

# **Atrocity prevention in Syria and Libya – a comparative analysis**

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## Abstract

In the wake of the horrific events during the Second World War, the international community promised to 'never again' stand by and witness such gross violations of human right as the Holocaust brought with it. It is however the case that such events seem to appear much too frequently and the promise has been reiterated time and time again. In the 1970's the killing fields of Cambodia called for the promise to be remade and so did the ethnic cleansing of young Muslim men in Srebrenica and the 1994 genocide in Rwanda. History shows that we must work actively for the protection of human rights if we are not to be compelled to repeat 'never again' forever. The most recent examples of such cases are those of Libya and Syria where government forces in response to popular protest have committed war crimes, crimes against humanity and other horrible atrocities against their own populations these cases will be the focus of this study.

The 'rightful' response to atrocity crimes have historically been extremely contested and has in large been the reason why we have had to repeat that noble promise so many time. The doctrine of humanitarian intervention is of extreme relevance, but it is also very much a source extreme disagreement. Proponents of international order adhere to the traditional principle of 'Westphalian sovereignty' – that of non-intervention into the domestic affairs of states – whereas those advocating in favour of intervention on humanitarian grounds base their arguments on the concept of international justice, specifically in the form of universal human rights. With the development of the principle of Responsibility to Protect (RtoP) in the beginning of the last decade and its unanimous adoption at the 2005 UN World Summit appeared to have provided a framework for humanitarian intervention on which, if not all, then at least most of the world's states could agree. RtoP outlines the basic principle that states have the primary responsibility for protecting its citizens, but that in the case the state is unable, or unwilling, to do so, that responsibility falls upon the international community. RtoP was invoked in UN Security Council resolutions aimed at putting and end to the evolving conflict in Libya in 2011. For the first time in history, the UN Security council authorised the use of coercive measures against a 'legitimate' authority of a state on the basis of the Responsibility to Protect. As the Syrian crisis unfolded it became clear, that such action was doomed, due to the negative votes cast by China and Russia in the Security Council.

In this thesis I intend to investigate why the responses to these two crises were so different. My conclusion will be based on an examination of the development of the doctrine humanitarian intervention and the 'emerging norm' of RtoP. I will perform a comparative analysis of the events that characterised the two conflicts and make an assessment of the extent to which the principle of RtoP could rightfully be invoked. Subsequently, I will look at the votes cast by Security Council Members, and their reasoning behind this.

As will be shown, RtoP was applicable in both the Libyan and Syrian context; however, it was only invoked in the case of Libya. This turns my analysis to the voting behaviour of the Members of the Security Council regarding which it will be seen that the 'P2-Members', China and Russia, seemed to have made a drastic change in their position on this subject – based primarily on the experience of the intervention which took place in Libya in 2011.

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## 1. Introduction

Despite the post-holocaust promise of 'never again', genocide, crimes against humanity, ethnic cleansing, as well as gross and systematic violations of human rights are "all too frequently recurring phenomena" and, for the most part, it seems that the international response to these mass atrocities has been "slow, timid and disjointed" (Bellamy, 2009, s. 1).

At the heart of the debate on how to respond to such horrific acts is the contest between the concept of intervention on humanitarian grounds and the principles of state sovereignty and non-intervention.

In his Millennium Report to the UN, Kofi Annan, then secretary general of the UN, emphatically asked the international society, and in particular critics of humanitarian intervention: "how should we respond to ... gross and systematic violations of human rights that offend every precept of our common humanity?" In continuation he acknowledged that "Few would disagree that both the defence of humanity and the defence of sovereignty are principles that must be supported." But Annan unequivocally made his beliefs apparent when he stated that: "surely no legal principle – not even sovereignty – can ever shield crimes against humanity ... Armed intervention must always remain the option of last resort, but in the face of mass murder it is an option that cannot be relinquished" (Annan, 2000, s. 48).

In response to the Annan's question the International Committee on Intervention and State Sovereignty was formed in 2000. A year later it published its report 'The Responsibility to Protect' further articulating what had become known as 'sovereignty as responsibility' and outlining a framework within which. The main components of the concept of 'responsibility to protect' – RtoP – was since unanimously adopted by the UN General Assembly at the 2005 World Summit, and has subsequently been reaffirmed in various UN Security Council resolutions.

The concept of RtoP was invoked as the basis on which the 2011 intervention in Libya was justified and it might seem as if the notion had become a generally accepted norm. However, despite RtoP being at the heart of the international discourse on how to respond to mass atrocity crimes in Syria, there has not been consensus among major powers involved about intervening.

In the early days of 2011, protesters amassed in streets and squares of Libya's cities to demonstrate their unhappiness with the regime of Colonel Muammar Gaddafi. In late February, in his first major speech after the outbreak of protest, Colonel Gaddafi responded by declaring war on the uprising – vowing that he would “cleanse Libya house by house” and, echoing the language from the Rwandan genocide, calling the protesters “cockroaches” and declared that they would be executed (BBC NEWS, 2011). The situation was deeply alarming and the prospect of massacre and atrocity at the hands of the government forces was clear.

On 26 February 2011, the United Nations Security Council debated and adopted Resolution 1970 regarding the situation in Libya. In the resolution, the Security Council condemned “the widespread and systematic attacks ... against the civilian population” and demanded an immediate end to state violence; the Security Council furthermore made clear that it derived its actions from the responsibility of the Libyan authorities to protect its own population (REFERENCE). The first forcible intervention authorised by the Security Council and undertaken pursuant to RtoP had begun. Less than three weeks later, 17 March 2011, the Security Council adopted Resolution 1973 authorising a ‘no-fly zone’ as well as “all necessary measures ... to protect civilians and civilian populated areas” (REFERENCE).

The speed at which the UN system and in particular the Security Council considered the matter and adopted a ‘Chapter VII resolution’ was “almost unprecedented” (Zifcak, 2012, s. 3). The reaction to the decision to pass the resolution was remarkable; UN Secretary-General Ban Ki-Moon called it a “historic decision ... [which] affirms, clearly and unequivocally, the international community’s determination to fulfil its responsibility to protect civilians” (Ban, 2011). His excitement was subsequently echoed by the leaders of the United States, France, and Great Britain who jointly stressed that Security Council Resolution 1973 contained an “unprecedented international legal mandate” which authorised the use of force “to protect

civilians” threatened with mass atrocities by their own government (Obama, Cameron, & Sarkozy, 2011).

The application of RtoP makes Libya “a rather special case of normative change in international relations” (Fröhlich, 2015, s. 299). It genuinely marked the use of a concept that only ten years earlier had emerged on the international stage as a phrase coined by an international commission attempting to establish a new sense of balance between traditional state sovereignty and the concept and practice of humanitarian intervention.

The dramatic and tragic events that have since occurred in Syria have undeniably suppressed the otherwise immediate euphoria felt by the proponents of RtoP in the aftermath of the rapid intervention in Libya.

In Syria, protests also took place at the time. When the security forces of President Bashar al-Assad in mid-March responded violently to a large, but peaceful demonstration in Dar’a, the protests rapidly spread across the country. The conflict in Syria, now entering its sixth year, is the deadliest conflict in the 21<sup>st</sup> century. The human cost has been staggering. So far, it is estimated that the conflict has demanded the lives of up to almost 500.000 Syrians who have been killed in the fighting; more than a million have been injured and over 12 million Syrians – half of the country’s population prior to the outbreak of violence – have been displaced from their homes ( (Al Jazeera, 2016).

From the very outset of the conflict, the Syrian people, as well as the international community in general, has witnessed gross human rights abuses, crimes against humanity, and war crimes committed by Syrian Government forces and by pro-government militia groups. Initially, at least on the surface, the horrific actions perpetrated against the Syrian population were of a similar scale and intensity to that which preceded and justified the intervention in Libya and (Zifcak, 2012, s. 3). In the months and years that followed, the violence, atrocities, and war crimes which overshadows the conflict have only worsened – in his last press conference as United Nations Secretary-General, Ban Ki-Moon stated frankly that “Aleppo is now a synonym for hell” and that actors within the international community “have collectively failed the people of Syria” which remains a “gaping hole in the global conscience”

(Ban, 2016).

The “moment of real exhilaration” in the aftermath of the intervention in Libya was quickly replaced by a “real sense of disappointment” with regard to RtoP-intervention in Syria (Evans, *After Syria: the Future of the Responsibility to Protect*, 2014). While many in the international community and in particular the proponents of RtoP thought that the concept was “Alive and Well after Libya” (Weiss, 2011), it is beyond doubt that subsequent events – the ouster of the Gaddafi regime and the following impasse in the UN Security Council over intervention in Syria based on RtoP – thoroughly demonstrated the shortcomings of this new emerging norm and might have had disastrous effects on the prospects of future UN sanctioned interventions based on RtoP.

As briefly outlined above, and elaborated on further down, the two cases at hand seemed to, at least initially, share a number of crucial aspects. In both Libya and Syria the peaceful protests broke out in early 2011 and in both cases the protesting civilians were brutally suppressed by government troops, police forces and proxy militias. Both cases consisted of autocratic governments that used extra-judicial killings, intimidation, and unrestrained violence as a way to maintain whatever authority they believed to be based on (Renner, 2014). The United Nations Security Council, in the case of Libya, rapidly sanctioned the use of force to protect civilians and indisputably based its action on the principle of RtoP. In the case of Syria, however, the Security Council was paralysed and despite the continuing mass atrocities, the UN Security Council has not taken any decisive action to intervene with an aim to protect civilians in accordance with the principle of responsibility to protect.

