prison ended with killing of around 1,200 inmates.<sup>150</sup>

When the rebels started retreating to the east in mid-March, there was high probability that Gaddafi would have no mercy, and that not only rebels, but members of their families or just civilians thought to be involved in rebellion would be murdered. Considering the fact that the eastern third of the country was not under Gaddafi's control and that no groups in Cyrenaica tried to submit the cities back to Gaddafi, there was a substantial threat that Gaddafi's punishment would extend well beyond Benghazi.

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<sup>146</sup> Human Rights Watch, "Libya: Governments Should Demand End to Unlawful Killings," February 20, 2011, <http://www.hrw.org/en/news/2011/02/20/libya-governments-should-demand-end-unlawful-killings>.

<sup>147</sup> International Crisis Group, "CrisisWatch 98," October 1, 2011, 11.

<sup>148</sup> *BBC*, "Libya Protests: Gaddafi's Son Warns of Civil War," February 21, 2011, <http://www.bbc.co.uk/news/world-middle-east-12520586>.

<sup>149</sup> Sudarsan Raghavan and Leila Fadel, "Gaddafi Vows to 'Die as a Martyr,' Refuses to Relinquish Power," *Washington Post*, February 22, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/21/AR2011022104733.html>.

<sup>150</sup> Human Rights Watch, "Libya: June 1996 Killings at Abu Salim Prison," 2003, <http://www.hrw.org/sites/default/files/reports/libya2003.pdf>.

With the army's advance in mid-March there was no time for more substantiated reports and investigations, especially in the absence of foreign journalists and credible NGOs. The Resolution authorizing use of “all necessary means” to protect the population was adopted on March 17 and the first coalition strikes against Gaddafi’s units started on March 19, as the battles raged in the suburbs of Benghazi. Just before it was too late. Kuperman, however, analyzes the events in the aftermath of Gaddafi’s recapturing of the cities in March 2011, and calculates that no more than 1,100 people would have died had NATO not intervened,<sup>151</sup> but Kuperman does not take into account that it was the east of the country that was the bastion of opposition and that crushing of the uprising in Benghazi would have probably been much more violent.

### 2.2.2. Right Authority

The decision to intervene was taken by the UNSC Resolution 1973 under Chapter VII powers on March 17. Ten members voted in favor, and five abstained – two permanent members, Russia and China, as well as Brazil, Germany and India. The Resolution recalled the responsibility to protect the Libyan population, imposed no-fly zone on the whole territory of Libya and used the term “all means necessary” which was well-known to include use of military force. Prior to this Resolution, UNSC unanimously adopted Resolution 1970 by which Gaddafi’s use of lethal force was condemned, the situation referred to the ICC and travel bans and asset freezes imposed on some members of the regime.

Russia did express its reservations based on principle of nonintervention, but after the intervention had escalated, Russia condemned the attacks as disproportionate.<sup>152</sup> Had Russia been vehemently opposed to the intervention it could have used the veto power when voting

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<sup>151</sup> Alan J. Kuperman, “A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign,” *International Security* 38, no. 1 (Summer 2013): 118-119.

<sup>152</sup> Spencer Zifcak, “The Responsibility to Protect after Libya and Syria,” *Melbourne Journal of International Law* 13 (2012), 7.

on Resolution 1973. The wording “all means necessary” has been used in the same context since the intervention in Iraq in 1991, and it came as a compromise between Russian and American highest officials.<sup>153</sup>

Russia later called for Gaddafi’s departure.<sup>154</sup> Both Russia<sup>155</sup> and China<sup>156</sup> established contacts with the National Transitional Council over time and accepted it as the sole legitimate representative of Libyan people before the war ended.

### 2.2.3. Right Intention

It is clear that the international intervention did not start too early – just before Gaddafi’s counteroffensive reached Benghazi. and it is widely accepted that humanitarian concerns were the foremost reason for launching an intervention.

Some other justifications for the intervention appeared in public. One familiar argument is that the intervention and the whole civil war were the Western plot to remove an unwanted leader from the world politics. This argument does not hold well. Before the civil war broke out, Libyan regime went through a long phase of rapprochement with the West. In 2003 Gaddafi decided to abandon plans for building weapons of mass destruction.<sup>157</sup> Gaddafi agreed to pay the recompense to the families of victims of the Lockerbie bombing.<sup>158</sup> He had increasingly good relations with a number of Western leaders, including Sarkozy of France and Italy’s Berlusconi. The idea that the USA had a strategic interest in removing Gaddafi by intervention would mean that the Americans orchestrated the whole Arab Spring, possibly forcing a Tunisian street vendor to set himself on fire, then waited for the Arab Spring to

<sup>153</sup> ICISS Supplementary Volume, 86.

<sup>154</sup> International Crisis Group, “CrisisWatch 94,” June 1, 2011, 12.

<sup>155</sup> *Russia Today*, “Russia Recognizes Libya’s National Transitional Council,” September 1, 2011, <http://rt.com/news/russia-recognize-transitional-council-585/>.

<sup>156</sup> Tania Branigan, “Libya’s NTC Gains Chinese Recognition,” *Guardian*, September 12, 2011, <http://www.theguardian.com/world/2011/sep/12/libya-ntc-chinese-recognition>.

<sup>157</sup> *CNN*, “Bush, Blair: Libya to Dismantle WMD Programs,” December 20, 2003, <http://edition.cnn.com/2003/WORLD/africa/12/19/bush.libya/>.

<sup>158</sup> Matthew Weaver, “Families of Lockerbie Bombing Victims Receive Compensation from Libya,” *Guardian*, November 21, 2008, <http://www.theguardian.com/uk/2008/nov/21/lockerbie-libya>.

spread to other countries including Libya, predict Gaddafi's maniacal response, and then overthrow Gaddafi as part of a bigger plan to control Libya or the whole Middle East - is altogether absurd. The Arab Spring caught everyone by surprise, a number of states whose regimes were regarded as American allies were overthrown or under threat to be overthrown (Egypt, Yemen; Bahrain) and the US had to reshuffle their policy on many Arab countries because of this. Furthermore, some regimes that came to power, such as the Egyptian, were not regarded friendlier to the US or to their foreign interests more than the previous regimes, and the United States even lost its diplomatic personnel in the bombing in Benghazi – all this in an alleged plot to overthrow Gaddafi and control the Middle East.

What is a big problem for the interveners, and what could even jeopardize the concept of RtP is the fact that NATO stayed in Libya for too long, and while at it, participated in ousting Gaddafi even when its presence in Libya was no longer necessary for the protection of Gaddafi's opposition. This made future invocations of the RtP more controversial and difficult.<sup>159</sup>

According to the idea that Libya was attacked because of its natural resources, Western states launched a campaign in order to control Libyan oil. But after the rapprochement, Libyan oil was already flowing to the western countries, and Westerners had businesses in Libyan oil industry. In fact, the war and the post-war volatility disrupted the oil production.<sup>160</sup> Oil companies are still in Libyan hands and Western countries have not acquired any gains in supply or in ownership of Libyan oil after the intervention, so the oil argument may be discarded as another conspiracy theory.