The mismatch in response by the international community to these seemingly similar cases of gross human rights violations, war crimes and crimes against humanity is in itself the puzzle that led to the primary objective of this thesis – to examine and, to the extent its possible, explain why the two cases had such different outcomes based on the following research question:

*Why did the international community's efforts at atrocity prevention in Libya and Syria produce such disparate outcomes?*

It should be noted that, although there are various conceptual and legal distinctions between 'RtoP crimes' – genocide, war crimes, ethnic cleansing, and crimes against humanity – and other forms of mass atrocities. For the present purpose of this thesis I, along the lines of Kendal (2013, s. 3), intend to employ the term 'atrocity prevention' as synonymous with prevention of RtoP crimes. Also, when assessing efforts made by the 'international community', I will unless stated otherwise, consider the 'international community' as "represented by the membership of the [UN] Security Council" (Zifcak, 2012, s. 14)

Without doubt a large number of factors have had influence on the efforts made by the international community at conflict resolution; the nature of the conflicts, to what extent they did indeed fall within the criteria for RtoP, the role played by regional actors, as well as the motives and actions by major powers – not to speak of the prospects for success in case of intervention – are all matters of great importance in the context of the subject of this thesis.

In order to address this question properly, the following interrelated issues will be closely examined.

Firstly, the development of the concept of humanitarian intervention and the principle of RtoP and; secondly, the extent to which the principle of RtoP was applicable in the cases of Libya and Syria, and thirdly the considerations and actions of major powers involved in dealing with the cases at hand, in particular the 'negative lessons' learned by Russia and China in Libya and their impact on the Syrian case.

The starting point of my analysis will be the examination of the development of the two major concepts employed in this thesis – humanitarian intervention and the principle of RtoP – and their status within international law. Specifically, I will look at the theoretical debate and the

legal framework on state sovereignty, non-intervention, and prohibition of the use of force – both within written law, i.e. the UN Charter and other documents, as well as in customary international law based on state practice, i.e. practice of the UN Security Council etc.

Subsequently, I conduct my analysis of efforts made at conflict resolution and atrocity-prevention in Libya and Syria. First I consider the Libyan case and to what extent the situation warranted action under RtoP. This requires a somewhat detailed outlining of events crucial to the conflict and an assessment of relevant UN Security Council resolutions and debates. Subsequently I will perform, to the extent possible, an identical analysis of the events concerning the Syrian crisis. From this it will be shown that the events within both crises amounted to atrocity crimes, and that the authorities were either unwilling or unable to protect their populations the responsibility, therefore, fell upon the international community to protect the civilians.

After examining the developments of the two cases and the applicability of the concept of RtoP to them, I then turn to the core of the analysis – an examination of the positions and actions of the major powers involved and to what extent these converged or diverged. This part of the analysis will include a specific focus on 'P3 v. P2' and the influence of 'BRICS'. It will primarily be based on official statements made by P5 and BRICS members in the UN Security Council debates. The focus on motives and positions of major powers and their impact on relevant Security Council resolutions, is expected to give insight into the crucial issues that divide the powers in question; as Christine Gray has put it: "The drafting history ... reveals more about the views of states than the resolutions themselves do" (2008, s. 9). Again, in order to properly compare and contrast, I will first inspect the motives and actions in relation to the Libyan case and subsequently the Syrian case.

The last part of the analysis is concerned with how the reaction to the conduction of the 2011 NATO intervention in Libya influenced the debate and decisions of the Security Council in responding to the unfolding crisis in Syria. Especially I will consider the 'betrayal' felt by Russia and China, when NATO exceeded the mandate outlined in Security Council Resolution 1973 and began its efforts to facilitate a regime change.

Finally, after summarising and concluding on the findings of my analysis, I will discuss these results and reflect on how they compare to previous research and what implications they might have for future academic work in this field.

## 2. Methodology

The chosen research methodology will be presented in the next section along with a discussion of the consequences of the chosen methodology for this paper.

### 2.1 Research Philosophy

How researchers process and analyze data and draw conclusions is determined by the research philosophy to which they subscribe. The way research is performed is linked to the broader philosophies of science (Blumberg, Cooper, & Schindler, 2011)

It is important to keep in mind that the research philosophy determines the choice of methodology and in turn what data is used, how it is managed and how the research problem is analysed. To determine the validity of the research design and the methodology decisions, an understanding of the underlying research philosophy is needed. The research philosophy determines how observation, interpretation and reasoning is conducted. It affects the ontology of the methodology, the epistemology, the concept of truth, ways of drawing conclusions as well as methods and research techniques (Fuglsang & Olsen, 2005).

Each research philosophy represents a different view of the world, leading to different views of how knowledge is created and how research should be conducted. The two ends of the spectrum are positivism and interpretivism.

Both approaches will be illuminated next and the choice of research philosophy will be explained.

### **The Positivistic Approach**

The positivistic approach is based on the idea that the social world exist externally of the subject, that the subject can view this world objectively and that the world is value free and the researcher can objectively and independently access this world (Blumberg, Cooper, & Schindler, 2011).

The positivistic idea of knowledge is based on observation of an objective world (Saunders, Lewis, & Thornhill, 2009). Research conducted within this approach is based on an observable social reality, where drawn conclusion take form of law-like generalizations (Blumberg, Cooper, & Schindler, 2011). The challenge of adopting this approach is the strict limitation of the scope of science due to the fact that conclusions need verification in the form of verifiable sentences.

### **The Interpretivist View**

In direct opposition to the positivistic approach, interpretivism is found. Build on an anti-realistic foundation, interpretivism's concept of knowledge and recognition does not directly reflect reality, but is based on an interpretation or a specific perspective of the world (Rasborg in Fuglsang & Olsen, 2005). At the heart of interpretivism lies the idea the all knowledge and recognition is constructed socially in a cultural context - meaning that objective knowledge does not exist.

Although a physical world exists, this world does not have any meaning in itself but derives its meaning from different discourses, where meaning is socially constructed (Hansen in (Fuglsang & Olsen, 2005).

In the interpretivist view it is argued that definite laws and theories cannot be derived from the social world's complexity - doing so will inhibit a full understanding of the existing complexities. Conducted research is driven by human interested and the researcher is an active part of the interpretation, leaving interpretivist studies subjective perspectives which makes interpretivist conclusions hard to generalize.

This project is based on social constructivism, which is an approach leaning on the interpretivist approach. This project is based on qualitative data and thus based on subjective interpretations. The social constructivist approach means that the findings and results in this project are subjectively interpreted and social constructed - the nature of the conclusions likewise. Social Constructivism and its implications are illuminated next.

## Social Constructivism

Social constructivism builds on the interpretivist perspective where meaning is created, negotiated, sustained and modified. Emphasis is placed on everyday interactions between individuals and how language is used to construct reality. The social world is thus partly constituted by the discourses and these in turn by social practices. In other words, social and cultural processes and structures have a partly linguistically-discursive nature, which entails that social and cultural reproduction and change takes place in the discursive practices.

As social constructivism is primarily focused in how knowledge is constructed and understood, it is an epistemological more than ontological perspective.

## Ontology

The ontology of a research philosophy deals with the notion of being, the nature of reality and things that have existence. What characterizes social constructivism is the ontology of society existing as both a subjective and an objective reality. In social constructivism, an objective reality exists but as humans, we only have access to it through interpretations.

## Epistemology

Epistemology deals with the nature and grounds of knowledge. In social constructivism, knowledge and truth are viewed as created and not discovered by the mind (Schwandt, 2003).

The social aspect of social constructivism emphasises that reality is socially constructed not by the individual but by society at large through interactions of individuals creating a taken-for-granted reality. In the social constructivist approach, the world of experience is created socially and the individual experience of the world will be influenced by the broader social constructions on macro level (Young & Collin, 2004). Berger and Luckmann (1991) argue that individuals' interaction with the social world influence the individual, creating routinisation and habituation embedded in society. The embedded habituation creates a common knowledge that is internalised by individuals through socialisation.

## 2.2 Implications of Research Philosophy

The social constructivist approach influences the definition of the research question as this is based on an interpretation of the cases of Syria and Libya. As Social Constructivism is based on an anti-realistic foundation, knowledge and conclusions will never directly mirror reality but always be an interpretation (Rasborg in (Fuglsang & Olsen, 2005)). Following the research question, the selected qualitative data will in turn reflect the subjective interpretations presented by the different authors. Likewise, this subjectivity will be reflected in my own analysis and deductions.

Within the social constructivist approach it will not be possible to achieve objective and permanent knowledge. Instead, the project will uncover a certain perspective on the issue at hand that will be embedded in the broader knowledge system, that the data, it is based on, is part of. The authors' as well as my own interpretations are derived for a certain understanding of the world that is embedded and habituated into the broader society, we all belong to.

Although the project is the result of an individual interpretation, the analysis and conclusions will not be completely arbitrary, as the interpretations should be seen in link with broader social context.

## 2.3 Analytical Method

How knowledge is acquired and how conclusions are drawn is determined by the analytical method.

A deductive approach aims to test theory whereas an inductive approach build theory on top of drawn conclusions from a specific study. A deductive approach is useful when the research questions can be subjected to a formalized analysis (Lawson, 2003). As this is not the case with this paper, an inductive approach will be better suited.

The applied data for this paper will be used to induce conclusions, which in nature will be inferential jumps beyond the presented data (Blumberg et al., 2011). The conclusions will explain the evidence but will not necessarily be the only valid conclusions. The inductive approach poses the challenge of gathering enough data in order to gain confidence in the made conclusions and hypotheses. The call for sufficient data will be further touched upon in section 2.5.

## 2.4 Research Design

The research questions lays the base for the research design which represents the plan for how the question is turned into a research project - how the research question is answered.

It is the game plan for how data is gathered and analysed. This part is divided into two sections, which will be dealt with accordingly: the data type and the data collection approach.

### Data Type: Qualitative

The following section discusses the choice of qualitative research methods and the collection of data as well as their consequences.. Although the use of qualitative data does not necessarily disclaim quantitative data from being used, quantitative data will not be utilised in this study.

As the research questions incorporate a 'why' detailed information is needed to examine the question successfully. Quantitative methods are more appropriate for research problems that incorporate questions including 'what'.

The choice of qualitative data is furthermore rooted in this study's epistemology. As no eternally applicable conclusion can be made, the findings of this study will be an interpretation. It is the aim of this study to investigate atrocity-prevention efforts made by the international community in depth. In order to get an in depth understanding of this, it is necessary to base the findings on a number of sources to ensure that different perspectives are taken into account. The qualitative approach will allow me to discover new aspects of the....

However, a sole focus on qualitative research also has its drawbacks: the findings lack strong testability and cannot necessarily be verified in different studies. Moreover, this study is entirely dependent on the contents presented in the data, where important aspects may have been left out.

### Data Collection Approach

Data collection processes are performed either within the monitoring or the communication approach. The researcher can either observe conditions, behavior, events, people and processes or communicate with subjects on the relevant topics (Blumberg et al. 2011).

## 2.5 Data Collection Method

In my analysis, I will base my findings on the implementation of both primary as well as secondary sources of empirical data. The primary data employed consists, for the most part, of official documents – the UN Charter and similarly relative documents, reports, conventions, Security Council resolutions etc. These data are utilised in order to gain insight into, and an understanding of, the various considerations made by the international community – especially those in the UN Security Council charged with the maintenance of international peace – in their response to the conflicts in both Libya and Syria. In employing these data, I will be attentive to the fact that such data, in spite of a sense of immediate applicability, must be subject to thorough scrutinising and comparison with other accounts, given the fact that the data can indeed be subjective. For instance, some might claim that principle of RtoP is a generally accepted norm simply due to the fact that the Outcome Document of the 2005

World Summit was adopted unanimously in the UN General Assembly – to draw such a conclusion without consulting other data, say e.g. accounts of Chinese or Russian reservations and concerns, would not only be premature, it would also be incorrect. Similarly,

I will also be employing, to some extent, empirical data found in secondary sources – articles, reports, news stories, interviews and the like. When working with these types of data, I have as well been very considerate of the need to distinguish between what can rightfully be deemed ‘evidence’ and what could be considered a mere constructed subjective understanding based on the agenda of the primary researcher/journalist.

### **3. Theoretical and conceptual framework**

In the following section I outline the conceptual framework within which I will conduct my analysis. Here, I will primarily be concerned with sketching out the definitions of the various concepts of relevance in relation to answering my research question – sovereignty and the related rules on the use of force and non-intervention within existing international law (The UN Charter) as well as the notion of humanitarian intervention. The thorough discussion of these concepts will follow in the subsequent chapter.

It should be beyond doubt that the concepts of sovereignty and non-intervention have for the most part of their existence been intertwined to a very large extent. Both notions are seen as cornerstones in international relations and international law – the overall framework of this thesis – and are therefore of extreme importance when dealing with the task at hand. Additionally they are the straightforward counterparts to the doctrine of humanitarian intervention and thus a thorough account and evaluation of these concepts is necessary in order to ensure a valid answer to my research question.

For the purpose of preventing any form of misunderstanding it should at this early stage be noted that throughout this paper I make a clear distinction between ‘intervention’ and ‘invitation’ – both would technically amount to a violation of state sovereignty, but only the

'coercive interventions,' where the state concerned is opposed to it, is controversial and of real importance in relation to the question at hand and will be categorised as an intervention. In the case where it is a matter of 'intervention by invitation' it is merely "a case of giving support to a willing party and not an act of intervention" (Parekh, 1997, s. 53). The expression of consent is a critical dividing line between the two.

Also, along the lines of Hubert and Weiss, I will not consider 'interference' as an intervention given that "a central purpose of foreign policy is to persuade other states, friend and foe alike, to enact changes in behaviour that are consistent with foreign policy objectives" and thus any kind of interference which "fall short of coercion in the internal affairs of a state also do not amount to intervention" (Hubert & Weiss, 2001, s. 16).

### 3.1 Sovereignty

Sovereignty is traditionally defined as "a state's independence and exclusive authority over its territory and those residing upon it" (Henderson, 2014, s. 175). Sovereignty, in this sense, is a basic aspect of the modern system of states and derives its legitimacy from the Peace of Westphalia in 1648 and the following treaties of Osnabrück and Münster (Jackson & Sørensen, 2007, s. 14). As it will be shown further down, this definition of sovereignty is not one, which is set in stone.

The concept has, arguably, always included a broad distinction between its internal and external features – internal sovereignty, on the one hand, relates to the power and control exercised within a state, whereas external sovereignty, on the other, concerns the notion that states are equal and that no state is "subject to the legal power of another State or of any other higher authority" (Schrijver, 2000, s. 71). State sovereignty could also be said to include aspects such as mutual recognition, the ability to exercise effective control within the borders of the state, and also to control transborder movements (Krasner, 1999, s. 3-4; 11-12).

Recently, and of great importance to the work conducted in this thesis, sovereignty has increasingly been portrayed not as a right, which states merely enjoy, but as a 'responsibility'

towards the subjects of the state. This concept of sovereignty, that governments derive their power from the consent of the governed, is not a new idea. In fact, it was stated in the American Declaration of Independence of 1776 (Bellamy, 2009, s. 20), but its 'rebirth' in the debate is to a large extent owed to Francis Deng and his colleagues, who 'reinvented' the idea in a series of articles and book – most comprehensively in their book "Sovereignty as Responsibility: Conflict Management in Africa" (1996). Further elaboration on this development and its implications for the development of RtoP will be provided in a subsequent part of this chapter.

### **3.2. The principle of non-intervention**

Deeply intertwined in the classical understanding of the concept of "Westphalian sovereignty" (Krasner, 1999, s. 10) is the principle of non-intervention – today understood as undoubtedly being part of customary international law (Norooz, 2015, s. 11). The basic conception of non-intervention is as old as the modern state system. However, with regards to the placement of it within the sphere of written international law, the principle of non-intervention was first articulated by Emmeric de Vattel in the mid-eighteenth century and – although it was for a long period held in awkward tension with the right to wage war – the principle would become rather firmly established through the course of the twentieth century (Glanville, 2012, s. 7).

Within the framework of written international law, the early treaty formulations of the restrictions on the use of force and the articulation of the principle of non-intervention is best found in the Covenant of the League of Nations, the 1933 Montevideo Convention on Rights and Duties of States together with the Additional Protocol on Non-Intervention of 1936. In Article 15(8) of the Covenant of the League of Nations it is stated that if a dispute between Members of the League is claimed by one party, and is deemed by the Council, to "arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council ... shall make no recommendations as to its settlement" (League of Nations). Article 8 of the 1933 Montevideo Convention forthrightly spells out that "No state has the right to intervene in the internal or external affairs of another" (LNTS, 1936), and the 1936 Additional

Protocol to the convention declared bluntly in its very first Article that the “High Contracting Parties declare inadmissible the intervention by any one of them ... for whatever reason, in the internal or external affairs of any other of the Parties” (Hudson, 1937, s. 628).

Since the development of the UN and the adoption of its Charter, the principle of non-intervention is derived from Article 2(7) of the UN Charter, which reads:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

The principle has, since the adoption of the Charter, been reaffirmed in a number of legal international documents, such as the Charter of the Organization of American States and in the Constitutive Act of the African Union (Norooz, 2015, s. 11), as well as in the rulings on different cases of intervention that were put before the International Court of Justice. Additionally, it has been confirmed numerous times by the UN General assembly, as well as in UN Security Council resolutions.

Noticeably, the Constitutive Act of the African Union departed from the classical interpretation of the principle and its Article 4(h) established: “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity” (African Union, 2000).

#### **4.3 The prohibition of the threat or use of force**

The 1928 General Treaty for Renunciation of War as an Instrument of National Policy, perhaps better known as the Kellogg-Briand Pact, named after its authors, United States Secretary of State Frank B. Kellogg and French foreign minister Aristide Briand, spelled out the initial attempts at limiting the use of force. In its very first Article, it is stated that the

contracting parties to the treaty “condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another” (LNTS, 1929).

Notably, this treaty was concluded outside the League of Nations and thus ‘survived’ the abolition of that organisation; as recently as December 2013, in a written answer to the House of Commons, the Foreign and Commonwealth Office stated that the Kellogg-Briand Pact “remains in force and that the United Kingdom remains a party” (HC Deb, 2013, s. 483W).

Although the prohibition on the threat or use of force has been established and reaffirmed in a large number of international documents throughout the past century, it is within the framework of the UN Charter that it is most relevant for the purpose of the present analysis.

In the Charter of the United Nations the prohibition on the threat or use of force is articulated in Article 4(2) of the UN Charter:

“All members shall 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.”

There are, within the Charter, only two exceptions to the ban on the use of force – states are allowed, legally, to use force in self-defence and when authorized by the UN Security Council.

On the face of it, Article 2(4) must be interpreted as a general prohibition on the use of force on the international scene without any exceptions part from the aforementioned. Still, as will be shown, the question whether a right of humanitarian intervention without Security Council authorization is compatible with Article 2(4) continues to be debated

### 3.4 Humanitarian intervention

The definition of humanitarian intervention is, for obvious reasons, subject to the distinction between intervention, interference and invitation outlined earlier in this chapter. For the purpose of this thesis it is also vital to differentiate between humanitarian intervention and humanitarian aid or assistance – though these terms are sometimes used interchangeably there is a clearly marked difference in that the concept of humanitarian aid relies on the consent of the host state and thus share the features of ‘intervention by invitation’ and is as such not contradictory to the principle of state sovereignty (Griffiths & O’Callaghan, 2002, s. 145-146).