Humanitarian intention of an intervention is confirmed if it is executed by a coalition of countries, making it more difficult for a single country to pull off its own ulterior motives

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<sup>159</sup> David Berman and Christopher Michaelsen, "Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?," *International Community Law Review* 14 (2012), 355.

<sup>160</sup> *BBC*, "Libyan PM Ali Zeidan Warns Oil Port Protesters," August 16, 2013, <http://www.bbc.co.uk/news/world-africa-23721160>.

in the action. The coalition that started the intervention initially consisted of the USA, UK, France, and Canada but the command was soon transferred to NATO. The Alliance had military support of some other countries, such as Qatar. The recognition that the NTC gained before the war was over testified in a measure to the widespread support of the intervention. Finally, the intervention had a wide support inside Libya, and in Tunisia and Egypt that had already overthrown their long-standing rulers.

However, the fact that NATO eventually changed its priority from protecting civilians into helping Libyans oust their regime is a very big problem for moral integrity of the intervention.

#### **2.2.4. Last Resort**

To discuss this criterion means to discuss whether or not humanitarian intervention came after all other reasonable means to stop the atrocities were exhausted. This is, of course, not applicable in the cases when even bigger atrocities are imminent, as was the case in Libya.

Muammar Gaddafi did not attempt to engage in any dialogue, let alone an honest dialogue, before the intervention started. He did make mention of formation of committee to consider reforms, but this was before the first serious protests were crushed in blood.<sup>161</sup> Soon after, he called his enemies rats and drug addicts and threatened to eliminate them or die in the process. His counteroffensive was a serious threat, not because people would die in fighting, but because many unarmed people would have been killed in retaliation.

Finally, Colonel Gaddafi ruled Libya for 42 years – longer than any other 20<sup>th</sup> century ruler in Africa and longer than many monarchs. If he was sincerely willing to consider reforms, he could have done it during the four decades of his rule. Instead, he ruled with iron

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<sup>161</sup> International Crisis Group, “CrisisWatch 91,” March 1, 2011, 11.



fist over a country that has since the first Freedom in the World report been ranked as one of the least free countries in the world.

### **2.2.5. Proportional Means**

It is difficult to say that the intervention was disproportionate to the threat in scale or scope. The intervention was executed with no “foots on the ground” and no occupation, occupation was even precluded by Resolution 1973.<sup>162</sup> Some may argue that attacking only from safe distance makes for an uneven war, but attacking ground forces from air or by cruise missiles was never prohibited and demanding that NATO use only ground forces and comply with the no-fly zone it imposed itself would be a very quaint demand.

The operation ended in October. After Gaddafi was killed and the new Libyan government declared Libya liberated, UNSC adopted Resolution 2016 on October 27 and ended authorization for intervention. NATO ended its operation on October 31. This happened despite calls from Libyan PM that NATO prolong its presence until the end of 2011. Of course, a question remains whether NATO could have ended the operations even earlier as it was becoming more and more apparent that Gaddafi could no longer land attacks that would cause widespread atrocities. Since rebels were capturing and then being forced out of certain cities several times during the war, there was a possibility that ending the intervention prematurely could prolong the conflict and allow Gaddafi’s forces to regroup and attack again although this risk was not overwhelming. However, in the late stages of war, when it was clear that Gaddafi’s forces have almost been defeated, there was no longer need for NATO to continue its operations. Staying with Gaddafi’s opposition for so long could well mean that NATO did not respect proportional means criterion,

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<sup>162</sup> SC Res. 1973, para. 4.

NATO insisted that it only attacked military targets, but ignored requests of HRW to support those claims with proper information.<sup>163</sup> There were widespread reports of crimes committed by the rebel forces over the supporters of Gaddafi, some of them after the war ended and Libya was declared liberated. These crimes, however, cannot *ex post facto* decide on legitimacy of the intervention itself. They can, still, inform future operations in which humanitarian intervention interferes in a civil war. Such considerations can influence choice of allies, better communication between the interveners and the rebel groups, better training of rebels etc.

### 2.2.6. Reasonable Prospects

The coalition that started the intervention comprised of very strong forces of USA, France, UK and Canada and was later extended to NATO. Over time it gained support of some non-NATO members.

Their adversaries were underequipped Libyan forces. It was widely rumored and later confirmed in combat that Gaddafi neglected the army on purpose so it could not rebel against him, and he kept a sizeable personal guard that was much better trained, equipped and paid.<sup>164</sup> Some tribes were traditionally loyal to Gaddafi, like the Werfala of southern Libya. An unsubstantiated rumor was that Gaddafi was using a substantial number of African and Eastern European mercenaries to take on rebels, but the scope of this use was much narrower than initially reported.<sup>165</sup>

Libyan rebels consisted of hundreds of cells, with their loyalties lying in their tribes, cities, or neighborhoods. They were initially mostly concentrated in the eastern third of the

<sup>163</sup> Human Rights Watch, "Unacknowledged Deaths: Civilian Casualties in NATO's Air Campaign in Libya," May 2012, 6, [http://www.hrw.org/sites/default/files/reports/libya0512webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0512webwcover_0.pdf). This report provides records of 72 civilian deaths attributed to NATO.

<sup>164</sup> Sylvia Poggioli, "Gadhafi's Military Muscle Concentrated In Elite Units," *NPR*, <http://www.npr.org/2011/03/10/134404618/gadhafis-military-muscle-concentrated-in-elite-units>.

<sup>165</sup> For more on the treatment of alleged mercenaries, see Human Rights Watch, "Libya: Stop Arbitrary Arrests of Black Africans," September 4, 2011, <http://www.hrw.org/news/2011/09/04/libya-stop-arbitrary-arrests-black-africans>.

country – Cyrenaica, but the ease with which some cities in the west fell, e.g. Tripoli, showed that anti-Gaddafi forces were strong there as well. The rebel groups received aid in weapons, ammunition and equipment, both from NATO and from non-NATO states.

It was apparent from the very beginning of the intervention that keeping the no-fly zone and attacking Gaddafi's troops from air or by cruise missiles was sufficient to prevent the slaughter in Benghazi. During the summer warfare was moving along the coastal road, around Misrata and in the western mountains with little prospect of breaking this pattern. However, there was a breakthrough in August with the fall of Tripoli and for the next two months the battles were usually fought in Bani Walid and Sirte areas.