As with so many other concepts of international relations, throughout the literature there are slightly different variations of the concept of humanitarian intervention, but it seems clear that most scholars agree on three key features when defining the term: “the transboundary interference in domestic affairs of a foreign state, the predominant humanitarian purposes, and the coercive nature of the engagement” (Klose, 2015, s. 8).

For the purpose of this thesis, humanitarian intervention is defined as follows:

“the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied” (Holzgreffe, 2004, s. 18)

### 3.5 Major powers

For reasons of clarification, and in case it should not be clear by now, I will briefly outline the definitions of various other terms used in the present thesis.

When speaking of ‘P2’, ‘P3’, and ‘P5’ Members, I refer to the five Permanent Members of the UN Security Council – The United States, United Kingdom, and France constitute the ‘P3’

group, Russia and China the 'P2'. The term BRICS covers the group of "re-emerging powers" – Brazil, Russia, India, China, and South Africa (Odeyemi, 2016, s. 122). Finally, I will employ the term 'major powers' as one that includes all the abovementioned nations; in this sense both the P3 and the BRICS are included within this caption.

## **4. The concept of Humanitarian intervention and the principle of RtoP**

In this chapter I will examine in depth, the developments of humanitarian intervention and RtoP.

### **4.1 State sovereignty, the ban on the use of force and the principle of non-intervention**

At the heart of the discussion of humanitarian intervention is the battle between state sovereignty and human rights (Bellamy, 2009, s. 8-10). As briefly outlined above, the concept of state sovereignty as "a state's independence and exclusive authority over its territory and those residing upon it" (Henderson, 2014, s. 175) is as old as the modern state system itself. This notion of sovereignty is what is referred to as "traditional" or "Westphalian" sovereignty (Bellamy, 2009, s. 15) (Krasner, 1999, s. 3-4).

Although the concept has been clearly defined and for several hundreds of years has constituted "the central principal of the international community" (Henderson, 2014, s. 176), it should be noted that, as a whole, the concept of sovereignty is not free from contestation, and in many ways it is facing several challenges. Of highest relevance, in relation to the concept of RtoP and the task at hand, is the conceptualisation of 'sovereignty as responsibility'. In short, this idea, coined by Francis Deng in 1996, rests on the philosophy that sovereignty carries with it a responsibility on the part of governments to protect their citizens.

The conceptualisation of 'sovereignty as responsibility,' although it did not receive the wider attention that was focused on other normative developments of the 1990s, became "more

than any of these other contributions ... a central conceptual underpinning of the responsibility to protect norm as it finally emerged” (Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, 2009, s. 37)

International legal doctrine is still debating whether humanitarian intervention without authorization from the Security Council is compatible with Article 2(4). The primary argument for its legality is that humanitarian intervention is not designed to challenge the ‘territorial integrity’ or ‘political independence’ of a state. Humanitarian intervention is neither incompatible with the ‘Purposes and Principles of the Charter’ but conform with the fundamental UN purpose of promotion of respect for human rights, Article 1(3) (Reisman & McDougal, 1973, s. 171).

Article 1(3) states that the purpose of the UN is to solve international economic, social and cultural problems. In this regard, it can be argued that prohibition does not cover humanitarian intervention on economic, social or cultural ground.

It could also be argued that humanitarian intervention is incompatible with Article 2(4), which states that Member States have a subsidiary responsibility to maintain international peace and security when the Security Council is not able to fulfil the responsibilities under Article 24 as well as Chapter VII (Jessup, 1948, s. 170-171).

The Charter does, however, not give basis for this view. The ‘primary’ responsibility referred to in Article 24 falls exclusively upon the Security Council to maintain international peace and security. The subsidiary responsibility is referred to as that of the other UN organs such as the General Assembly but not the Member States (Danish Institute of International Affairs, 1999, s. 82).

The argument that the conditions underlying the Charter have radically changed in the wake of the Security Council’s failure to fulfil its responsibilities, has lost its strength after the revitalisation of the Security Council from 1991 onwards and cannot be said to be legally sound. Lastly, prohibiting states from the use of force in between themselves is an existing

principle under customary international law, independent on the UN Charter and not dependent on the effectiveness of collective security in Chapter VII

## 4.2 Development of the doctrine of humanitarian intervention

“At least until the horrifying events of 11 September 2001 brought to the center stage the international response to terrorism, the issue of intervention for human protection purposes has been seen as one of the most controversial and difficult of all international relations questions” (ICISS, 2001, s. VII).

### 4.2.1 Humanitarian intervention prior to the adoption of the UN Charter

Although some have the view that humanitarian intervention is a rather new concept, it is a fact that there is a rich history of legal thinking and writings about the rights of states to protect those beyond their borders from cruelty and persecution. The debate over humanitarian intervention has “long vexed international lawyers and philosophers” (Stromseth, 2003, s. 232).

The history of these ideas dates back to the development of the modern concept of state sovereignty in the 16<sup>th</sup> and 17<sup>th</sup> century if not earlier (Glanville, 2012, s. 5). The Roman philosopher Cicero, in the first century BC, argued that there were two types of injustice: “men may inflict injury; or else, when it is being inflicted upon others, they may fail to deflect it, even though they could” (1991, s. I.23,10) He insisted that justice not merely entailed negative duties to refrain from perpetrating harm, but also positive duties to protect others from harm. This notion of a ‘duty to intervene’ greatly influenced subsequent legal theorising about the responsibilities to punish injustice and those guilty of crimes. Early modern writers as Gentili, Grotius, Pufendorf, Vattel among others also held the view that intervention to rescue innocents and punish tyranny was a positive duty (Suarez, 1944, s. 770) (Grotius, 2005, s. 1158) (Pufendorf, 2005, s. 81) (Vattel, 2008, s. 262) (Glanville, 2012, s. 5) and that such a war should be considered a “just war” (Danish Institute of International Affairs, 1999, s. 79).

The modern doctrine of humanitarian intervention can be traced back to nineteenth century state practice and international legal theory. At that time in history, waging war and other

forms of use of force as a way of conducting international politics was not prohibited, but there was “a sense of necessity to justify the use of force on moral and political grounds in accordance, notably, with the tradition of just war” (Danish Institute of International Affairs, 1999).

In regards to practice, the nineteenth century saw states increasingly invoking humanitarian reasons to justify intervention. This was the case as early as 1827 when Great Britain, France, and Russia collectively intervened in Greece to stop the Turkish massacres and suppression of Greeks associated with revolutionary groups (Hubert & Weiss, 2001, s. 16)

Interestingly the historical accounts of humanitarian interventions show that from 1827 to 1908 at least five prominent interventions were undertaken by European powers. All of them were targeted against the Ottoman Empire and had very common features: Firstly, the intervention just mentioned in Greece 1827-30; secondly, the French intervention in the Lebanon 1860-61 to protect Maronite Christians; thirdly, there was an intervention by Austria, France, Italy, Prussia, and Russia in 1866-68 to protect the Christian population in Crete; fourthly, the Russian intervention in the Balkans 1875-78 in support of the insurrectionist Christians; and finally the interference by European great powers from 1903-08 in favour of the oppressed Christian Macedonian community (Danish Institute of International Affairs, 1999, s. 79).

By 1840 the term first began to appear in the international legal literature (Hubert & Weiss, 2001, s. 16) and in legal theory, the doctrine emerged as a growing number of legal commentators supported the notion that states had the right to intervene by the use of force “in cases in which a State maltreats its subjects in a manner which shocks the conscience of mankind” (Lauterpacht, 1950, s. 32). By the end of the nineteenth century and during the first half of the twentieth the doctrine of humanitarian intervention was recognised by a vast majority of legal scholars as constituting customary international law (Danish Institute of International Affairs, 1999, s. 79). Others rejected the claim that humanitarian intervention existed in customary law, noting the substantial number of scholars and commentators who had earlier rejected the proposition as well as the inconsistency of state practice (Hubert & Weiss, 2001, s. 17). Indeed, the first half of the twentieth century, did see a decline in the frequency of interventions carried out on humanitarian grounds – the decline coincides with,

and could possibly be linked to, the first initiatives (the Kellogg-Briand Pact from 1928) by the international community to prohibit the use of force in the relations between states (Danish Institute of International Affairs, 1999, s. 79)

#### 4.2.2 Humanitarian intervention under existing international law

As mentioned, when the modern conception of humanitarian intervention was coined in the nineteenth century, there were no restrictions on recourse to war. However, over the course of the twentieth century, that would change dramatically. The outlawing of the waging of war and the principle of non-intervention were developed in the Kellogg-Briand Pact and later crystallised into its current form under Article 2(4) and 2(7) of the UN Charter.

The Charter of the UN only allows the use of force by Member States in self-defence or when authorised by the Security Council. However, the Security Council, to which primary responsibility for the maintenance of international peace and security is conferred, may take action under Chapter VII of the Charter. Such action has the one purpose of maintaining or restoring international peace and security. According to Article 39 of the Charter, it is up to the Security Council alone to determine what constitutes a 'threat to peace' – the notion of a threat to peace clearly refers to international peace (Danish Institute of International Affairs, 1999, s. 62).

Although the original framers of the UN Charter hardly had the intention to regard internal conflicts and human rights violations a threat to international peace, they did not rule out the possibility of a dynamic development of the notion of a 'threat to peace' either. The notion is inherently vague and, as mentioned above, it is left to the discretion of the Security Council to the existence of such a threat (*Ibid.*).