The intervention had reasonable prospects of success from the start. The war, however, was ultimately not contained to Libya. The well-armed Tuaregs who were supporting Gaddafi fled through the desert into Niger and Mali and caused major blow to Mali in early 2012.<sup>166</sup> Tuareg separatists and Islamic fundamentalist groups launched an attack against Malian authorities in early 2012 and quickly overran half of the country, declaring it independent state of Azawad. The threat to territorial integrity of Mali and rights of its citizens was only partly removed with UN-lead offensive in April 2013. NATO should have had a plan for this contingency, especially having in mind that the borders in Sahel are very porous.

### **2.3. Côte d'Ivoire**

Côte d'Ivoire in late 2010 was a country still recovering from a devastating civil war that ended three years earlier. All the political parties agreed on electoral lists that would lead

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<sup>166</sup> Thomas Fessy, "Gaddafi's Influence in Mali's Coup," *BBC*, March 22, 2012, <http://www.bbc.co.uk/news/world-africa-17481114>.

to long-delayed presidential election to be held on October 31<sup>st</sup>.<sup>167</sup> Minor violence did arise between the two rounds of election but what would follow was much worse.

Laurent Gbagbo, the incumbent president refused to accept defeat at the election. The Constitutional Council headed by Gbagbo's allies overruled the results of the Central Election Commission that declared clear victory for the main opposition leader Alassane Ouattara.<sup>168</sup> Both Ouattara and Gbagbo held their own inaugural ceremonies, but the international community saw Ouattara as the winner, imposed sanctions on Gbagbo and demanded that he step down. Violence promptly ensued and more than 170 people were killed in December in fighting between the supporters of the two rivals and more than 15,000 people fled to Liberia.<sup>169</sup>

In February fighting broke out in the west between the army and Forces Nouvelles, the northern-based rebel movement that supported Ouattara, and in Abidjan between the army and the defectors aligning with Ouattara. The United Nations stated that the fighting "changed the game".<sup>170</sup> United Nations Operation in Côte d'Ivoire (UNOCI) that was present in the country since the end of the previous civil war was reinforced, and now it counted 11,000 troops.<sup>171</sup>

On March 30, 2011, UNSC acting under Chapter VII powers adopted Resolution 1975 stating responsibility to protect and authorizing UNOCI "to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment, including to prevent the use of heavy weapons against the civilian population."<sup>172</sup>

<sup>167</sup> *Voice of America*, "Ivory Coast President Approves Voter List," September 8, 2010, <http://www.voanews.com/content/ivory-coast-president-approves-voter-list--102547459/155777.html>.

<sup>168</sup> see International Crisis Group, "Côte d'Ivoire: Is War the Only Option?," March 3, 2011, 4-6, <http://www.crisisgroup.org/~media/Files/africa/west-africa/cote-divoire/171%20Cote%20dIvoire%20-%20Is%20War%20the%20only%20Option%20ENGLISH.pdf>.

<sup>169</sup> International Crisis Group, "CrisisWatch 89," January 3, 2011, 4.

<sup>170</sup> International Crisis Group, "CrisisWatch 91," March 1, 2011, 4.

<sup>171</sup> SC Res. 1967, para. 1, UN Doc. S/RES/1967 (January 19, 2011).

<sup>172</sup> SC Res. 1975, para. 6, UN Doc. S/RES/1975 (March 30, 2011).

Already in the beginning of April, fighting was brought to several neighborhoods in Abidjan, with sporadic clashes in the west of the country. Forces loyal to Ouattara attempted to arrest Gbagbo in his presidential palace in Abidjan but were forced back. That is when UNOCI got involved and helped Ouattara's Republican Forces of Côte d'Ivoire (newly renamed Forces Nouvelles aided by defectors) arrest Gbagbo.<sup>173</sup>

The swift action of UNOCI and RFCI marked the end of the war although some fighting between the militant supporters of Laurent Gbagbo and the government forces continues to this day. Many mass graves were found throughout the country both with supporters of Ouattara and Gbagbo, and some perpetrators and instigators have been brought to court, mainly from the ranks of Gbagbo's supporters,<sup>174</sup> although with a few exceptions.<sup>175</sup> Laurent Gbagbo and his wife Simone were charged with crimes against humanity by the ICC and are currently awaiting trial.

### 2.3.1. Just Cause

The violence that surged in the aftermath of the presidential election in Côte d'Ivoire claimed around 3,000 lives,<sup>176</sup> and forced around a million people to flee their homes.<sup>177</sup> Some particularly horrifying crimes took place in Duékoué in the west of the country where hundreds of bodies were found, but there were testimonies and reports about rapes, torture and summary executions throughout the country.<sup>178</sup>

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<sup>173</sup> BBC, "Ivory Coast: Gbagbo Held after Assault on Residence," April 11, 2011, <http://www.bbc.co.uk/news/world-africa-13039825>.

<sup>174</sup> CNN, "Political Tensions Rise in Ivory Coast as Gbagbo's Top Allies Arrested," August 28, 2012, <http://edition.cnn.com/2012/08/27/world/africa/ivory-coast-arrests/>.

<sup>175</sup> BBC, "Ivory Coast: Duekoue Massacre Suspect Held," May 18, 2013, <http://www.bbc.co.uk/news/world-africa-22584521>.

<sup>176</sup> International Crisis Group, "Côte d'Ivoire: Defusing Tensions," November 26, 2012, i, <http://www.crisisgroup.org/~media/Files/africa/west-africa/cote-divoire/193-cote-divoire-defusing-tensions-english.pdf>.

<sup>177</sup> UNHCR, "A New Displacement Crisis in West Africa," [www.unhcr.org/pages/4d831f586.html](http://www.unhcr.org/pages/4d831f586.html).

<sup>178</sup> Human Rights Watch, "They Killed Them Like It Was Nothing," October 2011, [http://www.hrw.org/sites/default/files/reports/cdi1011webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/cdi1011webwcover_0.pdf).

Not all the atrocities were attributed to Gbagbo's forces, in fact some gruesome mass killings were perpetrated by pro-Ouattara fighters.<sup>179</sup> The Resolution 1975, however only referred to attacks and violence perpetrated by Gbagbo and his allies. Generally, humanitarian intervention is launched when it is the government that is perpetrating the crimes, or when there is a mass scale loss of life occurring or is imminent because of state failure. At the time of commission of these crimes, Ouattara and his forces enjoyed bigger prestige and were more credible than the forces of Gbagbo who declared himself winner of the election. Had Ouattara less prominence internationally, the Resolution 1975 could have been slightly different and would have probably called for cessation of hostilities on all sides. Also, the country was in a state of renewed civil war, at least from mid-March. Civil war is not equal to state failure, although one may lead to another, and a failed state may be engulfed in civil war. The context of Côte d'Ivoire was not the context of a failed state but of a non-international armed conflict. Finally, the question is whether Gbagbo actually presented government that was committing crimes? Gbagbo inaugurated himself and formed government, but the universally accepted winner, Ouattara was inaugurated in a parallel ceremony in a hotel in Abidjan, and he also formed cabinet.