Through the practice of the Security Council, as will be further outlined below, the original understanding of what might constitute a 'threat to peace' has been considerably widened. In effect, the Security Council has on several occasions deemed internal situations – "civil war,

civil strife or gross and massive violations of human rights” – to be considered a threat to international peace (*Ibid.* p. 63). This can be said to be the case especially in the 1990s, but practice since 1991 is not without precedent. Already in the 1960s and 1970s the Security Council determined that the inherently internal situations in Southern Rhodesia and in South Africa constituted a threat to international peace (*Ibid.*)

It is noteworthy that in the 1960s it was primarily the developing Asian and African countries, with the backing of the Soviet Union, who brought pressure upon the Security Council to apply Chapter VII to various situations in Southern Africa, whereas the Western states were initially unwilling to consider these policies a “threat to peace” (*Ibid.*)

Though the prohibition on the use of force and the concept of non-intervention seems rather clear-cut, the questions as to the legality of humanitarian intervention have persisted. For instance, a number of American scholars, among others, have advanced the case for humanitarian intervention as a legal form of action and the positions of states varies as well – notably, France and the United Kingdom have on several occasions asserted a right of humanitarian intervention (Danish Institute of International Affairs, 1999, s. 80).

#### **4.2.3 Humanitarian intervention during the Cold-War period**

Against the backdrop of the development of the United Nations, and its explicit ban on the use of force and intervention established in Article 2(4) and 2(7) of the UN Charter, the debate about humanitarian intervention at first seemed to fade away, and prominent legal scholars such as Ian Brownlie expressed serious concerns about the validity of the doctrine. Pointing to instances of political abuse of humanitarian rhetoric to justify forcible interference in the past, especially in the case of the German assault on Czechoslovakia in 1939, Brownlie concluded that no authentic case of humanitarian intervention had ever occurred. Moreover, he called it a favourable development in international law and politics that this “institution has disappeared from modern state practice” (Brownlie, 1963, s. 340).

However, such drastic conclusions were far too premature and only a few years after Brownlie's comments in the end of the 1960s and the beginning of the 1970s, the debate about the issue of humanitarian intervention regained momentum on the occasion of the crisis in Biafra in 1968 and the military intervention of India to stop mass atrocities against the civilian population in East Pakistan in 1971 (Klose, 2015, s. 7). These events once again impelled academics and policymakers alike to pay considerable attention to the notion of humanitarian intervention.

State practice show that during the Cold-War period, there were in fact a number of cases in which an intervention by the use of force employed by one state against another took place, though most of these interventions "could not reasonably be said to be genuinely humanitarian" (Danish Institute of International Affairs, 1999, s. 88). Additionally, even in cases where the doctrine of humanitarian intervention could indeed have been invoked, states most often did not do so, and primarily relied on self-defence and protection of its own nationals abroad as their legal justification for intervention (*Ibid.*). Another prominent feature of that time – the deadlock within the Security Council, stemming from the ideological competition between the two superpowers – had particular affects on the character of interventions. In fact, during the Cold War, interventions were "far more likely to be undertaken by a single state ... than they were to be multilateral" (Hubert & Weiss, 2001, s. 18), which in no way supported the notion of a universally agreed right to intervene.

Aside from the two cases mentioned in the section above, arguable humanitarian interventions include: Vietnam's 1978-79 intervention in Cambodia, expelling the Khmer Rouge regime and installing a new government; the intervention by France in Central Africa in 1979 aimed at putting an end to the atrocities committed by President Bokassa; and the Tanzanian intervention in neighbouring Uganda the same year, in response partly to conflict concerning Kagera – a region of Tanzania annexed by Idi Amin, as well as the reign of terror conducted by Amin, which resulted in the estimated loss of 300.000 lives (Danish Institute of International Affairs, 1999, s. 88-89).

What is evident from the accounts of these interventions is that at no point during the Cold-War period – even with regard to arguably humanitarian interventions – was there any form of universal approval by the international community. None of the interventions listed just above were condemned in Security Council, but they were thoroughly discussed and many states criticised the Indian and the Vietnamese intervention, whereas only a few states voiced critical concerns about the French and Tanzanian interventions (Danish Institute of International Affairs, 1999, s. 89). As mentioned, states, at the time, were very reluctant to invoke humanitarian concerns as justification for their interventions; for instance, neither India, in the case of intervention in East Pakistan, nor Tanzania in its intervention into Uganda invoked the doctrine of humanitarian intervention (*Ibid.*)

Regarding developments in terms of the legality of humanitarian intervention, the Cold-war period saw a number of international declarations speaking against the assumption that a right of humanitarian intervention without authorisation from the Security Council was in existence. This can be seen, among other places, in the 1970 Declaration on Friendly Relations as well as the 1975 Helsinki Final Act from the Conference on Security and Cooperation in Europe. Both documents reiterate and affirmed the provisions set out in Article 2(4) and 2(7) of the UN Charter (Danish Institute of International Affairs, 1999, s. 89).

Furthermore, on two occasions, the International Court of Justice has ruled on cases related to the legality of interventions based on humanitarian grounds – the case of intervention by the United Kingdom in the Corfu Channel and the intervention by the United States in Nicaragua. In both cases, the International Court of Justice affirmed the principle of non-intervention as “a principle of customary law” (REFERENCE) and rejected the notion of use of force to ensure the protection of human rights (Hubert & Weiss, 2001, s. 18). It would seem that the doctrine of humanitarian intervention again was declared dead.

Such a conclusion, nonetheless, is in no way definitive as to the status of humanitarian intervention. The dissolution of the Soviet Union in 1991, and the subsequent end of the Cold War, was seen by many as a chance for the UN to reassert its position within the sphere of international politics and it did indeed bring with it “an urge for intervention to sort out problems of civil strife” (Hubert & Weiss, 2001, s. 19). In the following decade – the 1990’s –

the world witnessed a significant intensification of the debate within international law and political science, furthermore, in terms of state practice, there was, throughout the decade, “an unpredictable and diverse pattern of interventions by the UN, stretching from Iraq to Bosnia, Somalia to Haiti, Kosovo to East Timor” (*Ibid.*). It might seem plausible to argue that a right of humanitarian intervention, in some cases even without Security Council authorisation, may have emerged from the developments in this decade.

#### 4.2.4 The status of humanitarian interventions in the 1990's and the build-up to RtoP

During the 1990s a number of efforts were made to set the international thinking about humanitarian intervention on a new path.

French physician and co-founder of Médecins Sans Frontières Bernard Kouchner attempted to revitalise the doctrine of humanitarian intervention by inventing and popularising the expression ‘*droit d'ingérence*,’ the ‘right to intervene.’ This was something that had real resonance in the new setting of the post-Cold War world, where both the need and opportunity to take action on humanitarian grounds repeatedly presented itself (*Ibid.*). Kouchner’s contribution was outstanding in the way that it made the response to mass atrocities “the single most debated foreign policy issue of the decade” (*Ibid.*). In the recurring debates of the 1990s, the ‘mantra’ of those demanding forceful action when face with humanitarian catastrophes was consistently echoing Kouchner in calling for ‘the *right* of humanitarian intervention’. It did however become more and more apparent that while ‘the right to intervene ‘ was an “effective rallying cry ... in the global North, around the rest of the world, it enraged as many as it inspired” (*Ibid.*).

In the same way, UK Prime Minister Tony Blair made a similar attempt at articulating a doctrine by which the international community could address “the most pressing foreign policy problem we face” in a much-quoted speech to the Chicago Economic Club in April 1999 (Blair, 1999). Specifically, Blair embarked on a quest to identify a set of criteria by which states could determine whether or not to carry out a military intervention. Although the speech

“captured the mood of the time”, Blair, like Kouchner before him, was only able to “rally the North [and] his doctrine fell on very deaf ears in the South (Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, 2009, s. 34).

In 1994 the United Nations Development Program (UNDP) launched its Human Development Report with the subtitle ‘New Dimensions of Human Security’ which was a “very innovative attempt to bridge the gap between North and South views of the world” (*Ibid.*). In the report, the UNDP authors made an attempt to bring concepts that had previously been separate preoccupations of developed countries – national boundaries, military threats etc. – and of developing countries – feeding, clothing, and educating their populations together within the single coherent framework of ‘human security’. The concept of human security has since become an accepted and familiar part of international public policy, but has not proved to have any “immediate operational utility” (*Ibid.*).

A concept that does have seem to have some operational utility in its own terms is the notion first articulated by Roberta Cohen (1991) that sovereignty comes with a responsibility on the part of governments to protect their citizens. This idea – central to the subsequent development of the principle of RtoP - was perfectly coined by Francis Deng and his colleagues with their insistence on “sovereignty as responsibility”.

Although these theoretical contributions gained much attention, none of them really succeeded in generating any kind of broad international consensus as to when and how the international community could or should respond to atrocity-crimes. As evident from the challenged posed by Kofi Annan in his statement to the Millennium General Assembly, the debates during the 1990s had not produced an acceptable framework for humanitarian interventions.

In terms of practice, during the 1990s the UN Security Council evolved from a state of “self-induced paralysis to value-based interventionism” (Pippan, 2011, s. 161) and showed an “increasing tendency towards considering inherently internal conflicts threats to international peace and security” (Danish Institute of International Affairs, 1999, s. 65). This

change allowed the Council to act – though, as the horrific accounts i.e. from Rwanda and Srebrenica has shown, not in every case – upon serious violations of human rights and international humanitarian law.

In the case the former Yugoslavia (1991-1993), the Security Council considered civil war and violations of international humanitarian law a threat to international peace and – for the first time ever – authorised a humanitarian intervention (*Ibid.*). Subsequently, within the decade, the Security Council acted under Chapter VII of the Charter on several occasions in dealings with civil war and humanitarian emergencies, notably, aside from the ones mentioned in earlier sections of this chapter, the Security Council also acted in the cases of Liberia, Angola, Rwanda, Burundi, Zaire, Albania among others (Danish Institute of International Affairs, 1999, s. 64).

Remarkably, in the case of intervention in Haiti (1993-1994), the Security Council “in effect considered a violation of democracy – a military coup against the democratically elected government – a threat to international peace and security” and intervened “for the purpose, above all, of restoring democracy in Haiti” (*Ibid.* p. 66).

That the number of cases, in which the Security Council has taken action on the basis of humanitarian concerns and within the domestic sphere of Member States, has grown so drastically since the beginning of the 1990s is, above all, due to the altered political environment and the behaviour of the major powers. In sharp contrast to the experience of paralysis of the Security Council in the Cold War period, in the 1990’s – especially in the first half of the decade – China and Russia “often pursued a policy of abstaining instead of vetoing decisions in the Security Council” (*Ibid.*).

As argued, the widening of the notion a “threat to international peace and security” is clearly evident from Security Council practice with regards to humanitarian interventions. This development was initially characterised by clear reference to the perception that “internal conflicts have almost invariably also had international repercussions” such as transnational refugee flows, regional destabilisation etc. (*Ibid.* p. 63). Such references to international repercussions were initially employed as justification for Security Council action under

Chapter VII; this was the case in, amongst others, the interventions in South Africa, Iraq, Haiti and Kosovo.

However, it is inherently noteworthy to take into consideration that in recent practice another remarkable tendency is apparent. The Security Council, when dealing with internal conflicts under Chapter VII, “increasingly does not refer to international repercussions at all” and it seems that “The Security Council now considers that internal conflicts with humanitarian consequences may be regarded as threats to international peace in their own right, regardless of their international repercussions” (Danish Institute of International Affairs, 1999, s. 60-61). It appears, on the face of it, that state practice supports the idea that intervention by one or more states into the domestic affairs of another, in the name of humanity, can be considered to be legally feasible under the UN Charter.

There are notably three cases of what could be argued to be genuine humanitarian interventions carried out without prior authorisation from the Security Council: the intervention by the Economic Community of West African States (ECOWAS) in Liberia in 1990, the interventions led by the United States, United Kingdom and France in Iraq, and NATO’s intervention in the Federal Republic of Yugoslavia in 1999. (Danish Institute of International Affairs, 1999, s. 90-93).

Practice in these cases, as well as the ones sanctioned by the Security Council and dealt with earlier, shows that the international community is increasingly recognising that intervention for humanitarian purposes in the face of gross human rights violations may sometimes be a necessity. In the case of the ECOWAS intervention in Liberia for instance, the intervention was subsequently endorsed by the Security Council resolution; in the case of the ‘no fly-zone’ intervention in Iraq, the matter was dealt with in the UN General assembly and though some states recalled the principle of non-intervention and criticised the violation of Iraq’s sovereignty, several states spoke out in favour of the intervention and in the end, no resolution of condemnation was adopted. The case was rather similar with regard to the NATO intervention in Kosovo, where heavy criticism, notably from Russia and China, was expressed, but also evidence of support or, at least, “implicit acceptance from the international community” (Danish Institute of International Affairs, 1999, s. 92). On 14 April

1999 the Security Council, by twelve votes to three (Russia, China and Namibia) rejected a Russian sponsored draft resolution, which would have condemned the NATO operation (UNSC Press Release, 1999).

In partial conclusion, though it is clear that state practice does not sufficiently support the view that a right of humanitarian intervention without Security Council authorisation has become part of customary international law. However, it is clear that throughout the 1990s the amount of criticism of unilateral actions declined, and there were implicit support from the UN in cases where the intervention could be said to be truly humanitarian. (Danish Institute of International Affairs, 1999, s. 93). In this sense, state practice may be seen as evidence of greater acceptance of the notion that humanitarian intervention may be morally justified in extreme cases (Ibid.).

#### 4.3 Development of RtoP

Kofi Annan's heartfelt question to the Millennium General Assembly in April 2000, quoted in the introduction to this paper, was essentially the stimulus for "what proved to be, at last, the long-awaited conceptual breakthrough" (Evans, 2009, s. 38).

In 2000 The International Commission on Intervention and State Sovereignty was launched by appointment to the Canadian government. The aim of The International Commission was "to wrestle with the whole range of questions – legal, moral, operational and political – rolled up in this debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground" (ICISS, 2001, s. VII). In December 2001 'The Responsibility to Protect' - a 90-page report with a 400-page supplementary volume of research essays, bibliography and background material - was published.

The report had four primary contributions to the debate on international policy:

The first - and likely the most instrumental on the political level - was changing the discourse of the debate from 'the right to intervene' to the 'responsibility' of states to intervene. The focus was shifted away from the interveners and towards the victims of mass atrocities, ethnic cleansing, systematic rape and starvation.

The second essential change in terminology spurred by the report was to the concept of sovereignty and its transferability from the national to the international sphere. Building on top of Francis Deng's definition, the report insisted that sovereignty should no longer be considered as 'control' in the Westphalian tradition, but as 'responsibility'. The state is the primary responsible for the protection of its individuals. However, where the state falls short or lacks the will to protect its individuals, the responsibility falls upon the wider international community.

The third contribution centered on outlining the practical meaning of 'responsibility to protect' both for the sovereign state as well as for the international community beyond. The report made it clear that the concept entails a wide array of the responsibilities: "the responsibility to *prevent* mass atrocity situations arising; the responsibility to *react* to them when they did, with a whole graduated menu of responses from the persuasive to the coercive; and the responsibility to *rebuild* after any intrusive intervention." (Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, 2009) - the responsibility to prevent being the vastly most important of the three.

The fourth contribution was five criteria of 'legitimacy' for the use of military action in humanitarian interventions. They were as follows: "the seriousness of the harm being threatened (which would need to involve large-scale loss of life or ethnic cleansing to *prima facie* justify something as extreme as military action), the motivation or primary purpose of the proposed military action, whether there were reasonably available peaceful alternatives, the proportionality of the response, and the balance of consequences - whether more good than harm would be done by the intervention." (Evans, 2009, s. 34)

The RtoP concept slowly gained traction from 2001 onwards, firstly being fully incorporated in a doctrine by the African Union in 2002 placing emphasis on 'non-indifference' instead of 'non-interference' in relation to disastrous internal human rights violations.

The breakthrough for widespread acceptance of RtoP came in 2005 with the UN Sixtieth Anniversary World Summit. Leading up to the Summit, The UN Secretary-General's High-Level Panel on Threats, Challenges and Change prepared a report supporting the RtoP notion: "The Panel endorses the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent." (Evans, 2009, s. 34)

The secretary-general, Kofi Annan, wrote in his report to the summit: "while I am well aware of the sensitivities involved in this issue ... I believe that we must embrace the responsibility to protect, and when necessary, we must act on it." (REFERENCE) Annan emphasised the antecedent state responsibility followed by the priority of non-military responses as opposed to military ones.

A section of The Summit Outcome Document was devoted to the RtoP principles, addressing several of the concerns that had been raised in relation to the RtoP principles. Namely, emphasis was put on assistance given to states under stress by the international community - an aspect that was not given attention in the earlier reports. This meant the notion 'responsibility' also entailed the responsibility of states "to assist each other in building preventive capacity" (Evans, 2009, s. 34) The Outcome Document conjointly emphasised non-military reactive measures to be prioritized and military power only to be put into action when these were inadequate. Lastly, the document insisted on the UN - as well as the Security Council in matters of the use of military force - playing a central role in all humanitarian interventions.

The Summit Outcome was adopted by the General Assembly in resolution 60/1.

It is important to note that the paragraphs 138 and 139 of the Summit Outcome Document relation to RtoP are on par with solid principles of international law, where states equally are responsible to protect their populations from genocide, war crimes and crimes against humanity. Correspondingly, the actions covered by paragraphs 138 and 139 should only be initiated in conformity with the Charter of the United Nations.

Endorsing the RtoP principles, the Summit manifested the responsibility to protect state populations from the four specified crimes and violations: “genocide, war crimes, ethnic cleansing and crimes against humanity” (Ban, 2009).

The strategy outlined for advancing the Summit's RtoP agenda contained three pillars:

1. The protection responsibilities of the State (sect. II)
2. International assistance and capacity-building (sect. III)
3. Timely and decisive response (sect. IV)

Pillar one focuses on the responsibility of States to protect their populations, declared by the Heads of State and Government in paragraph 138: “we accept that responsibility and will act in accordance with it” (Ban, 2009).

Pillar two includes the responsibility of the international community to assist sovereign states in protecting their populations within. The pillar entails both cooperation of “Member States, regional and subregional arrangements, civil society and the private sector, as well as on the institutional strengths and comparative advantages of the United Nations system” (Ban, 2009).

Pillar three refers to the Member States' responsibility to collectively answer in a timely and decisive manner if a State fails to provide protection for its own people. The response need not be military, but can involve a large array of actions available to the UN and its partners, such as pacific, coercive or collaborative ones under Chapter VI, VII and VIII of the Charter. The choice of course of action must be in accordance with the provisions, principles and purposes of the Charter.

The pillars are understood to be equally important and the action take to protect populations should rely on “the equal size, strength and viability of each of its supporting pillars.” (Ban, 2009).

## 5. The status of RtoP in Libyan and Syrian conflicts

In this chapter I will, as outlined earlier, firstly look at the extent to which the principle of responsibility to protect was applicable to the two cases – did the events in the midst of popular protests and violent repercussion warrant action to be taken under this principle.