This all means that the engagement of Responsibility to Protect that was cited in Resolution 1975 was conducted against one side in a civil war – the side that had no legitimacy as the government, in a context that was not a failed state context that would warrant an international intervention, while the side that had legitimacy but could not exert it conducted mass crimes as well.

This does not mean that there was no just cause as such, just because Côte d'Ivoire was not a failed country, or because the state was not a failed state. But the UNSC did not assume responsibility to clearly protect all civilians from mass crimes when it failed to

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<sup>179</sup> see Ibid.

condemn the forces of the legitimate president. Similarly to Libyan case, the moral integrity of the mission has been corrupted to an extent.

ICC charges against Gbagbo and his partners, as well as some other charges brought by Ivorian prosecutor further testify to the cruelty of regime. Some charges were brought against Ouattara's supporters as well, although to a much lesser extent.

### **2.3.2. Right Authority**

The right authority in the case of Côte d'Ivoire was rightly exercised by the UNSC on March 30, 2011. The UNSC Resolution 1975 was adopted unanimously, authorizing UNOCI to "use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment, including to prevent the use of heavy weapons against the civilian population."<sup>180</sup> However, after Gbagbo's arrest by UNOCI and Ouattara's forces, Russian President Medvedev criticized UN's support for one side in the conflict,<sup>181</sup> although Russia voted in favor of the Resolution which was clearly to Ouattara's benefit.

Security Council had already adopted several Resolutions concerning the situation in Côte d'Ivoire prior to Resolution 1975, most importantly by sending additional troops to UNOCI.<sup>182</sup> The Resolution authorizing UNOCI intervention was adopted very near the end of the conflict but this does not mean that the UNSC was inert regarding this conflict.

### **2.3.3. Right Intention**

There is no doubt that the UNOCI was vested with the objective of protection of the Ivorian population. As a United Nations mission, it already had all the attributes of an

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<sup>180</sup> SC Res. 1975, para. 6.

<sup>181</sup> Alexei Anishchuk, "Russia Criticizes U.N. Force Role in Ivory Coast," Reuters, April 14, 2011, <http://www.reuters.com/article/2011/04/14/us-russia-ivorycoast-idUSTRE73D20920110414>.

<sup>182</sup> SC Res. 1967, para. 1.

international coalition that would best ensure that no particular ulterior motives of different states interfere with the humanitarian goal.

Gbagbo himself accused the UN of being colonialist and wanting Ivorian natural resources. These accusations are easily discarded. United Nations were offering support to Côte d'Ivoire while they were accepting him as the president, and he had no objections then. UNOCI did remain in Côte d'Ivoire, as this is still a fragile country, but has been downsized since. No natural resources have been used in any different manner since Gbagbo was captured by Ouattara and UNOCI than they were used before. The accusations certainly sounded familiar – these were the same accusations that Colonel Muammar Gaddafi used against the countries that first warned him and then intervened against him. The same countries that he was happy cooperating with since 2001.

There is an additional interesting issue: UNOCI was not only acting to protect the population, but also in self-defense, as Ban Ki-moon stated.<sup>183</sup> UNOCI was indeed targeted by Gbagbo's forces in several hard battles, but combining self-defense with an RtP argument adds up to be effective. Had the peacekeepers in Bosnia in 1995 had similar mandate, they could have been much more successful and the genocide in Srebrenica could have been prevented.

#### **2.3.4. Last Resort**

At the time when UNSC Resolution 1975 was adopted, the conflict in Côte d'Ivoire was already past its worst phase. The civil war had serious consequences but Ouattara's supporters virtually overran the country and at the time when UNOCI engaged in intervention, pro-Gbagbo militias were moving east, leaving a trail of crimes behind them.<sup>184</sup>

<sup>183</sup> *BBC*, "Ivory Coast: UN Forces Fire on Pro-Gbagbo Camp," April 4, 2011, <http://www.bbc.co.uk/news/world-africa-12960308>.

<sup>184</sup> see Human Rights Watch, "'They Killed Them Like It Was Nothing.'"



The decision taken on March 30, with troops that would intervene already on the ground and well acquainted to the situation was the right decision.

Laurent Gbagbo simply refused to concede defeat at the election and prompted clashes which then grew to civil war. He used inflammatory rhetoric against his rival and against the international forces when they received new mandate on March 30. While the money was draining out he deliberated on nationalizing the banks so he could pay for the services that were showing him loyalty.<sup>185</sup> At no point did he offer to step down and let the president-elect assume the office. He only offered ceasefire when it was clear that his last stronghold in Abidjan was about to fall. The criterion of last resort was certainly satisfied by the intervention.

### 2.3.5. Proportional Means

UNOCI was using its weaponry in offensive against Gbagbo's forces in Abidjan, but it was also attacked and had to fight back several times. The means it used were not disproportional to the threat posed to the population, nor to the threat posed to UNOCI itself. Helicopters were used in the final offensive on Gbagbo's residence

There were no reports of any violations of humanitarian law on part of UNOCI. Similarly to the Libyan case, lessons for the future must be learned regarding compliance with the laws of war of rebel forces who are on the ground. A UN mission, UNOCI was not adequate to teach one side in a civil war about humanitarian law more than the other, but it is still regrettable that in the end their mandate was to stand alongside forces that were committing egregious crimes in a civil war.

The question whether or not Gbagbo's removal that UNOCI directly participated in was too much of an interference in the political system of the country is complicated and valid. UNOCI's civil protection mandate *per se* could have been used better had UNOCI

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<sup>185</sup> International Crisis Group, "CrisisWatch 91," March 1, 2011, 4.

remained neutral. But UNOCI also acted in self-defense even if the need to act in self-defense arose from the fact that Resolution 1975 clearly pitted the UN mission against Gbagbo. However, political thuggery that Gbagbo performed should not be part of a political system in any country in the world. Gbagbo inaugurated himself while the whole world accepted his opponent as the clear winner of the election. When he was “removed from office” no one thought it was tragically unfair except him and his supporters.

### **2.3.6. Reasonable Prospects**

UNOCI was well-trained and armed and it received 2,000 additional troops during the crisis. Ouattara’s supporters constituted a much stronger force in the war which was demonstrated by how quickly they took over the southern half of the country. Gbagbo’s army suffered some defections.<sup>186</sup> Gbagbo’s forces and militias were in the end overpowered, mainly by his rival’s supporters, although political clashes along the same lines continued for some time in the future.

The intervention did not create any new conflicts in the region. On the contrary, Ouattara received regional support, and at one point ECOWAS offered to intervene.<sup>187</sup>

## **2.4. Syria**

The Syrian case is tragic without a trace of doubt. The crisis in Syria started in a similar fashion to the one in Libya, but unlike the Libyan case, the atrocities committed by the regime in Syria did not meet the same international response. So far, the number of casualties has topped 100,000 and more than 2 million people sought refuge outside Syria.