Secondly, I will analyse the motives and actions of the major powers concerned as a means to examine to what length the positions of these highly influential actors converged or diverged as well as their impact on Security Council action. This part of the analysis will incorporate a focus on the interconnectedness of the cases and assess how and in what way the experiences concerning the 2011 NATO intervention in Libya influenced the debates and decisions of the Security Council in response to the crisis in Syria.

### 5.1 RtoP and Libya

In the last weeks of 2010 popular protests broke out in Tunisia (literally) ignited by the death of a young fruit and vegetable seller, who set himself on fire in a desperate attempt to protest against bureaucratic indifference and police corruption. By 14 January 2011, President Zine el-Abidine Ben Ali fled into exile (Adams, *Libya and the Responsibility to Protect*, 2012, s. 5). Inspired by the events in Tunisia, mass anti-government demonstrations quickly spread to Egypt, Bahrain, Yemen and other countries in the region. It seemed that in the first weeks of 2011, “the question was not whether this ‘Arab Spring’ would continue, but which repressive government would fall next” (*Ibid.*).

On 15 February, only a few days after the resignation of Egyptian President Hosni Mubarak, protests broke out in Libya, where an estimated two hundred people gathered in front of police quarters in Benghazi and demanded the release of a well-known human rights lawyer. A number of people were injured when Libyan security force broke up the demonstration. The following day, general protests against the government spread to other towns and the security forces responding by employing lethal force. While impossible to verify, it was credibly claimed by Human Rights Watch and others that by 20 February at least 173 people had been killed (*Ibid.*).

After the uprising spread, Libyan police forces were driven out of some major towns and cities, and a large part of the country began to slip from Gaddafi's control. Some protesters started arming and defending themselves and their neighbourhoods from the government forces – the demonstrations turned into a rebellion as volunteer militias were formed across the east of the country (*Ibid.*).

On the night of 20 February Gaddafi's heir apparent, his son Saif al-Islam, appeared on Libyan television threatening that "rivers of blood" would flow and that "thousands" would die if the uprising was not put to an end (Walt, 2011). Soon after, Colonel Gaddafi himself declared war on the uprising – vowing that he would "cleanse Libya house by house" and, reminiscing the language of the 1994 Rwandan genocide, calling the protesters "rats", "traitors", "cockroaches" and declared that they would be executed (BBC NEWS, 2011). The situation became deeply alarming and the prospect of massacre and atrocity at the hands of the government forces was clear.

In response to the disintegrating situation in Libya, the international community, through the organs of the UN, reacted by condemning the gross violations of human rights and citing the responsibility of the Libyan authorities to protect the civilian population – thus laying out the ground for the subsequent intervention (Zifcak, 2012, s. 3).

For instance, on 22 February, the UN High Commissioner for Human Rights issued a statement affirming this responsibility and declared that "[w]idespread and systematic attacks against the civilian population may amount to crimes against humanity" (Office of the

High Commissioner for Human Rights, 2011). Along the same lines, the Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect issued a press release reminding the Libyan regime of its international obligations to "protect populations by preventing genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as their incitement" and made clear that in the case the "reported nature and scale of [the] attacks are confirmed, they may well constitute crimes against humanity" (Office of the Special Adviser of the Secretary-General on the Prevention of Genocide, 2011).

Additionally, the UN Security Council issued a press statement citing the principle of responsibility to protect and calling on the Libyan government to meet this responsibility (UN Security Council, 2011). On 25 February, the UN Human Rights Council convened a special session on the situation, at which it adopted resolution S-15/1 (REFERENCE). Apart from also citing the responsibility of the Libyan authorities to protect its people, the resolution recommended that the UN General Assembly consider the expulsion of Libya from Security Council membership (Zifcak, 2012, s. 4).

It is highly significant to notice that during these days, the key regional organisation "traditionally sympathetic to Middle Eastern and North African regimes" (Zifcak, 2012, s. 5) joined the chorus of international protest. Both the Security Council of the League of Arab States, the Peace and Security Council of the African Union, as well as the Secretary-General of the Organisation of Islamic Cooperation (OIC) issued statements condemning the descent into violence. The Arab League went one step further and suspended Libya's membership of it (*Ibid.*).

These reactions signalled the extent to which the international community was concerned with the occurring events in Libya and that there was some form of consensus that drastic measures had to be taken.

In Libya, nothing changed.

On 26 February 2011, the United Nations Security Council debated and adopted Resolution 1970 regarding the situation in Libya. In the resolution, the Security Council strongly condemned “the widespread and systematic attacks ... against the civilian population”, demanded an immediate end to state violence and made clear reference to the RtoP doctrine by “*Recalling* the Libyan authorities’ responsibility to protect its population” (REFERENCE). It also welcomed the condemnations by the Arab League, the African Union and the OIC.

In terms of coercive measures, the Security Council, acting under Chapter VII of the Charter, decided to enforce an arms embargo, as well as impose asset freezes and travel bans aimed at certain individuals. It also decided to refer the case to the International Criminal Court. The first coercive intervention authorised by the Security Council and undertaken pursuant to RtoP had begun. However, the Gaddafi regime did not comply with the resolution and in the following weeks violence escalated as pro-Gaddafi forces made advancements across the country.

By 16 March these forces were approaching the opposition stronghold of Benghazi. Again, Gaddafi promised to “show no mercy” (Al Arabiya News, 2011) and Saif al-Islam stated that the rebellion would “be over in forty-eight hours” (Usborne, 2011) – the risk of a massacre against civilians “seemed highly probable if the city was allowed to fall” (Adams, *Libya and the Responsibility to Protect*, 2012, s. 6).

The following day the Security Council adopted Resolution 1973 with ten votes in favour, five abstentions, and no votes against.

Resolution 1973 deplored the failure of the Libyan authorities to comply with resolution 1970, expressed concern about the deteriorating human rights situation, and reiterated the responsibility of Libyan Government to protect the Libyan population. It also recalled the condemnation of the Libyan regime by the Arab League, the African Union, and the OIC as well as their expressed demands for a no-fly zone and safe havens for civilians.

In terms of action under Chapter VII of the Charter, the resolution strengthened and extended the arms embargo, asset freeze and travel restrictions imposed in resolution 1970. What is of absolutely most significance is the fact that the Security Council, for the first time, authorised

coercive military intervention in a sovereign state without the acceptance of the governing authorities of that state (Zifcak, 2012, s. 6). At the time when resolution 1973 was adopted, only France and Italy had formally recognised the Interim National Transitional Council (NTC) as the governing authority of Libya (Pippan, 2011, s. 165).

Resolution 1973 authorised Member States, in effect NATO forces, to enforce a no-fly zone in Libyan airspace and “to take all necessary measures ... to protect civilians and civilian populated areas” (UNSCR 1973, para. 4).

From the accounts outlined above it can be argued that the case of the Libyan crisis did indeed warrant action under the principle of RtoP. First of all, the events that took place were of such a character, that action was demanded. As stated, security forces loyal to the regime were in February 2011 essentially massacring peaceful protesters and there were not at all any prospects of Gaddafi taking steps to resolve the conflict peacefully. Rather the contrary.

Not only did it appear to be the case that the authorities failed their responsibility to protect – it seemed to be beyond debate that the authorities were inciting as well as performing atrocity-crimes. Thus the invocation of RtoP in resolution 1970, I would argue, is in accordance with the whole rationale behind the RtoP doctrine. Along the same lines, it can be concluded that Gaddafi, by promptly ignoring resolution 1970 and, perhaps more importantly, by the unapologetic move to unleash further extreme violence against his own people, clearly failed its responsibility to protect. Thus an invocation in resolution 1973 of the principle of RtoP as a basis for military intervention was justified, and as such – on the face of it – at least the international community lived up to its responsibility to protect the Libyan population.

The conclusion that RtoP applied to the Libyan case can also be said to be supported by the fact that, despite some reservations elaborated further down, the UN Security Council appeared to be united in its decision on applying the principle of RtoP.

Subsequent to the actions taken by the Security Council, in March 2012 the Human Rights Council’s International Commission of Inquiry on Libya reported that “international crimes,

specifically crimes against humanity and war crimes ... [in the form of] murder, enforced disappearance, and torture were perpetrated [by Gaddafi forces] within the context of a widespread and systematic attack against a civilian population” (UN Human Rights Council, 2012a). Although, given the release date of the report, this information was not available to the Security Council at the time of adoption of resolutions 1970 and 1973, it further enhances the argument that RtoP was rightly applied in Libya.

## 5.2 RtoP and Syria

In Syria, protests also broke out in February 2011 following the events in Tunisia and Egypt. Initially these protests were rather limited in scale, but in mid-March, in the aftermath of the detention and torture of a group of children, large protests commenced in Dar’a (UN Human Rights Council, 2012b, s. 8). The protests then rapidly spread across the country. Much unlike his counterpart in Libya, President Assad did not use the same type of highly provocative language with regards to the protesters; Assad claimed, from the very beginning of the protests, that his government had become the target of attacks by armed gangs and terrorists (*Ibid.*). On 30 March, in a national address, he asserted that Syria was “facing a great conspiracy” at the hands of “imperialist forces” (*Ibid.*).

Additionally, rather than merely ignoring or rejecting the claims made by protester, President al-Assad, as early as April 2011, announced several steps towards political and legal reform. Namely, these steps included the formation of a new government, the lifting of the 48-year state of emergency, the abolition of the Supreme State Security Court, and new regulations on the right of citizens to participate in peaceful demonstration (*Ibid.*). Despite employing this placating tactic, protests continued and only a week later, on 22 April, the largest demonstrations yet seen occurred across the country (Zifcak, 2012, s. 15). Protesters accused the government of providing “too little too late” (Blanford, 2011).