The Arab Spring spread to Syria in March 2011 and peaceful protests first started in Daraa in the south of the country and soon spread to Damascus.<sup>188</sup> The protests were met

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<sup>186</sup> International Crisis Group, “CrisisWatch 92,” April 1, 2011, 4.

<sup>187</sup> International Crisis Group, “CrisisWatch 90,” February 1, 2011, 4.

with violent crackdown in which several dozen people were killed.<sup>189</sup> Over the next several months, the most brutal crackdown hit the cities of Homs that was put under siege, Idlib, Hama, Homs, Daraa, Latakia in which gunboats were used to attack people on the coast etc.

While the peaceful protests continued well into the year, some groups that rebelled against Bashar al-Assad captured weapons, while the number of defections from the regime was rising. In July these groups formed Free Syrian Army which will remain the most organized armed force fighting the regime.<sup>190</sup> Groups of political parties and dissidents gathered in Istanbul formed Syrian National Council in September which was the first opposition body to gain some level of recognition in the international community.

The Security Council could not reach consensus to condemn violence in Syria until August. The next attempt to condemn the authorities failed due to Russian and Chinese veto. Arab League suspended Syrian membership in the organization in November 2011.

Massacre in Houla, in which more than a hundred people were killed, mainly in summary executions, prompted fresh outrage in the international community. In November Syrian National Council joined a number of other organizations to form National Coalition of Syrian Revolutionary and Opposition Forces, which was recognized as the sole legitimate representative of Syrian people by around 30 states.<sup>191</sup>

The UNSC did manage to send a monitoring mission to Syria. The violence continued throughout their mandate, and they were themselves targeted several times.

The biggest crime of the Syrian civil war was the use of chemical weapons in the suburbs of Damascus on August 21, 2013. More than a thousand people were killed, and several thousand were injured in the attack. US president Obama who had already stated that

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<sup>188</sup> Joe Sterling, "Daraa: The Spark That Lit the Syrian Flame," *CNN*, March 1, 2012, <http://edition.cnn.com/2012/03/01/world/meast/syria-crisis-beginnings/>.

<sup>189</sup> International Crisis Group, "CrisisWatch 92," April 1, 2011, 10.

<sup>190</sup> *BBC*, "Syria Crisis: Guide to the Syrian Opposition," October 17, 2003, <http://www.bbc.co.uk/news/world-middle-east-15798218>.

<sup>191</sup> *The Economist*, "Higher Hopes," November 17, 2012, <http://www.economist.com/news/middle-east-and-africa/21566709-can-syrias-new-opposition-coalition-make-difference-higher-hopes>.

Assad would face consequences if he would use chemical weapons<sup>192</sup> started preparations for the intervention. But the support for intervention soon waned and the only consensus that was reached among the great powers was that Syria must get rid of the chemical weapons. Under the new UNSC Resolution, Syria joined the Organization for Prohibition of Chemical Weapons (OPCW) and reportedly destroyed their equipment for producing chemical weapons before the November 1 deadline.<sup>193</sup>

The civil war in Syria continues. A conference has been scheduled for January 2014 in Geneva but it is unclear who will represent whom. So far the Syrian regime is not offering end to Assad's rule, and the opposition forces accept nothing less.

### 2.4.1. Just Cause

In the case of Libya worst mass atrocities were averted, and in Côte d'Ivoire crimes had already subsided by the time the intervention started. In Syria the mass crimes were committed, including some crimes that are more egregious than anything that happened in other two countries, and crimes continue to be committed.

So far more than 100,000 have been killed in Syria since the uprising began in March 2011.<sup>194</sup> According to the UNHCR more than 2 million people have fled the country.<sup>195</sup> A list of crimes is long: summary executions in Al-Houla, indiscriminate shelling in Homs, Aleppo, Idlib and Damascus, snipers killing civilians in rebel-held neighborhoods etc.

One crime particularly shocked the conscience of the world – use of chemical weapons on civilians in Ghouta area of Damascus.<sup>196</sup> The use of chemical weapons that was

<sup>192</sup> BBC, Syria Crisis: "Obama Warns Assad over Chemical Weapons," December 4, 2012, <http://www.bbc.co.uk/news/world-middle-east-20583966>.

<sup>193</sup> BBC, "Syria Chemical Weapons Equipment Destroyed, Says OPCW," October 31, 2013, <http://www.bbc.co.uk/news/world-middle-east-24754460>.

<sup>194</sup> Alan Cowell, "War Deaths in Syria Said to Top 100,000," *New York Times*, June 26, 2013, <http://www.nytimes.com/2013/06/27/world/middleeast/syria.html>.

<sup>195</sup> UNHCR, "Syria Regional Refugee Response," <http://data.unhcr.org/syrianrefugees/regional.php>.

<sup>196</sup> United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, "Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August

confirmed by the UN<sup>197</sup> killed more than a 1,000 people and was just one of the crimes committed in Syria that would warrant fulfillment of the just cause criterion of intervention, but the reason it was so shocking was the nature of the weapon used. Chemical weapons are prohibited by customary law<sup>198</sup> and by the Chemical Weapons Convention that was signed by almost all states in the world.<sup>199</sup> These weapons are opposed to the proportionality principle of humanitarian law as they are.

At first the regime claimed that the weapons were not used, and later it claimed the weapons were used by the rebels.<sup>200</sup> After a coalition threatened Assad with humanitarian intervention, he agreed to accede to the Chemical Weapons Convention<sup>201</sup> and remove the stockpiles of chemical weapons that he claimed he was not using.

Atrocities were committed by some rebel groups as well, most notably in suicide bombings by Jabhat al-Nusra.<sup>202</sup> Additionally, it can be argued that the crimes committed by the rebels and the inability of government, or other rebel factions to prevent them could also warrant international intervention, because intervention is about protecting civilians, and not only about standing against a government that is committing crimes. However, not even the crimes committed by the regime have been addressed properly in the Security Council.

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2013,” August 21, 2003. For a thorough analysis see Human Rights Watch, “Attacks on Ghouta: Analysis of Alleged Use of Chemical Weapons in Syria,” September 2012, [http://www.hrw.org/sites/default/files/reports/syria\\_cw0913\\_web\\_1.pdf](http://www.hrw.org/sites/default/files/reports/syria_cw0913_web_1.pdf).

<sup>197</sup> United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, “Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013,” August 21, 2003, 1.

<sup>198</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I, Rules*, (Cambridge: Cambridge University Press, 2009), 259-163.

<sup>199</sup> Organisation for the Prohibition of Chemical Weapons, “Non-Member States”, <http://www.opcw.org/about-opcw/non-member-states/>.

<sup>200</sup> Shaun Waterman, “Syria’s Bashar Assad Tells Fox News He Didn’t Use Chemical Weapons,” *Washington Times*, September 19, 2013, <http://www.washingtontimes.com/news/2013/sep/19/syrias-bashar-assad-tells-fox-news-he-didnt-use-ch/>.

<sup>201</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, January 13, 1993, 1974 UNTS 45.

<sup>202</sup> International Crisis Group, “Tentative Jihad: Syria’s Fundamentalist Opposition,” October 12, 2012, 11, <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Syria/131-tentative-jihad-syrias-fundamentalist-opposition.pdf>.

## 2.4.2. Right Authority

After the crisis broke out it took the Security Council 6 months to issue the first presidential statement on Syria in which use of force against civilians was condemned,<sup>203</sup> because all the previous efforts to condemn the government in this UN body were met with stiff opposition from China and Russia. Russia and China blocked every attempt of the UNSC to adopt a resolution condemning Bashar al-Assad, imposing sanctions against him, or authorizing a military intervention. UNSC failed to do it even after reports from the Office of High Commissioner for Human Rights.<sup>204</sup>

The chemical weapons used in the suburbs of Damascus in August 2013 and a coalition quickly formed in preparations for an intervention. The support for intervention against Assad was never high in the public opinion or among the political parties<sup>205</sup>

A Russian proposal to prevent any future use of chemical weapons by making Syria accede to the OPCW was successful, and Syria became its 190<sup>th</sup> member. However, this does not solve the ongoing problem of mass scale loss of human life in Syria.

Failure to intervene did not only spell tragedy for Syrian people. It also meant discrediting humanitarian intervention and Responsibility to Protect doctrine in particular. Humanitarian intervention, and military support for people who are clearly suffering gross human rights violations was again seen as depending on the public support and votes. But RtP suffered an additional blow. When Obama was nearing decision to attack Syria he completely bypassed the language of Responsibility to Protect,<sup>206</sup> because RtP foresaw the Security Council as the exclusive authority that could decide on the intervention and it was

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<sup>203</sup> SC Pres. Statement 2011/16, UN Doc. S/PRST/2011/16 (August 3, 2011).

<sup>204</sup> International Crisis Group, "CrisisWatch 98, October 1, 2011, 10.

<sup>205</sup> *BBC*, "Syria Crisis: Cameron Loses Commons Vote on Syria Action," August 30, 2013, <http://www.bbc.co.uk/news/uk-politics-23892783>.

<sup>206</sup> Michael Abramowitz, "Does the United States Have a 'Responsibility to Protect' Syrian People?" *Washington Post*, September 6, 2013, [http://www.washingtonpost.com/opinions/does-the-united-states-have-a-responsibility-to-protect-the-syrian-people/2013/09/06/5decf4c0-167d-11e3-be6e-dc6ae8a5b3a8\\_story.html](http://www.washingtonpost.com/opinions/does-the-united-states-have-a-responsibility-to-protect-the-syrian-people/2013/09/06/5decf4c0-167d-11e3-be6e-dc6ae8a5b3a8_story.html).

blocked. RtP, at least in its military aspect, was proven to be less likely to protect civilians than a pre-RtP version of humanitarian intervention.

General Assembly condemned the Syrian regime several times as there are no veto powers in the UNGA to obstruct the decision.<sup>207</sup> However, it is not likely that UNGA would demand humanitarian intervention based on Uniting for Peace procedure, even if it were on the table. If the right authority fails to fulfill its duty, is it the right authority at all? If no other authority has the political will to take the decision, does it mean that mass atrocities will be allowed to continue?

### 2.4.3. Right Intention

The intention of any intervention must be to protect the civilians. Overthrowing the regime should not be the objective of intervention, but if it is the only way to stop the killings, then it cannot be ruled out. It is difficult to imagine that opposition to Assad will accept him as part of any future political settlement in Syria, although it might be difficult to avoid some of his allies in a future transitional government if it is formed. Any conceivable humanitarian intervention that could take place in Syria would probably not end until Assad were to be removed from power.

As with Gaddafi, Assad's potential removal is viewed as a part of Western conspiracy to gain strategic interests in the Middle East, and the conspiracy suffers from the same logical inconsistencies as the one involving a Western plot against Gaddafi. Arab Spring that sparked the protests, rebellion and civil war was not a cleverly designed project that delivered the outcomes that the allegedly unified Western countries desired. Arab Spring started unexpectedly, caused very different effects in different countries, and the West had many of

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<sup>207</sup> International Coalition for the Responsibility to Protect, "Syria Update: UN General Assembly Third Committee Passes Resolution Condemning Crackdown," November 22, 2011, <http://icrtopblog.org/2011/11/22/syria-update-un-general-assembly-third-committee-passes-resolution-condemning-crackdown/>

its game rules changed in the process. Assad's reaction to the protests was his own (although it resembled reactions of several other Middle Eastern autocrats) and a "Western" failure to initiate an intervention ultimately proves that occupation of Syria and gaining strategic position bordering Iran was not the congenial plan after all.

Additionally, it is unclear and unpredictable how, and if, various groups of different ethnic, tribal, political and religious allegiances would rule Syria anyway, and how the West would manage its alleged ulterior motives in this context.

However, some member of a possible coalition might have strategic and political motives to engage in an intervention. For example, Turkey would have an interest to stop the influx of refugees and provide return to the ones who are already there, and various Arab countries have an interest in the downfall of a regime with good relations with Iran and Shia Hizbollah.

#### **2.4.4. Last Resort**

In respect of the last resort criterion, Syria is very different from Libya and Côte d'Ivoire. The intervention in Libya came just before it was too late, and in Côte d'Ivoire it was at least able to bring a civil war to an end sooner. In Syria this condition was met several times already, to no avail. Many crimes that were committed in Syria warranted humanitarian intervention, especially having in mind that the Libyan case was very similar in the beginning and that it was handled differently by the international community. In fact, had the intervention happened after the first mass crimes were committed, it is possible that the radical Islamists would not come into play and gain the prominence and visibility they have now.



A conference in Geneva has been summoned for January 22, 2014 and this might be another chance to prevent further killings.<sup>208</sup> But had the international community intervened earlier, the last resort condition would have been met.

#### **2.4.5. Proportional Means**

Obama promised there would be no boots on the ground in case of intervention in Syria but it is not certain that air strikes would have resolved the situation as easily as in Libya, especially having in mind that the Syrian army held out for much longer and that it is better equipped than the Libyan forces.<sup>209</sup> Furthermore, Syria is not suffering the same level of international isolation, as the sanctions have not been imposed on it. An earlier idea was to establish a no-fly zone or safe zones and corridors for the civilians. As for the no-fly zone, it would help, but it would not be sufficient because Assad is mainly using mortar fire and ground troops in his campaign. It is also unlikely that safe zones and corridors would do much more than freeze the conflict even if these zones were not used for troops opposed to Assad to regroup, and even if they were not to be attacked immediately. If a humanitarian intervention were to go ahead, it would have to go far, it would most likely have to involve boots on the ground, it would probably not end until Assad were removed from power, and it would have to be followed by a sizeable UN mission. Even a short-term occupation would probably lead to the scenes from Iraq from 2003 until 2005.