On 25 April 2011, Syrian armed forces undertook the first wide-scale military operation in Dar'a. Since then, protests continued across the country, with an increasingly violent response by State security forces (UN Human Rights Council, 2012b). Accordingly, the protest movement responded to the repression by shifting its demands from reforms of the regime to advocating its removal (Zifcak, 2012, s. 15-16)

Over the course of the following months, the conflict entered its "second phase" (Adams, 2015, s. 6) which saw a growing number of civilians, as well as security force defectors, joining the newly established Free Syrian Army, (FSA). In September 2011, the FSA fought a major battle with regime forces in Rastan, and, "[s]hocked by the resilience of the political forces... and now militarily threatened by the FSA, the government adjusted its strategy" (*Ibid*).

On 4 October 2011, the UN Security Council considered a draft resolution in which the Council would recommend possible measures against Syria under Article 41 of the Charter – measures not involving the use of force. Nine members of the Council voted in favour of the resolution, four members – Brazil, India, Lebanon, and South Africa abstained whereas China and Russia voted against the adoption and thus, in what should become the first of a series, used their veto power to prevent the draft resolution from being adopted. In short, China and Russia believed that the resolution was unbalanced – it did not provide sufficient condemnations of the actions of opposition forces – and they were additionally preoccupied with the manner in which the NATO intervention in Libya had been conducted.

In the course of the following weeks, a number of events significantly weakened the position of the opponents of firm Security Council action (Zifcak, 2012, s. 21). On 8 November 2011, the Office of the High Commissioner for Human Rights estimated that, at least, 3,500 civilians had been killed by Syrian security forces since March and that thousands had also reported to have been detained, tortured and ill-treated (UN Human Rights Council, 2012b, s. 8). On 12 November, the Council of the League of Arab States, as it had also done in the case of Libya, adopted a resolution, which suspended Syrian membership of the organisation as well as threatening with economic and political sanctions (*Ibid*. p. 10).

Additionally, the report of the independent international commission of inquiry was presented on 23 November and included a devastating critique of the Syrian regime and its actions. The report concluded that gross violations of human rights had occurred since the outbreak of protests and it deemed the violations to be of such character as to persuade the commission that the Syrian authorities had been responsible for the commission of crimes against humanity (*Ibid.* p. 1).

In early 2012, the nature and scale of the conflict changed once again and entered its “third phase” in which the government forces sought to militarily seize the opposition centres of resistance (Adams, 2015, s. 6). The siege and assault on the city of Homs, characterised by an encirclement of the city, relentless artillery bombardment and the deployment of “ghost” civilian militias, is broadly representative of this phase of the conflict.

On 4 February 2012, another draft resolution was up for vote in the Security Council. This time thirteen members voted in favour – only China and Russia voted against, thereby preventing the adaptation by once again utilising their veto power. This led to “perhaps the most acrimonious debate [in the Security Council] since the end of the Cold War” (Zifcak, 2012, s. 25), but with no immediate effect – the Russian and Chinese delegations were unmoved and rejected the resolution, which they deemed “unbalanced” (*Ibid.*). Subsequently, on 19 July 2012, yet another draft resolution was rejected by the negative vote of China and Russia alone – this time Pakistan and South Africa abstained, whereas the remaining eleven members of Security Council voted in favour. The division within the international community was as evident as possible.

In brief conclusion on the accounts made here, it seem apparent, though none of the draft resolutions proposed included a reference to RtoP, that the principle would indeed apply in this case as well. I recognise that the nature and developments of the Libyan and Syrian conflicts were different, but it is clear that, in both cases, atrocity-crimes were committed by forces loyal to their respective governments (as well as by the opposition forces). There can be very little doubt, if any, that the authorities of both Libya and Syria failed to uphold their responsibilities towards the populations of the two states.

In both the Libyan and the Syrian conflict the responsibility to protect civilians from atrocity-crimes fell upon the international community. In the case of Libya, the international community lived up to its responsibility when the sovereign authority did not. In the case of Syria neither the state nor the international community has been able – or willing – to live up to its responsibility to protect civilians.

### **5.3 Motives of Major Powers**

#### **5.3.1 Motives of P3 Members**

In both the case of Libya and Syria the P3 Members had highly similar positions towards intervening. In their statements regarding the adoption of Security Council resolution 1973, all three delegations in similar fashions outlined the fact, that the P3 Members had for long been highly concerned with the situation and had been calling for means to protect the civilians (Juppé, 2011). They also pointed to the fact that the Gaddafi regime had not complied with earlier resolutions, namely resolution 1970, and that they “stood with the people of Libya in their struggle to exercise their fundamental rights” (Rice, 2011).

In the case of Syria, the P3 ‘alliance’ was once again clearly established. In all three attempts at adopting Security Council resolutions within the first year and a half of the conflict the resolutions, with their specific focus on the fundamental human rights of the Syrian civilians, were heavily supported by the P3 Members. They also, unsurprisingly, rallied together in their critique of the P2 blocking (Grant, 2011). To be fair, these observations are not groundbreaking – the P3 Members have a long history of allying with each other, and, though far from identical, their positions on the necessity to uphold fundamental human rights are alike. What is interesting is how the positions of P2 and IBSA members compared to those of the P3 group.

### 5.3.2 Motives of P2 Members

As evident from the above analysis, in the case of reacting to the Libyan crisis, the P2 Members abstained from vetoing the resolution. They did voice some concerns, primarily based on two aspects. Firstly, their reservations towards the resolution and the coercive intervention stemmed in part from the commitment of Russia and China to the principle of non-intervention in the affairs of a sovereign state. Secondly, their position was also based on disagreements between Security Council members as to the most appropriate strategies, and who should conduct them, in order to quickly bring and end to the violence.

Noticeably, representatives of both Russia and China made clear reference to the need to “respect” the UN Charter (Li, 2011) and “Security Council practice” (Churkin, 2011). In addition, and of some significance, China made a clear connection between its abstention from blocking the resolution and the fact that action had been strongly requested by the Arab League and the African Union (Li, 2011).

It seems that, although P2 Members were somewhat unsure about the legal status and implications of the resolution – they felt, that they could not base an abstention on those grounds. In any case, they seemed to have weighed the protection of the Libyan civilians higher than the need to protect Libya from an intervention – despite its call for the keeping of international order.

With regards to the resolutions concerning the crisis in Syria the contest between P2 and P3 Members were as apparent as possible. In this case, the P2 Members actively blocked the adoption of the three resolutions examined above. In sharp contrast to the experience concerning the adoption of resolution 1970 and 1973, in the case of Syria, the P2 Members emphasised that the principle of non-intervention was to be adhered to (Zifcak, 2012, s. 20). They stressed that the conflict in Syria, along the lines of what President Assad had stated, was a matter of internal conflict in which both sides were equally responsible for the violence. (*Ibid.*)

However, what seems to have been the most crucial argument for the P2 Member's blocking of the resolutions is the fact that they felt that NATO had overstepped its mandate in ousting the Libyan regime. In resolution 1973, member states were authorised to use all necessary means for the protection of civilians, regime change was not 'part of the plan.' Only a few months after the initial aerial intervention in Libya, NATO forces began to attack a wider range of targets and eventually supporting the opposition forces with aerial assistance, allowing them to re-conquer territory and to more firmly establish their command and control over opposition-held areas. This was perceived by P2 Members – and others – as a "disproportionate use of force" (Zifcak, 2012, s. 7).

It seems evident, that the positions of the P5 Members towards intervening in the crises of Libya and Syria were completely different. This is mainly due to the fact, that the P2 Members did not oblige to the idea that resolution 1973 allowed for force to be used with the intent of changing the – at the time – legally recognised authority of Libya. The experiences of the NATO intervention in Libya were crucial to turn of events in regards to the crisis in Syria. China and Russia, having made only vague reservations in regards to intervening in Libya, now stood firm on the principle of non-intervention and seemed to discard the idea that coercive military interventions were feasible – no matter how severe the situation.

The concept of RtoP has not been 'killed' by the NATO sponsored regime change in Libya. Firstly, the P2 Member, will at some point have to acknowledge the very high probability that the protection of the Libyan population from atrocity crimes could not have been guaranteed, had Gaddafi stayed in power. Furthermore – as to accounts of practice, it is significant to notice that in the three years following resolutions 1970 and 1973, the UN Security Council passed no less than twenty-four resolutions directly referencing the concept of RtoP.

## 6. Conclusion

In conclusion, I have through the examination of the development of the doctrine of humanitarian intervention, and the development of RtoP, established that within international law, there can be room for humanitarian interventions. The practices of states throughout the past centuries testify to this, and so does recent practice. In terms of the concept of RtoP, it seems, although still somewhat contested, to be the case that most states at least have adopted the notion of 'sovereignty as responsibility' though there is disagreement as to its use as a basis for coercive military intervention.

My analysis of the two cases at hand has shown that in both cases, the violence that was perpetrated by the force loyal to Gaddafi in Libya and to Assad in Syria, amounted to crimes of war, crimes against humanity and gross violations of human right. By this account action – even coercive military action – under the principle of RtoP was warranted.

In addition, I have briefly accounted for the various considerations that influenced the voting behaviour of the Major Powers involved. Specifically Chinese and Russian positions changed drastically over the course of 2011 – from abstaining with regards to resolutions on the use of force in Libya to actively blocking, by use of their veto, any form of intervention in Syria. It is clear, that the experience of the NATO-intervention in Libya, especially the fact that it seems the tactics went from 'protecting civilians' to 'regime change', have influenced the P2 powers – and to some extent their fellow BRICS members. It can thus be concluded, that difference within the motivations of Major Powers concerning intervention in the two cases can, to a high degree, account for the disparate results.

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