#### **2.4.6. Reasonable Prospects**

Another difficult issue in the Syrian case are the prospects of a potential intervention. Since NATO officials ruled out the possibility that the Alliance would intervene in Syria, and since the involvement of the OPCW was seen as sufficient to calm the conscience of the key

<sup>208</sup> BBC, "Q&A: Geneva II Peace Conference," November 25, 2013, <http://www.bbc.co.uk/news/world-middle-east-24628442>.

<sup>209</sup> Lindsey Boerma, "Obama on Syria Strike: 'This Is Not Iraq, This Is Not Afghanistan,'" September 3, 2013, <http://www.cbsnews.com/news/obama-on-syria-strike-this-is-not-iraq-and-this-is-not-afghanistan/>.

actors in the international community, any intervention without a serious game-changer is impossible.

Firstly a coalition that would intervene would have to be strong enough and reasonably diverse to ensure that potential particular interests are neutralized (this mainly refers to some Arab countries and Turkey). It should refrain from any interference with extremists in the opposition, and should consider them threat to the intervention that could possibly warrant further responsibility to protect the population. The alliance with the Free Syrian Army and other moderate groups in attempts to protect the population is essential.

The situation in all the countries bordering Syria is volatile to some extent, and unlike Libya and Côte d'Ivoire, an intervention could trigger a regional escalation. But with careful planning, through reasonable cooperation with the neighboring countries an intervention might succeed. A series of incidents involving neighboring countries has already occurred so a chance that an intervention could trigger a bigger conflict cannot be excluded.

But it is unlikely a humanitarian intervention will be put on the table again. For an intervention to have reasonable prospects of success, first it needs reasonable prospects of being considered. In the case of Syria, there are simply no reasonable prospects that intervention will again be discussed.

## Chapter 3: Recommendations

Humanitarian intervention and the doctrine of Responsibility to Protect are indeed able to stop atrocities committed by the governments against their own people. But it is now clear that in some instances the interventions are not launched even if all the conditions had been met if political will and political agreement or compromise are lacking. Responsibility to Protect is even more vulnerable to criticism as less adequate to protect population than the pre-RtP doctrine of humanitarian intervention, since exclusive reliance on prior authorization of UNSC of its military component makes it dependent not only on political will, but on political will of more international actors that often have opposing interests and views.

Therefore, Responsibility to Protect is at risk of either being inadequate or bypassed in humanitarian crises which could warrant intervention. It is inadequate if there is no agreement in the UNSC, as an intervention based on Responsibility to Protect cannot occur without a prior authorization. The doctrine can be bypassed when, for lack of authorization in the UNSC, one or more states decide to go into intervention without even invoking RtP.

Essentially, when there is political will (and, of course, reasonable prospects of success), humanitarian interventions may be launched to halt atrocities with or without invocation of Responsibility to Protect. Since political will and compromise are sometimes absent, RtP may fall into disuse if humanitarian interventions go ahead without it, or it may remain inadequate if interventions are not executed at all for the fact there was no RtP-conditioned authorization of the UNSC.

In order to improve RtP doctrine, several changes should be adopted.

First, Responsibility to Protect must be amended to include the possibility of *ex post facto* authorization by the UNSC in cases in which this body could not agree on prior authorization of military action. It is vital that decision on any humanitarian intervention be

based more on the just cause criterion, than on political considerations of the UNSC that has been the exclusive authority on intervention since the adoption of World Summit Outcome Document. This means that in cases of actual or imminent mass scale loss of life in which all conditions that warrant an international intervention had been met, and after all reasonable efforts to prevent or halt loss of life peacefully, and after the UNSC had been unable to authorize an intervention in a crisis because of use of veto or threat of use of veto, a state, group of states or an organization may intervene and seek the UNSC authorization after the intervention. This does not preclude options of using Uniting for Peace procedure if this would put additional pressure on UNSC permanent members, or using Article 99 powers of UNSG if the Security Council members could not put an item on the agenda. It is virtually impossible that the UNSC would agree to adopt a resolution providing for such option. Although it had *ex post facto* authorized interventions in Liberia, Sierra Leone and Kosovo, officially accepting a mechanism that would legally bypass some of its members is something that is not likely to happen. A UNGA resolution with this content could eventually be passed, and even though it would only be a soft law document, it would move this issue forward, clearly stating that such idea has support of majority of the states.

Second, the intervention under Responsibility to Protect should be allowed to go ahead even if it is not launched by an international organization under Chapter VIII, but by a coalition or even a single state. The intervention in Libya did not start as a NATO intervention, but as an intervention of a coalition of several states and its command was transferred to NATO ten days later. This was authorized within RtP framework without objections. However, allowing one state to intervene should also be permissible. A multilateral intervention is the best manner to ensure that the primary interest in intervention is saving lives, but that does not mean that a unilateral intervention must be ruled out if all other criteria for intervention were met.

Third, the UNSC needs to firmly support the UN agencies and bodies that provide evidence of mass crimes that could warrant an intervention. This does not mean that evidence collected and presented to the Security Council should automatically trigger an intervention – the UNSC must always have its say on any threat to international peace and security. Though credibility of some reports might still be an issue,<sup>210</sup> ignoring the UN-produced reports of war crimes and crimes against humanity is inexcusable. Under this recommendation, credibility offered to UN-produced reports should be extended to ICRC reports and evidence as well. There are many other high-profile human rights organizations and think-tanks but it is unlikely that they would receive the same support of all permanent members of the UNSC given their criticism of Russia and China in particular; some of these organizations are Amnesty International, Human Rights Watch, International Crisis Group, Médecins Sans Frontières etc.

Fourth, the interveners should not promise they will use only a particular means of warfare or strategy. For example, the interveners should restrain from promising that they will not send ground troops to the theaters where they intervene. The forces that are targeted only from air may adapt to the opponent's tactics which could prolong the war. If the war is prolonged, the population will longer be exposed to the attacks. Commitment to fight the adversary only from a safe height may save the lives of interveners, and gain support of the public opinion, but the primary intention of the interveners should be to save the population from mass atrocities, not to avoid risks at all costs.<sup>211</sup>

Fifth, a list of acts or omissions within the responsibility of the state that might trigger an intervention should, as a minimum, be reconsidered. One example is gross intentional neglect of population after a natural or environmental disaster. It was accepted in the international community that, contrary to the initial French position, lack of response from

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<sup>210</sup> Human Rights Council

<sup>211</sup> ICISS Supplementary Volume, 114.

the authorities of Myanmar after cyclone Nargis struck the eastern coast did not warrant a humanitarian intervention. It was argued that natural disasters are not a just cause for intervention, and that only armed violence could trigger it. It is true that natural disasters are not a just cause for international intervention, but intentional neglect aimed at prolonging the suffering and increasing casualties could be, and if e.g. a natural disaster struck an area inhabited by an ethnic minority that is not loyal to the authorities, consequences could have dramatic proportions. Under the Rome Statute, “[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” is one form of genocide. Deliberately inflicting on the group conditions of living in an area heavily hit by a natural disaster, and refusing to deliver aid could have genocidal proportions, although proving *dolus specialis* of those responsible for the neglect would be extremely difficult. In the case of Nargis, the government did eventually agree to allow aid to be delivered, so the case I presented was only inspired by Myanmar, but is still a theoretic possibility that should not be disregarded.

A theoretic and practical reality of concentration camps in North Korea is a separate issue. It is hard to work around a moral explanation why imprisonment of tens of thousands of people, many of which were born in the camps, is not a crime that warrants international intervention. This is not an example of armed violence that could trigger an intervention, but prisoners are under constant threat of being killed, tortured or mutilated. It is apparent that this is not viewed as an urgent problem, the one that instantly shocks conscience of the mankind, unlike violent breakouts in some other places. The world is used to North Korea. However, it is true that this case could not possibly be resolved through military intervention because there are no reasonable prospects of success of such an action. Intervention in North Korea would set off a war in which number of casualties would be catastrophic, so no one would even attempt it. This does not mean that there is nothing to be done about the human

suffering in North Korea, but the situation of the North Korean population would not be alleviated by expanding the scope of humanitarian intervention to such cases.

Even if these issues are not adopted in future renegotiation of RtP doctrine, the debate on them will be beneficial on its own.

To summarize: If Responsibility to Protect is to be an applicable and adequate doctrine, it should be amended, possibly in a form of a UNGA declaration. RtP doctrine should allow the interveners to seek *ex post facto* authorization of the intervention, provided that UNSC had been unable to authorize it earlier, and all other criteria for intervention had been fulfilled. Further, RtP should allow for coalitions or individual states to execute interventions if no regional organizations show willingness to do it. More careful consideration of evidence collected and presented by UN bodies and agencies, ICRC and international NGOs is needed, and evidence should affect decision on intervention. Finally, list of just causes of intervention should be reconsidered to possibly include cases of intentional gross neglect of population immediately following natural and environmental disasters. Without an improved RtP possibility of some humanitarian interventions will depend more on political relations inside the UNSC than on gravity of committed or planned crimes. Alternatively, those willing to intervene will undertake intervention without invoking RtP doctrine altogether.

## Conclusion

In the thesis I have discussed humanitarian intervention and Responsibility to Protect doctrine, an exciting and evolving issue of international law and international politics.

I have tried to demonstrate how adoption of the Responsibility to Protect doctrine influenced humanitarian intervention - the possibility of intervention taking place and its effectiveness. I have demonstrated that RtP doctrine is not adequate in protecting population from mass atrocities, mainly because it is reliant exclusively on the Security Council as authority for authorizing intervention. This means that under RtP doctrine a humanitarian intervention cannot be launched if a permanent member of the UNSC lodges a veto, or if the UNSC is simply not able to adopt a resolution authorizing intervention. Because of this, if the potential interveners do not receive the authorization, they could launch intervention without referencing responsibility to protect.

I have first briefly described the history of humanitarian intervention and RtP doctrine. I have shown how interventions evolved from Cold War cases in which humanitarian intentions of interveners were condemned as violations of state sovereignty, and in which humanitarian benefits that followed from interventions were overlooked as secondary consequences in international politics. After the Berlin Wall fell humanitarian crises contained inside the borders of individual countries were viewed as threats to international peace and security and could warrant an intervention under the Chapter VII powers of the Security Council. The war in Kosovo in 1999 led to a humanitarian intervention that was not authorized by the Security Council until after it ended. The RtP doctrine was devised in 2001 by the International Commission on Intervention and State Sovereignty as a crucial attempt to resolve the key moral and legal issues concerning intervention, but the form in which its findings were adopted in 2005 by the United Nations



was considerably different and did not provide for better protection of population any more than the previous doctrine of humanitarian intervention.

I have dedicated most attention to three recent situations, Libya, Côte d'Ivoire and Syria, and I analyzed them using criteria for intervention that the ICISS provided in its report in 2001. The intervention in Libya successfully prevented mass atrocity crimes against the rebels and civilian population opposed to Colonel Gaddafi, but eventually compromised the moral integrity of the RtP doctrine as the intervention continued well after Gaddafi ceased being a significant threat to the population of Libya. The intervention in Côte d'Ivoire was more modest in scope but was effective enough to help bring conflict to its end, although the interveners focused on preventing crimes committed by only one side in a civil war. The Syrian case remains tragic to this day, as the lack of compromise in the UNSC did not allow intervention that would stop the killings mainly orchestrated by the Syrian authorities. A number of western countries was on the verge of intervention after a deadly chemical attack in Damascus area, but backed off because of what were ultimately political reasons.

With the Syrian example I have also proved that RtP is not only inadequate to protect the population since it cannot be employed without the UNSC authorization, but that it can be altogether ignored if a state still pursues intervention. US president did not refer to responsibility to protect in the period in which he was warning Syria of intervention, as this would have required UNSC authorization which was absent.

I have set out a list of recommendations that would improve the Responsibility to Protect doctrine. RtP should be amended to include the possibility of intervention with only subsequent authorization of UNSC in the cases where UNSC is unable to authorize intervention and all other criteria have been met. RtP should not demand that interventions be only performed by regional organizations under Chapter VIII, but also by other coalitions or even individual states if only they are willing to intervene and halt or avert mass atrocities.

The Security Council should confer particular attention and importance to reports presented and evidence collected by UN bodies and agencies, and by credible international NGOs and should rely on them in deciding whether to authorize intervention or not. Finally RtP doctrine should be reconsidered to include interventions in cases of gross neglect for human lives in the aftermath of environmental or natural disasters. Any changes to RtP doctrine could be adopted by UN General Assembly in a form of resolution.

The main problem with the doctrine is its reliance on UN Security Council as the only right authority that can authorize an intervention. Insisting on this is not a problem when the UNSC can agree on an intervention. But authorizing an intervention always includes political considerations and this means that some permanent members of the Security Council will not authorize an intervention against the regimes that are their political allies. RtP needs to have a backup mechanism that will allow intervention even in these situations, because decision to start an intervention that has reasonable prospects of success should primarily depend on the gravity of crimes, and not on political alliances of those who are deciding on the intervention, or on electoral risks of going into an intervention.

Humankind pledged not to allow the Holocaust to happen ever again. Yet the world failed to prevent the worst in Srebrenica, Rwanda and Darfur. The prospect of such events happening again and again while the international community is carefully weighing on whether to take the least risky action is horrifying. “Never again” is not difficult to comprehend and the responsibility to protect is not only about protecting strangers. It is about protecting humanity.

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